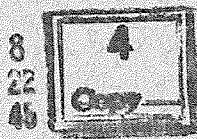


MALMEDY MASSACRE INVESTIGATION

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
EIGHTY-FIRST CONGRESS



FIRST SESSION

PURSUANT TO

S. Res. 42

INVESTIGATION OF ACTION OF ARMY WITH RESPECT TO
TRIAL OF PERSONS RESPONSIBLE FOR THE MASSACRE
OF AMERICAN SOLDIERS, BATTLE OF THE BULGE,
NEAR MALMEDY, BELGIUM, DECEMBER 1944

APRIL 18, 20, 22, 29, MAY 4, 5, 6, 9, 10, 11, 12, 13,
16, 17, 18, 19, 20, 23, 24, JUNE 1, 2, 3, 6, 1949

Printed for the use of the Committee on Armed Services



MALMEDY MASSACRE INVESTIGATION

HEARINGS

BEFORE A

U.S. Congress
Senate
SUBCOMMITTEE OF THE
COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 42

INVESTIGATION OF ACTION OF ARMY WITH RESPECT TO
TRIAL OF PERSONS RESPONSIBLE FOR THE MASSACRE
OF AMERICAN SOLDIERS, BATTLE OF THE BULGE,
NEAR MALMEDY, BELGIUM, DECEMBER 1944

APRIL 18, 20, 22, 29, MAY 4, 5, 6, 9, 10, 11, 12, 13,
16, 17, 18, 19, 20, 23, 24, JUNE 1, 2, 3, 6, 1949

Printed for the use of the Committee on Armed Services



1804
G43 36
1949
COPY 4

COMMITTEE ON ARMED SERVICES

MILLARD E. TYDINGS, Maryland, *Chairman*

RICHARD B. RUSSELL, Georgia
HARRY FLOOD BYRD, Virginia
VIRGIL CHAPMAN, Kentucky
LYNDON B. JOHNSON, Texas
ESTES KEFAUVER, Tennessee
LESTER C. HUNT, Wyoming

STYLES BRIDGES, New Hampshire
CHAN GURNEY, South Dakota
LEVERETT SALTONSTALL, Massachusetts
WAYNE MORSE, Oregon
RAYMOND E. BALDWIN, Connecticut
WILLIAM F. KNOWLAND, California

J. NELSON TRIBBY, *Clerk*

SUBCOMMITTEE

RAYMOND E. BALDWIN, Connecticut, *Subcommittee Chairman*
ESTES KEFAUVER, Tennessee
LESTER C. HUNT, Wyoming

CONTENTS

LIST OF WITNESSES

	Page
Ahrens, Kenneth F.	102
Bailey, James J.	154
Byrne, Maj. Robert E.	374
Carpenter, Lt. Col. Edwin J.	883
Dwinnell, Lt. Col. John S.	403, 441
Ellis, Lt. Col. Burton F.	28, 171, 382, 409, 514, 603, 713, 715, 745, 754, 764, 768, 795, 834
Ellowitz, Morris.	131
Evans, John Temple.	322
Fanton, Maj. Dwight F.	270, 473, 508
Finucane, James.	949, 1102
Fitzgerald, William T.	362
Guth, Paul C.	939
Harbaugh, Brig. Gen. James L. Jr.	1146
Karan, Dr. Max.	844
King, John Wyckliffe.	555
Lary, Virgil P., Jr.	1028
Micklewaite, Col. Claude B.	909
Owens, Jack A.	350
Perl, Dr. William R.	609, 658, 695, 731, 1125
Perry, Lt. Col. Charles J.	927
Raymond, Col. John M.	72
Ricker, Dr. John.	862
Royall, Hon. Kenneth C.	3
Scalise, D. A.	112
Shumacker, Paul.	803
Simpson, Judge Gordon.	190
Sloane, Herbert J.	897
Straight, Lt. Col. Clio E.	925, 1047
Strong, Herbert J.	571
Sutton, Granger G.	1169
Teil, Kurt.	543
Unterseher, Calvin George.	640
Van Roden, Judge Edward LeRoy.	225, 301, 1073

CONTENTS BY DATES

April 18. Statement of Hon. Kenneth C. Royall, Secretary of the Army.	3
April 20:	
Testimony of Lt. Col. Burton F. Ellis, JAGD, Headquarters, Sixth Army.	28
Insertion: Statement of Lt. Col. Burton F. Ellis.	33
Insertion: Statement of Lt. Col. Charles J. Perry, AGD, dated March 16, 1947.	37
Insertion: Letter from James J. Bailey, court reporter, Pittsburgh, Pa., to Senator Joseph R. McCarthy.	53
April 22:	
Testimony of Col. John M. Raymond, USA, (retired) Chairman of the Administration of Justice Review Board.	72
Insertion: Letter from Senator Joseph R. McCarthy to Senator Raymond E. Baldwin, dated April 21, 1949.	98
Testimony of Kenneth F. Ahrens.	102
Testimony of D. A. Scalise.	112
Insertion: Letter from Karl Kronmuller of Stuttgart, Germany, to D. A. Scalise.	131
Testimony of Morris Ellowitz.	131

	Page
April 29:	
Testimony of James J. Bailey.....	154
Insertion: Excerpt from a letter written by Herbert J. Strong of New York to Senator Joseph R. McCarthy.....	170
Insertion: Affidavit of Dietrich Schnell relating to medical treatment given Malmedy suspects at Schwabisch Hall (from Report of Administration of Justice Review Board).....	184
Insertion: Letter from a veteran living in Santa Monica to Senator Joseph R. McCarthy.....	185
Insertion: Letter from Bernard Schuelingkamp, a former interpreter at Schwabisch Hall, to James J. Bailey.....	189
Testimony of Judge Gordon Simpson.....	190
Insertion: Copy of cablegram dated July 16, 1948, from Secretary of the Army Royall to Gen. Lucius D. Clay arranging for the Simpson survey of Dachau war crimes trials program.....	192
May 4: Testimony of Judge Edward LeRoy Van Roden.....	225
May 5:	
Statement and testimony of Maj. Dwight F. Fanton.....	270
Insertion: Excerpt from Wigmore on Evidence (Exhibit A).....	282
Insertion: Memorandum dated February 9, 1946, from Maj. Dwight F. Fanton to Lt. Col. Burton F. Ellis.....	288
Testimony of Judge Edward LeRoy Van Roden (resumed).....	301
May 6:	
Testimony and statement of John Temple Evans.....	322
Insertion: Letter dated March 29, 1949, from Lt. Col. Burton F. Ellis to John Temple Evans.....	343
Testimony of Jack A. Owens.....	350
Testimony of William T. Fitzgerald.....	362
May 9:	
Testimony of Maj. Robert E. Byrne, JAGD.....	374
Insertion: Affidavit of Father Louis Desire Blockian, La Gleize, Belgium, dated June 18, 1946.....	401
Testimony of Lt. Col. John S. Dwinnell, JAGC, Headquarters, First Army.....	403
Insertion: Excerpt from Frankfurt Board of Review.....	417
May 10: Testimony of Lt. Col. John S. Dwinnell, JAGC (resumed).....	441
May 11:	
Testimony of Maj. Dwight F. Fanton (resumed).....	473
Letter from German Bishop A. G. Mentz.....	530
Testimony of Kurt Teil.....	543
May 12:	
Testimony of John Wyckliffe King.....	555
Testimony of Herbert J. Strong (including prepared statement).....	571
Insertion: Letter from Maj. Gen. Thomas H. Green, Judge Advocate General of the Army, with tabulation on disposition of sentences regarding reviews of record of trial in Malmedy cases.....	586, 588
Affidavit of German dentist, Dr. Edward Knorr.....	604
May 13:	
Testimony of Dr. William R. Perl.....	609
Senator McCarthy requests use of lie detector.....	630
Testimony of Calvin George Unterscher.....	640
May 16:	
Insertion: Letter dated May 10, 1949, from Virgil P. Lary to Senator Raymond E. Baldwin and reply of Senator Baldwin dated May 14, 1949.....	656, 657
Testimony of Dr. William R. Perl (resumed).....	658
May 17:	
Testimony of Dr. William R. Perl (resumed).....	695
Insertion: Statements of Otto Wichmann and Dr. Kurt Sichel (translated) together with sketches of commander's room, German Command Post at Petit Thiers and scenes of shooting of American prisoner.....	700
Insertion: Affidavit of Dr. Hugh Medak relative to Austrian judicial procedures.....	726
May 18: Testimony of Dr. William R. Perl (resumed).....	731
May 19: Testimony and statement of Ralph Shumaacker.....	803

CONTENTS

V

	Page
May 20:	
Statement to the chairman (Senator Raymond E. Baldwin) from Senator Joseph R. McCarthy announcing his retirement from the hearings-----	837
Insertion: Press release dated May 20, 1949, issued by Senator Joseph R. McCarthy on the same subject-----	839
Statement of Senator Raymond E. Baldwin in reply to Senator McCarthy's statement withdrawing from the hearings-----	840
Insertion: Letter dated April 21, 1949, from Senator McCarthy to Senator Baldwin-----	841
Testimony of Dr. Max Karan-----	844
Insertion: Letter to Senator Joseph R. McCarthy dated May 6, 1949, from the Bishop of Fargo, Apostolic Visitor in Germany (Stuttgart) referring to alleged brutalities occurring at Landsberg Prison-----	860
Insertion: Article from New York Herald Tribune of May 5, 1949, entitled "German clergy accuse United States of brutality in Landsberg Jail"-----	860
Insertion: Letter from the Department of the Army dated May 19, 1949, commenting on charges made by Bishop of Fargo-----	861
Testimony of Dr. John Ricker-----	362
May 23:	
Testimony of Lt. Col. Edwin J. Carpenter, Headquarters, First Cavalry Division, Tokyo-----	883
Testimony of Herbert K. Sloane-----	897
June 1:	
Testimony of Col. Claude B. Mickelwaite, Office of the Judge Advocate General of the Army-----	909
Testimony of Lt. Col. Clio E. Straight, Office of the Judge Advocate General of the Army-----	925
Testimony of Lt. Col. Charles J. Perry, AGD, Army Service Unit 4202, Western Recruiting District, El Paso, Tex-----	927
Testimony of Paul C. Guth-----	939
Testimony of James Finucane, associate secretary, National Council for the Prevention of War-----	949
Insertion: Letter date January 5, 1949, from editor Morris H. Rubin, the Progressive, to Mr. Finucane-----	984
June 2:	
Testimony of James Finucane (resumed)-----	989
Insertion: From German attorney von Schlabrendorff dated January 14, 1949, to the National Council for the Prevention of War submitting case record of Willi Schaeffer-----	993
Insertion: Letter dated January 14, 1949, from Bishop Neuhaeusler of Munich to the National Council for the Prevention of War-----	1013
Insertion: Letter dated March 2, 1949, from Bishop Wurm of Stuttgart to the National Council for the Prevention of War-----	1013
Insertion: Memorandum concerning war crimes trials by Oberkirchenrat Dr. Weeber of Stuttgart-----	1016
Insertion: Letter dated April 27, 1949, to the National Council for the Prevention of War from Fritz Kraemer, Hans Gruhle, and Arndt Fischer (Malmedy accused)-----	1021
Testimony of Virgil T. Lary, Jr-----	1028
June 3:	
Testimony of Lt. Col. Clio E. Straight, Office of Judge Advocate General of the Army (resumed)-----	1047, 1068
Statement and testimony of Judge Edward Le Roy Van Roden (resumed)-----	1073
Insertion: Excerpt from Simpson commission report-----	1077
Testimony of James Finucane (resumed)-----	1102
Insertion: Letter dated March 11, 1949, from Judge Van Roden to James Finucane-----	1124
Testimony of Dr. William R. Perl (resumed)-----	1125
June 6:	
Testimony of Brig. Gen. James L. Harbaugh, Jr., Office of Judge Advocate General of the Army-----	1145
Testimony of Granger G. Sutton-----	1168
Appendix-----	1181

MALMEDY MASSACRE INVESTIGATION

MONDAY, APRIL 18, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in the committee room, room 212, Senate Office Building, Senator Raymond E. Baldwin (chairman) presiding.

Present: Senators Baldwin (chairman) and Hunt.

Also present: Senator McCarthy (member of Senate Committee on Expenditures in Executive Departments present by invitation of the subcommittee), and Mr. J. M. Chambers (on the staff of the committee).

Senator BALDWIN. This subcommittee of the Committee on Armed Services of the United States Senate has been appointed by the chairman of the Senate Armed Services Committee, Senator Tydings, with the approval of the committee, to consider certain charges that have been made concerning the conduct of the prosecution in the Malmedy atrocity cases.

I might say here, for the benefit of the record, that the other two members, Senator Russell of Georgia, and Senator Kefauver, of Tennessee, are not with us this morning. Senator Russell, I learned from a letter this morning, has asked the chairman and the committee, that he be relieved as a member of the subcommittee, because of the tremendous pressure of work he has on his other committee assignments of the Senate; and, I have asked the chairman of the full committee to appoint another member of this subcommittee in his place.

I am very sorry to report that Senator Kefauver cannot be here today because of the untimely death of a close intimate personal friend of his, as a consequence of which he has had to leave the city.

Since we had already scheduled this hearing, and had as our first and, I think most important witness, the Secretary of the Army, who is a very busy man, I deem it advisable to go forward with the hearing because there will be a transcript made of all of the testimony which will be available, not only to the members of the subcommittee, but to the whole committee, and to the Senate as well.

Before any sound decision can be made on these charges, I feel that it is imperative that the subcommittee inform itself to the maximum practicable extent of all of the circumstances surrounding these matters. It is my intention to introduce into the record certain documents which have focused attention on the points in issue. We will then hear today from representatives of the Department of the Army who will give us the general background and current status of these cases.

We will then proceed to hear such persons as desire to be heard and to make such other investigations as will permit us to develop all the available facts. At this point, I wish to place in the record:

As exhibit A, a copy of a petition filed in the Supreme Court of the United States by Mr. Willis M. Everett, Jr., on behalf of Valentin Bersin and others, the defendants, as I understand, in the Malmedy prosecution, in order that they may be noted, and appended as a part of the record.

(Exhibit A, as filed, will be found in the appendix at the conclusion of the record.)

Senator BALDWIN. As exhibit B, we have a copy of a brief, and the supporting documents filed by Dr. Eugene Leer, attorney with the Post Trial Section, War Crimes Group, on February 1, 1949, on behalf of Valentin Bersin, and others, defendants in the case.

(Because this exhibit is deemed too voluminous to reprint it is ordered filed in the records of the committee in connection with S. Res. 42.)

Senator BALDWIN. As exhibit C, a copy of a memorandum to the Secretary of the Army, dated September 14, 1948, from Col. Gordon Simpson, Judge Advocate General's Department, and Col. Edward L. Van Roden, Judge Advocate General's Department, rendering their opinions and recommendations on the war crimes trials, held at Dachau, Germany.

(Exhibit C, as filed, will be found in the appendix at the conclusion of the record.)

Senator BALDWIN. As exhibit D, we have a copy of a report prepared in the Headquarters, European Command, entitled "Final Report of Proceedings of Administration of Justice Review Board" dated February 14, 1949, and signed by Col. John M. Raymond, G. S. C., chairman of the Board.

(Exhibit D, as filed, will be found in the appendix at the conclusion of the record.)

Senator BALDWIN. I feel that the question raised here is a fundamental one not only to our position as champions of right and justice, but to the reputations of the men who were the servants of this Nation during the prosecution of the persons responsible for the shocking massacre of our soldiers during the Battle of the Bulge.

The officers who are charged with the conduct of this investigation and the prosecution were acting on behalf of the United States Government. It is essential that their conduct should be examined and if it was improper, appropriate remedial action should and will be taken. On the other hand, if they committed no wrong, it is equally imperative that the records should be cleared once and for all.

I have asked the Secretary of the Army, Mr. Royall, to appear as our first witness, and I may say to him that I am glad to see him here this morning, and appreciate his willingness to come and help us out with this matter, when I know he is working under tremendous pressure with many other matters.

**STATEMENT BY KENNETH C. ROYALL, SECRETARY OF THE ARMY,
ACCOMPANIED BY COL. C. C. FENN, LEGISLATIVE LIAISON DIVI-
SION, DEPARTMENT OF THE ARMY**

Secretary ROYALL. Mr. Chairman, I am delighted to be here, and have an opportunity to discuss in general the Malmedy situation, primarily, as it relates to the death sentences which have been imposed, which are the ones about which there has been the principal publicity.

After I have completed my discussion, if there are any other features of the case to be discussed, I will be glad to cover them all, although of course detailed testimony and evidence could more accurately be presented by documents, many of which your committee already has.

I think, for the sake of clarification, some dates and figures might be of interest, certainly as a background. This matter originated approximately four and a half years ago. The Malmedy massacre was committed in December 1944 and January of 1945, at the time of and immediately after the Battle of the Bulge.

The investigation of these offenses and of those persons thought to be responsible was begun approximately 4 years ago, immediately after VE-day. This investigation, together with the preparation of trial of the cases, continued until charges were preferred, approximately a year later, or about 3 years ago, in April 1946.

The confessions which, according to the press accounts and other statements, seem to represent the real issue in this case, were largely obtained before April, and this is between 3 and 4 years ago.

The trial of the cases was completed in July 1946. The record of the trial was reviewed under our regular War Crimes Board of Review, the theater judge advocate, and finally by General Clay. These reviews extended about a year and a half or more, through March 1948, and during these reviews, the questions as to the confessions were raised and passed on by one or more of these various reviewing authorities.

In the trial which ended in July 1946, all 73 of the Malmedy defendants were convicted by the trial court. Of those, 43 were given death sentences. During the process of these various reviews up through the final one, 13 of the convictions, that is, of the 73 convictions were totally disapproved, and the sentences were changed so that the defendants were given prison sentences ranging from 7 to 25 years; 14 were given life sentences and 12, death sentences which were approved, which indicated of course that these matters were carefully considered by the reviewing authorities.

In May 1948, petitions were filed with the Supreme Court of the United States on behalf of all of the defendants. These petitions were denied by a 4-to-4 vote on jurisdictional grounds.

Senator BALDWIN. That is the only question that the Supreme Court decided in connection with these petitions, whether or not the Supreme Court of the United States had jurisdiction over the matter?

Secretary ROYALL. That is right. They didn't consider the confessions or the merits of the matter as they had in previous occasions, both in this case and a number of others. Four-to-four of course does not permit the Court to intervene, or take cognizance of the case.

This decision was rendered, and this 4-to-4 vote was announced on the 18th of May last year.

At about this time Mr. Willis M. Everett, Jr., an attorney of Atlanta, Ga., approached me about a further administrative review of these cases. That is the first time they had come to my attention, because of the number of war crimes trials, that was the first time it had come to my personal attention.

Under our procedure, if I may interject, which was established long before I came into office, the war crimes trial was left to the theater commanders, trials of this character——

Senator BALDWIN. Who was the theater commander?

Secretary ROYALL. General Clay.

Senator BALDWIN. At all times, during this Malmedy trial?

Secretary ROYALL. No, sir. At one time General Eisenhower was there for a while after the war; and General McNarney was there; and General Clay. I would have to divide this thing up into segments to see which did what function, but we can supply that information if you want it.

Senator BALDWIN. My point was that at all times while the discussion was going on and while the trials were being conducted, there was a reputable well-known senior officer of the United States Army in general supervision of the whole works?

Secretary ROYALL. That is right, sir.

When Mr. Everett approached me about an administrative review, and when his request was supplemented by that of Senator George and Representative Davis and others, I modified our general policy to the extent that I looked into these cases, and I may say that the contention made in those petitions were serious contentions; and for the first time I personally looked into the facts to the extent of saying that there was enough there which, in my opinion, justified some further investigation.

So I stayed the executions on the day Mr. Everett saw me, or the day afterward, and directed General Clay to investigate the charges alleged in the petitions filed by Mr. Everett, and then shortly thereafter I appointed a commission, consisting of Justice Gordon Simpson, of the Supreme Court of the State of Texas, and Judge Edward L. Van Roden, of the orphans court of Delaware County, Pa., asking them to go to Germany and investigate these cases, as well as other war crimes, such as the trials at Dachau, with particular reference to the death sentences.

This Commission principally investigated 139 death sentences, including the 12 Malmedy death sentences. Out of these 139 cases, the Commission recommended a commutation of 29 death sentences, which included the 12 Malmedy death sentences now under consideration by your committee. That was our recommendation.

The report of the Commission was submitted on October 6, 1948, and was forwarded to General Clay for consideration and action, with the stipulation that before any death sentences were executed that I would be further advised.

Senator BALDWIN. May I interrupt there, Mr. Secretary?

Do I understand that as a result of this Simpson-Van Roden committee, all of the death sentences at Malmedy were commuted?

Secretary ROYALL. They recommended that they be commuted.

Senator BALDWIN. Every one?

Secretary ROYALL. All 12. There were only 12 left. They originally started with a larger number, and as I outlined before, but by various reviews, it had gotten down to 12.

I believe the report you already put in the record, Mr. Chairman, the record of Justice Simpson gives the details on that.

General Clay, under instructions I had given, was at the same time making an investigation of his own, and that was through a board of his own, the report of which has been given to this committee and both reports released to the public.

Senator McCARTHY. Could you get me a copy of the Army report?

Mr. CHAMBERS. There is only one here. I have sent for yours, Senator.

Senator McCARTHY. Thank you.

Secretary ROYALL. General Clay personally considered the Simpson Board report, as well as the report of his own board, and again reviewed the cases.

This consideration was completed week before last. General Clay has reaffirmed six of the death sentences and has commuted to life imprisonment the other six. In each instance he gave the reasons for his actions, and released those reasons to the press.

I believe we have also furnished those to the committee.

You also have General Clay's reasons in each of the 12 cases.

Senator BALDWIN. So, up until now, it is fair to say, is it not, Mr. Secretary, in an effort to lean over backward to be just and considerate to these people, not a single German who took part in the perpetration of the Malmedy massacre, where some 250 of our boys were lined up and shot down, not a single German has yet been executed?

Secretary ROYALL. Not a single German has been executed. I don't believe the figure of 250 is correct now, but nevertheless, no one has been executed for the massacre, and only six now can be executed because under our procedure, I cannot increase a sentence above what General Clay has decided. I do have authority to recommend to the President, or I suppose to myself, as the Secretary, to reduce the sentence of those six which now have been approved for execution.

Senator BALDWIN. No date has been set for their execution?

Senator ROYALL. No. I stayed these executions in May 1948, and that stay remains in effect until this time. It has not been removed by me. The stay was to last until the review was completed, and General Clay fully understood that at all times. There was something in the press that I recently stayed the executions, but it has been stayed since May 1948.

I will not consider any cases in my office, any of the death cases, except those six, because there is no use to consider those that have been commuted. I have not yet gone over the complete record, waiting to narrow my review to those matters on which I could take action, and that action can only be in the six cases, and any matters relating to them.

I am now in the process of looking over those cases. I have had a summary made of the evidence and if that summary indicates that

the death sentence should be imposed, then it would be my intention to go into the full record.

Senator BALDWIN. Right on that point, so that we have the record clear, as I understand it, the sole power to further commute those six death sentences still pending is in your hands, is it not, and not in the hands of Congress in any way, shape, or form?

Secretary ROYALL. Not in the hands of Congress, as I say later in my talk.

However, if any committee of Congress, or Representative of Congress, wants to go on record and give me recommendations as to what to do with these cases, I, of course, will be glad to give it careful consideration, if you will bring any facts to my attention.

I am engaged in the consideration of those six cases, and before any decision is made, it would be my intention to go over them carefully, and so I say, I will be glad to receive any views from the Congress.

Senator McCARTHY. Mr. Chairman, may I ask a question?

In going over those cases, let us assume, if you will, that you are going over the case of John Jones. Let us assume that you find that two things have occurred: No. 1, you are convinced the evidence shows the man is guilty without any doubt at all, you are convinced of that; No. 2, let us assume you are convinced that in order to get the evidence, that mock trials were conducted, such as were found by the board General Clay appointed. Let us assume it found that physical violence was used in getting the confession. In other words, let us assume that they used force, used mock trials, used confessors, and such like. Assume you are convinced beyond a reasonable doubt that the man was guilty—on a death case, what would you do then? Recommend that he be hung, or that his sentence be commuted?

Secretary ROYALL. I will be glad to answer now, but if you will indulge me, I think I answer that later on. If I do not, I will be glad to come back to it.

Senator McCARTHY. Certainly.

Senator BALDWIN. Senator McCarthy, of course, represents the Committee on Expenditures in Executive Departments that also has this matter under consideration, and is here at our invitation.

Senator McCARTHY. I might say that I am here informally, I cannot say that I represent the Expenditures Committee, but I intend to report back to them, of course, in view of the fact that they were considering conducting such an investigation.

Secretary ROYALL. The Malmedy cases present sharply conflicting considerations, in view of the allegations that have been made. The situation is the type which always presents difficulty to any court, or to any executive authority which must act on the life or death of persons charged with crime. It is one of the most unwelcome responsibilities that my office has, to pass on death sentences.

There are rarely any in which there is not a sharp contention made—I do not know anybody charged with a crime in which the death penalty can be inflicted, who doesn't make sharp contentions of innocence or misconduct on the part of the court, or something. On the other hand, there is the undisputed fact that in these cases, approximately 80 American soldiers, as well as a number of innocent civilians, were slaughtered in cold blood, in total violation of all accepted rules of civilized warfare.

There is nothing in the record to indicate any controversy about that fact.

Most of those so killed were young men called into the service of their country, young men who had proven their courage and fitness, who had served honorably and faithfully and bravely, and who were entitled to expect that if they fell into the hands of an enemy, they would be properly treated as prisoners of war.

It is one of the most atrocious crimes that I know of in all of the war-crime annals. It is a crime that ought to be punished by death, if the right person can be apprehended and properly convicted and no guilty persons should escape just punishment, either through technicalities or legal refinements or overdrawn theories.

On the other hand, the contention is made that the convictions were obtained by involuntary confessions extorted by promises of immunity and by threats and force, in disregard of established rules of American justice. That is the contention of the defendants and their counsel but as to this feature of the case, those American officers and enlisted men and civilians who were charged with the preparation of these trials deny that there was any improper conduct in obtaining these confessions. If their statements are correct, then the procedures followed were proper, the confessions were voluntary, and those who were convicted have been proven guilty and should be punished.

These conflicting considerations, it seems to me, must be continually borne in mind, whatever aspects of the Malmedy cases are to be studied. And, I admit that I am not entirely clear just what features of this case interest your committee. That has not been made clear either through the press or in the statements made from time to time.

If it is desired by this committee to go into the facts relating to this horrible massacre of American soldiers in the winter of 1944-45, the Department will be glad to obtain for the committee all the available information relative thereto.

Senator McCARTHY. For the benefit of the Secretary, can I just briefly tell him, in answer to the question he raised, there is the question of the extent of which at least our committee was considering this case—I think every member of our committee has lost either a son or someone very close to him in the service. Every member of the committee realizes the gruesomeness of the crime perpetrated over there. I think every member of our committee feels that when the guilty are found and properly tried, they should be either hung or whatever sentence happens to be meted out to them. There is no desire on the part, I believe, of any Member of the Congress to see anyone who is guilty, go free.

However, in view of the exceptionally good record over in the Pacific where every war criminal was tried honestly and fairly, and executed as quickly as they were over in Europe—in all the unusual reports coming out of the European theater, some of us were very much concerned in checking to see exactly what type of justice we are meting out in Germany, especially in view of the report of the Clay committee.

As I recall, General Clay appointed the judge advocate general, plus some of the other members of the prosecution, to make an investigation over in the European theater and find out how confessions or convictions were obtained, so that the extent to which we are concerned in going into this, you might say we start out with a report that Clay's

own men make which they say there were mock trials, we did use physical force, that in some instances we took ration cards away from families of prisoners and in view of that we feel that we should go into the whole matter to find out whether or not the men who were prosecuting in that area were competent to know what is meant by "American justice."

As I say, that is doubly important, in view of the fact that over in the Pacific theater, where the crimes were just as bad, and the persons were just as hard to apprehend, we apparently dealt out a good clean brand of justice. I don't know how it was in Germany. I think that is what our committee at least wants to go into.

As to the gruesomeness, there is nothing that any of us can recall in recorded history that approaches the unwarranted type of mass slaughter that occurred at Malmedy, and we always like to see the men responsible brought to justice.

To repeat, we are concerned with finding out how the convictions were obtained, how confessions were obtained, and how the prosecution staff worked. If they worked improperly, we want to know. If they did not follow the American concept of justice, then we think that those individual men should be brought up before your court-martial board to determine whether or not they should be left in charge of that kind of work, so that when we go into the next war, if there is a next war, we will know that the trials were properly conducted, and if these same men are in charge, we want to know that they conduct those matters properly.

I am giving that in answer to your question of what we are going into.

I believe there are three committees interested in this, the Judiciary—

Secretary ROYALL. I was asking what feature you wanted stressed, or explained most clearly, and you have answered, in part. I have other inquiries to make, but I would like to say this, Mr. Chairman: I agree with the point of view the Senator has expressed—

Senator McCARTHY. In short, we both fully agree—

Secretary ROYALL. However, I want to correct some impressions. When you say this situation did not arise in the Pacific, you are wrong. There have been few death sentences presented for consideration where a contention was not made that the confessions were improperly obtained. I practiced law, and I am sure others here have done so, and in civil life I cannot recall many murder cases where the defendant did not contend that any confession he gave was extorted or obtained by promises of one sort or another, in practically every murder trial I have heard tried.

Senator BALDWIN. I think, Mr. Secretary, that the popular conception of the use of a confession is wrong, and it might be good, here, for the benefit of the record, to give some indication of how a confession is used.

It is very rare, in my experience as an attorney, that I have ever seen a confession actually introduced in evidence, as the confession of the defendant. What happens in connection with the confession is usually this: The man makes a confession and then the prosecuting authorities check up on the items of the confession. For example, the disposal of the body, the disposal of the weapon used, and all that sort of thing, and as a result of that, they gradually build

together a case which might otherwise have been impossible to reconstruct.

The effect of the confession is that the defendant has made available to the State, the different items that are important in the prosecution.

It is not necessarily the effect of the actual confession read in court. I don't know what the situation was in these particular cases.

Secretary ROYALL. There were confessions in most of these cases, and in my experience, it has been such that in a great many cases confessions are introduced, but wherever they are attacked—I might almost say they were attacked in every instance by the defendants in the several courts, civil or otherwise.

Senator McCARTHY. You understand, I am just giving you this because of your inquiry. The thing that originally disturbed our committee was this report made by, I guess you would call it the Clay committee.

Secretary ROYALL. That is right, I agree with you.

Senator McCARTHY. And some of the things that seemed to disturb us are unusual to say the least. You are a lawyer, Senator Baldwin, and Mr. Secretary, and I happened to be a judge for some time.

For example, the Judge Advocate General who is investigating, over there, himself seemed to think that there was something wrong with using stool pigeons. He confused that with the use of physical force. Any lawyer knows that it is perfectly proper to use a stool pigeon; they have used them since time began in order to get a confession.

The Judge Advocate General seems to think there was something wrong with asking minor criminals to turn state's evidence, in effect. We know that is a perfectly proper procedure.

Secretary ROYALL. You wouldn't get very many convictions, if that didn't apply.

Senator McCARTHY. As long as you honor your agreement with the minor criminal, if he turns state's evidence, there is certainly nothing improper there.

The Judge Advocate General, as I understand it, seems to confuse those things that are recognized procedure in every criminal court in the country, with taking the ration cards away from the family of the accused, using mock trials, physical force, and doesn't seem to be able to distinguish between the two, what is proper and what is improper.

Secretary ROYALL. The mock trial is questionable, the law is not clear as to whether they are proper or improper. Some States permit them, and some do not.

Senator BALDWIN. Returning to that question of the resolution, Senate Resolution 42, to answer the question of the Secretary of the Army, the resolution reads that the purpose of the investigation is to secure a full and complete study and investigation of the Army with respect to the trial of those persons responsible for the massacre of American soldiers, which occurred during the Battle of Malmedy in December 1944, with particular reference to (1) conduct of the investigation by the Army preliminary to the trial; (2) conduct of the trial of the alleged perpetrators of the massacre; and (3) action taken by the Army officials subsequent to the trial which resulted in a commutation of the sentences of many of the defendants convicted at the trial.

So, I might say that as I understand this investigation, it is merely an investigation into the methods, so that we might correct any abuses that have arisen and avoid these abuses if we ever have to go through anything like this in the future.

Secretary ROYALL. I don't believe Senator McCarthy was here when I called attention to the fact that these confessions were obtained between 3 and 4 years ago, between VE-day and April 1946. I am coming to that feature in a minute, but I assume that, from what has been said here, you do not desire to go into the question of the massacre, though some of the press accounts I read indicate that some people want that investigated.

Senator McCARTHY. I think all of us realize how gruesome that crime was, and I don't think we need to go into the question of whether or not there were more crimes perpetrated.

Senator BALDWIN. The Secretary has already said in his statement that it seemed to be an undisputed fact that 80 American soldiers who were entitled to the privileges of a prisoner of war, were massacred in cold blood.

Senator McCARTHY. And some civilians also.

Senator BALDWIN. And I do not think we need to go into those gruesome details.

Secretary ROYALL. Therefore, I will assume you do not want any eye witnesses either, into that.

Senator McCARTHY. I think, Mr. Chairman, that you and I will agree that if you think these men were guilty, they certainly should be punished. I think there is no doubt about that—whether or not the trials were properly conducted, whether or not we followed American procedure and in the American system of justice—

Secretary ROYALL. That is the second aspect of the case. You might desire, and apparently do desire to go into the circumstances connected with the confessions. If so, the papers which have already been furnished you will give you part of the information, but only part. The emphasis in the petitions filed, as well as a good deal of the press discussions, is on the German prisoner version of what happened, and the statements made after the trials; but their version attacked violently the conduct of loyal American soldiers and civilians of respected character, carefully selected, who obtained these confessions from the accused. Before this committee would make any adverse findings as to any Americans who conducted the inquiries, I am sure you would see that these Americans have an opportunity to defend themselves against charges made, in substance, by former enemies of this Nation, and I understand—

Senator BALDWIN. I might say, Mr. Secretary, we have a long list of witnesses: The men who took part in the prosecution and secured the evidence, and these confessions, and those who guarded the prisoners and conducted the prosecution and the trial. Only this morning, I have here a letter from Senator Knowland, in which he encloses a copy of a letter from a man named Nobel Johnson, who describes himself as the "Prison Commander of Internee Prison No. 2," located in Schwabisch Hall, Germany, from November of 1945 to December of 1945. He is typical of the kind of witness we have listed.

Senator McCARTHY. I can safely say also that the Secretary need not be concerned that the prosecution will not be adequately protected by the committee.

Secretary ROYALL. I am sure I said in my statement, I didn't raise the question, I am sure the committee will do that.

Senator BALDWIN. We are here to get the facts, but I think it is true that, as the Secretary indicated, these men who conducted the prosecution, and guarded the prisoners, our own soldiers and officers have never been personally called upon to testify in any great numbers, if at all.

Secretary ROYALL. And the publicity that has risen out of this thing is all on the side of the version given by the German defendants and their counsel—a large part of it has been.

Senator MCCARTHY. I don't like to get into an argument at this time, but I think the publicity that has arisen has been bad publicity, as far as the Army is concerned, and arose largely by reason of the report rendered by Colonel Harbaugh, who was Judge Advocate General, in which he set forth what was done in getting these confessions, and it is a most unusual document and I hope you keep that in mind when you are testifying. I would like to know what part of that document is true and what part is not, after reciting the use of physical force, mock trials, taking ration cards away, and, I find this in the Army report:

That the conditions obtained at the prison and the methods employed in the interrogations had a definite psychological effect on the defendants and resulted in their being more amenable to giving statements.

I doubt very much if Mr. Harbaugh intended to say that the use of mock trials and those things are all right because it has a good psychological effect and brought forth confessions—

Senator BALDWIN. May I interrupt—

Senator MCCARTHY. May I ask this?

The reason that we are concerned with this, our committee, is that we have been accusing the Russians of using force, physical violence, and have accused them of using mock trials in cells in the dark of night and now we have an Army report that comes out and says we have done all the things that the Russians were ever accused of doing, but they are all right, because it created the right psychological effect to get the necessary confessions.

If this Army report is true, then I think your duty principally, and I take it you are as much concerned as we are, I know—I think the duty of the Army is to run this down and find out who, over in that area, has been guilty of this sort of thing and take them out of that kind of work. They might be all right in a mess hall, but they apparently know nothing of the conduct of a trial.

If, on the other hand, this report of Mr. Harbaugh's is false, I think that should be cleared up so that the press of this Nation knows that the trials in Europe were properly conducted, as I think they were in the Pacific.

I don't want to take all your time, though.

Secretary ROYALL. I don't think, Senator McCarthy, that really while this report of Colonel Harbaugh has been given so much publicity, most of the official publicity, and the great quantity of publicity came from the petitions filed in the Supreme Court and the statements made by the German prisoners. That is what got people excited about it, without hearing the other side.

I would be less than frank if I did not say that I find it difficult, myself, to follow some of the conclusions made in this report in the theater.

Senator McCARTHY. It is an unusual document, surely.

Secretary ROYALL. I don't believe that it is intended to condone the items enumerated before, but certainly it is subject to that construction, and it is not clear at all.

I agree with you entirely that we must insist that our methods of obtaining confessions are entirely in accord with the American concept of justice. There is no doubt about that, and if there is anyone in that work who does not appreciate that, they ought to be removed.

Senator BALDWIN. That is one thing we are particularly anxious to find out about, Mr. Secretary.

Secretary ROYALL. As to the reduction of the six death sentences, as I said before, I would recommend and welcome any recommendations the committee might want to make. I want to say that I am confident that under all the circumstances, in view of the discussion, that no decision that I or my successor may announce as to these six death sentences—no such decision will meet with universal approval.

Senator McCARTHY. That is true.

Secretary ROYALL. If the sentences are commuted, there will be criticism that the deaths of young American soldiers are going unpunished. If the sentences are affirmed and the men executed, then no matter what is produced before this committee, or elsewhere, there will be some that will accept the German version of the mistreatment and it will be asserted that no single man has been convicted properly, and that all the principles of American jurisprudence have been violated. That will be the—

Senator McCARTHY. May I interrupt again? That is one of the reasons why we feel that any man who is responsible for using unusual proceedings to get convictions should be subject to great caution because it is entirely possible that some incompetent prosecutor by using illegal methods, may be responsible for some of these guilty men going free.

Secretary ROYALL. As a matter of fact, in investigating that, we have the problem complicated by the probable fact that none of those people who made this investigation are now engaged in that work. This happened immediately after VE-day, which may account for some of the measures that may have been used, and certainly makes it difficult to investigate, because that was a period of demobilization and flux, and therefore we are not investigating what is done now, but what was done immediately after VE-day while the war was still going on in Japan, or for at least a portion of the time.

Senator McCARTHY. Would you know offhand where Clay and the Simpson committee differed on the execution of the six that are scheduled to die?

Senator BALDWIN. Senator McCarthy, I wonder if you would let the Secretary finish his statement, because I think you will find that if you and I step into this thing now and try to compare this sentence here and that sentence there in another matter, we will have this thing pretty thoroughly disorganized, and I would like to hear the Secretary, or get the Secretary's statement in the record, if you do not mind.

Secretary ROYALL. Perhaps you would like to know, and I think it covers pretty much what you said, Senator McCarthy, the principles

which I think these cases ought to be reviewed on; I want the guilty person punished, if their guilt has been established by proper evidence; but I do not want to approve the sentence of the Germans, based on confessions obtained by any promises of immunity, or confessions otherwise illegally or improperly obtained.

Senator BALDWIN. Or by confessions that cannot be substantiated by a further independent investigation of the particular facts claimed or admitted.

Secretary ROYALL. A confession which does not find any support at all in the evidence.

It is the application of these principles, and not the principles themselves which present difficulties. This does not mean all confessions would be disregarded merely because trickery or deception has been practiced in obtaining them. As perhaps every member of the committee of Congress knows, confessions are rarely obtained without some tactics of that kind, stool-pigeons, and so forth, being used. If all confessions of this type were excluded, or all obtained by deception or trickery—a large proportion of our serious crimes would go unpunished.

To illustrate one problem that may arise: It is certainly common practice in civil courts, as well as elsewhere, and not one frowned on by the courts, to obtain confession of one defendant by stating to him that the other defendants have confessed, when the other defendants have not. I don't suppose there is a police department in the country that hasn't used that device, and it is also a common practice to use moral and even religious suasion, sometimes to an extreme degree, in an effort to induce prisoners to confess. In theory, the effect of moral and religious pressure to make a man tell the truth and not tell a lie—if we didn't believe in religion in America, we might think that religious pressure could make him tell a lie, if we believe in it and we believe that moral and religious pressure has a tendency to make a man tell the truth.

While I don't want to go to a discourse or a full discussion of the legal precedents, it is clear that even confessions rendered while prisoners are subjected to considerable discomfort are not always excluded by the courts.

There is, of course, a good deal of feeling among laymen and lawyers that many of our courts have become too technical in excluding confessions and that this tendency has reduced convictions of persons who are clearly guilty. It is not my purpose to argue for or against this considerable body of opinion, but I do want to say that I would not extend the scope of technical refinements in a case of this character.

Here the evidence clearly shows that all of the defendants were members of the SS and were under strict orders not to talk at all. If all legal means had not been used to induce these prisoners to talk about these occurrences, there would have been no chance at all to apprehend or convict any of those guilty of the massacre.

There is one other consideration that is entitled to considerable weight. It is a natural tendency of every defendant who confesses to claim that his confession was procured by improper means. In early experience in the trial of criminal cases, and I am sure in the experience of many of you gentlemen, it is rare in a murder case where there is a confession, rare indeed for the defendant not to seek to repudiate his confession.

It then becomes a question of veracity between the defendant, and possibly his associates, on the one hand, and the law-enforcement officer authorities on the other hand. These issues arise in many, many murder cases, and civil courts and, as we all know, in civil life.

The testimony of the law enforcement officers, on the average, is more credible and therefore is usually accepted.

If this were not true, there would be mighty few convictions for murder.

Despite all this discussion, I am still of the opinion that if any of the confessions relating to the guilt of the six under death sentence were obtained by force or improper inducements or brutality, or any other improper means, and if there is not sufficient other cogent evidence to support the death sentences, then they should be commuted.

Senator McCARTHY. That means, in effect, I'm not criticizing your position, but that means that an incompetent prosecutor would cause some guilty man to go free, am I right, if there is an incompetent prosecutor who gets a conviction improperly? As I say, I agree with your position, and I want to make that clear in the record—it means that the incompetent prosecutors who were guilty of using illegal methods of getting a confession of a man clearly guilty, would be responsible for that man going free?

Secretary ROYALL. It is certainly true, sir, and I would say in this case, that it is perfectly possible that investigations begun while the war in Japan was still going on, and in the days of temper immediately following the war when these confessions were obtained, it is perfectly possible that some people may have gone too far in their efforts to apprehend those guilty of this atrocious crime, and that may have had the effect eventually of freeing people that should have been executed.

Senator BALDWIN. You added one other condition that Senator McCarthy didn't include in his question, and that was—where the facts alleged in the confession cannot be supported by other cogent testimony which, after all, is the important thing, we want to see no man convicted or imprisoned or put to death on the basis of his own confession alone, particularly if it is obtained by force and violence, or threats or anything of the kind. We insist in American jurisprudence that a confession of that kind be supported independently by other cogent believable testimony, and I think that is what the committee wants to be convinced of in this particular case.

Secretary ROYALL. I agree entirely with you, and want to say this, that the danger of people escaping punishment by the fact of the psychology of the time, may have led to some excesses, which must be minimized by just the facts you stated, because in some of these cases, those confessions, no matter how obtained, may have been responsible for other facts being discovered which would justify conviction.

Now, I am not prepared today to discuss each of these six cases, because I am going to pass on them after I go into them very thoroughly, the six that General Clay has recommended the death sentence be imposed on, and at least in some of those, there is evidence totally aside from the confessions which indicates to me that at least it may prove their guilt—

Senator BALDWIN. May I say this, Mr. Secretary—I think that this committee wants in no way to interfere with your prerogative. You

may think it wise to hold up any further decision in these six cases until this committee has completed its hearings, or you may not. That is entirely your responsibility. What we are primarily concerned here in this committee with, is the methods that were used. God grant we do not have to go through this again, but we may have to, and this whole procedure was something entirely new in warfare, was it not?

Secretary ROYALL. Yes, sir.

Senator BALDWIN. We never had this sort of thing before.

Secretary ROYALL. That is right.

Senator McCARTHY. Before you have that subject, may I ask this question? Let us assume now, in your review of these cases, say you are reviewing the case of Mr. X and you feel the confession is improperly obtained, but feel, however, that the man is guilty without any doubt. You feel that if the prosecutor had been competent and done his work efficiently, that you would have had a good valid conviction that would stand up, but under the circumstances you feel that you have got to recommend that the conviction be set aside. Let me ask this: Is it your thought that you intend to run the matter down and get the name of the officer who was responsible for the guilty going free, and if he is in the Army bring him up before court martial? Do you have that in mind?

Secretary ROYALL. I don't know. We haven't reached that far.

Senator McCARTHY. That is a very important matter.

Secretary ROYALL. I would think that that would require considerable consideration. Certainly, no officer or civilian or enlisted man, and there were all three classes in this, who may have gone beyond the proper limits did so with any other idea than trying to convict people of a very serious crime. I would bear in mind that that was done under an entirely different background than exists today, a period of hostility toward an enemy, and of natural animosity; and, when the entire Military Establishment was disorganized, so to speak, by the rapid demobilization.

Now, I would not want to say that in the scales of what would happen today, it would be unjust to do so, and I am not sure what action should be taken against those men, most of them I doubt if you will find in the service in any appreciable number. If we did find it, I am not sure we would want to pursue it to the court-martial stage without knowing a good deal more about it. I would want to find out who was responsible, weigh the facts and give him an opportunity to explain if he wanted to, but as to court martialing anyone who, in a very normal and natural human emotion, wanted to convict those who were guilty of this atrocious crime—I would hesitate. It would have to be a pretty clear case before I recommend it.

Senator McCARTHY. This is rather important. It is a rather unusual statement you make. I was in the Marine Corps and as you know feeling ran high in all quarters for the duration of the war, in most combat areas during the war, and you felt that under the circumstances it was much more important to protect the rights of the prisoners of that time, than during the normal peacetime.

Secretary ROYALL. These were not prisoners of war in that sense.

Senator McCARTHY. Not prisoners of war?

Secretary ROYALL. No. These defendants were not. The war was over. They were not captured. They were criminals who had been apprehended.

Senator McCARTHY. You don't know whether they are criminals or not until they are convicted.

Secretary ROYALL. They were charged with these war crimes. They were not taken as prisoners of war, these defendants who were being tried.

Senator McCARTHY. You say they are charged with a crime.

Secretary ROYALL. Yes.

Senator McCARTHY. And you and I will agree, I assume, that when a man is charged with an atrocious crime and when feeling runs high, that is the time when we must have strict rules and regulations to protect the rights of someone who may have need of the law.

Secretary ROYALL. I agree.

Senator McCARTHY. Do I understand you to say, Mr. Secretary, that in view of the fact that these men were overeager to convict the criminals, even though you find that they indulged in practices which were wrong, practices which now might result in freeing a man who is guilty, that you would not take any action against those persons?

Secretary ROYALL. I did not say that. I said I would hesitate greatly to court martial a man who was investigating a case, trying to secure a conviction, for the murder of his comrade, with a war still going on, fresh in his mind.

They didn't commit the atrocities. Our investigators didn't commit any atrocities in the sense you normally use the term. They were merely seeking to establish a fact, perhaps a little too eager. The question is pretty near moot, because I think the statute of limitations would bar every one of these things. I don't think we could court martial them, anyhow, in all probability, unless it happened more recently.

Senator McCARTHY. In view of the fact that we may be, for all we know, in the next day or in the next week at war again, we don't know—let us assume that in checking case No. X, you find that all these things that Mr. Harbaugh or the Clay committee, or call it what you may, what the Army committee said existed, assume you find them all true, find that officer Jones who was assigned to prosecute, that No. 1, he takes a ration card away from the accused's family; assume you find that out, and that is part of the findings in the Army committee's report; No. 2, that he took the wife of the accused up to the officers' club and brought her there and bought her drinks during the time of the prosecution, or took a man's family, I am simply repeating things that the Army committee found—assume that you believe that in the dead of night they took this man down and put a black hood over his head and stood him before a table with a black cloth on it, and a crucifix in the middle of it with a phony prosecutor sitting behind the table and assigned a member of the prosecuting staff to act as his defense counsel, and they convicted him and sentenced him to hang in the morning; assume that you find that along about 2 or 3 hours before he is allegedly to hang, the phony defense counsel comes in and says, "If you will sign this confession, your family will get their ration card restored to them, you won't hang, you will get off with 5 or 10 years." Whatever the case may be, assume you find as the Army committee states, that physical violence was used on these men to get a confession; assume you find that physical violence was used on other witnesses to make them testify along a certain line; assume that you feel that had these things been

properly conducted that this man, Mr. X, would have been found guilty, but because of this complete departure from the American system of justice that you must let this guilty man free—do I understand you to say that you will not bring the Army man up for court martial, but will let his name come before the Senate year after year for promotion, from colonel to general or on down the line? We are concerned with that phase of it.

Secretary ROYALL. You have answered my question, Senator, by describing a most atrocious set of circumstances which I do not think even the nearness of the war was justified. If a case of that kind were found, as you have described, and if it was not barred by the statute of limitations, I should certainly favor disciplinary action, but I am saying—

Senator McCARTHY. May I interrupt?

Senator BALDWIN. Let the Secretary complete his answer, Senator.

Secretary ROYALL. I am merely saying, that in weighing these matters that mere overeagerness or stepping reasonably beyond the bounds, in view of the psychology then existing, would require very close scrutiny by me before I would court-martial a man, even if the statute of limitations had not run.

But you have described a case that may exist—I am not stating that it does not—but you have gotten together all the bad features against one individual.

Senator McCARTHY. Just the bad features from the Army report.

Secretary ROYALL. I am not criticizing your summary, but if that set of facts should be established against an individual I would agree entirely that some disciplinary action would be proper.

Senator McCARTHY. You understand, for the record, that I recited nothing that is not in the Army report.

Secretary ROYALL. Except that the Army's report does not ascribe all those things to one single person.

Senator McCARTHY. That is right.

Secretary ROYALL. You have just got an accumulation of all of them, and I agree with you; but I do not want to leave any impression that I think we can weigh conduct to the enemy prisoners—that is a different matter. We have to be very cautious there, because it applies on both sides, but as to the prosecution for crime, I am positive, for example, that a criminal, many war criminals tried immediately after the war were convicted who would not have been convicted 2 years later; and that is human nature.

Therefore, I say that in weighing the conduct of our soldiers and enlisted men overseas, and civilians, that we must give weight to that factor.

Now, gentlemen, I have stated the principles that I would like to apply and will apply, unless this committee or some other representative group of Congress would like to suggest other criteria. I think the criteria as to the guilt in these six cases, and the sentence to be imposed are the proper criteria, and while I do not say I envision a decision which will meet with universal approval, we want to do the fair thing about it.

Now, Senator Baldwin, you raised a question of whether I wanted to wait until Congress, or this committee, or any other, should consider the matter before I acted on these six death sentences. It has been a difficult question for me to decide.

In the first place, I hesitate to run the risk of this thing being so prolonged that my successor might have the responsibility of passing on it. I do not mind taking that responsibility. Of course, personally, I would hate it. I wish I didn't have to do so. I do not want to pass the buck to anyone else. I am not suggesting how soon that would be, but say there will be a successor sometime, I don't want to run the risk of passing the buck to him; nor do I want to seem to put the Congress in a position, or any congressional committee, in a position unless they want to get in that position, of taking the responsibility for the execution. My executive action in this matter is a responsibility put on this Department and not on the Congress.

Senator McCARTHY. I might say that Senator Hoey, chairman of the Senate Special Investigating Committee wired the President, and I believe that your office has a copy of the wire, requesting that the President himself take action to hold up any executions in cases in which the Simpson-Van Roden committee disagreed with General Clay.

Secretary ROYALL. Let me finish. I was going to say, despite those considerations on the other side, I have reached a decision that if the committees considering this matter will act promptly, any committee who wants to consider it, that I would be inclined to defer a decision on the matter of the six sentences until I hear something from the committees.

Senator BALDWIN. May I say this, Mr. Secretary: We do not want to be acting in any way as a court of appeals here. That is not our function. What we are doing is investigating the methods and policies and means used in these cases.

On the other hand, I am glad to have you say that if we will expedite these hearings, you would postpone final decision, because I believe we may be able to develop something in this investigation that will be helpful to you.

Secretary ROYALL. That is the reason I reached that decision.

Senator BALDWIN. And, it will be helpful to justice all along the line, and it might be wise under those circumstances to postpone your final decision, although we are not asking you do do so, because we, as a legislative branch of the Government, do not want to trespass upon what is obviously a prerogative and responsibility of the executive branch of the Government.

Secretary ROYALL. As a matter of fact, Senator, I had decided before Senator Hoey's request, and advised a number of Senators, that I would wait until I heard further from Congress, before passing on the matter.

Senator BALDWIN. There is just one other point that I wanted to bring out while you are still here. We don't want to go into any testimony as to this massacre itself, I mean, the things everybody in the country knows about it. There is just one possible exception to that.

Some of these confessions contained descriptions of how this massacre was perpetrated. There are some eyewitnesses, and where the veracity of a confession may be an issue, it may be necessary to corroborate or disprove the statement in the confession, with an eyewitness. To that extent, we may have to go.

Do you have anything further?

Senator McCARTHY. I have a number of questions, but first let me say this: Apparently our Expenditures Committee does not take the same position you do, Mr. Chairman, on the question of holding up executions.

We have felt that in any case in which the Simpson committee, or the Simpson-Van Roden committee, recommended that the man be freed, or that his sentence be commuted, that in those cases it would be a great mistake to have any execution take place while the Senate committee is investigating this particular matter.

For that reason, Senator Hoey sent a wire to the President asking him to hold up all executions in which the Simpson-Van Roden committee, the committee appointed by the Secretary—that those be held up until we finished our investigation because we felt that if the committee were to come back with a report to the effect that the convictions were improperly obtained, that you violated every concept of American procedure to get convictions, and there were serious question of the guilt of a man, we think it would be a tragedy to have had—

Senator BALDWIN. That isn't the question at this time. That isn't the point we are inquiring into—

Senator McCARTHY. I wanted to make our position clear in the record. We feel that in a situation, if it did arise, and it could arise, and if the execution took place, that it would do American prestige over in Europe infinite damage.

I might say that the reason why our committee was concerned about that was the constant stream of reports, apparently valid, from the Army's own report, from the Simpson-Van Roden committee, and others that we have been getting from Europe, as to unusual things—I think that Mr. Royall, our top brass, would not approve of a lot of those things done by some incompetent officer over in that area, and, in effect, doing everything we ever accused the Russians of doing, and for that reason it hurts the American prestige over in Europe and may be driving more to communism in that area than anything else; for that reason I feel that it would be entirely proper to ask the Secretary to hold his decision up until after we have completed our investigation.

Secretary ROYALL. The President never made any such request, and I assume is leaving the matter to our judgment; but, we had already decided before that request was made to the President that we would wait a reasonable time for these matters to be investigated, so that is a moot question.

I do not want to leave unchallenged the statement that we are following in Europe today procedures that are analogous to those in Russia. That is not a fact.

Senator McCARTHY. If the Army's report is true—

Secretary ROYALL. That report relates something that happened long ago, and, as I said at the outset, before any conclusion is reached that an American officer or officers and enlisted men and civilians have done the things charged against them, I want them to have an opportunity to be heard.

Senator McCARTHY. May I ask one or two more questions, Mr. Secretary?

In reviewing, let us say, case No. "X," if you find that the conviction was improperly obtained, then what will the procedure be? Would you recommend that the sentence be commuted to life imprisonment, or the man go scot free, or what would your recommendation be?

Secretary ROYALL. The immediate question is the death sentence. That would be the first thing to be passed on.

If, as a result of this entire situation and study of it which we are still engaged in, and as a result of committee hearings, I am convinced that the guilt itself is in doubt in these cases, because of improper confessions, it would be my intention to have every one of these cases considered again, not only as to the Malmedy cases, but as to the question if any sentence should be imposed on them, but we have not gotten to that stage yet; because the attention has been focused primarily on the death sentences at this time.

Senator BALDWIN. Senator McCarthy brought out an excellent point. We don't want to have it said, with any justification whatsoever, that we are using methods similar to those for which we condemn the Russians. On the other hand, I think that it is wholesome to have the world understand that American justice is fair and honest, but swift and final. I think that is an important thing, too.

I think that we can err by going either to one side or the other of this thing, and it is that phase of the matter, too, that is of considerable importance, to the committee, because we are dealing, in many instances, with people who have been pretty hard and cruel, and while we want to show Christian charity in every single case, we don't want to have our methods or purposes charged with being weak and pusillanimous, either.

Senator McCARTHY. May I ask another question? First, I might say, to make the record absolutely clear, I disagree with that. If we find someone to be guilty of these things, I think he should be immediately executed. I am not concerned with Christian charity. I am only concerned with having applied to all those cases what we have worked out here as the best method of getting convictions, the methods most honest to the people as a whole, and the defendants. Once we have done that, I am not concerned with extending any Christian charity to anyone guilty of those crimes.

Senator BALDWIN. I am not, either; I want you to understand that we are not granting any Christian charity to those people found guilty, properly.

Senator McCARTHY. I don't believe in charity for any of those actually found guilty in Malmedy.

Senator BALDWIN. Neither do I, and that is why I am perfectly willing to say that it is up to you, Mr. Secretary of the Army, to decide whether or not the execution shall go through.

It might be worth your while, Mr. Secretary, to wait until we have finished our investigation, because it might be that something might be developed that would help you in making the final decision because at all times that would be an extremely difficult decision to have to make.

Senator McCARTHY. I would like to ask the Secretary several questions.

You stated you thought it was all right to use religious pressure to—

Secretary ROYALL. I said the courts have decided that. The courts decided, not I.

Senator McCARTHY. A number of charges have been made, and I am afraid I have confused the report of the Simpson committee and the Army Committee, but as I recall, there was a claim made that phony priests were used in order to go in and get a man's confession before he was alleged to be executed after a mock trial. That is, of course, the use of religious pressure there. Would you consider that a satisfactory method of taking a confession?

Secretary ROYALL. I would say that is a sacrilegious thing, instead of being religious, and I condemn utterly that sort of tactics.

Senator McCARTHY. If you find from your investigation that that has been done, would you be interested in finding out the name of the officer, where he is stationed, what he is now doing, and who is responsible for that sort of a thing?

Secretary ROYALL. I certainly would. That injects an entirely new concept. I don't think—or, I might put it this way: I think the reason it is important to this country is that we are religious and we must not become sacrilegious in an effort to apprehend a criminal. That thing you have described as being referred to in some of these papers is clearly sacrilegious.

Senator McCARTHY. Now, in determining whether or not a confession was properly obtained, it is necessary that you first determine in your own mind whether you feel that the use of a mock trial is proper or improper. And let me ask you whether you would consider this a proper method of getting a confession, and I am reading from the Army report on mock trials, and skipping the preliminaries:

Those trials were held at Schwabisch Hall in one of the cells, sometimes a small cell about 6 by 8 feet, sometimes in a larger room two or three times that size. There would be a table covered with a black cloth on which stood a crucifix and burning candles and behind which sat one or more people impersonating judges.

The defendant would be brought from his cell hooded. The practice of using black hoods whenever a defendant was taken from his cell was universally employed at Schwabisch Hall to prevent communication with other prisoners and to prevent knowledge of where he was going. Allegations that these hoods were blood-stained were not supported by any testimony before the board, other than affidavits of the petitioners.

Assume that you found that those conditions to have existed, that there was such a mock trial, with the use of black hoods and the lighted candles and that the person was sentenced to hang at dawn, in the morning; assume that between the time of the mock trial and the scheduled execution that a confession is obtained—would you consider that improper? What would you do in that situation?

Secretary ROYALL. Well, I will tell you, I don't think it is quite fair, Senator, to put me on cross-examination as to a specific state of facts because there are always so many other considerations. I don't believe I want to answer to every set of facts. It is hard to follow them in my mind, just exactly what has been said, and there may be other circumstances that offset it, so I don't think you can quite put it in that narrow a packet.

I would say this, that the test of a confession is first, whether it was obtained by any promise of immunity or protection, and what you have described certainly indicates that between the time of the trial and the execution that there would be a sort of immunity, and also there would

be the question of whether it was obtained by force, or through force or fear. That is a question of degree.

I say again that what you describe there is purely improper, aside from the other features of it, it is manifestly sacrilegious, and I would weigh those circumstances very carefully. If what you said there were the only facts that existed, probably the thing would be simple, but if there were others, that might militate one way or the other.

Senator McCARTHY. Let me ask you, I am not going to press you for an answer if you prefer not to—

Secretary ROYALL. I just don't want to answer on a hypothesis, unless I know it is an actual one in a particular case. I don't believe we ought to decide this matter on theoretical states of fact, and I am not prepared to know whether those are the facts, or all of the facts in any particular instance.

Senator McCARTHY. Don't get under the impression that I am trying to cross-examine you. I think the attitude you have shown since we brought the matter to your attention is excellent. You have consented to hold up all action since the start of our investigation. This is not intended as a criticism.

Secretary ROYALL. Don't say "since you brought it to my attention."

I started this investigation in May of 1948 and held it up since then.

Senator McCARTHY. I should say, we have no complaint about your actions since we have been communicating with you on this, but in view of the fact that you hold this very important position, I do think it is important to know what attitude you take toward certain things in such a critical case. The No. 1 question is how you view the use of a mock trial.

Now, in my State, where I sat for some time as a judge, I passed and tried murder cases in which I sentenced a man to life, and, understand, there are very definite rules that we follow in this country, rules that come down from the old British law where, if a prosecutor took it upon himself to hold a mock trial in a cell at night, such as the Army says was held in Germany, we would promptly disbar him, he would never practice law in the State of Wisconsin again.

Secretary ROYALL. I would agree, over here.

Senator McCARTHY. I want to ask you this: Do you consider the use of a mock trial, and as I say, if you had rather not answer, I think it is very important that we know how you look at this procedure—do you consider the use of a mock trial as a proper method of getting a confession—or do you consider it improper?

Secretary ROYALL. It would depend largely on what you mean by "mock trial." I have already said if those were the sole facts, there would be no question about it.

Senator McCARTHY. Forget then about the "sole facts."

If this is one of the facts, if this mock trial was used, would you consider that highly improper?

Secretary ROYALL. I already said I would consider what you said as improper, but I cannot say whether, when the confession was made, it might have been repeated and it might have been later, the influence might have been removed, any number of circumstances might occur and therefore I do not believe I want to confine myself to a theoretical state of facts. I want to take the facts in a particular case and weigh them. And, I have stated the principles, which I think are that if

the confession is induced by force, fear or promise of immunity, then it should not be accepted in evidence, should not be considered on the question of guilt.

Senator McCARTHY. One further question: I would like to get your thought, if you care to give it today—I have been personally very much disturbed by the attitude demonstrated on the part of the Judge Advocate General, both when he was down here before the Expenditures Committee last week on the Ilse Koch case, in the report and in the conduct I have had with some of the underlings, there seems to be an attitude, if you go over the case and if there is doubt whether the man is guilty or not, then the situation can be taken care of by cutting down his sentence.

That is a fantastic attitude to take. Either a man is guilty or he is innocent. If he has been proven guilty of a crime charged, he should suffer, and if not, he should not. I cannot understand the system of compromise with justice by saying, "Well, it doesn't look like he was fully guilty and, on the other hand, he may be; therefore, instead of giving him 20 years or so—"

Secretary ROYALL. I never heard that suggestion by the Judge Advocate General and I have dealt with him a long time. If he ever suggested that, it must have been to someone other than me and I am the man that has to pass on them.

I never heard of that principle.

Senator McCARTHY. From going over this report the Judge Advocate General signed—

Secretary ROYALL. Are you talking about the Judge Advocate General here, or—

Senator McCARTHY. In the area.

Secretary ROYALL. In the area? I have never talked to Mr. Harbaugh, I don't know him.

Senator McCARTHY. I am not speaking of the Judge Advocate General here in Washington. I am speaking of the one abroad.

May I ask one further question—

Secretary ROYALL. Let me ask this, sir: In the question of death sentences, I don't know, I have not been a governor, but I guess the job of passing on death sentences in the Department of the Army is probably a little harder than that in the case of a governor, because we had certainly more of them in the early stages of my tenure.

In all frankness, a very slight and perhaps dubious doubt will justify a commutation of a death sentence. In other words, the human mind will apply a stricter test because everyone wants to avoid the execution, the final execution of a man, if there is anything that casts doubt on it. So, that is one exception to the theoretically sound rule you state.

Senator McCARTHY. I think that is where you can play a somewhat more generous role with the Christian charity referred to.

Secretary ROYALL. You have to do that when you are talking of a man's life and shutting off all possibility of future review—a decent human being will apply a little stricter test.

Senator McCARTHY. One closing question, Mr. Secretary: Let me ask—I assume you have read the report of February 14, 1949.

Secretary ROYALL. Yes.

Senator McCARTHY. Signed by the Judge Advocate General in that area of Europe to which we are referring.

Secretary ROYALL. Yes.

Senator BALDWIN. May it appear for the benefit of the record that Senator Hunt, of Wyoming, has come to the hearing and that he is here to serve as a member of the subcommittee in place of Senator Russell of Georgia.

Thank you very much for coming, Senator. We are glad to welcome you to this rather difficult and trying job, but I am sure you bring fine qualifications to aid in the solution of the problem.

Senator MCCARTHY. May I ask you this question, Mr. Secretary? Can you and I agree, from going over this report signed by the judge advocate general, meaning the man who is charged with the trials in that area, the man who decides what is correct and incorrect—in checking over his report you find that he completely confuses things that are entirely proper in criminal cases, such as the use of stool pigeons, which we all know is proper; the attempts to get minor criminals to turn State's evidence, which we all know is proper; he has confused things that are so definitely proper, with things that are equally definitely improper, such as, for example, the taking of ration cards away from the accused's family, the use of mock trials, and the use of physical force. You find him saying that, in effect, these things are all right because they created the right psychological background in order to get a confession; you find, in subsection (c) on page 9, that the use of physical force is really not too bad, because it wasn't systematically used. You find him in effect saying that all of these deviations from our concept of justice really were not too bad because there was an order on the wall saying that you couldn't do it.

Couldn't you and I pretty much agree that that man was incompetent for that job and that he should be immediately removed and put some man in charge who had some conception of what is right and what is wrong, it may be a little late, but shouldn't that be done?

Secretary ROYALL. Senator, I probably wouldn't go as far as you state. I have already said that earlier in that report, it certainly lacks in clarity and I think maybe you have unintentionally overdrawn it a little, in your description; but I agree with you entirely, that it lends itself to much confusion, and many of the conclusions you have drawn.

In connection with the investigation of this case, it is my intention to find out just who wrote that report and why it does leave a very confused impression of the whole situation. It does on me, and did on me when I read it, and I would not want to prejudice Colonel Harbaugh, I don't know him, and certainly would want an opportunity to discuss the matter with him before I decided, but I agree that the report is not a good one.

Senator MCCARTHY. I hope that Colonel Harbaugh is to be brought before the committee.

Senator BALDWIN. I think we can arrange to have him here.

Senator MCCARTHY. I have no further questions.

Secretary ROYALL. May I say this: For example, in that report, frankly I don't believe from a partial reading of the record in this case we are going to find any such mock trial as that report describes. I don't believe they occurred and I don't believe there is evidence that they did occur. At least I have tried to find some evidence and I have not completed my investigation, but I have found no evidence that they did.

Colonel Fenn, did you find any such evidence?

Colonel FENN. I didn't see any evidence of anybody being sentenced or anything.

Secretary ROYALL. I have seen nothing like that.

Senator BALDWIN. Nothing indicating—

Senator McCARTHY. You said you found no evidence.

Colonel FENN. They had mock trials, I think so, but never went as far as you indicated in their trials—as you indicated in your questioning of the Secretary.

Senator McCARTHY. You did find that mock trials were used, but there is a question of how far they went?

Colonel FENN. I don't even know that they held them at night.

Senator BALDWIN. May I say that we plan to have witnesses to just exactly what did take place and how many mock trials there were, if such there were.

Senator McCARTHY. May I ask, are you going to have Judge VanRoden and Judge Simpson here?

Senator BALDWIN. Yes.

Senator McCARTHY. They are very important.

Secretary ROYALL. Their report was a very thorough one, and, as I said earlier, Senator, my job as to the sentences is narrowed to six cases, because they recommended that 12, which was all of the death sentences, be commuted. They did not recommend that the sentences be entirely set aside, but recommended they be commuted to life imprisonment; and that, I suppose—the cases must have fallen in the area I described a minute ago, here is a man's life at stake, and General Clay reviewed the sentences, this is repetitious but you were not here when I went over this originally, and he says that 6 of the 12 ought to be executed and 6 sentences commuted.

Now, I can review those sentences if I think it is proper, but I cannot raise General Clay's sentence, I can only reduce and therefore I am now engaged in a full review of those six cases to reach a decision as to whether I think they ought to be commuted or whether the death sentence should stand.

Senator BALDWIN. Just one question, Mr. Secretary.

These men that were tried and convicted in the Malmedy massacre were all SS troopers, were they not?

Secretary ROYALL. That is right.

Senator BALDWIN. And they were supposed to be the toughest and hardest of the whole German Army?

Secretary ROYALL. That is right.

Senator BALDWIN. And I understood that they were the men also who were committed not to say a word at the German capitulation—they were given instructions that they were not to talk under any circumstances?

Secretary ROYALL. That is correct.

Senator BALDWIN. So that they were difficult people to deal with in every sense of the word.

Secretary ROYALL. They were hard and hardened.

Senator McCARTHY. I might say, Mr. Chairman, if you apply that rule, you might lose your chief clerk of the committee who was in the Marine Corps prior to this time. The marines were told not to talk but to give your rank and serial number, but we didn't think that

would justify some of the things that were done to our marines in the Pacific.

Secretary ROYALL. Don't confuse those matters. That was a question of being prisoners of war. These men are not prisoners of war. These are different and that is the difference. They were under orders, not as prisoners of war, not to talk—they were under orders as enemies, if accused of crime, not to talk under any circumstances.

Senator McCARTHY. I might say one reason why this sort of thing is disturbing. Over in the Pacific we had this particular thing done to our marines oftentimes when they were taken prisoners and all the things that the Van Roden-Simpson committee says that our people did to the Germans in Europe are the same that we accused others of doing to us, and for the same purposes, for the purpose of getting information and creating the right psychological atmosphere so that our marines would talk. Sometimes they did, sometimes they didn't; they were killed before they talked. We felt so strongly about that sort of thing being done, so very strongly that we cannot help but feel strongly about it over there, when we hear that that sort of accusation is being hurled at our men, in their treatment of an enemy we defeated.

Senator BALDWIN. Let me ask a question in connection with that, because I think there is one point we should clarify in the record, as it is fundamental?

When the 80 American soldiers were shot down in cold blood, they were prisoners of war and were entitled to the treatment and respect that is customarily accorded prisoners of war by conventions that go back into the centuries—

Secretary ROYALL. That is correct, sir.

Senator BALDWIN. Particularly the Geneva conventions.

On the other hand, these SS troopers that were apprehended and tried in this case were apprehended and tried after Germany had surrendered, after the war was over, and they were apprehended and tried not as prisoners of war, but as men who, at the bar of justice and decency, were being tried for what they had done during the war in violation of the rules of war, isn't that correct?

Secretary ROYALL. That is right.

Senator BALDWIN. So, they are in a little different status than the man who has been captured and from whom they are trying to get information.

Are there any further questions?

Senator McCARTHY. Not at the present time.

Senator BALDWIN. Thank you very much, Mr. Secretary.

We appreciate the time and effort that you have given us on this thing.

Is Colonel Ellis here?

Colonel ELLIS. Yes, sir, right here.

Senator BALDWIN. I might say for the benefit of the record, Senator Hunt and Senator McCarthy, I think it would be wise, since we are asking witnesses to testify as to facts, if they were to be administered on oath, and we will follow that policy in connection with the other witnesses in the future.

Senator McCARTHY. I didn't hear that.

Senator BALDWIN. Since we are asking the witnesses to testify as to facts that come to their knowledge, I think it would be proper for us to administer an oath to the witnesses as they appear.

I will ask you to hold up your right hand, Colonel.

Do you swear that the testimony you are going to give in the matter now in question shall be the truth, the whole truth, and nothing but the truth to the best of your knowledge, information and belief, so help you God?

Colonel ELLIS. I do.

Senator McCARTHY. Mr. Chairman, so the record may be clear, I would like to make it clear that in referring to whether or not these prisoners were prisoners of war, if I am correct in my mind, they were all war prisoners, and during the interrogation and procedure up to a point about a week before the trial, at which time I don't know what action was taken, but some action was taken to declare that they were no longer prisoners of war, but civilian prisoners of the Army, so that during all the interrogation, all were prisoners of war, I think.

Senator BALDWIN. I think that is a fact we will have to get some information on.

Personally, I would think that there might be a considerable difference between the status of a man who is caught bearing arms while the hostilities are still on, and one who is apprehended after the war, from among civilian population, and is no longer a member of any military unit; whether these men fell into that class or not, I don't know. That is a fact we will have to develop.

Senator McCARTHY. I doubt if we could distinguish between the rights of a man who is technically a war prisoner, or a prisoner of war, for example, and the other kind. For example, in our theater of operations, if we picked up a Jap who was accused of the commission of some atrocities, he was given a fair and speedy trial and, if found guilty, executed. That was during the war.

If we picked him up after the war, say, I don't believe the conduct of the trial should be any different than during wartime. That is where I disagree so heartily with the Secretary when he says he thinks some of these things are justified because under the heat of the moment you may be entitled to violate the rights of a defendant. There can be no difference between a man's rights the day before war ends and the day after the war ends. If he is a criminal, and many of these there was no doubt about, he should be tried, but properly tried and executed. I just cannot find any fine line of distinction between the treatment of a man while you say he was a prisoner of war, and now he is no longer a prisoner, but a civilian prisoner of the Army.

I don't want to get into an argument over the matter, but want to clarify my feelings on the matter.

I might say, Mr. Chairman, I think this is one of the most important investigations this Chair will have the opportunity of conducting for some time. I think upon the completeness of this investigation, the outcome will determine to a great extent the method of administering justice from now on, after the next war, if there is one, win or lose.

Senator BALDWIN. That is why I think this particular point we were just discussing here is very important. These men were not tried as

captured prisoners in a strictly military court. They were apprehended, as I understand, after hostilities ceased, and they were tried before an entirely new type of tribunal, a war-crime tribunal, for which we have not much, if any, precedent in the whole history of humankind. That is why I think this investigation is important.

Have we used the right procedures here and, if not, what should be done and how should it have been done?

Mr. CHAMBERS. Mr. Chairman, I think you have already stated this, but we have definitely planned on trying to have the record show clearly the status of these 73 people while they were at Schwabisch Hall.

Senator McCarthy is correct in that at some place along the line their status changed from prisoner of war to that of persons being charged under this new plan of trying people for war crimes.

Now, what precedent will be built up under the war crimes, I don't know; but in any event I think it is very pertinent to this study, the record, and perhaps Colonel Ellis, one who can give his part of that background, should show clearly their status, because prisoners of war do have certain specific protections under rules of warfare, most of which were fixed by the Geneva treaties, of which we were one of the cosigners.

The war-crimes investigation, however, was rather a new field and I think the gist, sir, of this record we are building up, and the part it will play in future war criminal trials, as Senator McCarthy pointed out, could well be one of the most important nature.

Colonel Ellis will have a few words to say along that line, I am sure.

TESTIMONY OF LT. COL. BURTON F. ELLIS, JUDGE ADVOCATE GENERAL'S DEPARTMENT, OFFICE OF THE JUDGE ADVOCATE, HEAD-QUARTERS, SIXTH ARMY, DEPARTMENT OF THE ARMY

Colonel ELLIS. I would like to say that there is a rule regarding honorable prisoners of war, and they have a certain status and have certain rights, but these people that we had, had changed over into a different category. They were charged with war crimes and were treated as war criminals, not treated as prisoners of war. They were not considered as prisoners of war.

Senator McCARTHY. Treated as war criminals?

Colonel ELLIS. For war crimes, from the time they had a label put on them as suspects for war crimes.

I am telling you what the record is, and the way it was done.

Some of these people were captured at the time of the Bulge, some on surrendering the 8th and 9th of May; some were additionally apprehended sometime later. They were in many categories.

Senator McCARTHY. So there can be no question about the man's testimony, Mr. Chairman, if it is true, and I certainly give you credit for being truthful, sir, you say from the minute one was apprehended, you placed upon them the stamp of being accused of being a war criminal, and from that time on they were treated as war criminals?

Senator BALDWIN. Just a minute—

Senator McCARTHY. Let him answer.

Colonel ELLIS. He may not have been segregated and put in a war criminal's cage, but sometime during the process he would come to the war-crimes enclosure and would be considered as a war-crimes person

and guided toward the central war-crimes enclosure, whether he was suspected of being in the Malmedy massacre, or some of the others, he was treated as a war criminal for all administrative purposes. I don't say that he was fed any different or given less exercise or anything else.

Senator McCARTHY. Just so you don't put something in the record you don't mean, you made a statement that I think is the most phenomenal I ever heard from an Army officer.

What was your assignment?

Colonel ELLIS. Chief prosecutor and was charged with the investigation—

Senator McCARTHY. In other words, from the time the man got the label of being accused, he was treated as a criminal; is that correct? Is that what you mean to say?

Colonel ELLIS. What do you mean by "treated as a criminal"?

Maybe what I am talking about and what you are talking about are altogether different.

Senator McCARTHY. That is what I think should be cleared, in all fairness. You should be entitled to clear it up.

Senator BALDWIN. Let us go at this matter with a little bit of order here.

You make your statement and then let Senator McCarthy or Senator Hunt or the rest of us ask any questions we want.

First, let us get your name on the record.

Colonel ELLIS. I am Burton F. Ellis, lieutenant colonel, Judge Advocate General's Corps.

Senator McCARTHY. Chief prosecutor?

Colonel ELLIS. Chief prosecutor, and chief of the investigation section.

Senator McCARTHY. So the record will be clear, you were in charge then of all the prosecutions in that area?

Colonel ELLIS. No, sir. I was not in charge of the prosecutions, other than this case. That was the only case I prosecuted.

Senator McCARTHY. Pardon me for interrupting, Mr. Chairman.

Senator BALDWIN. That's all right.

Tell us your status, please, during and in connection with this war crimes trial.

Colonel ELLIS. In April 1945 I was assigned to the War Crimes Branch in Washington and sent overseas to Europe and arrived in Europe on the 2d of May 1945; sent by the War Crimes Branch, FUS, United States forces, European theatre.

At that time I was put in the investigation section as executive officer.

Early in September 1945 I was made chief of the investigation section of war crimes, which position I held until approximately the 1st of May 1946, at which time I was directly in charge of preparing the Malmedy case for trial, and held that position—

Senator McCARTHY. What was that date?

Colonel ELLIS. Approximately the 1st of March 1946.

I went to Schwabisch Hall, as I recall, actually on the 5th of March 1946 and had charge of the final preparation of the case for trial.

I was chief prosecutor, and the trial started on the 16th of May 1946 and was concluded on the 16th of July 1946.

I went to the United States, returned on TDY and leave. At the conclusion of the trial I returned to the European theater on the 19th of October 1946; for a space of 2 or 3 weeks, I was executive officer of what they called the evidence branch, which included the investigation of the war-crimes case, and apprehension of individuals and the gathering of evidence. Approximately in late November I was made chief of the evidence branch. On the 1st of July 1947 I was made Deputy Chief of Operations, which included charge of all trials, all investigations, and all apprehensions and I held that position up until the 14th of January 1948, at the conclusion and closing out of the Dachau operation. At that time I was returned to the ZI.

Senator BALDWIN. How long have you been in the Army?

Colonel ELLIS. I went in a first lieutenant the 25th of June 1942. Prior to that time I was tax attorney for the Texas Corp., in Los Angeles and New York City.

Senator BALDWIN. And prior to your duties in connection with these trials, did you serve with any combat units?

Colonel ELLIS. Well, I was with the Air Force in India for approximately 2 years, first with the Tenth Air Force, later with headquarters, Army Air Forces, CBI, and then I was on TDY with the Fourteenth Air Force and with the Air Transport Command, and I don't know, I had several TDY's but I don't recall the name of some of the commands.

Senator BALDWIN. You have already give us the date that you undertook this task in connection with these war-crimes trials?

Colonel ELLIS. Yes.

Mr. CHAMBERS. Colonel Ellis, I believe you said you went to Schwabisch Hall to finish up the case for the prosecution about the 1st of March 1946.

Prior to that time, in your capacity as first executive officer in the investigation section and later as chief investigator, did you have any contact with developing the case?

Colonel ELLIS. Yes, sir.

Mr. CHAMBERS. What was it?

Colonel ELLIS. First our headquarters in May and June was located in Paris, and at that time Major Fanton reported to us. Whether it was May or June, I no longer recall. Shortly after he reported we placed him in charge of starting the preparation of the Malmedy case for trial. He worked on it, as I recall, mostly alone up until late August when he then started to work with Colonel Otto, and I think a Lieutenant Higginbotham, and maybe two or three others who I don't recall any longer, that is, as to their names—they went to Bavaria, and Austria, through the prison camps trying to find the First SS Panzer Regiment.

Senator McCARTHY. Roughly, what time was that—just roughly?

Colonel ELLIS. As I recall, the last of August. I place that date on it because Colonel Otto was redeployed the 1st of September 1945, but he went on this trip. Colonel Otto was chief of the investigation section. I was executive officer.

Senator McCARTHY. Just for my information, which of you four gentlemen had previously been a resident of Germany, if any?

Colonel ELLIS. None of us; none of the men I have mentioned, at all.

Senator McCARTHY. I don't like to interrupt, but to get the picture clear, was anyone of your staff a former resident of Germany?

Colonel ELLIS. Later on, Lieutenant Perl, as I recall, was from Vienna and Mr. Thon, I don't recall whether he was born in the United States or born in Germany, but as a youth went back to Germany, if he was born in the United States—there was a period there I am not sure about that, because he knows, I don't. He told me once, but I have forgotten.

Senator McCARTHY. Mr. Thon?

Colonel ELLIS. Mr. Harry Thon, and there may have been some translator on the staff, too, but I don't know as to whether they were born in Europe or not. I don't know their records now.

Senator McCARTHY. So I will have the picture clearer, what position did Mr. Perl and Mr. Thon have on your staff?

Colonel ELLIS. Originally Thon was an interpreter and then became an investigator. Perl was always an investigator.

Senator BALDWIN. How many officers were there, and civilians—employees connected with this whole operation?

Colonel ELLIS. It varied from time to time, beginning originally with Major Fanton all alone, and grew until I would say there were probably 12 to 16 officers, civilians and GI's that composed the informal investigation team at Schwabisch Hall. Actually there was never more than four investigators working on the case, but they were supported by secretaries and the necessary translators and interpreters.

Senator BALDWIN. They were at all times under your direction?

Colonel ELLIS. I was chief of the investigation section, and it would be the same as in any other department. When I went to Schwabisch Hall, I took personal direction.

Senator BALDWIN. And you dictated policy and the general way in which the investigation proceeded?

Colonel ELLIS. Major Fanton suggested things to me, and I either approved or disapproved, and that was the way it worked.

Senator McCARTHY. Mr. Chairman, are we going to continue on?

Senator BALDWIN. I thought if we could stay here another half an hour.

Senator McCARTHY. May I notify my office?

Senator BALDWIN. Would you rather recess now?

How about you, Senator Hunt?

Senator McCARTHY. How about the housing legislation coming up on the floor today?

Senator HUNT. I would like, Mr. Chairman, to be on the floor, at least within 15 minutes, if I could.

Senator BALDWIN. Perhaps then we had better recess until later, because you are interested in the housing legislation.

We will now recess and meet again at 10 o'clock Wednesday morning.

(Thereupon, at 12 noon, the subcommittee stood in recess until Wednesday, April 20, 1949, at 10 a. m.)

MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, APRIL 20, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in the committee room, room 212, Senate Office Building, Senator Lester C. Hunt (acting chairman) presiding.

Present: Senators Hunt (acting chairman) and Kefauver.

Also present: Senators Tydings and McCarthy; and Mr. J. M. Chambers, on the staff of the committee.

Senator HUNT. Those in the committee room will now please cease their conversation. We will proceed with this hearing.

I think the record should show that Senator Baldwin who is chairman of this subcommittee, has had an emergency call from his home State of Connecticut and finds it impossible to be present here this morning.

At the close of our last hearing Colonel Ellis, who was chief prosecutor in these cases, was testifying.

Is that not correct, Colonel Ellis?

Colonel ELLIS. That is right.

Senator HUNT. He is here with us now, and if you will proceed, Colonel, with your statement, we will appreciate it.

FURTHER TESTIMONY OF LT. COL. BURTON F. ELLIS, JUDGE ADVOCATE GENERAL'S DEPARTMENT, OFFICE OF THE JUDGE ADVOCATE, HEADQUARTERS OF THE SIXTH ARMY, DEPARTMENT OF THE ARMY

Colonel ELLIS. I would like to read this prepared statement which is in affidavit form. In part it may be repetitious of the testimony I gave on Monday, but if I may, I would like to read it in its entirety.

Senator HUNT. Colonel, were you sworn?

Colonel ELLIS. I was, sir. [Reading:]

That references herein made to "the petitioner" refer to the chief defense counsel, former Colonel Willis M. Everett, Jr.; that references to petitioner's writ of habeas corpus referred to herein is the unnumbered petition in the Supreme Court of the United States for a writ of habeas corpus entitled "Willis M. Everett, Jr., on behalf of Valentin Bersen et al., petitioner, v. Harry S. Truman, Commander in Chief of the Armed Forces of the United States, and other respondents," which was sworn to by the petitioner, Willis M. Everett, Jr., May 11, 1948.

That all the following statements, are, to the best of my knowledge and belief, true and correct, except as to the matters herein which are on information and belief, and as to those matters I believe them to be true.

That I reported for duty with War Crimes Branch, ETOUSA, May 6, 1945, in Paris, France, and was assigned to the Investigation Section as assistant to the Chief; that shortly thereafter Maj. Dwight Fanton (then Captain) was assigned to work on the Malmedy case, file No. WCB 6-24; that I personally took a keen interest in the development of the case in my official capacity and carefully watched and aided in its development; that early in September 1945 I became Chief of the Investigation Section, and in that capacity I was charged with the gathering of the evidence for war crimes cases, which included the Malmedy case; that I personally took more than ordinary interest in the development of this case and carefully selected the personnel that I assigned to it, that I inspected the detachment as often as conditions permitted and personally aided them in obtaining a suitable prison, living quarters, transportation, and in formulating plans for the investigation; that in late February 1946 I was relieved as Chief of the Investigation Section and assigned as chief prosecutor on the case, with instructions to bring it to trial by March 25, 1946; that on March 1946 I was ordered to Schwabische Hall, Germany, where the investigation detachment was located that was developing the case, and personally took over and supervised the investigation, preparation of the case for trial, and the apprehension of the accused; that when the trial date was postponed until May 16, 1946, I continued the development of the case; that on April 16, all but six of the accused and possible witnesses were moved to Dachau; that on April 19, 1946, I completed the movement of the prisoners and investigation staff to Dachau, Germany, where the trial was held.

That I was the chief prosecutor during the trial, which began May 16, 1946, and was concluded July 16, 1946; that I personally supervised and inspected the evidence adduced, including pretrial interrogation of the witnesses; that I personally conducted at least 50 percent of the trial work and was in court with the possible exception of not more than 3 or 4 hours during the entire trial; that I planned and directed the trial tactics and methods and saw to it that they were carried out.

That in the early stages of the investigation the personnel of the First SS Panzer Regiment were scattered throughout the prison camps, hospitals, and labor detachments of Germany, Austria, the liberated countries, and the United States; that whenever any of them were located, they were interrogated, but conditions in the prison camps were such that they were able to rejoin their comrades immediately after interrogation and soon they knew exactly what the investigators knew and by their exchange of information gleaned from the interrogations, they were able to effectively block the development of the case; that I believe that it was during this period it became known that prior to the beginning of the Ardennes offensive the SS troops were sworn to secrecy by their commanders not to divulge the orders to kill prisoners of war; that in November 1946 when all the known members of the First SS Panzer Regiment were assembled at the internment camp, Zuffenhausen, they were housed in a single barracks; that here it was impossible to maintain any security of communication between the accused; that while here the Regimental Commander Peiper, although in close confinement, gave instructions to blame the Malmedy massacre onto a Major Poetchke (commanding officer of the First Tank Battalion, who had fallen in Austria in the last days of the War), and that these orders were carried out by the accused; that from these experiences it became apparent that if the perpetrators of the Malmedy massacre were to be brought to justice, a place where absolute security of communication could be maintained would have to be found; that after several conferences with the then judge advocate (Colonel Bard) and the then provost marshal of the Seventh Army, and the inspection of several prisons, the Internment Prison No. 2, Schwabische Hall, Germany, was selected and made available to War Crimes Branch, USFET, by the Seventh Army for the purpose of investigating the Malmedy case; that early in December 1945 approximately 500 of the suspects were moved there. (See exhibit 1, undated, entitled "Investigation of the Malmedy massacre by War Crimes Branch, USFET" prepared by the affiant for and delivered to Col. C. B. Mickelwait, theater judge advocate, prior to the conclusion of the trial July 16, 1946.)

I believe I will read that exhibit later on when I finish the statement, if I may. [Reading:]

That Internment Prison No. 2 was a large German penitentiary and consisted of several buildings, all of stone and concrete; that the investigating detachment maintained offices and interrogation rooms in the administration building; that part of the prisoners were kept in the administration building and the balance

in other buildings of the prison; that the administration of the prison was under the Fifty-eighth Armored Field Artillery Battalion, Seventh Army, and was separate and apart from the investigation detachment.

I might add there, when they first moved in, it was the Sixty-third Tank Destroyer Battalion which was either inactivated or sent home, while the personnel for the administration was retained, and was assigned to the Fifty-eighth Armored Battalion. [Reading:]

That the investigation detachment had nothing to do with the administration of the prison or prisoners; that to the best of my recollection, sometime during March 1946, the Fifty-eighth Armored Field Artillery Battalion was replaced by another organization, whose name I no longer remember; that the guards for a few weeks were American troops which were later supplanted by Poles.

That because of a shortage of American personnel, only two American enlisted men were available to move prisoners; that many of the accused had to be moved between buildings; that in order to move more than one accused at a time and still maintain absolute security of communication between prisoners, a hood was placed over their heads, thus preventing them from knowing who else from the regiment was also confined there or who was in the group being moved, and communicating with them.

I have a picture of that, that has been marked "Exhibit No. 2." [Reading:]

That by this means it was also possible to keep them from learning the lay-out of the prison and finding out from one another how much was known about them individually; that when once interrogated they were kept in close confinement until it was decided that no more information could be obtained from them.

That throughout the interrogation period at Schwabische Hall of approximately 4½ months, additional accused were being located, apprehended, and brought in; that as a matter of fact, additional accused arrived within 24 hours of the time of the last movement to Dachau.

Senator McCARTHY. May I interrupt? Were you in charge during all of the investigation?

Colonel ELLIS. As chief of section, but I was not present right where the teams were working at the moment.

Senator McCARTHY. All right.

Colonel Ellis (reading):

That during the investigation period at Schwabische Hall approximately 700 accused were interrogated, many of them several times, and at no time were there more than four interrogators working, and then not continuously.

That the petitioner alleges in paragraph 8a of his petition for writ of habeas corpus that he had less than 2 weeks to prepare the defense; that I know of my own knowledge that Chief Defense Counsel Willis M. Everett, Jr., was appointed defense counsel sometime prior to April 11, 1948, or at least 5 weeks prior to the trial; that this statement is based upon an entry in my diary dated April 11, 1948, which reads as follows:

"Got back to Schwabische Hall about 1930 hours and found Colonel Everett of defense counsel here. Served 67 defendants tonight in Everett's presence. Got back to billets and found five more defense counsel—Lieutenant Colonel Dwinell, Captain Marvid, and Second Lieutenant Waller. Had to find them billets at transit hotel and it was 0100 before I retired."

That petitioner, in paragraph 8 of his petition for a writ of habeas corpus, generally alleges that he was not afforded sufficient time to prepare the defense; that the record of trial in the case discloses that defendants failed to ask for a continuance, and when asked on the opening day of the trial by the President, "Are you now ready for trial in this case?" defense counsel replied, "May it please the court, on behalf of the accused they desire to answer in the affirmative except at the proper time a motion for severance will be made" (R-71).

That petitioner in paragraph 11 of his petition for writ of habeas corpus alleges that the accused were confined in Schwabische Hall for varying lengths of time but generally in excess of 10 months prior to being served on April 11, 1946; that this allegation by petitioner is not a true statement of fact; that the first accused, with other suspects in the Malmedy massacre were transferred

from IC No. 78 at Zuffenhausen, Germany, to IP No. 2, Schwabische Hall, Germany, on or about December 5, 1945, as evidence by SOP No. 1 dated December 5, 1945 (see exhibit No. 3); that from time to time thereafter additional accused were located or apprehended and transferred to Schwabische Hall; that my diary indicates the date of arrival of 22 of the accused at Schwabische Hall to be as follows:

Hillig, March 5, 1946.
 Klinkelhoefer, March 14, 1946.
 Kies, March 14, 1946.
 Bruhle, March 15, 1946.
 Boltz, March 16, 1946.
 Von Chamier, March 20, 1946.
 Dietrich, March 21, 1946.
 Briesemeister, April 1, 1946.
 Mickelaschek, April 2, 1946.
 Werner, April 2, 1946.
 Siegmund, April 2, 1946.

Rauh, April 4, 1946.
 Kraemer, April 5, 1946.
 SICKEL, April 7, 1946.
 Bode, April 7, 1946.
 Schaefer, April 7, 1946.
 Weiss, April 12, 1946.
 Priess, April 12, 1946.
 Braun, April 16, 1946.
 Richter, April 16, 1946.
 Sebauer, April 16, 1946.
 Wassenberger, April 16, 1946.

That to the best of my recollection the following three accused were transferred to Schwabische Hall from France on the dates as indicated:

Schwambach, on or about April 10.
 Hammerer, on or about April 10.
 Stickel, on or about April 18.

That the policy for handling prisoners was to keep them confined separately only while they were being worked with; that as soon as they had confessed they were confined together, for company and as a precaution against suicides; that to the best of my knowledge and belief, none of the accused were confined alone after they had confessed; that while being interrogated they were usually confined alone for security of communication purposes, but the food and accommodations were the same as for all other prisoners.

That to the best of my knowledge and belief none of the accused or other prisoners were ever abused or mistreated in any manner; that the only incidents of maltreatment of prisoners ever reported to me were several days after the completion of the interrogation of Dietrich—either he told me this, or one of the staff told me that Dietrich had told them that he was kicked in the rear by a guard, and I heard also that Peiper was kicked by a guard, but whether I first heard of it before the trial or during the trial I am no longer able to recall; that I never witnessed any maltreatment of prisoners; that the procedure for interrogation did not permit or countenance any threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment; that this was always the standard operation procedure in the investigation of the Malmédy massacre and it was reduced to writing by Maj. Dwight F. Fanton (see par. 4, SOP No. 4, War Crimes Branch, USFET, Detachment at IP No. 2, February 7, 1946, exhibit 4) and was never revoked.

That the principal defense of the accused was to attack their own confessions; that in preparing the defense each accused filled out a questionnaire (see exhibit 5), prepared by petitioner or his staff, which was directed primarily against the confessions. See particularly questions Nos. 19, 20, 21, 22, 23, 31, 32, 34, 35, 36, 37, and 38 of exhibit 5; that a few days after the accused arrived at Dachau the petitioner officially complained about the alleged improprieties in the manner in which the confessions were obtained; that on or about April 24, 1946, the then deputy theater judge advocate for war crimes ordered an investigation made of the matter by Lt. Col. (then Col.) Edward J. Carpenter (now judge advocate of First Cavalry Division in Japan); that he came to Dachau on or about April 24, 1946, and made such investigation and talked with several of the accused; that on Sunday April 28, 1946, I was in Wiesbaden and was called into conference with Lt. Col. (then Col.) C. E. Straight, the petitioner, Col. Willis M. Everett, Jr., and Lt. Col. (then Col.) Edward J. Carpenter; that I was ordered to return to Dachau and inquire of my staff if any such alleged improprieties had taken place; that I returned to Dachau on April 29, 1946, and held the conference with my staff as directed, and upon informing them of the allegations of Colonel Everett I was assured that none of the alleged improprieties had taken place; that I have subsequently discussed the matter with Colonel Carpenter and he told me that four of the accused had admitted to him that their accusations of violence and beatings were only made "to get out from under" their confessions and were not true; that on April 30 the petitioner, Willis M. Everett, Jr., stated to me that Sprenger, Neve, Hoffman, J., and Jackel admitted fabrication of their

story of beatings; that in connection with the above my diary recites the following:

WEISBADEN, April 28, 1946.

Two-hour conference today with Colonel Straight, Colonel Carpenter, and Colonel Everett (defense counsel). Defendants claim they were beaten. Ordered to make inquiry of my staff and to withdraw all statements gotten under compulsion.

Senator McCARTHY. Who ordered that?

Colonel ELLIS. Colonel Straight. He was the executive for the deputy judge advocate for war crimes at that time. I believe Colonel Mickelwait was judge advocate for—

Senator McCARTHY. You say Colonel Straight was from the Pacific?

Colonel ELLIS. No, sir. That is Colonel Carpenter. Colonel Carpenter is now in the Pacific theater. At that time he was in ETO. [Reading:]

DACHAU, April 29, 1946.

Flew back to Dachau today. Had immediate conference of staff and they assured me none of the defendants were beaten. I so advised Straight, Corbin, and Everett. * * *

DACHAU, April 30, 1946.

Colonel Everett said today that Sprenger, Neve, Hoffman, J., and Jaskel admit fabrication of story of beating. * * *

Senator McCARTHY. Who told you that?

Colonel ELLIS. Colonel Everett; himself. [Reading:]

That as further evidence that the allegations of maltreatment are without foundation and were probably born in the minds of the defense council, there is attached hereto the affidavit of Lt. Col. Charles J. Perry dated March 6, 1947, covering his conversation on February 6, 1947, with the accused First Lieutenant Junker and Colonel Peiper, both of whom received death sentences.

I would like to read that affidavit at this place.

Senator HUNT. Which is that?

Colonel ELLIS. No. 6, I am going to read now.

STATEMENT OF CHARLES J. PERRY, O240597, LIEUTENANT COLONEL, AGD

On February 6, 1947, I visited Landsberg Prison for the purpose of being present during the interrogation of former SS personnel who were awaiting execution for their part in commission of atrocities committed in vicinity of Malmedy, Belgium, and for which they were found guilty by a military court and given the death sentence. While at Landsberg Prison I interviewed Joachim Peiper and Benoni Junker, in connection with their interrogation and treatment prior to their trial before the military court which heard their case.

Junker, who spoke excellent English, informed me that during the development of the Malmedy case at Swabish Halle, Germany, he, at no time, was struck by anyone connected with the investigation of the case. He stated that the treatment he received during his confinement at Swabish Halle was better than the treatment he received at Dachau and the physical conditions at Swabish Halle were much better than those at Landsberg. I again asked specifically whether he had at any time before or during his trial been struck or threatened with bodily harm by any interrogator. He answered specifically that he had never at any time been struck or threatened with bodily harm by any American captor, interrogator, or jailor. I asked whether he had been treated in any manner which might tend to humiliate him or degrade him in the eyes of his former subordinates or superiors. He stated that he was intensely interrogated at Swabish Halle and that frequently his answers to direct questions were distorted and colored to suit the ideas of his interrogators in an effort to elicit further information, but that such methods were not unusual and were probably a great deal milder than the methods which would have been used by German interrogators had the circumstances been reversed. He further stated that the

interrogation was not believed by him to be an effort to degrade him before his German comrades and actually did not so degrade him. I asked whether he had at any time seen or had been placed in cells which contained bullet holes or pieces of flesh, human or other. He answered that the story about pieces of flesh was the figment of someone's imagination and without basis in fact, also, that since the prison at Swabish Halle was an old prison there may have been holes in the cell walls but he was certain that if there were such holes he had not seen them. He further stated that the story reference pieces of flesh and bullet holes in the walls was so fantastic to him that he wrote a humorous limerick about that subject and addressed the limerick to the chief of the prosecution staff during the trial at Dachau. Junker volunteered the information that he held no malice toward any individual connected with the prosecution of his case, and that he particularly esteemed and respected the chief of the prosecution staff, Lt. Col. Burton Ellis, JAGD. I asked whether he had heard stories of mistreatment of prisoners at Swabish Halle during the development of the Malmedy case. Junker replied that he had heard such stories from many of the defendants in that case but that he believed none of them to be true. He further volunteered the statement that the origin of these stories was based on a desire to "wiggle out of" damaging testimony voluntarily given by some of the defendants; that when they realized that such testimony was to their disadvantage they attempted to negative such testimony with the false claim that it was beaten out of them.

Senator McCARTHY. May I interrupt again? Is this a conversation you had?

Colonel ELLIS. No, this is the man who made that affidavit, Colonel Perry.

Senator McCARTHY. Mr. Chairman, I think that if Perry wants to testify, or anyone else, we should have them here. I believe we should restrict ourselves to the testimony of this particular witness.

I think it is just a great waste of time for him to come and read affidavits of other men who may or may not be witnesses. If he wants to present affidavits to the committee and wants them made a part of the record, or wants to call witnesses, that is one thing, but I think it is a great waste of time for him to come here and read an affidavit given to him by the men who worked under him.

I frankly am not interested in them at all, unless they are here so I can talk with them.

Colonel ELLIS. I understand he is to be called.

Mr. CHAMBERS. That is correct.

Senator McCARTHY. If he is to be called, let's have him testify himself.

Mr. CHAMBERS. Senator McCarthy, this particular affidavit is part of the record of the Clay Board and it has been accepted by the Raymond-Harbaugh Board.

Senator McCARTHY. I have no serious objection to it. It is merely a question of wasting time, but if here is a man that is going to be a witness at this hearing, there is no conceivable reason why Colonel Ellis should read that man's affidavit.

Senator HUNT. I agree with you thoroughly on the conservation of time, which we all like to accomplish.

However, in this particular case the colonel is attempting to collaborate his own statement and is well along with this particular affidavit—

Senator McCARTHY. I have no serious objection, it just seems to be an unusual procedure for the witness to come in in this manner.

I am very anxious to talk, and attempt to find out what he knows. Time is short. If he is going to spend all of his time reading state-

ments by men who are accused of improper conduct over there, he may well never get down to getting information that we need here.

As I say, however, I have no serious objection to it.

Senator HUNT. If you don't mind, let him finish this and then, Colonel, do you have any other affidavits in mind that you intend reading?

Colonel ELLIS. I have other affidavits that I have secured within the last 2 or 3 weeks from administrative and medical personnel, American people who were there present at the prison, but if it is not your desire that they be read, it is all right with me.

I understand that some of these people are to be called as witnesses.

Senator McCARTHY. Mr. Chairman, so that my position will be clear, I think if we are going to call someone as a witness, and he is going to come and testify under oath, there is no reason at all why the colonel should read this man's affidavit.

If he is not important enough to be called as a witness, I think the colonel should give your staff any information he has, the names of any individuals that he thinks can shed light on this subject. I think we should go into this in complete detail so that when we finish our investigation, we either can once and for all do away with these claims that there has been unusual procedure followed. Or, if the claims have been correct, we will find out who is responsible for any unusual things that have been done.

I think it is so far from any procedure I have seen, to have the witness come in and read the affidavits of six or seven individuals, when he himself is the important witness on many many things, and I know I want to spend several hours with this man getting information.

Senator HUNT. Do you not think, Senator, that since Colonel Ellis was the prosecutor in these cases, that it is rather necessary that he present the statements that were made to him as the chief prosecutor in presenting his statement to us?

I agree too, if it is not absolutely necessary, I don't like to sit here and listen to affidavits about other men, but I can understand the colonel's position. He was chief prosecutor and he feels he needs this supporting data at this time, to support his position.

Senator KEFAUVER. Mr. Chairman, may I interrupt?

Why cannot Colonel Ellis summarize the affidavits he is going to depend upon, and tell us in one-tenth of the time it would take to read them, what is in the affidavits, and then file them as a part of the record?

Senator McCARTHY. Also, the thing that occurs to me, this is part of an unusual picture: You see, to begin with, there are very serious accusations made by the Simpson-VanRoden committee, as you know, the two judges sent over to investigate. What happens? The commander of the theater appoints the Judge Advocate General to conduct an investigation of himself, and we have a report of a man investigating himself.

Now, we have Colonel Ellis, who was in charge during the time of all of the investigations, and during the time of the trial—and you understand, the Colonel may be entirely right, perhaps everything he claims is absolutely true, but we will know that when we get through.

But, I don't think the proper way to proceed is to quote what his subordinates, who allegedly were responsible for these atrocities said,

or for us to say "Now, investigate yourself and tell me what happened"; and, then, he reads to us the report of the individuals whom he is responsible for.

I think it is a great waste of time.

I think if he has affidavits, they should be presented to the committee. If he wants to make them available to the press, good; there is no objection to that whatsoever; and then, this committee can determine whether or not the individuals whose affidavits are presented, are important enough to be called, but I don't want to go any further on this, Mr. Chairman, and perhaps waste more time arguing than I have.

Colonel ELLIS. Senator, I believe you are misinformed.

Colonel Perry was not even in the theater at the time of the investigation of Malmedy. He was on the Skorzey case and trial, and arrived there——

Senator McCARTHY. Was he on your staff?

Colonel ELLIS. He was in charge of the investigation and trial at this time, in the Skorzey case, and he had to talk with these people who were possible witnesses in the Skorzey case.

Senator HUNT. Colonel Ellis, apparently you have 8 or 10 minutes more of this particular brief. Would you care to summarize it, if you could in less time, or the chairman is inclined to allow you to proceed to read the full affidavit if you wish; but, I am in harmony with the thinking of the Senator, if we can conserve time.

Colonel ELLIS. If it is the committee's desire that I not finish that affidavit, it is satisfactory with me. I do not want to waste your time, either.

Senator KEFAUVER. Could you summarize it?

Colonel ELLIS. Both Junker and Pieper, who were defendants in the case, both received death sentences and claimed that these personnel received no mistreatment, that all that they knew was just based on hearsay; and, I think both of them go on further and say that it was not brought to their attention until after the defense took charge of the case, when they heard anything about it. That is practically what they say. I have not read this affidavit for some time, but that is as near as I can recall the substance of their testimony. Both of them, I think, state that their treatment at Schwabisch Hall was better than they received prior to, or subsequent to their confinement in other prisons.

Senator HUNT. Then, if you will proceed, Colonel.

Colonel ELLIS (reading):

That petitioner, in paragraph 13 of his petition for a writ of habeas corpus, describes a so-called mock trial used in the investigation of this case, which is erroneous and misleading and not based upon fact; that an accurate description of the so-called mock trial, which is based upon knowledge gained from once as an unnoticed observer and not as a participant, once as a known observer, and from discussions with investigators, is as follows——

Senator McCARTHY. This is your own statement now?

Colonel ELLIS. This is my own statement; yes. [Reading:]

The regular interrogation cells were used. They were about 8 feet square, with a full normal-sized window, and in one corner was a toilet bowl. The furniture consisted of three or four chairs and a small table. The table was covered with black-out cloth and held two lighted candles and a crucifix. (The crucifix was nearly always used when taking sworn statements, as it was my

understanding that it was continental practice to use the crucifix instead of the Bible for this purpose.) Two or three members of the staff were usually seated behind the table, posing as officers, and two German-speaking interrogators were present. This was known as the schnell procedure by the staff. The accused was brought in and told that this was the schnell procedure. Witnesses would be brought in and the accused was confronted by them. To the best of my recollection only bona fide ones were used and they were sworn. This was all done very rapidly, with considerable lack of decorum and noise. Everything was in German, and I do not understand it, but I was told that one investigator kept telling the various crimes the accused had committed and the other investigator kept insisting that the other investigator let the accused tell his story and called the witnesses liars. By the time the witnesses finished telling about the shootings the accused had participated in, the accused was whispering to the investigator. About that time the whole thing dissolved, the witnesses being taken away and the staff departing to other duties. No announcement of any kind was made. I do not recall that the people sitting behind the table ever said anything. The instructions given to all concerned were to scrupulously avoid stating that a trial was being conducted, that no one should hold himself out as being the defense counsel, and that no findings or sentences would be pronounced.

Senator McCARTHY. May I interrupt?

Colonel ELLIS. Yes.

Senator McCARTHY. You mean, your thought is that the defendant did not think he was being tried at this time?

Colonel ELLIS. I don't know what the thought was that was created in the mind of the individual.

Senator McCARTHY. That is very important. You were charged with the conduct of an investigation. You have decided in your own mind whether at these mock trials the accused thought he was being tried or not. You were in charge of the whole area procedure.

Colonel ELLIS. That would be a most difficult question for me to decide, whether he thought he was being tried or not.

I just would not know whether he thought he was being tried or not. We were trying to get them to talk, if that is what you mean.

Senator McCARTHY. I understand that, wholly. The question is whether he used the proper methods or not. I want to find out whether, in your opinion, at these mock trials, the accused thought he was being tried by a legitimate American court, an Army court.

Colonel ELLIS. I don't think he did; no, sir.

Senator McCARTHY. You don't think so?

Colonel ELLIS. No.

Senator McCARTHY. You think he knew this was a fake trial?

Colonel ELLIS. Well, to me it was certainly a fake.

Senator McCARTHY. Of course it was.

Colonel ELLIS. In fact all the rest of us, I don't suppose—I don't just know what was in his mind, I couldn't tell. It wasn't very effective, I can tell you that.

Senator McCARTHY. Wasn't the whole purpose of this trial, the whole purpose of this mock trial, and the only purpose to convince the defendant that he was being tried by a legitimate court? Wasn't that the whole purpose of it, or what other explanation could you give?

Colonel ELLIS. The purpose was to get him to talk. It was not conducted in the way that any trial I ever saw was conducted.

Senator HUNT. Colonel Ellis, let me ask you to elaborate on what took place.

Colonel ELLIS. I only saw this one through the peephole of a door.

To my knowledge, that was the only one that was ever conducted other than another one that I will mention and describe later, in which there were not even any witnesses there.

In this particular instance, there was as I say, two or three of these civilians, as soldiers, sitting behind the table, dressed as officers—

Senator HUNT. Germans or Americans?

Colonel ELLIS. Americans.

Senator McCARTHY. Are you aware of the fact that the Harbaugh committee, appointed by General Clay, has a report on file which has been made public, in which they state that when the so-called retrial was commenced, that oftentimes it took 2 or 3 days in effect to convince the defendants that it was not another mock trial?

Colonel ELLIS. I am aware that that allegation was made.

Senator McCARTHY. As the man in charge of it, you know that we can't find out, unless you come here and tell us the truth.

Colonel ELLIS. I am trying to—

Senator McCARTHY. If you do any twisting or distorting of the facts, it makes it impossible for us to determine whether your actions were proper or improper.

If these were mock trials, you were a lawyer, you practiced law, you know it is, of course, entirely improper to bring a defendant in and try to convince him that he is being tried by a proper court, tried and convicted, in an attempt to get a confession.

When you heard the charge that mock trials were being conducted, I assume that, being in charge, you knew whether they were true, and you would take the trouble to find out. I assume you would find out whether they were convinced that they were being tried legitimately. I assume you would try to find out whether you should call off the mock trials. For you to say you knew it was a mock trial and therefore the defendant knew it was, doesn't impress me.

Colonel ELLIS. I don't think you should use the words "mock trial."

It was a ceremony. We thought of it as that. We thought of the hearings, being conducted with a lot of noise and lack of decorum, not as a matter of whether it was legal or not. I think Secretary Royall said on Monday that the law was not decided on it, that it was divided, some States holding it was legal and others that it was not.

Senator McCARTHY. As the lawyer in charge, did you think it was proper to use a mock trial, assuming, if I may use that term, use the mock trial at which the defendant or accused was convinced he was being actually tried? Do you think that it proper or improper?

Colonel ELLIS. If it went on with all the various elements of the trial, and sentence and the findings, I would say it was improper.

Senator McCARTHY. Let's forget the elements such as you have mentioned. The accused knew he was being tried by a court. Do you think that proper or improper? I think it is important.

Colonel ELLIS. If he thought he was being tried by an American court, I would answer the question this way—that the law books say that artifices and deceptions may be used. I don't think there is a treatise on criminal law any place that would not substantiate me in that.

Senator McCARTHY. Let me ask you this. I think you can answer "Yes" or "No"—I am going to ask the chariman to insist that you do: You were holding a very important position. Unless we know how you felt in this, what your thought was, as to what is right and what

is wrong, it is impossible for us to determine just what activities were indulged in.

Let me ask, refer back to the Harbaugh report. If a man were brought in at night, and sat before a table, or stood before a table with a crucifix on it and two candles, and assigned a phony defense counsel—of course one of your prosecution staff, some of your prosecution staff posed as the defense counsel, and if that man is convinced he is being tried, and witnesses are presented, do you think that is proper or improper?

Keep in mind at this time—defense counsel is not present, knows nothing about it. In your opinion, is that a proper or improper artifice to get a confession?

Colonel ELLIS. You don't have all of the elements that are necessary.

Senator McCARTHY. Assume those elements are there. You add what other elements you want. The one important element in the mind of any competent lawyer is whether or not the accused thought he was being tried, No. 1; No. 2, whether or not his own defense counsel was present.

Let us assume those two elements existed, the accused thought he was being tried, you had phony judges, your prosecution staff, you assigned to him a phony defense counsel, and you proceed with a trial regardless of the lack of decorum in that situation—do you think that is proper or improper?

Colonel ELLIS. That did not happen in the Malmedy case.

Senator McCARTHY. I don't care whether it happened or not. I want to know whether you think that procedure would be proper or improper. I am not arguing whether it is proper or not. I want to know what you thought as the prosecutor in charge.

Colonel ELLIS. Will you read back the question?

Senator McCARTHY. I will repeat it.

I will ask you this: Whether this procedure is proper in your opinion: Bringing an accused into a room, having a table in which there is a black cloth, with a crucifix in the center and candles on both ends; behind that table having some prosecution staff posing as judges assigned to the case, and a phony defense lawyer, in other words, one of your prosecution staff as the defense attorney, not have his defense attorney present at the time; then, proceed to take evidence, call witnesses, during all of which time the accused thinks he is being tried. Do you think that is a proper or improper procedure?

Colonel ELLIS. I would say, where you assign the defense counsel, and that you then lead him to believe he is being defended, properly defended, but when there is no assignment of defense counsel, no one says "I am your defense counsel" to him, then I think that would be a proper procedure.

Senator McCARTHY. You say it is improper if they say "You have a defense lawyer"? It is improper then?

Colonel ELLIS. Yes, I'll tell you why.

Senator McCARTHY. You can, later on. You say, however, if the prosecution did not assign him a defense counsel, if he were made to defend himself, that then it would be perfectly proper—you can't mean that.

Colonel ELLIS. You are putting things in there. I would like to answer on the basis of what we did. We can go on this forever, on theoretical and hypothetical questions.

Senator McCARTHY. Let me ask you this question: How long have you practiced law?

Colonel ELLIS. Since 1929.

Senator McCARTHY. And where did you practice?

Colonel ELLIS. I practiced in California and in New York.

Senator McCARTHY. In New York, and you were a tax lawyer?

Colonel ELLIS. With the Texas Co.

Senator McCARTHY. The Texas Corp.?

Colonel ELLIS. That is right.

Senator McCARTHY. Were you a tax consultant; is that right?

Colonel ELLIS. One of their tax consultants. I wasn't the head of the department; no, sir.

Senator McCARTHY. One of the men in the tax department?

Colonel ELLIS. That is right.

Senator McCARTHY. Did you ever appear in court?

Colonel ELLIS. During the time that I was with——

Senator McCARTHY. Be very careful and give us the facts.

Colonel ELLIS. I am going to give them to you.

During the time I was with the Texas Co. I never appeared in court, but the Texas Co., as far as I know in the place where I was assigned, never had a tax case that went to court.

Senator McCARTHY. You never appeared in court while you were with the Texas Co.?

Colonel ELLIS. That is right.

Senator McCARTHY. After you left the Texas Co., where did you go?

Colonel ELLIS. In the service.

Senator McCARTHY. So that prior to entering the service you never appeared in a court.

Colonel ELLIS. I didn't say that—as a tax lawyer.

Senator McCARTHY. Did you ever appear in court?

Colonel ELLIS. Yes.

Senator McCARTHY. Prior to going with the Texas Co.?

Colonel ELLIS. No, sir; while I was with the Texas Co.

Senator McCARTHY. I asked you awhile ago, while you were with the Texas Co. whether you ever appeared in court.

Colonel ELLIS. You understand, not as a tax attorney.

Senator McCARTHY. Let's get the proper understanding.

Did you ever appear in court while you were with the Texas Co.?

Colonel ELLIS. Yes; but not representing the Texas Co., however.

Senator McCARTHY. Not representing the Texas Co. All right.

Roughly, how many times did you appear in court?

Colonel ELLIS. Well, over a period of years, I would say 10 or 15 times.

Senator McCARTHY. That is, from 1929; when did you go into the service?

Colonel ELLIS. In 1942.

Senator McCARTHY. So you appeared in court about once a year?

Colonel ELLIS. Approximately.

Senator McCARTHY. Approximately once a year.

Colonel ELLIS. Most of those cases were in the forepart of my practice, however, and were not when I went to New York. I never appeared there.

Senator McCARTHY. When did you go to New York?

Colonel ELLIS. In 1938, as I recall.

Senator McCARTHY. From 1929 to 1938 you appeared in court maybe 10 or 15 times, and after that you were never in court.

Colonel ELLIS. That is right.

Senator McCARTHY. What type of cases did you try in court?

Colonel ELLIS. Divorces and probates.

Senator McCARTHY. So, you had no experience whatsoever in criminal law?

Colonel ELLIS. Absolutely none.

Senator McCARTHY. And knew nothing about it—and in the Army, the Army put you in charge of the criminal prosecution?

Colonel ELLIS. In 1945—

Senator McCARTHY. I might say—

Colonel ELLIS. I was in charge of this prosecution.

Senator McCARTHY. I might say, Mr. Chairman, it is unfortunate that we have got to cross-examine this defendant as vigorously as we have to, who has as complete a lack of knowledge of our procedure in this country as he has. I don't think it is his fault, if it proves that he did such a bad job as the two judges sent out claim he did, if it is proven that the Army report, the Harbaugh report, is correct. I don't think this is the man that should be condemned. I think the Army put a man in charge of the criminal trials who had had no experience in that line whatsoever, and told him to try the cases. Perhaps he is a very competent tax attorney, no doubt he is. I think I should say it is expecting entirely too much to take a man who had never appeared in court in a criminal trial and put him in charge of the most important criminal trials we have ever had to conduct.

Colonel ELLIS. Senator, may I interrupt? I was put in charge of this case in 1946. I had been in the Army 4 years at that time. I was put in charge, I think my reputation as a trial attorney in the Army will stand on the record. I have no apologies to make about it.

Senator McCARTHY. I frankly think you should, Colonel, when you tell us it would be proper to have a mock trial, with no defense counsel present, and the prisoners have to defend themselves, and you think that is proper. It is improper.

Colonel ELLIS. That is a play on words, Senator.

Senator McCARTHY. Then tell us, and this is very, very important: What do you consider proper or improper? Am I correct—this is going into the record, if you want to correct it—am I correct that you say it would be improper to have a mock trial if you assign the defendant a phony defense counsel, that would be improper. However, if you made him defend himself—

Colonel ELLIS. You added that.

Senator McCARTHY. Made him defend himself before this court, then it would be proper?

Colonel ELLIS. You added that conclusion to it. I didn't say that, sir.

Senator McCARTHY. Now, you tell us, will you?

Colonel ELLIS. This was an interrogation and it was for that purpose it was conducted. Many times I am sure, in civil practice, the accused are interrogated by more than one person at a time. I have never participated in any, but I understand that is true.

You are a judge and you probably have handled more criminal cases, and probably know better than I do, but I understand that to be the truth.

Senator McCARTHY. I have been a judge so long, and have tried enough criminal cases that it makes me rather sick down inside to hear you testify what you think is proper or improper.

May I ask you this, again, and I don't want to take all day, Mr. Chairman, but I think this is a very important matter, to discover his attitude, to find out what he knows about criminal procedure.

Let me ask you this: Do you think it is proper to conduct a mock trial as a trial in which the accused thinks he is actually being tried, using your prosecution staff as phony judges, no defense attorney present, assigning him, we say, a phony defense counsel, somebody that is not even a defense counsel, do you think that is proper or improper?

Colonel ELLIS. I answered that.

Senator McCARTHY. In order to get it straight—

Colonel ELLIS. I answered that question once.

Senator McCARTHY. So that we are sure of your answer, do you think that is improper?

Colonel ELLIS. I certainly do. I think the law will bear that out.

Senator McCARTHY. You think it is improper, and if however he were not assigned any defense counsel, if you get your phony judges behind the bench, you have your witnesses appearing, and not assigned a defense counsel, but he does feel he is being tried, would you say that is proper or improper?

Colonel ELLIS. If he felt that he was being tried, I presume that the conclusion would be that it would be improper. I don't know they thought they were being tried. It was an entirely different thing; it wasn't for that purpose; it was not to pronounce any sentence, or give any findings, but it was trying to get evidence—

Senator McCARTHY. We will give you a chance to talk as much as you want.

So, you think it would be improper, in either event, either with defense attorney, or without defense attorney, as long as he thought he was being tried, is that right?

Colonel ELLIS. I presume it would be so.

Senator McCARTHY. You presume it to be so? As the man in charge of that important trial, is it your opinion that it was proper or improper?

That is a most elementary question. Can you answer? That is a simple question to ask a criminal lawyer.

Colonel ELLIS. I will come back to this: The law says in some States it is proper to have mock trials and in others, it says it is not.

Senator McCARTHY. Forgetting about the different States, do you think it was proper, over in that area of Germany in which you were in charge—do you think it was proper or improper?

Colonel ELLIS. Sir, the evidence under which—the rules of evidence under which the war crimes were tried were most liberal.

Senator McCARTHY. In your opinion.

Colonel ELLIS. No; not in my opinion. I can show you the record, the law.

Senator McCARTHY. I have a simple question I am asking you. Let me ask, forget about what happens back home, but in Europe, you were in charge of a very important criminal trial and I want to ask you some very simple questions.

Do you think that type of mock trial is proper or improper? Are you willing to allow that type of mock trial to be used?

Colonel ELLIS. I think the answer to that question would be—so long as I let the court who weighs the evidence know how I obtained that confession, that is the important thing. Then, the duty is on them.

I want to point out to you, sir, that the prosecution, when they are laying the foundation for the introduction of those confessions, they told the court how they were obtained, and the court weighed the evidence.

Senator McCARTHY. In other words you say it would be proper to get a confession in any way you saw fit, so long as you let the court know how you got the confession?

Colonel ELLIS. I think under the rules of evidence, it would be perfectly proper. There were some things that would be repulsive to one individual that would not be to another. I certainly would not allow a confession to be used where a man was beaten or forced under threats or compulsion to make a confession, I am definitely opposed to that.

Senator McCARTHY. I am glad to know that.

Now, getting back to the mock trials, you would allow then—

Colonel ELLIS. Where the law is conflicting on it, I think I would have a right to let the court decide, itself.

Senator McCARTHY. When I am talking, if you won't talk, then I won't talk when you are talking.

Colonel ELLIS. If you will go along with me.

Senator HUNT. You might consult the chairman occasionally.

Colonel ELLIS. Pardon.

Senator McCARTHY. I am sure the chairman does not object to my asking a few simple questions.

You say you think that is proper?

Colonel ELLIS. I enjoy having you ask me these questions.

Senator McCARTHY. See if I have your position correctly in mind. You think it is proper then, to use the mock trial if the court were informed, that is, the final legitimate honest court were informed that you used this phony court previously?

Colonel ELLIS. Under the rules of evidence which we were practicing under over there, I think it would be.

Senator McCARTHY. You think it would be proper.

Colonel ELLIS. Yes.

Senator McCARTHY. Do you feel, yourself, using different rules of evidence in that area than we use in the criminal procedure here at home, that that is proper?

Colonel ELLIS. Most certainly; they admitted hearsay there, and you don't here.

Senator McCARTHY. In other words, you didn't feel that you were bound by the same rules of evidence that we follow here—

Colonel ELLIS. Definitely—

Senator McCARTHY. Let me finish.

You don't feel bound by the same rules that our Federal and State courts follow in this country?

Colonel ELLIS. No, sir. That is laid down to us by SHAEF. They set the rules of evidence, not I.

Senator McCARTHY. Do you have copies of those rules of evidence?

Colonel ELLIS. Yes, sir, I have; and that is what I wanted to show you. Here it is right here. This is my copy, and the only one I have, please.

Senator McCARTHY. SHAEF has approved the use of hearsay?

Colonel ELLIS. They sure did.

Senator McCARTHY. In other words, the use of having a witness testify as to what someone else has said—correct?

Colonel ELLIS. That is my understanding.

Senator McCARTHY. Is that your understanding?

Colonel ELLIS. Yes.

Senator McCARTHY. That is the rule you followed?

Colonel ELLIS. That is the rule we followed, and that is the rule all those courts followed.

Senator McCARTHY. What other deviations were there?

I assume the chairman doesn't mind?

Senator HUNT. The Chairman has no objection, Senator, excepting I would like for the Colonel to finish his statement before we adjourn, if possible.

I would like, too, Senator, to suggest this situation: That after all, this hearing is not a prosecution of the witnesses before us. What we are attempting to do is just get the witnesses' statements, and then we will be the judge of whether they did things in the right manner or not. That is my interpretation of the hearings.

Senator McCARTHY. I entirely disagree. If that is the purpose of this hearing, to merely get the witnesses' statements and let it drop at that, I am wasting my time sitting in. I think when we have a witness who was in charge in that area, we should have not only the right but the responsibility to go into complete details as to the whole methods that they employed over there, what his ideas are on criminal law, what he felt was right, what he felt could be done, and unless we do that, this is a completely useless hearing.

Unless we do that, in fact, I would definitely return to my Expenditures Committee and ask them to immediately commence an investigation. If we are just going to hear the statements of these witnesses and let it rest at that, it is a waste of time and money.

At this time, I don't know—I don't know whether the report of the Army is true or not. If it is true, something should be done about it. I don't know whether the report made by the Van Roden-Simpson committee is true or false. If their reports are true, then the prosecution was conducted in such a manner as to do more damage to American prestige than anything we could conceive of.

If a man is put in charge of the investigation and trials such as this, who has never been in court in a criminal case before, and apparently hasn't the first conception of what—from what he testified to—as to what constitutes proper criminal procedures, we want to know it. Then, when we get all that information we should be able to recommend to the Army and Congress what steps should be taken to make sure that in the future the trials are properly conducted.

As I say, it is not a criticism of this man. You take a young fellow who is a tax attorney—not the head of the staff, but a tax attorney for a large corporation—who had never appeared in court before except in divorce cases, the Army takes him, puts him in charge, and I say, in charge of one of the most important criminal trials ever conducted anywhere.

Senator KEFAUVER. Could we ask the witness how much longer his statement is?

Colonel ELLIS. Not too much longer.

Senator KEFAUVER. Wouldn't it be the solution to let him finish his statement and then—

Colonel ELLIS. I am on page 7, and it goes to 15.

Senator MCCARTHY. I have no objection.

Senator HUNT. If that is agreeable.

Senator MCCARTHY. The reason I interrupted was to get an important point. I felt that it was more important to pin that down at the time, rather than try to later on.

Colonel ELLIS (reading):

No announcement of any kind was made. I do not recall that the people sitting behind the table ever said anything. The instructions given to all concerned were to scrupulously avoid stating that a trial was being conducted, that no one should hold himself out as being the defense counsel, and that no findings or sentences would be pronounced; that it would be referred to as the "schnell procedure"; that I only have personal knowledge of two of these ceremonies being held, but I have been told that there were as many as six or seven, all of which were not successful; that the accused Hennecke, one of the two whom I saw undergo the "schnell procedure," was 23 years of age at the time of the trial; that my diary indicates that his "schnell procedure" was held March 8, 1946, and that the date of his sworn statement taken subsequent thereto and used at the trial is March 13, 1948; that the other "schnell procedure" which I witnessed was in the case of Von Chamier, and occurred on the night of March 20, 1946; this accused arrived from the United States by plane and was delivered to the prison at Schwabische Hall, Germany, at about 2100 hours on the 20th of March; that about 2300 hours that evening he was interrogated in my presence; that I sat behind a table in semidarkness—due to the fact that there was no ceiling light, a wall light was used; as far as I can recall I never spoke a word; that Corporal Cain brought the accused into the room; that Captain Shumaker and Mr. Thon did the interrogating; that no witnesses were used; that after about 10 minutes of Von Chamier stating "Nein, nein," he admitted his participation in the Malmédy Massacre; that the statement he made and which was used in the trial was sworn to on March 21, 1946; that at the time of the trial Von Chamier was 30 years of age.

I might say at that time—now I have no recollection of whether there were candles or a crucifix on the table in this particular so-called schnell procedure. I only referred to it because I referred to it in my diary as a matter of procedure. Otherwise, I would not have even mentioned it. [Reading:]

That I do not know of an occasion, even for disciplinary reasons, where any of the accused were ever deprived of their food for as much as even 1 day, nor were any blankets withdrawn in winter or in spring that I ever heard about; that I do recall asking the officer in charge of the prison for the Fifty-Eighth Armored Field Artillery to give Peiper more blankets, as he complained to me of sleeping cold; that the so-called death cells which were on the same floor and opposite the interrogation cells were used as a matter of convenience to hold prisoners while they were being interrogated; that they were never held there more than a few days at a time; that these cells were approximately the same as the others except that the window was higher and it had an additional door; the bed may have been closer to the floor, but as to this I am no longer certain; that if there were beatings or any corporal punishments administered to either the accused or witnesses, I did not hear of them,

and I cannot believe this would have happened without my knowing of it; that the only tricks and ruses and so-called stratagems employed which I know about were those the prosecution told to the court during the presentation of the evidence; that I know of no instance where promises of immunity or light sentences were ever made to any of the accused or where any hopes of reward were ever held out to them.

That petitioner, in paragraph 16 of his petition for writ of habeas corpus, gives a completely incorrect account of the suicide of Freimuth; that my knowledge of this event is as follows: That Freimuth committed suicide the night of March 6-7, 1946; that at the time he was confined alone in a cell in the building used exclusively for accused and witnesses of the Malmedy Massacre case; that if Freimuth was ever given the "schnell procedure" it never came to my attention, and if it had happened I'm sure I would have known of it; that the entries in my diary in connection with this event are as follows:

"March 6, 1946: Harry Tone got Hans Hillig's confession today. Perl took Freimuth's confession. * * * Perl went with Captain _____, M. D., to Stuttgart to get his car. * * *

"March 7, 1946: * * * Arvied Freimuth hung himself last night (had lined American PW's up at LaGlaise and engaged in target practice on them). * * *"; that my recollection is not clear on all the details, but it is my belief that Perl and the Medical Corps captain left rather early in the afternoon of March 6 for Stuttgart—

I might add that later I found out it was Captain Richter, and I understand he is to be called as a witness—

and left Freimuth to finish writing his confession without supervision, and that he was given paper, pen, and ink to take to his cell to finish the job and that the confession was found in the cell the next morning by myself as I was called as soon as the body was found by the guards; that I have no reason to believe that Freimuth was ever mistreated in any way by any of the personnel under my command and supervision, nor by any of the guards or other administrative personnel of IP No. 2, at Schwabische Hall.

That I never was apprised of any occasion where forged confessions were ever used in an effort to persuade accused to sign confessions; that the death chamber with bullet holes in the wall in which human flesh was imbedded was pure imagination and was a subject of ridicule even among the accused themselves (see exhibit 7, a limerick which was sent to me during the trial by the accused Junker); that to the best of my knowledge and belief no accused was ever taken to the so-called hangman's room and there unhooded, placed on a high stool, and a hangman's rope placed around his neck; nor did the prosecution team suggest and allow the accused to write farewell letters to their parents before they would be hanged; nor did members of the prosecution team offer the accused the privilege of seeing a priest before death; nor were any threats of violence and torture ever directed toward the mothers, fathers, sisters, wives, and children of the accused unless they signed confessions.

That to the best of my knowledge and belief stool pigeons were not used as described by petitioner in paragraph 18 of his petition for a writ of habeas corpus.

I might add we did use some stool pigeons.

Senator McCARTHY. It is perfectly proper to use stool pigeons.

Colonel ELLIS (reading):

Exhibit C referred to by petitioner in paragraph 19 of his petition for a writ of habeas corpus does not correctly recite the testimony of the record of trial, which it purports to do; that said exhibit C purports to be testimony which was elicited in chronological order, whereas as a matter of fact it is excerpts taken from over 25 pages of record, beginning on page 675 and ending on page 701.

That exhibit D referred to by petitioner in paragraph 21 of his petition for a writ of habeas corpus is not the correct and true order appointing the court, as he alleges; that I, the affiant, was the appointed trial judge advocate and did try the case, whereas exhibit D referred to by petitioner shows a Lt. Col. Granger C. Sutton as the trial judge advocate.

That I do not know to what the petitioner refers in paragraph 22 of his petition for a writ of habeas corpus, by the statement "questionable actions of the chief prosecutor and his staff"; that I do know that the petitioner was ap-

pointed chief defense counsel prior to April 11, 1946; that on that date he and members of his staff arrived at Schwabische Hall; that he did not make a request to interview a single accused while he was there but shortly left for Dachau; that on April 15, 1946, I went to Dachau to make arrangements for the arrival of the accused and witnesses, secure office space and billets for my staff, and to complete other arrangements for the trial; that I found the petitioner in Dachau had made no arrangements for billets, office space, transportation, nor any other necessary arrangements for his staff; that I personally secured billets for his staff, as well as office space, typewriters, etc., and on April 20, 1946, turned over to him half the transportation I had assigned to me for the use of my staff; that I repeatedly urged him to get busy on the preparation of his defense, as we were anxious to get started, as my staff were looking forward to early redeployment.

That the reference by petitioner, in paragraph 23 of his petition for a writ of habeas corpus, to a woman allegedly murdered in Wanne, Belgium, is false and misleading, as there is no reference in the record of trial to any woman being killed at this place; that there was an unknown woman murdered in Bullingen, and to rebut this the petitioner produced a statement by a man whose wife had been killed by artillery fire, not sworn to before a priest as the petitioner alleges, but before one of the petitioner's own investigators, Miles W. Rulien, P-5.

That the alleged tampering with witnesses of the defense by the prosecution, as stated by petitioner in paragraph 24 in his petition for a writ of habeas corpus, is not true; that the facts are that at that time many war criminals in other cases, from other places of confinement throughout Europe, were being brought to Dachau; some of these were coming as a result of TWX's sent out in the fall of 1945 for all members of the First SS Panzer Regiment to be sent to Zuffenhausen; others from this regiment were being sent by France; that it was the policy of the prosecution to interrogate all members of the First SS Panzer Regiment when they arrived; that the defense did not notify the prosecution who their witnesses were, and it did happen that the prosecution interrogated some defense witnesses before the defense had an opportunity to do so; that I have no personal knowledge of any tampering with defense witnesses by the prosecution; that if there was any tampering with witnesses it was on the part of the defense and not the prosecution. See R-2966, where accused Georg Preuss tried to influence the testimony of prosecution witness Kohles.

That the incident recited by petitioner in the first paragraph of paragraph 26 of his petition for a writ of habeas corpus is incorrect in that it is a complete distortion of the facts; that what actually happened was that the accused had been searched by the black guards and all prohibited writings and communications taken from them; that these writings were turned over to Lieutenant Perl by the block commander of the guard and I instructed Lieutenant Perl to translate them for me.

That as to the allegations in the second paragraph of paragraph 26, it should be said that the wives of the accused were permitted to and did attend the trial; that members of the prosecution staff were sitting at the prosecution table and could be easily identified as the prosecution; that in many instances wives of the accused came to the prosecution staff requesting special privileges, but that to my knowledge no one on the prosecution staff ever represented himself to be defense counsel of the accused.

That the allegations of petitioner in paragraph 28 of his petition for a writ of habeas corpus may represent the petitioner's state of mind when he made the announcement in court about "the fear of the prosecutors lingers on"; that, however, a day or so before this fateful announcement he asked to see me privately, either one morning before court started or at recess; that at that time he evidenced concern about the unfavorable showing and impression the accused were making on the court and asked my advice as a friend and fellow attorney as to whether or not he should continue putting them on the stand; that to this I replied in substance and effect: "Willis, as far as I know, none of the defense counsel in previous cases have kept the accused off the witness stand. It seems to me that if I were defending one of these cases and felt my accused were guilty, they would only take the witness stand over my dead body, for the reason most of them get mixed up in their attempts at explanations and wind up giving credence to their confessions"; that following this conversation, three more of the accused took the witness stand, all with disastrous results; that then followed the petitioner's announcement that he was not putting any more of the accused on the stand.

That petitioner in paragraph 23 of his petition for a writ of habeas corpus states that when the prosecution rested, only a few days were allowed the defense staff to interview witnesses and plan the defense for their 74 defendants; that the record of trial on page 1579 recites the following:

"PRESIDENT. The German counsel have requested a lapse of five working days before the defense opens its case, which request is endorsed by chief counsel for the defense. In order to fully serve the interests of justice, this request is granted by the court. Accordingly, the court is now adjourned to meet again at 0830 hours, Monday, June 17th."

That the prosecution rested its case at 1555 hours June 7, 1946; that it is pointed out that the petitioner as chief defense counsel did not ask in open court for more than the five working days requested by German counsel; that as an actual fact the defense had 9 days between the time the prosecution rested on Friday, June 7, 1946, and the time the trial commenced again on Monday, June 17, 1946.

That the aspersions cast by the petitioner upon the character, integrity, uprightness, and professional ethics of my subordinates in the investigation and trial of the Malmedy massacre is a matter of grave concern to me; that with the exception of one War Department civilian investigator, Harry Thon, all the principal investigators and counsel were members of the bar of some State or Austria; that I personally hold them in high esteem and am proud of them for their accomplishments in this case; that they participated throughout with a strong sense of responsibility and an exhibition of devotion to duty, loyalty and sincerity of purpose never before nor since witnessed by me; that without the great spirit, enthusiasm, diligence, industry, thoroughness, intelligence, and team play exhibited by each and every one of the detachment, including officers, enlisted men, United States and Allied civilian employees, male and female, the announcement made by the War Department early in 1945 "that the perpetrators of the Malmedy massacre would be brought to justice" in my opinion never would have been accomplished.

Senator McCARTHY. Read that last sentence again.

Colonel ELLIS. That is a long sentence, going back to the previous page. Do you want to look at it?

Senator McCARTHY. If I may.

Mr. Chairman, I have a suggestion I would like to make. I think in view of the tremendous import of the findings of this committee, it might be an excellent idea for the committee to invite some representatives of the American Bar Association to sit in as spectators, in other words, as amicus curiae.

I also think it would be an excellent idea, if this Technical Manual for Legal and Prison Officers, Second Edition, which contains some rather unusual deviations from American rules of evidence and rules of evidence of the British law, be submitted to the American Bar Association with the request that they go over this and give this committee the benefit of their thoughts on the necessity, if any, for these deviations from our rules of evidence.

Senator HUNT. I see no objection at all to your request, Senator.

The staff will attend to that, of course this volume belongs to Colonel Ellis.

How many copies of that are available, Colonel?

Colonel ELLIS. That is the only one I have. I brought that back from Europe, and it may be that the Judge Advocate General, War Crimes, or maybe the Civil Affairs Division has a copy, but that is the only copy I have.

Senator McCARTHY. I assume you have no objection to the committee keeping this for the time being?

Colonel ELLIS. Absolutely not, but I would like to have it back at the conclusion of the hearings.

Senator McCARTHY. I hate to have it lost. If possible, I would like very much to get a copy of that.

Mr. Chairman, I have a letter I would like to read.

Do you know one of the official reporters, James J. Bailey, from Pittsburgh, Pa.?

Colonel ELLIS. The name is a little bit familiar, and that is, if you give me some dates and other connections.

Senator McCARTHY. I will give you those. His name is James J. Bailey, official court reporter, 536 Court House, Pittsburgh, Pa., phone number, Atlantic 4900.

Here is the letter I got from him this morning, and I know nothing about this gentleman's background, except that I have phoned and found that he is an official court reporter, and I had my office get in touch with him and ask him if he would be available in case he were called upon to substantiate the things he sets forth in this letter.

I will read the letter to you.

HON. SENATOR McCARTHY: An article in today's Pittsburgh Press concerning your demand for a stay of execution of six Nazi stormtroopers, sentenced to death for their part in the Malmedy massacre, prompts me, in the interests of American justice and fair play, to write you this letter.

I was one of a "team" of nine, consisting of three lawyers, four so-called interpreters, another shorthand reporter and myself, who were sent from the War Crimes Branch, Wiesbaden, Germany, to Schwabisch Hall, Germany, where the SS troops were imprisoned. We arrived in Schwabisch Hall on or about December 27, 1945, and I remained there until the early part of March 1946. The purpose of our being sent there was to obtain confessions from the prisoners and prepare pretrial data. During my stay at Schwabisch Hall, the entire team spent an average of about 8 hours per day in the prison. During my 10-weeks stay, I took in shorthand, through the interpreters, practically all of the so-called verbatim confessions of the prisoners, and typewrote at least half of the translated long-hand statements that had been purported made by the prisoners. I still retain a considerable portion of my original shorthand notes.

The methods used by these so-called interpreters to obtain these "confessions" were such that after a period of 10 weeks, I could stomach it no longer and requested my return to the United States. After these interpreters had "worked out" on these prisoners (some of whom were kids of 16 and 17 years of age), and softened them up and scared them into a condition where they would confess to anything, the prisoner then had a long multicolored robe thrown over him, and black hood pulled down over his head, and rope knotted about his neck, and he was marched into a cell to be interrogated by one of the lawyers. I have been present in cells where there was only a small table with a black cloth over the top, and containing a crucifix and two candles, and when the prisoner was marched in, and the black hood suddenly jerked from his head, he fainted dead away, his nose striking the concrete cell floor, flattening his nose and making his face a bloody mass, and I have then seen the interpreter take his foot and push the prisoner over on his back, jerk him to his feet, and tell the American lawyer that the prisoner was faking. The lawyer would then proceed to interrogate him and obtain his confession, which I took down in shorthand and then reduced to typewriting for the prisoner's signature, but I am definitely certain that the statement which the prisoner ultimately signed and which was later used to help convict him at the Malmedy trial in no way remotely resembled the original "confession" given in the cell. I have witnessed the use of physical force, threats of bodily harm, and even death used to obtain these so-called confessions.

I have been an official court reporter for the past 28 years, in both civil and criminal courts, and feel that I have some knowledge of the way American justice is dispensed in our American courts, and the methods used by the pre-trial War Crimes Branch, which was presided over by Lieutenant Colonel Ellis, who later, I understand was the chief prosecuting attorney at the Malmedy trials, were so brutal as to be repulsive to any American with a sense of decency and fair play. I have no sympathy for the Germans; I have no German connections of any kind; my ancestors are all Irish-Americans. The massacre of those 80 American soldiers at Malmedy was a dastardly crime, and the guilty I feel should have received the death sentence, but why make a mockery of American justice and pretend a fair trial, when the evidence was obtained in a manner most

repugnant to any true American, obtained by starvation, brutality, threats of bodily harm and even death, yes, and a lot of the evidence even manufactured.

Respectfully submitted,

JAMES J. BAILEY.

Colonel ELLIS. He may have been there. I don't recall. I will check this if you want, but I don't recall the name.

Senator McCARTHY. Let me ask you this: When you stood behind a table, or in the corner of a room that you said was in semi-darkness, and watched one of these schnell procedures, as you called it, the Army board refers to it as a mock trial, did you feel that that was being properly conducted?

Colonel ELLIS. Yes, sir; I sure did.

Senator McCARTHY. And when you say you saw the mock trial through the cell door, I believe you said—did you feel that that was properly conducted?

Colonel ELLIS. It certainly was.

Senator McCARTHY. Let me ask you this, so we won't misquote in any way: Do you feel that the Harbaugh Committee is giving us a true picture when they describe the mock trial on page 3 of the report? They say:

Mock trials: At the trial the prosecution admitted and the board finds in the evidence before it, that in certain instances, probably about 8 or 10—

You said two or three.

Colonel ELLIS. Two is all I personally know about. I understand there were as many as six or seven.

Senator McCARTHY. And the board says 8 or 10, do they not?

Colonel ELLIS. I believe my own figures are more approximately correct.

Senator McCARTHY (continuing):

The use of a so-called mock trial was resorted to in an attempt to "soften up" a witness who was thought to be susceptible to such procedure. Those trials were held at Swabisch Hall in one of the cells, sometimes a small cell about 6 by 8 feet, sometimes in a larger room two or three times that size. There would be a table covered with a black cloth on which stood a crucifix and burning candles and behind which sat one or more people impersonating judges.

So far, that is correct?

Colonel ELLIS. I don't like the use of the word "impersonate," but I presume that could be taken that way.

Senator McCARTHY. Is there any doubt in your mind whatsoever but what the accused thought the men behind the table were judges?

Colonel ELLIS. I think he could reasonably come to a different conclusion, but he might have come to that conclusion.

Senator McCARTHY (continuing):

The defendant would be brought from his cell hooded. The practice of using black hoods whenever a defendant was taken from his cell was universally employed at Swabisch Hall to prevent communication with other prisoners and to prevent knowledge of where he was going. Allegations that these hoods were blood-stained were not supported by any testimony before the board, other than affidavits of the petitioners.

It that substantially true?

Colonel ELLIS. That is right.

Senator McCARTHY (continuing):

When the prisoner was brought into the mock-trial room sometimes other people were brought in who purported to testify against him.

Is that correct?

Colonel ELLIS. There were witnesses brought in, accusers.

Senator McCARTHY. Page 4, at the top of the page:

There is no evidence on which the board can find that the prisoner himself was forced to testify at such trial.

I call your attention to the next sentence particularly.

One member of the prosecution team would play the part of prosecutor, and another would act as a friend of the defendant.

Is that correct?

Colonel ELLIS. Substantially, that is correct. They would intercede with the prosecution, when the prosecution so-called would be accusing him and stating the crime that he had allegedly participated in and the other party would then intervene and say, "You have got to give him a chance to tell his story."

Senator McCARTHY. Mr. Chairman, I wonder what fraternity the captain is from?

So the accused had a defense attorney or representative—a phony from the prosecution staff; is that right?

Colonel ELLIS. That is right.

Senator McCARTHY. Do you think that was proper?

Colonel ELLIS. Under our rules of evidence, I think that was all right.

Senator McCARTHY. That was?

Colonel ELLIS. I mean, there is a distinction between "I am your defense counsel," and when somebody just spontaneously gets up and starts intervening.

Senator McCARTHY. Do you think he was led to believe that was his defense counsel?

Colonel ELLIS. I don't know.

Senator McCARTHY. Is that your thought?

Colonel ELLIS. I presume I could have, or—he could have come to that conclusion.

Senator HUNT. May I—

Senator McCARTHY. Let me ask: While he may not have been actually told that that was the case, he had every reason to believe that he was taking that part—pardon me, Mr. Chairman, sorry.

Is that correct?

Colonel ELLIS. In my opinion, I would not say he would be given every reason to believe so; no.

Senator McCARTHY. You think the Army report is wrong on that?

Colonel ELLIS. I think it is a misstatement.

Senator HUNT. I was going to ask Colonel Ellis: Was it the intention of the prosecution that the prisoner would feel that this party was solicitous for him and was attempting to defend him? Was it your intention to have the prisoner believe that?

Colonel ELLIS. Well, what we were trying to do was get into his confidence and get him to talk.

Senator HUNT. Then, it was your intention.

Colonel ELLIS. Yes.

Senator McCARTHY. No doubt it was your intention to have him believe the defense attorney was his friend?

Colonel ELLIS. Not a defense attorney in the true sense. There was somebody there who would intercede and say, "Well, you have got to give this man an opportunity."

I can't understand German, all this was in German, but that is what I understood was said.

Senator McCARTHY. You never tried a criminal case—

Colonel ELLIS. I have tried criminal cases. You are drawing the conclusions.

Senator McCARTHY. Don't interrupt, please.

Colonel ELLIS. O. K.

Senator McCARTHY. The defense attorney in a criminal case is the man who does that, intercedes for you and protects your rights. That is a defense attorney, understand?

Colonel ELLIS. I understand.

Senator McCARTHY. When I say this man was led to believe this man was his defense attorney, I mean this was some man who was his friend in court, protecting his rights, looking after his rights, and was it your intention to have the accused believe that one of the members of your prosecution, one of the prosecution's staff was his attorney and was protecting his rights?

Colonel ELLIS. No, sir; not to that extent.

Senator McCARTHY. No. 1, this friend of his, the defense attorney, call him what you may, was a member of your prosecution staff, am I right?

Colonel ELLIS. Certainly.

Senator McCARTHY. And, he was to play the part of a friend of the defendant, is that right?

Colonel ELLIS. That is right.

Senator McCARTHY. It was your purpose to convince him that this man was his friend and was protecting his rights?

Colonel ELLIS. Not protecting his rights, no. The only thing that this—as I understand, they would say "You have got to give him a chance to tell his story."

Senator McCARTHY. Protecting one, or some of his rights, would you say that is correct?

Colonel ELLIS. All right.

Senator McCARTHY. This man was his friend and was going to protect some of his rights in court.

Colonel ELLIS. Right.

Senator McCARTHY. You concede he was completely phony, he was one of your prosecution staff?

Colonel ELLIS. Certainly.

Senator McCARTHY. Do you think that was proper procedure, forgetting whether the accused was guilty or innocent?

Colonel ELLIS. I think that was proper procedure.

Senator McCARTHY. You think it was proper.

Colonel ELLIS. Yes.

Senator McCARTHY. You think the whole procedure of conduct at the mock trial—

Colonel ELLIS. As a mock trial, no. I have told you, I think this is three times, mock trials—I don't think so.

Senator McCARTHY. Give it a different name—why do they call it a "schnell procedure"?

Colonel ELLIS. In German "schnell" means fast or quick. I don't know what the German name for "procedure" is.

Senator McCARTHY. This is the name for "quick treatment"?

Colonel ELLIS. Whatever you want to call it. I don't know. I know "schnell" means fast.

Senator McCARTHY. Do you know whether or not the defendant in these cases understood, or a defendant understood that he was convicted after this mock trial?

Colonel ELLIS. I am certain he understood he was not convicted.

Senator McCARTHY. You are certain of that?

Colonel ELLIS. Yes.

Senator KEFAUVER. May I ask a question.

Why is he certain?

Senator McCARTHY. May I ask you, there is only one in examining the man, may I ask these two or three more questions?

Senator KEFAUVER. Yes.

Senator McCARTHY. You say you only knew two or three cases—you witnessed two cases. How are you certain that there were six or eight cases?

Colonel ELLIS. Only from what I have been told.

Senator McCARTHY. Let me read you the Army report from the Judge Advocate General, if I may, appointed to investigate the situation.

I will ask you to refer to page 4, if you will. The part you yourself underlined in red.

Colonel ELLIS. Yes.

Senator McCARTHY (reading):

The accused was made to understand that it was his last chance to talk—

Colonel ELLIS. I don't see where you are reading from.

Senator McCARTHY. Page 4.

Colonel ELLIS. Do I have the same copy?

Senator McCARTHY (reading):

The accused was made to understand that it was his last chance to talk and undoubtedly in some cases understood he had been convicted.

Colonel ELLIS. I don't see that, sir.

Senator McCARTHY. Do you have a different report?

Colonel ELLIS. I don't think so.

Senator McCARTHY. Here, underlined in red:

The accused was made to understand that it was his last chance to talk and undoubtedly in some cases understood that he had been convicted.

If that is true, do you think that is proper?

Colonel ELLIS. If he had been made to understand he was convicted, I don't think it was proper. To my knowledge, in these cases, there was never any findings or sentences, there was no reason—I know of no reason why the accused would ever believe he was convicted—certainly not in the two I witnessed.

Senator McCARTHY. I understand you never raised your voice against these mock trials.

No. 2, the Army report says that the ration tickets, ration allowances were taken from the families of the accused, I assume until they confessed.

Colonel ELLIS. That is definitely not true.

Senator McCARTHY. You are sure of that, sure the Army report is wrong on that?

Colonel ELLIS. Positive.

I have never heard of such a thing, or never had until I read this. I cannot recall; that was never mentioned. If it came up in the trial, I have completely forgotten about it.

Senator McCARTHY. Now, referring also to the wives of the accused, the report also points out that the prosecution staff would take the wives to the officers' club; it doesn't mention buying them liquor, but will you tell me what happened after they got there?

Colonel ELLIS. I wasn't present. I know what happened on one occasion, between the findings and sentences, where two of my staff took three or four wives of the accused down to the officers' club and were there for, I don't know, I wasn't there, it was 2 or 3 hours, and I was at Wiesbaden when it was reported to me, rather, it was reported to me when I came back.

Senator McCARTHY. The Army report doesn't refer to one time, does it?

Colonel ELLIS. That is the only time I ever heard anything of it.

Senator McCARTHY. Did you ever check into it?

Colonel ELLIS. I never had occasion to have it come to my attention until then. One was one of the men who took part in it, and was with another man, who was with the wives, one was returned to the States, and the other was given some disciplinary punishment. I don't know, both were civilians.

Senator McCARTHY. You do consider it highly improper?

Colonel ELLIS. Reprehensible.

Senator McCARTHY. Let me finish.

You consider it highly improper for the prosecution to take the wives of the accused out?

Colonel ELLIS. Certainly, but I want it understood that this happened between the findings and the sentence. There was a period of 4 or 5 days in which the court was recessed and this happened during that time.

Senator McCARTHY. Does it make any difference when it happened?

Colonel ELLIS. It makes a lot of difference, if they were taken to get evidence to use in the trial, I would say that would be terrible, most reprehensible conduct; but this happened at a different time, the trial part was over and the evidence was in.

Senator McCARTHY. The Army report says that physical force was used; is that correct?

Colonel ELLIS. I don't think so.

Senator McCARTHY. You don't think so?

Colonel ELLIS. I never saw any instance of it.

Senator McCARTHY. I know you didn't—no matter about what you say—

Colonel ELLIS. I never saw any accused who ever told me that they had been injured, beaten, mistreated in any way while I was at Schwabisch Hall, and prior to the time that I was called to the meeting in Wiesbaden, I never had any information that there was even any allegation as to that.

Senator McCARTHY. When the Van Roden-Simpson committee made the report, you were aware of this whole allegation?

Colonel ELLIS. That was in 1948.

Senator McCARTHY. I may not be correctly quoting from the Van Roden report, because I don't have it with me, but as I recall that report was to the effect that many accused came into court with their teeth broken out.

Colonel ELLIS. Utterly ridiculous.

Senator McCARTHY. You understand that Simpson and Van Roden were two men picked, I believe, by Secretary Royall—

Colonel ELLIS. I do.

Senator McCARTHY. Let me finish. The President was the one that signed the order and considered that they were getting the two most competent judges in the country.

Colonel ELLIS. I understand that perfectly.

Senator McCARTHY. You say that they were lying when they say the accused had teeth kicked out?

Colonel ELLIS. I don't say that they were lying, but whoever told that to them was.

Senator McCARTHY. They didn't repeat that as hearsay.

Colonel ELLIS. Senator McCarthy, have you seen the list of witnesses attached to that report?

Senator McCARTHY. I am asking you whether or not that part of the report is true.

Colonel ELLIS. I am telling you it is not true.

Senator McCARTHY. All right.

Colonel ELLIS. But, I would like to ask if you have seen the list of witnesses attached to that report.

Senator McCARTHY. I know there is a list.

Colonel ELLIS. Do you know that not one of those is anyone that would know, other than hearsay knowledge?

Senator McCARTHY. I don't know that.

Colonel ELLIS. That is the truth.

Senator McCARTHY. You don't think that Mr. Van Roden and Mr. Simpson would issue a report based on hearsay? They are competent judges, to the best of my knowledge, and I think they were picked by Secretary Royall because they were competent.

Let me ask you this: To your knowledge, do you know that the defense attorney who was finally appointed had difficulty in persuading the accused that he was not another phony defense attorney in the actual trial? In other words, after the accused had had the experience of having one of your staff doublecross him, say "I am your friend, your pal, and defending you in this mock trial," after it was over, say "Ha ha, that's a big joke, you are not to hang."

Colonel ELLIS. I don't believe that.

Senator McCARTHY. In the real trial, are you aware of the fact that the defense attorney then said to the accused—then had difficulty in convincing the accused that he was a bona fide defense attorney?

Colonel ELLIS. I understand he made that allegation.

Senator McCARTHY. Do you understand that?

Colonel ELLIS. I understand he made that allegation.

Senator McCARTHY. Forget about the allegation. What is your opinion? You were in charge.

Colonel ELLIS. I wasn't present when he interviewed the accused, I don't know what he told them.

Senator McCARTHY. Your job was to see that the guilty were convicted, that the accused did have a fair trial. Is it your opinion that the defense attorney who was appointed had difficulty often in persuading the accused that he was actually an attorney for him?

Colonel ELLIS. I have no basis on which to base the opinion, other than the allegation.

Senator McCARTHY. You don't know, either way "yes" or "no"?

Colonel ELLIS. I don't know, either way, "yes" or "no."

Senator McCARTHY. The Army report says that is the situation, you can't question it, is that right?

Colonel ELLIS. At this time I can't. I might later.

Senator McCARTHY. If I may read from the Army defense counsel, a whole paragraph on page 4:

This procedure has a further bearing on the preparation of the case when it really came to trial.

Colonel ELLIS. Just a moment.

Senator McCARTHY. Page 4.

Colonel ELLIS. Whereabouts?

Senator McCARTHY. Numbered 15.'

This procedure—

referring back to the defense attorney—

has a further bearing on the preparation of the case when it really came to trial. Defense counsel appointed for the accused found difficulty in getting the confidence of the defendants because of their experience with the mock trials, but it appeared that such difficulty was overcome after the first 2 or 3 days.

You cannot question that statement, I assume?

Colonel ELLIS. I had no question on it at that time. I have no idea.

Senator McCARTHY. When you were in charge of that matter, realizing that you were dealing with not only the life and death of a number of men, that is not the poor Americans that were killed, but you realized that you were representing Americans. And American prestige would suffer tremendously if they didn't get a trial and were not properly convicted, as they were over in the Pacific—didn't you think it was important that you check these matters and see what effect the mock trials had on the defense attorney later? Didn't you go into that?

Colonel ELLIS. I had no occasion to ever question that particular phase of it.

Senator McCARTHY. Are you in the Reserves?

Colonel ELLIS. No, sir.

Senator McCARTHY. How long have you been in the Army?

Colonel ELLIS. Since June 25, 1942.

Senator McCARTHY. You are a Regular?

Colonel ELLIS. I am. I was integrated in 1946.

Senator McCARTHY. What kind of work do you do?

Colonel ELLIS. Assistant staff, Judge Advocate General.

Senator McCARTHY. In the Judge Advocate's office, yet?

Colonel ELLIS. I am, sir; and I would like to put on the record, if you will permit me to, I have tried a great many general courts martial, both on the prosecution and defense, and all of them successfully.

Senator McCARTHY. Successful in getting convictions.

Colonel ELLIS. Yes, and in an honorable way, sir.

Senator McCARTHY. I would say you had been eminently successful. I understand you have 73 defendants in the Malmedy cases, and that you convicted 72. The only reason you didn't convict the seventy-third is because he couldn't be convicted, he was dead.

Colonel ELLIS. That is a misstatement of fact.

Senator McCARTHY. How many of them were there?

Colonel ELLIS. Seventy-four. One was withdrawn at the time of the final argument, on the direction of headquarters USFET, and turned over to the French, because he was an Alsatian, and the other——

Senator McCARTHY. That left 73?

Colonel ELLIS. The other 73 were convicted.

Senator McCARTHY. One was not convicted.

Colonel ELLIS. He wasn't ever tried.

Senator McCARTHY. So all you charged with the crime, and put the tag on, you convicted except the one turned back to France, and one who committed suicide?

Colonel ELLIS. He wasn't tried, the one you are talking about who committed suicide, the one you interrogated me about——

Senator McCARTHY. I don't want to spoil your record at all.

Colonel ELLIS. You are trying pretty hard to.

Senator McCARTHY. In other words, you didn't lose one. You won all of them and think you could have convicted the other chap if he hadn't died, if you had continued?

Colonel ELLIS. I don't know. I don't know if we could have convicted on that because his case was not complete.

Senator McCARTHY. Mr. Chairman, I don't want to take all of the committee's time.

Senator HUNT. I want to ask a few questions.

Senator KEFAUVER. Go on, go ahead.

Senator McCARTHY. Let me ask you one other thing. Do you know who prepared the rules of evidence that were sent to you?

Colonel ELLIS. No, sir. It states in the book—I don't know what it says. This was approved, as I recall, from SHAEF.

Senator McCARTHY. And can you tell me in what way they differed from the rules of evidence—you have tried no criminal cases here?

Colonel ELLIS. No.

Senator McCARTHY. Tried none in this country?

Colonel ELLIS. No.

Senator McCARTHY. You told me a minute ago——

Colonel ELLIS. I didn't.

Senator McCARTHY. You haven't tried a single criminal case in civil life?

Colonel ELLIS. No, sir.

Senator McCARTHY. Never tried a criminal case?

Colonel ELLIS. No.

Senator McCARTHY. So then you cannot tell us in what way the rules of evidence you followed there, differed from the rules in this country?

Colonel ELLIS. I might be able to. I don't believe it's appropriate in this hearing.

Senator McCARTHY. Yes, that is one of the things we want, in what way your rules of evidence differ, if you know, that is one of the important things. You may not understand the purpose. It is to try to recommend to whoever made those rules, any changes we think are necessary in the court procedure you followed—if you followed an improper procedure, we want to make sure it is never done again. If you have rules of evidence that differ from our rules of evidence that we have, tested for a long time, that come down today from the old English law—understand, if you made a radical departure, I would like to know to what extent.

Colonel ELLIS. They are in the book, that is all I can tell you.

Senator McCARTHY. Do you know enough about our rules of evidence in Federal courts and the State courts covering criminal cases so that you have any idea as to how they differ?

Colonel ELLIS. Generally, I presume. I haven't made any study of it.

Senator McCARTHY. I don't want to ask you any questions—I know you were a tax attorney and never tried criminal cases, so I don't want to embarrass you, but I would like to know if you know sufficient about the rules of evidence in criminal cases in this country so that you can give us some idea as to the difference—

Colonel ELLIS. Am I taking a bar examination?

Senator McCARTHY. Pardon?

Colonel ELLIS. Am I taking a bar examination?

Senator McCARTHY. It is much more important than the bar examination. You are the one man who can give things a fairly clear picture, if you want to, as to how we meted out justice.

Colonel ELLIS. I followed the rules as laid down in the handbook.

Senator McCARTHY. Do you know—

Colonel ELLIS. What?

Senator McCARTHY. Do you know to what extent those rules of evidence differ from the rules of evidence here?

Colonel ELLIS. My understanding is they differed to a considerable degree.

Senator McCARTHY. In what particular specification?

Colonel ELLIS. Hearsay—primarily as to hearsay evidence, is my recollection now; but I have not looked into the matter definitely for some time.

Senator McCARTHY. So now then, one final question—your testimony is today that as far as you know there was no physical violence used whatsoever on these defendants?

Colonel ELLIS. None came to my attention up to the time I came to Wiesbaden, I think on about the 26th or 27th or 28th of April 1946.

Senator McCARTHY. As of today can you tell us whether in your opinion there was any physical violence of any kind used upon any of the accused?

Colonel ELLIS. In my opinion—none.

Senator McCARTHY. No physical violence whatsoever?

Colonel ELLIS. None whatsoever.

Senator McCARTHY. The only thing that you agree with, insofar as the Army report is concerned, the Van Roden-Simpson committee's report, is in the use of mock trials.

Colonel ELLIS. The way I answered it; yes.

Senator McCARTHY. You knew they were being conducted and took no steps to have that knocked out?

Colonel ELLIS. That is right.

Senator McCARTHY. I have no further questions.

Colonel ELLIS. I would like to answer that in that case, though, they were not successful so we just didn't proceed with it.

Senator McCARTHY. Thank you.

Senator HUNT. Senator Kefauver, do you have any questions?

Senator KEFAUVER. I would like to ask unanimous consent of the subcommittee to have page 3 of the preface or foreword of Technical Manual for Legal and Prison Officers, second edition, printed as a part of the record in the appendix, and also I think it would be useful, Mr. Chairman, to have the Rules of Procedure in Military Government Courts, beginning on page 33 and ending on page 48, printed in the appendix. This shows the difference in rules of procedure and evidence.

(Exhibit E, the preface referred to, and the Rules of Procedure in Military Government Courts, exhibit F, will be found in the appendix attached hereinafter.)

Senator KEFAUVER. As I understand, Colonel Ellis, all of this procedure was under your jurisdiction?

Colonel ELLIS. The trials, you mean, and the investigations?

Senator KEFAUVER. Yes.

Colonel ELLIS. Yes, sir.

Senator KEFAUVER. How many members of the staff did you have?

Colonel ELLIS. Well, the trials had six counsel for the prosecution—this is at the trial I am speaking of.

And there were three who were referred to as check interpreters, and then there was a clerical staff of translators of two or three more.

Now, at Schwabish Hall—

Senator KEFAUVER. That is sufficient.

Did you receive any special orders for the conduct of these proceedings, from SHEAF, or—

Colonel ELLIS. You are referring to the investigation?

Senator KEFAUVER. Yes.

Colonel ELLIS. Just normal procedure, for which there was a printed instruction to investigating officers.

Senator KEFAUVER. In view of the publicity, and the awfulness of the massacre, at that time did you receive any special orders in addition to your regular instructions?

Colonel ELLIS. Well, I can't answer that in a "yes" or "no" way. In this case, the only special instructions I can recall now is that there was considerable urgency to bring this case to trial. We started out with only the First Army IG report on it, which referred to the probability, as I recall, of certain units that might have been in that area, and there was a slip of paper with the name of Briesemeister on it, which he had given to some Belgian there at the crossroads. He fired a couple of rounds into the house and the Belgian came out and protested, and he wrote his name on a piece of paper and said, "Take this to my colonel and he will pay you."

That was the only indication we had of who might have been there. That was after the crossroads—in the afternoon. And that was the first real definite lead as to who was there. That is the definite instruc-

tions, we had no written ones, other than it was just staff talk in war crimes that this case was urgent, that we should bring it to trial as soon as possible, and we gave it priority.

Senator KEFAUVER. To correlate the time, what was the time of the investigation, March—

Colonel ELLIS. Sir, the investigation originally started by Major Fanton, was in May or June 1945. Our headquarters were still at Paris. Of course, it was a matter of reading—

Senator KEFAUVER. What was VE-day?

Colonel ELLIS. May 8, '45. I carried on to the best of my recollection until August.

Lieutenant Higgenbotham, who had been captured by Phifer, went down to the prison camps around Munich, and in Bavaria and Austria, where this division's remnants were in captivity, to see whether he could identify any of these SS people. There was a driver and maybe an interpreter or two that went along on that trip, but I don't recall the details.

Senator KEFAUVER. But at the time we were still in active war—before VG-day, when these interrogations took place, inquisitions took place?

Colonel ELLIS. I don't recall—

Senator KEFAUVER. You read a note as to the time you sat.

Colonel ELLIS. It is my recollection that all the confessions that were taken, other than maybe one or two, or perhaps three, from Phifer or Dietrich were taken beginning late in December '45 up through January, February, and the bulk of them in March and April 1946, that is, to the best of my recollection. I think the trial record would be the best place to get that.

Senator KEFAUVER. And what time intervened between the time of the taking of the confessions and the presentation of the cases to court?

Colonel ELLIS. Well, let's see. I would say we concluded the investigation, when we left Swabisch Hall, which was in—the last prisoners were moved out, as I recall, the 19th of April 1946, the trial started the 16th of May 1946 and there was a space of four or five—

Senator KEFAUVER. What judges sat on the court?

Colonel ELLIS. General Dalby was present, Colonel Rosenfeld was law member, Colonel Condor, and if I may refer or refresh my memory, I think the order appointing the court is attached here [indicating].

Well, I don't seem to have an order here appointing the court.

Senator KEFAUVER. For the record, VE-day, I am informed, was May 7, 1945.

Colonel ELLIS. I thought that was a copy of the order attached here.

Senator KEFAUVER. That is all right, Colonel Ellis.

Just one further question: When Judges Simpson, of Texas, and Van Roden, of Pennsylvania, made their investigations, did they call you?

Colonel ELLIS. No.

Senator KEFAUVER. Do you know why?

Colonel ELLIS. No, sir.

Senator KEFAUVER. Were you in communication with them?

Colonel ELLIS. No, sir.

Senator KEFAUVER. Do you know if they interrogated the judges that held the hearings?

Colonel ELLIS. I believe they interrogated Colonel Rosenfeld. I believe his name appears on the list of witnesses. He was the law member.

Senator KEFAUVER. Do you know why they didn't ask for your statement?

Colonel ELLIS. No, sir.

Senator KEFAUVER. Did you have this file available at that time?

Colonel ELLIS. This was prepared and the original was with, or is with the Clay report, and filed in October or early November 1948, I believe.

I want to clear something up for the record. I have written a letter to Judge Simpson, after I got this newspaper clipping out of the press.

Senator KEFAUVER. What is it? What is the date of your letter?

Colonel ELLIS. Well, about March 23, 1949.

Senator KEFAUVER. Is the letter confidential?

Colonel ELLIS. No; it is not. I don't believe I have a copy, but I have it in my hotel room.

Senator KEFAUVER. Could we ask the witness to file it?

Senator HUNT. Yes.

Senator KEFAUVER. And also the reply you received from him?

Colonel ELLIS. I certainly would.

Senator KEFAUVER. What did he say, generally?

Colonel ELLIS. Substantially, it is in the Dallas Morning News here [indicating]. He here says that Van Roden is doing us a disservice by those inordinate statements. He cited the report saying that the investigation showed no evidence of any systematic or widespread methods to get confessions. The Commission reported that essentially fair trials were conducted, and he goes on here and says—I think that is about all he said, in the letter that—

Senator KEFAUVER. Colonel Ellis, you said a few minutes ago that Judge Simpson, his committee, interrogated no one or filed no statements of people who had any first-hand information.

Colonel ELLIS. Based on the list of witnesses that is attached to their report. I went over that, and I can find no name that I know of that has any evidence, or any information, other than hearsay.

Senator KEFAUVER. You mean none of your staff?

Colonel ELLIS. None of my staff; that is right.

Senator KEFAUVER. That is all, Mr. Chairman.

Senator McCARTHY. Just one question, in connection with the Simpson matter.

As to the defense attorney, was he kept under guard?

Colonel ELLIS. The defense attorney?

Senator McCARTHY. Yes.

Colonel ELLIS. No.

Senator McCARTHY. Was there any case where two MP's were assigned to a defense attorney?

Colonel ELLIS. Not to my knowledge. I think Colonel Corbin could answer that better than I could.

Senator McCARTHY. In the courtroom, where the trial was being held, were the defense attorneys allowed to sit and discuss the matters with the accused and the witnesses?

Colonel ELLIS. By all means.

Senator McCARTHY. In all cases?

Colonel ELLIS. I never saw any attempt at anything of that nature whatsoever.

Senator McCARTHY. You are sure of that?

Colonel ELLIS. If it happened, I had not knowledge of it. I saw nothing that would indicate it.

Senator McCARTHY. Mr. Chairman, I would like to ask that this court reporter be subpoenaed to come down and testify. I know nothing about him except that apparently he is one official court reporter of the courts of Pittsburgh. He took the shorthand notes of all the confessions that were made. He makes some rather serious charges and says the later confessions signed differ from the confessions he took down in his shorthand notes, and things like that.

This need not be on the record.

(Discussion off the record for a short period of time.)

Senator McCARTHY. He was one of the boys who was there. I would like to ask the Chair to either send for him, by subpoena, or request him to come down.

Senator HUNT. The staff will be asked to do that.

I would like to get your wishes, Senator, with reference to further questioning at this time, or recessing and asking Colonel Ellis to come back for questioning at the next session.

Senator KEFAUVER. Do we have other witnesses who are here to testify today?

Senator HUNT. Yes; but if I may answer my own question for you, I would like to be on the floor today.

Senator KEFAUVER. I want to be on the floor, too.

Senator HUNT. I do want to take 3 or 4 minutes to ask Colonel Ellis some questions, if I may, at this point.

Colonel, what school did you graduate from?

Colonel ELLIS. I took law at the University of Idaho; and took graduate work at the University of Southern California.

I had some other courses, too; but not in law. I don't think they are particularly important.

Senator HUNT. If you care to state to the committee—were you well up near the top of your class, or not?

Colonel ELLIS. Sir, I do not know.

Senator HUNT. You do not know about your grades.

How many States do you have a license to practice in?

Colonel ELLIS. Three.

Senator HUNT. What are they?

Colonel ELLIS. Idaho, California, and New York.

Senator HUNT. You were with the Texas Co. how long?

Colonel ELLIS. Thirteen years.

Senator HUNT. Did you progress to any degree with your work while you were with them?

Colonel ELLIS. I started out as a shipping clerk and became tax attorney and they moved me from California, Los Angeles, to New York in 1938.

Senator HUNT. Let me ask you a question with reference to the average age of those who were tried in this case.

Did the age of 15 or 16 predominate, or were the ages mixed?

Colonel ELLIS. As I recall, at the time of the commission of the offenses, alleged offenses, there was one who was 16 years of age. They

ranged on up from there, up to Dietrich, who I believe was 54. Of course, he was commanding general of the Sixth Army. Most of them were, I would say, between the ages of 20 and 30. That is probably just a shade younger than our ordinary unit, in the American Army, because the large losses that Germany had sustained—that is all in the record of the trial and can be readily ascertained.

Senator HUNT. There is no question but what they were members of the SS troops?

Colonel ELLIS. Everyone, I am sure, admitted at the beginning of the trial, when questioned by the court—admitted they were members of the SS.

Senator HUNT. As I understand, these war crimes had no procedure guidance of any kind by any precedents. It was the first time that we in the United States ever had such a thing as a war crimes trial; is that correct?

Colonel ELLIS. That is my understanding.

Senator HUNT. You therefore had no rules of procedure to go by, that you may have gotten familiar with during your law practice?

Colonel ELLIS. Absolutely none, sir. This was the—not the first war crimes case tried, though.

Senator HUNT. But following this war, it was the first time.

Colonel ELLIS. When there had been probably 15 or 20 prior trials by the War Crimes Branch at that time.

Senator HUNT. Were you conscious of a great public opinion in the United States for this prosecution to proceed?

Colonel ELLIS. I most certainly was; yes, sir.

Senator HUNT. Let me ask you one more question. In event you were faced with the same situation again, would your procedure be likewise?

Colonel ELLIS. With one exception.

Senator HUNT. And that is what?

Colonel ELLIS. Due to the criticism on the Schnell proceedings, I certainly would not have them again; but otherwise I have not one thing to apologize for. I think that our procedures were fair, and they were just and according to the standards that were set up.

Senator HUNT. Anything else, Senator?

Senator KEFAUVER. I want to ask this question: What do you think the outcome of the trials would have been without the Schnell proceedings?

Colonel ELLIS. It would not have made any difference on them at all.

Senator KEFAUVER. Why?

Colonel ELLIS. We didn't get any evidence, practically none from them. If I recall correctly, in the case of this one fellow Hennecke, his statement was not even taken—or his confession—until several days later; and in the case of this Von Chamier I told you about, we already had the evidence on him. It was just a matter of his confession—getting his confession. He could have been tried without his confession.

Senator KEFAUVER. So your opinion is, the confessions you got through these preliminary trials, or mock trials, or whatever they may have been called, didn't really affect the outcome of the cases?

Colonel ELLIS. Not one bit.

Senator KEFAUVER. Well, the confessions, some of them, were admitted, nevertheless.

Colonel ELLIS. There was evidence. You have disregarded anything we have obtained, and still convicted them.

Senator KEFAUVER. Did you finally get—

Colonel ELLIS. Also, we were allowed to use the statements of co-accuseds.

Senator KEFAUVER. One identified the other as having participated?

Colonel ELLIS. That is right.

Senator MCCARTHY. That is the most important part of the whole matter, I believe, Senator Kefauver. It is a question of whether or not—not so much a matter of the confession; but if the report of the Van Roden-Simpson Committee is true, and I frankly don't know whether it is or not, then they would use the Schnell procedure in varying forms on the different accuseds and not only get them to sign a confession but also sign the desired statement implicating the others accused, that it was then a cross-procedure.

In other words, if you had six mock trials, and you got confessions from all six, and also statements implicating the other five, it isn't merely a question of him improperly getting a confession, but improperly getting a statement, so that does become, I think, extremely important.

Senator KEFAUVER. Yes, it does. I appreciate that.

So, then, does the record show who formulated the Code for Military Trials?

Senator HUNT. Not to my knowledge.

Mr. CHAMBERS. It does not, sir.

Senator KEFAUVER. Do you know, Colonel Ellis?

Colonel ELLIS. I would say not. I would have to look at the record.

Senator KEFAUVER. I notice the explanation of the foreword here is by Lt. Gen. A. E. Grasett.

Is he still in the service?

Colonel ELLIS. No, sir; he is just a name to me.

Senator KEFAUVER. Where did you take your military justice course, at Chicago, or—

Colonel ELLIS. Well, I went in the service as an Air Forces lieutenant, and went to OTS at Miami Beach. I remained there and taught military law and justice, and international law, for 6 or 7 months.

From there I went to the staff of the Judge Advocate's office, basic training center No. 7 at Atlantic City, for 2½ months.

From there I was shipped to India and was with the—I think that was the Tenth Air Force Judge Advocate's Office, and then there was a split-up of command and I am not definitely sure, but I was then either with the Air Service Command or headquarters, Army Air Force. Anyway, our office had the court-martial jurisdiction before us of both the Army Air Forces and the Air Service Command.

Then there was another shift in there, and I think I was assigned definitely to headquarters, Army Air Forces.

In 1945 I was returned home. No; it was in December 1944, I was returned home, and sent to the Judge Advocate's School at Ann Arbor which, as I recall, must have been for only about a 2-month course.

Then I went out to the west coast and was with the Ninth Service Command—No; I didn't go to the Ninth Service Command, but to San

Francisco Port of Embarkation, came back, and was sent to Europe for 3 years, when I was in war crimes.

Senator KEFAUVER. Mr. Chairman, I assume we will have testimony to show how these rules were constituted and whether there is any basis for similar rules in force by any other countries—the British or French.

Senator HUNT. We will ask the staff to get the information for us.

Senator KEFAUVER. From a summary examination of the rules of evidence and procedure, it is entirely different.

Senator McCARTHY. It is rather unusual.

Senator KEFAUVER. I notice article II, subsection 5—I think this is a case of unusual court-martial proceedings where it says:

Every issue shall be determined by a majority of the votes of the members of the court as then constituted, except that a two-thirds vote shall be required for a sentence of death.

I think the committee could do a good service, as Senator McCarthy has said, in examining this.

Senator McCARTHY. I would like to ask just this one question so the record will be complete in this.

How long were you a shipping clerk after you left law school, before you started practicing as a tax attorney?

Colonel ELLIS. I didn't stay over 2 days as a shipping clerk. I think I left law school in rather straitened circumstances and I needed money to eat on, and I was right happy to get the clerk's job for 2 days there.

Senator McCARTHY. I merely wanted to know for how long before you started to practice law.

Colonel ELLIS. Well, I think inside of a year or 18 months, or within 2 years, I am certain—well, I can tell you: When did the Federal gasoline and lubricating oil tax become effective? Whatever that date was—I was put in charge of that.

Senator McCARTHY. I think that was in 1931.

In the meantime you worked for the same company, but worked in a capacity other than that of attorney?

Colonel ELLIS. That is right.

Senator McCARTHY. I wasn't criticizing—I just wanted to know how long you had practiced law.

The CHAIRMAN. The subcommittee will stand in recess until Friday morning at 10 o'clock.

(Whereupon, at 12 o'clock noon, the committee stood in recess until Friday, April 22, 1949, at 10 o'clock a. m.)

MALMEDY MASSACRE INVESTIGATION

FRIDAY, APRIL 22, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in the committee room, room 212, Senate Office Building, Senator Raymond E. Baldwin (chairman) presiding.

Present: Senators Baldwin (chairman) and Hunt.

Also present: Senators Tydings and McCarthy, and Mr. J. M. Chambers, on the staff of the committee.

Senator BALDWIN. The meeting will come to order. Please see that the doors are closed.

The first witness that we have today is Col. John M. Raymond.

Colonel Raymond, will you give us your full name and address, please?

Colonel RAYMOND. John M. Raymond, 4533 Lowell Street NW., here in Washington.

Senator BALDWIN. Are you presently an officer in the Army?

Colonel RAYMOND. No. I retired from the Army.

Senator BALDWIN. And were you one of the men who made an investigation into the Malmedy trials?

Colonel RAYMOND. That is right.

Senator BALDWIN. And at that time were you an officer in the Army?

Colonel RAYMOND. Yes, sir.

Senator BALDWIN. In what department?

Colonel RAYMOND. I was a colonel on the General Staff Corps, and at that time I was Director of the Legal Division of the Office of Military Government in Germany, and legal adviser to General Clay.

Senator BALDWIN. How long had you been in the Army?

Colonel RAYMOND. I had been in, on this tour of active duty, since 1940. I had been a reserve officer for a good many years.

Senator BALDWIN. Are you a veteran of World War I?

Colonel RAYMOND. Yes, sir.

Senator BALDWIN. What was your business or profession before you went into the Army?

Colonel RAYMOND. I was a practicing attorney in Boston. I practiced there for about 20 years.

Senator BALDWIN. All right, sir.

Now, before you testify, may I administer an oath?

Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge, information, and belief, so help you God?

Colonel RAYMOND. I do.

TESTIMONY OF COL. JOHN M. RAYMOND, UNITED STATES ARMY
(RETIRED)

Senator BALDWIN. Do you have a prepared statement?

Colonel RAYMOND. There is one point I would like to clear up. Apparently there has been some mistake here as to the nature of our investigation.

I say "our investigation," the investigation of the board of which I was the chairman.

May I see the exhibits of our report for a moment?

Mr. CHAMBERS. These are all [passing documents to the witness].

Colonel RAYMOND. This is what I want.

On the 18th of August in 1947, by command of General Clay, a board was set up in the European command known as the Administration of Justice Review Board. That was established by general order headquarters, European command. It consisted of the Director of the Legal Division of OMGUS, Judge Advocate of European Command, and the Adviser to the Military Governor for Governmental Affairs; and, it was set up to investigate and report on any complaints received regarding administration of justice in the European Command.

Now, from time to time after that, various matters were referred to that board, in this particular matter of the Malmedy case was referred to the board by order of General Clay dated May 28, 1948, so that the board was not established particularly for this case, but was a standing board in the theater, and this case was merely referred to it as being within its sphere.

At that time, the board consisted of myself as chairman and General Harbaugh, then Colonel Harbaugh, who was the judge advocate of the European command; and Dr. Carl Freiderich, who was the adviser on governmental affairs, and who is now back at Harvard University, where he is a professor.

Senator BALDWIN. May I ask, is he a professor of law, or was he?

Colonel RAYMOND. He is not a professor of law, but he is a lawyer.

Senator BALDWIN. I see. Thank you.

Colonel RAYMOND. And that board met on several occasions, called witnesses who were available in the European command, received a number of affidavits, and prepared at that time a preliminary report, but we felt that we wanted to get the statements from certain people in the United States who were not available to us.

Following that, affidavits were taken in the United States from a number of people and forwarded to the board, and the board considered those affidavits.

By that time Dr. Freiderich had returned to the United States and his office was vacant, so that the final report was signed only by General Harbaugh and myself, although in substance there was very little change from the original report which had been signed by the three of us.

Senator BALDWIN. May I ask you this, Colonel: At the time you started this investigation, or at the time the matter was referred to you, was there any formal complaint—and by that I mean was there any formal written petition or document or anything of that kind—were you merely commissioned generally to look into the Malmedy prosecution and trials?

Colonel RAYMOND. There had been a petition for habeas corpus in the Supreme Court of the United States by Mr. Everett, on behalf of some of the accused in this Malmédy case, and that petition was not taken by the Supreme Court; but the allegations in that petition were such that the Secretary of the Army desired to have an investigation of them, and asked General Clay to have an investigation of those allegations, and that was what was referred to us, the question of the allegations in that petition.

Now, admittedly, we did not have access to all the people who knew about this. Many of them, in fact the great majority of the Americans who had had anything to do with the case, were redeployed to the United States.

We did have before us Mr. Kirchbaum and Mr. Thon, two of the interrogators. Those were the two principal people that we had.

Senator BALDWIN. Were they Army personnel or civilians attached to the Government?

Colonel RAYMOND. They were civilians.

Senator BALDWIN. Were they lawyers?

Colonel RAYMOND. I don't recall that either of them was a lawyer, but they might have been. They were people who had been trained in investigation work, and had extensive interrogation of prisoners of war for various Army commands during the fighting; and, were called in on this Malmédy case at the time the prisoners were assembled at Schwabisch Hall.

Now, we also had a number of other people. As to the stories of the German accused in the Malmédy case, we had a number of affidavits which had been forwarded from one of the bishops, I forget just where they came from now, but they came through some such source, came to Washington and were sent to the ETO in that connection. Also, there were a number of other affidavits and communications of one sort or another received later.

We found that Kirchbaum and Thon, the two men we had who seemed to have first-hand knowledge of the matter, were two of the men who were accused in these affidavits of having done some of the things that Mr. Everett was complaining of in his petition; and, we were confronted by a situation where, on the one side we had the affidavits of these Germans, which said these things were done in an astounding degree, some of the things were absolutely unbelievable; on the other hand—

Senator HUNT. May I ask a question?

You say "absolutely unbelievable." Colonel, do you mean you don't believe them or they were of such a nature that it was simply impossible to believe them?

Colonel RAYMOND. I think some of those affidavits went so far as to be of a character that nobody would really believe the story in them. I certainly didn't believe some of them.

Senator BALDWIN. One further word, Colonel: When you speak of these affidavits, you mean affidavits complaining of the prosecution and investigation?

Colonel RAYMOND. That is right.

Now, on the other hand, as I say, both Mr. Thon and Mr. Kirchbaum denied substantially everything in the way of any physical mistreatment. The mock trials, as they have been referred to, or the Schnell procedures were, of course, admitted. Everybody always has

admitted that those proceedings took place, whatever they may have been. My understanding is, they were admitted at the trial by the prosecution and were related at that time to the Court before the statements were introduced.

We therefore tried to see what we could find in the way of corroboration, and there was very, very little.

We did have one or two witnesses who were translators, or interpreters, or something of that sort at Schwabisch Hall, and against whom there were no complaints.

We had some affidavits from one or two Germans who said they were at Schwabisch Hall. We had certain documentary evidence submitted by some of the prosecution staff, and perhaps obtained from other sources; and after consideration of the whole case, we derived our conclusion on the basis of all of the evidence.

I believe the report which we signed is in evidence before your committee.

Senator BALDWIN. Yes; it has been made a part of the record.

Now, Colonel, I would like to ask you a few questions with reference to that report on page 4 of the report.

Do you have a copy of that before you?

Colonel RAYMOND. I am afraid my copy is not the same as the one you have.

Senator BALDWIN. Paragraph 10, could you find paragraph 10?

Colonel RAYMOND. Yes.

Senator BALDWIN. You said there;

The allegations as to misconduct fall into two principal categories:

(a) The use of mock trials, threats, inducements, and stratagems to procure sworn statements against other accused and to obtain confessions—

Pausing on that a moment—

Senator McCARTHY. What page?

Senator BALDWIN. Subsection 10, I don't think your page is the same as this one.

Senator McCARTHY. Yes.

Senator BALDWIN. What were the complaints made with reference to the mock trials? Could you just describe that?

Colonel RAYMOND. Well, they said they were taken into a room where there was a table with black cloth over it, a crucifix on the table, burning candles, one or more people seated behind the table, and one or two other people in the room, one of whom took the part of a prosecutor; the other one assumed to argue for the individual defendant, and witnesses were sometimes brought in who testified against this fellow.

Then, quite an argument would take place between the prosecutor and the fellow who was acting as friend of the defendant, and finally the proceedings would break up.

Senator McCARTHY. You say finally the defendant, your lawyer, you mean a defense counsel?

Colonel RAYMOND. It was universally testified that these men did not hold themselves out as defense counsel.

Senator McCARTHY. As a lawyer, will you tell me the difference between a man who represents you in court as a friend of the defendant and defense counsel? I am a little hazy on that, I am afraid.

Colonel RAYMOND. Well, I suppose counsel would be somebody who was in a confidential relation with the individual defendant, and who would represent him in that capacity.

This was an anomalous proceeding——

Senator McCARTHY. I still don't get your thought. You say he didn't hold himself out as defense counsel, held himself out as friend of the defendant. You have been a lawyer, I gather, for 20 years. I have been a judge. I don't know of any difference between "friend of the defendant" and defense counsel. Could you tell me in what way it differs?

Colonel RAYMOND. I don't think you would find a situation of this sort in an ordinary court, Senator.

Senator McCARTHY. I am sure you wouldn't; but, you wouldn't in my court, I know.

Colonel RAYMOND. And, I am simply giving you the testimony that was before the Board, that these people were not represented as defense counsel. In fact, there was no representation to show they were, or what they were doing. They simply started arguing on behalf of this fellow.

Senator BALDWIN. In other words, they sort of appeared to assume the role of being friendly to the defendant, is that what you mean?

Colonel RAYMOND. That is right, and that was the testimony of all of the witnesses that we heard.

Senator McCARTHY. May I pursue this further, Mr. Chairman?

In other words, there was a mock trial, and the accused thinks he is being tried, right? That is the purpose of the mock trial?

Colonel RAYMOND. Well, I don't know. I assume he thought he was being tried in some of these cases, and some of the cases from the description, I would doubt very much if he did.

Senator McCARTHY. Let's take the case in which he thought he was being tried. I assume that was the purpose of the mock trial, to convince him he was being tried, otherwise it would have no purpose whatsoever.

Colonel RAYMOND. I think the purpose, the real ultimate purpose in every case was to try to get the defendant to talk.

Senator McCARTHY. That is the purpose in all this procedure, I gather.

Colonel RAYMOND. That is the purpose of the entire interrogation.

Senator McCARTHY. I understand that. Now, some men sat behind the bench and they held themselves out as judges, is that right?

Colonel RAYMOND. Well, I assume that is what they would be representing themselves as.

Senator McCARTHY. You investigated this, you were appointed for the purpose of investigating it?

Colonel RAYMOND. That is right.

Senator McCARTHY. I assume Clay had some confidence in you when he asked you to investigate it, right?

Colonel RAYMOND. I assume he did.

Senator McCARTHY. Now, when you started checking into these mock trials and reported back to General Clay, did you determine whether or not the prosecution staff held themselves out as judges trying the man?

Colonel RAYMOND. Yes. The members of the prosecution were the people who sat behind the table.

Senator McCARTHY. If we are to get anywhere we have to be absolutely frank with each other, I am afraid.

Colonel RAYMOND. Well—

Senator McCARTHY. Now, tell me this, will you? Is there any doubt in your mind but what the prosecution staff took over the position as judges and tried to convince the accused that they were judges trying him? There is no doubt about that, is there?

Colonel RAYMOND. Well, in those cases where, as I say, the fellow had a—was led to believe he was being tried, that is true.

Senator McCARTHY. And now, then, there was, according to your report, a man who took over the job of defending him, right?

Colonel RAYMOND. That is right.

Senator McCARTHY. And after the trial was over, then this defense counsel, or friend of the defendant, would give him advice on what to do, as a friend or as his counsel—right?

Colonel RAYMOND. My understanding is that it wasn't quite that; that there was an effort, in a good many cases, to get the defendant to talk right then and there, in the room where this proceeding was taking place. In other cases the man that we referred to as the friend of the defendant would go out with him and go back to his cell with him and say, "Well, now, I think you had better talk and tell what you know."

How far they went in their representations on that it is very difficult to say.

Senator McCARTHY. Let's get—

Colonel RAYMOND. That was the general fact of the—

Senator McCARTHY. May I get back and get the record straight? Can you now tell me any difference between a defense counsel and friend of the defendant? Is there any technical difference that you know of?

Colonel RAYMOND. Well, as I say—

Senator McCARTHY. So we can—

Colonel RAYMOND. These men were certainly not defense counsel.

Senator McCARTHY. Did the defendant think that he was being represented by that man in a court?

Colonel RAYMOND. I don't know what he thought, but he might well have thought that.

Senator McCARTHY. In other words, that was the purpose of the mock trial, have him think that judges were sitting behind the table, that he was being represented by defense counsel, or friend, or call it what you may—someone to represent him in that court—there is no doubt about that?

Colonel RAYMOND. That was the effect of it.

Senator McCARTHY. Now, may I ask you—Mr. Chairman, if I may—may I ask you one other question? In these mock trials there was a claim, I understand, in the affidavits which you received, claimed by some of the reporters that after the mock trial, a man would be sentenced to death, sentenced to be hung. Did you run down those allegations?

Colonel RAYMOND. We did. We asked practically every witness who might know about it, and came to the conclusion that in no case was any sentence pronounced in the court or the trial—whatever you call it.

Senator McCARTHY. Did you find that the accused was led to believe that he had been convicted?

Colonel RAYMOND. He certainly, in some cases, I think, came to the conclusion he had had a trial; and, whether he thought the actual conviction or sentence or finding of the trial board had taken place at the time he was in the room, I don't know, but he certainly, I am satisfied, in some cases, felt that he was being tried.

Senator McCARTHY. In other words, he felt that he had been tried, and this was his trial, this was the final court; right?

Colonel RAYMOND. I think that is true.

Senator McCARTHY. Do you know whether or not he was led to believe that he had been convicted?

Colonel RAYMOND. Well——

Senator McCARTHY. That was a very important thing for you to determine, I assume, when you were trying to find out whether or not the trials were properly conducted.

Colonel RAYMOND. I think he undoubtedly, in some cases, felt that a decision had been made.

Senator McCARTHY. In other words, that he had been convicted?

Colonel RAYMOND. Well, he might have suspected that. I don't know.

Senator McCARTHY. Then, when the phony defense counsel, or the phony friend of the accused, came back to his cell, do you know whether or not this defense counsel would tell him that if he would sign a confession that instead of being hung, he would be let off much easier? Do you follow me now? So there will be no misunderstanding.

Colonel RAYMOND. I know that claim was made, but I don't think we were satisfied; I certainly was not satisfied that that had ever been done.

Senator McCARTHY. Were you satisfied then of this—were you satisfied that in some cases the accused was brought in, he believed that the prosecutors sitting behind the table were judges, he believed that the man prosecuting him was the prosecuting attorney, he believed that the man who was fighting for his rights in that so-called court, was his friend, he believed that when this was over that, as you say, a decision had been reached, and that he had reason to believe that he was convicted? So, you found the facts up to that point to be right?

Colonel RAYMOND. That is right.

Senator McCARTHY. Then, you found that the phony defense counsel went back to his cell and made certain representations and came back with a confession, you found that, didn't you—is that right?

Colonel RAYMOND. Not quite; because the testimony was that the procedure was not very successful, but some of them undoubtedly did make some statement following the trial.

Senator McCARTHY. Let's take this, if you will. Assume the phony defense counsel went back to him, take the successful one, when he would come back with a confession, in those cases I understand the accused claimed to you that he had been told that he was convicted, that he was to be hung in the morning, and if he would sign that confession that his friend, the defense counsel, or call it what you may, gave him, he would be let off with 5 or 10 years. Now, I know you were not in the cell there; there is no way you could run that down; you would have to take the word of the phony defense counsel as against the word of the accused—right?

Colonel RAYMOND. Yes.

Senator McCARTHY. But, in view of what went on before that, the fact that you had the stage set, you had the mock trials, you had the conviction or the impression of a conviction—I assume that any man who can add two and two would then realize the purpose of that was to have the phony defense counsel go back and get this confession; is that right? I am speaking of the successful cases now.

Colonel RAYMOND. Well, the purpose of the whole proceeding was to get the defendant to talk, whether he talked in the court or afterward, or where he talked.

Senator McCARTHY. Do you have any reason to believe that after he went through this phony procedure, that the defense counsel didn't represent to the accused that he was to be hung in the morning, and if he would sign a confession, he would succeed in getting him clemency, as his friend?

Colonel RAYMOND. I certainly was not convinced of that. I think that the most that I was satisfied of was—and I am speaking simply for myself, I don't think—I forget what we say in our report on this.

Senator McCARTHY. If you will refer to page 4.

Colonel RAYMOND. We say:

Undoubtedly some defendants would confess at least part of their crimes under the influence of such procedures.

Senator McCARTHY. Let me ask you this further, if I may: I gather, you have been a lawyer for a long time—right?

Colonel RAYMOND. Right.

Senator McCARTHY. And in active practice?

Colonel RAYMOND. Right.

Senator McCARTHY. In Boston?

Colonel RAYMOND. That is right.

Senator McCARTHY. A good place to practice. Did you do any criminal work? I assume you did.

Colonel RAYMOND. Very little.

Senator McCARTHY. Very little?

Colonel RAYMOND. Most of my work was civil.

Senator McCARTHY. Now, Mr. Ellis, who incidentally never tried a criminal case in his life until he got in the Army, but he did try some default divorces, told us the other day that he understood that some States had laws, or statutes, or rules that recognized the validity of a mock trial such as you have outlined. I might say, in my State, if a lawyer conducted a mock trial such as that, he would never practice law again. I have tried to make a check to find out where a court ever said that type of procedure was proper in this country. Do you know of any place in this country where the criminal courts allow the type of procedures that you have described?

Colonel RAYMOND. Well, I never looked the point up, Senator. I just don't know.

Senator McCARTHY. Let me ask you this. You understand, we are not talking about letting off any of the men who were responsible for this gruesome crime—I think they should have been hung long before this time, if they were the guilty men—but are concerned with conducting reasonable, sensible trials, you know, of the type we conducted over in the Pacific where they hung them just as quickly and they were just as dead as those in the European theater.

Do you think it is at all proper to go through the procedure you have described here?

Colonel RAYMOND. Well, there is certainly one vice in it. I say "vice"; it strikes me as a vice. I have never looked the point up. You do have a confidential relationship between attorney and client, and if a man is held out in such a way that an individual feels he is his attorney, I think the individual should be able to talk with him confidentially and not have the statements then thrown up in an effort to convict him.

Senator BALDWIN. Was there any evidence that at any time these men who represented themselves to be, or acted as though they were, in these mock trials, a friend of the defendant, had ever talked with the defendants before any confidential relationship of attorney and client?

Colonel RAYMOND. No; they had never, as far as I know, talked with them in such relationship, before the trial. Whatever talk they may have had in that connection—and it wasn't true in every case, in some cases they did talk with them after this proceeding, and that was the talk that they had.

Now, as I say, I don't know whether that is recognized by some jurisdictions or not, but all I can say is that personally, if I had anything to do with it I don't think I would follow those tactics. Whether I am right or wrong on this as a matter of law is something I don't know.

Senator McCARTHY. One of your prosecution staff made the statement, which I think is very pertinent. He said "You know, it is an odd thing, but a man that is innocent will scream just as loud when he is being put to torture as the man that is guilty. The man that is innocent, if tortured enough, will sign the same confession as the man who is guilty. There is no doubt, if you torture a man enough, regardless of whether he is guilty or innocent, he will do the same type of screaming and most likely sign the same confession."

Colonel RAYMOND. Well, that may be so, but I don't know what that has to do with this problem.

Senator McCARTHY. Let me ask you this. Let us say that you are brought before a court, a mock court, a phony court; you can't understand the language of the members of the court; you are being tried, let's say, over in Russia, and you have three Russian officers behind the table; you are being tried, you know that if you are found guilty you will be hung. The court assigns to you a defense counsel or a friend, a man who will fight for your rights in that court, and tell you what is going on. After this trial is over, you know you have been convicted, so your friend, this phony defense counsel, one of the Russian officers who actually is one of the prosecuting staff, comes back to your cell and says, "Now, John, if you sign this confession, instead of being hung tomorrow morning at sunrise, I will get you off with 5 years. I can do it. I am your friend. You have seen me fight for you. We are going to give the ration cards back to your family so they will be able to eat. Here is a confession. In it is set forth what 10 of the other defendants have done. We want you to sign this, implicating the other fellows, and confessing your own guilt. Then, you will get off with 5 years."

You know you are innocent. You are now miles from where the massacre occurred. The possibility is rather great that you would sign that confession, isn't it?

Colonel RAYMOND. I can see where there would be a tremendous pressure to make you sign the confession.

However, let me say one thing—

Senator McCARTHY. Let me ask—

Senator BALDWIN. Let the witness answer the question.

Senator McCARTHY. I am not mistreating the witness, am I?

Colonel RAYMOND. Let me explain one thing there, Senator.

In the first place these trials, these Schnell proceedings, were conducted in German. They were conducted in the language of the accused. And, in the second place, I don't believe, from anything I have heard, from all the evidence I have heard in this case that those representations were made in that way to these people after the proceedings were over, so I don't think—

Senator McCARTHY. At the time you lost contact with the cases—after you find the accused thought he was convicted, then the friend of the court goes back to his cell and comes back with a confession—I am asking you this question—let us assume that situation did occur, and there are many, as far as we know, completely disinterested parties, the court reporter taking the notes says this is a fact, I understand we are going to have some of the members of your prosecution staff, men who were taking part in the prosecution who will come in and tell us what happened, and their claims are considerably different from the way you recited them, and I wasn't there, of course, all I can do is take the stories of these people who bring them in, assume that situation, that is the type of situation that has been represented to us over and over, when you decide whether or not you are going to sign a confession, you are up to the point now of signing the confession, a confession brought to you by your friend, or a fellow who fought for you, it doesn't make much difference whether you are guilty or innocent, would it, in your decision to sign the confession, if he said that by helping him he could get you off with a 5- or 10-year sentence, see that your family got their ration cards back—

Colonel RAYMOND. That is right. That sort of thing is certainly not countenanced in any jurisdiction I know of.

Senator McCARTHY. Let me ask you this: If you were in charge of the prosecution, would you have countenanced this type of mock trial, in which the accused may be made to believe he was convicted, and assigned a phony defense counsel; would you have countenanced that?

Colonel RAYMOND. As I said before, I never looked the point up as a matter of law, but I would not have employed it if I had been in charge of it. Whether I am right as a matter of law, I don't know.

Senator McCARTHY. In other words you consider it improper?

Colonel RAYMOND. Well, the vice in it, as I say, that I see is the relationship between supposed attorney and the individual who is being charged.

Senator McCARTHY. Isn't it an even greater vice, isn't the really great vice in this fact that you tell a man he is convicted, that is obviously the purpose of the mock trial, and his friend goes back and says, "I can get you off. You won't hang if you sign the confession." Isn't your investigator likely to get the same type of confession from an innocent man as from a guilty man? Isn't that the bad thing?

Colonel RAYMOND. I think actually the way these proceedings were conducted, the whole emphasis was on the point that this is your

chance to tell your story. Now, some of them may have talked right then and there. Some of them may have talked after they went, or written out their statement after they went, back to their cells, and I am sure that these people who were acting as friends of the defendants advised them to tell what they knew, and so on, when they went back to their cells.

Senator McCARTHY. After the conviction?

Colonel RAYMOND. After the proceeding was over.

Senator BALDWIN. Let me interrupt there, Colonel. Was there any evidence in those affidavits or from any witnesses you interviewed that at any of those mock trials there was any so-called purported decision made of conviction? What was the fact on that?

Colonel RAYMOND. Well, some of the affidavits of the defendants, I believe, made that claim, when asked. We decided after talking with a number of witnesses and going into the matter further, that there were no decisions made by these Schnell proceedings.

Senator BALDWIN. You say in your report here—

Colonel RAYMOND. I think we so state, don't we?

Senator McCARTHY. You state the opposite.

Senator BALDWIN. You say that—

in certain instances, probably 8 or 10, the use of a so-called mock trial was resorted to in an attempt to "soften up" a witness who was thought to be susceptible to such procedure. Those trials were held at Schwabisch Hall in one of the cells, sometimes a small cell about 6 by 8 feet, sometimes in a larger room two or three times that size.

Now, from these affidavits, and from the witnesses that you interviewed, is your conclusion that this happened in 8 or 10 cases, that the most or the least, or is that a fair number?

Colonel RAYMOND. That is the maximum. Some said a smaller number. I believe Colonel Ellis said not over six or seven, but the number given by different people varied, and this is certainly the maximum number of cases.

Senator BALDWIN. You are speaking of, here in your report, you say something about softening up the witnesses, what do you mean by that?

Colonel RAYMOND. These Germans were SS men who had been ordered not to talk, and they had been trained and grown up in the tradition of obeying their orders, and it was extremely difficult for this interrogation team to get them to talk, and yet the team was faced with a situation where they knew that this massacre had taken place, but they did not know who was responsible for it and they had to depend on this group of Germans to get the evidence. There were no eyewitnesses, just one eyewitness, and he was only able, I believe, to identify one of the people.

Senator McCARTHY. May I interrupt? The eyewitness was able to identify only 1 of the 72 convicted?

Colonel RAYMOND. I may be wrong on that, Senator, but I think that is so.

Senator BALDWIN. We have an eyewitness here, you may ask him.

Senator McCARTHY. I understand we are going to prove that the Malmedy massacre did occur.

Colonel RAYMOND. Now, these fellows were rounded up late in the fall of '45, if I am not mistaken, and early '46; but it was a long time before they could get any of them to talk, and they did resort to var-

ious devices to try to get them to talk. They had to, in order to get anywhere on the case.

Now, that is what I mean by "softening up" the witness, to get him to the point where he would talk.

Senator BALDWIN. I think the important point Senator McCarthy brought out is the claim apparently made by the accused here that they were purportedly, or in a phony way, told that they were convicted and that that was their one chance, afterward, to talk and get a lighter sentence.

What was the evidence on that——

Colonel RAYMOND. I think our report states——

Senator MCCARTHY. So you won't make any mistakes——

Colonel RAYMOND. No sentence was pronounced, but the accused was made to understand that it was his last chance to talk, and undoubtedly in some cases understood he had been convicted.

That was our conclusion on all the evidence, that certainly no sentence was pronounced.

Senator HUNT. I would like to inquire, if I might.

Senator BALDWIN. Senator Hunt.

Senator HUNT. Colonel Raymond, were the facts of these mock trials made known by the prosecution to the court at the time of the trial?

Colonel RAYMOND. Oh, yes; in fact before, I believe, in the opening statement of the prosecution there was reference made to them, and certainly the information was brought out at the trial, at the time these statements were being introduced.

Senator HUNT. What action did the court take with reference to the information they received from the prosecution that these mock trials had been used?

Colonel RAYMOND. I believe I am right, that they accepted the statements and said they would give them such weight as they thought they ought to have, that they would consider all the circumstances.

Senator HUNT. Did any member of the court make any statement to the effect that they were improper, that that method should not have been used?

Colonel RAYMOND. I can't answer that, I don't know.

Senator BALDWIN. May I interject a question there? When you refer to the court that Senator Hunt refers to, do you refer to the criminal court that actually tried the prisoners and imposed the sentence?

Colonel RAYMOND. That is right.

Senator BALDWIN. That is the real court as distinguished from the so-called mock trial?

Colonel RAYMOND. That is right.

Senator HUNT. One other question: Were these mock trials conducted before or after counsel had been announced for the accused?

Colonel RAYMOND. Oh, that was long before.

Senator HUNT. I have no other questions.

Senator BALDWIN. Going down to paragraph 12 of your report, you say the defendant would be brought from his cell hooded. What can you tell us about that?

Senator MCCARTHY. Before you leave this point here he is on, Mr. Chairman, in regard to getting of convictions, would you mind much if I complete my interrogation on the point?

Senator BALDWIN. No; go ahead. That is all right.

Senator McCARTHY. Getting back to this confession that was gotten in his cell, you said that in some cases he understood he had been convicted. Let us stick to those cases, and you say after the trial was over, he was given to understand this was his last chance to talk—right—after his conviction?

Colonel RAYMOND. Yes [nodding].

Senator BALDWIN. Could you answer so we will have it on the record?

Colonel RAYMOND. Yes; go ahead. I thought you hadn't finished.

Senator McCARTHY. After his conviction, or alleged conviction, he was led to believe he was convicted, he was given to understand that he had one last chance to talk, according to your report, is that right?

Colonel RAYMOND. That is right.

Senator McCARTHY. Now, if he had already been convicted do you know what argument then was made to him that he should talk? In other words, why should he talk after he was convicted? Was he told that he would get off easier, in other words, what inducement—why talk when you are already convicted?

Colonel RAYMOND. Well, a good many criminals who have been convicted, particularly those who were sentenced to death, do make a final statement before going to the gallows.

Senator McCARTHY. In other words, they were led to believe that they were about to go to the gallows, this was their final statement?

Colonel RAYMOND. I don't know that they were led to believe that they were going to a gallows, but after conviction, you are asking about what inducement there would be to make a statement, sometimes the man's conscience or his religious beliefs, or other things may enter into it, I don't know.

But, at any time there were attempts made to get him to talk, that is as far as I know.

Senator McCARTHY. No doubt—so the record will be completely straight, he was led to believe he was convicted in some case, after that his friend went back to the cell and induced him to talk, is that right?

Colonel RAYMOND. That is right.

Senator McCARTHY. Now, some of the court reporters who will appear here, some of the witnesses not accused, you understand, will testify that the inducement then was that instead of being hung, instead of going to the gallows, he would be let off with 5 or 10 years if he would sign a certain confession, and that the accused signed that confession regardless of whether it was true or untrue.

Do you know anything about that situation?

Colonel RAYMOND. None of the witnesses who testified before us made any such statement.

Senator McCARTHY. Did any of the witnesses make the statement in their affidavit, or otherwise?

Colonel RAYMOND. Some of the Germans in their affidavits talked about having been convicted and there was a good deal of talk in those affidavits, in various places, about the gallows, and noose that was put around their necks, and so forth. All the people who testified before us, and they were cross-examined at some length on the point, all of them insisted that there was no means of execution anywhere around the prison, and that there was no rope used in any way, in

connection with the interrogation of these prisoners, and we believe that.

Senator McCARTHY. Did you find that some confessions were obtained when the man had this noose around his neck?

Colonel RAYMOND. No; we found that the noose was not used. That is on the basis of all the testimony we heard.

Now, you may have something that we didn't hear, I don't know.

Senator McCARTHY. I assume not. I assume you heard it all.

Here is one of the court reporters, who says this, he says—

Senator BALDWIN. Put his name in, please.

Senator McCARTHY. It is the same man we had the letter from, which was read. His name was James J. Bailey, and here is what the court reporter said:

The prisoner then had a long multicolored robe thrown over him, and black hood pulled down over his head, and rope knotted about his neck, and he was marched into a cell to be interrogated by one of the lawyers.

I gather this is a disinterested witness. I don't know anything about him except the letter I have gotten.

Did you run any of those claims down?

Colonel RAYMOND. All I can say is, Senator, I don't recall that we ever heard the name of Mr. Bailey. We certainly had no affidavit or statement from him.

Senator McCARTHY. Did you have a statement from any of the so-called disinterested parties, not referring to the accused—so-called disinterested parties to the effect that this sort of procedure was used?

Colonel RAYMOND. They all said it was not used, those that were of the prosecution staff and those that were disinterested.

Senator McCARTHY. And the defense staff, what did they tell you?

Colonel RAYMOND. We had one of the defense counsel who testified, and he had no such knowledge. He had no knowledge of any such procedure.

Senator McCARTHY. Did you interrogate Mr. Everett, Chief Defense counsel?

Colonel RAYMOND. No; Mr. Everett we did not have a statement from, except as stated in sworn petitions for habeas corpus.

Senator McCARTHY. Did you try to run down his claim that this procedure was used?

Colonel RAYMOND. That was the purpose of our hearing, was to investigate the allegations in his petition.

Senator McCARTHY. That is all.

Senator BALDWIN. You spoke of the evidence, I assume, of the complaining witnesses and disinterested persons. Did you have any of them personally before the Commission to examine them personally on their oath?

Colonel RAYMOND. Yes, sir. If I may refer to the report, I can tell you exactly who we heard.

Mr. CHAMBERS. Here it is.

Senator McCARTHY. Where it said seven witnesses?

Colonel RAYMOND. We had before us Lt. Col. C. E. Straight, he was the officer who had reviewed this case and under whose general jurisdiction the trial had been conducted.

We heard Joseph Kirchbaum, who was one of the interrogators against whom certain of the complaints were made.

We heard Harry W. Thon, another investigator against whom complaints had been made.

We heard Lt. Col. James B. Costello. Costello was involved in subsequent views on the case, and in subsequent proceedings. He was quite familiar with the record, and he furnished us with certain information from the record. We heard First Lt. Robert Byrne. Byrne was a member of the prosecution staff, but had not participated to any extent, if at all, in interrogations. His statement was of very minor character.

We heard Benjamin M. Narvid, who was one of the defense counsel, and the only one of the defense staff then in the European theater.

We heard Frank Steiner. I believe he was officially called a translator, I can get that. Anyway, he was a translator and interpreter for the investigators; and, we heard Bruno F. Jacob, who was also an interpreter, if I am not mistaken. I might check that. I don't believe he had any official position with the prosecution staff. He said he was temporarily assigned there to help them out for a short time.

Then, we had affidavits from a number of people, too.

Senator BALDWIN. I was thinking particularly of the complainants. Did you have any of the complainants before you individually?

Colonel RAYMOND. You mean the Germans?

Senator BALDWIN. The Germans; yes.

Colonel RAYMOND. No; we had a batch of affidavits from them which we assumed would be what they would testify; just as we had affidavits from the prosecution staff who were in this country.

Senator BALDWIN. And you examined the personnel that had conducted the investigation and prosecution on the basis of the affidavits and the complaints set forth in those, and in the petition filed in the Supreme Court?

Colonel RAYMOND. That is right. There was a rather detailed statement prepared, all of the allegations made against Thon and Kirchbaum, I believe that is one of the exhibits annexed to my report, and we went rather carefully into each of those allegations with those men.

Senator BALDWIN. They were under oath, were they, at that time?

Colonel RAYMOND. Yes, sir; these proceedings were all under oath.

Senator BALDWIN. But, you never did cross-examine the complaining witnesses, the Germans, on the basis of their affidavits?

Colonel RAYMOND. No; we did not.

Senator BALDWIN. Now, do you have any further questions on that point, Senator?

Senator McCARTHY. Just one: Am I correct, then, that you interrogated six of the members of the prosecution staff and one of the defense staff—in other words, seven witnesses came before you?

Colonel RAYMOND. I didn't—

Senator McCARTHY. As I followed you, I gathered as much.

Colonel RAYMOND. I didn't check the number of them.

Senator McCARTHY. Roughly that, anyway?

Colonel RAYMOND. Thon, Costello, and Byrne, Steiner and Jacob were all connected with the prosecution; Narvid was connected with the defense; Straight and Costello were on the reviewing end.

Senator McCARTHY. There is a question that occurs to me, Mr. Chairman. I am wondering why the court didn't take the trouble to

find out what Mr. Everett and the men who took the opposite position from Thon and I understand Thon——

Mr. CHAMBERS. Kirchbaum.

Senator McCARTHY. And Kirchbaum were alleged to be the two men most responsible for the alleged kicking and beating and that sort of thing. I can't understand at this point why the Army didn't bring in who made the claims, such as Everett, and the men vitally concerned with it. Why you didn't make some effort to bring in just the court reporters, men who were connected neither with the defense or prosecution, the so-called disinterested people.

Colonel RAYMOND. They were all in the United States and not available to us.

Senator McCARTHY. I see.

Senator BALDWIN. Further pursuing the point that Senator McCarthy raises, you mentioned particularly Kirchbaum and Thon. Are those the two men against whom all or most all of the allegations of mistreatment contained in the affidavits were made?

Senator McCARTHY. I think it is physical mistreatment.

Senator BALDWIN. Physical mistreatment.

Colonel RAYMOND. No, sir; there were, as I recall it, five, in addition to those two. There were allegations against a Lieutenant Paul, Mr. Ellowitz, Captain Shoemaker, and they were all in the United States, but we did have affidavits from them.

Senator BALDWIN. Those were the men against whom the particular complaints were made in these affidavits by complaining witnesses?

Colonel RAYMOND. Yes, sir.

Senator BALDWIN. And in the petition filed in the Supreme Court, am I correct in that?

Colonel RAYMOND. Yes, sir.

Senator BALDWIN. Now, going down to the point in paragraph 12, you say the defendant would be brought from his cell hooded. What can you tell us about that, as you found it?

Colonel RAYMOND. It was testified that in moving defendants from one place to another, they always used a hood. This hood was placed over the head of the defendant to prevent his communicating with others, knowing who else was in prison, who else was there, who might be asked to testify against him, and prevent his learning the lay-out of the prison in case, I imagine, as a security measure.

Senator BALDWIN. Now, in connection with these mock trials, was there any claim made, or did you investigate any claim or investigate the situation that might pertain to the use of physical abuse? What can you tell us about that?

Colonel RAYMOND. We did. We went into that at considerable length, because that was the most serious claim made, and it was the most difficult one to unravel.

Now, to begin with we found that there was an order issued on February 7, 1946, by the commanding officer of the interrogators, and I will read one paragraph of it:

Any ruse or deception may be used in the course of interrogation but threats, duress in any form, physical violence or promises of immunity or mitigation of punishment should be scrupulously avoided.

That order was in effect from that time on, during the entire investigation of the case.

Senator BALDWIN. Do you have the date of that order?

Colonel RAYMOND. February 7, 1946. That was shortly after Major Fanton came to Schwabisch Hall and he was the commanding officer who issued that, and it was after that period, if I am not mistaken, when most of the statements were obtained.

In fact, I don't recall offhand that any statement that was used in evidence was obtained before that date, although there may have been one or two; I don't know.

Senator McCARTHY. In that connection——

Colonel RAYMOND. Pardon me.

Senator BALDWIN. Let me pursue that point further.

What evidence was there, as you found from this investigation or from the affidavits, of any physical abuse or intimidation? I mean by that, beating or cuffing, or withholding of rations or threats of any kind.

Colonel RAYMOND. We asked all of the witnesses, pressed them on that point. Thon and Kirchbaum both denied it in every detail. On the other hand, the affidavits that we have and with which we were confronted at the start of the case, and the petition filed by Mr. Everett, both alleged serious physical mistreatment.

I cannot speak for the other members of the Board as to their personal reaction; but I know I felt that we got much nearer to the truth in the testimony of Mr. Steiner, who was not accused of any mistreatment, whose knowledge admittedly was very limited, but he did have some knowledge because he had been in on some interrogation as interpreter or translator or whatever you call them, and if I may do so, I will read one or two questions and answers from his testimony.

Senator BALDWIN. Yes; if you would like to.

Colonel RAYMOND. This is from testimony before the Administration of Justice Review Board, taken on July 26, 1948, Mr. Steiner testifying, questions 26, 27, and 28. The first two questions were by me:

Did you ever witness any physical violence being used on these suspects by the interrogators or by their translator?

Answer. Real physical violence, I never witnessed it myself; probably pushing, something like that. I wouldn't deny that. I have seen it two or three times. I don't remember exactly who did it but I mean what you would probably call beaten up, I personally never witnessed anything of that kind.

Question. When you say "pushing" will you tell us a little bit more what you mean?

Answer. That is where I say a man stands there and then probably after 2 or 3 hours of interrogation in the face of real evidence the man still defies, he would probably be pushed against the wall. That is all I remember.

Question (by Colonel Harbaugh). How hard was he pushed against the wall?

Answer. How hard can you push with your open hand a man who stands here and force him up to the wall? Not very hard. Those men I know are rough guys. All of the interrogators are men like you and me.

Now, I personally have no doubt that these interrogators got exasperated with these fellows being confronted by evidence, and still refusing to talk, and I believe that incidents similar to that occurred from time to time, quite possibly pushing them up against the wall, possibly one or two other things a little more exaggerated, but nothing like the story these people tell.

May I now take the case of Goldschmidt? Goldschmidt testified at the actual trial before the military court.

Senator BALDWIN. Is Goldschmidt one of the interrogators?

Colonel RAYMOND. No; Goldschmidt is one of the defendants, one of the Germans who was accused, and he has been sentenced to life imprisonment.

He testified at the trial, took the stand and made absolutely no claim of improper treatment by any of the interrogators. That was in April or May of 1946.

On February 11, 1948, he executed an affidavit, one of the batch that was before our Board. In that affidavit he says that on February 12, 1946, that he was kicked and beaten in the face, and after a hood was put over his head.

I was taken to a cell opposite where I was beaten in the abdomen, fell to the ground and screamed, and thereafter was made to stand between two objects which were placed together strongly and beaten several times over the head with a hard object. Two days later I was kicked twice in my lower body and later was beaten in the face and kicked in the leg.

Now, I just don't believe anything of that sort ever occurred. I think that sort of physical abuse, if there was any, or physical handling of these people, was the type of thing that Steiner testified to, when these interrogators, in the heat of the moment, after long hours of interrogation, got pretty exasperated and took hold of a man and said, "Now, damn you, you come through and talk." Something of that sort.

Senator BALDWIN. Senator Hunt, do you have any questions on this point?

Senator HUNT. I have some, when the colonel has completed his testimony; but, I don't care to interrupt now.

Senator BALDWIN. Do you have any, Senator?

Senator McCARTHY. You think they didn't get exasperated enough to really get rough, just shoved him against the wall, is that your thought?

Colonel RAYMOND. It goes against all reason, it seems to me, for a man trying to get a man to talk, to take the kind of measures that this fellow Goldschmidt alleges.

Senator McCARTHY. I might say that you talk about what tough fellows these SS troopers were. One of the reasons why this gets rather close to me, when we were out in the Pacific, we used to pick up Jap diaries, it was common practice for the Japanese soldiers to keep diaries, and in it he told exactly what happened to your men who were held by the Japs, who used to try the same thing, and there were threats of running tractors over people, and we thought our marines were pretty tough in this war, and through reading these diaries and things, we found out what had happened, and what the Japs did to our boys and we were very eager to pick up the Japs responsible for that. That is one of the reasons I feel we should be very careful that they don't do the same thing. It is true, if you are trying to get a confession from someone, questioning him for a couple of hours, you might get exasperated and shove him around. What we want to know is the extent of that shoving around.

In your affidavit here, your report differs very materially from what you just told. You say:

Corroborating the claims of the various accused as to physical violence—

this is on page 5—

there is the affidavit of Dr. Knorr, the dentist at Schwabisch Hall, that he treated 15 or 20 of the suspects for injuries to the mouth and jaw, apparently inflicted by blows.

Did you feel that their mouths were injured, their teeth were knocked out by being gently shoved against the wall? This is your own report.

Colonel RAYMOND. I understand that. That is what the affidavit said. I just don't believe that any physical violence by these interrogators went to any such extent.

Senator McCARTHY. You have the dentist's affidavit. The dentist was over there. Didn't you think it was important that you call in that dentist to find out the name of the prisoner that had his teeth knocked out, or prisoners, keeping in mind that prior to that, the Simpson-Van Roden report stated that practically every defendant that came into court was missing some teeth, that is in the 139 death cases they checked on.

Colonel RAYMOND. Senator, we discussed interviewing this dentist. We had a hard time locating him. This affidavit was received only a matter of days, I would say, before this report was finally completed.

Senator McCARTHY. You were not in any great hurry. You were supposed to give General Clay an honest report..

Colonel RAYMOND. I understand, but we checked on him and finally located him and found he was sick, he had just had a leg amputated and couldn't be interviewed.

Senator McCARTHY. You have no reason to believe his affidavit was not true, have you?

Colonel RAYMOND. I think that many of the statements in all the affidavits submitted by these Germans are grossly exaggerated.

Senator McCARTHY. Don't you think it was your job, Colonel, don't you think it was your job to run these matters down? You see, a half investigation is worse than no investigation at all. You have the affidavit of a dentist, the man who treated them and said he treated 15 having their teeth kicked out; a prisoner of war who worked in the hospital said he observed a number of prisoners—your own report says it—treated for bruises and you just dismiss this by saying the camp commander said he didn't personally see any of these things, but he had heard a lot of rumors about them. That doesn't give us the complete picture. From that, we don't know what happened.

Colonel RAYMOND. I don't think that paragraph is intended to be argumentative—simply stating the type of thing that we have before us from people who are not members of the prosecution or defense.

Senator McCARTHY. How do you think General Clay can determine from this what happened to those men? You say you have a dentist's affidavit that 15 of them had their teeth kicked out?

Colonel RAYMOND. Well, I don't know that you can determine exactly what happened to any of these people without getting everybody who was connected with the case, and bringing them in and examining them. That was not possible for us to do.

Senator McCARTHY. Let me ask you this: It is alleged that representatives of the prosecution threatened to harm relatives of the ac-

cused if they did not confess, such as deprivation of ration cards—in other words, unless a man signed a confession, his family would starve. There was, you say, evidence that this did occur. The Board found that it is probable in certain instances such threats may have been made, but the Board is unable to identify the particular instances involved.

Frankly, if I had appointed you to conduct an investigation and you brought that back to me and said "Yes; we feel that they did threaten to starve the relatives of the accused if he didn't sign a confession, we think it happened, but we can't identify the instances involved," I would send you back to find out.

Wouldn't you do that? In other words, the thing is completely incomplete.

You say "Sure, these things occurred, but we are not going to go further into it."

Colonel RAYMOND. You see the difficulty in it, Senator; but, quite a number of the affidavits submitted by the Germans made that allegation.

The nearest thing we had to corroboration was again the testimony of Steiner, who said that he recalled one incident where some such—there was some such talk.

Senator McCARTHY. In other words, where they told the accused, unless he signed a confession—

Colonel RAYMOND. Therefore, he couldn't identify the fellow it was. Now, I believe that something of the sort did occur, at least in one case, and perhaps in more than one; but he couldn't identify the person and here you have got a half a dozen, or maybe 20 people claiming it. I don't know.

Senator McCARTHY. Well, you know—

Colonel RAYMOND. I don't know how you can answer that.

Senator McCARTHY. One of the things that concerns me is the name of the officer in the Army who has threatened to starve the families of an accused if the accused didn't sign the confession. I would like to know his name, when he comes up for promotion. I imagine you and I both consider that entirely improper; don't we?

Colonel RAYMOND. Yes, sir.

Senator McCARTHY. It is treatment we certainly wouldn't want to get. You wouldn't want to be told that unless you signed a confession, your family would starve?

Colonel RAYMOND. I quite agree with you, but when the witness won't give it to you, what can you do?

Senator McCARTHY. It further appears that during the trial certain members of the prosecution staff invited the relatives of the accused to a party at the officers' club.

I assume you mean the wives of the accused?

Colonel RAYMOND. That allegation was made in the rather broad language in Mr. Everett's petition, and consequently we asked every witness what he knew about it. The only witness who knew anything about it was Harry Thon, and he told his story as to what happened.

Now, I haven't looked at that recently, but my recollection is, I don't know whether you care to go into it, but it was after the evidence was in, and the wives were there, wives of some of these accused were there at the trial, had been attending the session, and Harry Thon said that he, and I think he was the only one of the prosecution staff, but

he and some other people had taken these people up to the officers' club because they, the wives, apparently didn't have any place to go, and he wanted to take them up there and they spent an evening up at the club, nothing further than that happened, as far as we could determine from any witness that appeared before us.

Senator McCARTHY. Did you think that was proper or not?

Colonel RAYMOND. I see nothing proper in that.

Senator McCARTHY. Do you know that Colonel Ellis testified that he thought it was so improper that they were disciplined and one was sent back to the States? Did you check into that matter?

Colonel RAYMOND. When you say "improper," as far as affecting the justice and propriety of the proceedings, I see nothing improper. As to Colonel Ellis, if it was against his orders, I don't blame him for disciplining them.

Senator McCARTHY. In other words, you think if you are accused of some crime, you are in a foreign nation; your wife is there watching the trial; you think there is nothing improper, let's say you are in Russia—nothing improper about the Russian officers taking your wife over to the officers' club, while you are being tried for your life, and serve her refreshments?

Colonel RAYMOND. That was after all the evidence was in.

Senator McCARTHY. You don't say so in your statement.

Colonel RAYMOND. The trial had not been concluded, because judgment had not been pronounced, as I understand—that in my recollection of the testimony. Everything was in, by Harry Thon's testimony.

Senator McCARTHY. One final question: Am I correct in this, referring to your report: No. 1, you found evidence, and you found it probably, using your language, that in certain instances threats to take the ration cards from the family were used to get a man to sign a confession, No. 1; No. 2, that you had affidavits from the dentist that he treated 15 or 20 of the suspects for injuries to the mouth and jaws, apparently inflicted by blows; and, taking your summary, that there was physical force used but not systematically used in order to obtain statements; and that the conditions that were created at the prison, and the methods employed in interrogation did have a psychological effect for the purpose of making the defendants amenable to giving statements—is that pretty much a summary of your findings in regard to the charges of abuse and improper conduct, plus mock trials?

Colonel RAYMOND. Well, those statements are in the report. There is a lot more in this—

Senator McCARTHY. No further questions, Mr. Chairman.

Senator BALDWIN. That statement with reference to the teeth made by this German dentist, Senator McCarthy made some reference to that being in some report. Do you know where that is?

Colonel RAYMOND. The statement of the dentist? Yes, sir.

Senator McCARTHY. I wonder if we could get that affidavit.

Colonel RAYMOND. Yes, sir, I think it is in this batch.

It is exhibit 39, attached to our report, Dr. Knorr.

Senator BALDWIN (reading):

In my capacity as official doctor of the former prison at Schwabisch Hall, I came there twice a week, generally on Tuesday and Thursday, to attend also to the dental needs of the interned people. These duties several times involved the treatment of members of the Waffen-SS, all of them very young men, who

were to be heard in the Malmedy trial. Unfortunately, I cannot give any names, as it was forbidden to ask for names or other particulars. There may have been about 15 or 20 patients who had to be treated for injuries of the mouth and the jaw. Maltreatments by blows could be clearly traced with nearly all of them. Once when I asked a young man how he was, he replied: "What can you expect if you are beaten so much almost daily, at any rate on the occasion of every hearing; look at my head." And indeed, he was beaten blue all over the head which was bloodshot. Moreover I can definitely remember 2 cases in the one of which 1 tooth, and in the other one 4 teeth were knocked out of the upper jaw quite recently. Besides, there was one presented to me—a man with a rupture of the lower jaw which I was allowed to put in a provisional splint only because he was transferred to an American hospital at once.

It is known to me that people residing in the vicinity of the prison could definitely hear the cries of pain of the tortured men. That is why there was much agitation and indignation among the population.

And it is signed by Dr. Knorr.

What investigation did you make of that charge, Colonel?

Colonel RAYMOND. We were unable to check with any of the American doctors because none of them were still in the European theater, and we only had very vague information as to who they were, and practically no information as to where they were.

Senator BALDWIN. Did you discuss these allegations with the men whom you did interrogate?

Colonel RAYMOND. Yes, sir, yes, indeed. We asked all the people we interrogated about physical blows. We picked up from the affidavits specific statements, where there was anything specific, and in every case the people that we were questioning said they knew nothing about it, nothing of the sort ever occurred, as far as they were concerned.

Senator BALDWIN. Did you ask them whether or not they had ever seen any injuries of these alleged kinds on the men involved?

Colonel RAYMOND. We asked, inquired at some length.

I might refer, in that connection, to the testimony of Mr. Narvid, who was the counsel for the defendants, that we examined, and whose statement seemed to be of some significance.

Senator McCARTHY. Let me ask—Mr. Narvid was in the Army at the time?

Colonel RAYMOND. No—well, he was then a civilian working with the military government.

Senator McCARTHY. Working with the military government?

Colonel RAYMOND. I believe he had been an officer at the time of the trial, but he was a civilian working with the military government.

Senator McCARTHY. And was Colonel Ellis at that time his superior officer, boss at that time?

Colonel RAYMOND. No, this was defense counsel, Mr. Everett had been his superior.

Senator McCARTHY. Who was his boss at the time he was interrogated by you, working for the Army—who was his superior, immediate superior?

Colonel RAYMOND. Maybe I can tell, if I look and see what he says. I don't know. I think—now, I'll have to refresh my recollection on that.

He was then, at the time he testified, employed as Director of Military Government for Unter-Franklin, in Wurzburg, so that his chief would be Governor Von Waggoner, of Bavaria.

Now, Narvid said, regarding this matter of physical violence—you see, he was defense counsel:

Question. Were there any reports you had of violence such as would leave a bruise or scar of any kind?

Answer. I inquired and asked about it, and none of the accused that I defended were able to show specific evidence of scars or bruises. Of course they all claimed that the duress or mistreatment occurred about 6 months or more before the trial.

You can start reading with question 738 of his testimony.

Senator McCARTHY. Do you know when he came in the case, how long after the alleged mistreatment?

Colonel RAYMOND. He was appointed counsel, I believe, at the same time Mr. Everett was.

Senator McCARTHY. How long after the alleged mistreatment?

Colonel RAYMOND. He tells that right here, in his testimony:

Of course they all claimed that duress and mistreatment occurred about 6 months or more before the trial.

Senator BALDWIN. It might be wise at this point in the record, to put the date of Dr. Knorr's statement in. It was made apparently on the first of June, 1948, at least that is the certificate of the notary.

Senator McCARTHY. Does it refer to the time of the treatment?

Senator BALDWIN. No, this is a sworn statement. The only date I find is June 1, 1948. That is the only date that is on this statement, so it doesn't appear from Dr. Knorr's statement when he observed these at all. I mean, I had just assumed that he observed them during the time that he was the doctor there, but it doesn't appear just when he was a doctor.

Do you think that is an important date we ought to find out?

Senator McCARTHY. That would be, I think.

Senator BALDWIN. The date on the head of Dr. Knorr's statement is this:

Dentist Dr. Knorr, Schwabisch Hall, May 29, 1948.

That is apparently the date that the affidavit was drawn up, and was sworn to on the first of June, 1948.

Excuse me, Colonel; go ahead.

Colonel RAYMOND. Narvid made one or two more statements about this matter of mistreatment. Question 741:

Didn't you say that of the 40 men you defended none complained of having been beaten or otherwise mistreated?

Answer. Most claimed they were beaten, but none of them could show evidence of bruises or marks. They say it occurred 6 months before the trial, and whatever they had had vanished, but the majority complained of mistreatment.

Question. But couldn't show any visible signs?

Answer. That is right.

Now, question by Colonel Raymond:

Six months before the trial was before they got to Schwabisch Hall?

Answer. Yes, sir.

If that is true, the mistreatment that they were talking about didn't occur in connection with their interrogation which took place at Schwabisch Hall.

Senator BALDWIN. I want to ask you this question, it pertains to all the mistreatment that is complained of of every kind, because I want to go into some of the other details with you, further—later.

Did you examine the record of the trial to determine whether or not these men who complained of mistreatment at Schwabisch Hall, while they were held as prisoners there, and while they were being interrogated, while the prosecution was being prepared—did any of those men testify on their trial as to mistreatment or abuses or anything of that kind? Did they make any such claim, and if they did, what was the claim, if you know?

Colonel RAYMOND. We did go into that. We didn't personally have the trial record before us. It is quite an extensive record and we saw no point in cumbering up the report, but we asked Colonel Costello, who was thoroughly familiar with it, to get that information for us.

Senator BALDWIN. Was he one of the prosecutors?

Colonel RAYMOND. No, sir, he was not. He had no connection with the trial whatsoever, but he had worked on the record, and in another connection, and his statement is, I think, the very last of the exhibits connected to our report, 41, I believe it is, and what we found was recited in paragraph 28 of our report, which I might read:

It is to be noted that the chief counsel for the defense, shortly after he was appointed and before the trial, submitted forms to be filled out by each of the accused. These forms called for information as to any mistreatment that they had suffered. Presumably these forms were completed and in the hands of the chief defense counsel prior to the trial. Nevertheless only 9 of the 73 defendants who were convicted took the stand in their own behalf, and of these 9, only 3, Motzheim, Sievers, and Tomhardt, then claimed any physical mistreatment in connection with their interrogation.

Senator BALDWIN. Let me stop you there, colonel, to get my mind straightened out on this thing.

When you say these 73 that you referred to in paragraph 28—are these 73 in connection with the Malmedy matter?

Colonel RAYMOND. All Malmedy defendants.

Senator BALDWIN. And you say of those 73, only 9 took the stand in their own behalf?

Colonel RAYMOND. That is right.

Senator BALDWIN. Go ahead, from there.

Colonel RAYMOND (reading):

In January or February 1948, when these same individuals prepared affidavits they advanced new and greatly expanded claims of mistreatment. For example, Goldschmidt, testifying at the trial, made no claim whatsoever that he was subjected to duress or improper treatment. Yet, in his affidavit of February 11, 1948, he claims that on February 12, 1946, he was "kicked and beaten in the face" and after a hood was put over his head "I was taken to a cell opposite where I was beaten in the abdomen, fell to the ground and screamed"; that thereafter he was made to stand between two objects which were pressed together strongly "and was beaten several times over the head with a hard object." Two days later "I was kicked twice in my lower body" and later "was beaten in the face and kicked in the legs." An example of a greatly elaborated claim of mistreatment being made for the first time long after the trial is the case of Motzheim. At the trial he mentioned beatings administered by Mr. Thon and Lieutenant Perl but without giving any details. In his affidavit of February 11, 1948, he stated "I was beaten by Mr. Harry Thon and Lieutenant Perl in the face, in the abdomen, and in the genitals." Later "Thon kept pushing my head against the wall of the cell and Lieutenant Perl kicked me in the genitals. * * * I was kept on being beaten until I collapsed." In his next interrogation he says the same methods were used, and he was hit in the face and in the abdomen and his interrogation "continued till late at night with constant beatings by Mr. Harry Thon and Lieutenant Perl." On his third interrogation he says "After a half hour, two United States guards appeared and beat me with their clubs when I was wearing the hood and when I lay on the ground kicked me with their feet. Then Mr. Thon and Lieutenant Perl continued the interrogation till noon by means of beatings and other mistreatments."

Certainly if any such actions had taken place it was within the knowledge of the defendant at the time of the trial and presumably within the knowledge of their counsel. No reason appears to explain the fact that the matter was not brought out at that time, or if brought out was not developed to the fullest extent.

I might say, in some qualification of that which appears further over in our report, that there was some statement from Lieutenant Narvid as to why they did not put these men on the stand. There was no explanation as to why, having put them on the stand, they didn't bring out to the fullest extent this alleged mistreatment, if they knew of it; and I know of no reason why they could not have put these people on the stand when the statements were offered, and confined their testimony simply to the question of admissibility of the statements and bringing out any mistreatment that was alleged.

Senator BALDWIN. Of course, it appears from this report that of these 73, only 9 took the stand. That may have been because they themselves didn't want to go on the stand, or because they were advised by defense counsel. You don't know. That is within the realm of the professional and confidential advice of counsel.

Colonel RAYMOND. Well, Narvid's testimony is the only thing we have on that. He did say—

Senator McCARTHY. Everett?

Colonel RAYMOND. The only thing we had was Narvid's statement.

Senator BALDWIN. What did he say?

Colonel RAYMOND. He said that the defendants wanted to take the stand, not on this point, but to tell their story about the massacre, and that they advised them against it, counsel advised against it, but no explanation was given as to why they didn't bring out these alleged mistreatments, except the fact that there was no such claim made at any time. That is the only thing I can infer, and Narvid's testimony which I read a moment ago, in which he said that they didn't make any such claim at that time, seems to me bears that out.

Senator McCARTHY. Mr. Chairman, I wonder if the colonel would go into a little more detail as to the complaints, where the defendants were not put on the stand? There were serious charges made in connection with that, which I am sure you are aware of.

Colonel RAYMOND. Two reasons were given. Well, there was quite a little in our report about that. I might read what we found on that.

Senator McCARTHY. What page of the report are you reading from now?

Colonel RAYMOND. Paragraph 37, the paging is different. [Reading:]

A second point not to be overlooked is the fact that only 9 of the 73 accused who were convicted took the stand. Whatever may be said about the method used in obtaining statements, had the defendants given completely false statements in their signed confessions it is difficult to understand why they did not want to take the stand and repudiate them.

Senator McCARTHY. May I interrupt?

Colonel RAYMOND. Yes.

Senator McCARTHY. Are you aware of the claim made by the chief defense counsel, by Mr. Everett, as to the situation existing as to why they were denied to take the stand? Why the treatment they got on the stand—

Colonel RAYMOND. Well, I think you will find that we deal with that.

Senator McCARTHY. Not covering whether the claim was true or not, but wondering whether you were aware of the situation as claimed by Mr. Everett; apparently, from reading this, you are not.

Colonel RAYMOND. I think it comes out in this next section I was going to read. If it does not come out fully, I will be glad to bring it out by going into it further.

Senator McCARTHY. All right.

Colonel RAYMOND (reading):

The witness Narvid, the only member of the defense staff who testified before the Board, stated that the defense staff felt that a prima facie case had not been made by the prosecution, but he further stated:

"We felt that the prosecution still had a considerable amount of other evidence in the formal statements involving these accused which they were utilizing for rebuttal, or intended to use for rebuttal. * * * They gave the impression that they were hoping the accused would take the stand so that they could 'really give it to him' * * * They would involve themselves more than they were already involved. Colonel Everett, chief defense counsel, is reported to have stated that if he put the accused on the stand they would probably hang themselves. Lieutenant Colonel Ellis, in his affidavit, states that during the trial Colonel Everett was concerned about the unfavorable showing the accused were making on the court by their testimony, and discussed the matter with Lieutenant Colonel Ellis who told him that if he were acting for the defense and believed the accused were guilty, he would not put them on the stand. Thereafter only three more of the accused took the stand. Although the findings—

The rest of it is merely the conclusion of the Board.

Senator BALDWIN. Go ahead.

Colonel RAYMOND (reading):

Although the findings in this paragraph have only a remote bearing on the issues before the Board, there was testimony on this point which was felt important enough to report. It does tend to discredit the idea advanced in the petition for habeas corpus that the methods used by the interrogators were so severe as to cause the accused to sign false confessions.

Senator BALDWIN. Your board examined the whole matter of the trial and the treatment of the prisoners to determine whether or not these sentences should be carried out, wasn't that correct?

Colonel RAYMOND. It was determined, as far as we could, the truth of the allegations in the petition for habeas corpus.

Senator BALDWIN. Yes; and in connection with that, did you go into the question of whether or not these 73 Germans accused in the Malmedy matter had adequate and competent counsel to defend them in the trial? What is the situation there, because I think that is important, if we ever have a trial like that again, and God grant we don't have to, but if we ever do, I think we ought to certainly see to it that the men charged with serious offenses such as these are adequately and competently defended. What is the situation you found with reference to that?

Colonel RAYMOND. The defense staff included seven American lawyers, headed by Colonel Everett, two of whom had command of the German language. There was no limit placed on the number of German counsel the defense could employ.

Senator BALDWIN. Did they employ German counsel?

Colonel RAYMOND. Actually, about a half a dozen German defense counsel were used, at least one of whom spoke fluent English. The defense were permitted complete access to their clients. Every defense counsel had a secretary, and in addition an interpreter, and other interpreters were available if needed. American vehicles and

personnel were made available to counsel to go out and look for witnesses and evidence. So far as the defense went, it was open to these Germans to hire any defense counsel they wanted. They would have been accepted and they did actually have some Germans there, a half dozen or so, and in addition to the appointed defense staff.

Senator BALDWIN. So what was the conclusion of your board on that, then?

Colonel RAYMOND. We concluded that there was no unfairness in that aspect of the case.

Senator BALDWIN. Senator Hunt, do you have any questions on these points thus far?

Senator HUNT. Might I ask the chairman, what are your intentions—

Senator BALDWIN. I thought, Senator, that I would ask permission of the Senate to resume at 1:30, so we could continue for at least 2½ hours this afternoon, if that meets with your convenience. We have one witness here particularly who has got to leave on a train at 5 o'clock, and I would like to get to him, get his testimony down so he won't have to come again—and, what is your situation, Colonel? Can you give us some time this afternoon?

Colonel RAYMOND. I am at your disposal, Senator, and if you prefer—

The CHAIRMAN. Would you—

Senator HUNT. I was just going to say, if the colonel was available this afternoon, then I should suggest that we adjourn now. If not, my questions will only take a few minutes. I don't want the colonel to have to come back again.

Senator BALDWIN. Would you have time now?

Senator HUNT. I think so.

Colonel, I am going to ask you some matters of opinion. Answer them or not, as you like.

In your first conclusion, that there was a limited use of mock trials, do you think the terrific crimes that had been committed—that mock trials were justified in order to secure evidence?

Colonel RAYMOND. Well, as I said before, I think the real vice in mock trials was the purported establishment of the relationship of attorney and client, which was then later used in some cases, not all, but in some cases to try to get the man to make a statement to be used against him.

To that extent, I think it was improper, even in this case.

Senator HUNT. In your second conclusion, that there was a general use of the practice of persuading underlings to talk, by telling them the prosecution wanted to get their superiors, and was not so much interested in them, do you think anything was wrong with that?

Colonel RAYMOND. No; not in that particular statement, as you read it.

Senator HUNT. In your third conclusion that physical force was not systematically applied in order to obtain statements, but that undoubtedly in the heat of the moment, on occasions, interrogators did use some physical force on the suspect—do you think that there was any great difference in the physical force that might have been used there, and the physical force as we know it is used, in some of our local law-enforcement agencies today?

Colonel RAYMOND. No; I do not.

Senator HUNT. I am going to skip this, it is not important.

In (e) you say:

That the practices referred to in (a), (b), (c), and (d) above, in certain instances exceeded the bounds of propriety but the board has been unable to identify such cases.

In other words, you are assuming there, or you are implying, but you were not able to definitely fix the responsibility?

Colonel RAYMOND. That is perfectly true.

Senator HUNT. In (f):

That there was a general use of other ruses, stratagems, stool pigeons, and similar practices justified by the difficulty of "cracking the case."

Is that justified, in your conclusion?

Colonel RAYMOND. That is our conclusion, and I think I see nothing improper in the "other ruses and stratagems" that were employed.

Senator HUNT. Mr. Chairman, I think that is all the questions I have.

Senator BALDWIN. Thank you, Senator.

I think now, we had better adjourn or recess until 1:30.

Senator McCARTHY. Before you recess, Mr. Chairman, I have got a letter here I would like to read into the record, if I may, unless the Chair would prefer that I just insert it in the record.

Senator BALDWIN. Whatever you like.

Senator McCARTHY. I think in fairness to the chairman of the subcommittee, this should be read into the record.

It is a letter to Hon. Raymond E. Baldwin, United States Senate, Washington, D. C.

APRIL 21, 1949.

DEAR SENATOR BALDWIN: After yesterday's hearing on the Malmedy cases, I read some accounts of statements I made which would appear to do you a great injustice. None of the accounts I read misquoted me, but I fear that statements I made with regard to the attitude of the Armed Services Committee in this case may have very easily been misinterpreted to mean that I was critical of your personal handling of this matter.

As you know, our Expenditures Investigating Committee became concerned with reports of the Van Roden-Simpson committee and the Army committee, regarding the methods used by the American Army staff in obtaining confessions, convictions, etc., in the war-crimes cases. When the Armed Services Committee suddenly appointed your subcommittee to investigate this matter after our special investigating committee of the Expenditures Committee had announced its intention of conducting this investigation, I frankly was very much disturbed by what I thought was an attempt to head off a complete investigation by our committee and provide a whitewash of the Army's prosecution staff.

However, I am convinced that at least since you have taken over, this situation does not exist and the efforts of the committee will be directed toward assembling and clearly presenting all of the facts. I want you to know that I have no criticism whatsoever of your handling of this investigation. I think you have been eminently fair and certainly have accorded every opportunity to the Expenditures Committee and the Judiciary Committee to participate in this investigation.

I might add that I think this is one of the most important investigations which the Senate has conducted for some years. I think it is doubly important in view of the billions of dollars we are spending in Europe to create good will toward this Nation and the amount of money and effort we are expending to sell to the peoples of the world democracy and American concepts of justice.

I thought, in fairness to the chairman, that that letter should be made a part of the record, because I fear that the comments I made regarding the authority of the Armed Services Committee, and its attitude, have been misinterpreted. I was not misquoted in any way; I think there

was in some quarters misinterpretation to mean personal criticism of yourself.

Senator BALDWIN. If I may say, for the benefit of the record, that the chairman of the subcommittee appreciates the Senator's letter and statement, and I'm sure the whole subcommittee does, and the whole Armed Services Committee does.

We seek here only to find the truth and the light, and to benefit by our experience, so that if we ever have to go through any such circumstance and procedure again—God grant we don't—we will better know how to deal with them, in the interest of justice and fairness.

Senator McCARTHY. I would like to make a suggestion. Apparently this is going to be a very lengthy hearing and consume many days' time. I think that, and I realize I am sitting here as an adviser, not as a part of the subcommittee, I know the chairman is open-minded on anything that may expedite matters and make the hearing more profitable. I do think if we would bring in some of the men like Van Roden or Simpson, some of the court reporters, and have them get their stories in the record so that when we call, the prosecution witnesses will have something to question them on, I believe we will progress a lot more rapidly and efficiently.

I think it is a mistake to spend so much time putting in the prosecution's defense, in effect, before we know what—I don't know all the claims Judge Van Roden or Judge Simpson are going to make, and I can't intelligently question many of the witnesses until I know what this apparently competent body have found, what their statements will be. If we hear all the prosecution staff, and then bring in Van Roden and Simpson, I know we will want to call back all the prosecution witnesses.

As I say, I am just offering that as a suggestion.

Senator BALDWIN. I may say the reason we didn't start off with the two you mentioned, who will be here later to testify, is because they couldn't come. We tried to proceed in this whole hearing, on the basis of taking the reports and affidavits and putting them in evidence, as to the charges that were made here, and then to give these other people an opportunity to appear and be heard with reference to the charges, and the colonel, this morning, very consciously tried to direct his testimony in that way, to what the charges were in the affidavit and then to bring out from the hearings and from his study of it, the study of his commission, what they found with reference to those particular charges.

Senator McCARTHY. I may state, Mr. Chairman, that the affidavits, as far as I am concerned, many of them have no value whatsoever. I have sat as a judge in many criminal cases, and I am familiar with the affidavits of convicted persons—

Senator BALDWIN. As a lawyer, you know they lack many essential things in the determination of justice, in an American court, and one is that these witnesses never appeared, have never been confronted by those they are charging with serious offenses, have never been subjected to cross-examination and those two latter things are considered, in American jurisprudence, vitally essential in the determination of a judgment or a verdict.

It may be that before this is over, we will want to call some of those men. I think our first effort will be to explore the situation and find

whether or not there is sufficient corroboration of their affidavits to warrant going into the thing further.

Senator McCARTHY. I am afraid the chairman didn't get my point.

Senator BALDWIN. I think, so far as we are concerned, as a matter of policy, since there have been none of these executions carried into effect it certainly indicates that the military government in Germany and the military command in Germany has been very careful to see to it that no executions have been carried out, no death sentences have been carried out until all of the facts are determined here.

Senator McCARTHY. I don't think the chairman got my thought at all. We have before us a great mass of affidavits, many completely worthless, many, as I say, typical affidavits which an accused will sign after convicted and sentenced. However, we have as you know I think, a very competent committee of two outstanding judges who went over and made a very thorough investigation. Rather than our trying to interrogate the witnesses, based upon some affidavits which the Van Roden-Simpson committee may have found, I don't know of the basis, in fact I know it would be much easier for me and I think for the chairman, if we first had the story of the disinterested people, and we know that the prosecution is very interested in that.

Senator BALDWIN. May I say that we have gotten an answer to a couple of our letters, and Judge Van Roden and Judge Simpson will be witnesses next Friday, so we are going to get their testimony then.

I will ask the staff to clear the room so that we can leave our papers right here.

(Whereupon, at 12:15 p. m., the committee stood in recess until 1:30 p. m. of that same day.)

AFTERNOON SESSION

(Following the taking of a luncheon recess, the hearing in the above-entitled matter was resumed at 1:30 p. m.)

Senator BALDWIN. The meeting will be in order. Will the doorman close the door.

Senator McCARTHY. Mr. Chairman, before you call any witnesses there is something that puzzles me very much about these cases and I thought one of these gentlemen might possibly have the answer.

We were meting out the death sentences on the theory that the shooting of those American boys called for the death penalty—which is right. However, I find on going over the case that the generals who ordered the shooting—the generals who sent the boys out and said, "I want you to kill all prisoners," got either 10 or 15 years, I forget which, and the privates who carried out the orders are being hung. I am just wondering why a general who orders a private to do something which we find warrants a death penalty is let off with such a light sentence, when the private who carries out the orders assigned him under penalty of court martial if he would not perform them, is to be hung. It seems to me if the private who carries out the orders is to be hung, the general should get the same treatment, if not worse. Do you get my thought? I just wondered if any of the witnesses here can tell us the why of such a thing.

Senator BALDWIN. I do not know whether that is so in that particular case.

Senator McCARTHY. That is true, isn't it?

Colonel ELLIS. That is true. General Dietrich, the commander of the 6th S. S. Panzer Army, was sentenced to life imprisonment; his chief of staff, who was Kramer, 10 years; and the commander of the corps—that is, of the 1st S. S. Panzer Corps, Priess, 20 years.

Senator McCARTHY. Could we recall Colonel Ellis for just a minute?

Senator BALDWIN. Colonel Ellis is going to be here right along and we have two gentlemen here whom we are taking away from their jobs. They are working people and they have to be at work at a certain time and quit at a certain time. So if you could defer that—

Senator McCARTHY. Could I ask the witness who just left the stand one question so that it follows through with the balance of his testimony, if the chairman does not mind?

Senator BALDWIN. Go ahead. He is going to be recalled.

Senator McCARTHY. This forenoon you made the statement that during your investigation of this matter you felt that there was nothing definite proven in regard to the American prosecution staff taking out the wives of the accused, and that you thought there was nothing wrong about it.

I would like to refresh your memory and ask if this is correct.

This is from the testimony of Thon, taken before you, with you personally presiding. Starting out with an answer:

ANSWER. I was there. I made a mistake and I know it blackened my name and I feel bad about it.

QUESTION. There has been some discipline?

ANSWER. No; Colonel—

and I do not have the name of the colonel filled in—

was very nice about it to me. However, I feel bad about it every time I hear it.

Then there is further questioning:

I knew some of the accused and the wives asked that we bring some cigarettes in to the accused, which happened quite often during the trial. Well, drinking went on and we took them to the Officers' Club. There were four of them.

QUESTION. Were they the wives?

ANSWER. That is right. We took them to the Club one Saturday evening.

QUESTION. How did they happen to be there?

ANSWER. They came and asked us to deliver some cigarettes and cigars to some of the accused.

And going on with it: You are aware of the situation? The wives came in and asked the prosecution staff to get them to hand some cigarettes to the accused—

Colonel RAYMOND. That is—

Senator McCARTHY. And they took the wives down on different occasions to the Officers' Club and furnished them with liquor?

Colonel RAYMOND. They took them down there one night, I believe.

Senator McCARTHY. One night only?

Colonel RAYMOND. I think so. That is all.

Senator BALDWIN. Mr. Ahrens, will you stand and raise your right hand.

Do you solemnly swear that the testimony you are going to give in this matter now in question shall be the truth, the whole truth, and nothing but the truth to the best of your knowledge, information, and belief, so help you God?

Mr. AHRENS. I do.

TESTIMONY OF KENNETH F. AHRENS, OF ERIE, PA.

Senator BALDWIN. What is your full name?

Mr. AHRENS. Kenneth F. Ahrens.

Senator BALDWIN. Now, will you give us your address?

Mr. AHRENS. 241 East Fifth Street, Erie, Pa.

Senator BALDWIN. You are no longer in the armed forces?

Mr. AHRENS. No, I am not.

Senator BALDWIN. Where do you work?

Mr. AHRENS. I work in the G. E., in Erie, Pa.

Senator BALDWIN. In Erie, Pa.?

Mr. AHRENS. Yes.

Senator BALDWIN. During the war were you in the armed forces?

Mr. AHRENS. I was.

Senator BALDWIN. What outfit were you with?

Mr. AHRENS. I was in the Two Hundred and Eighty-fifth Field Artillery Observation Battalion.

Senator BALDWIN. And were you in the so-called Battle of the Bulge?

Mr. AHRENS. I was.

Senator BALDWIN. And that was in December 1944?

Mr. AHRENS. That is right.

Senator BALDWIN. Can you relate to us what happened in connection with the Malmedy matter?

And may I preface any statement by saying that I feel that the committee needs this type of testimony from an eyewitness in order that we may have in the record the testimony of an eyewitness of what he did see and know about it, in order that we may compare that with some of the statements and confessions, to test whether or not there was something exacted in the confessions that did not occur.

Senator McCARTHY. May I make a statement, and I very reluctantly make this. In view of the fact that every member of the committee has agreed, both privately and publicly, that the Malmedy massacre was one of the most atrocious war crimes that was witnessed, and in view of the fact that we are all agreed that those who are guilty of perpetrating such an atrocity should be shot or hung, when apprehended, and that that is very gentle punishment for them. I might say that I seriously wonder why this committee is going about this task of trying to—instead of investigating the thing we are concerned with, and that is whether or not we have the right men, whether we are hanging the guilty or whether we are hanging the innocent—I just wonder why the chairman thinks that he must prove that there was a Malmedy massacre and that these young men were shot. There is no question about that.

I say that very reluctantly. On the face of it, this would appear to be an attempt to put those of us who feel this thing should be investigated into the position of appearing to defend the actions of those German storm troopers—which we don't.

It seems to me an attempt to again try to inflame the public and try to create the same situation in this committee which apparently existed over in Germany at the time of the trials, and get us away from looking at the cold facts of what our Army was doing, and trying to induce this committee to say that there was a tremendous crime, an atrocious crime, and some one must hang for it.

I say this reluctantly, but I think it is completely inexcusable.

I know I am sincerely interested in hearing the story of this young man—a young man who was patently very lucky to survive, a young man with an excellent war record—I am interested in hearing his story; but to present this at this time, during this type of investigation, I think it is just entirely improper.

That is all, Mr. Chairman.

Senator BALDWIN. Senator, may I say this: We all know there was a massacre at Malmédy, and it certainly is not the purpose of the committee to inflame anybody.

However, these confessions which, it is claimed, were obtained by threats and intimidation and other improper means, contained certain statements of what happened at Malmédy.

The only way we can ever determine that those statements are pure fiction and something that was made up by the prosecution, or by the investigators, and put before these defendants to sign, the only way we can determine whether or not there was something in those statements that was pure fiction, is to find out from an eyewitness what actually did happen.

I have not talked with this young man. I don't know what he is going to say about it. But certainly if he is going to testify to facts that also appear in these confessions, it would be at least some evidence, and I think very convincing evidence, that these confessions were not made up out of whole cloth if what these Germans may have said as having happened, or described as having happened at Malmédy, is corroborated by what men who were there and observed as eyewitnesses have observed, what some of our own troops have observed. That would give credence to the fact that after all these confessions did contain statements that were true. That is the only purpose in calling an eyewitness to the atrocity itself; and it is the only purpose that this committee has.

Senator McCARTHY. I might say, Mr. Chairman, in view of the fact that I happen not to be a member of this committee, and am, in effect, just a spectator, I certainly do not want to question the chairman's method of presenting it any further; and I am very interested in hearing this young man recount what I think we all agree is one of the most atrocious war crimes perpetrated in this period.

Senator BALDWIN. All right, sir.

Will you describe to us where you were, and how you came upon the scene, and, as briefly as you can, what happened, as you observed it?

Mr. AHRENS. Well, my entire company of approximately 150 men was sent out to a town by the name of St. Vith; that is in Belgium.

Senator BALDWIN. V-i-t-h?

Mr. AHRENS. That is right.

We had been up north at this particular time and they pulled us out of there and we were being sent on down to St. Vith, and we were traveling in convoy; I would say 40 or 50 trucks and jeeps.

Early in the afternoon of this particular day, we approached this crossroads above Malmédy and there was more or less of a straight stretch of road as you go through the crossroads. You hit a straight stretch of road for approximately a mile or two. And at that point, when we got out on that road, was the first we knew of a break-through at all, because we were trapped right in the middle of it, and our vehicles and men were pinned right down on the road from tank fire

and small arms fire, at which time I got out of my jeep and hit the side of the road until I kind of found out what was going on.

Senator BALDWIN. When you say "hit the side of the road," do you mean you got down on the road.

Mr. AHRENS. The road was more or less built up level with the ground, and I crawled out of my vehicle and went down more or less of a field outside the road, which practically all of the men did, because if we had stayed in the jeeps we would have been killed right there.

Senator BALDWIN. In other words, you mean by that, while traveling along the road you were suddenly subjected to terrific gunfire of all kinds?

Mr. AHRENS. That is right.

Senator BALDWIN. Go ahead and describe what happened after that.

Mr. AHRENS. At that time, not knowing—it was a complete surprise—not knowing what was going on, I made a break for some sort of a farmhouse across the road for reasons of shelter and so forth, and I laid there when I was captured. They kept us pinned down until we were captured.

Senator BALDWIN. Do you know how many were captured?

Mr. AHRENS. Well, my entire company, as I said before, was spread out along this road, and I would say all of them, pretty close to 150, were involved, plus some stray vehicles that had gone by or come by at the same time. I mean the road is a through road, and therefore our troops used it to get back and forth on, and naturally there would be different companies who had men going through there, and this also was some way back of the front line. It was probably 5 or 6 miles in the rear of what we thought was a front line, so I would say it was a complete surprise being cut down that fast, not knowing what it was.

So as I laid alongside of this farmhouse, we could see these tanks rolling up the road, and the German troops all spread out through the fields and woods. They more or less had been waiting for somebody to come through there because they were that far advanced through our lines at the time this happened.

So about the only thing we could do was give up. I mean we just could not fight against tank fire. We had nothing but small arms and they were using a lot more than that to keep us down. We had no choice but to throw our arms up and give up.

At that time I got up on the road with my hands up in the air, the same as the rest of the boys—I could see them lined out all the way down the road, the road that we came up on. And they proceeded to get us all in some sort of file and told us to walk back the way we came, which is what we did during the course of that time. During the course of that walk back toward the crossroads where we just passed, which was about half a mile above that, I seen numerous men that had already been killed and wounded. Some of them were laying alongside the road. Some of them were being beat up. Some of them were being pulled out of the woods—they had gotten into the woods and were hiding in there, trying to get away from this gunfire, naturally. And they marched us back down this road, in more or less of a column of men.

When they got us back to the crossroads, they searched us and took whatever they wanted to. I mean they went through our pockets and took watches, rings, and wallets—whatever we had on us.

Senator BALDWIN. Had they taken your arms away from you at that time?

Mr. AHRENS. We had already thrown our arms up. If we had not, they would have killed us at that time. We definitely had no choice of holding our arms, at the time I crawled up on the road. I was hiding down there at the farmhouse. I was alongside of the farmhouse. I threw my gun away down there. If I had come up on the road with my gun I would have been shot right there.

I take it that is what happened to the men I saw lying along the road. They still had their guns in their hands when they were caught.

So when they marched us back down to this crossroads, they, as I say, they searched us and pushed us all into a field which was a more or less enclosed cow pasture. I believe it belonged to a farm. There seemed to be a small farm right there, a couple of buildings off to the side of the field, and the field ran parallel with the road. It sat right alongside the road. The fence was no more than 10 or 15 feet away from us. So we all crawled, or we all were pushed down into the field, into more or less of a group.

By the time I had got down there, there was practically my entire company lined up in that field, and everything was in quite a turmoil, and there was a lot of our boys had been hurt then; I mean hit by shellfire and gunfire, and a few of our aid men were running around trying to help this man and that man, either tying up the arm or the leg or something; and stop the pain. And we stood there, not knowing just what was going to happen. I mean we had no idea what they were going to do with us, and I figured it was pretty close to Christmas and I was thinking about spending Christmas in some camp over in Germany.

I mean that is what I had in my mind at that time, a terrible thought, anyway.

But we stood there for about half an hour, I would say, and at the same time they had lined up probably two or three tanks on the edge of the field, up on the road, and there was probably five or six troops on each tank, and they mingled around up there on the road. They watched us, and they told us to keep our hands up in the air. Every time somebody would drop their hands down a bit we would get a gun pulled out and they would aim it a little bit and they would tell us to get our hands up in the air, and that is the way we stood there, not knowing what was going to happen.

But at the same time this one tank, that had finally straightened around up there in the road alongside of the field, one of their men stood up on top of it—it was either a half track or a tank, I am not sure what now.

Well, he pulled out his pistol while I was standing facing him, like all of the boys were; we were just massed in a group there, and he waved his gun in the air a little bit and aimed down into the front of our group.

Senator BALDWIN. How far were the tanks away from the road then?

Mr. AHRENS. Well, I would say 20 feet, 15 to 20 feet at the most, and he aimed down into our group and he fired once, and I noticed one of the boys drop; and he fired again and one more of the fellows dropped standing right alongside of me; and about that same time, well, I would say all hell broke loose. They just started opening up their machine guns and they really sprayed us.

Senator BALDWIN. You say the machine guns opened up?

Mr. AHRENS. Yes. They had guns. They mounted them right on their tanks. And at that particular time I turned round and fell flat on my face.

Well, I think I was probably hit in the first burst or two, because I can recall being hit in the back the first time as I lay there. Well, naturally that shooting went on for quite a little while, until they thought they had killed just about all of the fellows.

I know I didn't look around. I couldn't see. I mean I didn't dare look around. Just more or less fear, I guess, and numbness.

Senator BALDWIN. You were hit by the gunfire?

Mr. AHRENS. Yes. One of the first bursts hit me and then I was hit again. I was hit during the course of the afternoon as I lay there.

And after that happened, I don't know how long they fired into us like that, it was quite a little while, they sprayed that group back and forth. I could tell the way the guns would get close to me and then back and forth across the group.

Well, after that ceased, I could hear them walking down amongst the boys that were lying there. And naturally there was a lot of moaning and groaning, and some of the boys weren't dead yet. I mean they were still alive. They had been shot up pretty bad.

So what they done, I figured what they were doing, you would hear a stray shot here and a stray shot there, they were walking around making sure that there was nobody left. Each time they would hear somebody moan, they would shoot him; and there was one particular time when I could feel, I could almost feel, a footstep right alongside of me, where one of the boys laid across the back of me, or this side of me [indicating] and they shot him. But why he didn't shoot me, I don't know. He must have thought I was dead because I had been hit in the back and naturally looked like I was dead.

That went on for a little while. I don't know how long. I mean time was like years then. I could not calculate very well. But they must have moved on, and there was troops going back and forth on the road. This was their spearhead, more or less; it must have been their spearhead in this drive. And of course they were rushing troops up as fast as they could on this road, and they were heading to St. Vith too. That was the same road we were using. And every once in a while a tank or a half-track would roll by and turn their guns on us, just for a good time; I mean they were laughing, they were having a good time. That is the way it was all during the course of the afternoon.

The first quiet spell that we had, I don't know how long it was after, after I lay there, I heard somebody whisper in the group that lay there with me, so I knew there was somebody else still alive, and I was trying to see if I could feel anything and see if I was alive, which I wasn't sure of. And as I say, we could hear them talking up on the road; there must have been a few of them left up there; but somebody said, "Let's go!" and at that time I got up and started running towards

the way I laid. I laid facing away from the road. And I got up and started running, and they opened up on us again. They must have had a machine gun up there. I would say there was a rearguard left at the fork in the road. They had probably three or four men up there with small arms and a gun and they started to cut us down again. But somehow I got into the woods, which was probably a couple of hundred yards or more away, and from then on until sometime that night, before I got onto my own lines, and I got picked up, I had two boys with me that had been shot up pretty bad. We must have gone probably 5 or 6 miles that evening before we bumped into an American captain who was out more or less on a patrol. We had to take a chance. We didn't know whether it was our troops or their troops. They had got all of our equipment, vehicles and clothing, and we weren't sure whether we were bumping into our own men or who. But we had to take a chance. We were all pretty much shot up and weak. So we let out a yell when he came by in a jeep on the road, and we stuck to the woods by the road, as near as we could, and he finally picked us up.

He didn't know whether he wanted to or not. He stopped the jeep and turned round and was going to head back; but he took a chance and picked the three of us up, and we told him all three of us were wounded pretty bad.

Senator BALDWIN. Was that some of your troops?

Mr. AHRENS. That was two boys that were with me in my own company.

Senator BALDWIN. Who were the people that picked you up? Were they Americans?

Mr. AHRENS. Yes. They were Americans. I don't know what outfit they were attached to or anything. But I know they were out trying to find out just how far advanced the Krauts had gone.

Senator BALDWIN. About what time of the day did this happen? Do you recall that?

Mr. AHRENS. This happened about 1 o'clock in the afternoon.

Senator BALDWIN. And what time was it when you finally got up and ran? Have you any idea about the passing of time? I would not be surprised if you did not have, but I wonder if you could give us any information as to that.

Mr. AHRENS. Well, I don't have—I would say probably around 4 o'clock. I mean just guessing, because it was after dark when we got picked up.

Senator BALDWIN. And who were these other two American boys who were with you?

Mr. AHRENS. One fellow was a corporal from Pittsburgh. His name is Velanzi—V-e-l-a-n-z-i.

Senator BALDWIN. He was in your outfit?

Mr. AHRENS. He was in my squad.

Senator BALDWIN. Do you remember the name of the other boy?

Mr. AHRENS. I can't tell you offhand. I don't know who he was. I know he was in my company but I didn't just know his name.

Senator BALDWIN. At the time that they opened up on you with machine guns, were your hands in the air?

MR. AHRENS. Oh, yes. We had no arms and we had been captured for all of an hour before this happened.

SENATOR BALDWIN. Was anything said to you that you could understand? I mean, were there any instructions given to you?

MR. AHRENS. Well, they made a lot of movements. I mean, when they were marching me down the road they wanted to know if I could drive these trucks of ours, which were still up on the road. They wanted to get them moved because—so they could get the tanks through. I shook my head, "No, I couldn't drive at all." Different things they wanted, that is the way they would ask. They would motion and shove you around a little bit, if they didn't like the way you looked or the way you were standing or the way you had your hands up in the air.

SENATOR BALDWIN. Was this man that brandished or waived his pistol—was he standing in a jeep or tank, or was he standing on the ground?

MR. AHRENS. He was standing; it was more or less of a half track; it was an open-top track vehicle. They have a name for it over there. I don't know the name of those vehicles. But they have got a name for them. It was more or less of a squad car with tracks.

SENATOR BALDWIN. Do you know whether any other American boys got away from that as you did?

MR. AHRENS. Well, I know of these two that were with me, and I know of one fellow that was captured again that got away the same as I did. I mean, he got away that night, but he was picked up again during the night.

He spent the rest of the war in some camp over in Germany. I don't know which one it was.

And there were four boys who went back to Europe on these war trials with me that got away similar to the way I did.

SENATOR BALDWIN. Did you testify in the war crimes trial?

MR. AHRENS. Yes; I did.

SENATOR BALDWIN. And previous to that time, the time that you testified, did you give a statement about what happened?

MR. AHRENS. Oh, yes; more than once.

SENATOR BALDWIN. How long before the time that you testified?

MR. AHRENS. Well, the day that—or the night that I had escaped, during the night I gave a statement to one of the inspector general's aides who was a captain—and I don't know his name. He approached me in one of the aid stations where they had sent us for the time being.

SENATOR BALDWIN. Where were you wounded?

MR. AHRENS. I was wounded in the back.

SENATOR BALDWIN. Through your shoulder or through your lung?

MR. AHRENS. No. Right next to my spine, about halfway down my back.

SENATOR BALDWIN. I mean, did the projectile go right through you?

MR. AHRENS. No. It came in here [indicating] and came out over here [indicating].

SENATOR BALDWIN. Then you said you were wounded in another place.

MR. AHRENS. Well, they were both in about the same place. One was right alongside the other one. In fact, they cut the whole thing open from one end to the other and sewed it up again.

Senator BALDWIN. Were you ever able to identify any of these Germans?

Mr. AHRENS. No, I wasn't, because it was over a year since that happened before I went back to the trials. Naturally they didn't look the same men they did when they captured us.

Senator BALDWIN. Could you tell what German outfit they were attached to?

Mr. AHRENS. The only thing we could tell, they were SS men. They wore some kind of a lapel button, sort of a—well, I can't describe it. It has got more or less of a streak in it.

Senator BALDWIN. Well, it is the SS insignia?

Mr. AHRENS. Yes. Some you could see it on and some you couldn't. Some had different clothes on. They weren't all dressed alike.

Senator BALDWIN. Have you anything further you want to say about it, that you can recall?

Mr. AHRENS. I would imagine—there is a boy from my home town with me that got killed, and his dad was talking to me, and I know very much he would like to be here hearing this. He is taking it all pretty hard, and a lot of people have written to me in the past couple of years to ask me if I ever heard anything of their husbands or sons. Some of the boys weren't found. Some of them are still missing.

Senator BALDWIN. How many would you say, to the best of your knowledge, that were on the ground after they had finished with the first burst of machine gun fire as you described it.

Mr. AHRENS. Well, I would say there was all of 150 men lying there.

Senator BALDWIN. All of 150 men?

Mr. AHRENS. Yes.

Senator BALDWIN. Whether they were all killed or not, you don't know.

Mr. AHRENS. I don't know. And not all, like I say, were from my company. There were some that were thrown down with us, I saw so many faces when we were pushed down into the field; they were pushed down on the same basis when we were in the field, strange people that I hadn't seen before.

Senator BALDWIN. Senator Hunt, have you any questions?

Senator HUNT. Mr. Chairman, I would like to ask the witness: As I understood your statement, during the killing the SS troops seemed to be in a hilarious mood and seemed to be enjoying their work?

Mr. AHRENS. Oh, yes; very much so.

Senator HUNT. Let me ask you if any of those SS troops were, during the trial, pushed up against a wall, would you consider that they were being mistreated, after what they did to your boys?

Mr. AHRENS. No; I certainly would not. I often wish I would have a chance to push them up against a wall.

Senator HUNT. Do you think that a trial of men of that type, that character, for committing acts such as they had committed, should be shown all of the rights that we expect today in a civil trial?

Mr. AHRENS. No; I don't.

Senator HUNT. Do you think that the fact that now 6 out of the 73 that have been convicted may be hung for killing—how many of your boys? One hundred and fifty, wasn't it?

Mr. AHRENS. Yes.

Senator HUNT. Do you think that seems to be a very severe penalty for the price that American boys paid?

Mr. AHRENS. I certainly do not.

Senator HUNT. I haven't any more questions.

Senator BALDWIN. Senator, have you any questions?

Senator McCARTHY. Not at all.

But I might say that the prosecution has informed me that not only this boy, but any of the American boys that have come back to testify were absolutely truthful. And that despite the inclination they might have to identify some of those that the prosecution staff said were guilty, these boys were very careful and did not try to identify anyone they could not absolutely identify, regardless of the fact they must have felt very strongly about this; and I think they should be complimented for that. I could conceive that under certain circumstances they would have gone in and identified anyone whom the prosecution said was guilty. And for that reason I want to compliment these young men—this young man and the others—for being as truthful as they were under stress.

I imagine that this young man would heartily agree with me that if there were to be executions, the generals who ordered the privates to do the killing should not be let off with 10 years while the private who carried out the order was hung.

I might say, Mr. Chairman, while this is interesting and provides part of a Roman holiday here, and is a bit difficult for those of us who did lose a lot of good friends under circumstances that were analogous to this, I think it is so entirely improper. We are not here to determine whether or not there was a gruesome crime committed that day. We know there was.

The questions that have been asked here—the admissions which the young man has been asked to make—point up the thing that is the whole purpose of this part of the investigation: It is an attempt to inflame the public and to intimidate the members of this committee, if you please, to the end that we cannot honestly and intelligently and fairly determine whether or not the guilty have been convicted, or whether or not some of the guilty have gotten away because of some bungling in that area, or how many of the innocent we have got.

Take, for example, the question asked by my good friend from Wyoming, the question of whether or not the men should be hung if guilty of this crime. Why, obviously they should be. Likewise the mere fact that there was a gruesome crime committed does not say that we are going to run out and grab everyone in sight.

As I say, the prosecution as a whole, every one of them, have been very generous in their praise of these young men who went back and who would be inclined, more than the prosecution, to try to get convictions and see that some men were shot or hung for this crime. They tell me these young men were painstaking in making sure they would not identify the wrong men, and it seems to me that this committee could be at least as honest and fair as these young men who had that gruesome experience there, in the position that it takes.

As I say, I reluctantly make this statement, Mr. Chairman, but I do so because I think what we are doing is so entirely improper.

Senator BALDWIN. I have already made a statement on my purpose in asking for this type of testimony. There are just one or two

other details that I want to ask this witness, because they pertain to facts that I have heard in one or two of the confessions.

How many different times after the first bursts was it that tanks went by and fired into the group—do you recall that at all?

Mr. AHRENS. I would say probably three or four times.

Senator BALDWIN. Then you mentioned the fact that when you got up and ran for the woods, you and these two other boys, there was a detail at the cross roads. Were they German troops?

Mr. AHRENS. Yes.

Senator BALDWIN. And they fired at you. I think you described them as a sort of rear guard.

Mr. AHRENS. That is right.

Senator BALDWIN. Were they down at the crossroads?

Mr. AHRENS. I didn't see them. I mean, I didn't take the time to turn around and look to see them, but from the sound of the guns, that is where I would say they were.

Senator BALDWIN. The fire came from that direction?

Mr. AHRENS. That is right.

Senator BALDWIN. Are there any further questions?

Senator HUNT. I would like to ask one more question, Mr. Chairman. May I ask the witness: You testified at the trial, if I understood you correctly; and then did you have the opportunity, or did you spend any other time within the courtroom while the trials were in progress? Did you watch them closely at all—the progress?

Mr. AHRENS. Well, yes; I did. I had been there approximately 2 months before the trials began.

Senator HUNT. You have been very straightforward in your statements, as has been brought out by the distinguished Senator from Wisconsin.

Did you see any evidence of viciousness displayed on the part of the prosecution? Did you see any improper acts on the part of the prosecution in these cases? To put it into one question, Do you think the men had a fair trial?

Mr. AHRENS. I would say they did.

Senator HUNT. That is all.

Senator BALDWIN: Just one further question. Before you were herded into this field and fired upon, as you were being brought down toward the field, was there any abuse offered you by the SS troops—were you pushed or shoved or kicked or threatened or intimidated, or anything of that kind?

Mr. AHRENS. I believe I said in the first part of this talk that there was quite a bit of it all the way, all through the march that they marched us back down this road again. I noticed one of the first things, when I was captured and brought up onto the road, they were taking our carbines off of the boys, or up off the ground, and in more than one case I had seen them beat them across the back or across the chest or across the head, or break them up against trees, and that gives you an idea of the treatment that we had gotten when we were captured.

Senator BALDWIN. At that time there was no doubt in your mind but what you were a prisoner of war?

Mr. AHRENS. There was not any doubt whatsoever.

Senator BALDWIN. And your hands were up over your head?

Mr. AHRENS. That is right.

Senator BALDWIN. And you had thrown away your weapons?

Mr. AHRENS. That is right.

Senator BALDWIN. So you were unarmed?

Mr. AHRENS. That is right.

We had no choice, Senator; we had to throw them away or else we would have been killed right there. Like I said, I had seen probably 10 or 15 men who had been killed that were laying alongside the road.

Senator BALDWIN. As I understand you, you were traveling along the road with this artillery unit and this break-through came that took you by complete surprise. There was not any chance of successful resistance, or any chance of any resistance at all?

Mr. AHRENS. None whatsoever.

Senator BALDWIN. I think that is all.

Have you any further questions, Senator?

Senator MCCARTHY. No.

Senator BALDWIN. In the light of what has been said here, I would like to say for the benefit of the record that in investigating a matter of this kind it is the province of the committee to keep a cool head and keep as cool a head as this young man kept, and I am sure the committee will do that.

On the other hand, I cannot believe that in an investigation of the Malmedy massacre, when we are trying to discover what kind of treatment was given to these Germans and what the background was behind it, what the details were that had been related here, and what the details were that appeared in the confessions, I cannot imagine that you would find any more competent witness for an investigation of this kind than a man who was right there and saw it all happen.

I want to thank you, sir, very much, and I want to commend you for your fine Americanism and your fine display of courage.

Mr. AHRENS. Thank you.

Senator BALDWIN. We will hear the next witness.

Mr. Scalise, will you stand up? Hold up your right hand.

Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SCALISE. I do.

TESTIMONY OF D. A. SCALISE

Senator BALDWIN. Give us your full name.

Mr. SCALISE. Dominic A. Scalise.

Senator BALDWIN. And where do you live?

Mr. SCALISE. 104 Orchard Street, Warren, Pa.

Senator BALDWIN. What do you do? What is your business?

Mr. SCALISE. Oil worker in the United Refining Co.

Senator BALDWIN. You have come down here at the request of the committee to testify?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. What is your connection with this war crimes investigation? When did you first have any contact with it?

Mr. SCALISE. Well, it was in the fall of 1945. I was a provost sergeant at this prison at Schwabisch Hall. That is the first I had contact with the Malmedy case.

Senator BALDWIN. You were in the Army at that time?

Mr. SCALISE. Yes, sir; I was.

Senator BALDWIN. What was your outfit?

Mr. SCALISE. Six hundred and thirtieth TD Battalion.

Senator BALDWIN. And what were you?

Mr. SCALISE. Provost sergeant.

Senator BALDWIN. Provost sergeant?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. What were your duties in connection with your position there?

Mr. SCALISE. I was to oversee incoming prisoners, prisoners going out, and the clothing of the prisoners; supervise the feeding and checking the guards, and so forth.

Senator BALDWIN. You had the rank of sergeant, you say?

Mr. SCALISE. Technical sergeant.

Senator BALDWIN. Well, Sergeant, do you remember what the date was that you first came there? You say in the fall of 1945.

Mr. SCALISE. That is when I first had contact with these SS trooper boys.

Senator BALDWIN. Oh, yes.

Mr. SCALISE. I had come in there, September '45, about.

Senator BALDWIN. September of '45; and you were at Schwabisch Hall then?

Mr. SCALISE. Yes.

Senator BALDWIN. At that particular time were you guarding prisoners there?

Mr. SCALISE. At that particular time we had nothing but civilian internee prisoners.

Senator BALDWIN. Civilian internee prisoners?

Mr. SCALISE. That is all we had then.

Senator BALDWIN. When did these SS troopers first come in as prisoners?

Mr. SCALISE. I think it was about October. It was getting kind of cool weather then.

Senator BALDWIN. Was this a prison for military personnel, or civilian personnel, or both?

Mr. SCALISE. Well, we had a few prisoners of war among the group of civilian internees. A very few when I first came there. We had 17 generals in there. They were transferred to another place.

Senator BALDWIN. Well, then, these SS troopers came, you say, along in October?

Mr. SCALISE. That is right.

Senator BALDWIN. What was the most number—the greatest number that you ever had?

Mr. SCALISE. Well, we must have had around 600, all together.

Senator BALDWIN. Were they all SS troopers?

Mr. SCALISE. All SS.

Senator BALDWIN. And how long were they there?

Mr. SCALISE. Well, as the interrogations proceeded, and they found somebody that had no connection with this case, they would transfer

them to another prison, and we would get more in, keep getting some every other day. And then they would kind of weed them out.

Senator BALDWIN. When you first came there, did you see Colonel Ellis?

Mr. SCALISE. Not when I first came there.

Senator BALDWIN. How long had you been there when he came?

Mr. SCALISE. Well, shortly after the other groups were there, Colonel Ellis came down to check the situation over. That is when I first met him. I don't remember how long it was.

Senator BALDWIN. Then, after he came, did there come a number of military and civilian personnel to interview these witnesses?

Mr. SCALISE. Well, they all seemed to arrive about the same time.

Senator BALDWIN. The whole group?

Mr. SCALISE. The interrogation group and the investigators and all—quite a staff—came in at once.

Senator BALDWIN. Now, in guarding these German SS troops—in the first place, let me ask you what kind of a place is Schwabisch Hall? Give us a little description of it?

Mr. SCALISE. The town, you mean?

Senator BALDWIN. That is the name of the town, is it?

Mr. SCALISE. That is right.

Senator BALDWIN. This was not a hall, as such, but a compound; internment camp?

Mr. SCALISE. Well, Schwabisch Hall is the town, and the prison was in Schwabisch Hall.

Senator BALDWIN. Well, what was the nature of the prison? Just describe it to us briefly.

Mr. SCALISE. It was a fairly modern prison, had cement-block walls, I'd say, about 18 feet high all around it, with these electric doors in front, double doors.

Senator BALDWIN. A regular penal institution?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. Built by the Germans?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. And how many prisoners did you say you had there? At any one time.

Mr. SCALISE. Well, we must have had about 1,200; around that number. I am not just exactly sure.

Senator BALDWIN. During the time that you were there, what was the condition of the food? What kind of food was given to these prisoners?

Mr. SCALISE. The food was always very good. It was American rations, the same as we were getting.

Senator BALDWIN. Would you say it was American rations, just the same as were issued to American military personnel?

Mr. SCALISE. Not exactly the same as the GI's were getting, but it was stuff that the Americans furnished, like dehydrated potatoes, dehydrated rice—all American food.

Senator McCARTHY. That is the first time I ever heard an Army sergeant say that the Army rations were good.

Senator BALDWIN. He isn't talking to a commanding officer now. Were they ample? Was there ever a shortage?

Mr. SCALISE. No; we had plenty to eat.

Senator BALDWIN. And the prisoners had, as you observed it—
Mr. SCALISE. Yes; they had plenty.

Senator BALDWIN. Now, during that time—was there any time that the prisoners were deprived of food, or put on short rations or anything of that kind, that you observed?

Mr. SCALISE. Not to my knowledge, there wasn't.

Senator MCCARTHY. I missed part of the testimony.

Were you in charge of the messing of the prisoners?

Mr. SCALISE. I had detailed a group of civilian internees under the supervision of the American soldiers, to feed the prisoners.

Senator MCCARTHY. You were in charge of the messing?

Mr. SCALISE. I was to make sure they were fed.

Senator BALDWIN. Part of your duties was to see that they got fed?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. And did any of the German prisoners, SS troopers, ever complain to you or to anybody, to your knowledge, that they didn't get their food, or were not being fed, or were put on short rations, or anything like that?

Mr. SCALISE. I never heard any complaint about food.

Senator BALDWIN. Were there any complaints about anything?

Mr. SCALISE. Once in a while we would get a complaint. Maybe a fellow was cold and would want an extra blanket, and we would see to it that he got an extra blanket.

Senator BALDWIN. Were they kept under cover and indoors, these prisoners?

Mr. SCALISE. Yes, they were.

Senator BALDWIN. Were they heavily guarded?

Mr. SCALISE. We had guards for all cell blocks; two guards for each cell block.

Senator BALDWIN. So the prisoners were locked up in cell blocks?

Mr. SCALISE. Yes; they were.

Senator BALDWIN. What can you tell us, if anything, about the treatment? Was there any abuse, any beating or pushing or tripping, or any physical violence of any kind?

Mr. SCALISE. I didn't see anything of that abuse that they were talking about. I had quite a bit of access to the prison, and I never had any report of anything.

Senator BALDWIN. How long were you there, Sergeant?

Mr. SCALISE. I left in March of 1946.

Senator BALDWIN. And were you there from September 1945 to March 1946?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. Do you know of your own knowledge whether or not in that period of time these prisoners who were tried for the Malmedy affair were actually in the prison?

Mr. SCALISE. Well—

Senator BALDWIN. Do you understand my question?

Mr. SCALISE. Will you repeat it?

Senator BALDWIN. They were not all Malmedy cases that were there?

Mr. SCALISE. We had two different groups. We had some civilian internees, and this Malmedy group.

Senator BALDWIN. You had a civilian group, and you had the Malmedy group?

Mr. SCALISE. No; they were in separate sections of the prison.

Senator BALDWIN. Now, during that time, tell us as frankly as you can, about their treatment. If there was any abuse we would like to know it.

Mr. SCALISE. There was no abuse. I had nothing ever reported to me; and generally, I naturally hear about those things, floating around the prison like I did. I had quite a bit of contact personally with the SS men. They never mentioned anything about any abuses.

Senator BALDWIN. Was there any occasion when any of the guards might have beaten any of these prisoners, or mistreated them in any way?

Mr. SCALISE. At one time, when we first brought prisoners in there, we did have one of our guards that did rough up a prisoner a little bit.

Senator BALDWIN. What was that about? Can you tell us about that?

Mr. SCALISE. Well, they were supposed to be quiet after the lights were out in the cells, and they wouldn't keep quiet, so I guess he got into a scrape with one of them, and we found out about it and had the guard removed.

Senator BALDWIN. You had the guard removed?

Mr. SCALISE. We put him on as a prison chaser.

Senator BALDWIN. A prison chaser?

Mr. SCALISE. That was another job we had in the prison.

Senator BALDWIN. What kind of a job was that?

Mr. SCALISE. The civilian internees, they had access to the prisoners; they were under constant guard, and they could go out and do electrical work or carpentry work, and they had a guard for every five or six men to watch them.

Senator BALDWIN. There has been some claims made that men there had teeth knocked out, were pushed up against the wall, and were abused in various ways.

Mr. SCALISE. Well, I listened to that this morning, and when those men first came into the camp, a lot of the men had bad teeth then, and were complaining about toothache. Then we had to go in at night and try to quiet them down, and we used to take them to Stuttgart for dental work. That was before they even had the first interrogation started.

Senator McCARTHY. You understand the interrogations had been started before they came to Schwabisch Hall? You know they were?

Mr. SCALISE. I didn't know that.

Senator McCARTHY. That has been the testimony. The interrogations started before they were ever brought to Schwabisch Hall.

Senator BALDWIN. I don't recall any testimony here to that effect. My recollection is sometimes faulty. The record will show that, whether it be so or not.

Do you have a letter from the German dentist?

Did you ever know, while you were at the prison there, a Dr. Knorr?

Mr. SCALISE. Yes; I did.

Senator BALDWIN. When did he come there?

Mr. SCALISE. I am not exactly sure. I think he came about twice a week to take care of the dental work.

Senator BALDWIN. About twice a week?

Mr. SCALISE. I think so.

Senator BALDWIN. Was he coming there about twice a week when you first arrived?

Mr. SCALISE. Yes, he was.

Senator BALDWIN. So that he was there during the time that you were there?

Mr. SCALISE. Yes.

Senator BALDWIN. Do you know anything about him at all? Did you ever meet him or talk with him?

Mr. SCALISE. I have talked with him. He used to bring the nurse right with him. He used to have a nurse that came right along with him.

Senator BALDWIN. How many different times did you talk with him, would you say?

Mr. SCALISE. I would say three or four times.

Senator BALDWIN. Did he ever at any time make any complaint to you about the prisoners having their teeth knocked out, and jaws broken, that he had fixed?

Mr. SCALISE. No.

Senator BALDWIN. You are quite sure about that?

Mr. SCALISE. Positive.

Senator BALDWIN. Were you in such a position of authority that a complaint of that kind would normally have been made to you?

Mr. SCALISE. It could have been.

Senator BALDWIN. I mean, you were there—the provost guard in charge, were you not, part of the time?

Mr. SCALISE. Yes.

Senator BALDWIN. And when he came to the prison with his nurse, did you let him in or go with him or anything of that kind?

Mr. SCALISE. He had a regular pass to come in, and he knew where to go. He went right to the hospital ward.

Senator BALDWIN. And you have talked with him, you say?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. How many different times?

Mr. SCALISE. Probably three or four times.

Senator BALDWIN. Did he ever personally make any complaint to you about witnessing any physical abuses on the prisoners?

Mr. SCALISE. No; he never did.

Mr. BALDWIN. He never said anything to you about having seen any broken jaws, or teeth knocked out, or anything of that kind?

Mr. SCALISE. No, no.

Senator BALDWIN. Of your own knowledge?

Mr. SCALISE. Yes.

Senator BALDWIN. And did you ever hear—this is pure hearsay—did you ever know of his making any complain to anybody else?

Mr. SCALISE. The first time I heard about it was this morning, when it was brought up in this case.

Senator BALDWIN. And do you know anything about so-called mock trials that were conducted?

Mr. SCALISE. Well, I had seen the paraphernalia that they used, but I never witnessed one.

Senator BALDWIN. What was the paraphernalia that they used?

Mr. SCALISE. Well, they had a black cloth, and a couple of candles

and a crucifix, but that is all I ever did see. I spent my time in different sections of the prison, taking prisoners back and forth.

Senator BALDWIN. There was a mention made of a black hood that they put over the prisoners' heads. Was that used?

Mr. SCALISE. Yes, sir; we used them all the time.

Senator BALDWIN. Why did you use that?

Mr. SCALISE. Well, we were told that they wanted to keep them from coming in contact with the other prisoners so couldn't see any other prisoners—more or less a matter of security. We used to help hold them by the arm to walk with them to see that they wouldn't walk—so they wouldn't get hurt or anything.

Senator BALDWIN. Did you ever see any rope or nooses? You said you saw some of the paraphernalia they used. What was that paraphernalia?

Mr. SCALISE. I mentioned these candles and this black cloth and the crucifix. That is all I had seen of the mock trial things.

Senator BALDWIN. Did you ever see any nooses, ropes, or anything of that kind?

Mr. SCALISE. No; I did not.

Senator BALDWIN. Any clubs?

Mr. SCALISE. Well, the guards were equipped with little clubs.

Senator BALDWIN. The guards carried clubs?

Did your guards carry arms?

Mr. SCALISE. They were unarmed in the prison.

Senator BALDWIN. Now, were there cells for solitary confinement in the prison?

Mr. SCALISE. Well—by "solitary confinement," you mean—

Senator BALDWIN. Where they put one prisoner in, all by himself.

Mr. SCALISE. We had a lot of those cells.

Senator BALDWIN. Did you ever put any of these prisoners in solitary confinement?

Mr. SCALISE. When we first got these SS-men, we put them by themselves, and some we put with two, some with three and some with four—they were sort of put in different groups.

Senator BALDWIN. Were you ever given any instructions by anybody that so far as the treatment of these SS troopers was concerned, it was to be any different than any other prisoner?

Mr. SCALISE. Well, they were supposed to eat all of their meals in their cells. They weren't allowed to go out around the prison yard, like the rest of them. They were more or less confined to their cells. They had the same rations that the other ones had, though.

Senator BALDWIN. Well, were they ever permitted to get together in a group?

Mr. SCALISE. Yes, they were; at their interrogations—they had quite a large room, and I would get notice to take them to a certain place—the number, you know—and I would put them in this room and when we got the room full, then we would ship them out.

Senator BALDWIN. I see.

Before they were interrogated, they were kept in solitary confinement, mostly?

Mr. SCALISE. Yes.

Senator BALDWIN. And afterward—

Mr. SCALISE. They were sort of put in different sections.

Senator BALDWIN. Did you ever hear any screaming or shouting or crying or moaning, or anything of that kind, from the prisoners?

Mr. SCALISE. Only one case. We had a young boy there—must have been about 17 or 18 years old—that was crying and hollering; and I went to his cell and opened up, and he was kind of afraid. He had been there alone for a week or so, and he got a little scared, and he wanted to know what the trouble was, why he was brought there; so I got one of the war crimes men to talk to him and kind of quieted him down, and he was all right.

Senator BALDWIN. Was he one of these SS-troopers?

Mr. SCALISE. Yes; he was.

Senator BALDWIN. You don't recall his name; do you?

Mr. SCALISE. No; I don't. He was a nice-looking boy, about 18 years old, I'd say. He was just afraid.

Senator BALDWIN. Now, did you ever attend any of these mock trials? I think you said you didn't. I am not sure if I asked you that question.

Mr. SCALISE. No. I used to see these rooms where they were held, and I was too busy with the other parts of the prison.

Senator BALDWIN. Well, you saw these rooms. What were the rooms like?

Mr. SCALISE. Well, they were—the war-crimes branch had a special part of the prison to themselves. The rooms were different sizes. Some were maybe 10 feet by 6 feet, some small rooms; some were a little bigger.

Senator BALDWIN. There was a statement here this morning, I think from Colonel Raymond, to the effect that a Major Fanton issued some order concerning the treatment of these prisoners. Do you recall what that was, Colonel?

Do you have that order there?

Colonel RAYMOND. Yes; it is in my report.

Mr. CHAMBERS. Is that No. 2—your regulation No. 2?

Senator McCARTHY. Page 6 of your report.

Senator BALDWIN. Do you have it there?

Senator McCARTHY. Yes.

Senator BALDWIN. These rules governing interrogation—I don't suppose you would know anything about that?

Mr. SCALISE. Not too much; no.

Senator BALDWIN. Were there any instructions issued by the commanding officers, as to the treatment of these prisoners?

Mr. SCALISE. When the SS-men first came in we were briefed very shortly by Major Fanton as to how to treat the prisoners, and who they were supposed to come in contact with, and so forth.

Senator BALDWIN. What did he tell you when he briefed you?

Mr. SCALISE. That they were not supposed to come in contact with other groups of civilian internees. They were not authorized—see, the German civilian internees were always available at feeding time, and we didn't want to have any communication between the two—that is one thing; and then also, about these black hoods we were supposed to use.

Senator BALDWIN. Were there any other instructions given, other than that?

Mr. SCALISE. I believe that is all I can remember.

Senator BALDWIN. Just one final question :

This, Sergeant, is a pretty serious business, because in a sense the reputation of the Army and the reputation of the country is at stake. I want an absolutely truthful answer, and I think you have tried to be absolutely truthful.

At the time that you were there, do you know of any case that you haven't told us about, now, where there was any abuse of any kind, physical violence, threats, intimidation, withholding of food, or anything of that kind, that you would consider cruel and inhuman in any way, shape, or manner?

Mr. SCALISE. No; I do not know of any case.

Senator BALDWIN. You have told us all you know about it?

Mr. SCALISE. Yes, I have.

Senator BALDWIN. Any questions, Senator Hunt?

Senator HUNT. I would like to ask a few, Mr. Chairman.

Generally speaking, Sergeant, you were quite familiar with what was going on around Schwabisch Hall, were you, in the prison?

Mr. SCALISE. Yes, sir.

Senator HUNT. Did you have any personal contact with these SS troops in the prison?

Mr. SCALISE. Oh, yes.

Senator HUNT. You saw them from day to day?

Mr. SCALISE. Saw them and talked with them.

Senator HUNT. From day to day?

Mr. SCALISE. Yes.

Senator HUNT. Did you attend any sessions of the trial?

Mr. SCALISE. No; I did not.

Senator HUNT. Now, around an Army camp of that type, no doubt your groups got together and discussed informally, among yourselves, what was taking place and what was going on, didn't you?

Mr. SCALISE. Well, more or less; yes.

Senator HUNT. During those conversations and discussions, do you remember any of your men under you, telling of any of these acts of torture that supposedly were being committed on these prisoners?

Mr. SCALISE. No; I never heard that subject discussed.

Senator HUNT. From your general knowledge of the situation there, would you say that there was or there wasn't any systematic physical torture applied, to get confessions?

Mr. SCALISE. I think those prisoners were treated pretty good. I mean they were treated—well, better than they should have been treated.

Senator HUNT. You, yourself, don't know of any threat made to the prisoners by the interrogators?

Mr. SCALISE. No; I do not.

Senator HUNT. I assume you were not present at the interrogations?

Mr. SCALISE. No; I just dropped in once in a while.

Senator HUNT. Now, when these hoods were applied, were they applied viciously or gently, or applied normally? Did the prisoners suffer any physical torture while the hoods were in place?

Mr. SCALISE. No; they would throw the hoods over their heads, and that was about all there was to it.

Senator HUNT. Now, this is a question of your opinion, and you can answer it, or not, just as you wish:

Do you think from your knowledge, the interrogators were justified—within your knowledge of what took place—of having the mock trials and things of that nature to get these confessions? Do you think they were justified?

Mr. SCALISE. I think they were.

Senator HUNT. Now, this boy that you speak of, that was crying out, do you think that was a result of some threats or some tortures, or was the boy just in a condition of hysteria and afraid?

Mr. SCALISE. The boy had never been interrogated yet. He had been waiting for several weeks, and he was a little bit afraid, and he wanted some consolation, wanted to know why he was there, and so forth, and we did straighten him out. He had never been talked to before—just brought in there and—

Senator HUNT. Would you say, in talking with this boy, that you were sympathetic with him?

Mr. SCALISE. I kind of felt sorry for that kid, because he didn't look like the type that—he was an awful young kid, and he was a little bit scared.

Senator HUNT. Now, when you were briefed by your commanding officers, when these SS troops came in, did your commanding officers say anything to you about not using physical torture of any kind?

Mr. SCALISE. Well, they told us, just mentioned how they wanted the guards set up, and mentioned about the feeding of the prisoners, and things like that; didn't mention anything about physical violence. We didn't bother with that anyway. I told you of the one case we had.

Senator HUNT. Mr. Chairman, the Senator from Wisconsin made a statement awhile ago that I am interested in also, and I wonder if the staff cannot find out for us why it was that the general got something like 10 years, while these other prisoners, some of them, are getting the death sentence? I would like to have just a brief statement on that situation.

Senator BALDWIN. Well, I think, Senator, that is a good point, and that is one of the things very definitely that this committee ought to go into, because, of course, one of the claims made in all of these criminal trials was by the officers, as I recall reading about it, was that they simply were obeying military orders. Obviously, these men may have been only obeying military orders, too. That is one of the things I think we will, before this hearing is over, have to go into pretty thoroughly.

Senator McCARTHY. I have some questions.

Senator BALDWIN. Are you all through?

Senator HUNT. Yes.

Senator McCARTHY. I don't clearly have in mind what your duties were at Schwabisch Hall. Your title was what?

Mr. SCALISE. Provost Sergeant.

Senator McCARTHY. Now, what were your duties? This may be repetitious, but I want to get it clearly in mind.

Mr. SCALISE. Taking care of the incoming prisoners—

Senator McCARTHY. Taking care of issuing—

Mr. SCALISE. Issuing things, put them in certain cells and taking their papers into the office, that they had with them.

Senator McCARTHY. In other words, you processed incoming prisoners?

Mr. SCALISE. That is right.

Senator McCARTHY. And you processed outgoing?

Mr. SCALISE. Outgoing.

Senator McCARTHY. And you had an office for that, I assume?

Mr. SCALISE. Yes.

Senator McCARTHY. How many enlisted men were helping you in that work?

Mr. SCALISE. I had two assistants with me, and there were two other American boys in the office, doing the typing and clerical work, plus two German women doing typing in German.

Senator McCARTHY. Then, did you have a mess sergeant to take care of messing?

Mr. SCALISE. We had a regular man in the kitchen, head cook.

Senator McCARTHY. Who was the mess sergeant?

Mr. SCALISE. It was a German civilian.

Senator McCARTHY. And how many attendants did you have in Schwabisch Hall—how many people?

Mr. SCALISE. We had roughly—I would say at the most probably 1,200.

Senator McCARTHY. One thousand and two hundred prisoners, and how many calls were there, just roughly?

Mr. SCALISE. Well, there weren't enough cells for those prisoners. We had to put some of them in two or four to a cell. We were too crowded.

Senator McCARTHY. I understand all the Malmedy cases were kept in solitary until after their interrogation was completed?

Mr. SCALISE. Not all.

Senator McCARTHY. Not all?

Mr. SCALISE. What ones we would be able to.

Senator McCARTHY. Was it any part of your job to visit the—how many cells did you say there were?

Mr. SCALISE. I don't know, exactly.

Senator McCARTHY. Roughly three or four hundred?

Mr. SCALISE. There must have been 600, at least.

Senator McCARTHY. But it wasn't one of your jobs to go around personally and inspect the cells for the prisoners, I assume?

Mr. SCALISE. I have done it.

Senator McCARTHY. But during the course of the day that wasn't your job, to go around and make a personal inspection?

Mr. SCALISE. No; it wasn't.

Senator McCARTHY. You had a camp commander whose function that was?

Mr. SCALISE. Yes.

Senator McCARTHY. Who was the camp commander?

Mr. SCALISE. At the time I left?

Senator McCARTHY. Yes. Who was he?

Mr. SCALISE. Captain Evans.

Senator McCARTHY. And who was, when you first came?

Mr. SCALISE. Captain Torme?

Senator McCARTHY. Was there a camp commander by the name of Karl Diebitsch?

Mr. SCALISE. He was the German man, the civilian internée.

Senator McCARTHY. How many men did you have working under you?

Mr. SCALISE. We had possibly four or five hundred civilian internées we had access to for any kind of work.

Senator McCARTHY. Who was in direct charge of the guard? Who was the officer of the guard?

Mr. SCALISE. Lieutenant Owens was in charge of the guard.

Senator McCARTHY. You were not in charge of posting or removing the guard, were you?

Mr. SCALISE. No; that was taken care of by the first sergeant at headquarters.

Senator McCARTHY. So then, as I understand it, your principal function was in charge of the office work, of processing incoming and outgoing prisoners?

Mr. SCALISE. Yes, sir.

Senator McCARTHY. You never took any part in the interrogations?

Mr. SCALISE. No; I did not.

Senator McCARTHY. And you had no function at all connected with that?

Mr. SCALISE. No. I just cooperated with them, as far as moving prisoners back and forth, and seeing that they were, when they were moved to different—

Senator BALDWIN. May I interrupt just a minute right there?

Senator McCARTHY. I would like to finish, if I may. I would appreciate being allowed to examine without interruption. I have not interrupted the chairman or Mr. Hunt. I think this is tremendously important. If the chairman thinks—

Senator BALDWIN. Not at all; but there is just one point right in connection with that thing that I wanted to ask this witness, since I have given you the privilege of doing so on every occasion.

The question is this: I am going to ask this question if you don't mind—

Senator McCARTHY. May I make the record clear? May I ask this consideration of the chair, with the exception of this question I am going to ask now, unless the Chair thinks I am not being fair to the witness, that you do allow me to continue my examination, because some of these witnesses who will appear here will be interested in either—in favor of the prosecution or the defense. I think in those cases it is very important that the Senator who is doing the questioning be allowed to continue uninterruptedly until he finishes. I would very much appreciate that consideration from the Chair.

Senator BALDWIN. I have given you every consideration, and intend to show you every courtesy, and there is no reason for having an argument about this at all; but I have permitted you to interrupt me when I was questioning, and I certainly shall not interrupt these witnesses or interrupt your questions in any way to try to help the witness, if that is the inference.

This is simply a question—

Senator McCARTHY. I wanted to make the record—

Senator BALDWIN. The question now is this: Was it up to you to move these prisoners around from one place to another?

Mr. SCALISE. To see that they were moved.

Senator BALDWIN. And along the line of questions that Senator McCarthy has asked, was it part of your job to take these prisoners to and from the places where they were being interrogated?

Mr. SCALISE. That was part of the job.

Senator BALDWIN. How often did you do that?

Mr. SCALISE. Whenever they—we had a special phone in my office. When they wanted a man moved from a certain cell, we would look in our records, find out where he was located, and we would move him.

Senator BALDWIN. In connection with the mock trials, did you take the witnesses to and from there?

Mr. SCALISE. Well, we took them to certain rooms all the time, and then the guards that were stationed there would move them where the investigators wanted them. They always went to a certain room first.

Senator BALDWIN. The point was, when they were through interrogating the witnesses, did you bring them back to the cells?

Mr. SCALISE. Well, when they were ready to be removed, they did.

Senator BALDWIN. What was their condition under those circumstances? Did you ever observe anything with reference to their condition after they had been interrogated?

Mr. SCALISE. They looked just the same to me, when I brought them back, as when I brought them over.

Senator BALDWIN. That is all I wanted to ask; so it seems to me a perfect logical question came in mind while you were making that very point.

Senator MCCARTHY. So that I will have this correctly in mind, you would be asked by the War Crimes Branch, if I have the information correctly in mind, to have certain witnesses moved to a certain room; right?

Mr. SCALISE. That is right.

Senator MCCARTHY. From that point, the guards would take over?

Mr. SCALISE. They would move them around wherever the War Crimes wanted them.

Senator MCCARTHY. All right.

Now, how many of the SS troops did you have in the prison, roughly, at one time?

Mr. SCALISE. In the whole prison?

Senator MCCARTHY. Yes.

Mr. SCALISE. We started out with between 400 and 500 coming in there at certain intervals. They came in by convoy.

Senator MCCARTHY. Now, when one of the prosecution staff would want a man moved, the request would come to your office in writing?

Mr. SCALISE. Or by telephone.

Senator MCCARTHY. And you would phone some of the men and tell them to make them move?

Mr. SCALISE. I had my assistants; if I didn't go, one of the other boys would make the move.

Senator MCCARTHY. Now, you understand that at the time you were in charge of these men—I understand, rather—you had no way of knowing which were guilty or which were innocent; right?

Mr. SCALISE. As things went on, I could get an idea who was kind of guilty, there.

Senator McCARTHY. But, so far as you were concerned, until their trial, you were not in position to decide?

Mr. SCALISE. No; I couldn't decide.

Senator McCARTHY. You made a statement that interested me very much. You said you thought these men were treated too well.

Now, if you were in charge, how would you have treated them?

Mr. SCALISE. Well, I was more or less in charge.

Senator McCARTHY. You said you thought they were treated too well. I assume you are referring to both the men that were guilty, and the innocent—anyone accused of war crimes—you think were treated too well; fed too well, given too much clothing, should not have been kept in solitary long—in what way would you have made the treatment worse?

Mr. SCALISE. I didn't say "make it worse."

Senator McCARTHY. You said they were treated too well. In what way? Too much food, too much clothing? In what way were they treated too well?

Mr. SCALISE. After considering what they did, I was using that as the basis for my statement; what they did at Malmedy. That is the reason I mentioned that.

Senator McCARTHY. In other words, you are working under the assumption that anyone brought in, accused of being at Malmedy, was there, and should have been treated as though they were guilty? That is the thought; that is the thing that disturbs me.

We all agree with you, when you get the men that are guilty, whether the man signed the order which said "Kill all American prisoners" or whether the men pulled the trigger should be hanged or shot. We are very much concerned about the attitude, that once a man has been tagged, the sergeant, PFC's, and second lieutenants can take it upon themselves to mete out the punishment. You say they were treated too well. I was just wondering in what way.

Take the boy that was in solitary for 3 weeks, who started to scream; an 18-year-old kid, in the middle of the night. You had no way of knowing whether he was guilty or innocent.

Mr. SCALISE. No.

Senator McCARTHY. No way of knowing whether he was at Malmedy or a hundred miles away.

Mr. SCALISE. No.

Senator McCARTHY. Did you think his treatment was too good?

Mr. SCALISE. He was like the rest of the prisoners.

Senator McCARTHY. You didn't think he was being treated too well?

Mr. SCALISE. He was treated the same as the rest of them. All were the same, except he was a boy that was a little bit afraid.

Senator McCARTHY. I don't want to badger you here too much, but this is an important point: You don't think that kid was treated too well, that was put in solitary? You don't think he was treated too badly?

Mr. SCALISE. No; he was treated all right.

Senator McCARTHY. Now, is there anything you would have done if you think he was treated too well—I am trying to find out why or in what way you think the defendants were treated too well, if you know of any way—strike that question.

How long—first, let me ask you: What was the average age of the defendants in the war crimes cases?

Senator BALDWIN. May I interrupt? We have a schedule of all the ages. It would help you.

Senator McCARTHY. I will look at it after a bit.

Do you have any idea what the average age was?

Mr. SCALISE. I would say the average was about 27.

Senator McCARTHY. Did you attend any of the interrogations there?

Mr. SCALISE. No; I didn't.

Senator McCARTHY. Did you attend any mock trials?

Mr. SCALISE. No, sir.

Senator McCARTHY. Did you know the mock trials were going on?

Mr. SCALISE. Well, I had seen those candles and things, and I knew they were there for some purpose; but I didn't pay any attention to it.

Senator McCARTHY. Were you in charge the night one of the men committed suicide?

Mr. SCALISE. Yes. Well, I was in the barracks at the time.

Senator McCARTHY. In the barracks at the time?

And are you aware of the fact that the claim was made by the other inmates of the prison that he did considerable screaming and shouting and making statements before he committed suicide? Are you aware of that?

Mr. SCALISE. Well—

Senator McCARTHY. The next morning did you hear that?

Mr. SCALISE. This man that committed suicide was not an SS man.

Senator McCARTHY. He was one of the Malmedy defendants. I am asking you this question: Were you aware of the fact—you were still in charge—that this man did a lot of shouting, along in the morning, before he hung himself? Were you aware of that?

Mr. SCALISE. No, I wasn't aware of that.

Senator McCARTHY. Did you hear anything to that effect the next morning?

Mr. SCALISE. I just heard that someone killed himself during the night.

Senator McCARTHY. Did you go back to the cell in which he had killed himself?

Mr. SCALISE. It seems to me, the officer, Captain Evans, and all of us, went back there.

Senator McCARTHY. Wasn't one of your jobs to make an investigation of that case?

Mr. SCALISE. No. It was up to the camp commander.

Senator McCARTHY. You said you never heard any screaming. Did you know that there was a lot of screaming that night?

Mr. SCALISE. No; I didn't.

Senator McCARTHY. So then, if I have this picture correctly in mind, you were simply the sergeant in charge of processing incoming and outgoing prisoners. You had no connection whatsoever with the confession team, with the prosecution; your job was merely to move, have men moved, from one section to another when they asked you to, and your men did not move them to the interrogation room or mock-trial room, you moved them to a room at which the guards took over?

Mr. SCALISE. That is right.

Senator McCARTHY. From then on the guards made the moves?

MR. SCALISE. The regular guards did that part of the work.

Senator McCARTHY. I have no further questions of this witness, Mr. Chairman.

Senator BALDWIN. We might put in the record at this point, that there were 73 accused, ranging in age from 18 to 54; three were 18 years old; all of their sentences were disapproved by General Clay. Six were 19 years old; all of whose sentences were reduced by General Clay. Forty-two were 20 to 25 years old; 12 were 28 to 30 years; and 10 were over 30 years. Twelve death sentences were originally approved by General Clay, with ages from 23 to 37, averaging 27; six death sentences were finally approved by General Clay, ages from 23 to 37, average 28.

Senator McCARTHY. Mr. Chairman, may I ask this—I know this is one thing apparently you and I and Senator Hunt see eye to eye on: Am I correct in this, that those boys of 18 and 19 had sentences that averaged much higher than the general who was found guilty originally of signing the death order to the effect that they were to take no American prisoners; that they were to shoot all prisoners, whether they were disarmed or had their hands in the air, or not?

Senator BALDWIN. I don't know.

Senator McCARTHY. Does your staff?

Senator BALDWIN. Well—

Mr. CHAMBERS. We will make a complete study and give it to you and put it in the record. That is, a copy of the schedule of punishments for all 73: but to my knowledge now, your statement is absolutely correct. I do not know whether we have yet developed whether there were any written orders saying "Kill all Americans," but the people responsible, the commanding general, did not receive a death sentence in these cases.

Senator McCARTHY. Am I correct—I may be wrong, but I am asking—am I correct that the crime which those commanding generals were tried for, the crimes for which they were found guilty, was giving the order to kill these Americans?

Mr. CHAMBERS. That I will have to check in detail and report later.

Colonel ELLIS. They were all tried under the same specifications; all joined.

Senator BALDWIN. Is this a copy of the specifications?

Senator McCARTHY. May I ask, Colonel Ellis: Am I correct that the crime for which the two generals were found guilty was giving the order that culminated in the shooting of the Americans?

Colonel ELLIS. General participation, was what it was. There was one specification in which it was alleged that acting with community and with common intent 74 people had murdered 750 Americans and 150 civilians.

Senator McCARTHY. Am I correct, if the generals were not there to take part physically, but were found guilty of having issued the order—

Colonel ELLIS. I am not sure of the exact words, but the count was to that effect, because they were not physically present at any of the shooting.

Senator McCARTHY. Is that what you were prosecuting them for?

Colonel ELLIS. Yes.

Senator BALDWIN. Were there any executions carried out at the prison, of any kind?

Mr. SCALISE. No, there were not.

Senator BALDWIN. Some reference was made by affidavits by the Germans that they were put in death cells. Were there some death cells?

Mr. SCALISE. They had a solitary cell that they never used. It was in a basement of the prison, in one of the cell blocks. They used to use it years ago for prisoners, but we never used it.

Senator BALDWIN. Did they ever use it while you were there?

Mr. SCALISE. No, we didn't.

Senator BALDWIN. There was also a claim made that these German prisoners couldn't get any drinking water except from the toilets. What can you say about that?

Mr. SCALISE. No; they were served water. They had no running water, but they were given water by the guard when they wanted any to drink.

Senator BALDWIN. What orders were issued about drinking water for them, can you tell us that?

Mr. SCALISE. There was no strict order issued, but they could have it whenever they wanted.

Senator BALDWIN. Did you have a detail whose duty it was to get them water?

Mr. SCALISE. A patrol, all the time, with the water available.

Senator BALDWIN. Was there a toilet in each cell?

Mr. SCALISE. Yes, there was.

Senator BALDWIN. There is also the charge made that some of these hoods had blood and hair on them, and things of that kind. What can you tell us about that?

Mr. SCALISE. I never saw any.

Senator BALDWIN. Did you ever handle any of these hoods?

Mr. SCALISE. Yes; I handled quite a few of them.

Senator BALDWIN. In what condition were they kept?

Mr. SCALISE. When we finished using them, we put them on a bench, and when we would take a prisoner, we would take a hood or two, or how many we would have to take.

Senator BALDWIN. Did you ever wash or clean them?

Mr. SCALISE. Well, I think they were cleaned once in the laundry. Part of them were; while we used half, they used to clean the other half up. We had our own laundry there.

Senator BALDWIN. Did you ever see any blood?

Mr. SCALISE. I never did.

Senator BALDWIN. How about the clothing of the prisoners?

Mr. SCALISE. They had a complete change of clothing every week, clean clothes.

Senator BALDWIN. What kind of clothing was it?

Mr. SCALISE. It was regular German Army clothes.

Senator BALDWIN. Do you have any further questions?

Senator MCCARTHY. I have one or two. I don't think they will matter too much.

Now, there was what you referred to as a death cell; is that right?

Mr. SCALISE. There was. It was in the basement of the one, one of the cell blocks.

Senator MCCARTHY. And that term was used because of the history of it, you say, rather than because any men about to be executed were put in that cell?

Mr. SCALISE. It must have been. It was shown to me by one of the civilian internees. I never even knew it was there.

Senator McCARTHY. Do you know whether or not any of the defendants in this case were quartered in that particular cell?

Mr. SCALISE. No, nobody was ever quartered in there.

Senator McCARTHY. You are sure of that?

Mr. SCALISE. I am positive.

Senator McCARTHY. I wonder what this term in the Army report means, when it says "There is no evidence, apart from the use of the term, that the accused was threatened with death by being placed in that cell."

The Army report apparently finds that this death cell was used, but that the individual was not threatened with death when he was put in there. You tell me this cell was never used, and you didn't know it was there; is that right, until a civilian told you?

Mr. SCALISE. That is right.

Senator McCARTHY. So you wouldn't be in a position to know if it was used or not?

Mr. SCALISE. It was a secluded place beneath the cell block. I am sure it was never used.

Senator McCARTHY. Do you think that report of the Army is wrong?

Mr. SCALISE. In respect to that cell, it must have been, because in the cell they had a machine shop and machinery and equipment.

Senator McCARTHY. One other question: You had nothing to do with the medical end of the operation at this camp, had you?

Mr. SCALISE. Well, in a way.

Senator McCARTHY. You had a doctor there, did you?

Mr. SCALISE. We had a German doctor and American doctors.

Senator McCARTHY. And who did you say was the commander?

Mr. SCALISE. Captain Evans.

Senator McCARTHY. And was there a regular doctor at the prison?

Mr. SCALISE. There was one—two different doctors; one was there and he left, and we had a Captain Karen, who was a medical doctor.

Senator McCARTHY. Did the doctors ever report to you personally as to how they treated their patients? That wasn't their job, to report to you?

Mr. SCALISE. They used to make reports to us and tell us if they needed medical attention at Stuttgart, of what should be done.

Senator McCARTHY. If a man was to be transferred, or needed treatment, you got that word?

Mr. SCALISE. That is right.

Senator McCARTHY. If a dentist came in and fixed a man's tooth, or pulled a tooth, he didn't report that to you?

Mr. SCALISE. No, the dentist, see, he only took care of the civilian internees in the prison. We had our dental work done in Stuttgart.

Senator McCARTHY. How about the dentist named Knorr?

Mr. SCALISE. He was a civilian in the town of Schwabisch Hall.

Senator McCARTHY. He would come down and treat a man's mouth, you say; he would come in twice a week?

Mr. SCALISE. Yes.

Senator McCARTHY. And he would come back and report to you the number of prisoners he treated?

Mr. SCALISE. I never had any report from him.

Senator McCARTHY. It wasn't his function to report to you?

Mr. SCALISE. No, sir.

Senator BALDWIN. Did you have a hospital in connection with the prison?

Mr. SCALISE. Yes, sir.

Senator BALDWIN. Was the health of the prisoners watched?

Mr. SCALISE. Very closely.

Senator BALDWIN. Are there any further questions of this witness?

Mr. CHAMBERS. Sergeant, were the SS prisoners treated in the prison hospital?

Mr. SCALISE. No; they were treated in Stuttgart, at the general hospital.

Mr. CHAMBERS. Who was treated in the prison hospital?

Mr. SCALISE. Just the civilian internees. They were not allowed to come in contact with the German doctors.

Mr. CHAMBERS. Wasn't it true that some of the medical personnel of the prison hospital on occasion treated the SS prisoners?

Mr. SCALISE. We had one case. It was a case of emergency. One of the SS boys was having some severe pains, and we couldn't locate the American doctor. He was out some place, so the guard took it upon themselves to get this German doctor to treat him, and then we finally sent the boy to the hospital in Stuttgart. That was the only case we had. It was a case of emergency.

Mr. CHAMBERS. With that one exception, then, the medical personnel of the prison hospital had no contact with your SS prisoners?

Mr. SCALISE. That is right.

Mr. CHAMBERS. Thank you.

Senator BALDWIN. What about cigarettes for the men when they were confined? Did they have smokes?

Mr. SCALISE. We had a ration for them. They had Bull Durham tobacco and this canned tobacco.

Senator BALDWIN. Did you give them many cigarettes?

Mr. SCALISE. No cigarettes. These roll-your-own type.

Senator BALDWIN. Any further questions, Senator?

Senator McCARTHY. I would like to clarify this testimony. I would like to ask the colonel: Is it your opinion that all of these SS men were kept in solitary from the time they arrived at Schwabisch Hall until you completed your interrogation?

Colonel ELLIS. Unless we brought them in first. I think that schedule that can be found some place would show who were allocated. Some were put in individual cells, and some were put in with others; two, three, or four. I think he described it pretty well. Major Fanton would be able to give you the right information, better information than I could, because he was there when I arrived.

Senator BALDWIN. Thank you very much, Sergeant.

Mr. SCALISE. Would this letter be of interest in the case?

Senator BALDWIN. Here is a letter from Karl Kronmuller, Stuttgart-S. My German isn't as good as it was in 1912.

Who is this letter from?

Mr. SCALISE. He was one of the civilian internees that was discharged while I was there, and we became very close friends, and he wanted my address and I gave it to him.

Senator McCARTHY. What does it say?

Senator BALDWIN (reading):

DEAR MR. SCALISE: I hope you are in good health enjoying civilian life. How you remember, I was the first helper from Mr. Diebitsch in Schwabisch Hall. Sometimes if I see friends we speak about old times in Schwabisch Hall. It was a difficult time for us, and we remember, how you were always human and good to us. How is business going there? Are you content? As to us, there are still many difficulties, of course. The last ones of us returned to liberty in 1948; some ones are in their old professions, other, as I myself for instance, live in business.

Diebitsch paints and sells, Rheinwald is an insurance agent. I hope to receive good news from you.

With many regards,
Sincerely yours,

KARL KRONMULLER.

And he was a prisoner?

Mr. SCALISE. He was a prisoner.

Senator BALDWIN. Who is Diebitsch?

Mr. SCALISE. He was camp commander.

Senator BALDWIN. The general?

Mr. SCALISE. A full colonel.

Senator BALDWIN. And Rheinwald?

Mr. SCALISE. He was an interpreter.

Senator BALDWIN. Well, that shows the spirit upon which the future of the world and world peace has to eventually rest.

Mr. SCALISE. I thought it might be of interest.

Senator BALDWIN. It is of interest.

Thank you very much for coming.

I would like to call Mr. Ellowitz now, because he is another civilian witness brought here from New York.

Mr. Ellowitz, will you raise your right hand and be sworn, please?

Do you swear that the testimony that you are going to give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge, information and belief, so help you God?

Mr. ELLOWITZ. I do.

TESTIMONY OF MORRIS ELLOWITZ, NEW YORK CITY

Senator BALDWIN. What is your full name, please, Mr. Ellowitz?

Mr. ELLOWITZ. Morris Ellowitz.

Senator BALDWIN. Where do you live?

Mr. ELLOWITZ. New York City.

Senator BALDWIN. What is your address?

Mr. ELLOWITZ. 483 West End Avenue.

Senator BALDWIN. What is your business?

Mr. ELLOWITZ. Lawyer.

Senator BALDWIN. And how long have you been an attorney?

Mr. ELLOWITZ. Since 1935.

Senator BALDWIN. Were you in the Army of the United States?

Mr. ELLOWITZ. Yes, I was.

Senator BALDWIN. And when did you go in the Army?

Mr. ELLOWITZ. I was inducted in February or March 1941.

Senator BALDWIN. Where did you serve?

Mr. ELLOWITZ. I served in the United States and in the European theater.

Senator BALDWIN. Were you in a combat unit?

Mr. ELLOWITZ. No, I was assigned to the 6900th Replacement Depot.

Senator BALDWIN. And were you later sent to Schwabisch Hall, in connection with the Malmedy investigation?

Mr. ELLOWITZ. Not as a member of the armed forces.

Senator BALDWIN. As a civilian?

Mr. ELLOWITZ. That is right.

Senator BALDWIN. When were you discharged from the armed forces?

Mr. ELLOWITZ. In October 1945.

Senator BALDWIN. And then where did you go?

Mr. ELLOWITZ. I was first assigned to investigate a case in which a pilot had been murdered when he parachuted into a river in Frankfurt. I worked on that 2 weeks and was resigned to Zeupffenhausen to proceed with the screening of Malmedy suspects.

Senator BALDWIN. And when did you come to Schwabisch Hall?

Mr. ELLOWITZ. When the detachment came to Schwabisch Hall.

Senator BALDWIN. About when was that?

Mr. ELLOWITZ. The early part of December, about 1945.

Senator BALDWIN. First, I am going to ask you to tell your own story, about your experiences there, and I want to ask you some questions.

Will you go ahead and relate to us what happened and what you observed?

Mr. ELLOWITZ. Well, at Zeupffenhausen, it was a situation where members of the SS units that were purportedly from the Task Force Pieper were collected. I think there were about 900 men there.

Senator BALDWIN. When you say "Task Force Pieper," that was the Nazi or German General that controlled this spearhead of SS troops?

Mr. ELLOWITZ. That was Colonel Pieper in charge of the spearhead, and when they were not confined. They always were allowed to roam around within the limits of the confine, and our task there was to screen out the people that we were not interested in, as we had many German soldiers sent there who were part of the First Panzer Division, but we knew—but who were not members of the Task Force Pieper outfit, but in the course of the screening it became apparent that no purposeful interrogation could ever take place of the Pieper men because they had heard over the radio at the time the bodies of the men were found, that the United States Government would use all the resources at its command to track down the perpetrators and bring them to justice, and they had over a year to figure out their reaction, between the time they would be called for questioning. Some of the men who were not involved in the crime, we were told—told us that Pieper had instructed the entire group to keep quiet about the crime; the Americans had no eyewitnesses to the crime, and that it would be impossible to prove anything against the perpetrators. In fact one of the men—several of the men—stated that from their viewpoint the Americans would probably end up by taking a like number of Germans, as Americans that were killed, and take them out and execute them.

Senator BALDWIN. That is what they were told?

Mr. ELLOWITZ. At least in that case, and they figured they had only a 1 in 10 chance of being executed for the crime.

Then, as a result of that screening and the information we received there, the prison of Schwabisch Hall was made available so that the suspects could be kept in confinement and not allowed to discuss the questioning or interrogation with each other.

At first there was practically no lead as to who was responsible. Every man that was interrogated admitted to being there at the cross-roads, admitted seeing the bodies, but when it came to the actual question of who did the shooting, they knew nothing about it.

Finally, I believe it was, one of them—I believe it was Richman, an accused, who stated to one of the interrogators that he finally decided to tell his story about it. He knew that he would probably, or probably might be executed for it.

Senator BALDWIN. You say he finally decided to tell his story. Do you know what made him decide to tell?

Mr. ELLOWITZ. As far as Richman was concerned, he volunteered it.

Senator BALDWIN. Was he abused in any way, to your knowledge?

Mr. ELLOWITZ. No, sir.

Senator BALDWIN. Any special promises held out to him?

Mr. ELLOWITZ. No, sir.

Senator BALDWIN. What kind of a fellow was he?

Did you ever talk with him yourself?

Mr. ELLOWITZ. I talked to him briefly, but I believe Lieutenant Perl interrogated him, and I don't know what his background was. I believe he was a machinist. But he made the statement that he realized that he might be executed for what he is about to say, but he certainly hopes that Pieper and men of his type are executed, because some day, if German rearmament occurs again, and there is a like government of Nazis, Pieper will be one of the leaders.

Senator BALDWIN. Well—

Mr. ELLOWITZ. That is what he stated.

(Senator McCarthy entered the committee room and assumed his seat.)

Senator BALDWIN. Senator, to bring you briefly up to the moment: Mr. Elowitz was in the Army from 1941 to 1945 when he was released, and he stayed over in connection with the work of the investigation of these war crimes. He has told us that he first investigated the murder of a parachutist, and then came up to this camp where these men were first brought in and screened, and he has described that these men were separated, and the ones that they thought were to give testimony about the Malmedy matter were sent down to Schwabisch Hall.

He said that the difficulty they had, at first, was that many of these SS troops were or would admit that they were at the Malmedy cross-roads, and that they saw the Americans in the field after they were shot down; but none of them knew anything about the shooting.

We were just about at that point, and he was telling about the name of one German who made the first confession.

Now, go ahead from there.

Mr. ELLOWITZ. Then, a short time after two privates confessed. They didn't confess to participation—they testified that they observed an American soldier who was captured a short time after the Malmedy massacre and brought to Pieper's headquarters for questioning, and that the soldier refused to give anything but his name, rank,

and serial number, and that Colonel Pieper in disgust called for his sergeant—a man by the name of Hillig—and ordered them to take the American prisoner out and have him shot.

We didn't have Hillig in custody, but we had other people who had observed it.

That is the way the case first started to break.

However, there was also a snag. We could never get beyond the privates or the corporals who did make the statements, so the strategem was adopted to build the case from one rank to another, and that was successfully followed. That is, to first interrogate all of the privates and have them incriminate the people above them in rank, their immediate superiors, and from then on up, right up to the generals.

Now, in the course of that interrogation, in the course of the interrogations along those lines, I have heard—the last two sessions that I have been here, that I have sat here—reference to these mock trials.

I would like to say the first time I ever heard that procedure referred to as a mock trial, was at the trial in Dachau. It was referred to by the staff at Schwabisch Hall as the *schnell* proceeding. As far as the Germans were concerned, it was the same term—

Senator BALDWIN. What was the name?

Mr. ELLOWITZ. "Schnell." That means fast procedure.

From my observation of it, it was nothing more or less than a continuation of the interrogation, and after a man was brought in for interrogation two or three times, at first appearance, he was rather nervous and upset; but after being in several interrogations he sort of fell into the groove of informal questioning, and it was thought by one or two of the interrogators that we would have to create a sort of solemn background to interrogate them, to give this a different kind of interrogation, and that is when he was brought up to these so-called mock trial rooms.

I only know of several cases where it was done, but I know that in at least two I know of, the suspect has been interrogated some time previously, many times previously, by the same people who after this *schnell* procedure, posed as the prosecutor, and that the interrogator, who is outlining all of the evidence that the interrogation team had against him, and the person who posed as his friend, or the man who interceded for him, was also known to him as being a member of the interrogation team.

At none of these proceedings was a sentence ever passed.

Senator BALDWIN. Just describe to us what you would do. Give us a word picture of what you did there.

Mr. ELLOWITZ. I, myself, never conducted that in the many I interrogated. I observed it. I didn't think it was very effective and didn't have much value.

Senator BALDWIN. As a interrogator, you interrogated men individually?

Mr. ELLOWITZ. That is correct.

Senator BALDWIN. What was the *schnell* procedure? You said you had seen it.

How did it work?

Mr. ELLOWITZ. I observed it in one instance. At this time, I saw no light or crucifix at the table. It was a larger room. The suspect was brought in for his interrogation, for this procedure, and immediately one of the interrogators would begin to outline the evidence, the testi-

mony that we had already acquired against this man. It was the suspect who usually would deny everything, ever having been in the vicinity of the crossroads, or whatever particular site of the case we were working on; but we did have several witnesses, members of the command, who would give a narrative story of exactly what occurred, how the men were killed, and the participation of this particular suspect in the crime; but the suspect would just refuse to talk about it. He would talk about everything from the day he was born until the day of the trial, but he would cut out that 2 hours of the crime, and he was brought into the room, as this person who outlined, one of the interrogators I saw, he was known to the suspect as being one of the interrogators, outlined all of the evidence. The two SS members who had previously given us the statement concerning the co-crime, involving themselves and the suspect, were brought in, and it wasn't the first time that he had faced them—and told them exactly what had occurred, and another interrogator would intercede in this respect for him: He would make a statement to the effect that "This man can't be as bad as he was painted."

In effect it was just a strategem that I understand is normally used by law-enforcement agencies, by facing the suspect with a top interrogator and an easy one, and give him a choice, when he is under psychological pressure of telling the truth to the man that he considers is much easier to deal with than the tough guy.

Senator BALDWIN. At that particular time, would he appear to pass any sentence, or anything of that kind?

Mr. ELLOWITZ. There was no sentence ever passed.

Senator BALDWIN. You say this procedure was used on those who you assume had taken part, but who would not talk at all?

Mr. ELLOWITZ. Or who would not discuss that particular phase of their record or experience.

Senator BALDWIN. How often would you say that sort of procedure was used?

Do you have an idea how often or frequent it was used?

Mr. ELLOWITZ. Well, I observed it used twice. I couldn't say. I don't think it was used very often, because probably if it was customary procedure, I certainly would have known about it, and generally I was too busy myself to go around observing; but I saw it used twice in the manner I described and I think it was about three or four other instances.

Senator BALDWIN. Was there ever any of these interrogations—was there ever any physical violence used?

Mr. ELLOWITZ. No, sir.

Senator BALDWIN. It has been stated here that one witness said that there were some of the suspects pushed up against the wall, I should judge rather violently. Did you ever see anything like that?

Mr. ELLOWITZ. I never observed it; no sir. I had heard rumors around the prison that some of the prisoners were being badly mistreated, but I never saw any of it, and in fact wherever I went in the Army, there were always rumors. Everybody has a rumor.

Senator BALDWIN. What can you say about the physical appearance of these men that were being investigated? Did you ever see any evidence of blows or wounds or anything like that on them?

Mr. ELLOWITZ. No, sir; they were all in good physical shape.

Senator BALDWIN. How about their teeth?

Mr. ELLOWITZ. I never noticed anything wrong with them.

Senator BALDWIN. It is claimed that there were some broken jaws. What can you tell us about that?

Mr. ELLOWITZ. I never observed any of it, and I certainly never submitted any person to that treatment; and if it was done, I probably would have known about it, because I was in the interrogation hall every day.

We interrogated, at Schwabisch Hall, I believe over 500 men, and we just did not have much time to spend the proper amount of time with each man. I would say most of them were shipped out, of the 500, finally—the case was built around 73 or 74. There were other cases we should have built that were a matter of Army record where groups of 8 or 10 Americans were lined up and shot, and which a man escaped and reported, but we never did have the time to go into those and report thoroughly.

Senator BALDWIN. Do you want to ask any questions about that phase of it?

I want to call your attention, Mr. Ellowitz, to the case of Fritz Eckman.

He says on January 27—

at about 1600 I was interrogated by the prosecutor Ellowitz and an interpreter I was beaten in the face by the interpreter and my head was beaten against the wall. When I did not say anything, Mr. Ellowitz turned away and nodded to the interpreter, whereup he, the interpreter, beat me with his fists, in my face again. I then fell to the ground. Following this I had to stand at attention against the wall and when the interpreter said "I am told that you are a hard nut to crack but I will soften you up," I received some more slapping by fists in the face and then they left the cell. I then once again was taken into a death cell. I was kept there over 14 days. The windows were open day and night. There were no blankets and mattresses at all. I had to lie on the wooden bed day and night. There was no sleeping due to the cold. On or about February Mr. Thon and Lieutenant Perl came to my cell and wanted me to make a statement.

Then he goes on and makes claims against Mr. Thon.

This affidavit is submitted—well, the acknowledgement was taken on the 21st of January 1946. That is 2½ years after he was apparently at Schwabisch Hall. What do you want to say about that? Do you remember this particular German?

Mr. ELLOWITZ. I remember who he was, but I can say that that portion of the affidavit is entirely false. I remember I interrogated him several times, and he did make the statement that he was at the cross-roads and saw the Americans who were killed, but he did not participate in them; and I dropped the interrogation of him after it was impossible to get anything from him, and I wasn't able to find out any other witnesses of the command—of the company that he was in—that could tie him up with any of the shooting, and he was interrogated later by Thon and Perl.

Senator McCARTHY. This man Eckman, you say at that time told you—Eckman, was that his name?

Mr. ELLOWITZ. That is right.

Senator McCARTHY. Told you at that time that he was at the cross-roads in that area, but that he did not take part in the shooting; is that right?

Mr. ELLOWITZ. That is correct.

Senator McCARTHY. And you say you had no other members of the company, or no witnesses to tie him down to this, to the actual shooting?

Mr. ELLOWITZ. Yes.

Senator McCARTHY. Later on, he signed a confession saying he took part in the shooting.

Mr. ELLOWITZ. I didn't work on it exactly that way. Later he did make a statement; later, after further interrogation not by me.

Senator McCARTHY. Who conducted the further interrogation; do you know?

Mr. ELLOWITZ. I believe it was Thon or Perl.

Then, of course, I developed it after he had made the statement that his gun crew, his tank crew, had been stationed in the field a few miles from Malmedy, and that they had received orders from their tank sergeant to shoot a group of about five American prisoners of war who were stationed at the edge of the field nearest the woods, and I remember when he made that statement, when he finally did make that statement, he did say he felt much better now that he got that off his mind, that he could tell us some more information about the crossroads now.

Senator McCARTHY. Did he finally admit that he did some shooting, that he did kill some Americans?

Mr. ELLOWITZ. I don't think he admitted that he participated in any shooting of those Americans; but I think he did admit that he fired a machine gun at the crossroads.

Senator McCARTHY. And signed a confession to that effect?

Mr. ELLOWITZ. Yes.

Senator McCARTHY. Do you know that he was sentenced to hang?

Mr. ELLOWITZ. That is correct.

Senator McCARTHY. Now, I will ask you to tell us this: What occurred to make him change his attitude after he said he was there and had no part in the shooting, from the day he told you that to the day he signed the confession upon which he was sentenced to hang?

What made him soften or change his mind, to later sign a confession saying he did kill some American boys?

Mr. ELLOWITZ. As I recall at this time, I believe that he was shown, or it was read to him, the affidavits of many other suspects who had described the whole incident that had occurred at Malmedy; and it was pointed out to him that "We have the whole picture now, we don't need your statement if you don't want to give it. If you want to give it, we will take it."

Senator McCARTHY. Do you know whether he had a mock trial or not?

Mr. ELLOWITZ. He definitely did not.

Senator McCARTHY. This witness has been sworn, too, has he not?

Senator BALDWIN. Yes.

Senator McCARTHY. I might say this not only for the benefit of this witness but for all the witnesses to come, we know that some that the fellow was beaten, kicked, his teeth knocked out; and the deliberate perjury. We have two diametrically opposed stories. One, that the fellow was beaten, kicked, his teeth knocked out; and the other, that they were treated gently. We know there have come before

the committee witnesses that have committed deliberate perjury. I have no way of knowing which now. If the trials were properly arranged and conducted, if the defendants were convicted properly, all right; if on the other hand the story Mr. Bailey tells, the way it was apparently told to the Simpson committee so that they believed it was true, then it is one of the most shameful performances that we ever witnessed. As to the handling of the trial, we have two diametrically opposed statements, and I sincerely hope that before we finish we will be able to pin down and find out who is committing perjury before this committee, and make sure he is properly punished.

Senator BALDWIN. Let me get the issue about perjury before this committee straightened.

The testimony that we have had concerning the abuses here has been read from statements given by Germans. The Germans themselves have not testified. The other allegations of mistreatment and so forth have come from conclusions drawn by investigators who have examined these statements of the witnesses and also interrogated the prosecutors and the investigators.

So, I might say for the benefit of the record in connection with your statement here that such evidence as we have now, as to the nature and extent of these abuses, is exclusively hearsay because it comes from these affidavits of these Germans.

This one in particular was given in January 1948, long after the affair, and after this man apparently had been convicted and ordered executed.

Now, I don't say that to indicate any conviction of my own in the case. I merely say it to keep the record straight because I don't think until we have heard all of this, we can come to any conclusion as to who the liars are, and so I think that if we were to attempt to do that now, it is jumping to a conclusion rather hastily.

Senator McCARTHY. Mr. Chairman, I don't think what I said can possibly be misunderstood. I stated there is obviously perjury. The Army report is based upon affidavits, I understand, unless I am entirely mistaken, affidavits sworn to. I, at this time, have no way of knowing at all who is committing perjury. I think this is important enough so that we do not close this case until we run the facts down and anyone that commits perjury before this committee, in a case as important as this, I think should be definitely prosecuted.

As I say, I don't have the slightest thought but what that gentleman is telling the absolute truth, at this time, or not. I hope, before we are through, we can determine that. His story is so diametrically opposed to the other story, I know either this man is lying or the other man is a liar.

Senator BALDWIN. This man is either telling the truth or the Germans who made the affidavits are not telling the truth.

Senator McCARTHY. I think the committee should notify all witnesses that they are under oath, and their stories will be run down and if it is found that they have committed perjury, they will be prosecuted.

I am not intimating that you are lying, you may be one of the most outstanding investigators we had. I don't know—

Mr. ELLOWITZ. Well, I would like to point out in connection with the statement you just made that the testimony I am giving you is a direct contradiction to that of Mr. Bailey. I remember Mr. Bailey

quite well over there. I don't see how he was in a position to even observe what was going on in that connection. He was assigned as a typist in the Administration Office. That was the bone of his contention, that he had taken employment as a court reporter at Nuremberg—

Senator McCARTHY. You say he was not present at any of the interrogations?

Mr. ELLOWITZ. I don't recollect him ever being. I don't see how he could have been, because no shorthand notes were taken of the interrogation.

Senator McCARTHY. When the interpreter took the story from the accused, in other words the accused started to talk, we will say—

Mr. ELLOWITZ. That is right.

Senator McCARTHY. And started to give you a story, then the interpreter tells you what he is saying—

Mr. ELLOWITZ. Right.

Senator McCARTHY. Then, didn't you have a court reporter to make notes on that?

Mr. ELLOWITZ. No, sir. We started out with that system, the question-and-answer method with the court reporter taking notes, but then we received a target date for trial sometime in March, and the interrogation of 500 men in that way would have taken at least 2 years, so the system we used after that was, the statements were given in narrative form and the interrogator took notes and then when the statement was completed, the oral statement, then from the notes and story, the story was refreshed in the mind of the suspect and they wrote it in German and from the German it was translated into English and both typed, and Mr. Bailey was one of the typists who typed those statements.

Senator McCARTHY. Let me see if we have this straight.

Let's say that you are examining Pete Smith who is the accused—

Mr. ELLOWITZ. Yes.

Senator McCARTHY. And you are the interrogator. Did all interrogators speak German?

Mr. ELLOWITZ. No.

Senator McCARTHY. Did you speak German?

Mr. ELLOWITZ. I understand German, but spoke very little.

Senator McCARTHY. Say you are one that don't understand, you are interrogating John Jones, the accused, and you have an interpreter.

Mr. ELLOWITZ. Right.

Senator McCARTHY. And you are asking the prisoner questions.

Mr. ELLOWITZ. That is right.

Senator McCARTHY. In any of the cases did you have a shorthand reporter, or anyone take notes so that when the interpreter said to you "His answer is thus and so," the shorthand reporter could make notes on it?

Mr. ELLOWITZ. No, sir. Whenever—

Senator McCARTHY. I want to get this pinned down. That is in direct conflict with Bailey's story.

Do you know if any of the other interrogators followed that practice?

Mr. ELLOWITZ. They might have occasionally, but the practice they followed was the same as mine.

Senator McCARTHY. Your story is that you never did have a shorthand reporter in the cell to take notes.

Mr. ELLOWITZ. No.

Senator McCARTHY. What would you do; did you make notes yourself?

Mr. ELLOWITZ. Yes, sir; where that part of the statement became vital, and it was very slow, I took all notes of everything that was said at that particular time.

Senator McCARTHY. And did you take verbatim notes?

Mr. ELLOWITZ. On the vital matters, practically verbatim.

Senator McCARTHY. Do you know Bailey?

Mr. ELLOWITZ. I just know him from my association with him over there.

Senator McCARTHY. How well do you know him?

Mr. ELLOWITZ. Very well.

Senator McCARTHY. You know him very well?

Mr. ELLOWITZ. We were good friends.

Senator McCARTHY. Working together?

Mr. ELLOWITZ. Yes.

Senator McCARTHY. And finally he quit?

Mr. ELLOWITZ. Well, he didn't quit. He couldn't very well quit. He had a 2-year contract, and in order to go home and not pay his passage, he had to be released, and several times I remember he complained to Major Fanton that he wasn't doing the work that he had agreed to perform for the Army, and unless he received—

Senator McCARTHY. Speak louder.

Mr. ELLOWITZ. Unless he received a new assignment, he wanted Fanton to intercede for him to have the Army release him from the contract, and Fanton went to Wiesbaden one time to see Colonel Ellis to have him released, but they were so short of typists that it was 2 or 3 months after that before he was released.

Senator McCARTHY. How many of these shorthand reporters or typists did you have?

Mr. ELLOWITZ. We didn't have many; I think four. I believe we had four.

Senator McCARTHY. Four typists.

Mr. ELLOWITZ. They were all court reporters.

Senator McCARTHY. Did any of those court reporters go into the cells at the time of the interrogation and take shorthand notes?

Mr. ELLOWITZ. The interrogations I took—I think I can state categorically—never.

Senator McCARTHY. How many did it?

Mr. ELLOWITZ. Thon and Perl—generally they followed the same practice I did. Whether they did on occasions use a court reporter, I couldn't say.

Senator McCARTHY. You were there during all of the interrogations?

Mr. ELLOWITZ. Yes.

Senator McCARTHY. Now, do you know anything about the threats to take the ration cards from the accused, or anything like that?

Mr. ELLOWITZ. No.

Senator McCARTHY. The report made by the Army group has this to say:

It is alleged that representatives of the prosecution threatened harm to relatives of the accused if they did not confess, such as deprivation of ration cards. There was evidence that this did occur. The board finds it probable in certain instances such threats may have been made, but the board is unable to identify the particular instances involved.

Now, do you know whether that is true, or whether the Army board is mistaken on that?

Mr. ELLOWITZ. I don't know if the Army board is mistaken, but I know in my case that I never used those threats and I never heard of them being used.

Senator McCARTHY. You say that you never laid a hand on a defendant at all?

Mr. ELLOWITZ. That is correct.

Senator McCARTHY. Do you know anything about the claim that—I will read from the Army report:

Corroborating the claims of the various accused as to physical violence, there is the affidavit of Dr. Knorr, the dentist at Schwabisch Hall, that he treated 15 or 20 of the suspects for injuries of the mouth and jaw, apparently inflicted by blows.

Had you heard about that claim?

Mr. ELLOWITZ. No, sir.

Senator McCARTHY. When did you first know that there was a claim that some of the men had suffered injuries to their mouths?

Mr. ELLOWITZ. That particular claim, the first time I heard it was when I read it at the Army board's hearing.

Senator McCARTHY. You were in court during the trial?

Mr. ELLOWITZ. Yes, sir.

Senator McCARTHY. Tell me this, then. Did anyone ever tell the court that any physical violence was ever used on the defendants? In other words, was the court ever informed that any physical violence was used?

Mr. ELLOWITZ. The court was informed at the time a few of the accused took the stand on direct examination, by their counsel.

Senator McCARTHY. Informed by the accused?

Mr. ELLOWITZ. By the accused.

Senator McCARTHY. How about the prosecution staff? Did the prosecution staff ever tell the court that any physical violence was ever used?

Mr. ELLOWITZ. No, sir.

Senator McCARTHY. Did the prosecution staff ever admit that there was a threat to take the ration cards away from the families in order to get the confession?

Mr. ELLOWITZ. They did not.

Senator McCARTHY. Did the prosecution staff ever tell the court whether or not mock trials or schnell procedures were used?

Mr. ELLOWITZ. Yes.

Senator McCARTHY. And did the prosecution—I assume this is all in the record, isn't it?

Mr. ELLOWITZ. Yes, sir.

Senator McCARTHY: And did the prosecution tell the court that the defendant was led to believe that he was being actually tried, and that in at least some instances he believed that he had been convicted? Was the court ever told that?

Mr. ELLOWITZ. No; the court was told by witnesses of the prosecution exactly what occurred at the Schnell procedure, without elaborating on what the defendants thought was happening.

Senator McCARTHY. In view of the conflict as to what did occur, how far the mock trials went, there is a claim, as you probably know, that after the mock trials a man was convicted and he was sentenced to be hung at sunrise—these were in the affidavits which I am sure you have seen—that then the friend of the accused, or defense attorney, whatever you might call him, would go to his cell and say, in effect, "I will get you off with 5 or 10 years if you will sign a confession showing you are guilty and also implicating other men we want to convict."

This is the claim—at this time I don't know whether it is true or not—but that is the claim that is made, but they came back with a signed confession, whether he was guilty or innocent. Also, he was told that his family would get their ration cards back.

Was the court told—in that respect, how far did you tell them you went in the mock trials?

Mr. ELLOWITZ. Well, as far as I know, the accused was never told that it was a mock trial, and the court was told just what we knew and what we observed, ourselves.

Senator McCARTHY. Was the court told that the accused was taken into a room at night, and that there would be a table with a crucifix with candles on the table; so far, was the court told that?

Mr. ELLOWITZ. There are two or three different questions there. Can I answer each separately?

Senator McCARTHY. I wish you would.

Mr. ELLOWITZ. They were never told, there wasn't a man brought in at night, so the court wasn't told that.

Senator McCARTHY. I am not speaking of that. I am asking what the court was told.

Let me take it piece by piece.

Was the court told that in the room in which the defendant would be tried, where he would be subjected to the schnell proceedings, that there was a table with religious articles, and a black cloth on it; was the court told that?

Mr. ELLOWITZ. I can't remember exactly the trial record, but I am quite sure the court was told that.

Senator McCARTHY. And was the court told that behind the table would sit men who were posing as judges?

Mr. ELLOWITZ. They were told men were sitting there, but the men did not actually pose as judges.

Senator McCARTHY. Was the court told that they were posing as judges?

Mr. ELLOWITZ. The court was not told that they were.

Senator McCARTHY. Was the court told that the accused was led to believe that he was actually being tried?

Mr. ELLOWITZ. No; the court was not told that. The court was told exactly what occurred.

Senator McCARTHY. Was the court told that in some instances the accused understood he had been convicted? Was the court told that?

Mr. ELLOWITZ. No; the court was not.

Senator McCARTHY. Let me read you this, and if this is an incorrect statement of how the mock trials were conducted, I wish you would tell me in what respect it is incorrect, this is the Army's report, you understand. Paragraph 11:

Mock trials: After the trial the prosecution admitted and the board finds in the evidence before it, that in certain instances, probably about 8 or 10, the use of a so-called mock trial was resorted to in an attempt to "soften up" a witness who was thought to be susceptible to such procedure. Those trials were held at Schwabisch Hall in one of the cells, sometimes a small cell about 6 by 8 feet, sometimes in a larger room two or three times that size. There would be a table covered with a black cloth on which stood a crucifix and burning candles and behind which sat one or more people impersonating judges.

Now, is that correct?

Mr. ELLOWITZ. That is not correct; no.

Senator McCARTHY. This statement says:

The prosecution admitted and the board finds—

You are not part of the prosecution that admitted that?

Mr. ELLOWITZ. That is correct.

Senator McCARTHY. You say if the prosecution admitted that, they are in error and not telling the truth?

Mr. ELLOWITZ. I don't recall the prosecution admitting that people were impersonating judges.

Senator McCARTHY. You say no one ever impersonated a judge in this case. In other words, did or did not one sit behind the table and impersonate a judge? I wish you would weigh your answer very carefully. I don't want you to have something go on the record you will have to correct later.

Mr. ELLOWITZ. In the case I observed, the procedure I observed, I believe there were two men sitting behind the table.

Senator McCARTHY. Yes.

Mr. ELLOWITZ. They certainly didn't act as any judges.

Senator McCARTHY. They may not have acted as judges, I concede that; but did they attempt to impersonate judges?

Mr. ELLOWITZ. I don't know. That is very difficult to answer. I don't know what you mean by impersonating judges.

Senator McCARTHY. Is it your opinion that there is an attempt, or was an attempt to make the accused believe that he was actually being tried, in other words, this was his trial?

Mr. ELLOWITZ. In my opinion, the accused didn't think he was being tried.

Senator McCARTHY. Do you know whether or not that was the purpose of the mock trial? Was that the purpose of the crucifix and the candles and the men impersonating judges; was it their purpose to make the accused believe that he was being actually tried?

Mr. ELLOWITZ. The purpose was not to make him actually believe he was on trial for the crime he committed. The purpose was to have him believe that he was at a very, very formal and solemn hearing, a further interrogation, that it was something higher than the informal interrogation that he had been accustomed to.

Senator McCARTHY. Let me read this, to see if this is correct :

When the prisoner was brought into the mock trial room sometimes other people were brought in who purported to testify against him. There is no evidence on which the board can find that the prisoner himself was forced to testify at such trial. One member of the prosecution team would play the part of prosecutor and another would act as a friend of the defendant. While this latter may have been not held out affirmatively as defense counsel the accused had every reason to believe he was taking that part.

In your opinion, is that correct or incorrect, it specifies there "that part"?

Mr. ELLOWITZ. That part is correct, where witnesses were purported to appear against him.

Senator McCARTHY. I will read that one sentence, see if this is correct :

While this latter may have been not held out affirmatively as defense counsel the accused had every reason to believe he was taking that part.

Is that correct?

Mr. ELLOWITZ. Well, in the one case I was an observer at, to me it didn't seem possible for an accused to believe that the man that was taking his part had been——

Senator BALDWIN. I am willing to have you conduct as long an examination as you want, but in the interest of time it should appear for the benefit of the record that this witness never said at any time he took any part in these mock trials, and I think he said he observed one, and you are questioning him on the basis of a report made by the Army, which apparently is a summation of the testimony of a lot of witnesses who saw all of the details of this thing. I don't want to protect the witness. He doesn't need my protection. He is testifying and the gentleman is telling the truth as much as he can, but I am wondering if we are helping the case any by trying to interrogate him on the basis of something that he obviously testified he doesn't know about, because he hasn't said that.

You are reading to him the full purport of this whole report, and he says that he only observed this thing once or twice at the most, and never took any part in it.

Senator McCARTHY. There is only one thing which I claim to have, an unimpeachable memory when I am examining a witness. I will buy the chairman the best steak dinner he can order if I am not correct that this witness told us that the court was told exactly how the mock trials were conducted, given the details of how mock trials were conducted. If he knows, if that isn't true, if this witness doesn't know how a mock trial was conducted, then he can't tell me that the court was given the information, he was making a mistake——

Senator BALDWIN. You are asking the question whether or not this witness—you are asking of the witness whether or not the court was told how the mock trial was conducted, and he said that the court was so told. Now, you are questioning him as to whether or not all of these details were part of a mock trial or part of things told the court.

Senator McCARTHY. Mr. Chairman, if the accused tells me the court was told how a mock trial was conducted, then I want to know whether or not he knows how it was. For example, one of the important things in a mock trial was whether or not, No. 1, whether the

accused was led to believe he was actually being tried; No. 2, whether there was a conviction; No. 3—

The CHAIRMAN. To get my point across, suppose you were down in the courthouse, and a witness was on the witness stand and describing an automobile accident which you had never seen. Wouldn't you be able to say that the witness described the automobile accident, even though you had never seen it?

As I understand it, that is what this witness said, these mock trials were described to the court, but his personal knowledge of how they were conducted is limited to one or two times that he happened to observe it.

I want to give you every latitude I can, but it does seem to me that we are wasting time here on this thing.

Senator McCARTHY. Let me ask the witness then—do you know whether or not the court was actually and truthfully told how the mock trials were conducted?

Mr. ELLOWITZ. As I recall the record now, at this time, the court was told.

Senator McCARTHY. Well, now, let me ask you this: Do you know of your own knowledge how any of the other six or eight mock trials were conducted, how any in which you did not take part—

Mr. ELLOWITZ. I can't say, of my own knowledge.

Senator McCARTHY. Do you have any way of knowing whether the court was properly informed as to how those mock trials were conducted?

Mr. ELLOWITZ. I was there at one and took part in discussions with the other interrogators, the way in which they were done.

Senator McCARTHY. You claim to know how the mock trials were conducted?

Mr. ELLOWITZ. Not from my own personal observation.

Senator McCARTHY. In view of the fact that you don't know from your own personal observation how they were conducted, I would like to know what the court was told about the mock trial? Can you tell me that? Can you tell me what the court was told?

Mr. ELLOWITZ. I can tell you exactly.

Senator McCARTHY. I am going to ask you this question: Do you know whether or not the court was told that a friend of the defendant—using the language of the report—do you know whether or not the accused was given every reason to believe that at the mock trials that he had a defense counsel?

Mr. ELLOWITZ. I don't think the court was told that.

Senator McCARTHY. You don't think the court was told that?

Mr. ELLOWITZ. No.

Senator McCARTHY. Do you know whether or not the court was told that behind a table would sit men impersonating judges?

Mr. ELLOWITZ. I am sure that the court was told that there were men sitting behind tables, but I don't recall that they were acting as judges.

Senator McCARTHY. Do you know whether or not the court was told that in some cases the defendant understood he had been convicted?

Mr. ELLOWITZ. The court was not told that.

Senator McCARTHY. Was not?

Mr. ELLOWITZ. I am quite sure.

Senator McCARTHY. I don't think I have any further questions, Mr. Chairman.

Senator BALDWIN. I want to read to you, Mr. Ellowitz, from the affidavit of Heinz Hofman, which appears to be signed February 11, 1948.

Do you remember Heinz Hofman?

Mr. ELLOWITZ. I recall, if he is the person I have in mind.

Senator BALDWIN (reading):

My first interrogation by Mr. Ellowitz and Mr. Kirchbaum, at 0900 hours on March 14 went like this: A black hood covering my head I was taken from my solitary cell to an interrogation cell. Having taken my personal data I was promised that I would be taken back to Heilbronn, immediately, if I would say who had given me the order at Stoumont, Belgium, to fire at prisoners of war. Since I am not aware of any guilt, I denied this accusation. In spite of various promises and threats which I had to undergo, I could not be moved to deviate from actual facts which were there. Never in my life have I shot a prisoner or mistreated any one. A short time later First Lieutenant Perl entered the interrogation cell and identified himself as my defense counsel. When good words on his part did not help him to gain any confession from me regarding the accusations, he slapped me in the face three or four times with his fist and when I put my hands in front of my face, he ordered me to stand at attention. While he was beating me with his fists in the abdomen, just as many times. When this did not help, he tried promises and threats again. He said literally a democracy such as the United States represents does not care to deprive us innocent men of our lives but it desires the big shots such as Pieper and Sepp Dietrich. If I would not admit ever having shot and killed then I would be hanged; this could be done without trouble since none of my relatives knew where I was at the time and furthermore, my relatives would lose all their food ration cards and thus die of hunger. I then had to state under oath that I had never received an order to fire at prisoners of war but I could not add that never in my life had I fired at any, et cetera. The interrogation ended at 1200 hours noon, under all sorts of name-calling and threats.

The lunch I received was taken away by Mr. Ellowitz and I was locked into the death cell. I had to put all of my clothes, except my trousers and socks and underwear, outside of the door so that I only possessed one thin blanket during the night with which to cover myself on the cold wooden bunk. At 1400 hours, Mr. Kirchbaum returned, called me names, and threatened me with hanging if I would not admit. He pushed me into a corner and once more beat me in the abdomen with his fists several times. Subsequently Mr. Ellowitz appeared and asked me for my last wish because I would be hanged within 24 hours. After a night most frightful to me I was taken out next to be interrogated for the second time, but there I remained steadfast in spite of name calling and threats, comrades of my company were confronted with me who wanted to have seen that I had fired.

After a few questions, however, which I was allowed to ask them, it became obvious to me that they were only saying these things for the sake of improving their present existence. When I was taken back to the death cell after about an hour I beseeched Mr. Ellowitz, while moaning loudly, to take me out of here, saying that I would sign everything he would request of me. Immediately cigarettes were offered to me and I wrote the statement which was being dictated to me by Mr. Ellowitz and which was introduced as proof in the trial but which never corresponds with the truth.

I felt myself humiliated physically and mentally to such an extent that I was capable of doing anything only to find peace; my statement came into being in that fashion. This sworn statement is to serve before courts and authorities.

And that is signed by Heinz Hofman.

Can you tell us about that?

Mr. ELLOWITZ. I believe I remember that man.

That is not true. Heinz Hofman was not with the original group brought to Schwabisch Hall. We obtained statements from two members of his tank crew who had involved themselves with the murders of

some Americans, and they stated that they did so under the instigation of Heinz Hofman who also fired upon the group.

A search was made for Heinz Hofman, and he was finally located several weeks later. When he was brought into the prison at Schwabisch Hall, he was immediately confronted personally, by two of the men of his tank crew, who told the story to him substantially as they had written it.

It was only a very short time after that, that Heinz Hofman agreed that the facts were substantially correct in their statements, and he made his statement.

Senator BALDWIN. Was he one of the men that was convicted, do you recall?

Mr. ELLOWITZ. Yes; he was convicted. They were, all.

Senator BALDWIN. And ordered executed?

Mr. ELLOWITZ. I don't know if he was.

Senator BALDWIN. He got life imprisonment?

Mr. ELLOWITZ. He got life.

Senator BALDWIN. Do you have anything further you want to say with reference to that?

Mr. ELLOWITZ. I don't recall much more about that particular man, because I know I didn't spend much time with him at all.

Senator BALDWIN. Did you see Mr. Kirchbaum hit him, or did you at any time hit him?

Mr. ELLOWITZ. No, sir.

Senator BALDWIN. Let me read you one more.

This is from Hans Pletz.

How would you say that?

Mr. ELLOWITZ. It is pronounced P-l-e-t-z.

Senator BALDWIN. This statement is signed here, on the 22d of January 1948.

I was taken to the prison at Schwabisch Hall on December 5, 1945. My first interrogation took place on December 16, 1945, and was carried out by Mr. Ellowitz and an interpreter who is unknown to me. This interrogation lasted approximately 10 minutes. From December 18, 1945, to March 5, 1946, I stayed at Kronwestheim Internment Camp, and at the PW camp of Heilbronn. On March 5, 1946, I was again returned to Schwabisch Hall and there I was interrogated anew on March 14. The interrogating officer was Mr. Ellowitz, together with Mr. Kirchbaum as interpreter. Right away during the first few minutes I was called a mean liar and murderer by Mr. Kirchbaum, beaten in the face and abdomen by him, and kicked with his knee into the genitals and spat into the face several times by him. When I gave the assurance that I would answer as far as my power everything I was being asked, they wanted to know what I knew in the way of criminal orders and deeds, as regards my company. Since I knew nothing of this I was supposed to write down under oath that I knew of no criminal orders. I did so after I had been told several times that United States law calls for a death penalty upon committing a perjury. After I had written this down I was shown a written statement of my company commander which said among other things that he had held a speech to his company before the beginning of the offensive in which he had said that our attack was to be preceded by a wave of terror and horror and that no prisoners were to be taken. I was then reminded that my life rested solely within the hands of Mr. Ellowitz but that he had no intention at all of saving me from the gallows by tearing up my statement if I would continue to lie in such a hard-boiled manner. On the other hand I was definitely promised that I would be released immediately if I should tell them of only one case in which a United States prisoner of war had been shot, even if I had shot them myself and on orders. Since I could not do this I was told that my parents would no longer

receive their food-ration cards because of my being so hard-boiled. Mr. Thon then entered the room and hit me with his fist on my left eye so hard that it kept on watering for hours. He then told me if I would not answer his questions by saying "Yes" I would die without recourse.

Senator McCARTHY. I wonder how you would "die without recourse"?

Senator BALDWIN (continuing) :

This question as well as which concerned another accused, I could only answer in the negative whereupon Lieutenant Perl declared that he would have to refuse taking over my defense while I was continuing to lie to United States officials and officers, after the interrogation which lasted about 2 hours.

That section right there doesn't pertain to Mr. Ellowitz, so I will go further on down.

Whenever Mr. Ellowitz and Mr. Kirchbaum happened to be in my cell while the food was being issued, they would take my food away from me. The latter said to me: "When you will hardly be able to stand up on your legs because of hunger and weakness then you will be just strong enough to climb the steps to the gallows." At that time men were being shown to me, several times, who had already written statements of some sort and who described to me how well they were faring since then. I was about to invent some kind of a story only to get out of this terrible position. Due to my lack of experience in trial and judicial affairs, I believe at every approaching step that the frightful threats would now be realized and that the hour had come. It is impossible to describe these psychic conditions after Lieutenant Perl had come to my cell one night—

That doesn't pertain to you, either.

That is all that is mentioned in this affidavit about you.

Do you remember this man at all?

Mr. ELLOWITZ. I do.

Senator BALDWIN. What can you tell us about him, in connection with this claim?

Mr. ELLOWITZ. I can only state that those statements in the affidavit are not true. I don't think Pletz ever made a confession or statement of any kind.

Pletz, I recall now, he was a very intelligent boy, and I think it was Pletz who at one time during the interrogation did state that he was not going to say a word because he knew in a democracy, in a democratic procedure you must be tried before a jury and you must have defense counsel.

Senator BALDWIN. Did you ever strike him?

Mr. ELLOWITZ. No, sir.

Senator BALDWIN. Did you ever take his food away?

Mr. ELLOWITZ. No, sir.

We had no charge of food there at all.

Senator BALDWIN. What?

Mr. ELLOWITZ. We had no charge of the food at all. The German internees served the food to the prisoners.

Senator BALDWIN. I think that is all.

Do you have any questions, Senator HUNT?

Senator HUNT. I will ask three, it will only take a minute, Mr. Chairman.

I will ask the witness if he noticed any show of remorse or regret among the SS troops over the act that had taken place, and what they were being tried for, the crime they were being tried for?

Mr. ELLOWITZ. For the most part, they did not; and some of them, I recall in the beginning, when the case first began to break did state, or words to this effect, that they did not take part in any shooting and

they did, or were sworn to secrecy about it, but they were damned if they were going to stay in jail until the case was broken, to protect other people.

And, I recall, they told us stories of one fellow who at the Malmedy Crossroads was ordered to shoot and refused to do it, and he was threatened with court-martial proceedings for failure to obey orders.

Senator HUNT. These affidavits apparently have been made from 2 to 3 years following the massacre, and quite some time following the end of the trial.

Are you of the opinion that these affidavits now are made primarily to attempt to save their necks, so to speak?

Mr. ELLOWITZ. Definitely; I am convinced as to that.

Senator HUNT. Did you think that these affidavits are of their own wording, of their own initiative, or do you think that they had been coached in preparing these affidavits to some extent?

Mr. ELLOWITZ. It would be very difficult for me to answer that because I have only read several of them.

Senator HUNT. That is all I have.

Senator BALDWIN. Any questions?

Senator McCARTHY. I have one that I would like to ask this man, or some subsequent witness.

I will ask you the question, and if you don't have the information, we will save it until we get someone on the stand that can answer.

Am I correct that after conviction and after the sentencing of the 73 defendants that a review board of 2 officers went over the cases and made recommendations, found that in some cases there should not be a finding of guilt, that the evidence wasn't such; that then those 2 officers were discharged and a new board was appointed of 4 officers? Let me ask you are you aware of that situation?

Mr. ELLOWITZ. I am aware of the reviews of the case.

Senator McCARTHY. Then, I will follow up—then that the four officers were appointed, and that they made further recommendations cutting down sentences and inserting in some cases a recommendation for a certain number of years in lieu of the death penalty, and the recommendations as to guilt of or innocence of the defendants were such that those four were then discharged and that then one of the reporters, a lady reporter who had a legal background, was asked to review the cases and she refused and asked to be relieved of duty? Do you know anything about that, and finally Colonel Dustan reviewed them.

Mr. ELLOWITZ. No; I am not aware of that.

Senator McCARTHY. You don't know that?

Mr. ELLOWITZ. No; I just know that there was a review.

Senator McCARTHY. Who was the man who would give the information?

Colonel ELLIS. Colonel Straight, or General Harbaugh will give you the details.

Senator McCARTHY. May I ask, Colonel Ellis, whether or not that is substantially true?

Colonel ELLIS. I am not familiar with the reviews whatsoever. They stayed away from me.

Senator McCARTHY. After the conviction, that ended your connection?

Colonel ELLIS. That is right; I had no more interest in it.

Senator McCARTHY. I wonder if you, Colonel, over here could tell.

Colonel RAYMOND. There was a review by Colonel Straight and some other officers; I think it is an exhibit to our report. There was a further review later on, by a board in Colonel Harbaugh's office. That is all in our record and, in Harbaugh's final report to Clay.

Senator McCARTHY. Am I correct—I may be incorrect: I don't have any staff of investigators; all I do is get reports mostly from interested parties, so all I can do is ask questions of you gentlemen about them—am I correct that first there was a review by two officers, and they made a recommendation not in line with the action of the trial board. No action was taken upon those recommendations but those two officers were dismissed and a new board of four officers was appointed; that those four officers also made recommendations that were completely out of line with the action taken by the court; and, that those four officers were then dismissed; and then, there was a request that a lawyer who was a reporter, a lady, conduct the reviews and she refused and asked to be discharged and was discharged and came home and Colonel Dunstan (?), who had been in charge of the prosecution, at one of the other cases, conducted the review.

Colonel RAYMOND. I never heard that before.

Senator McCARTHY. His review was made a part of the—

Colonel RAYMOND. The only review we had was signed by Colonel Straight, and I believe Mr. Reynolds, and a couple of others.

Senator McCARTHY. Could you check on that matter for us?

Senator BALDWIN. Would you be satisfied with a check between now and the next hearing? We want to close this hearing today.

Colonel RAYMOND. The review was signed by Reynolds, and approved by Straight. That is what this one has.

Senator BALDWIN. Are there any further questions?

Senator McCARTHY, do you have anything further?

Senator McCARTHY. I would like to say this to this witness, and this applies to all of the men who were conducting this case out there: I hope you don't misunderstand our questions as an indication you think you are guilty of any charge that has been made. These are very, very serious charges, some of them, and we have no choice whatsoever except to run them down. I certainly hope it is proven that you fellows always conducted yourselves properly and we meted out a good brand of American justice.

At this time I have very serious reason to doubt that that is the situation, in view of the report, the unbiased group report of the Simpson-Van Roden committee.

Let me repeat, I seriously hope that none of you considers the questioning as an indication that we think you are guilty or innocent in the affair.

For all I know, you may have done an outstanding job, and I hope the proof is ultimately to that effect.

Mr. ELLOWITZ. You understand, I would like to say that we bent over backward in many cases, spent lots of time tracking down false accusations made by some SS men against other SS men. In fact that took most of our time.

Senator BALDWIN. Let me ask a question there. You raised a point, Mr. Elowitz, that I think is significant or important. When you got a statement from one SS trooper that involved another SS trooper's participation in this thing—

Mr. ELLOWITZ. Yes.

Senator BALDWIN. Did you seek corroborative testimony of that statement?

Mr. ELLOWITZ. We certainly did. We not only sought it from the other SS men, but we sought it from Army files, to discover if any bodies were found in that particular area, sought to find the corpus delicti of the crime.

I know of several cases that I interrogated, in which men had voluntarily made statements that they had shot Americans at Malmedy, and there was no other testimony except their own statement, and after a good deal of interrogation they would finally admit that they made the statement that way because they were told by other prisoners that if they made a statement, they could go home.

Senator BALDWIN. In other words, when statements were made, you checked up to determine whether or not the soldier was shot at that particular place.

Mr. ELLOWITZ. Yes, sir.

Senator BALDWIN. And finding none, would you again confront the fellow and he would admit that he made the statement in order to get out?

Mr. ELLOWITZ. That is right.

Senator BALDWIN. In other words, in an American court, a confession is used to check up on the accused.

Mr. ELLOWITZ. Yes, sir.

Senator BALDWIN. And you sought to corroborate the admissions that were made in the confessions. Was that procedure followed in this case?

Mr. ELLOWITZ. Yes, sir.

I don't think there were any accused who were indicted merely on his own unsupported statement.

Senator McCARTHY. May I ask Colonel Ellis to do something, not today, but to bring it in and answer tomorrow, or some other time—I would like to have the colonel, preferably at the next hearing, tell us if he can under what terms and conditions if any American services held it was proper to destroy prisoners. Would you follow me?

Colonel ELLIS. What?

Senator McCARTHY. I want to know from you whether under any circumstances the Army, Navy, or Marine Corps has held that it is proper to kill prisoners, and if so, I want to know under what conditions the services feel that is proper.

Do you follow me—under the rules of warfare.

Colonel ELLIS. I believe so.

Senator BALDWIN. Do you have any further questions.

Senator McCARTHY. No.

Senator BALDWIN. Mr. Elowitz, we thank you for coming.

We will adjourn for a week, because of the pressure of other things that we have to attend to; so, the next meeting of this committee will be a week from today, in this room at 10 o'clock.

Senator McCARTHY. Will you summons Mr. Bailey.

Mr. CHAMBERS. Mr. Bailey will not be here until the second Monday. The next meeting will be on the second, but Judge Simpson and Judge Van Roden are the witnesses for next Friday.

(Whereupon, at 4:30 p. m., the hearing in the above-entitled matter stood in recess until 10 a. m., Friday, April 29, 1949.)

MALMEDY MASSACRE INVESTIGATION

FRIDAY, APRIL 29, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10:20 a. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin, presiding.

Present: Senators Baldwin (presiding) and Hunt.

Also present: Senator Joseph R. McCarthy, and J. M. Chambers of the committee staff.

Senator BALDWIN. Will the meeting be in order.

Senator McCARTHY. Mr. Chairman, before you call any witnesses, I have a letter here which I would like to read into the record—one paragraph of this letter.

My office got a call from Mr. Teil, who is a student over at the Washington and Jefferson College, and he said he had information which he thought would be of value to the committee, and when asked what it was he said he was one of the investigators in the area, that the first day he came on duty Mr. Ellis did tell him not to beat any of the prisoners. But when he was being shown around by Mr. Thon he was shown one of the death cells and one of the men was lying unconscious on the floor with a black bloody hood over his head and he asked Mr. Thon who this man was and Mr. Thon said he was one of the men who had just finished his interrogation; and he said he would be glad to come down and testify.

So that there is no mistake, he said Mr. Ellis had told him not to beat anybody up.

Senator BALDWIN. Do you know about what the date of that was, Senator?

Senator McCARTHY. I do not know.

Senator BALDWIN. The date of that occasion. Would you like to call him as a witness?

Senator McCARTHY. Yes.

Senator BALDWIN. Why do we not call him as a witness?

Senator McCARTHY. Also, Mr. Chairman, I have been getting a tremendous flood of mail on this from men in that area. The two men who are mentioned most and referred to as sadistic, were accused of most of the beatings, are a man named Perl and Thon.

I think both those men should definitely be here, regardless of how far we have got to go for them.

Senator BALDWIN. We have them, Senator, on the list of witnesses to be called now.

Mr. CHAMBERS. Dr. Perl is scheduled to appear on May 4. I will have to check, but I believe Thon is in Germany, but he is definitely on the list of witnesses we will have.

Senator McCARTHY. They seem to be, from all the information I get, the prime offenders.

Senator BALDWIN. Now, in connection with Mr. Bailey's testimony, have you the letter, the original letter, because that was put in the record?

Senator McCARTHY. I do not know if I have it.

Senator BALDWIN. I would like to have him identified.

Senator McCARTHY. I do not think I have the original letter.

Senator BALDWIN. Mr. Bailey, will you stand up. Do you solemnly swear that the testimony you are about to give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BAILEY. I do.

TESTIMONY OF JAMES J. BAILEY, PITTSBURGH, PA.

Senator BALDWIN. What is your full name, Mr. Bailey?

Mr. BAILEY. James J. Bailey.

Senator BALDWIN. Where do you live?

Mr. BAILEY. 3573 Shadeland Avenue, Northside, Pittsburgh.

Senator McCARTHY. Before Mr. Bailey starts to testify, I would like to tell you that I appreciate very much your writing me and giving me the information.

Mr. BAILEY. Are you Senator McCarthy?

Senator McCARTHY. And for your willingness to come over here to appear.

Mr. BAILEY. I am glad to do it. I also want it understood that when I sent the letter to you, I sent the exact letter to the Secretary of the Army.

Senator McCARTHY. Yes.

Senator BALDWIN. What is your business, Mr. Bailey?

Mr. BAILEY. I am an official court reporter in the Allegheny County court.

Senator BALDWIN. How long have you been a court reporter?

Mr. BAILEY. 28 years.

Senator BALDWIN. During the investigation of Malmedy massacre affair, were you attached to the Government, and, if not, would you tell us what your capacity then was?

Mr. BAILEY. I was employed originally by the State Department. That is with whom my contract was, and I reported in Wiesbaden, Germany, to the War Crimes, and I was assigned as one of a team of 10 to—a team consisting of three lawyers and four interpreters, another reporter, and myself.

Senator BALDWIN. Can you give us about the date of that? Not the exact date, but the approximate date.

Mr. BAILEY. I think I can give you the exact date. We left Wiesbaden on December 26, 1945, and we reported at Schwabisch Hall the next day, December 27. That would be—

Senator BALDWIN. 1945?

Mr. BAILEY. That is right.

Senator BALDWIN. When you reported at Schwabisch Hall who was the officer to whom you reported?

Mr. BAILEY. Well, the team of nine of us left War Crimes headquarters in Wiesbaden together. We left in two vehicles. The man supposedly in charge was a Maj. Dwight W. Fanton. He was under the jurisdiction of Lieutenant Colonel Ellis. Colonel Ellis at that time was in charge of the pretrial work of the War Crimes Branch. I believe that is correct.

Senator BALDWIN. Now, Mr. Bailey, do you see Colonel Ellis here?

Mr. BAILEY. That is right.

Senator BALDWIN. That is the Colonel Ellis who testified?

Mr. BAILEY. I have spoken to the colonel; when I came in.

Senator BALDWIN. And you reported to Major Fanton, and Fanton—

Mr. BAILEY. Fanton accompanied us. We all went down together.

Senator BALDWIN. You all went down together in a group.

Now, after you had reported to him, you were assigned to quarters, I assume?

Mr. BAILEY. We all lived in the same quarters. It was a very nice building—the quarters were very nice—one of the finest houses in this small town, I guess.

Senator BALDWIN. It was not within the confines of the prison?

Mr. BAILEY. No; we reported at the prison every morning approximately at 9 o'clock and left there about 5:30 in the evening. We came home for lunch every day.

Senator BALDWIN. And your duties in connection with this matter were what, Mr. Bailey?

Mr. BAILEY. Well, I was employed as a shorthand reporter, but there was not much of what I would call reporting done in Schwabisch Hall.

Senator BALDWIN. I show you a copy of a letter, and I ask if you can identify it.

Mr. BAILEY. I can, and that is a carbon copy of a letter I wrote to the Honorable Joseph R. McCarthy, and an exact duplicate sent to Kenneth L. Royall, Secretary of the Army.

Senator BALDWIN. You sent a duplicate to the Secretary of the Army?

Mr. BAILEY. Well, I sent an original to both.

Senator BALDWIN. I see.

Mr. BAILEY. But the wording is exactly alike.

Senator BALDWIN. Was the one that you sent to the Secretary of Army—not that it matters particularly—was it one that was addressed to him, or was it a copy?

Mr. BAILEY. I have a copy of both if you care to see them, a carbon copy.

Senator BALDWIN. It does not matter. This is the letter. If you want a copy to consult—

Mr. BAILEY. I have got a copy of the letter in my pocket.

Senator BALDWIN. I was going to ask you some questions in connection with it.

You say in the middle of the second paragraph of your letter:

The purpose of our being sent there—

This is after you tell about going to Schwabisch Hall—
was to obtain confessions from prisoners and prepare pretrial data.

Do you want to enlarge upon that a little bit? Were those your specific instructions?

Mr. BAILEY. Well, that is the information I received. That was the impression I got from Major Fanton, who was, supposedly, in charge of the team when we went down there.

Senator BALDWIN. Then, you say:

During my stay at Schwabisch Hall the entire team spent an average of about 8 hours per day in prison.

Mr. BAILEY. That is right.

Senator BALDWIN. Then, you say:

During my 10-week stay I took in shorthand through the interpreters practically all of the so-called verbatim confessions of the prisoners and typewrote at least half of the translated longhand statements that had been purportedly made out by the prisoners. I still retain a considerable portion of my shorthand notes.

Will you enlarge upon that a little bit? Tell us what the procedures were, Mr. Bailey, and how you did it.

Mr. BAILEY. The procedure was: There were only two reporters on a team, a Mr. Berg and myself. His first name was Signor, I believe. He had been in the United States Army, and, I understand, got his discharge in Germany or at least in the European area and signed up as a civilian employee.

He had a rating of a CA-8, and mine was CA-9; but Mr. Berg did not want to go into the cells. As a matter of fact, he was perfectly willing to do my typewriting if I would go into the cells, and that is about how it worked out.

Senator BALDWIN. That is, you went into the cells and took the stenography and he did the typing.

Mr. BAILEY. The arrangement was this: The interpreters or investigators, those who could talk German and translate it, they would go in and interrogate the prisoners, and when they arrived at the point where they felt the prisoner was ready to give a statement or a confession they would come into the office where we were and would get one of the lawyers and myself and we would go into a cell, probably be in there a couple of minutes when an MP would walk in with the prisoner who was going to be interrogated, and he had a long grotesque wrapper over him.

Senator BALDWIN. What is that?

Mr. BAILEY. There was a long grotesque wrapper—I do not know how else to explain it.

Senator BALDWIN. A wrapper?

Mr. BAILEY. I would call it a woman's wrapper, a sleeveless wrapper. It was tied around his neck, and there were no sleeves to it. It hung down loose. I do not know how else to describe it.

Senator BALDWIN. Who would have that, the interpreter?

Mr. BAILEY. The MP would bring the prisoner into the cell where the lawyer and the interpreter and I were waiting for him. The MP would simply deliver him into the cell. The interpreter would pull a black hood off him and start interrogating him.

Senator BALDWIN. Could you tell us a little bit how the cell looked and what the arrangements were in the cell at the time, if you remember?

Mr. BAILEY. Well, the cells in this particular prison, the only one I was in, were different from any cells in any prison I have seen in the United States. There were no bars where the prisoners could look through; there was a solid door in front and solid on both sides; small, probably about 15 by 15, square inches, of window with bars in the back; concrete floor, small table, and three or four wooden chairs.

Senator BALDWIN. On these occasions, would they have anything on the table, the black cloth, or anything of that kind?

Mr. BAILEY. Not on all occasions. As a matter of fact, if you are referring to the crucifixion candles, if that is what you have in mind, Senator—

Senator BALDWIN. Yes; that has been testified to before.

Mr. BAILEY. If you care to see what I said in the letter on that, if you want me to elaborate on it, I would be glad to do it.

Senator BALDWIN. Yes; I would like to have you do so, Mr. Bailey.

Mr. BAILEY. Well, on one occasion, after I had been there probably 3 or 4 weeks, there was a new man sent down; his name was Steiner—his first name was Frank. He came down there as an interpreter, and on this—I might, incidentally before I forget it, say that he worked almost exclusively with this Lieutenant Perl whom I heard Senator McCarthy mention.

Well, on this particular occasion, Capt. Raphael Shumacker, who, in my opinion, was the only experienced lawyer on the team and the only man who conducted a so-called fair investigation, but on this occasion Captain Shumacker called me out and he called this Steiner out, and we went into Major Fanton's office, and he first administered an oath to me, which was unusual, that I would well and truthfully transcribe, and then he swore in Steiner as an interpreter, and then he qualified him, as you would in any court in the United States as to his ability to talk English; and I took his qualifications down in shorthand.

Senator BALDWIN. Let me ask you a question right there.

You say before you started to transcribe any notes they administered an oath to you that you would well and truly—

Mr. BAILEY. That is right. Before we ever saw who was going to be interrogated.

Senator BALDWIN. Did they do that each time?

Mr. BAILEY. This was the first time, to my knowledge.

Senator BALDWIN. Did they do it after that?

Mr. BAILEY. Not to my knowledge; at least, I do not recollect them ever doing it. They did administer it to the prisoners.

Senator BALDWIN. Did they administer an oath to the interpreter, too?

Mr. BAILEY. On this particular occasion. I had been there at this time probably 4 or 5 weeks—that is just more or less a guess—and when he swore the interpreter in and swore me in, and then interrogated the interpreter as to his qualifications, I thought it was something a little out of the ordinary, and that is the first time that, I believe, it was—the first time at Schwabisch Hall that they used a table with a black cloth over it with a crucifix and two candles.

Senator BALDWIN. Do you know about what time this was, what month?

Mr. BAILEY. I would say that was the very first week—the first of February 1946.

Senator BALDWIN. And that was the first case that you dealt with?

Mr. BAILEY. That was not the first statement I had taken, by any means. You see, it was a daily occurrence to bring every prisoner in with his black hood on him and a rope around his neck, and this cloak around him. They were all brought in that way. It was a regular procedure. But that was the first time I had seen a table with a black cloth over it and a crucifix with two candles, which would give you an impression of a small altar in a church.

Senator BALDWIN. Well; go on and describe to us how this confession, so-called, was taken.

Mr. BAILEY. On this particular occasion, we walked in the cell, and when I saw that I said to Captain Shumacker, I said, "What the hell is this?" I thought it was something out of the ordinary coming off, and he said, "That's O. K.; wait a minute." So, in a matter of a couple of minutes, one of the MP's brings the prisoner in with his regular dress, black hood, cloak, and a rope.

Senator BALDWIN. Let me ask you there—

Mr. BAILEY. Maybe I am talking too fast.

Senator BALDWIN. You cannot talk faster than a Senator, I do not think. [Laughter.] But what I meant was: You said he had a black hood on and a black wrapper you called it.

Mr. BAILEY. It was not black. This wrapper was mostly all colors. It was white and red and green and everything else. If you have seen a camouflaged battleship in the First World War, that is what this wrapper was like.

Senator BALDWIN. And you say it was sleeveless?

Mr. BAILEY. Yes; sleeveless.

Senator BALDWIN. Then, you spoke of the hood the prisoner had on, a black hood.

Mr. BAILEY. A black hood with no eyeholes in it at all. That was the regular garb that they brought every prisoner in the cell with.

Senator BALDWIN. Then, you mentioned a rope around the neck. Tell us about the rope. What kind of a rope was it?

Mr. BAILEY. I would say a rope twice as thick as the ordinary clothes-line, probably three-quarters of an inch in diameter. It was not tied tight. It was not put around to choke him, or anything like that.

Senator BALDWIN. Well, would you say that it was like a hangman's rope or would you say—

Mr. BAILEY. Exactly.

Senator BALDWIN (continuing). Or would you say it was a rope to tie the hood down so that it could not be pulled off the head?

Mr. BAILEY. I think the whole garb was to have a psychological effect on the prisoner; and outside of mental brutality, there was no physical brutality attached to it.

Senator BALDWIN. How long would the rope be? Would it hang down—

Mr. BAILEY. Oh, the MP who would bring him in would have hold of the other end, probably 3 feet in back of him. That would be around his neck. The MP would have to steer him in; he could not see where he was going.

Senator BALDWIN. All right. Go on and tell us what happened from then on.

Mr. BAILEY. In this particular occasion when this prisoner came in, Steiner, he jerked the hood off, and to my mind it looked like a kid of about 15 or 16 years of age. The kid immediately—a boy—fell flat on his face and his nose hit the concrete and it was bleeding. It looked pretty flat to me.

Senator BALDWIN. He fell flat on his face?

Mr. BAILEY. Yes.

Senator BALDWIN. You say he fell. Was he pushed or shoved or what?

Mr. BAILEY. No; at that time he was not touched. It looked to me as if he took a look at that crucifix and candles and just lost control of himself and just fell. He was not pushed at that time. But when he fell and lay there, Steiner took his foot—I won't say he kicked him, but he pushed him over on his back and he pulled him up to his feet and he said to Captain Shumacker, "He's faking." Well, they gave him a couple of minutes to get his breath and get his bearings and then Captain Shumacker interrogated him.

Senator BALDWIN. Now, let me ask you this question: At that particular time, when you saw this prisoner, you said he fell on his nose. Did he have a bloody nose?

Mr. BAILEY. Yes; very bloody, just like—

Senator BALDWIN. Other than that, were there any bruises or marks or anything of that kind on him?

Mr. BAILEY. Well, all you could see was his face.

Senator BALDWIN. Yes.

Mr. BAILEY. And—

Senator BALDWIN. All right; go ahead, Mr. Bailey.

Mr. BAILEY. The only bruise or mark on his face was when his nose contacted the concrete floor, and I took his statement, and I said, "The hell with this stuff; I'm going to get out of here."

Senator BALDWIN. Well, tell us about taking the statement. How did he give it? Was he questioned or how did he give it?

Mr. BAILEY. He was questioned and he was not touched. Captain Shumacker handled him no differently than the average prosecuting attorney would handle a witness on cross-examination. I will say that for Captain Shumacker for any occasion I was with him. I won't say that for any of the others.

He took a statement—I can tell you this fellow's name. I think his name was Gustav Neve, and he had been interrogated previously, as Captain Shumacker asked him if he had been in some other prison by a gray-haired captain and he admitted he had, and they were trying to get a confession from this kid on which to convict the commanding officer. I believe his name was Stivers.

Senator BALDWIN. Steiber—S-t-e-i-b-e-r?

Mr. BAILEY. Stivers. He was the commanding officer.

Senator BALDWIN. It was not Peiper, was it?

Mr. BAILEY. Oh, no; I can come to Peiper.

Senator BALDWIN. All right.

Mr. BAILEY. But that was the extent of it. The worst that Captain Shumacker accused the kid of was lying, but there was no physical abuse to him, outside of his falling on the floor and smashing his nose.

Senator McCARTHY. Did I understand you to say that Shumacker was the one man who treated the men decently?

Mr. BAILEY. In my opinion, I would say he treated them better than anybody else.

Senator BALDWIN. Go ahead and tell us what happened after that, with this particular prisoner.

Mr. BAILEY. Well, they just took his statement—oh, yes; and, naturally, we got back to the office, and Fanton heard about the occasion; Major Fanton heard about the occasion, and there was a Dr. Karen from Brooklyn there waiting to get back to the States, and Major Fanton asked him to go and take a look at this boy, and he did, and he came back and reported to Major Fanton, he said, "The kid has got a bad ticker"—meaning a weak heart. But he did not say there was any immediate danger of him dying or he did not say that he had been beaten up or anything.

Senator BALDWIN. Did Fanton ask him whether he had, in your presence?

Mr. BAILEY. Not in my presence, but the natural assumption was that Captain Shumacker had mentioned it to Fanton.

Senator BALDWIN. Yes.

Mr. BAILEY. And when the doctor came in, why, Fanton asked the doctor to take a look at him.

Senator BALDWIN. Well, at that particular time, Mr. Bailey, was there any other thing, other than you have described—I mean about the hood and being led in with a hood over his head and a rope around his neck, which you have described, and the other part of the rope in the hand of the MP—was there any physical abuse or threats or violence of any kind? If there was, I would like to have you describe it.

Mr. BAILEY. The only physical abuse that I saw was by this Lieutenant Perl.

Senator BALDWIN. Well, now, speaking about this particular case—and then I was going to ask you about others. In this particular case.

Mr. BAILEY. So far as I know, this was the end of that particular case. I never saw—I transcribed the statement.

Senator BALDWIN. In this particular case when the confession was written out, was it in your presence read to the prisoner?

Mr. BAILEY. No; it never was.

Senator BALDWIN. How did the prisoner give it? Did he write it himself, or did he answer questions, or how did he do it?

Mr. BAILEY. Well, I would say that in probably 60 percent of the cases the confessions were taken down in longhand by these interpreters. How they were gotten by them, I do not know. But when they were translated into English by them, or one or the others, and I typewrote them, I know there were additions and deletions and alterations made in them.

Senator BALDWIN. This particular thing that you describe, was that an occasion when they asked the prisoner to sign a confession or was that an occasion when they got the statement or confession from the prisoner?

Mr. BAILEY. I do not know. That was the first time that I saw the interpreter sworn, the first time I was sworn, the first time I heard an interpreter interrogated by the lawyer as to his qualifications to interpret properly; and I thought at the time it was something un-

usual; that they were making this in Peiper or—I think it was going to be an important case, but it was only this kid that they brought in. Senator BALDWIN. In this testimony that you are giving you say he was only about 15 years old; you say in your letter:

After these interpreters had worked out on this kid, some of these kids were 16 and 17 years of age, and softened them up and scared them into a condition where they would confess to anything, the prisoner then had a long multicolored robe thrown over him, and black hood pulled down over his head, and rope knotted about his neck, and he was marched into a cell to be interrogated by one of the lawyers.

Mr. BAILEY. Well, he was interrogated by a lawyer through an interpreter.

Senator BALDWIN. Yes.

Mr. BAILEY. In the presence of—

Senator BALDWIN. Well, now, you have described this particular occasion, Mr. Bailey. Will you go on and tell us, to the best of your recollection, whether or not you saw any occasion of abuse or intimidation or threats or violence, and if you can, recall the name of the prisoner and the Americans who might be involved. We would like to have their names, and if you can give us the approximate time we would like to have that.

Mr. BAILEY. Everything I testified to would have to be between December 27, 1945, and the middle of February or the first 3 weeks in February 1946, I would say.

I saw prisoners come into cells shaky and nervous and with a few scratches or bruises on them, but nothing serious; that is the condition I have seen them in, in the cells. I have seen Lieutenant Perl slap them, and I have seen them knee a couple of them in the groin.

Senator BALDWIN. You have seen Lieutenant Perl slap them with his open hand or with his first, or how?

Mr. BAILEY. Well, I would say it was with his open hand, but it was a pretty violent slap.

Senator BALDWIN. Did you ever see him hit them with any clubs or anything, or sticks, or ropes, or any implement of any kind?

Mr. BAILEY. No; I never did. I have seen—well, it was an oversize blackjack, about three times as big as an ordinary blackjack, lying on the table. But I think it was done for effect on the prisoner. I never saw him hit anyone with it.

Senator BALDWIN. You never saw them hit any prisoner with a blackjack?

Mr. BAILEY. Nothing.

Senator BALDWIN. You say they had scratches or bruises but nothing serious.

Mr. BAILEY. Nothing serious.

Senator BALDWIN. Have you ever noticed this hood? There have been some statements here that the hood was bloody. What can you tell us about that?

Mr. BAILEY. Well, on the outside the hood was coal black, and you could not tell whether there was any blood on it. On the inside, I think I have seen a few splotches of blood. That was a bright yellow on the inside of the hood.

Senator BALDWIN. Bright yellow?

Mr. BAILEY. That is my recollection. It was coal black on the outside and yellow on the inside is my recollection.

Senator BALDWIN. Let me ask you this question: There have been described here occasions when a table would be covered with a black cloth, and there would be a couple of candles on it and a crucifix. Did you see that set-up, so-called, used?

Mr. BAILEY. Oh, I think I have described that, Senator, in detail.

Senator BALDWIN. Yes; you have. The thing we wanted to ask you was whether or not that was used on every occasion. What can you tell us about that?

Mr. BAILEY. It had never been used up to that time, to my knowledge. That was the first time I had ever seen it, and that was close to the 1st of February 1946.

Senator BALDWIN. How many times after that did you see it used?

Mr. BAILEY. That was the only occasion that I saw it used, because I quit after that; at least, I tendered my resignation.

Senator BALDWIN. Was that the only confession you ever took, or statement, that you can recall to mind?

Mr. BAILEY. No; I took dozens of them, but that was the only one where I took it with the crucifix—where that took place. I took dozens of them where they were brought in with the black cloak and the hood around it. That was the ordinary garb for every prisoner.

Senator BALDWIN. You mean this cloak?

Mr. BAILEY. You understand, Senator, when a prisoner—when the MP's would be sent to the prison, they would go to the cell, and when the MP would bring them down, that was the dress they had on—bring them down to the cell. They used the same cell for interrogating them all; at least, it was the same cell I took them in, and they would bring them in, in that garb.

Senator BALDWIN. Now, can you recall, and will you tell us, if you can recall, about any other specific case of abuse of any kind, physical violence, threats, intimidation, or anything concerning any other prisoners, as I say?

Mr. BAILEY. The only two men that I saw use any rough tactics—I will qualify it; I will say three—were Steiner and Perl and Thon. I believe the Senator referred to him as "Tone." I imagine it is the same fellow that he had reference to. I believe you spell his name "T-h-o-n."

Senator BALDWIN. Can you tell us about those occasions, Mr. Bailey, when, and who was the prisoner, if you recall?

Mr. BAILEY. I could not recall the name of the prisoner, and I have seen Lieutenant Perl—to my mind, he was the only man, I would say, who had a really sadistic, brutal streak in him, and I do not think he had any business on that team, and I will tell you why: He was down there in the garb of a first lieutenant of the American Army. He has his wife along, dressed as a United States Wac. She had never been in this country; she had spent, as I understand it, 4 or 5 years in German concentration camps. He had escaped from one after being sentenced to death.

Senator BALDWIN. Was he a German himself?

Mr. BAILEY. He was an Austrian.

Senator BALDWIN. Was he in the American Army?

Mr. BAILEY. He wore a first lieutenant's uniform; so, apparently, he was. Somehow he got in—I do not—

Senator BALDWIN. Do you know whether or not he had ever lived in the United States?

Mr. BAILEY. My impression is that he had not. I do not say that for certain.

Senator BALDWIN. Now, again, I ask you if you can recall any other instances of violence and buse.

Mr. BAILEY. The other incidents would be pure hearsay on my part.

Senator BALDWIN. You did not see them?

Mr. BAILEY. I heard this Steiner mention them and gloat and laugh about them, about things that he and Perl had pulled, but I was not an eyewitness to it.

Senator BALDWIN. What did Steiner say, for example, because obviously that could be competent testimony, if he said anything?

Mr. BAILEY. Well—by the way, I would like to put this in the record: This fellow Steiner—I found this out when Captain Shumacker was interrogating him as to his qualifications as an interpreter—said he had been born in Austria; he had come to the United States in 1941; he enlisted in the United States as a French interpreter in 1942—and, by the way, before I forget it, this Steiner went into the cells, which all the interpreters did, and took statements or confessions, whatever you want to call them, from prisoners, not in my presence, see, and then come out and translated them into English.

Well, some of the translations of this fellow Steiner which he had and were submitted to Major Fanton were so contrary to the known facts of the Malmedy case that I think—Colonel Ellis, who will verify it—that Steiner was taken off the job in about 3 weeks.

Senator BALDWIN. How long was Steiner there, 3 weeks, you say?

Mr. BAILEY. Three or four weeks. He was impossible.

Senator BALDWIN. They took him off the job?

Mr. BAILEY. That is right. Major Fanton sent him back to Weisbaden. He came up on the 17th, as I did.

Senator MCCARTHY. There was one word you said that I did not get. You said he was what? I do not get what you said he was.

Senator BALDWIN. He said he was impossible.

Tell us about any other cases that you observed yourself.

Mr. BAILEY. I cannot recall any. I will say this, that who I did most of my work with was Captain Shumacker, and he did not subject, in my presence, any prisoner to any brutality. He might have threatened and scared him, but I do not think Shumacker did. But one bad feature, one bad arrangement I would say, this Lieutenant Perl got probably 75 percent of the confessions during my stay there, and I would say every time he went into a cell he was accompanied by this fellow Steiner.

Senator BALDWIN. You spoke about this prisoner Neve. Did anybody put his knee in his groin?

Mr. BAILEY. No.

Senator BALDWIN. Then, you spoke of one case where they did. You said somebody did. Did you see that?

Mr. BAILEY. Yes; I saw this Lieutenant Perl knee a fellow and saw him slap a couple.

Senator BALDWIN. We have here, Mr. Bailey, the affidavit which Gustav Neve—

Mr. BAILEY. That is it.

Senator BALDWIN. Gave to, I assume, defense counsel. Is that correct?

Mr. CHAMBERS. That was one of the affidavits that supported the defense counsel's petition before the Supreme Court.

Senator BALDWIN. This affidavit accompanied the petition; this was one of the affidavits that accompanied the petition to the Supreme Court of the United States that was filed in behalf of these prisoners, and I just wanted to read back to you one or two of the statements that Neve apparently himself made. This is not the confession, you understand.

Mr. BAILEY. Yes.

Senator BALDWIN. This is another statement. He said:

I, Gustav Neve, took part in the Eifel offensive in December 1944 as a codriver of an armored personnel carrier. I was taken to the investigation prison at Schwabisch Hall for the purpose of interrogation on December 2, 1945. There I was locked into a cell and had to spend 2 days without blankets. On January 8, 1946, I was taken to be interrogated and a hood was pulled over my head which was completely smeared with blood. I had to undress completely in an interrogation cell in the presence of two interrogating officials.

Now, did you witness anything like that?

Mr. BAILEY. That did not occur in my presence. If that happened, it happened prior to his being brought into the cell where he was interrogated.

Senator BALDWIN. When you saw him he had his clothes on?

Mr. BAILEY. He had this—I do not know what was under this big robe or what it was that they had on him. He had shoes on.

Senator BALDWIN. He had shoes on?

Mr. BAILEY. Yes.

Senator BALDWIN (reading):

In February 1946 I was taken into a cell where, a hood draped over my head, I was put standing against a wall and beaten by a guard with a club into the abdomen and into the genitals.

Mr. BAILEY. It did not happen in my presence, and I might say that could have been at the time I was in the cell. Does he mention anything about the crucifix?

Senator BALDWIN. Just a minute. I will read the whole thing to you. [Reading:]

After half an hour had gone by I was taken into a dark room where I had to stand with my face toward the wall and my hands lifted up. In so doing I was treated to kickings and beatings of the fists until I collapsed. After this treatment I was carried into a larger cell where there were three interrogating officials sitting around a table, of whom I recognized Captain Shumacker and Lieutenant Perl.

Now, was Lieutenant Perl present in this interview you spoke of?

Mr. BAILEY. No, sir; it was Steiner and Shumacker and myself.

Senator BALDWIN (reading):

Lieutenant Perl stepped toward me immediately and told me that I was facing a summary court and if I could not say everything I would be hanged the next day.

Did you ever hear anything like that?

Mr. BAILEY. No; that did not occur in my presence.

Senator MCCARTHY. Were you present when Perl conducted an interrogation at all?

Mr. BAILEY. Not with Neve.

Senator MCCARTHY. In other words, you were not there at any time Perl interrogated, and obviously you could not see it.

Mr. BAILEY. No, sir; I worked mostly with Shumacker. Perl could not talk sufficient English.

During this trial three false witnesses were confronted with me who gave testimony the like of which I had never heard nor seen.

Were there any witnesses who testified at the time you talked with him?

Mr. BAILEY. No, sir.

Senator BALDWIN (reading):

Whenever I wanted to break in I was quieted down by Lieutenant Perl by means of a kick with his foot or a slap with his fists. During this trial I was twice threatened with hanging whereby a rope was put around my neck and I was pulled up. A few days later a fairy-tale-like statement of crimes was dictated to me which I never heard nor saw anything. Whenever I refused to write beatings were administered until I continued to write out of fear.

That is signed by Gustav Neve.

Now, on this particular occasion that you described with Neve, did he sign the confession then in your presence?

Mr. BAILEY. No. I typewrote it and put on the bottom "Sworn to and subscribed before me this (blank) day of (so-and-so)," and I saw the statement later with a signature—at least Neve's name on it and witnessed by Captain Shumacker.

Senator BALDWIN. In other words, on this particular—

Mr. BAILEY. The one thing in it—excuse me, Senator.

Senator BALDWIN. Yes; go ahead.

Mr. BAILEY. The one thing in there that you mention on January 22, where you say a rope was put around his neck and he was pulled up or something—

Senator BALDWIN. Yes.

Mr. BAILEY. Well, I heard Steiner describe an exact incident to me, but I do not recall that he and Perl had done it on the prisoner; but I do not recall that he mentioned Neve's name, although it could be done by having him walk up a few steps and making him think he was on a platform and Perl jerking a rope over a board; he did not say he was pulling him off his feet, or anything like that.

Senator BALDWIN. Did he not say anything about pulling him off his feet? He did say that?

Mr. BAILEY. Steiner told me that it was a good joke.

Steiner seemed to get pleasure out of it. Steiner told me that the Germans were responsible for killing his mother.

Senator BALDWIN. Now, on this particular occasion with this witness Neve, how long were you engaged in this business of writing down his confession?

Mr. BAILEY. It was—

Senator BALDWIN. In the cell, I mean, Mr. Bailey.

Mr. BAILEY. It was a rather lengthy confession. I would say Captain Shumacker interrogated him very thoroughly and asked him if he had not said thus and so when he was interrogated by a gray-haired captain at another prison prior to his coming to Schwabisch Hall, and he examined him and reexamined him and accused him of lying in one place from the other. But the two stories did not detail at all.

Now, whether it was because Neve was frightened and could not think, or what it was, I do not know.

Senator BALDWIN. In other words, on this particular occasion they went into it at great length with questioning, and you took it down; you took it down in shorthand?

Mr. BAILEY. I took it down in shorthand, and I believe I still have my notes.

Senator BALDWIN. Now, at the time they interrogated this prisoner Neve, did they have any other statement from him that you saw or any other material to question him on?

Mr. BAILEY. I am not certain Captain Shumacker was reading from a prior statement or from his recollection but I remember distinctly he was saying to Neve, "You're lying to me." He said, "No." "Weren't you," he said, "Weren't you interrogated at some other prison by a gray-haired American captain?" He said, "Yes." He said, "Didn't you say thus and so?" And the kid either said, "I don't remember," or something. He did not give a satisfactory answer, but he was interrogated. What they were trying to do was apparently to convict this Neve's commanding officer. They had knowledge that Neve was familiar with some shooting or orders to shoot at Malmedy by, I think, the name was Stivers.

Senator McCARTHY. Incidentally, for the record, Neve was sentenced to death, and his sentence was then commuted to 20 years.

Mr. BAILEY. Yes. I do not know who was convicted or who was not.

Senator BALDWIN. Mr. Bailey, you are here to tell us anything you know about it in your own way. Can you tell us of any other cases?

Mr. BAILEY. I want it understood that I have no sympathy for the Germans. I think if the investigation had been properly handled there by experienced police officers, by a few attorneys who knew how to conduct an investigation, they could have found who the guilty ones were and convicted them on credible, reputable testimony.

But it was conducted haphazardly, and there was no sense or reason to it the way it was conducted; and they had what they called their prisoners—they would be referred to as stoolpigeons here. They would cooperate—they were doing favors for war-crimes teams. For instance, one of these German officers—I do not know how guilty he was in Malmedy—but at least he was in there as a German officer, and had been an artist in public life. He drew a life-sized oil painting of one of the lawyers on the team.

Another fellow made skis, made fancy skis for them. Another one made a pair of fancy boots.

Senator BALDWIN. Did you see these things or did you hear about them?

Mr. BAILEY. I saw them.

Senator BALDWIN. You saw them?

Mr. BAILEY. Absolutely. I saw them shipping the skis home, and I saw the portrait exhibited.

Senator BALDWIN. Let me ask you this: Do you speak or understand German?

Mr. BAILEY. Not a word of it.

Senator BALDWIN. Well now, can you recall to mind any other incident that you personally saw where a prisoner was abused in any way, or can you recall any prisoners whom you saw there who appeared—who had bruises and black eyes or anything of that kind, that you saw?

Mr. BAILEY. No; I cannot. They received black eyes, but they could have gotten it any way; they could have bumped their heads against the wall. I never saw anybody actually beaten by anybody, except with the possible exception of one or two occasions by this fellow Perl.

Senator BALDWIN. You saw him beat a prisoner?

Mr. BAILEY. I saw him slap a prisoner pretty hard with his hands.

Senator BALDWIN. What else did you see?

Mr. BAILEY. And knee him once or twice.

Senator BALDWIN. You came there on December 27, 1945, according to your letter?

Mr. BAILEY. To Schwabisch Hall; that is right.

Senator BALDWIN. And you stayed there until the early part of March 1946?

Mr. BAILEY. That is right.

Senator BALDWIN. During that time, how many different men did you take confessions from or transcribe confessions for?

Mr. BAILEY. Well, I transcribed a lot more than that which had been taken by the investigators—you see, Perl could also talk German, and he could take them through an interpreter or he could take them direct himself. He was quite a linguist, and talked several languages, and I transcribed maybe 40 or 50. There was only the two of us that did all the transcribing, that was Berg and I.

Senator BALDWIN. Have you got anything further that you want to say, Mr. Bailey?

Mr. BAILEY. Well, I read an article in the New York Times where Colonel Ellis flatly denied everything in my letter. I would like to say that Colonel Ellis could neither deny nor affirm anything in that letter because he was never at Schwabisch Hall on any occasion I was there.

Another thing, Colonel Ellis said that——

Senator BALDWIN. Let me ask you this: Did you understand that he specifically denied the details that you described in the letter or was his denial a general denial?

Mr. BAILEY. The article was in the New York Times, and it said that Colonel Ellis flatly denied the statement made by Mr. Bailey. Somebody mailed me the article; I do not know who it was.

Senator BALDWIN. You say you never saw Colonel Ellis there?

Mr. BAILEY. He was never at Schwabisch Hall during the time I was there. Colonel Ellis, I saw him the day I left—in fact, he was the man that sent us there, and I saw him when I came back. I saw him both times at Weisbaden when I worked at headquarters.

Senator BALDWIN. At Weisbaden?

Mr. BAILEY. Yes.

Senator BALDWIN. All right. Is there anything else you want to say?

Mr. BAILEY. Nothing else unless you have some questions.

Senator BALDWIN. Senator Hunt, do you have any questions of this witness?

Senator HUNT. Mr. Bailey, would you tell us how you happened to become a court reporter on this work? Did you make application for the position or the Government approach you and offer you the work?

Mr. BAILEY. No, the Government approached the National Shorthand Reporters' Association, of which I am a member. They asked if they know of any members that might be interested in going over there, and my name was apparently given in, and then someone wrote me from the Pentagon Building and asked me if I was interested, and I told him I was; then I got a teletype message to go down to the Federal Building in Pittsburgh and take an examination, and then I went to Washington.

Senator HUNT. Now, was that examination for typing, for the taking of shorthand or an examination as to a court reporter?

Mr. BAILEY. It was an examination—the examination was for a court reporter, and that is what my application reads. I mean, that was what my contract read, for court reporter; and when they examined me, they gave me three tests of 200 words per minute. But I understand when we got there we would have to do at least the greater part of our own typing, but when every court reporter over there, expecting to do court reporting—

Senator HUNT. To whom did you report when you arrived in Germany, Mr. Bailey?

Mr. BAILEY. My orders called for me to report to headquarters at Frankfurt. I went there, and a Captain Patterson there told me that I had been assigned to war crimes at Weisbaden. Up there I met, I think it was, a Colonel Carpenter. I think Carpenter was in complete charge. He turned me over to a colonel in the personnel department, and he brought me up to Colonel Ellis.

Senator HUNT. What would you say was your ultimate assignment, your final assignment? Was it—

Mr. BAILEY. The only assignment I worked on was the Malmedy case from the beginning to the end. My ultimate assignment was Berlin, but I did not go there.

Senator HUNT. Then, during your stay in Germany you did not have the opportunity to do any real court reporting for what you were really employed?

Mr. BAILEY. That is right, and that was the reason I gave in my resignation to Colonel Ellis, and he took me up to Colonel Straight, and said that the duties to which I have been assigned are not remotely connected with what was under my contract, and they wanted to send me to Berlin to do court-martial work.

Senator HUNT. In view of that situation, you certainly had a right to be, and were quite a little disappointed and discouraged over the type of work that you had been assigned to, were you not?

Mr. BAILEY. Very much, sir, but I will say this: The treatment we got was excellent; we lived well, and were not worked hard.

Senator HUNT. You would not say, or would you, that you had been not exactly double-crossed, but misled in the promises made to you in reference to the work you were going to have?

Mr. BAILEY. I think that is almost the words I told Colonel Ellis, and he took me up to Colonel Straight; I think that is the reason I gave. But I was not disappointed. I was homesick and was darned glad to get back to the United States, and I told him that.

Senator HUNT. Did you ever discuss with any of the members of the team, with Mr. Fanton, Major Fanton, or Mr. Ellowitz, the fact

that you were disappointed in the work they had assigned to you, and that you did not anticipate doing that kind of work?

Mr. BAILEY. I do not think I did, Senator, up until the time I handed my resignation. I took it down and wrote it out and handed it to Major Fanton, and Major Fanton said he was going up to Weisbaden the next week, and he would take it up and give it to Major Ellis. Fanton came back three or four weeks later, and he said, "I believe you want to talk to Colonel Ellis yourself," and I went up there.

Senator HUNT. Were you over there under a contract or did you sign a contract to stay?

Mr. BAILEY. No; I did not. The contracts read that you had to stay for 1 year, but mine did not. There was no time specified in mine whatsoever, and that may be one of the reasons I got back as soon as I did.

Senator HUNT. And you never signed a contract?

Mr. BAILEY. I definitely signed a contract, but not for any specific length of time.

Senator HUNT. Not for any stipulated length of time?

Mr. BAILEY. That is right.

Senator HUNT. Did you ever ask any of the men with whom you were associated to intercede in your behalf to get the type of work that you thought you were entitled to?

Mr. BAILEY. What could they do? What could they do if I did ask for it? It would be foolish to ask for it.

Senator HUNT. Did Major Fanton ever make any special trips for the purpose of trying to help you to be relieved from your work so that you might return to the United States?

Mr. BAILEY. Never. I never complained to Major Fanton or anybody else until I went in there and laid my resignation on Fanton's desk, and when I went up and talked to Colonel Ellis, he took us up there and talked to Colonel Straight. There was a fellow named Hecht there from Washington, who wanted to get back here, and I told Colonel Straight, in the presence of Colonel Ellis, what my position was, and my feelings in the matter.

He said: "I can sympathize with you, Bailey, but we have no war crimes coming up, and we have no jurisdiction over Nuremburg, that special tribunal."

Senator HUNT. Now, by virtue of the fact that you signed no contract, then you did not have to pay your own fare back, did you?

Mr. BAILEY. I offered to, and I expected to, but they treated me very good; they paid for it.

Senator HUNT. While you were over there, did you ever report to any of your superior officers any criticism of what you had observed?

Mr. BAILEY. Always. There was no superior officers there. Fanton was in charge of this team, but the dominant figure of the whole outfit was this Lieutenant Perl.

Senator HUNT. Did you ever make any approach to Lieutenant Perl that you were disgusted with the way the investigations were being conducted?

Mr. BAILEY. Most of that team did not care to have much contact with Perl. He was more or less of a lone wolf.

Senator HUNT. You did not, as a matter of record then, make any statements similar to the one that you wrote to Senator McCarthy?

Mr. BAILEY. You mean over there?

Senator HUNT. Yes.

Mr. BAILEY. At no time. No—what the hell; I would be crazy if I did. I certainly did not expect this publicity was going to develop. The letter I wrote to Senator McCarthy, I sent the same to the Secretary of the Army in the same mail. I thought I might be called here as a witness.

Senator HUNT. Excepting what you saw with your own eyes during the interrogation with Captain Shumacker, you actually yourself did not observe any of these cruelties that were supposedly practiced.

Mr. BAILEY. No; I did not. All I could testify to would be hearsay, and heard it talked over, and mostly by those two men, that was Steiner and Perl, particularly Perl. On maybe one or two occasions Thon would come up there and laugh and joke about how he had gotten a confession, but that was hearsay; I did not see it.

Senator HUNT. Reading from one of the statements, our investigators:

would put a black hood over the accused's head and then punch him in the face with brass knuckles, kick him and beat him with a rubber hose.

Senator McCARTHY. May I ask what statement you are reading from, Senator?

Senator HUNT. I am reading from an address by Judge Edward L. Van Roden.

Mr. BAILEY. I never saw such a thing happen. I saw the black hood and I saw the robe and a rope, but I have seen the MP boot him in the rear end in a cell, but not enough to hurt him.

Senator HUNT. You did not see any broken jaws or any teeth knocked out or anything like that?

Mr. BAILEY. No; I did not.

Senator HUNT. Were your relations with Steiner and Fanton and Perl and Thon, and your team, as you call them, were they pleasant, most of the time?

Mr. BAILEY. Yes; always pleasant.

Senator McCARTHY. Are you through?

Senator HUNT. Yes.

Senator McCARTHY. Before I commence questioning this witness, I would like to read from this letter. I want to request the chairman to call this man—this is a letter from Herbert J. Strong, a Jewish refugee from Hitlerian Germany, and for that reason he had every reason to feel vindictive, and his letter certainly indicates that he felt strongly that we should have some decency over there in the conduct of the trials.

I want to read from another letter here and also I would like to have this man subpoenaed. I read from his letter:

I took active part in the war-crime trials from approximately early March 1946 to the early part of August 1946. Prior to my assignment to Dachau, I acted as defense counsel in various war-crimes trials before military government courts in Ludwigsburg.

I had already, before I ever reached Dachau, heard about the methods used by the prosecution team at Schwabisch Hall in the preparation of its case. The source of this information and the circumstances under which I obtained the same might be of interest to the committee, and is, to me, proof of the accuracy of the accusations.

When we later, at Dachau, prepared the case for the defense, we encountered a deep-seated suspicion on the part of all of the accused, which, as we later were told by them, was due to the treatment they had previously experienced on the hands of the prosecution. Every one of the accused was in detail interrogated

by the particular member of the defense team to whom the defense of the particular individual had been assigned, and we encountered in almost every case, the same story of mistreatment, mock trials, etc., which are now the subject matter of the pending investigation.

I wish to stress, in this connection, that I had at no previous occasion, ever received similar complaints from other defendants whom I had represented.

For obvious reasons we did not in the beginning take the accused's stories at face value. However, our continuous daily contact with them which extended over several months, convinced us that, on the whole, their stories were correct. They were supported by the stories of witnesses whom we also interrogated prior to and during the trial, who made similar complaints and who were obviously in terror of the prosecution team.

Of course neither of us was an eyewitness, as presumably all the acts complained of occurred in Schwabisch Hall and as we saw the accused for the first time in Dachau.

Every one of us share, unnecessary to say, in the indignation about and condemnation of the acts of which the defendants were accused and every one of us felt that if their guilt could be proved beyond a reasonable doubt, death sentences would constitute their only just punishment. However, we were, as to quite a few of the accused, in doubt whether they had actually committed the crimes in question and were skeptical about the value and accuracy of statements either of the accused or witnesses which were obtained by duress or fraud.

Mr. Chairman, this is a letter from a lawyer in New York, who is a Jewish refugee from Hitler.

Senator BALDWIN. We will put that in the record, Senator.

Senator McCARTHY. I would like to do that, and I would also like to say at this part of the record that I am receiving a tremendous amount of mail in regard to this since we are getting publicity on it, and I am very happy to find that so far I have not found a single combat soldier who condemned our going into this to find out whether we were decent and honest in our handling of the enemy after we defeated them.

I have received mail, and I have taken the trouble to check it from some of the so-called soldiers who spent their time fighting the war slow-rolling down bars. Also, and I think this is of particular interest, in view of the fact that the Jewish people suffered so heavily at the hands of Hitler, I have not received a single letter from any Jewish person condemning our going into this matter.

I have received a number of them praising the committee very highly for going into this matter.

Now, Mr. Bailey, you testified that one of the principal investigators had spent time in a concentration camp; the other one had his mother killed by the Germans; is that correct?

Mr. BAILEY. I said that Lieutenant Perl's wife, who was with him in Schwabisch Hall, had spent years in a concentration camp in Germany.

Senator McCARTHY. How about Perl?

Mr. BAILEY. Perl himself had been sentenced—this is only hearsay, but the general common knowledge amongst the team—he had been a German prisoner, but had been sentenced to death, and had escaped.

Senator McCARTHY. Do you know whether he was an American citizen or not?

Mr. BAILEY. I do not know. My opinion is that he was not.

Senator McCARTHY. Mr. Chairman, I would like to ask permission to ask Mr. Ellis whether this man Perl and his wife had been in the concentration camp, whether they were American citizens or not.

Colonel ELLIS. Perl is an American citizen. As I recall, he came to the United States in 1938 or 1939. He was apprehended at the

time of the Anschluss, and was held in prison a short time. I do not know how long. He was supposed to have been taken to Dachau, but for some reason he was not, and was released.

Now, if he was ever sentenced to death, I never heard of it. He then escaped and came to America, and became an American citizen, and I think went into the Army in 1941 and 1942, and was commissioned as an officer in military intelligence, and he served on the Chief of Staff's intelligence center in London, interrogating high-ranking German officers before he came to War Crimes. His wife was an Aryan, and because of her befriending Jews, this is only hearsay, you understand, she was picked up some time during the war and held at some camp for 2 years, is my recollection. This is hearsay. Lieutenant Perl will be here, and he can give you the story. This is just hearsay.

Senator McCARTHY. With the chairman's permission, how many other refugees did you have on the prosecution staff?

Colonel ELLIS. Oh, there were several. Kirschbaum—

Senator McCARTHY. Kirschbaum.

Colonel ELLIS. Steiner.

Senator McCARTHY. Steiner was a refugee also?

Colonel ELLIS. Well, I think he was. I am not certain on that, but it is my recollection that he was.

Senator McCARTHY. Do you know whether they were American citizens or not?

Colonel ELLIS. I think all of them that have been in the service were. I know Kirschbaum was a combat soldier, and I believe Steiner was. They all come into the service from the States that is, they had gotten to the States. There were several interpreters or translators, I should say, who never had any contact with the prisoners, who were refugees, those—I am not sure which ones—there was a boy from England, a boy with the name of Hart, and a Rosenthal, I believe his name was, who also came from England, but they were civilian employees.

Senator McCARTHY. Rosenthal was also a refugee?

Colonel ELLIS. Well, he was a refugee either from Austria or Germany, but he had gotten to England, and the War Department had hired them in England and brought them over as translators.

Senator McCARTHY. And he was what you would call the "legal" on the court?

Colonel ELLIS. No; that is a different individual.

Senator McCARTHY. I see.

Colonel ELLIS. The law member was Colonel Rosenfeld up here from Philadelphia, who has been an American citizen by birth.

Senator McCARTHY. Just one further question: This man Kirschbaum, you say he was a combat soldier. Am I correct in this, that he was never in combat; he was in a combat area?

Colonel ELLIS. Well, I cannot say directly as to that; I just do not know.

Senator McCARTHY. None of these refugees that you had on this team ever did any shooting; Perl never carried a gun, did he?

Colonel ELLIS. I doubt it very much if he did.

Senator McCARTHY. That is what I thought.

Senator BALDWIN. If you will pardon me, Senator, let me ask the colonel a question there, because it pertains to what he has just said. You say that there were some refugees that you used in these inter-

rogation teams, and in the prosecution teams. Why did you use refugees?

Colonel ELLIS. Because they were the only available personnel that we could get who could speak the German language.

Senator BALDWIN. Was there any other reason?

Colonel ELLIS. So far as I know that was the only reason; that is, we could not get Americans; they all wanted to go home; they wanted to be redeployed, and we had to take the best people available, and those were the only ones we could get.

Senator BALDWIN. Mr. Bailey has said that Steiner was released from his duties thereafter, as I recall it, Mr. Bailey.

Mr. BAILEY. Three or four weeks.

Senator BALDWIN. Three or four weeks. Does that jibe?

Colonel ELLIS. That is my recollection. Major Fanton came to me and said that Steiner was just not competent, and he would like to have him relieved, and Fanton was in charge; if he wanted any changes made I always made them.

Senator BALDWIN. Was Fanton down there at the time, that is, from December through the period that Mr. Bailey said he was there? Was he there all the time, to your knowledge?

Colonel ELLIS. Fanton left the middle of February, and it is my recollection that Mr. Bailey left prior to that, but that is only a recollection.

Mr. BAILEY. I would say we got a boat the same day.

Colonel ELLIS. They may have gone home together.

Mr. BAILEY. Practically the same day.

Senator BALDWIN. Just one question, Mr. Bailey, on that point. You are speaking—I was asking about who was in charge. Was Fanton in charge while you were there?

Mr. BAILEY. All the time. He was in charge. Fanton did not do any interrogating; the bulk of the interrogating and the important part of the interrogating and any rough handling that I had, any knowledge of was all done—Perl was looked up to as the big shot in that investigating team.

Senator McCARTHY. Mr. Chairman—

Senator BALDWIN. May I ask just one question to complete this line of interrogation?

Senator McCARTHY. I have sat here for an hour and a half and did not interrupt under any circumstances while the Senator was interrogating this witness, and the Senator from Wyoming was interrogating the witness. I would appreciate it very much if I could have the same courtesy to complete my interrogation of this witness, and if the chairman believes there is anything left untouched, he can continue the interrogations. But it certainly interrupts my questioning if I do not get the same courtesy from the Chair that the Senator from Wyoming gets.

Senator BALDWIN. After all, Senator, I think it is the duty of the chairman to try to conduct this thing and get the record in such shape so that it is best readable and understandable, and when there are questions that involve something that we have already discussed, it seems to me that it is in the interests of clarity and fairness to put it in then and there.

The only other questions—

Senator McCARTHY. I am sure the chair can complete his record without insisting upon interrupting me when I am conducting an examination.

Senator BALDWIN. I do not want to interrupt you, Senator, in any way, shape or manner, but the thought occurred to me that when you are on a particular point it is a good plan when you are on cross-examination, to try to exhaust that particular subject then and there and have it all in one place in the record.

The only further question I wanted to ask Mr. Bailey was whether or not Fanton was actually present at Schwabisch Hall all the time that you were there, actually physically present.

Mr. BAILEY. There is possibly every other week that Major Fanton—usually Ellowitz and Shumacker made a trip, I would say, every other week up to Weisbaden. During that time Perl was in complete charge.

Senator BALDWIN. How long would they be gone?

Mr. BAILEY. Usually they would go at noon on Saturday and come back the following Wednesday.

Senator BALDWIN. All right, that answers my question. I think it is an important point.

Senator McCARTHY. I might say, if there is some doubt in the chairman's mind, I have not accused Fanton of any misconduct. I do not have any information at this time that Fanton was guilty of any misconduct. I know he is the chairman's law partner, and I am not attempting to go into that and prove there is anything wrong with what Fanton did, unless—

Senator BALDWIN. Now, Senator, go ahead if you will. I would just like to say this: I am not, in any way, shape or manner here interested in Fanton. Fanton will probably later be a witness, and I think it is important for the benefit of this record to have this witness testify as to when and how long Fanton was there, because I think that has a very direct bearing upon what Fanton might say when he testifies.

Senator McCARTHY. Now, Mr. Bailey, Elston or something like that—what was his name—testified the other day.

Mr. CHAMBERS. Ellowitz.

Senator McCARTHY. Testified that you attended very few of the interrogations; that your work was principally to take the notes from the interpreter after he left the interrogation cell, and then reduce that to typewriting.

Mr. BAILEY. Well, I would say any time a court reporter or a stenographer went into a cell, I was the only one that did go in.

Senator McCARTHY. Well, now, roughly how many times were you in the cell and got the confessions? How many times did you get the confessions in the cells?

Mr. BAILEY. I would say approximately 20 times.

Senator McCARTHY. About 20 times out of the 73?

Mr. BAILEY. What do you mean, the 73?

Senator McCARTHY. Twenty of the 73 men were convicted.

Mr. BAILEY. You understand, Senator, that this investigation continued on, I believe, under the direct charge of Colonel Ellis, Colonel Ellis, I understand, went to Schwabisch Hall or was getting ready to go, the day I left Weisbaden. I do not know what occurred there. That would be from at least the middle of February on.

Senator McCARTHY. Now you testified that this man Perl a number of times kneed the accused in the groin.

Mr. BAILEY. Yes.

Senator McCARTHY. There will be testimony here to the effect that of 139 men who were sentenced to die, about 138 were irreparably damaged, being crippled for life, from being kicked or kneed in the groin. Can you tell us whether or not you saw any of that?

Mr. BAILEY. I could not tell you. I would say, in my opinion, that is a gross exaggeration. That is just my opinion.

Senator McCARTHY. Did you claim you attended all the interrogations?

Mr. BAILEY. During my stay in Schwabisch Hall, Mr. Berg, the other reporter, I do not think ever went into the cell. He did not want to go into the cell.

Senator McCARTHY. You say it is a gross exaggeration when I say someone said that they were crippled for life because of having been kneed in the groin. Do you mean this man Perl generally did it in the groin?

Mr. BAILEY. No, I do not think he did it out of a 138 of the 139.

Senator McCARTHY. When you got through kneeling them in the groin, do you think they were in good health from what you say?

Mr. BAILEY. I would not say they were in good health, but I think they could be repaired.

Senator McCARTHY. From the time you wrote this letter to me until today, how many people have contacted you in regard to your hearing, and with respect to what testimony you were going to give?

Mr. BAILEY. Not a single person.

Senator McCARTHY. No one at all?

Mr. BAILEY. A few newspapermen—by the way, Senator, I understood you at the beginning to offer a letter from a man Teil or something?

Senator McCARTHY. Go ahead.

Mr. BAILEY. I got a letter from him; he said he had met me in Weisbaden in a room next to me, and gave the address, and it was an address I never lived at, and I do not know the fellow. He asked me if I was in Pittsburgh every week end, and he wanted to know where he could contact me. I do not know the fellow and I do not know where he is. He says he is attending W. and J.; he was complimenting me on a letter. I told the truth; I do not know him.

Senator McCARTHY. Will you do something for me? Just try to stick to my questions, and when I am all through you can give me all of the conversation.

Mr. BAILEY. I am sorry.

Senator McCARTHY. Who did you talk to this morning?

Mr. BAILEY. Not a soul.

Senator McCARTHY. Did you talk to Colonel Ellis?

Mr. BAILEY. Not a soul. I talked to the colonel when I came in.

Senator McCARTHY. No one else? The only people you talked to were newsmen?

Mr. BAILEY. Not a soul.

Senator McCARTHY. I thought you said two or three men contacted you.

Mr. BAILEY. Not a soul; I refused to give them any information.

Senator McCARTHY. I just wanted to get what happened since the time you wrote—

Mr. BAILEY. Freddie Wertenbaugh, who covers the courthouse up there and writes for the Pittsburgh, he came to see me every day, and I said, "Freddie, I would rather you would not publish it until I got down there," and he said he would not, and he did not.

Senator McCARTHY. In other words, the only man to contact you to get your story was a newspaperman?

Mr. BAILEY. That is right. The Associated Press called me up, and I told them—

Senator McCARTHY. I do not care what you told them.

Mr. BAILEY. I can tell you.

Senator McCARTHY. Let me get you straight; the only man who contacted you in regard to this from the time you wrote the letter until today was the newspaperman?

Mr. BAILEY. Not a soul.

Senator McCARTHY. Now, how many of Perl's interrogations did you attend?

Mr. BAILEY. Very few. I transcribed a lot of Perl's statements or confessions that he had gotten, either alone or accompanied by Steiner, but I was not present with him except on probably two or three occasions.

Senator McCARTHY. Then, of the 20 that you attended personally, of those 20, Shumacker was in charge?

Mr. BAILEY. Yes; I did most of Captain Shumacker's work. We roomed together; we had a room together; and I have no criticism whatsoever of Captain Shumacker.

Senator McCARTHY. You said that you heard Steiner and Perl discussing the interrogation; right?

Mr. BAILEY. Perl did very little discussing. He was very reticent. Steiner was much more talkative, but he told us generally—mostly when Perl was not present—Perl was very seldom there in the evenings; he had his wife and lived up the street; but Steiner did all the talking about what he and Perl had done. Perl never talked.

Senator McCARTHY. One of the things you said they did was to march a man up some steps, make him believe he was on a scaffold, and tie a rope around his neck, and then jerk him.

Mr. BAILEY. That is right.

Senator McCARTHY. That was for the purpose of getting a confession?

Mr. BAILEY. It couldn't have been for any other purpose.

Senator McCARTHY. Do you know whether or not that was done after these mock trials at which a man would be found guilty or was that before a mock trial?

Mr. BAILEY. Well, I would say it would have to be before the mock trials.

Senator McCARTHY. Why would you say it would have to be before the mock trials?

Mr. BAILEY. Because I did not witness any mock trials when I was there, unless you call the confessions mock trials.

Senator McCARTHY. You mean because you did not witness them they did not have them?

Mr. BAILEY. I would not know, Senator.

Senator McCARTHY. In other words, you do not know whether this was after or before the mock trials, if you did not witness them.

Mr. BAILEY. Do not get me wrong, I am just—Steiner left there before I did, and I think if there were any mock trials conducted while I was there, I would have been present. I think one of the requisites of a mock trial is a court reporter.

Senator McCARTHY. You say that is necessary in a mock trial, a court reporter?

Mr. BAILEY. Well, I think it is necessary in every trial. I do not think it would be different in a mock trial.

Senator McCARTHY. The reason you say you do not think there were mock trials—

Mr. BAILEY. No.

Senator McCARTHY. Wait until I get through, will you please?

Mr. BAILEY. Excuse me.

Senator McCARTHY. Do I understand that the reason you do not feel there were mock trials is because you were not there as a court reporter?

Mr. BAILEY. I do not feel there was not any mock trial, Senator; there probably was. I said I had not knowledge of them.

Senator McCARTHY. I want to know whether or not you know whether the mock hanging was after a mock trial or not. If you do not know, don't try to tell me. If you do know, tell me.

Mr. BAILEY. I do not know.

Senator McCARTHY. How about these confessions that were dictated to you by Perl or Thon? Do they sound like the confession that a 15- or 16- or 17- or 18-year-old boy would give, or were they very literary?

Mr. BAILEY. They sounded to me like a farce. Fifty percent of them were either made up by Perl or Thon, and they were altered and changed and deleted.

Senator McCARTHY. I read over these confessions, and some of them by the 17- or 18-year-old boys with no education at all apparently sound like literary masterpieces, and I am wondering if you got the same impression or not.

Mr. BAILEY. I did. I got the impression that they were not a verbatim report of what they learned from the prisoner in the cell.

Senator McCARTHY. Now, when this boy would sign a confession, was the confession in German or English?

Mr. BAILEY. In a lot of cases, we got the confession in the prisoner's own handwriting, signed by him. It was brought into the room where we all worked, with the exception of Major Fanton, and given to an interpreter who could also translate. I do not think Perl did any of the translating; he had Steiner translate.

Senator McCARTHY. And when this was brought in in the prisoner's own handwriting, who would interpret it for you; Perl?

Mr. BAILEY. No, he usually turned it over to Steiner or Thon. They had one very intelligent interpreter, but he was, I think, pro-German, I think he was German, myself—I think it was the opinion of most of them—and he was a very well-read fellow. His name was Hecht; and he had studied in Switzerland and in Germany, and his translations were put in perfect literary style; but Thon was uneducated,

and certainly Steiner was. They could scarcely—I do not think that he went in the sixth grade in school.

Senator McCARTHY. Incidentally, so that the record is straight, have you ever seen me until today?

Mr. BAILEY. Never before in my life.

Senator McCARTHY. And this letter was in your own—

Mr. BAILEY. I happened to read a statement in the Pittsburgh Press, and I said, "What the hell; I might as well get this off my chest."

Senator McCARTHY. Let me read this, where you say:

I took down in shorthand, and then reduced to typewriting for the prisoner's signature, but I am definitely certain that the statement which the prisoner ultimately signed and which was later used to help convict him of the Malmedy trial in no way even remotely resembled the original confession given in the cell.

Mr. BAILEY. That is right.

Senator McCARTHY. Is that correct?

Mr. BAILEY. That is right. I will say this: This Lieutenant Perl would bring out in German what he had gotten in a cell, either in his own writing or in the prisoner's own handwriting. He turned it over to Thon or Steiner or to Schuelingkamp—he was another one there, and had them make a copy of it in English and longhand or translate it, and then they would give me the longhand and I would typewrite it, and give it to Perl.

Well, any typist was supposed to copy—I know of no occasion—there was not one occasion that Perl did not change every one of them and say it was not a proper translation. Either he was changing them or the translator there could not translate German into English, one or the other.

Senator McCARTHY. In other words, there was some writing that would come from a cell in the accused's handwriting?

Mr. BAILEY. That is right.

Senator McCARTHY. And the interpreter would interpret in English?

Mr. BAILEY. That is right.

Senator McCARTHY. You would type it out and give it to Perl?

Mr. BAILEY. That is right.

Senator McCARTHY. And then he would change it?

Mr. BAILEY. Never satisfied; he said this is not what, he would say, he would have to have.

Senator McCARTHY. Typewritten in English?

Mr. BAILEY. Typewriting it over half a dozen times to meet satisfaction.

Senator McCARTHY. You would typewrite it over and over until it met his satisfaction?

Mr. BAILEY. That is right.

Senator McCARTHY. Then, take it over to the man who could not read English, and he would sign it?

Mr. BAILEY. Only conclusion you could arrive at.

Senator McCARTHY. In view of the bragging that you heard Steiner do in regard to these mock hangings, and viewing Lieutenant Perl kneeling these men in the testicles, is there any reason to believe that he told them what was in the confessions? Is there any reason to believe that he told them what was in the confession to be signed?

Mr. BAILEY. My honest opinion is this, Senator, that probably, just as a rough guess, with a possible exception of Peiper, who wanted

to admit everything and take the rap for all of them, the evidence adduced and presented against those six—and I do not know who they are—is not any more credible than the evidence against the rest of them in the prison.

Senator McCARTHY. In other words, can we safely say that at this time that we do know that it is impossible to determine from the methods of interrogation, from the mock hangings, from the kneeling in the groin, whether we are actually going to hang guilty men, or innocent men? Do we have any way of knowing, in view of the way in which these statements and confessions were gotten?

Mr. BAILEY. Those confessions and statements were taken in a most haphazard manner. There was no systematic plan or procedure in examining witnesses, and the people sent there were absolutely incompetent to be on an interrogating team, as lawyers or interpreters.

Senator McCARTHY. Let me ask you this also: You recited that both Steiner and Perl were refugees and, of course, I understand Perl's wife was in a concentration camp.

Mr. BAILEY. I did not use the word "refugee," Senator, but it is all right.

Senator McCARTHY. Well, use whatever word you want to.

Mr. BAILEY. That is right.

Senator McCARTHY. They, of course, had very many good valid reasons to very intensely hate those who were guilty of their predicament. Do you feel that there was intense hatred on the part of Perl and Steiner, on the part of those two, against the Germans, as a race?

Mr. BAILEY. Steiner had admitted it openly. Perl—but from the background and the actions you could not arrive at any other conclusion that they had a terrible hatred. Justifiably so, maybe, but I do not think they were the proper people to be on such a team.

Senator McCARTHY. In other words, maybe they were kneeling the wrong man?

Mr. BAILEY. It did not make any difference to them; they did not know. They had no way of knowing.

Senator McCARTHY. As of today, as we look over that trial, we do know this, that the men who are getting confessions upon which the convictions were based did intensely hate the German people as a race. I am not trying to put words in your mouth, but I just want to get this fully into the record.

Mr. BAILEY. No, but I want to get my honest feelings and conclusions in this.

Senator McCARTHY. Yes.

Mr. BAILEY. My honest opinion is that a much larger number than six were guilty of that Malmedy massacre—

Senator McCARTHY. If they were guilty.

Mr. BAILEY. If they would properly get—

Senator McCARTHY. You and I would assume that a man who is being tortured would scream just as loudly if he was guilty as if he were innocent.

Mr. BAILEY. Well, that was my natural reaction to that young fellow Neve.

Senator McCARTHY. Then, as you watched this boy being mistreated, you say, a kid of 16 or 17 or 18, you feel if he were beaten up enough he would sign a confession regardless of whether he was guilty or innocent?

Mr. BAILEY. I did not know what that Neve got until you told me he got 20 years or life.

Senator McCARTHY. He was sentenced to death originally, and that was cut down to 20 years.

Mr. BAILEY. Well, I think that was an overly severe sentence unless they got a lot of additional evidence which they did not receive from this ex parte deposition which we took in his cell.

Senator McCARTHY. Were you present during the course of the actual trial?

Mr. BAILEY. No, I was back home.

Senator McCARTHY. Will you tell me—and I know that you may dislike to do so, but this is very important—will you tell me which of the officers got oil paintings from some of the prisoners who were treated especially well?

Mr. BAILEY. Well, I do not like to put his name into the record.

Senator McCARTHY. I know you do not.

Mr. BAILEY. I am hurting that fellow, and possibly if the majority of that team had the same opportunity they would have accepted it.

Senator McCARTHY. From the picture I have gotten of the team that is entirely possible. But we are dealing here not only with the life and death of men who may be guilty and innocent, but we are also dealing with something infinitely more important, and that is just to what extent we are discrediting the United States over in that part of Europe; to what extent we are selling communism instead of democracy, and it is important to us to know what type of officers were in charge, and if the officers were taking gifts from some of the prisoners and then treating them well after they had gifts, giving them special treatment, we must know the names of those officers.

Senator BALDWIN. May I concur in what the Senator says? You are here under oath.

Mr. BAILEY. I have no reticence in telling it.

Senator BALDWIN. You have the protection of this oath. What you say here cannot be used against you, because you are saying it in testifying before a congressional committee.

Mr. BAILEY. Any officer—

Senator BALDWIN. If you know the names of any officers or officer or anybody who got gifts from these prisoners, I think it is your duty, Mr. Bailey, to tell us so.

Mr. BAILEY. I would not call it a gift. The officer who accepted it, I do not think he accepted it as in the form of a bribe, by any means. I think my opinion was that he was outsmarted by this German officer.

Senator McCARTHY. Let us have the committee decide. We want to know the names of the officers who got the gifts.

Mr. BAILEY. The officer who got an oil painting of him was Major Fanton.

Senator McCARTHY. How about the skis?

Mr. BAILEY. The skis were given to two or three, I cannot recall the names, but I saw them examining them, and they were a beautiful job.

Senator McCARTHY. Who else got oil paintings, do you know?

Mr. BAILEY. That is the only one to my knowledge.

Senator McCARTHY. At the time you were over there, were you informed that one of the officers was a candidate for office back in this

country, and that convictions had to be obtained before the election because he needed that as campaign material, and for that reason the defense would be given very little time to defend the cases, and for that reason also your interrogation had to be speeded up?

Mr. BAILEY. No, I never had knowledge of that, Senator.

Senator McCARTHY. All right.

Did you take notes of Ellowitz's interrogations?

Mr. BAILEY. Well, yes, I took some of Ellowitz's—what little he did. Ellowitz was more or less a playboy; he came and went as he pleased.

Senator McCARTHY. Played rather rough. Did you take any in the cells or were these—

Mr. BAILEY. I think possibly I did on one or two occasions for Ellowitz, but Ellowitz was not the type, the brutal type. He was just the opposite. He was just going through the motions there. He was just drawing his pay, more or less.

Senator McCARTHY. I have had statements from two different men whom I assume will be witnesses here, to the effect that Colonel Ellis did tell them not to beat up these men.

Now, will you give me a picture as to whether Ellis was available, whether he knew it was going on or what the situation was.

Mr. BAILEY. Well, I think, in fact I know, that Major Fanton and Colonel Ellis were in daily telephonic communication. I think Colonel Ellis got a daily report from Major Fanton.

Senator McCARTHY. Who was in charge of the Schwabisch Hall at the time that you were there?

Mr. BAILEY. Major Fanton.

Senator McCARTHY. Ellis was not there then?

Mr. BAILEY. At no time.

Senator McCARTHY. I am sorry, I thought that Ellis was there.

Mr. BAILEY. No, I think I have said that.

Senator McCARTHY. Now, this man Thon—

Mr. BAILEY. That is right.

Senator McCARTHY (continuing). Was he an American citizen?

Mr. BAILEY. I think he must have been. He was a chef or a cook in New York City, so he told me. He had been a professional soccer player.

Senator McCARTHY. Yes.

Mr. BAILEY. And incidentally he was a German by birth, but nevertheless he was one of the three brutal men on that team.

Senator McCARTHY. Now, you said, in answer to Senator Hunt's question that there are many things that you could recite, but that it was all hearsay, and for that reason you do not know whether we wanted to hear it or not. In view of the fact that the Army or Military Government in charge of this trial issued orders saying that hearsay was competent evidence in a matter involving the death of these men, I think we will hear the hearsay also, with the chairman's permission, so I would like to hear about that. In other words, I would like to hear everything you heard in regard to the treatment.

Mr. BAILEY. Before we go into that, Senator McCarthy, there was one mention I made in my letter there about starvation, nobody has asked me about it. Maybe it is not of importance, but I was going to clear it up.

Senator McCARTHY. I was going to ask you about that.

MR. BAILEY. Do you want me to answer any one—which one would you like to have me answer?

Senator McCARTHY. Give any one. Tell me about the hearsay first.

MR. BAILEY. As far as hearsay was concerned, it was a general topic—Perl would come up there, he was uncommunicative; he would come up there at 12 o'clock and dance a jig, "I have got another confession." He had been there by himself in that prison.

Senator McCARTHY. Go ahead. Would he tell you how he got it?

MR. BAILEY. No, as to how he got them—my information came from Steiner. Perl did not talk much.

Senator McCARTHY. Then tell us, it is very important that we hear everything that Steiner said, everything you can remember.

MR. BAILEY. I cannot remember, Senator.

Senator McCARTHY. Give us everything you can remember.

MR. BAILEY. I think I have told you the high lights of it.

If you can think of something you have heard from prior testimony and tell me it, it may refresh my testimony.

Senator McCARTHY. Well, I have an Army report which says they have an affidavit from the dentist to the effect that—I do not want to misquote the Army on this, and maybe I had better read from their report. On page 525:

Corroborating the claim of the various accused as to physical violence, there is the affidavit of Dr. Knorr, the dentist at Schwabisch Hall, that he treated 15 or 20 of the suspects for injuries of the mouth and jaw, apparently inflicted by blows.

Now, would you shed any light on that that you can?

MR. BAILEY. To my knowledge there was never a dentist at Schwabisch Hall; whether they got their teeth knocked out or did not, there was no dentist to take care of them; as for a great portion of the time there was never a doctor there.

Senator McCARTHY. Now, will you continue and tell us anything that that you heard Steiner say. It might be repetitious, but I would like to get the whole picture.

MR. BAILEY. I do not know, outside of the fact that when he mentioned—yes, I told him about the rope around the neck, and Perl pulling the prisoner off his feet, and he laughed about it; and we were sitting there in the room, and I said, "What the hell is so funny about that?" And he said, "I hate those bastards. They are responsible for murdering my mother."

Senator McCARTHY. Just one further question. Now, in these statements that the accused ultimately signed, the ones that you said you had to type and retype over before Perl would accept them, do you know whether those statements were later used to convict not only the man making the confession but also the other codefendants?

MR. BAILEY. I think that was the primary purpose of most of them. The primary purpose was to convict the other fellow, not that particular person. You see, my impression, at least, of the whole set-up was to get—interrogate one man to get evidence against another.

Senator McCARTHY. In other words, let us say the three of us, Senator Hunt, you and I are three codefendants, and statements would be gotten from all of us by the methods which you have described; and my statement would be used not only—

MR. BAILEY. To convict me.

Senator McCARTHY. But also to convict you and Senator Hunt.

Mr. BAILEY. That is right.

Senator McCARTHY. Your statement would be used to convict not only yourself, but Senator Hunt.

Mr. BAILEY. That is right.

Senator McCARTHY. So that when the prosecution says that the confessions were corroborated by other evidence, the corroboration consisted of other confessions gotten in the same manner.

Mr. BAILEY. Gotten prior to the confession of the particular person that was convicted on it. They confronted him with statements of others.

Senator McCARTHY. Let me ask you this.

Mr. BAILEY. I do not think there is anything wrong in that. I am not criticizing that method. I think it is used in our courts here, but that was the procedure followed. They got the dope from me to convict you, and from me before they interrogated you.

Senator McCARTHY. You say you are a court reporter over in Pennsylvania? You do not mean that the courts over there use this process of mock hangings and kneelings?

Mr. BAILEY. I had no reference to that.

Senator McCARTHY. You mean you were referring to the fact that they got the statement of one man to convict another.

Mr. BAILEY. The courts do not do that, but I think the detective bureau does that.

Senator McCARTHY. You have been a court reporter for some time and have seen a lot of civil and criminal actions tried. Do you think that you can at all rely upon statements or confessions or convictions that are gotten as a result of this type of beating and mock hanging and the breaking of a man's teeth. In other words, is there any way of knowing whether you have a guilty man or an innocent man?

Mr. BAILEY. No, I think it was absolutely improper in the methods use, but I think it ruined the purpose of the investigation. I think fellows probably went scot free who were just as guilty as those five or six.

Senator McCARTHY. Just one final question: Do you think that Steiner and Perl much cared whether the man they were getting a confession from was guilty or innocent?

Mr. BAILEY. I think they were of the opinion that every German in that prison was guilty and should have been hanged.

Senator McCARTHY. And they would work them over until they got a confession from them?

Mr. BAILEY. That is my opinion.

Senator McCARTHY. And they actually worked all 73 over until they got confessions, with the exception of the seventy-third man, who committed suicide during the interrogation?

Mr. BAILEY. My honest opinion is that a lot of those fellows were guilty, were guilty of atrocious crimes, and should have been convicted and executed. My criticism was as to the methods used to arrive at that. My question was, Did they arrive at a proper conclusion by the methods they used?

Senator McCARTHY. Thank you very much, Mr. Bailey.

Senator BALDWIN. Do you have any questions, Colonel?

Mr. CHAMBERS. Senator, with your permission, and the permission of the committee, I would like to place in the record a copy of the standing operating procedures insofar as medical health is concerned,

and how they were to be handled. I think it is an important thing to be in the record.

Senator BALDWIN. Very well, it will be printed.

(The document referred to follows:)

APRIL 28, 1949.

RE: DIETRICH SCHNELL'S AFFIDAVIT DATED JANUARY 10, 1948, RELATING TO MEDICAL TREATMENT OF MALMEDY SUSPECTS AT SCHWABISCH HALL (PART OF EXHIBIT 23, REPORT OF ADMINISTRATION OF JUSTICE REVIEW BOARD)

1. Particulars requested of EUCOM have not been received as yet.

2. See SOP #2, War Crimes Branch, USFET, February 7, 1946, attached to Dwight Fanton's affidavit, October 20, 1948, Exhibit 29, Proceedings before Administration of Justice Review Board, which states in part:

"8. There will be an American medical technician (NCO) on duty at I. P. #2 from 0800 until 1700 daily except Sunday. Between 1700 and 0800 daily and on Sundays, the medical technician (NCO) will be on call and will be available within the limits of SCHWABISCH HALL. An American medical officer will be assigned to this prison. This officer will be responsible for the health of the prisoners in this group and will serve as prison surgeon, assisting German overhead medical personnel in medical matters pertaining to the prison as a whole. Under no circumstances will any of the prisoners in this group have any contact with German medical personnel. Minor surgical procedures may be accomplished at the prison infirmary, but adequate security must be provided to insure that no communication between the prisoner being treated and German personnel in the prison occurs. Prisoners in this group who require hospitalization for surgical, diagnostic, or other treatment beyond the capacity of the prison infirmary will be evacuated to the 216th General Hospital in Stuttgart. The military unit charged with responsibility for providing security at this prison will supply guards for maximum security of prisoners evacuated to this hospital in accordance with the provisions of this SOP. Prisoners will receive dental treatment for emergencies only. Dental cases will be taken to the 6th Dental Laboratory in BACKNANG. Adequate guards will be provided to insure that all security requirements set out in this SOP are satisfied. The medical officer will be responsible for reporting all medical and dental cases treated. The report submitted will state patient's full name and grade, the cell in which he is confined, and diagnosis of his ailment with recommended disposition. In case transfer to the prison infirmary or evacuation to the hospital is required, the matter will be cleared with the Commanding Officer of this Detachment prior to such transfer. In case of evacuation to the hospital, the aforementioned medical officer's report will also contain a statement of probable length of hospitalization. The medical officer will be responsible to see that daily records are kept of all cases treated to show the patient's full name, cell number, diagnosis, and treatment rendered."

Mr. CHAMBERS. May I ask one question of this witness if we are going to finish with him?

Senator BALDWIN. I do not know whether he should come back here.

Senator HUNT. I want to ask one question. Mr. Bailey, you spoke of the portrait and the skis, and things of that kind as gifts. Do you know whether or not any payment of any kind was made to the men who did the painting or made the skis?

Mr. BAILEY. I am practically certain it was not. He was anxious to do it. He was ingratiating himself into the graces of the person whose portrait he was painting.

Senator HUNT. Do you think it had any influence on the trend of the trials or convictions or generally on the whole picture?

Mr. BAILEY. I do not think it would as far as Major Fanton is concerned. I do not think it was the proper thing for the officer in charge of a team to do, but I do not think it would influence Fanton in any way. I had a lot of respect for Major Fanton as a man. He took no part in it, but I refer to him simply as nothing more than a figurehead

there over the whole thing. I do not think he ever went into a cell. I do not think he ever took a statement or a confession, just sat in the little office and got reports from Ellowitz and Shumacker and Perl, and he was guided and influenced by Perl.

Senator HUNT. One more question, Mr. Chairman. You spoke, Mr. Bailey, of having been present at 20 interrogations.

Mr. BAILEY. That is just a rough guess. It may have been 15; it may have been 25.

Senator HUNT. Could you tell us what proportion or percentage of the interrogations would it be? Would it be one-half or two-thirds?

Mr. BAILEY. You mean as to the total number?

Senator HUNT. Yes.

Mr. BAILEY. I would say it would be a hundred percent of the interrogations that a reporter was present at and took verbatim report of during the time I was there, because it was Berg who was the only other one there.

Senator BALDWIN. We will take a recess until 2:15 because I have to meet a group of newsboys from Connecticut at 2 o'clock, and that will not take long. We will reconvene again at 2:15. I will get permission from the Senate.

(Whereupon, at 12:05 p. m., the committee recessed to reconvene at 2:15 o'clock p. m. the same afternoon.)

AFTERNOON SESSION

Senator BALDWIN. The committee will come to order. Mr. Bailey, will you come forward, please?

TESTIMONY OF JAMES J. BAILEY—Resumed

Senator BALDWIN. Do you have some further questions?

Mr. CHAMBERS. I think Senator Hunt had finished.

Senator MCCARTHY. Mr. Chairman, I don't like to clutter up the record with a lot of letters, but I would like to read one paragraph of a letter received from a young veteran in Santa Monica, Calif., because it is typical of the way the combat veterans, I think, feel about this sort of thing.

Senator BALDWIN. Would it save time if we put it in the record?

Senator MCCARTHY. It is only two paragraphs:

DEAR SIR: I am writing to you for two definite reasons. First, to express to you from the bottom of my heart, not only for myself but also for all my buddies who died in the last war, fighting for ideals that so many people, especially the brass hats, had so soon forgotten. It is gratifying to know that you and a few other men in Washington remember that so many American boys gave their lives in the idea that under democracy a man is innocent until proven guilty. Yes, even a German SS-man. And it isn't necessary to use the Hitler or Stalin method of getting someone to say he did whether he did or not.

That is the pertinent part of it. He served for 2 years and asked that we not make a record of his name, but in case the Chair would like to see the entire letter, I will show it to him.

I have one or two questions. Mr. Bailey, in going over the record of the court martial—and I wouldn't ask you this question except that you have had long experience as a court reporter, so you have seen courts operate, otherwise I would consider this question normally

only to be asked of a judge or of a lawyer. Here is the question. One of the defendants is being examined:

Question. Now, how often would you say you were approximately interrogated at Schwabisch Hall?

The PROSECUTION. I object.

Colonel ROSENFELD. Objection sustained.

Mr. STRONG. May I respectfully point out to the court, with due deference, that this is cross-examination.

Colonel ROSENFELD. It is not cross-examination because it is without the scope of the direct examination. The court has ruled. The objection is sustained.

Question (KRAMM). Isn't it a fact that you, during the time you were in Schwabisch Hall, signed a statement for the prosecution in question-and-answer form, consisting of approximately 20 pages?

The PROSECUTION. I object again.

Colonel ROSENFELD. That is not cross-examination. This is the last time the court will notify you.

Let me ask you if you ever heard of anything that could compare with that in a court trying a defendant.

Mr. BAILEY. I have not.

Senator McCARTHY. Will you agree with me that that is the most distorted and the most tortured interpretation of the law that you have ever heard, to tell a man that you will not allow a man to testify as to how a confession was obtained, not allow him to testify as to how many different confessions he was forced to sign?

Mr. BAILEY. I have taken thousands of rulings by courts, and my honest opinion is that would be overruled instead of sustained.

Senator McCARTHY. It is elementary in a court that when a defendant's confession is presented, that he be allowed to at least tell the court all the facts and circumstances surrounding it. Otherwise, the court is insisting that they work in the dark and must rule on the confession without knowing how it was obtained.

Mr. BAILEY. I would certainly think so, speaking as a court reporter, not as a lawyer.

Senator McCARTHY. Thank you. No further questions, Mr. Chairman.

Mr. BAILEY. Would you care to ask about starvation?

Senator McCARTHY. Yes. Tell me about the starvation you mentioned.

Mr. BAILEY. I don't know if it is of much importance, but since it was in my letter, I might as well bring it out.

The day we arrived at Schwabisch Hall Prison, which was about noon of December 27, as soon as we got in there one of the German prisoners, who was apparently more or less a flunky around there, brings a couple of tin pans that they feed the prisoners in over to Major Fanton, showed some scratches that looked like a couple of X's in rows or something, and I got from his interpretation that he suspected it was some code the German prisoners were trying to use.

The pan wouldn't be given to the same men. None of the interpreters on the team could make any sense out of the marks and neither could the German prisoners who were cooperating with them.

So Major Fanton said, "We will put them all on bread and water until they confess." That was December 27. That continued. I didn't pay any attention to it, it was none of my business, up until New Year's Eve when a sergeant major who had charge of the day MP's guarding the prisoners, came to me and said, "These prisoners have

been on bread and water going on the fifth day now. I don't want the responsibility for it."

I don't think I made any comment, but that was New Year's Eve day, and that night Major Fanton took me and Captain Shumacker and Thon, he said Captain Johnson, who happened to be in charge of the military police, is having a party tonight. He said, "Let's go over." So we did.

In the course of the conversation that evening I mentioned the fact that the prisoners—told Major Fanton and also Captain Johnson what the sergeant major had told me, and Captain Johnson said that under the rules they were working under they weren't permitted to keep them on bread and water over 3 days. Major Fanton answered him that he had nothing to do with that, that the war crimes had charge of those prisoners.

Captain Johnson commented that, with all due respect to Major Fanton, the feeding of those prisoners was his duty, and they would be taken off bread and water the next day.

The next day was New Year's and we didn't work. But the day following New Year's there was a call came in from Weisbaden to Major Fanton, I presume it came from Colonel Ellis, and they were immediately taken off bread and water.

Senator McCARTHY. I didn't quite get it. They had scratched the bottom of the mess plates?

Mr. BAILEY. That is right, and they suspected that that was a code, exchanging from one prisoner to another. Somebody else would get that pan to eat off of next day.

Senator McCARTHY. What kind of scratches were they?

Mr. BAILEY. It looked to me like X's and O's, as I recall, but they never found out whether it meant anything or nothing, as far as I know.

Senator McCARTHY. I would like to say for the purpose of the record, so there will be no misunderstanding as to the importance of what I just read, which is from page 64 and page 65, that here is a ruling which indicates that no one could conceivably have gotten a fair trial before that court. This man Rosenfeld was the only attorney on the court; he made this ruling and apparently made it constantly, so you can understand why more defendants weren't put on the stand.

He held that unless he went into the question on direct examination, the question of how a confession was obtained, what beatings were administered, what physical punishment, what type of mock trials the witness was subjected to in order to get him to sign this statement, unless Rosenfeld or the prosecution went into that on direct examination, he ruled that then the defense could under no circumstances go into that on cross-examination, which was in effect a statement by the court to the fact that they wanted to rule in the dark. They had to rule upon the value of this testimony and they in effect said, "Upon the advice of Rosenfeld, we don't want the facts, we don't want to know how much of a beating these men have taken, because the prosecution didn't go into it on direct examination," which obviously he wouldn't. They said, "We want to hear nothing about it." Under that alone it makes it completely impossible to conduct an intelligent trial, and I

might say I think if any of those men are in the Army yet who made such a ruling, made rulings of this kind, they should be promptly retired to civilian life.

I would like to say something further so there will be no question about my position in this. I think we should find out who is responsible for hiring refugees from Hitler, men whose wives were in concentration camps, men who had every reason to dislike the German race and dislike them intensely, and the prosecution goes out and hires those individuals and gives them complete charge of the job of getting confessions. The prosecution or whoever was responsible for doing that should be asked to resign from the Army immediately.

Mr. Chairman, as we go along this picture becomes more and more gruesome. That is worse than anything we have ever accused the Russians of doing.

Senator BALDWIN. May I ask a question? You mentioned the man's name, Kramm.

Senator McCARTHY. A witness. He was the prosecution's witness. He was one of the original accused.

Senator BALDWIN. Let me say in answer to your statement that it is the purpose of this committee to go into this thing thoroughly and produce every witness that we think can be helpful in bringing us to a satisfactory recommendation to the main committee, because I personally firmly believe that if we ought to conduct war crimes trials, it is very essential in the interest of democratic institutions and democracy generally that we give a demonstration of utter justice and fairness in our administration of justice, because that is vitally essential as a part of our whole system.

So that is the direction and that is the purpose of this whole investigation. Did you have any further questions?

Senator McCARTHY. Yes; I have.

Senator BALDWIN. I might say we have Judge Simpson here and Judge VanRoden. I don't want to hurry, but we are anxious to hear them.

Senator McCARTHY. I had some questions in regard to rules of evidence, but I would rather ask those questions of the judges.

Mr. BAILEY. I have a letter here received from Mr. Schuelingkamp. He was one of the interpreters. He speaks very favorably of Colonel Ellis, and maybe it should be offered in evidence.

Senator BALDWIN. This is from Mr. Bernard Schuelingkamp. Who was he?

Mr. BAILEY. One of the interpreters of the team of nine down at Schwabisch Hall at the same time as I.

Senator BALDWIN. This letter was written to you personally?

Mr. BAILEY. Yes; I hadn't heard from him for a period of two or three years until I got that from him by air mail the other day.

Senator BALDWIN. He was one of the interpreters?

Mr. BAILEY. That is right.

Senator BALDWIN. Do we have him as a witness?

Mr. CHAMBERS. I don't believe that we have.

Senator McCARTHY. I might say regardless of whether that is favorable or unfavorable to Mr. Ellis, I seriously would question the propriety of putting in a letter of anyone who is not going to testify. I have read in parts of letters with the request that those men be brought here. The purpose of reading those parts of letters was to

let the chairman know the views of the writers and how they would testify if they were brought here. I would like to cross-examine and talk to everyone who can shed light on this case.

Senator BALDWIN. This witness lives in Los Angeles and we can get him here.

Senator McCARTHY. If he is important, I think we should, and if he is an interpreter, I think he is important.

Senator BALDWIN. He writes:

MY DEAR FRIEND BAILEY: I am sorry for the long delay in answering your letter. I was really glad to hear from you again and I often think of the trip when I drove you from Wiesbaden to this awful place "Schwabisch Hall." How time flies. This morning I read your name in the papers, concerning the Malmedy case, and I thought back and realized that it is now 3 years since you and I exchanged our feelings about the things which you once told me come to light one of these days. I am sure that Colonel Ellis has nothing to do with forcing questions out of the prisoners. I think you and I remember too well what went on. Of course, I, a German by birth, could not open my mouth. You found out what they had done to me and I am suffering from it to this date. That's what I got with my four battle stars. Well, my friend, once your character gets smeared, it stays that way. I can't even find, I mean get a job on this account. Once you put down in your application form that you had been discharged, that's all brother. Nobody cares to know the true story or help you find it. Colonel Ellis was the only person that wanted to help me, but this Captain Bouton at the personnel office in Frankfurt, together with his gang, fixed it so that nothing could be done.

It is about 2 years now since I wrote to you and that letter came back to me. I hope this one will reach you and don't take my example in answering. Please inform me if there should be anything of interest. If you meet Colonel Ellis, please give him my best regards. I have great respect for him, he never lets an Army man down. He went with me to Frankfurt and personally dictated a letter to Washington to help me. Of course, that letter was never sent, the boys in the Frankfurt office took care of that. This is my idea.

Bailey, if there is anything I can do for you, I'll take the first train—you gave me great comfort once upon a time.

SCHULY.

He was one of the interpreters?

Mr. BAILEY. That is right.

Senator BALDWIN. Well, I think we can probably get Mr. Schuelingkamp here as a witness. At least, we will make every effort to do so.

Senator McCARTHY. May I ask a question? He refers to what was done to him. What was done to him?

Mr. BAILEY. Senator, Colonel Ellis could probably tell you more about that than I. I know he got in some difficulties over there, and his friends thought he was framed. I thought he was, and some of the others did. The details of it I am not familiar with. I left them in Germany.

Mr. CHAMBERS. I would like to ask a question to clarify the gift situation. You mentioned that these gifts were given to the prosecution staff by the prisoners. Now, as I understand it, there were two groups of prisoners at Schwabisch Hall. One group were those who were there for interrogation for the Malmedy cases and the other were a group of civilian internees there for confinement with a German camp commander.

Were these skis made and the paintings made by the Malmedy prisoners or were they these internees at Schwabisch Hall having nothing to do with the Malmedy cases?

Mr. BAILEY. I don't know.

Mr. CHAMBERS. Do you know the German officer's name who painted the picture?

Mr. BAILEY. I don't know. I heard it, but I have forgotten it. My recollection is that that oil painting is autographed by the painter. I am not certain about that.

Mr. CHAMBERS. Did you know the name of the German officer who painted the picture or what his job was around there?

Mr. BAILEY. No; I don't. I know that for a couple of hours a day for several days or longer Major Fanton sat there and posed for him while he was working, maybe a couple of hours a day for weeks. I didn't keep track of it.

Mr. CHAMBERS. You are not certain they were Malmedy?

Mr. BAILEY. No; I don't think I said so, and I don't think I said they were gifts.

Senator BALDWIN. What did you mean by two groups?

Mr. BAILEY. They were all prisoners as far as I knew.

Mr. CHAMBERS. However, one group were being interrogated by the interrogation staff under Major Fanton. Those were all Malmedy people. I understand there was another group of people who were civilian internees, and I was trying to find out which group had done this work for Major Fanton.

Mr. BAILEY. I don't know.

Mr. CHAMBERS. Thank you.

Senator BALDWIN. Thank you, Mr. Bailey, for your public service in coming down here. We appreciate it.

Judge Simpson, will you take the stand.

I might say for the record that Senator McCarthy has spoken to me about a physical condition and an operation he has had which has caused him considerable pain, and I don't want to keep him here any longer than we have to.

Senator McCARTHY. I am supposed to be at the hospital and have a sinus drained at 5 o'clock.

Senator BALDWIN. Suppose we go on with Judge Simpson and we will get you through in time to go out there.

Senator McCARTHY. I would appreciate it an awful lot.

Senator BALDWIN. Judge Simpson, will you stand and hold up your right hand, please.

Do you solemnly swear that the evidence you shall give in the case now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SIMPSON. I do.

Senator BALDWIN. Thank you, sir.

TESTIMONY OF GORDON SIMPSON

Senator BALDWIN. Will you give us your full name.

Mr. SIMPSON. Gordon Simpson.

Senator BALDWIN. And where do you live, sir?

Mr. SIMPSON. I would say at Dallas. I am in the process of moving from Austin, Tex., to Dallas, Tex. I practice law in Dallas.

Senator BALDWIN. You are a practicing attorney there?

Mr. SIMPSON. I am.

Senator BALDWIN. And a member of the Texas Bar?

Mr. SIMPSON. I am.

Senator BALDWIN. How long have you been a member of the Texas Bar?

Mr. SIMPSON. Since 1919.

Senator BALDWIN. And you are a graduate, I assume, of a university and a law school.

Mr. SIMPSON. I am.

Senator BALDWIN. Have you ever been a justice of any court before?

Mr. SIMPSON. Of the Supreme Court of Texas.

Senator BALDWIN. For how long a term?

Mr. SIMPSON. A little over 4 years.

Senator BALDWIN. Are you presently a justice of the Supreme Court of Texas?

Mr. SIMPSON. No; I have resigned to enter the law practice again.

Senator BALDWIN. Now, were you asked to undertake an investigation of these Malmedy convictions?

Mr. SIMPSON. Yes.

Senator BALDWIN. And when was that?

Mr. SIMPSON. It was in July of 1948.

Senator BALDWIN. I will ask Colonel Chambers to go ahead with the direct examination and I will get back in a few minutes. I have to leave for a short time.

Senator McCARTHY. I may want to do some questioning myself.

Senator BALDWIN. Yes. I would suggest that Colonel Chambers continue. Could you go on?

Mr. CHAMBERS. I would not like to be put in the position of ruling on Senator McCarthy.

Senator BALDWIN. Don't have a disagreement among you. If you reach an impasse, both of you stop and call for me. I will be back in 10 minutes.

Mr. CHAMBERS. I believe, Judge Simpson, that the question was asked: Were you asked to investigate the Malmedy cases? Who asked you to make this investigation?

Mr. SIMPSON. The Secretary of the Army, Mr. Royall.

Mr. CHAMBERS. Did he appoint you as chairman of a board or commission to make this study?

Mr. SIMPSON. Yes.

Mr. CHAMBERS. Who were the other members, sir?

Mr. SIMPSON. Judge E. L. Van Roden, of Media, Pa., and Charles W. Lawrence, Jr., a lieutenant colonel in the Judge Advocate General's Corps of the Regular Army.

Mr. CHAMBERS. Was your assignment just the Malmedy cases, Judge Simpson, or did it have a broader scope?

Mr. SIMPSON. No; it did not include the Malmedy cases alone, but extended to an investigation into the fairness of the trials of 139 German nationals who were convicted, given the death sentence, and awaited execution.

Mr. CHAMBERS. Of these 139, how many of them were as a result of the so-called Malmedy atrocities?

Mr. SIMPSON. Twelve.

Mr. CHAMBERS. Twelve?

Mr. SIMPSON. Yes. There were 67 records of trial altogether involving these 139 death sentences.

Mr. CHAMBERS. However, of necessity in studying those 12 you had to make a study of other aspects of the Malmedy cases, going beyond just the record of trial in the 12 death sentences; is that correct?

Mr. SIMPSON. Yes, we made a rather extensive investigation and inquiry.

Mr. CHAMBERS. We have as a part of the record of these committee hearings your report. Do you have a copy there, sir?

Mr. SIMPSON. Yes, I do.

Mr. CHAMBERS. I wonder if perhaps the best way to proceed would not be for you to tell us what you would like to about the background, the way you operated, and such other information as you think would be pertinent.

Mr. SIMPSON. The commission which we were to execute can best be understood if I refer again to the cablegram from Secretary of the Army Royall to the commander in chief of the European Command, General Clay, outlining the scope of the inquiry we were to make. Secretary Royall wired General Clay:

Have arranged to have Judge Gordon Simpson, Texas Supreme Court, make survey of Dachau war crimes program with a view to making recommendations as to advisability of clemency or of further review or consideration. He is now engaged in a preliminary examination of records available here and will arrive by air probably within a week. Request that you issue theater clearance for traveling to Germany of Judge Simpson and two assistants, whose names will be furnished later.

That cablegram was dated July 16, 1948. Pursuant to that mission and its accomplishment, Judge Van Roden and Colonel Lawrence and I, after conferences with those in charge of the war-crimes program here in Washington, including Colonel Young and some of his assistants, and after inspection of such records as were available here, the three of us departed for Germany and spent approximately 6 weeks, the most of which was at Munich where these records of trials were on file, pursuing an inquiry into these trials with a view to making recommendations such as Secretary Royall desired.

We were given adequate clerical help at Munich, satisfactory office space, and we set about the examination in the face of these 67 separate records of trial. I might say that each of the three of us during the war had had rather extensive experience in military justice, and the matter of investigating those records was greatly facilitated by our familiarity with the general way in which those records were compiled. I would say had we not been familiar with it, it would have taken a much longer time and possibly would have been impossible of accomplishment in less than 6 months rather than 6 weeks.

We went through those records and in every case where there was any claim made that any improper methods were used by the prosecution to obtain evidence to support its claim that the accused was guilty, we looked carefully into the matter. The claims were not numerous or general. They were indeed infrequent. I would say not over 2 or 3 claims of the kind appear in the 63 records of trial outside of the Malmédy case, and the court in each case, we were happy to observe, looked with very careful scrutiny upon the testimony to make sure no injustice had resulted to the accused in consequence of the claim that improper methods were employed to obtain prosecution evidence.

The trials, I am glad to report, were to my personal way of viewing them essentially fair, and the courts, it occurred to me—

Senator McCARTHY. You are speaking of the Malmédy cases?

Mr. SIMPSON. I am coming to that specially. The courts on the average, it occurred to me, were meticulous in seeing to it that those German nationals who were on trial were accorded a fair trial without

regard to the reprehensible nature of the crimes with which they were charged.

I must say of the 139 who were convicted and awaiting execution, they were all convicted of murder or complicity in murder, as it is denounced under the statutes of our country and the international conventions.

Senator McCARTHY. So as to make the record clear, are you speaking now of the Malmedy cases?

Mr. SIMPSON. I include that; yes, sir.

Senator McCARTHY. I am going to ask you to confine your testimony to the Malmedy cases, if you will.

Mr. SIMPSON. All right.

Senator McCARTHY. Otherwise, we don't know which ones you are talking about.

Mr. SIMPSON. As to the Malmedy case, and I will come to that now, Col. Willis M. Everett, Jr., of Atlanta, is known to you gentlemen and had filed a petition for writ of habeas corpus in the Supreme Court of the United States, making certain claims that excesses and abuses occurred in procuring evidence upon which the accused in the Malmedy trials were convicted, and the claims were of such nature that General Royall was greatly concerned about the entire war crimes program, and that is the reason I mention the general inquiry, to see whether or not the other trials were fair, too. Particularly General Royall charged us to make inquiry into the Malmedy case to see if the allegations made by Colonel Everett were substantiated and also to see whether or not the records of trials fairly demonstrated the guilt of the accused who were under sentence of death.

With those general considerations in mind, we went forward with the inquiry and arrived at the conclusions with which you gentlemen are familiar. The abuses which Colonel Everett claimed to have occurred in obtaining that prosecution evidence were verified insofar as the claims extended to the mock trials. In fact, the prosecution admitted at the trial that mock trials were employed to obtain that evidence, and you are familiar with the general nature of those.

Our report reflects that we couldn't condone the use of those trials in our opinion. The record, so far as anything I can remember, the record failed, however, to show any beatings or threats other than Colonel Raymond's commission found that in one or two instances some of the accused or one or more of the accused were threatened with members of their families being deprived of ration tickets.

Senator McCARTHY. May I interrupt? Are you aware of the fact that the prosecution would object and the court would sustain any objection to a recitation of the details of the beatings?

Mr. SIMPSON. Yes.

Senator McCARTHY. Under the circumstances, the record couldn't show those beatings, could it?

Mr. SIMPSON. Yes.

Senator McCARTHY. I am speaking of the court records.

Mr. SIMPSON. The court record could. In fact, I would say I agree with you that the court erred in the ruling, certainly. There was no reasonable support in law for the ruling made, and it was an unfortunate occurrence. But Colonel Everett started to putting his clients—they were his clients, he was appointed to defend them, and he did a magnificent job of it, and is to be complimented highly for

the sincerity with which he devoted himself to his duty. Colonel Everett started proving these claimed abuses during the trial, but he discontinued putting his clients on the stand because of reasons satisfactory to himself. I believe that Colonel Everett would not object if I told you that he said he did not think those accused were making very good witnesses under all the circumstances.

Senator McCARTHY. Let me ask you this, if I may—

Mr. SIMPSON. Yes.

Senator McCARTHY. I think, since you are on the supreme court, you and I won't have any argument about the law. I think we both heartily agree that an attorney has the right to question a witness as to whether he is being paid for his testimony or what he is being offered to testify, what he is getting in the way of a reward for testifying—in other words, his interest in the case.

Likewise, you can ask whether he is testifying because he was beaten up and threatened with prosecution if he wouldn't testify. In view of the fact that Colonel Rosenfeld erred so grievously in cases that were so important, I am just wondering how the record could show anything about these beatings. In other words, if you get my question in mind, let's say there are a hundred of us accused of murder, and the prosecution says to 25 of us, "We will let you off"—after they beat us up—"if you will sign this confession implicating the other 75." So the 25 of us testify that the other 75 are guilty.

If the defense attorney doesn't have a chance to examine us and show why we are testifying, then it is impossible for any man looking at the cold record to evaluate the testimony. Looking at the cold record, you can't possibly evaluate the testimony, then, could you?

Mr. SIMPSON. It was a difficult matter, I agree with you entirely, as is demonstrated by what happened. To begin with, there were 44 of these accused who were given the death sentence and General Clay through his subordinates, particularly through Colonel Straight, to begin with, and then later reviewed by Colonel Harbaugh, now General Harbaugh, concluded that only 12 of those death sentences ought to be confirmed; and some of those given death sentences were by General Clay's order absolutely acquitted.

A critical analysis was made of the record which had been made. The review shows, I think, Colonel Rosenfeld erred.

Senator McCARTHY. Do you recall this? The facts were brought out as to the case of a man being sentenced to hang for having participated in the operations of a certain office in the year 1941 on the theory that having been in that office, he knew what orders were issued from the office, and therefore, was guilty and should be hung, and the defense counsel before the court didn't even argue the point that this man was never even working in that office, defense counsel merely argued there is no evidence to show that he knew what was in these various orders and that after the conviction, after the sentence to hang, then it was brought up to the reviewing authority and they were informed that the uncontested evidence showed this man was I don't know how many miles away, two or three hundred miles away, and hadn't been in that town since 1939.

Were you aware of that particular case?

Mr. SIMPSON. What was the name of the accused?

Senator McCARTHY. I don't know. I was given that information, and we intend to bring in the details of the case. They may have been set aside before you entered the picture.

Mr. SIMPSON. That doesn't impress me. I don't recognize immediately the situation you describe.

Senator McCARTHY. Do I understand the only cases you reviewed were those in which death sentences were pending at the time?

Mr. SIMPSON. Exactly.

Senator McCARTHY. In some of those cases General Clay set the conviction aside entirely?

Mr. SIMPSON. Yes, indeed. If you gentlemen wouldn't mind, I would prefer to answer the questions you propound because I may go afield if I talk other than in response to questioning.

Mr. CHAMBERS. We do have a series of questions we would like to ask, and I am sure that then Senator McCarthy will have additional questions.

Senator McCARTHY. I have a sizable number. There is one question I would like to ask before you go further.

You recommended in a certain number of cases the men should not be hanged?

Mr. SIMPSON. That is correct.

Senator McCARTHY. Have some of those men since been hanged?

Mr. SIMPSON. I think that is true. I observed it in the newspapers.

Senator McCARTHY. I believe five of the men you said should not be hung have already been executed.

Mr. SIMPSON. That is correct.

Senator BALDWIN. Was that the Malmedy affair?

Senator McCARTHY. No. They investigated 139 cases.

Mr. CHAMBERS. Senator McCarthy asked that we confine the testimony to the Malmedy cases, and I was going to point out that those five that were hung were outside the Malmedy cases.

Senator McCARTHY. Yes.

Senator BALDWIN. Go ahead.

Mr. CHAMBERS. We have had primarily as a result, I believe, of Colonel Everett's petition and then in charges that have come in in many ways—part of them are based on the affidavits of the accused, many very serious charges concerning brutalities, beatings, and matters which I believe can be grouped under the heading of inhuman treatment.

As differentiated from those, we had a series of charges involving mock trials, solitary confinement, et cetera.

I would like to ask you if the evidence that you discovered established that there is reasonable grounds to believe that these inhumane and brutal methods were carried out by the prosecution staff at Malmedy. I guess we should say at Schwabisch Hall.

Mr. SIMPSON. No. We found no evidence of that. Today the testimony that was given before you gentlemen is the first direct and dependable evidence I have heard of it outside of these circumstances. The affidavits made by the accused, after convictions, which must obviously be received with a great deal of caution, and next there was an affidavit by a dentist named Knorr, I believe, who lived at the town of Schwabisch Hall, and we didn't have an opportunity to interview him, and I left that affidavit with Colonel Harbaugh and told

him, "This is your responsibility," and I see his group and Colonel Raymond did look into the matter.

Senator McCARTHY. May I interrupt?

Senator BALDWIN. Yes.

Senator McCARTHY. Colonel Harbaugh and Colonel Raymond were the two men who were in charge of this whole area, so that when you left this work to them, you were saying in effect, "Gentlemen, you go ahead and investigate yourselves, and if you find you have done something wrong, tell me."

Mr. SIMPSON. No. Colonel Raymond wasn't. Colonel Harbaugh was in responsible charge of the legal work in that area, including the war crimes.

However, I never left but one thing with them, and that was that Dr. Knorr affidavit. I asked them to follow that up. I hadn't had time to talk to the dentist.

Mr. CHAMBERS. So that the Knorr affidavit was the only evidence you had that would support charges of knocking out of teeth and breaking jaws, and so on?

Mr. SIMPSON. Yes, and inquiry from such people as we could interview in Munich failed to substantiate the claims of beatings and brutality.

Mr. CHAMBERS. Were those inquiries made of people who were in position to know what went on at Schwabisch Hall?

Mr. SIMPSON. We talked to as many who had been prosecutors and defense counsel as we could find, both in the United States and in Germany.

Senator McCARTHY. May I ask: Are you referring to the Malmedy cases again?

Mr. SIMPSON. Again I see what you mean.

Senator McCARTHY. Ultimately I want to know which of the defense counsel in the Malmedy cases you talked to and which of the prosecution staff, and it is very important that we keep these two things separated. I know you were there on a much bigger job and important job.

Mr. SIMPSON. We reviewed every record and affidavit that pointed toward this claim of abuse and mistreatment, and we weren't able to locate any tangible support to the claim outside of what I have told you gentlemen.

Mr. CHAMBERS. Now, there was a charge made, sir, of posturing as priests. Did you find any evidence to support that?

Mr. SIMPSON. I did not and it shocked me so to think that that might have been done that I looked for it, and I did not find it.

Mr. CHAMBERS. There have also been charges made of solitary confinement, and we have had many witnesses here who admit freely that they were kept in separate cells, but now, generally speaking, the term "solitary confinement" carries a connotation to us that is a little more severe than being placed as a single prisoner in a cell.

How were these people treated insofar as their confinement was concerned?

Mr. SIMPSON. They were kept in solitary confinement. In fact, you will find in the record that they were kept in cells which for some reason or other got to be called death cells.

But the records shows that those who were being investigated for the massacre at the Malmedy cross roads of these surrendered Amer-

ican prisoners of war belonged to Combat Group Peiper, and they wouldn't talk, and the officers had such control over them, as the record indicates, that these investigators had to separate them in order to keep them from telling the same story.

It didn't shock me at all that they put them in individual cells for the purpose of keeping them from correlating information and for the purpose of getting at the truth of the matter, but that was done.

Mr. CHAMBERS. Did the records that you all examined show that there were complaints made indicating the fact that they were kept in solitary confinement or did they complain of suffering from cold or not being properly fed or other complaints you might have run across in the record of trials?

Mr. SIMPSON. Yes; Colonel Raymond's board reflects they took blankets away from some of those prisoners. The man who testified to the fact that blankets were taken away said that cells were steam heated, but still that didn't set very well with us. Others did have blankets in steam-heated cells and that, of course, didn't rest very well.

Also there was some testimony about overcoats being taken away from one or two of the accused, but so far as inadequate food being given them, I didn't observe any claim to that effect.

Mr. CHAMBERS. Today in the examination of other witnesses and in some of the printed stories based on the Simpson report, there is reference made to the fact that a rather surprising percentage—I think out of 139 cases all but 2 of the Germans had had their testicles damaged beyond repair. Where did you find the evidence on that?

Mr. SIMPSON. None at all.

Mr. CHAMBERS. Were there charges made to that effect?

Mr. SIMPSON. No; no claim was made to that effect in any of the records we inspected, and we diligently tried to find them.

Senator McCARTHY. Just a second. Did you read Colonel Everett's affidavit, Judge?

Mr. SIMPSON. Yes.

Senator McCARTHY. You say there was no claim made. You read that before you conducted your investigation?

Mr. SIMPSON. I suppose you are correct. When I say no claim was made, I am too broad in that. I like to separate between the realm of allegation and the realm of proof.

I want to say I found no proof of that.

Senator McCARTHY. The best proof would be to say to a doctor, "Examine the man." Here is an affidavit that says they are crippled for life. Your best proof would be to say to a doctor, "Examine the man." Did you do that?

Mr. SIMPSON. No.

Senator McCARTHY. Then the proof wouldn't show through their clothing; would it?

Mr. SIMPSON. No.

Senator McCARTHY. What proof would you expect to find?

Mr. SIMPSON. I think that is an absurd claim, the claim that they were damaged for life.

Senator McCARTHY. You may think so. This is an important matter you were sent to investigate. There is one simple way to do it. You could have picked three or four men at random and have said to a doctor, "Examine these men," say all except one is crippled for life.

If you picked out two or three, you would know whether the claims are correct or not.

Mr. SIMPSON. If you gentlemen think that is a proper procedure, I take it it can be done now, and I take it you so recommend.

Mr. CHAMBERS. If I may say, Senator McCarthy, my question was: What direct evidence was secured to justify that particular claim? Apparently the answer is—

Senator McCARTHY. So that this record is clear, I think it is absurd to ask a man whether he found evidence and he says, "Now, I didn't find any claim made."

We know that the affidavit which started this machinery in motion to get these investigations, those affidavits were replete with claims that the men were crippled for life. If the judge says he didn't find any evidence, in order to make that clear he must say, "I didn't look for evidence."

If you want to find whether a man has a wooden leg, you pull up his trousers leg and look at the leg. If you want to determine whether 138 out of 139 were crippled for life—and their affidavit is important here—the only way to determine that is to say to a doctor, "Examine 2 or 3 or 10 of these men."

Pardon me, judge, but just so the record is clear, I understand you didn't look for evidence of that kind.

Mr. SIMPSON. We did not conduct any physical examination.

Senator BALDWIN. You made no physical examination of the prisoners?

Mr. SIMPSON. We did not.

Mr. CHAMBERS. Directly along that same line and so that we can know the degree to which a check was made into these things, in one of the reports again, which came out concerning—I believe it was made by Judge Van Roden, and we will speak to him directly, but you probably have some knowledge of it—in further reference to these 139 people, the claim that they were ruined for life, the other statement was that this was standard operating procedure with American investigators. Did you look for any direct evidence on that point?

Mr. SIMPSON. We found in regard to that, in regard to that being standard practice, the one and only time we found these questionable procedures occurred in any substantial degree at all was in the Malmedy case.

Senator BALDWIN. Could you tell us, judge, at that point what you found in the Malmedy case with reference to the abuses of any prisoners or anything that was complained of?

Mr. SIMPSON. We found no proof of physical abuse. We found proof enough of these improper methods to which I have referred, to satisfy me personally, that even though I was convinced that the record warranted the findings of guilty, I didn't want to see anybody hung in a procedure which had the blemish in it of that improper investigation; and so clemency was recommended, not because we didn't think the men were guilty, but because we didn't approve the procedures by which the cases were investigated.

Senator BALDWIN. Was it your opinion that the evidence you examined was legally competent evidence to establish their guilt, but that the methods that were used in connection with the prosecution and the investigation were such that the men ought not to be executed because of the methods used?

Mr. SIMPSON. That is substantially it.

Senator McCARTHY. May I ask a question? You were on the supreme court, right?

Mr. SIMPSON. Yes.

Senator McCARTHY. The Appellate Court in Texas?

Mr. SIMPSON. Yes.

Senator McCARTHY. A record comes up to your Appellate Court. You, of course, don't have a chance to see the witnesses.

Mr. SIMPSON. That is correct.

Senator McCARTHY. You review on the record.

Mr. SIMPSON. That is correct.

Senator McCARTHY. Then let us say that John Jones here is convicted of murder and he is sentenced to hang. He appeals to your court, and you find, No. 1, that a mock trial was conducted and a rope tied around his neck, thrown up over a beam, and he was jerked with a black hood over his head to make believe he was being hanged.

Assume he signs a confession and in court the defense counsel tries to question witnesses to show how this statement was obtained, whether obtained under duress, promises, and so on, and the court says, "Objection overruled." The court won't even hear how these statements were obtained.

You are sitting in the Appellate Court. What would you do with a case like that?

Mr. SIMPSON. It would be remanded. I agree with you about that.

Senator McCARTHY. You wouldn't let a conviction stand?

Mr. SIMPSON. You would remand it for a new trial. I agree it presents a very difficult problem here.

Senator McCARTHY. I am not trying to browbeat you, but this occurs to me: You are a judge, and I assume a good one. If a record comes before you and the only evidence convicting a man—and he was sentenced to death—is his own statement and three or four other statements all gotten under duress, or at least the prosecution wouldn't allow the defense to state what the duress was, and the court said, "We don't want to know whether you were beaten; we don't want to know the details." Under those circumstances I wonder if you agree with me that you would not only remand the case for a new trial, but you would recommend to the Bar Association that they check into the matter to see what type of prosecution was handling it and see what type of judge was handling the case. Am I substantially correct in that?

Mr. SIMPSON. In general and in principle I agree with you, yes. The upshot of this, however, is different and peculiar in that first, at least to my satisfaction, this record of trial sufficiently demonstrated that these 12 accused participated in the murder of these American boys, and that they, therefore, were properly convicted even though there were errors in the trial.

Senator McCARTHY. Let me ask you this: If that is true that the records shows that, I don't think any of us have any quarrel with the sentence. I am wondering how you can determine that when you have no evidence before you as to how the statements were obtained, when the defense counsel says, "I want this man to tell under what circumstances and under what conditions his statement was obtained," and the prosecution says, "I object," and says, "I don't want the court to know how his statement was obtained," and the court says, "That

objection is sustained, we don't want to know how that statement was obtained."

Let's say you have 3, 4, or 5 men all testifying as to his guilt. Finally the defense gives up. You will find in the record here that Mr. Rosenfeld warned the defense counsel that he wouldn't rule on that again. In other words, he would find him in contempt of court if he tried to prove how the statements were obtained.

Under those circumstances is there any conceivable way how you and I can tell whether a man was properly convicted, whether he was guilty, not knowing how he was forced to make the statement, how far they went? I can't conceive how you would say the evidence shows he was guilty unless you are referring to evidence which is not altogether clarified.

Mr. SIMPSON. Senator, I would hazard this guess: that you would agree with me upon reading the records in connection with this Malmedy case that these particular men did participate in the murder.

Senator McCARTHY. If you read the records and the affidavits, you will agree they weren't written by illiterate boys of 16 or 17, I agree they were dictated and written by a very smart prosecutor, that the language was his, the language wasn't the language of the boys, I will agree that if you read them and believe what is in the affidavits, that then hanging was too good for those men.

But any man with just common horse sense, such as you and I have, reading those affidavits, we would say those affidavits were never written by young 15 or 16-year-old boys, many of whom never even went through grade school, having gone into the Army. I would want to know whether these men are guilty.

Let me ask you this question, if I may: The testimony this morning was—and apparently it is unquestioned—that the chief investigator, one of them had been sentenced to death by Hitler's gang, he had escaped, his wife had been held in a German concentration camp for 4 years and I assume not treated too well. Another of the investigators had his mother killed. These are people from Germany, men who had to get out from under Hitler or they would have been killed most likely. You have heard the court reporter state they disliked the whole German race and thought they all should hang.

Don't you think it is improper beyond words to put those men in charge of the interrogation, in charge of getting the confessions, in charge of getting the statements upon which men are going to be hanged?

Mr. SIMPSON. Senator, I wish they hadn't used that team. I will say, however, that those gentlemen claim they couldn't get anybody else to do that investigating. The war was over, all our reliable personnel over there wanted to get home. They said they just had to get these men because that is all they could find.

They called for volunteers and, of course, these people would volunteer. They would be perfectly willing to volunteer because of animus. They didn't know these people wouldn't fairly conduct the hearings.

Senator McCARTHY. There were three or four million men there in the Army. Many of them could speak German. They didn't have to call for volunteers. They could go through the statements these men filled out in the beginning and find those who were qualified. They would say, "You come here."

No. 2, is there any reason why they believe they can get a vengeance team and put them in charge of interrogation and get a fair trial?

Mr. SIMPSON. I don't know why that couldn't have been pursued, and I agree with you I wish they hadn't used this particular team, but I believe that the authorities over there acted in good faith about it.

I must say a kind word for our personnel over there. So few people seem to be standing up for them. I found an honorable and devoted group of officers when I went over there to investigate these things, people who wanted to do what was right.

Senator BALDWIN. One thing that may be indicated out of all this is, as I see it now, as chairman of the subcommittee, as far as we have gone, it is that if we are ever to conduct a trial of this kind again, one of the considerations that we will have to give great weight to is the competency and the adequacy of the personnel with which to do it. Would you say that is correct?

Mr. SIMPSON. Absolutely.

Senator BALDWIN. I would like to say this for the benefit of the record: My position here as chairman of the subcommittee is one that makes it necessary for me to try to preside over these hearings just as impartially as I can; whereas Senator McCarthy can cross-examine these witnesses. I don't intend to take that role in the thing at all. I want to develop insofar as I can through direct questioning the facts presented here as fully as we can get them.

Going back to the question of the injuries to the privates of these prisoners, these Malmedy prisoners, you said you made no physical examination to determine whether or not their affidavits were correct; is that right?

Mr. SIMPSON. We did not.

Senator BALDWIN. Was there any medical testimony to the effect that they had been permanently injured in any way, or what was the medical testimony on that?

Mr. SIMPSON. There was none produced.

Senator BALDWIN. Did you look for any?

Mr. SIMPSON. Yes. We looked for all evidence which would substantiate the claims which had been made, and we found no evidence to that effect.

Senator BALDWIN. In connection with these so-called confessions, Senator McCarthy has brought out, I think, a very good point, and that is that they are written in ordinary English style, not as a literal translation of what a German might say.

I might also point out for the benefit of the record—and, of course, it is part of the record—that the affidavits which they filed in the Supreme Court of the United States to accompany their petition are likewise written in that same style. They are not what might appear to be the verbatim testimony literally translated of a German, who usually puts the verb, as I remember it, at the end of the sentence, so that you were aware of all those facts, were you, Judge?

Mr. SIMPSON. Yes.

Senator BALDWIN. I think you said a moment ago that after an examination of this record, you had no question in your mind, at least, as to the actual guilt of the men who were convicted?

Mr. SIMPSON. That is true.

Senator BALDWIN. But you did have some question in your mind as to the manner in which the testimony and their confessions were obtained. In an examination of this record, was any man convicted who, in your judgment, was convicted upon his confession alone?

Mr. SIMPSON. I lost my memorandum on that, and I prepared it. I analyzed the record particularly from that viewpoint, and I don't believe that there was one man convicted or possibly one man, convicted on his uncorroborated statement.

Senator BALDWIN. In other words, his only statement was corroborated by other competent testimony?

Mr. SIMPSON. Competent under the rules that were obtained, and there we bring up another controversial question.

Senator BALDWIN. That was the next question I was going to ask you. What was the degree of competency? Was it the degree of competency that would be required in an American court to secure a criminal conviction or what was its nature?

Mr. SIMPSON. No, it wasn't. The rules of evidence—and I am sure you gentlemen have been over this before—which were followed were the rules which had been substantially adopted for the Nuremberg trials, and that is to say any evidence which had any probative value which the trier of facts might think should be admitted.

Senator BALDWIN. In other words, hearsay was admitted and its weight depended upon its credibility?

Mr. SIMPSON. Yes; that was the system, and we didn't question the system. It had been adopted, and that is quite another question.

It is one that is debated at great length to this day, whether this is proper procedure. But that was the procedure agreed upon and followed in the British, French, and American trials, as I understand it, and at Nuremberg.

Senator BALDWIN. In other words, before these trials began there was a sort of code made up of rules of evidence and rules of procedures that death with this particular trial?

Mr. SIMPSON. Yes. Colonel Chambers has a copy of it there.

Senator BALDWIN. I think that has been introduced in evidence.

Mr. CHAMBERS. Yes.

Senator BALDWIN. It will be part of the record. This question asks you for a piece of expert testimony that maybe you might not feel competent to answer.

Mr. SIMPSON. If it is expert, I am not competent.

Senator BALDWIN. Let me ask you this as a lawyer: Do you know whether or not in France and in Germany in the trial of cases they have different rules as to the admissibility of evidence than we have? In other words, in a French court and in a German court is hearsay testimony admissible?

Mr. SIMPSON. Senator, I wouldn't be able to answer that. I have heard that it is, but what I have heard is of little value.

Senator BALDWIN. I think that is an important point here to determine. I think we should look that question up. Of course, in an American court, as you well know, it is not. I would be interested in knowing whether or not they adopted any of the rules that pertain to the courts of the country of which these men were citizens.

Mr. SIMPSON. The rules were adopted as a compromise among the four powers at London as to how the Nuremberg trials were to proceed, and finally these rules came out, whether good or bad, and they

have been followed. The regularity of the proceedings, so far as rules of evidence were concerned, was accepted by us.

Senator BALDWIN. I think that is one of the questions this committee has to decide in connection with its recommendation: Whether or not in a trial of this kind we should proceed by our own criminal code and procedure or whether we would be warranted in setting up rules of evidence and procedure different from what pertained in the civil courts of our own country. I think that is a very important thing for us to decide.

Mr. SIMPSON. You are eminently correct.

Senator BALDWIN. Did you find, Judge Simpson, any deviation from the rules laid down for procedure as to evidence and procedure in this investigation and in the trials? Did you find that the American personnel who conducted the investigation and the prosecution deviated from the rules laid down for their guidance and, if so, could you tell us about that?

Mr. SIMPSON. As I construed the record, the rules were followed rather faithfully. There may have been some errors such as Senator McCarthy mentioned that were committed in admitting testimony.

For instance, Colonel Rosenfeld's ruling, which he and I agree was in error.

However, on the whole the courts tried their best, it seemed to me to follow the rules laid down in the manual.

Senator BALDWIN. In your investigation what competent evidence did you find of beatings of the Malmedy prisoners?

Mr. SIMPSON. I did not observe any.

Senator BALDWIN. What evidence, if any, did you find of shortened rations and starvation and anything of that kind?

Mr. SIMPSON. I found no evidence of that.

Senator BALDWIN. What evidence did you find of men being put into so-called death cells and held there indefinitely?

Mr. SIMPSON. They were kept in solitary confinement, and some of the cells where they were confined were known—and nobody seemed to explain the reason why they were known—as death cells. That was before the trial and during the investigation. That did occur.

Senator BALDWIN. Did your investigation disclose the manner in which these confessions were obtained?

Mr. SIMPSON. The mock-trial procedures were disclosed rather fully.

Senator BALDWIN. Could you describe them as you found it from your investigation?

Mr. SIMPSON. The accused would be taken out of his solitary confinement and a hood would be placed over his head before he left his cell and he would be led through the corridors necessary to get to the room where the interrogation would proceed.

Upon his arrival there, the hood would be removed from his head, and here is what he would see. He would see a table covered with a black cloth and two candles on the table with a crucifix in between and the crucifix is the conventional method of administering the oath in judicial proceedings on the Continent.

Senator BALDWIN. You say the crucifix is the conventional method of administering the oath?

Mr. SIMPSON. On the Continent. It is used instead of the Bible. It is a symbol of the sanctity of the oath being administered.

Behind the table would be seated two or three men attired as American Army officers, whether they were or not, ostensibly judges.

On this side would be a man attired as an Army officer, who would pose as prosecution counsel, and on the other side there would be a man attired as an American Army officer who would pose as the defense counsel.

The prosecution would reel out at the accused and the defense counsel would come to his rescue, ostensibly.

That sort of proceeding was carried along in an effort to get the accused to make an extra judicial statement which later would be used against him. If they couldn't get the statement from the accused, they would tell him, "That is all at this time," and they would lead him back to the cell with a hood placed back over his head.

Senator BALDWIN. In connection with those mock trials, was there evidence that came before you of beatings, physical abuse of any kind?

Mr. SIMPSON. I found none.

Senator BALDWIN. Was there any evidence of men being slapped in the face or were kneed in the groin or anything of that kind?

Mr. SIMPSON. I found no evidence of that.

Senator BALDWIN. Did you go to Schwabisch Hall?

Mr. SIMPSON. No, I didn't go to Schwabisch Hall.

Senator BALDWIN. What witnesses did you talk with about this trial?

Mr. SIMPSON. There was such a host of them and I didn't keep my notes as to their names.

Senator BALDWIN. You say there was a host of them. We have here attached to your report the names of 33 witnesses.

Mr. SIMPSON. Yes.

Senator BALDWIN. Which apparently includes officers in our own Army.

Mr. SIMPSON. Yes.

Senator BALDWIN. Do you recall a Dr. Rudolf Aschenauer?

Mr. SIMPSON. I don't remember him individually. His name appears there. We would listen to those people as long as they wanted to talk. We tried to give them all the time they required.

Senator BALDWIN. Here is a name of Dr. Eugen Leer and Dr. Rudolf Aschenauer and Lt. Col. John S. Dwinell, and Colonel Ellis advises me that Dwinell and Leer were defense counsel. Do you remember talking to them?

Mr. SIMPSON. Yes. Dr. Leer was a lawyer; apparently the German lawyers are called doctors.

Senator McCARTHY. These men, I understand, were not M. D.'s.

Mr. SIMPSON. Yes, sir; that is right.

Senator McCARTHY. They were lawyers and in Germany you use the term "doctor" for a lawyer?

Mr. SIMPSON. That is right.

Senator BALDWIN. There is a Dr. Ring and a Dr. Spoerlein who are listed. Do you recall whether they were physicians?

Mr. SIMPSON. There may have been a doctor or two there. I do not remember offhand.

Senator BALDWIN. Then there appear the representatives of the Evangelical Bishop of Wurms and they are Dr. Weeber, Dr. Becker, and Dr. Tischer. Do you remember that?

Mr. SIMPSON. Yes.

Senator BALDWIN. Also a Father Echardt. Could you tell us who those witnesses were?

Mr. SIMPSON. Those gentlemen, Dr. Weeber being the leader of the group, as I remember it, those men were representing the Evangelical Bishop of Wurms and they appeared before us on one occasion a full afternoon and returned, I believe, for another interview together over this entire situation.

The burden of the claim which was made by those gentlemen was not that there was beating and abuse of the prisoners, but in general it was that the war-crimes program was wrong. That, in general, was the claim those gentlemen advanced, that it was inhumane for us to try these people for offenses on ex post facto proceedings and like matters.

Senator McCARTHY. You are speaking now of the discussion of the Malmedy cases?

Mr. SIMPSON. They were talking about it and all the rest of the cases. They weren't exercised especially about one Malmedy case. They didn't claim it to be distinctive from the others.

Senator McCARTHY. Did they know anything about the Malmedy case? Did they live near Schwabisch Hall? These bishops, ministers, and priests, did they know anything about the Malmedy trials? Did they claim to know anything about them?

Mr. SIMPSON. I don't remember.

Senator BALDWIN. In whose behalf did they come?

Mr. SIMPSON. Both the Bishop of Wurms and the Catholic Bishop of Munich and Freising appeared, and they were very fair in their whole attitude. They were simply laying their side of the story before us, a legal and humane standpoint.

Senator BALDWIN. I take it by that you mean they were speaking in behalf of the accused?

Mr. SIMPSON. Yes; that is right.

Senator BALDWIN. Did they make any claims of physical abuse or violence or anything of that kind?

Mr. SIMPSON. They did not.

Senator BALDWIN. I beg your pardon?

Mr. SIMPSON. They did not. I will say that Dr. Weeber, as I remember it, left me a copy of that affidavit by Dr. Knorr, and he left some other affidavits, and in some of them there may have been a claim of physical violence, but I listened to him particularly at length, and he in his written address to our commission didn't advance any claim of violence.

Senator BALDWIN. What other witnesses did you examine that you could say—that is, what other witnesses from this particular group did you examine that you could say appeared in behalf of the defendants?

Mr. SIMPSON. In the Malmedy case?

Senator BALDWIN. Yes.

Mr. SIMPSON. I don't remember that any of these gentlemen appeared especially in that case, outside of Dr. Leer, and in his oral representations to us Dr. Leer did not claim that there were these beatings and abuses. He did claim these other irregularities I am talking about in general, and he claimed that the trial should have resulted in acquittal.

Dr. Leer is a very fine man, too. But my recollection is that he did not in his oral presentation state that there was beating or physical mistreatment of prisoners.

Mr. CHAMBERS. There are two more questions that I would like to ask, Judge Simpson.

In your report, it caused a little confusion, I believe, in the minds of some, and we find the language:

We have found no general conspiracy to obtain evidence improperly.

And there is one thing further:

There was no general or systematic use of improper methods to secure prosecution evidence for use at the trials.

This report covers Malmedy and Dachau cases?

Mr. SIMPSON. It covers 67 trials.

Mr. CHAMBERS. This statement doesn't mean there was no evidence in the Malmedy cases of general or systematic use of improper methods, but rather that throughout your entire 67 cases there was no evidence of a pattern that would apply to all prosecutions?

Mr. SIMPSON. You are correct.

Mr. CHAMBERS. Was there a difference between the Malmedy cases and the other cases insofar as your findings were concerned?

Mr. SIMPSON. Yes, the Malmedy case was the third one tried. It was one of the first ones tried. I was personally gratified to find that the methods that were used in the Malmedy case did not appear to have been repeated.

Mr. CHAMBERS. Sir, as a result of some of the information that has come out in connection with these cases, statements have been made involving the prosecution staff and various comments have been made that they should be exposed in the public process and prosecuted, and so on.

You reviewed all the Malmedy cases or the great bulk of them. Did you find evidence to support that belief, that some of this prosecution staff had gone so far that they should be charged and tried?

Mr. SIMPSON. Not at all.

Mr. CHAMBERS. Did you feel it necessary to call members of the prosecution staff before you to explain or defend the methods they had used?

Mr. SIMPSON. No. We wanted mostly to talk to defense counsel, although some members of the prosecution did come, and I know there is here listed Colonel Rosenfeld, the law member of that court. He appeared before us.

Mr. CHAMBERS. How about the prosecution staff that conducted the preliminary investigations at Schwabisch Hall? Did you have any of them before you?

Mr. SIMPSON. None of them were here. Their testimony is, I suppose, before you in the Raymond commission investigation.

Mr. CHAMBERS. That is correct. One other question. Perhaps you can answer this and clear up a point.

Those confessions that were in the court records, were they written in English or in German or both? Do you recall?

Mr. SIMPSON. No, I wouldn't be able to recall that.

Mr. CHAMBERS. Thank you, sir.

Senator BALDWIN. Just one further question before we ask Senator McCarthy to go ahead.

In connection with these trials and the conduct of the investigation and the prosecution, did you question any of the men who had taken part in the prosecution and investigation?

Mr. SIMPSON. They had a prosecution team and they had an investigating team. The testimony of the investigating team was available to us. They had already been interrogated by Colonel Raymond, Colonel Harbaugh, and Dr. Friedrich and, therefore, it was a part of the archives that we considered in arriving at our conclusions.

Senator BALDWIN. In other words, you examined their sworn testimony on the records?

Mr. SIMPSON. Exactly.

Senator McCARTHY. Judge, we seem to have had some confusion in the record about what cases you were talking about. Looking at this list of 32 witnesses, do you know which of those witnesses knew anything about the Malmedy trials?

Mr. SIMPSON. Colonel Dwinell.

Senator McCARTHY. Did he tell you about these beatings?

Mr. SIMPSON. He told me he wasn't able to find any substantiation as to the maltreatment of prisoners. I asked him particularly. He said, "No, I can't prove that."

Senator McCARTHY. Who made the claim?

Mr. SIMPSON. Colonel Everett made the claim.

Senator McCARTHY. A few minutes ago you said nobody had made that claim.

Mr. SIMPSON. I didn't intend to say that.

Senator McCARTHY. You said the first you had heard was what was presented here today.

Mr. SIMPSON. This was the first proof of that that I had heard, the testimony today.

Senator McCARTHY. Who else in the group knew something about the Malmedy cases?

Mr. SIMPSON. Dr. Leer.

Senator McCARTHY. He was one of the defense counsel?

Mr. SIMPSON. Yes; he was.

Senator McCARTHY. What did he tell you?

Mr. SIMPSON. He didn't claim there was any beatings of his clients.

Senator McCARTHY. What did he say was wrong? Did he tell you about the mock trials?

Mr. SIMPSON. Yes.

Senator McCARTHY. He told you some of the men would be convicted and sentenced to death, and after the death sentence had been passed, that a rope would be put around the neck of the man and he thought he was going to hang, and then he was promised that if he signed a confession written in English, that he would not be hung, his sentence would be cut down, and his family would get their ration cards back?

Mr. SIMPSON. No.

Senator McCARTHY. How much did he tell you?

Mr. SIMPSON. The only proof about these mock trials I was able to find—

Senator McCARTHY. I am speaking of Leer.

Mr. SIMPSON. Dr. Leer or anybody else—it is what I have told you before, the description of the mock trials as far as they went. Leer's concern was mostly with the legal aspects of this thing.

We didn't have a right to try those men, according to him. They were only acting pursuant to superior orders and that ought to have been a complete defense. Those were the things Dr. Leer talked about.

Senator McCARTHY. You had Dwinell and Leer who knew something about the Malmedy cases. Were there any other witnesses besides Rosenfeld?

Mr. SIMPSON. After we came back to the United States, we invited Colonel Everett to come to see us, and we talked to him for approximately half a day, or allowed him to talk.

Senator McCARTHY. How about the ones you interviewed over there? What did they tell you about the beatings?

Mr. SIMPSON. Senator, I didn't find any proof over there of any beatings, and I looked for it.

Senator McCARTHY. I wonder if you would search your memory. I understand that Dwinell joined with Everett in making out the affidavits and appeal—although I may be wrong on that—and that he does agree that all the things Everett says in his affidavit are true. This was before you were called to make the investigation.

It is hard for me to believe when Dwinell came before you that he said Everett's affidavits were not true. If you are sure, I would like to know.

Mr. SIMPSON. Senator, I always stand the risk of being mistaken. My recollection is that is what Dwinell told me.

Senator McCARTHY. If Dwinell comes in and says he told you there were beatings and mock trials, you wouldn't question his statements?

Mr. SIMPSON. No. He is a very honorable man.

Senator McCARTHY. Judge, you said you found no evidence of force being used to obtain confessions; is that correct?

Mr. SIMPSON. Outside of the testimony that I have given.

Senator McCARTHY. You said you found no evidence of any physical punishment.

Mr. SIMPSON. I found no evidence of bludgeoning with clubs or with kicking in the genitals or that sort of thing. I think it was probably physical punishment to keep those men in solitary confinement, as they did, possibly and take blankets away from them and to conduct them to these mock trials. I don't condone that at all.

Senator McCARTHY. You are convinced that the blankets were taken away from these men prior to the time they confessed?

Mr. SIMPSON. The evidence didn't show whether it was before or after, but it was during the investigation.

Senator McCARTHY. During the interrogation?

Mr. SIMPSON. Yes.

Senator McCARTHY. You say you found no evidence of physical beatings like being kicked in the genitals and things like that; is that right?

Mr. SIMPSON. That is right.

Senator McCARTHY. Is that correct?

Mr. SIMPSON. Yes.

Senator McCARTHY. You had heard a lot of reports of that, hadn't you?

Mr. SIMPSON. I hadn't heard a lot of reports. The extent of the claim that that had occurred I believe was in the application for writ of habeas corpus and supporting papers.

Senator McCARTHY. And in the dentist's affidavit.

Mr. SIMPSON. Yes.

Senator McCARTHY. Let me ask you this: In view of the fact that you say the evidence was sufficient to convict them, I assume you are interested in knowing how that evidence was obtained. Can you today tell us the evidence was properly obtained in view of the fact that you turned this over to Mr. Harbaugh to interview the dentist, he has not done that, the dentist has not been interviewed. In view of that, can you tell us at this time whether that claim is true or false?

Mr. SIMPSON. The record of the trial demonstrated to my satisfaction that these accused were there and that they were present when these American boys were being shot down, and there was some evidence to show they participated in it.

Senator, I agree with you that this record of trial doesn't measure up to what I could wish the trial had been, I agree about that, but still I believe it does sufficiently demonstrate that these people were present and took a participating or consenting part in the matter.

Senator McCARTHY. Take John Jones, one of the defendants. We will take him for an example. He is convicted on a number of things. No. 1, his own confession, obtained after a mock trial. No. 2, by the written statement, not the testimony, but the written statement filed, statements made by other men who also claimed they were subjected to these beatings, who also claimed they had a rope placed around their necks, as Mr. Bailey tells us. That is the sole testimony. Do you follow me?

Mr. SIMPSON. Yes.

Senator McCARTHY. That is correct, isn't it? Maybe I am going too fast. In some cases did you find that the only testimony against a defendant was his own confession plus the confession of other co-defendants that implicated him, no other testimony?

Mr. SIMPSON. I believe that is right, Senator McCarthy, in one or more instances. I believe that is right.

Senator McCARTHY. I am sure it is. Let's start from there. You say that evidence was sufficient to convince you they were guilty. You and I, I assume, will agree that if the claim is made by Everett, if the story told by Mr. Bailey, if those things are true—in other words, if they tortured those men enough, then we can't place any weight whatsoever upon those confessions, can we?

In other words, there is a point beyond which the human body can't stand punishment, a point at which it will sign any confession. Some men can stand more. That is the only difference.

If the stories that Bailey tells are true, if the story Everett tells—and you say he is an honorable man, and I think he is one of the finest men I know, he has spent roughly 20 to 30 thousand dollars of his own money trying to bring about justice, and if the story he tells us is true, you have nothing whatsoever to base the conviction on.

Mr. SIMPSON. I wouldn't go that far. The claims that Colonel Everett made, and he advanced them in good faith, were hearsay to him necessarily.

Senator McCARTHY. Bailey's wasn't hearsay.

Mr. SIMPSON. That is the only direct evidence I have heard.

Senator McCARTHY. I wish you gentlemen had made this investigation and found it out before you rendered your report, but you have heard that direct evidence today.

Mr. SIMPSON. Yes, sir.

Senator McCARTHY. Mr. Bailey is not being paid to come here and testify. He is a court reporter and volunteered this. I take it we agree that some men were sentenced to death, their conviction was based upon their own confessions and upon the confessions of the co-conspirators.

Let's take one of those cases. You say there is enough evidence to uphold the conviction. Let's say we have got—and the number isn't important—we have got the man's own confession. All right. If he is subjected to a mock trial and tortured enough, he will sign that. You and I would. The testimony has been that the confessions were written over and over, five or six times until this man Perl was satisfied with the statement. It was taken back to the boy, and he signed it. If that is true, he was tortured, and his confession is worth nothing; is that right?

Mr. SIMPSON. The value of the confession would certainly be greatly weakened.

Senator McCARTHY. Let's put it this way: If he is tortured enough, he will sign the same confession whether he is guilty or innocent.

Mr. SIMPSON. That is conceivable.

Senator McCARTHY. And you as a judge wouldn't under any circumstances convict him upon that confession.

Mr. SIMPSON. Not that alone.

Senator McCARTHY. Let's take a man, No. 2, another codefendant. He is also subjected to the same thing, having a rope put around his neck, told he is to be hung, having had his teeth knocked out, if the dentist's affidavit was true, and apparently the Army thought it was true. The Army's report lists that as a fact. I assume if they thought that report was not true, they would have investigated that. We have that.

There is the case of the mock trial, the mock hanging, the kicking out of the teeth, and he is tortured enough. So he signs a confession and implicates your original man. Would you consider that confession worth anything?

Senator BALDWIN. Just a minute before you answer that, Judge Simpson.

Senator McCARTHY. This judge is competent to answer the question.

Senator BALDWIN. I think right there for the benefit of the record it ought to be pointed out that the testimony, as I recall it, that Mr. Bailey gave on his point was not what he had seen himself but what he claims Steiner had said or Perl had said that they had done. Isn't that correct, Senator? I don't recall that Bailey witnessed any such things.

Senator McCARTHY. Bailey stated the chief investigator by the name of Steiner came in and bragged about the way he got a confession, told that they had marched this man up some steps, told him he was on a scaffold, put a rope around his neck, threw it over a beam,

and jerked him up. He said Steiner said his mother was killed by Germans, he hated the entire race and thought they should all hang. There is no doubt about that.

Senator BALDWIN. That is Bailey's statement of what he claims to have heard Steiner say he claimed to have done.

Senator McCARTHY. Let's assume in addition to these things that they were kneed in the genitals—in other words, kicked in the genitals with your knee, to the end that he signed a confession implicating No. 1. Under your rules of evidence that would be admissible. That is, the rules being followed there.

Would you say that would have any probative value at all?

Mr. SIMPSON. It wouldn't have much, Senator, I would say.

Senator McCARTHY. Let me ask you this: A man would sign the same thing regardless of whether he was guilty or innocent, wouldn't he, except some men would stand more? I am trying to get things that men with common sense would agree to.

Mr. SIMPSON. As you say, the things speak for themselves. They are obvious truisms.

Senator McCARTHY. That being true, how can you come back here and tell us that the evidence is sufficient to uphold a conviction? In your court you would certainly throw it out.

Mr. SIMPSON. The record demonstrates to my satisfaction that those accused were at the crossroads and participated in the massacre of those surrendered prisoners of war.

Senator McCARTHY. By the confessions?

Mr. SIMPSON. Yes, their confessions corroborated by extrajudicial statements of other accused.

Senator McCARTHY. Let's get that. We are asking about the confessions and we have the records here, speaking of those records in which you had a conviction based upon the confession of No. 1 plus the confessions of Nos. 2, 3, and 4 that have implicated No. 1.

Now, if all those confessions are obtained with the same amount of duress, the same amount of beating, the same amount of kneeling, same kind of mock trials, the same kind of hanging, if they are all obtained in the same way, you can't corroborate one bad piece of evidence with another bad piece of evidence, can you?

Mr. SIMPSON. Yes.

Senator McCARTHY. You can?

Mr. SIMPSON. I agree that in the case you suppose, of course, it is one where there ought not to be a conviction, but we didn't find evidence of those matters which you suppose in your hypothetical question.

Senator McCARTHY. Let's see where you went for your evidence. Did you see any of the other Malmedy defendants?

Mr. SIMPSON. No, we did not.

Senator McCARTHY. You never saw a single one?

Mr. SIMPSON. No.

Senator McCARTHY. You never saw the doctor that treated them?

Mr. SIMPSON. Didn't any doctor treat them, except I saw shortly before we left this note, unsigned, a copy of an affidavit of this dentist, Dr. Knorr.

Senator McCARTHY. So that you never made it a point to see the doctor that visited the prisoners, never made it a point to see the dentist that visited the place, never saw any one of the defendants, that is correct, isn't it?

Mr. SIMPSON. That is right.

Senator McCARTHY. And you tell us here there is no evidence of beating. If I testified to that in your court, would you allow it to stand?

Mr. SIMPSON. Of course, if we had seen those accused, they would every one have sworn they were beaten to death. It is human nature, of course, when they have got a death sentence pending, that they will resort to every expedient to escape execution. It would have done no good to hear those people try to get out from under the sentences which had been imposed. This affidavit of Dr. Knorr was a very unsatisfactory affair, and I repeat that we did not have time to look into it before we left. He said he didn't know the names of any of the people he treated. He said jaws were broken and teeth knocked out. Colonel Everett and Colonel Dwinell never claimed they saw people with broken jaws and teeth knocked out. Neither one of them. This Dr. Knorr said he was told not to ask the names of these people, that there was a design on the part of the American officers for him not to find out who they were.

But in general the affidavit didn't comport or agree with the other inquiries we had made or the claims that those representing these accused had been advancing.

Senator McCARTHY. You knew it was claimed that these men sentenced to death were crippled for life because they had been kicked in the genitals. Didn't you think it was important to send a doctor to examine two or three of those men?

Mr. SIMPSON. I suppose I saw it and forgot it, since you say it is there. I never saw a claim that a man had been injured for life because of a blow in the genitals.

Senator McCARTHY. Didn't you read over Colonel Everett's affidavit?

Mr. SIMPSON. Is it in his affidavit?

Senator McCARTHY. It is in these documents, I would say, 10 or 15 times in the documents supporting Everett's application. I do wish you would look these over and discover what you have overlooked.

Mr. SIMPSON. I accept your statement that it is in there, if it is.

Senator McCARTHY. I would like to have you see it.

Let me ask you this: This is not from the book itself, I do not have the book, this is from one of your lawyers in Dallas, Tex., who sent me excerpts from Regulations for the Trial of War Crimes and, as I say, I haven't had a chance to verify whether this is a correct copy or not, although I assume it is:

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 any proof of either the issuance or of the signature thereof.

What do you think about that?

Mr. SIMPSON. I don't know about that, Senator. I never heard of that before.

Senator McCARTHY. Forgetting for the time being the Malmedy cases, don't you think that is a fantastic rule of evidence, that if a

document is purported to have been issued by somebody, you didn't prove it was issued, you didn't prove it was signed, you introduced it in evidence to prove the facts in the document.

Mr. SIMPSON. The rules of evidence certainly didn't comport with our conventional views of admissibility in the United States.

Senator McCARTHY. In view of the fact that this was an American court under American Military Government, don't you think we should follow our rules?

Mr. SIMPSON. No, I don't.

Senator McCARTHY. Instead of following French rules or Hitler's rules, the rules we condemn, instead of following Hitler's rules, bringing our idea of justice down to his level, we should try to bring it up to the level we have found has been effective, having brought it down from the old English law, found it to be adequate protection for defendant and society. Is my question too involved? Should we adopt Hitler's rules of evidence or follow our own?

Mr. SIMPSON. We shouldn't adopt anything Hitler did. You ask me a political question, I believe, that can best be answered in a political forum. It is true, Senator, that many authorities, including Wigmore On Evidence, thought that hearsay ought to be admitted.

Senator McCARTHY (reading):

Any diary, letter, or other document may be received in evidence as to the facts stated.

Is that one of the German rules of evidence?

Mr. SIMPSON. I don't know.

Senator BALDWIN. Read it again.

Senator McCARTHY (reading):

Any diary, letter, or other document may be received in evidence as to the facts therein stated.

Do you think you should sentence a man to death under that?

Mr. SIMPSON. I see no reason not to let it in, myself, for whatever it is worth.

Senator McCARTHY. In other words, you think that is a proper rule of evidence?

Mr. SIMPSON. Under the procedures that obtained there and the necessities of the case, I don't see any harm in admitting that for whatever the trier of facts thought it was worth.

Senator McCARTHY (reading):

Translation of any document will be presumed to be a correct translation until the contrary is shown.

In other words, you don't have to prove a translation was correct to be used as evidence. Do you think that is a sound rule of evidence?

Mr. SIMPSON. I don't know that I would go for that, but I suppose it wouldn't result in many abuses.

Senator, you are asking me a good many political questions now that have to do with those procedures that were settled in the Four-Power Conference in London and later set as procedures for the British, French, and Americans who followed them, and I leave it to the wisdom of you gentlemen here as to what to recommend in that respect.

I generally thought that the proceedings were fair, but I might be mistaken about it. It is a matter I am glad you gentlemen are looking into.

Senator McCARTHY. Judge, if you don't want to answer any of these, it is all right, but you are here to testify, and one of the functions of this subcommittee is to decide what charges are to be made. One of the things we have asked the American Bar Association to do is to make a complete review of the rules of evidence.

I don't know that the four powers adopted these rules of evidence. I don't think that is true. But let's assume they have. These are American courts, American prestige to a great extent depends on the way we mete out justice.

I am asking you whether or not you as a judge think there is any justification for our abandoning our rules of procedure in criminal cases and adopting what you say are the rules of the country—in other words, Germany, the rules that Hitler had. That is not a political question. It is something we must decide. We must make a recommendation on it. You are a Supreme Court Justice. I would like to have your thought on that.

Mr. SIMPSON. I wouldn't say to my knowledge the procedures followed at Dachau were according to Hitler's rules of evidence. The rules were that any evidence with any probative force was admitted and its weight was to be appraised by the trier of the facts, and if worth nothing, rejected, and if worth something, accepted.

Senator McCARTHY. Let me go back to this question again. Do you recall the ruling of Rosenfeld?

Mr. SIMPSON. Yes.

Senator McCARTHY. When you were reviewing the record of the cases, did you know that Rosenfeld had ruled that it was improper to inquire from the witnesses as to the circumstances under which the statements and confessions were obtained?

Mr. SIMPSON. I knew of the ruling.

Senator McCARTHY. You knew at the time of the review that the defense counsel could not prove how the statements and how the confessions were obtained.

Mr. SIMPSON. I knew his right of cross-examination had been limited by that ruling.

Senator McCARTHY. Don't start hedging on me. I am trying to get the facts.

Mr. SIMPSON. He could have proven it by putting his own clients on the stand.

Senator McCARTHY. Now, Judge, a man is in a cell alone at night, and the confession is obtained. There is no one there except the prosecution. You say he can put his own clients on the stand. His own client is in solitary two floors away. How can he put him on the stand?

Mr. SIMPSON. The accused were sitting in the courtroom.

Senator McCARTHY. He was to prove the facts and circumstances under which the statement is obtained.

Mr. SIMPSON. That is right.

Senator McCARTHY. According to the evidence, many of them were obtained in a dark room at night during or after a mock trial. Defense counsel had not yet been appointed, they were not there, the defendant himself was not there, the only man who was there was his co-defendant, and now a witness against him, only he and the prosecution staff.

Now, you say he can prove how that confession was obtained by putting his own client on the stand.

Mr. SIMPSON. Yes.

Senator McCARTHY. I call to your attention that his own client is three cells away when it happened. There is no way he has of knowing. The only way he can prove that is either by calling the prosecution and making them admit something which they obviously won't admit or by asking this man who has made the statement—that he tried to do and Rosenfeld, the law member of the court, said, "You can't do that."

Now, I ask you: Is there any other way he can prove it, Judge?

Mr. SIMPSON. I misapprehended your question.

Senator McCARTHY. I am sure you did.

Mr. SIMPSON. I thought you were talking about the confessions the accused themselves made. We have a rule in some jurisdictions in this country, it is true in Texas—

Senator McCARTHY. Will you stick to my question, please.

Mr. SIMPSON. Yes.

Senator McCARTHY. You understand the question. First you didn't, but now you do. Now, you know under the ruling of Rosenfeld the defense counsel could not question what you call the corroborating statements because when he tried to question the witness, Rosenfeld said, "You can't ask him about that and I won't warn you again."

In other words, he said don't try it again.

Now, did you know that at the time you examined the case?

Mr. SIMPSON. I knew of the ruling, yes.

Senator McCARTHY. You knew of that?

Mr. SIMPSON. Yes.

Senator McCARTHY. Let me ask you this: Then you had no way of knowing and you knew the defendant had no way of letting you know whether those statements were gotten by physical punishment, duress, mock trials, or what have you. Doesn't that follow as night follows day?

Mr. SIMPSON. You, of course, have a situation where the Court erroneously limited that cross-examination, and I suppose you couldn't test the circumstances under which the statement was taken.

Senator McCARTHY. You and I agree that the court was in error.

Mr. SIMPSON. Yes.

Senator McCARTHY. We agree that the court should have let the defendant show in what way these statements were obtained.

Mr. SIMPSON. Yes.

Senator McCARTHY. Am I not right in this: That the court was so grievously in error that none of us can tell whether they are guilty or innocent men.

Mr. SIMPSON. My recollection is that each of those accused, maybe with the exception of Peiper or one or two others, made confessions. Now, of course, you could prove by your accused himself if the confession was obtained improperly, what the facts were.

Senator McCARTHY. If I can point out to you in the record where Rosenfeld would not let the accused testify as to the details of the physical punishment, the extent of it, if I can show you that in the record, then would you say that none of those convictions should stand?

Mr. SIMPSON. No, sir, I won't go that far. I will go back to what I said: That a bird's-eye view of the entire panorama of this thing, viewing the entire record, convinced me personally that the record sufficiently manifested the guilt of these accused.

Senator McCARTHY. That is the last question, Mr. Chairman. I might say if this were being tried before me in court and the witness testified to me that he found the evidence sufficient to uphold a conviction, but that he didn't know how the evidence was obtained, he knew that the court ruled that the defendant could not show how it was obtained, he knew the court ruled that the accused could not show how much physical punishment was administered in order to get his confession, if a witness testified that way before my court, I would strike all of his testimony as being of absolutely no value whatsoever—period.

Senator BALDWIN. Are you all through?

Senator McCARTHY. Yes.

Senator BALDWIN. Mr. Chambers just advises me that an examination of Colonel Everett's affidavit, which was filed in the Supreme Court and which was the one which was referred to here, apparently shows no claim that there was any number of men or any at all who were damaged or injured in private parts as the results of the conduct of the investigators for the prosecution. Is that correct? We can examine that further.

Mr. SIMPSON. The record will show and my recollection might be wrong and the Senator's might be wrong.

Senator McCARTHY. Just so we don't get Colonel Chambers or anyone else in a misstatement, the affidavits filed by Colonel Everett and supporting documents set forth very definitely the physical violence used in order to get confessions.

Mr. CHAMBERS. That is correct.

Senator McCARTHY. Let's not distort the record.

Senator BALDWIN. The affidavits of the accused themselves—that is, the German soldiers, the SS troopers.

Senator McCARTHY. Mr. Chairman, the point is that Judge Simpson and Judge Van Roden at the time they went to Europe to make this investigation knew that Everett was applying to the Supreme Court to have that conviction set aside because of the identical type of beatings that Bailey described here this morning, and that is in the supporting documents, there is no doubt about it, and I will be glad to sit down with Colonel Chambers and show it to him and mark it, and I intend to do that and ask him to come back the next day and read into the record this particular evidence.

Mr. CHAMBERS. Mr. Chairman, the point that I took a look at this record, as did Senator McCarthy's counsel, it was to resolve the point that seemed to be in issue between Judge Simpson and Senator McCarthy in which Judge Simpson said he did not recall having seen a charge of 139 or some such number of people being ruined for life by being kicked in the testicles.

In an effort to clarify that particular point, I have checked through here and it is not in the record, and I believe Mr. McCarthy's counsel will concur in that.

Senator McCARTHY. All but 2 out of 139. I don't claim that identical statement was in the record. I say Colonel Everett's affidavit, I saw it there, and there is no question about the fact that Colonel Everett's affidavit sets forth in detail the physical beatings and the type of punishment used in order to get the confessions.

Mr. CHAMBERS. That is correct.

Senator McCARTHY. Good.

Mr. CHAMBERS. Colonel Everett's petition before the Supreme Court alleged many different types of pressures, among which were beatings, brutality, mock trials, and things of that kind.

Senator McCARTHY. Teeth being kicked out, genitals being ruined, it is all in the affidavits.

Mr. CHAMBERS. There is nothing on the latter point. That is the point I am trying to make.

Senator BALDWIN. For the benefit of the record, and we can check this later, but as I understand it, Colonel Everett's petition to the Supreme Court of the United States was based upon affidavits which accompanied the petition, and these affidavits were all affidavits of the SS troopers who had been convicted, alleging these different atrocities so claimed. Is that correct, Judge?

Mr. SIMPSON. That is my recollection.

Senator BALDWIN. And they were not supported by any other claims other than the statements of the accused themselves?

Mr. SIMPSON. That is my recollection.

Senator McCARTHY. Judge, why do you say—you just got through telling us the dentist's affidavit was not supported by any other evidence.

Senator BALDWIN. I don't understand that Dr. Knorr's letter was attached. We are talking about the petition filed in the Supreme Court. I don't understand that Dr. Knorr's letter was part of that document.

Senator McCARTHY. I think you are right.

Senator BALDWIN. Were you all finished?

Senator McCARTHY. Very much so.

Senator BALDWIN. Let me ask you this series of questions, Judge: I should judge from what I have heard of this case so far that there is no question whatever but that a number of our troops, artillery men, on their way to St. Vith and after crossing the so-called Malmédy crossroads, were put down by heavy gunfire which came from German troops, SS troops, and that the gunfire was so heavy that these men were forced out of their vehicles to the side of the road and some of them took refuge in nearby farmhouses, that they were overwhelmed by the force of the advance of the Germany Army, surrounded and captured as prisoners, either gave up or threw away their weapons, and were herded up on the road with their arms above their heads, and then led into a field nearby the road and that while they stood there in that field, as one witness testified here today, some 15 feet away these tanks were drawn up and at a signal given by an officer standing in one of the tanks or one of the vehicles and firing his revolver or pistol at these men who were standing there with their hands over their heads, these tanks immediately opened gunfire on these prisoners.

Is that your recollection of the major details of this?

Mr. SIMPSON. In general; yes.

Senator BALDWIN. Now, of course, the question immediately presents itself: Who were these Germans that did this? That is, generally, they were SS troopers. Are you convinced from an examination of the record that the men that were convicted at Dachau in connection with the Malmédy affair were actually present and participated in one way or another in this affair?

Mr. SIMPSON. That is my conviction.

Senator BALDWIN. That is, everyone who was convicted was present at Malmedy crossroads and participated in one way or another in this massacre?

Mr. SIMPSON. All of these 12 who were sentenced to death.

Senator BALDWIN. All of these 12 who were sentenced to death.

Now, let me ask you a question. Of course, the legal question posed is whether or not that is murder or whether or not it is an act of war within the rules of warfare and within the rules of humanity, if there can be such a thing in connection with war. That is another legal question, isn't it?

Mr. SIMPSON. Yes.

Senator BALDWIN. You found nothing in the record to indicate that these men were not present and participated in this affair?

Mr. SIMPSON. I think they were there and I think they took part in the massacre.

Senator BALDWIN. So if in Texas a man was to drive up in an automobile with an accomplice in his automobile and was to go into a gasoline station and hold up that gasoline station attendant and if in the process of that hold-up a shooting occurred, the gasoline station attendant was killed in that shooting, what, if any, crime would be in the State of Texas?

Mr. SIMPSON. Well, both are principals and equally guilty.

Senator BALDWIN. In other words, the man who went in and fired and shot and killed the attendant would be guilty of murder, would he?

Mr. SIMPSON. Yes.

Senator BALDWIN. Would the man who sat out in the automobile and didn't participate in any way in the shooting, but maybe helped with the get-away, what would be his crime?

Mr. SIMPSON. He is a principal and equally guilty of murder.

Senator BALDWIN. So that in this particular Malmedy thing what we are concerned with here is there isn't much question but what these 12 men were there, you are convinced of that?

Mr. SIMPSON. That is my conviction.

Senator BALDWIN. The question we have to decide is whether or not in proving that they were there we used the proper processes and procedures in justice and in fairness to prove those facts.

Mr. SIMPSON. I take it that is true.

Senator BALDWIN. Would you say from your examination of the record whether or not the evidence was competent evidence? Would you say it was competent evidence, first, under the rules for the proceedings as laid down by the convention that set up these trials? Would you say that the evidence from your examination of the record was competent to prove they were there and participated?

Mr. SIMPSON. It was competent for the rules obtaining for the trials.

Senator BALDWIN. Would you say it was competent under what you know as a lawyer as generally accepted rules pertaining to criminal trials in the United States?

Mr. SIMPSON. No, it was not.

Senator BALDWIN. It was not.

Mr. SIMPSON. No. I say that is generally true. I think I could pick out perhaps one or more of those accused who were convicted upon evidence which we would call competent, but for the most part, those people were convicted upon evidence which would not support a conviction in this country.

Senator BALDWIN. But it would under the rules laid down for the trial of the cases?

Mr. SIMPSON. That is right.

Senator BALDWIN. That is a very important question to this committee.

Senator McCARTHY. It is very important.

Judge, do I understand you to say that the hypothetical situation which Senator Baldwin just recited to you about the gasoline station in Texas, that it would be analogous to the situation at the crossroads of Malmedy?

Mr. SIMPSON. In general outline. It isn't, of course—obviously, it isn't exactly analogous.

Senator McCARTHY. Let's say Private Jones is with Peiper's troops, and let us say Peiper orders his troops to kill an American boy. Private Jones doesn't fire a shot, won't kill anybody. The mere fact that he is there doesn't make him a party, does it?

Mr. SIMPSON. He is a consenting party.

Senator McCARTHY. Have you ever been in the Army? Is it your thought that you are a consenting party when your commanding officer orders you to go down a road?

Mr. SIMPSON. I don't catch your point.

Senator McCARTHY. Do you mean to tell me in reviewing that record that you were of the opinion that if a private was present with the troops that day but took no part whatsoever in the shooting, that he would be equally guilty with the man who pulled the trigger?

Mr. SIMPSON. I didn't say that. I don't think so.

Senator McCARTHY. You say he is there, he is a consenting party.

Mr. SIMPSON. He must participate in it. He must either shoot or urge others to shoot or abet in the shooting. He must actively participate in the act.

Senator McCARTHY. One other question. You said that all of the men who were convicted were present participating. I assume you didn't mean that, because there were three generals that were convicted who were not there.

Mr. SIMPSON. I am talking about these 12 death penalties.

Senator McCARTHY. Some were sentenced to life imprisonment, were they not?

Mr. SIMPSON. We didn't review them with particularity.

Senator McCARTHY. Some of the 12, as I understand it, and I may be wrong, were down as low as the rank of private. At least, they were not commissioned officers.

Mr. SIMPSON. Some were enlisted men.

Senator McCARTHY. You convicted three generals—I say "you," but I mean the American military government convicted three generals because they issued the order to kill these Americans.

The generals who issued the order to kill the Americans, I am not saying they did, but that is the conviction, so the court had to find they issued the orders, and those generals got a lighter sentence, as I understand the record, than any one of the privates who were ordered to go out and do the shooting.

Do you consider that to be a good brand of American justice? Keeping in mind that if some privates didn't follow the general's orders, they would have been court-martialed and most likely shot themselves.

Mr. SIMPSON. I would say the generals got too little and the privates got about what was coming to them. I don't want to say whether that is a good brand of American justice, if you will excuse me.

Senator McCARTHY. Let me ask you this: Do you think it is just, Judge, even by the farthest stretch of the imagination, to say to a general who has told a private to go out and shoot an American boy, to say to him, "You get 10 years," and say to the private who went out and did the shooting, "You must hang"? Is that even an approximation of justice?

Mr. SIMPSON. I will agree there is quite an inequality there, and I wouldn't myself vote for that disparity of sentence. I would give the general as much as I give the private.

Senator McCARTHY. No further questions.

Senator BALDWIN. The one question I had in mind that I didn't ask you, unless I may have asked it of you before, was this: From a review of all the records and an examination of all these witnesses, were you convinced in your own mind that the men for whom you recommended that death sentences be imposed were actually present and took part in the proceedings and that there was competent evidence upon which to establish their guilt?

Mr. SIMPSON. Now, Senator, we didn't recommend that any of these death sentences be imposed. We recommended that all 12 death sentences be commuted because for the reasons stated in our report here, and I will say for the added reason that we were not satisfied with the regularity of those pretrial investigations and didn't want to see anybody hung in a proceeding which had that particular blemish.

Senator BALDWIN. As I remembered, you said before you felt that on the testimony and on the record these men were guilty, but that there was a question in your mind as to whether or not the evidence against the men had been procured in such a way that it warranted the lightening of their sentences.

Mr. SIMPSON. That is correct.

Senator BALDWIN. But you felt convinced in your own mind from reading the record that they were guilty.

Mr. SIMPSON. That is correct, Senator.

Senator BALDWIN. I think that is all. Are there any further questions?

Senator McCARTHY. But that no American court could find them guilty under American rules of evidence?

Mr. SIMPSON. That is true for the most of them. There may be one or two.

Senator McCARTHY. If the conviction came to your court in Texas on appeal, you would have to set the conviction aside?

Mr. SIMPSON. There would probably be a remand for a new trial.

Senator BALDWIN. Not to carry this thing out indefinitely, but this is really the nub of one part of this proceeding, but you did come to

the conclusion that under the rules that were laid down for the conduct of the prosecution in the trial, there was competent evidence under those rules to find them guilty?

Mr. SIMPSON. Clearly I was of that view.

Senator BALDWIN. Thank you very much, sir.

Do we need Judge Simpson any further?

Senator McCARTHY. I don't think so.

Senator BALDWIN. Thank you very much, Judge Simpson.

We will adjourn until Monday morning at 10 o'clock.

(Whereupon, at 4:40 p. m., the subcommittee adjourned, to reconvene at 10 a. m., Monday, May 2, 1949 in the same room.)

MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, MAY 4, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10:15 a. m., in room 212 Senate Office Building, Senator Lester C. Hunt, presiding.

Present: Senators Hunt and Baldwin.

Also present: Senator Joseph R. McCarthy; J. M. Chambers, of the committee staff.

Senator HUNT. The hearing will come to order.

Judge Van Roden, will you kindly stand and be sworn?

Do you swear that the testimony you are going to give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge, information, and belief, so help you God?

Judge VAN RODEN. I do.

Senator McCARTHY. Before there is any testimony, there is a matter which has come to my attention which I think this committee should go into, and I believe it is of tremendous importance.

On the 14th of April of this year Baron Von Weisszacker, who was the former state secretary under Hitler, was sentenced to 7 years by the Nuremburg court. I have not seen the record in the case, but I have been following newspaper reports carefully to see what would be done in this case.

Apparently the evidence is all uncontradicted, there is no question about it. It was to the effect that this was the most valuable undercover man which the Allies had in Germany, starting in 1936. The evidence is undisputed that he notified Britain before the invasion of Poland, that he kept Neville Henderson informed at all times of the negotiations prior to the signing of the Soviet-Hitler Pact. The primate of Norway who is the protestant bishop in Norway, testified that he was notified by Von Weisszacker prior to the invasion of Norway.

I know the Chair will recall that the primate of Norway was one of the leaders of the opposition to Hitler in Norway.

So that we have here a man who was our principal undercover man. The court apparently—and, as I have said, I have not seen the record or the decision, but from the newspaper records, the court apparently was firmly convinced—they could not have been otherwise—that this man was the principal undercover man we had in Germany. There was no doubt about that at all.

However, in the process of getting information for us and in the process of getting this information and passing it on to us, he had to

be friendly with some of the Nazis and that, therefore, he should get 7 years.

Now, I cannot conceive of anything quite as imbecilic as that attitude they have had. It will do tremendous damage. It is in effect a notification to any persons who might be of assistance to us in Russia at this time that if they were to act as undercover men for us in Russia, that after any hostilities ceased, if they escaped the Russian OGPU, as Baron Weisszacker escaped the German Gestapo, we would see that they were punished.

I think this committee should see what type of morons—and I use that term advisedly—are running the military court over there. There is something completely beyond conception, and I would like to ask the Chair to go into that matter, and in effect notify the world at this time that the American people are not in approval of this complete imbecility in that area.

Senator BALDWIN. May I say this for the benefit of the record? I asked Senator Hunt to act as chairman today because it was planned to call Major Dwight Fanton as a witness, and I thought that it would be better, certainly, if I were not in the chair at the time, because I do not want to have it appear in any way that I am at all partial in this whole situation; and so I have asked Senator Hunt, and he has kindly consented to take the chair.

So far as the matter that you have mentioned is concerned, I think the best thing for us to do would be for the subcommittee to consult about it and then decide whether or not we ought to go into that phase of it, because the resolution under which the matter was referred to this subcommittee certainly is not broad enough to cover that particular situation.

Senator McCARTHY. I believe the Armed Services Committee certainly would have jurisdiction to go into that, since it is a matter being conducted by the military government.

Senator BALDWIN. I think it would be something the subcommittee ought to consult about and maybe ask the main committee, because our instructions run to the extent only of going into the Malmedy matter.

Is that the way you recall it?

Senator HUNT. That is the purport of the resolution and also that is the instruction we received from the full committee. Most certainly, I am sure, the subcommittee, Senator, would have no objection to considering your request and then presenting it to the full committee.

Senator McCARTHY. I am inclined to think the Central Intelligence Agency must be very much disturbed about this activity on the part of the Army in that area. It is so completely brainless, no reason for it at all, the activities over there. If they keep this up, they will make it absolutely impossible for us to have any kind of intelligence in the prospective opposition of other nations, potential enemies.

If we have an undercover man who has done an outstanding job for us, unquestionably he has, and we proceed when he has escaped Hitler's Gestapo, we give him 7 years because he had to be friendly with the Nazis to get this information—if we do that we will be serving warning on any potential undercover man in Russia or any potential enemy.

I personally would like to have this committee, or if not this committee, at least bring back this court so we can see what type of men

are doing this sort of thing. I am sure the chairman will agree with me in that.

Senator HUNT. Very well, we will proceed.

**TESTIMONY OF EDWARD LE ROY VAN RODEN, PRESIDENT-JUDGE
OF THE ORPHANS COURT OF DELAWARE COUNTY, PA.**

Senator HUNT. Judge Van Roden, did you have a prepared statement you wished to present?

Judge VAN RODEN. No, sir; I do not have a prepared statement.

Senator HUNT. Senator McCarthy, do you have any questions you would like to ask?

Senator MCCARTHY. Yes; I have quite a number I would like to ask the judge.

You are a judge of what court?

Judge VAN RODEN. I am president-judge of the Orphans Court of Delaware County, Pa.

Senator MCCARTHY. How long have you been practicing law, Judge?

Judge VAN RODEN. Since 1915.

Senator MCCARTHY. And you have had occasion to try criminal cases, I assume, as a lawyer, and preside over criminal cases as a judge?

Judge VAN RODEN. I have.

Senator MCCARTHY. Judge, I am going to call your attention to the evidence in one of the Malmedy cases and, with the chairman's permission, I am going to read to you the sole evidence against one of the defendants, and then I have some questions to ask you on this.

This is in the case of Hans Pletz, and I am going to read the only evidence in the case. This man was sentenced to life imprisonment. Mr. Ellowitz, the prosecution, calls the witness, Otto Lessau. [Reading:]

OTTO LESSAU, called as a witness for the prosecution, was sworn and testified through an interpreter as follows:

DIRECT EXAMINATION

(Questions by Mr. ELLOWITZ:)

Q. What is your name?—A. Lessau, Otto.

Q. Were you ever a member of the German armed forces?—A. Yes; I was.

Q. What was your rank and to what organization did you belong?—A. I was an SS unterscharfuhrer sergeant, and belonged to the Second Company SS, Panzer Regiment L. SS. A. H.

Q. What is your present status?—A. I am an American prisoner of war.

Q. Where are you being held as a prisoner of war?—A. In Dachau.

Q. Did you belong to Second Company, First Panzer Regiment, LKKAH during the Eifel offensive in December 1944?—A. Yes; I did.

Q. Who was your company commander?—A. My company commander was First Lieutenant Christ.

Q. Could you identify Christ if you could see him again?—A. Yes.

Q. Will you please look to your left at the accused and identify Christ?—A. Yes.

Q. What number is he wearing?—A. Seven.

Q. What were your duties at that time in the company?—A. I was Obersturmfuhrer Christ's tank driver.

Q. Who was your tank commander?—A. First Lieutenant Christ himself.

Q. Were you ever in Stumont during the period of the Eifel offensive?—A. Yes; I was.

Q. When?—A. I first set foot in Stumont on the morning of December 19, 1944.

Q. Were any of the tanks of your company knocked out when you were in Stumont?—A. Yes; before we reached Stumont the tank of Rottenfuehrer Braun was knocked out outside of the town.

Q. How far was your tank from the position of Rottenfuehrer Braun's tank when it was knocked out?—A. About 80 meters.

Q. Was your tank commander Obersturmfuehrer Christ at that time in your Panzer?—A. Yes; he was.

Q. Did you continue on into Stumont?—A. Yes, we went to Stumont.

Q. Did you see or hear anything happen?—A. When we reached the center of Stumont, I saw at the right side of the road in front of a grocery store a group of American PW's standing.

Q. How many prisoners would you estimate were in the group?—A. There were 12 to 18 men.

Q. Describe how they were standing.—A. They were standing in front of a store, facing us, with their hands above their heads.

Q. Did they carry any weapons?—A. No, they were carrying no weapons.

Q. Describe what happened then.—A. Our car stopped in front of these PW's and while it was stopping it fired three or five shots from the turret machine gun.

Q. Do you know who the turret machine gun operator was at that time?—A. Yes, I do.

Q. Who was it?—A. The officer candidate, Hans Pletz.

Q. Could you identify Hans Pletz if you were to see him again?—A. Yes.

Q. Look at the accused on your left and identify Hans Pletz.—A. Yes.

Q. What number is he wearing?—A. Forty-three.

Mr. ELLOWITZ. May I request the court to have Hans Pletz rise.

The PRESIDENT. Number 43, stand up. Sit down.

Q. Was Hans Pletz at that time in his position of gunner?—A. Yes.

Q. Do you know if anyone but the gunner could fire or aim the turret machine gun?—A. Only officer candidate Pletz can aim it.

Q. At that time you saw the American prisoners of war and the time you heard the burst from your turret machine gun, was your company engaged in combat with the enemy?—A. We had already penetrated the village. There wasn't any more actual fighting.

Q. Was there any firing other than the firing from your turret machine gun?—

A. As far as I could hear, no.

Mr. ELLOWITZ. Cross-examine.

CROSS EXAMINATION

(Questions by defense, Lt. Col. DWINNEL:)

Q. Lessau, you actually saw the prisoners shot at Stumont, is that correct?—

A. No, I didn't see that.

Q. What do you base your information upon?

Mr. ELLOWITZ. May it please the court, the witness did not testify that he saw the prisoners shot nor did he conclude that prisoners of war were shot.

Lieutenant Colonel DWINNEL. As I recall the testimony, the witness said he saw a tank fire upon prisoners.

Mr. ELLOWITZ. I don't believe the witness stated that. He stated that he saw prisoners of war and then he heard the turret machine gun firing. He is testifying to facts which corroborate the statement of Erich Werner, which was read previous to this testimony.

That is the sole testimony given in regard to this man Pletz. Now, there was a statement introduced into the record, no one was put on the stand whatsoever, which, of course, would make it obviously an incompetent statement, which I will also read so that we will have the complete picture in this case in which a man was sentenced to life imprisonment.

I will start in that part of the statement which might be remotely connected with Pletz:

We traveled along the main street of Stumont and reached a point in the center of the village, which I have shown on my sketch B attached hereto. At point number 5 on my sketch, I saw a group of about 30 to 38 American prisoners of war standing sideways. They were standing in single file facing us as we

traveled toward them as shown on my sketch. The prisoners had their hands clasped behind their heads, and had no weapons. When my tank reached the point shown as number 3 on my sketch, which was about midway of the column of prisoners, I saw machine gun tracer bullets firing into that part of the group of prisoners who were still ahead of us.

It was clear to me from my past experience in battle that from the sound of the shooting and the amount of tracer bullets I saw, that the firing was coming from two machine guns. From the noise and the tracers I was absolutely positive that the fire directed at these prisoners came from two machine guns and not from a single one. This was obvious from the fact that the tracers showed two different but simultaneous trajectories.

I am also positive that this machine gun fire came from two machine guns mounted on the same vehicle. The trajectories as shown by the tracers were practically parallel and not more than 30 cm. apart and traveled at approximately the same height above the ground. For these reasons I concluded that the fire had to come from one vehicle.

I could not see who was firing, so I yelled at Hauptscharfuehrer Knaffich, "Who is firing?"

Hauptschar. Knaffich yelled down to me, "It is the company commander's tank." That is how I first knew that Obersturmf. Christ's tank was directly behind us.

Judge, this was a statement read into the record. One of the accused—he was not put on the stand as a witness, you understand, and the only testimony was what I read to you, in which he said that he saw the tank stop in front of the store, saw the tank fire four or five shots, he did not see any prisoners fall, he did not see any killed, the prosecution did not claim he did.

This man was sentenced to life imprisonment on that testimony. Would you want to tell us what you think about that as a judge?

Judge VAN RODEN. It is a very difficult question to answer. I tried to absorb all the facts you read to me, Senator. Was there a confession or statement?

Senator McCARTHY. In this case there is no confession. That is one of the boys who never did sign a confession. This is the Pletz case.

Judge VAN RODEN. I see. As I get the facts from what you read—

Senator McCARTHY. The only testimony in the record is by one boy in a tank who said he knew the four or five shots were fired from his tank, which was stopped in front of 16 or 18 prisoners. He testified he did not see any prisoners shot, he did not see any fall, he did not see any dead or dying.

That is the only testimony in the case. On this testimony a man is sentenced to life imprisonment.

Judge VAN RODEN. Did he say who was in the turret of that tank, who fired the shots?

Senator McCARTHY. Yes.

Judge VAN RODEN. Identified the defendant?

Senator McCARTHY. I think it was adequately established that the defendant, Pletz, was in the tank.

Judge VAN RODEN. What is your question now—what I would do if I were judge?

Senator McCARTHY. I am asking if you want to give us an opinion on that. He was convicted of having shot American prisoners when the only testimony was to the effect that four or five shots were fired from the tank, no testimony that they were fired toward the prisoners, no testimony that any prisoner fell, no testimony that any prisoner

was wounded, dead, or dying, but that the man was on top of the tank, heard some shots, and did not see any prisoner hurt at the time. On this testimony a man is sentenced to life imprisonment.

Judge VAN RODEN. Your question is now as a civilian judge in criminal court—

Senator McCARTHY. You were sent to investigate these cases and make recommendations, to pass on them. I am asking you to pass on this case now.

Judge VAN RODEN. It seems to me, Senator, very frankly, there are circumstances there indicating there was some guilt attributable to the defendant, I would say. Whether it is sufficient or not, I have not absorbed all the facts as you read them hastily. There seem to be some circumstances indicating that the shots came from a certain tank, vehicle, and the defendant was in the vehicle, and they shot toward the prisoners. I am not sure I get the facts.

Senator McCARTHY. You spent 8 weeks over there. You got the facts.

Judge VAN RODEN. I went over there with Judge Simpson and Colonel Lawrence to investigate only 129 cases of those who had received the death penalty and which had been approved by General Clay. This case is entirely new to me, what you have given.

Senator McCARTHY. You did not go into all these cases?

Judge VAN RODEN. No; we did not have time. There were only 129 cases approved by General Clay. That is the extent of the scope of our investigation.

Senator McCARTHY. The same court which sentenced this man sentenced some of these men to death. What do you think about a court that will convict a man for shooting American prisoners of war when the only testimony is that four or five shots were fired from a tank, no testimony as to what they are being fired at, the man who was watching the prisoners did not see any of them fall, he did not see any of them injured, he did not see that the shots were fired toward the prisoners.

Now, is there any indication in that whatsoever upon which you can base a conviction for any crime, let alone killing American prisoners of war?

Judge VAN RODEN. I say it is very doubtful and very unsatisfactory testimony. I would not want to go further than that.

Senator BALDWIN. Mr. Chairman, at that point may I suggest a question?

Senator McCarthy said this is the only testimony in the record on which this man was convicted. I do not know it to be a fact, but I assume that there was before the trial court over there other testimony to the effect that these prisoners standing in front of this particular store were fired upon and that some of them were killed.

Now, I assume there is testimony of that kind in the case. If there is not, I think there is great weight in what the Senator says, but if there is testimony of that kind, that some of this group were shot down in front of this store, my point is that you do not have an identical individual separate case against every one of a number of joint defendants.

I mean there are certain facts that can be established generally in a trial of this kind. That is, in this particular case, that some men in

this group were actually shot down and killed. Now, the fact that this man testifies that he heard the shots fired and knew the name of the gunner who fired them may be the extent of the knowledge that he has pertaining to it. It might be that from some other independent testimony it appeared that at this particular time and place some of these men were shot. Whether or not that is in the record, I do not know, because this is just one of a great many cases, but, of course, that would alter the situation very materially.

Senator McCARTHY. I do not want to argue the case at this time, but I want to show a typical case, the case in which the only testimony that the prosecution put on would be the type that normally the defense would put on the stand.

In other words, you have a gunner in the turret of the tank—and I know the chairman was in the service, he knows how the turret of a German tank looks—you have the man in the turret of the tank, he is watching 16 or 18 prisoners of war. He is watching them and he sees them. He hears four or five shots fired from the tank. He says that those shots did not kill any prisoners. They were the only shots fired from this tank.

Now, on that a man is sentenced to life imprisonment. That is a typical case. I know the chairman is going on the bench very shortly, and I am sure he would not find a man guilty of disorderly conduct on that type of evidence.

Senator HUNT. Senator McCarthy, may I at this time ask that there be read into the record a reference to this particular case by the Review Board that you were just discussing. It is only a brief sentence.

Senator McCARTHY. Excellent.

Mr. CHAMBERS. There are two excerpts from this review of the trials, which I think should be read into the record. Part of the information which Senator McCarthy has already read into the record is repeated here, so in the interest of economy of time, I will not read it:

According to this record of review, there was apparently separate evidence to show that at Stumont on December 19, 1944, there were approximately 15 to 20 unarmed and surrendered American prisoners of war shot and killed by the crew of a German Mark IV tank at a point next to a house which was thought to have been the command post of accused Peiper.

That was in separate testimony, and the reference here is R-631, 1320—13276: P-X 44. I have no knowledge as to what those particular references are, because we do not have the complete record of trial before this committee. It is quite voluminous, and we only have extracts from it.

Senator McCARTHY. The only evidence, as you call it, was a statement by a man who was not put on the stand and not subject to cross-examination, statement gotten, of course, after these mock trials and mock hangings.

Mr. CHAMBERS. For the purpose of the record, what is the page reference on that?

Senator McCARTHY. 1,348.

Mr. CHAMBERS. In addition to that, apparently there were two other references we have already put in the record. I would like to repeat again we do not have the complete records of proceedings in front of us, and I think in order to complete the picture, it might be well to examine it.

Senator McCARTHY. May I ask you so that this is clear, did you read everything the reviewing authority said about this case into the record?

Mr. CHAMBERS. That particular paragraph is the complete reference to the instance of December 19. On the case of Pletz, I believe, Senator, we are putting in the complete thing here on the statements of Pletz. I think we can put it in in its entirety. It is about a page and a half long, and I would be glad to read it entirely.

Senator McCARTHY. Could I see it?

Mr. CHAMBERS. Yes.

Senator McCARTHY. I think this gives a fairly clear picture of the type of evidence the court required in order to convict a man. May I read this one short paragraph? [Reading:]

Evidence for prosecution; Stumont: Lessau testified that he was driving the tank of Company Commander Christ when he reached the center of Stumont on the morning of December 19, 1944. He observed a group of unarmed American prisoners of war, about 12 to 18 in number, standing in front of a grocery store located on the right side of the street. The prisoners had their hands above their heads facing the street. As the vehicle stopped in front of these prisoners of war, three to five shots were fired by the accused from the turret machine gun of the tank driven by the witness. There was no fighting going on there at that time. The witness did not see the effect of the shots.

Mr. CHAMBERS. I would appreciate it, Senator, if you would read the balance of the thing, or let me.

Senator McCARTHY. That is all of it.

Mr. CHAMBERS. If you read on, you will see what Werner says. I am trying to get into the record what happened to this man Pletz.

Senator McCARTHY. Very well. It says:

Werner, also a member of the Second Panzer Company, stated in his extrajudicial sworn statement that the tank he was driving entered Stumont about 0700 hours December 19, 1944. While driving along the main street of Stumont past a point in the center of the village, he saw a group of 30 to 35 American prisoners of war on the right side standing in single file facing him. The prisoners had their hands clasped behind their heads and they had no weapons. When Werner's tank reached a point about midway of the column of prisoners, machine-gun fire from the tank behind him shot into the prisoners who were within his view. He saw the half of the group which was within his view fall to the ground. The tank immediately behind him was that of Company Commander Christ.

Evidence for defendant; Stumont: Vollsprecht testified that he arrived outside Stumont about 0500 hours on December 19, 1944, and joined in the attack about 0800 or 0830. He further testified that in Stumont he passed a grocery store on the right-hand side of the road and stopped for about 5 minutes. The tank of Christ was 10 to 15 meters in front of the witness, and he had a clear view of the grocery store. There were no prisoners of war standing in front of the store, nor did Vollsprecht see any shooting in the direction of the grocery store coming from Christ's tank.

Sufficiency of evidence: The court apparently concluded that the accused willingly killed surrendered prisoners of war. However, in the absence of positive evidence that some compulsion did not result from the immediate presence of the accused's superior, Christ, it cannot be inferred that some compulsion did not exist. This circumstance should be considered in mitigation, notwithstanding the accused's rank as sergeant and position held as tank commander.

The findings of guilty are warranted by the evidence. The sentence is excessive.

This sentence was cut then from life to 15 years.

The reason I go into this case specifically is for the purpose of showing the tortured reasoning on the part not only of the court, but of the reviewing authority. Here is a man who is convicted of shooting American prisoners of war. Either he shot them or he did not

shoot them. They do not pass upon them. In effect, the court says it is questionable. He perhaps did not shoot them. He might have shot them and, therefore, we will not give him life. We will give him 15 years.

Consequently, I say, I think we should bring the members of the court here and if any of them are still in the Army, after being guilty of this type of activity, I think the Army should ask them to resign.

Now, Judge Van Roden, when you were over there will you tell me whether or not you were given the facts concerning confessions received from some of the Malmedy defendants in the case involving the killing of a woman over in Belgium, a town called Waimes?

Judge VAN RODEN. I do not recall that, Senator. It may be in the records of the Malmedy case, but I do not recall the name.

Senator McCARTHY. Let me recite the facts as set forth in Colonel Everett's brief. I have not had a chance to go through the record yet. A detailed confession was obtained from one of the defendants to the effect that he went into this Belgian home, shot down the wife of an old Belgian. As she was lying on the floor, he fired several further shots into her body. There are several other statements from the other men in this Malmedy case, I think two or three others; I think they were giving all the details of this particular shooting, this to be used, of course, to convict this man and sentence him to hang.

The confession was obtained, we do not know whether by Perl or Thon or Steiner, but it was obtained by part of the interrogation team. The defense staff did have time to go to the town, check on the story, visit the husband of the woman who was killed, got his affidavit taken before either the parish priest or the minister, I forget which, to the effect that no German soldier ever fired at his wife, that she was standing out in front of the house at the time the Americans were shelling the town, that an American artillery shell fell short and burst and killed her instantly.

In view of that type of confession, the fact that you can get a detailed confession from a man who obviously was not there, this interrogation staff was getting that type of confession, would you as a judge place any weight whatsoever upon the other 74 confessions obtained?

Judge VAN RODEN. The answer to that would be I do recall some of the facts you just related there. I have forgotten the name of the accused whose case we examined. We examined 129 cases, some of whom were the Malmedy defendants. One hundred and twenty-nine, of course, were the concentration camp cases, fliers' cases, and the Malmedy massacre cases.

I do remember there was some testimony in the records of the trial and in the judge advocate's review along the lines you have just related.

Answering your question, I would say that I have only been a judge on my fourth year now; I was practicing law since 1915, and was also a member of the district attorney's office from 1920 to 1925, and district attorney for 4 or 5 years after that, so I had some experience in prosecuting criminal cases.

To give you a little background, I was with G-3 of the Seventh Corps from the day of the invasion, I got there on D-day, which happened to be a mistake, but I was there. Then I was transferred to 2 weeks' temporary duty in December of 1944 and sent down to the Fifth

Armored Division in a little village called Waimés, about 20 kilometers from Malmédy. I know that country rather well. It was at the crossroads, I was at St. Vith, and I know a little bit about that geography.

Also by way of that background, we went into a village called Sweifal in Germany the Friday before the Germans moved into that same section of Belgium. I happened to have had an office in a barn or stable in Sweifal in Germany and was there when a lieutenant, a rather bedraggled lieutenant, literally crawled in there and made a report to G-2 of the Fifth Armored and I heard what he had to say about what he experienced at the time the shooting took place. The shooting certainly took place.

Senator BALDWIN. That is the Malmédy shooting?

Judge VAN RODEN. Yes. This may be hearsay, but I am telling you for what it is worth what I heard. I don't remember his name, but he was a young lieutenant, a second lieutenant, I believe, a first lieutenant or second lieutenant, and he reported to Lieutenant Colonel—I have forgotten his name—of the Fifth Armored Division, acting as G-2 of that division staff.

As I recall the substance of his statement, it was—he made a report, he was bedraggled, had walked, tramped, and hitchhiked, and his vehicles had broken down going across the hills there, and he said his impression was that some Americans were trying to escape and that somebody started shooting to prevent the Americans' escaping, and his impression was that the Germans became trigger-happy, as I am afraid all soldiers—you will understand as I do because I myself was in combat in this war, in active combat—and everybody started shooting all at once. That is what he reported as to the Malmédy incident. I do know from that that the Malmédy massacre took place, and they were killed. It was a horrible thing to have happen.

Senator MCCARTHY. This chap had just come from Malmédy; is that right?

Judge VAN RODEN. We left the Fifth Armored, what was left of it. There had been terrible casualties in Luxemburg. They left at midnight or early morning on Friday, we got up to Sweifal that same day by vehicles, of course, and the following Sunday, which is about 72 hours later, this lieutenant came in there and he then told us; for the first time I learned myself about the so-called massacre at Malmédy.

Senator MCCARTHY. He was an eyewitness?

Judge VAN RODEN. Yes; he was an eyewitness. I do not remember his name, I do not remember the name of the lieutenant colonel.

Mr. CHAMBERS. Larry?

Judge VAN RODEN. I went back to the Seventh Corps 10 days later. Answering your question about these confessions, in these records of trial we examined just as Judge Simpson told you last Friday, when I was here and heard him testifying before this committee, we examined, I think, 67 or so records of trial, but we concentrated our efforts upon these cases of the 129 who had been sentenced to death and whose sentences had been approved.

Of course, we were bound to read the background insofar as it involved other accused as well as these 129 accused, and specifically in the Malmédy case the 12 accused.

Senator McCARTHY. I think I owe you an apology. I thought your job was to scrutinize the cases of all Malmedy defendants.

Judge VAN RODEN. I was not trying to evade your question. I was trying to give an intelligent answer.

Answering your question about these confessions, we did find that in the Malmedy case these confessions were secured by means which I could detail if you wish me to, they were secured by methods which we found, as Judge Simpson said, were unreliable.

I might go a step further and say I think they were absolutely unprecedented in any experience I had in securing these statements. We have a principle in law in Pennsylvania, and I guess it is similar in all civilized jurisdictions, which is that a confession, if it is voluntary, is admissible and properly so as evidence against an accused who makes it. If a confession is not voluntary, has not been secured voluntarily, is not the voluntary statement or confession, whatever it may be called, of the person who makes it, then the court excludes that as not being properly evidential.

We believe all these statements secured from these Malmedy defendants, including these 12 and also the others who were on trial, 74, as I recall, originally, 72 of which stood trial, Fieileuth had committed suicide in his cell because he refused to sign and finish the paper which the investigator was forcing him to sign. That was a matter we determined was of record, although we also found that that particular statement, if you call it that, written out, as I recall, in Fieileuth's handwriting, upon the dictation of one or more of the American investigators, I think, got as far as 16 pages.

This is from memory and not from the records I may have here of it, but he then said he wouldn't sign any more because it wasn't true; and after some threats had been made, so we learned, of death or whatever, he had just had a mock trial, about 18 years old at the time this was taken, a German private soldier, and he said he would not complete it and would not sign it because it was not true.

I think you will find in the record of the trial that that same piece of paper was offered in evidence and admitted in evidence as evidence against Colonel Peiper because his name was involved, and that certainly would not take place in any of our civilian courts in which I have practiced law in Pennsylvania and, I assume, no court in America would admit a paper, unsigned and uncompleted, if the reason that the person who wrote it out that far said he would not sign it because it was not true, that certainly would not only not be a voluntary confession, but it would be nothing at all, but the court did receive that.

As I recall, the law member made some statement to the effect that it would be received for what it was worth, as he said in all the cases, that the members of the court were of sufficient intelligence to determine how much credence or weight to give to that along with other testimony that was received.

Those confessions, I say, gentlemen, in my personal opinion and shall I say, modestly, in my professional opinion, were not only not voluntary confessions, but they were confessions or statements involving not only the accused who signed them, but involving their co-defendants, coaccused, as you know from the records, and we felt, all of us felt—Colonel Lawrence, Judge Simpson, and myself—we felt they were unreliable as testimony.

I made a long speech. I am sorry, but I thought I would give you the background.

Senator McCARTHY. Will you tell us something about the physical force used to get these confessions?

Judge VAN RODEN. Bear in mind that we were not there when it took place. We were sent over there upon, as you know, Army orders by Secretary Royall. He nominated Colonel Simpson—both of us are colonels in the Reserve Corps, still are—and he designated us and Lieutenant Colonel Lawrence of the Regular Army to investigate these cases.

We did not get there until the 29th or the 30th of July of 1948, and we stayed there until around the 9th or 10th, I think, of September.

During that time we had access—maybe you have heard this before—to all of the records we desired, about 12½ tons. We didn't read all those, but we had all the records there, and I want to say this: That the records were very well kept by the War Crimes Branch. They were well indexed, they were available, they were accessible, we had all that we needed, and the system and the clerical work over there, may I say in praise of that branch of the Army, was excellently done.

So, therefore, we had before us just the records of the cases. We had the records of the trial, 67 altogether, we went into every page of those. We divided the work. Judge Simpson would take a few, I would take a few, and Colonel Lawrence would take a few, and we would consult with each other every day or so in regard to cases about which we had doubt, and then we would decide whether we thought recommendations should be made in those cases, and our conclusions were in every case unanimous.

There were a few cases I thought should be considered, and they felt not, and they convinced me there was sufficient competent evidence, and they did the same with me in certain cases.

Then we had in the records of trial before us literally thousands of petitions that had been filed by different persons or organizations, some filed by counsel, German civilian counsel, American civilian counsel, and American military counsel. There were some filed, as I recall, by, I think, the Archbishop of Friesing and Munich, and there was a group of people who might correspond to our Rotary Clubs back home. They were not called that there. Some were emotional or sentimental in appeal, and some of which were more or less negative in character and many of which had, we thought, meat in them, in which they made averments that they had not received fair trials, that some of the accused had not received fair trials, and they gave specific reasons for it.

We had literally thousands of those. Some were long and some were short, and some had, we thought, considerable value. As Jack Simpson told you, I think, last Friday, we had the report of the dentist, Dr. Knorr. We had the report, we did not see him, he was not available, and we did not see him.

We had a report of a doctor, I have forgotten his name, a medical doctor, I cannot remember the name, I did not write it down here.

We then interviewed a number of people. You have the list here under one of the tabs. You have the names of the persons we interviewed. For example, there is the name of Bishop Wurm—that was his name—he is a Lutheran bishop, and we interviewed him.

Also there were groups of men from sport clubs and athletic clubs, different groups, and we talked to them.

Senator McCARTHY. May I interrupt? Was this Bishop Wurm one of the men who alleged that there were acts of misconduct?

Judge VAN RODEN. Yes; he is one of those who made accusations. He was rather reticent, he wasn't very elaborate or very verbose in his talk. He tried to be very fair. As I recall, he didn't express conclusions.

May I say to you, in all frankness and fairness, because I want to be frank and fair in my testimony before this committee, that he said that many of the things he talked about were hearsay as far as he was concerned. As I recall, he was very frank and fair in his statement. I think he spoke through an interpreter. I am not sure. One did and one did not. I have forgotten. I do recall that he said certain persons had told him many of the things which he brought to our attention, as this commission sent over there by the Secretary of the Army.

There were other persons. There was Dr. Leer, I recall, who was counsel for Peiper. He came before us, he did not testify. They made their statements. As a result of all that, I am afraid I cannot sort it out and remember who said what, because we could not do that, I do not have that sort of a brain, I am afraid, to pigeonhole each person's statement before us or what we read, but as a result of all that, I heard Gordon Simpson say last Friday, we felt that the evidence of these confessions was unreliable.

Senator McCARTHY. May I interrupt? Judge Simpson last Friday said he felt that the convictions in most cases should stand because the confessions were corroborated by other competent evidence.

I have before me—

Judge VAN RODEN. I recall that he said that.

Senator McCARTHY. Let me finish this. I have before me the affidavit of Colonel Everett and, you understand, I have not had a chance to check through the tremendous records to determine whether or not this affidavit is true, but I have talked to the colonel, and I have every reason to believe this is true.

He sets forth on page 30 of the petition to the Supreme Court the names of 14 defendants who were convicted upon no evidence other than their own forced confessions.

Pardon me for interrupting, but I wanted to have the record correct.

Judge VAN RODEN. I go one step further than Judge Simpson, because it was my understanding that not only did we think this evidence was not sufficient to sustain the sentences of death, which was our sole duty and the limit of our authority, but it is my distinct impression and recollection that the three of us—Simpson, Lawrence, and myself—had serious, I know I did, serious doubt about the sufficiency of the evidence to sustain the convictions in these 12 cases.

Senator McCARTHY. Let me ask you this, Judge: Was your function principally to recommend whether or not the death sentence should be executed, or were you to go into the entire trial?

Judge VAN RODEN. The order is here, a copy of the order. I think it is under one of these tabs. You have it in the confidential report.

Mr. CHAMBERS. It is tab B.

Judge VAN RODEN (reading):

Each of the following-named officers will proceed from Washington, D. C.—

Senator McCARTHY. I do not believe it is necessary.

Judge VAN RODEN. Our duties and our functions were to look into these death-penalty cases and other cases that we might think were important in connection therewith to ascertain whether these men had received fair trials. That is the impression I have. It was whether they received fair trials. I suppose I am bound to add, on my own thought, in accordance with American standards. That is not in the orders, but we reported back to the Secretary in person, and were to report whether there was accorded to these men, any or all of them, fair trials, as I understand, in accordance with the American standard of justice.

We had different rules established, giving in to some of our allies, but I think that was a mistake, although I should not say it. It was giving in on the hearsay rule, for instance. One of the rules was there should be no new trials, and that is the reason, I believe, we recommended commutation of sentences because we were informed we had no authority to suggest, and the policy of the Army was not to grant any new trials and, therefore, if we could not recommend new trials, we did not know, gentlemen, whether these men were properly convicted or not, we believed these records of trials that we examined did not tell us, we could not tell from the records of trial whether they were guilty or not, and if they were guilty, they may have been guilty, we do not know and we do not know yet, but we all three thought that if there was guilt attached to any or all of them, that they should not be let off scot free and, therefore, we recommended that sentence be commuted from death, so that they would not be hung and not given an opportunity and commuted to life imprisonment, one of them to 10 years, and one to 2½, I think, and another 27 were commuted to life imprisonment, and I think we recommended also, as you will see in our report, that the Department set up a board to further investigate these cases because then they can determine whether or not, for example, the policy might be changed to have a new trial.

There is no reason why the policy cannot be changed, as we understand the law.

Senator McCARTHY. Then your recommendation in those cases was that these men not be executed?

Judge VAN RODEN. That is correct.

Senator McCARTHY. And that a board be set up to further investigate each individual case?

Judge VAN RODEN. And, if possible, to have a retrial for that purpose. We did not recommend that. We recommended that it be commuted to life imprisonment—to life imprisonment, except two or three were less because we were not sure the men were guilty.

We all believed—I am sure of this—that these records of trial—I do not recall that Judge Simpson said on Friday that he believed that, but I certainly think we understood, I did, that this evidence was not only insufficient to sustain the sentences but insufficient to sustain findings of guilty, as a cold record.

We made the recommendations, therefore, as I said before, for that purpose: To give the men a chance to breathe and then have the matter reinvestigated or retried, if that could be done, and then determine if they were guilty or if they were innocent; and if they were guilty, they should be obliged to pay whatever the penalty would be and then,

if innocent of the entire case, remitted or commuted, as the case may be.

Senator McCARTHY. As of now you would say that as far as you are concerned, you and I or anyone who looks at the record, you would say that some of those men may be guilty. They may be innocent. We have no way of knowing from the record of the trial.

Judge VAN RODEN. That is so.

Senator McCARTHY. I understand a little better now your recommendation that the sentence be commuted to life imprisonment. At the time I read the account in the paper I could not understand the recommendation that they be given life imprisonment.

However, in view of your statement that you did feel that a board should be appointed to go into each individual case and investigate each case and check the wisdom, for example, of granting a new trial where a man was entitled to it, I can understand your recommendation much better.

Judge VAN RODEN. I hope I have made that clear to the committee and to the Republic, if that is important.

Senator McCARTHY. I think it is important that that be made clear. From the report and from the stories I heard, if I may tell you, this is the impression I got:

Two competent judges go to Europe to go into these cases, and they say that, yes, brutal methods were used to get confessions, the evidence is insufficient to sustain a conviction, but we are going to recommend that they not be hanged, that they be sentenced to life imprisonment.

Going so far, it seems like an unusual recommendation.

Judge VAN RODEN. Inconsistent.

Senator McCARTHY. When you clarify and make clear the balance that you recommended a board be appointed to study each of the cases and that your recommendation merely was to the effect that during the working of this board that these men not be killed off in the meantime, that they be living so that justice can be done——

Judge VAN RODEN. Yes, sir.

Senator McCARTHY. You are aware that five of the men whom you and Judge Simpson felt should not be hanged because they did not have a fair trial have since been hanged by the Army; are you aware of that?

Judge VAN RODEN. I have heard that from the newspapers, but not officially from the Department of the Army.

Senator McCARTHY. Is that in the Malmedy cases?

Judge VAN RODEN. No, sir; but we recommended that the sentences in 29 cases be commuted, 12 of which were the Malmedy defendants, and the others——

Senator BALDWIN. None of the Malmedy defendants have been executed?

Judge VAN RODEN. So I am informed.

Senator McCARTHY. I have checked with the Army and I understand that five, not of the Malmedy cases, but five men whom your committee said did not receive a fair trial and should not be convicted, rather, should not be hanged, that five of them have since been hanged.

Judge VAN RODEN. As an American citizen, I am very much disturbed about that action, although, of course, I cannot criticize it except as a citizen.

I think the recommendations we made here were sound, but apparently the Commander in Chief was not of the same opinion. I will not say anything further than that. I fell it is a very great mistake.

Senator McCARTHY. I do not find anything in the record which would bring this to General Clay's attention. Would you know from your experience over there whether or not General Clay knows that the prosecution hired as an interrogation team refugees from German concentration camps?

For example, there was Perl, a man who has been accused of brutality, and who had, according to the testimony we have had here, been sentenced to death in Germany, had escaped from a concentration camp. He was appointed as one of the interrogation team to go in and get these confessions.

Also his wife had been in a German concentration camp for 4 years. According to the testimony, she was wearing a WAAC uniform. Whether she was an American citizen, I have no way of knowing.

Also that Steiner, another of the triumvirate, who is the man who, according to Witness Bailey, bragged about the mock hangings they conducted, where they would lead a man up some steps and tell him he was on a scaffold and tie a rope around his neck and jerk it, and get a confession. Steiner was a refugee from Germany whose mother had been killed, according to himself, by the Germans, and he had made the statement that he disliked all Germans and would get confessions from any man who was assigned to him.

The third man, Thon, I do not have the exact facts as to Thon. But do you know whether General Clay knew that the prosecution staff were hiring these refugees, No. 1, and No. 2, that they were hiring as guards young men from Poland whose families had suffered very heavily at the hands of the Germans? Do you know whether General Clay knew that or not when he was reviewing these sentences?

Judge VAN RODEN. I have no way of knowing what General Clay knew, but I know with our limited opportunities, which were much more limited than his, I made a notation when I was over there, I kept these memoranda, why I don't know, but I am happy to have them here, I made a notation of the investigators that we, the three of us, found had participated in this sort of procedure.

I will read them to you for what they are worth. There was Perl, Kirschbaum—we called him Thon—Ellowitz, Berkowitz, and I have a Captain Hisch, although he was not a part. Those five are the names of investigators that we found from what we read and from what we saw over there had been instrumental in getting these confessions. They were on one or more of these teams.

Senator BALDWIN. That is in the Malmedy matter?

Judge VAN RODEN. All these matters.

Senator BALDWIN. You do not know which ones are the Malmedy ones? As I recall this resolution, it is directed to the Malmedy situation.

Judge VAN RODEN. Let me look at this and see if I can get the Malmedy people. There was Perl, Kirschbaum, Thon, and Ellowitz who were working on the Malmedy cases. That is my best recollection. I am not sure whether Berkowitz was or not.

Then I put down three names of the officers who had charge of these teams, but to which we found no misconduct attributing. That in-

cludes Major Fanton, Captain Hirsch, and Major Sternberg. I put those names down because they were Army officers, either in charge—Colonel Ellowitz was in charge of the teams, as we understood. But there are the names that I found, that we learned were—and we learned also they were refugees—they called them 39'ers. That is where I learned that term. I had never heard that term before.

However, in Germany we were told—as a matter of fact, it was common knowledge, everybody seemed to discuss it around the war crimes branch, and the boards of review seemed to know about it. There were two boards of review functioning when we got there, and there had been three previously. As I recall the two boards, each had one civilian member and two Army officers, as members reviewing these cases as post trial boards of review, but all these persons spoke about the 39ers, and I think Gordon Simpson, with that inimitable smile of his, asked "What are 39ers?"

We were told the 39ers were Germans who had escaped the persecution in 1939 and came to America, became American citizens, and then some of them—these names are included in that list—so we were informed over there, secured employment with our Government as investigators and as interpreters and went over there to Germany to investigate these offenses and ascertain, if they could, who were responsible for the war offenses

Senator McCARTHY. In other words, 39ers were in charge of getting confessions?

Judge VAN RODEN. Yes, sir. Not all were 39ers, but most of them were 39ers. There were other persons whose names I do not have, but these were the ones we learned were refugees.

Senator BALDWIN. Will you give the names of the refugees again?

Judge VAN RODEN. Perl, Kirschbaum, Thon, Ellowitz, and Berkowitz.

Senator BALDWIN. Which were the ones, can you say, who were connected with the Malmedy case?

Judge VAN RODEN. I think all four were: Perl, Kirschbaum, Thon, and Ellowitz. That is my best recollection. I have the paper here, which you can see. I do not have very copious notes.

Senator McCARTHY. Judge, in going through the record I find that the law member of the court, Colonel Rosenfeld, consistently refused to allow the defense to show the conditions under which the statements were gotten. He would not allow them to show the details of the beatings, the number of interrogations, and such like.

Under those circumstances, is it possible today by going over the cold record to determine whether or not the confessions were properly obtained, without going for outside information?

Judge VAN RODEN. I do not believe it is entirely so, Senator, for this reason: It developed in the record of trial, which you no doubt have read, the defense first, I think, adopted a policy, if I can call it a policy, of having one or more of the accused testify as to the cruelty and the beatings used.

There were 73 persons on trial in that Malmedy case. The court declined to grant a severance. There were a number of lawyers, I don't know how many, but a number of lawyers representing these several accused, and Colonel Everett at that time I think, was with military intelligence. However, he wore the Infantry insignia.

However, he was chief defense counsel and, therefore, he was guiding the strategy, if that is the word you use, of the defense in the Malmedy cases.

It developed from the record of trial and also from what Colonel Everett told the three of us when we interviewed him in Washington before we made our report to the Secretary, it developed that the different attorneys, some German civilians and some military Americans, and some American civilians, were apparently not in accord with that strategy in some way, and apparently each was trying to save his own client, and things were said which apparently under cross-examination in the record seemed to get the defense out of control. I am quoting Colonel Everett now.

Senator McCARTHY. I am afraid you did not get my question. I am going to read to you the ruling of Rosenfeld, which was repeatedly made, and ask you whether or not a fair trial could conceivably be given the defendants under this ruling. I will read the ruling. The witness by the name of Kramm was testifying:

In what period of time did you take part in that Russian campaign which you first mentioned?

PROSECUTION. I object.

Colonel ROSENFELD. Objection sustained. Not cross-examination.

This is not pertinent to the questions I am going to ask you, but since I have read this by mistake, I will call that to your attention, that on direct examination, it was the claim of the defense that on direct examination the prosecution would attempt to intimidate the witnesses by going into different Russian campaigns they were in, intimating that if they did not confess, if they did not stick by a statement they had made under duress, they would be sent to Russia for a trial and, hence, this part of it.

Getting on to the other question, here is the cross-examination:

Question. Now, how often would you say you were approximately interrogated at Schwabisch Hall?

The PROSECUTION. I object.

Colonel ROSENFELD. Objection sustained.

Mr. STRONG. May I respectfully point out to the court, with due deference, that this is cross-examination.

Colonel ROSENFELD. It is not cross-examination because it is without the scope of the direct examination. The court has ruled. The objection is sustained.

Question. Kramm, isn't it a fact that you during the time you were in Schwabisch Hall signed a statement for the prosecution in question-and-answer form, consisting of approximately 20 pages?

The PROSECUTION. I object again.

Colonel ROSENFELD. That is not cross-examination. This is the last time the court will notify you.

In other words, Rosenfeld here says, "Don't try that again," when all the defendant is trying to do is show the conditions under which the statement was obtained. I know you and I both having been judges and both having practiced law, and I believe the other members of the committee are also lawyers, we realize that it is elementary that you can show what interest a witness has in a case, whether he is being paid to testify, whether he is related to any of the parties, whether he was under any duress to testify as he did, just one of the elementary things you can do.

I cannot conceivably evaluate a witness' testimony.

Judge VAN RODEN. I agree.

Senator McCARTHY. Rosenfeld says he will not let the court know these facts, he will not let them know how the confessions or statements were obtained, he will not let the court know how many different statements were taken or whether any physical violence was used.

Under the circumstances, was it humanly possible to give those men a fair trial, the type of trial after which you could determine they were guilty or innocent?

Judge VAN RODEN. In my opinion; no.

Senator McCARTHY. Any competent judge would conclude that, and I certainly thank you.

Let me ask you this, Judge, if I may: When you started this investigation, did the Army inform you that there were any standards by which you were to go? In other words, were there any instructions given to the prosecution as to the terms and conditions under which a confession could be obtained, what type of treatment these defendants were to get?

In other words, did they say that these are the standards by which we, the Americans, are bound and you will use this in your investigation of the case? Did they give you that?

Judge VAN RODEN. I am not aware of anything like that.

Senator BALDWIN. May I interpose a question right here?

One of the very important things that I think the committee has got to consider is this very point that you have just touched upon. There is in the record now a booklet of rules and regulations.

Judge VAN RODEN. I have that.

Senator BALDWIN. Which were apparently agreed upon by the Allies, who were conducting these trials.

In other words, these trials were not solely American affairs. They were quadripartite or at least tripartite affairs. That is as I understand it, and there were rules of conduct, rules guiding the conduct of the American personnel dealing with the investigation and the prosecution and the conduct of the trials.

Those rules, as I have examined them, show several departures from normal American procedures in criminal matters. However, they were not promulgated by the American Army alone; they were promulgated by the commission, which consisted of three governments.

Judge VAN RODEN. Four governments.

Senator BALDWIN. Yes; four governments. In other words, this manual starts off with this provision:

This manual is published for the guidance of legal and prison officers and other officers concerned with the discharge of legal and prison duties. The manual is divided into four parts, the first of which is intended for legal officers and the second for prison officers. Part III and IV provide a glossary and an index. The manual contains rules for military government courts and the guide to procedure. It also contains detailed instructions with respect to the supervision of German courts, and an outline of German criminal law. The relevant forms to be used by legal and prison officers are placed at the end of each section.

In view of the provisions of ordinance No. 3 making the English language official for the areas under the control of English-speaking forces and the French and English languages in the area under French military government control, German translations of the proclamation laws and ordinances have not been included. However, German translations of the forms to be used by military government courts and directions to German authorities, though they are not official texts, have been included for the convenience of practitioners.

In other words, here was a complete booklet, as I understand it, that was issued, and, I assume, as a result of agreement among the Allied Powers, for the conduct of these trials.

Of course, one of our problems is this: Insofar as these are a departure from normal American procedure, if we ever have to go through a thing like this again, what kind of rules of procedure should be set up? Should they be American rules or should they be the result of international agreement?

It seems to me that is a very, a very important thing because if we are going to establish as a principle that certain things in the conduct of war do constitute a crime that is punishable after the war is over, then we must establish the proper rules of procedure to insure justice.

It seems to me that one of the difficulties here under which the American authorities may labor is the fact that they were guided by these rules and may in some instances have been required to make departures from what would be normal American procedures. I do not say that in any way to justify anything they have done, because what they have done that was in the way of abuse, we want to know about and, furthermore, what was done in the way of an abuse and injustice that this kind of procedure and rules permitted, we really want to know about because we want to stand before the world as a Nation that administers justice with equity and humaneness to everybody.

But you have said that you have considered this whole trial, that is, your examination was considered from the American standpoint, the American point of view, what would have been just in that respect, and I do not say that is not the proper point of view from which to consider it. Is that correct?

Judge VAN RODEN. I am glad to hear what you have said, because I go along with most of what you said, especially about the nature of the trials. I do not recall the booklet has anything in it which authorizes confessions to be secured by the means by which they were secured, that they may use force or violence to get confessions. I do not see it.

Senator BALDWIN. I do not claim it is, but one of the difficulties under which this committee is laboring: we are judging the thing under American standards, whereby the thing was conducted not according to 100-percent American standards; and I think that is one thing we have got to have in mind. It is one of the basic things connected with this investigation.

Judge VAN RODEN. I want to make one comment upon that. It seemed to us over there, and it seems to me now, that these rules and regulations which were agreed upon at the conference in London in August of 1945 were primarily intended for the international court which began, of course, in Nuremberg. We felt that these courts at Dachau, including the Malmedy trials, which took place at Dachau, was exclusively and unquestionably an American military court and not an international court; and we felt that, because Justice Jackson had announced that everybody would be equal before the court, that that certainly applied to American courts, and they would have a fair trial in accordance with American standards, even though we were not going to be following the same rules of evidence that we followed in our American tribunals.

Senator BALDWIN. It seems we have really a United Nations problem, and eventually it will have to be considered by that body. That is, what does constitute a war crime?

Judge VAN RODEN. That is a very involved topic.

Senator BALDWIN. What is the proper procedure for investigating and prosecuting it? What are the rules of justice that should be established in administering penalties if guilt is found? That is a very important field. This is the first time in history that I know about that anything of this kind has been attempted.

Judge VAN RODEN. Yes, sir.

Senator BALDWIN. And I think it is a whole new field of the law.

Judge VAN RODEN. Of course, it is.

Senator McCARTHY. Just so there is no question about this, there is nothing in the book that you have before you, nothing in the rules that the four powers adopted which would allow or justify the type of tactics which you found that the Americans engaged in in the preparation of and in the trial of the Malmedy cases. Am I correct in that?

Judge VAN RODEN. My answer to that is "Yes".

Senator McCARTHY. In other words, it was not any Russian standard, any German standard, any other standard that would justify or authorize them to beat these men up, have mock hangings, mock trials. That was the innovation of the American prosecution staff and their Thirty-niners?

Judge VAN RODEN. Of course, maybe it is done in Russia, too; but, as far as we found, that was actually done by the investigators employed by the American Government, all of whom I believe, were American citizens.

Senator McCARTHY. There is nothing in the rulebook that the Senator from Connecticut has been talking about that allows that type of procedure?

Judge VAN RODEN. No.

Senator BALDWIN. Of course, it ought to appear here that I do not claim it is.

Senator McCARTHY. I understand that. Then, regardless of what standards these men are judged by, the standards of any civilized nation are that an innocent man shall not be convicted and that the guilty shall be convicted; is that right?

Judge VAN RODEN. Yes, sir.

Senator McCARTHY. And, going over these cases at this time, you are convinced that there is no way that this committee or any man of reasonable intelligence can tell whether those men who are about to hang, whether they are guilty or innocent; there is no way of knowing from the record?

Judge VAN RODEN. That is my opinion.

Senator McCARTHY. You do not feel that it was the rules of evidence adopted by the four powers, if they did adopt such rules, you do not feel that those rules of evidence brought about this situation?

Judge VAN RODEN. No, sir.

Senator McCARTHY. You feel these men could have been given a semblance of a fair trial under the rules?

Judge VAN RODEN. They could have been given a fair trial; yes, sir.

Senator McCARTHY. So that, when you say you are judging this by American standards, you are judging it by American standards, but

keeping in mind that the prosecution could follow the rules of evidence that the four powers had laid down?

Judge VAN RODEN. That is what I meant to say; yes.

Senator McCARTHY. Just one other question. There has been considerable in the papers and considerable testimony in regard to certain very definite acts of brutality. The witness Bailey testified that he saw a number of men kneed in the groin by this man Lieutenant Perl.

Senator BALDWIN. Just a moment, Senator McCarthy. I wonder if Mr. Bailey did testify exactly to that fact.

Senator McCARTHY. We were all here.

Judge VAN RODEN. I heard him testify last Friday. I was here during the entire testimony.

Senator BALDWIN. I do not recall that he testified that he saw it. He testified there were some who said it had been done, but I do not recall that he testified he saw it.

Senator McCARTHY. Would the chairman like to bet me a good steak dinner that he did not so testify, that he personally said he saw several men kneed in the groin? I am sure he said it, and I am sure it is in the record.

Mr. CHAMBERS. Shall I check that for the steak dinner?

Senator BALDWIN. Don't take the steak dinner away from Mr. McCarthy.

Senator McCARTHY. Without making it a bet, I will buy the chairman a good steak dinner if it is not in the record.

Judge VAN RODEN. May I share in the steak dinner?

Senator McCARTHY. Yes. Am I correct in saying that you did find evidence to indicate that a sizable number of those men sentenced to die were crippled to at least some extent because of having been kicked in the testicles?

Judge VAN RODEN. We found that to be so. But I have seen some of the articles in the papers and some were exaggerated. I read one the other day saying that all but two of the men had been injured for life. We did not find that.

Senator McCARTHY. But you found—

Judge VAN RODEN. That some of them had been injured in their testicles. We could not find out how many.

Senator McCARTHY. I assume that you and I would agree that an innocent man will scream about as loudly as a guilty man if you are kicking him in the testicles, and an innocent man will perhaps sign the same confession that a guilty man will if you kick him long enough and hard enough. There is not much doubt about that; is there?

Judge VAN RODEN. That is correct.

Senator McCARTHY. There is one final question I think you have covered adequately before, but just so it is absolutely clear: You felt that after your investigation of these cases the record is such that none of these men should be executed until it has been determined or until they get a decent, honest, fair trial, and that if we must depart from the rule which the Army has adopted that you cannot order a new trial, if it is necessary to do that in order to avoid having guilty men go free, that we depart from that rule. Do I make myself clear?

Judge VAN RODEN. Yes. I am very much concerned about it personally. I think human life is a very precious thing, and whether we

do it as individuals or whether we do it as a Nation, to take a person's life without an absolutely good reason, I think it is a very wicked thing to do, and it is a very dangerous precedent to establish, and that is why I think these persons should be given further opportunity or further opportunity should be afforded to examine their cases before we take their lives, even if they are Germans and we fought them and they fought us, and I was in combat in this war, and I know what I am talking about.

Senator McCARTHY. Can you see any reason at all for the Army's ruling to the effect that under no circumstances can you grant a new trial; that either a man must be punished on the trial record as it is, no matter how erroneous it is, or be allowed to go free?

Judge VAN RODEN. I think a better way would be to have a new trial. It would be more fair to the Government, to our country, and be equally fair to the accused.

Senator McCARTHY. How much damage do you think we are doing to American prestige in that part of the world by this demonstration of American justice?

Judge VAN RODEN. I could not estimate that. People there are more bewildered about it than upset. They are bewildered about the way we are behaving. That is as far as I would go.

Senator McCARTHY. Do you think the people in that area realize these are trials being conducted by the Americans? They are not blaming the Russians or the British for that?

Judge VAN RODEN. They are not finding out much about it. Since that time they have been published in some of the papers. But the German public at large is not being told much about it. I worked hard and perhaps I did not get around to see.

Senator McCARTHY. Judge, do you feel that this demonstration of American justice—that is, of alleged American justice, which certainly is not our idea of justice, this alleged American justice—by our Army, is doing a lot to undo the good we may have done by spending the billions of dollars we are spending in that part of the world?

Judge VAN RODEN. I am afraid it has. I believe it has.

Senator McCARTHY. In other words, some of these moronically incompetent men who are over there conducting these trials can fritter away an indefinite amount of good we have done over the past number of years?

Judge VAN RODEN. I am not sure I will adopt your language, but I agree in substance with what you have said.

Senator McCARTHY. That is all.

Senator BALDWIN. Just for the benefit of the record, with reference to the question that I raised about what Mr. Bailey had testified, I read from the transcript at page 434:

Senator McCARTHY. There will be testimony here to the effect that, of 139 men who were sentenced to die, about 138 were irreparably damaged, being crippled for life, from being kicked or kneed in the groin. Can you tell us whether or not you saw any of that?

Mr. BAILEY. I could not tell you. I would say, in my opinion, that is a gross exaggeration. That is just my opinion.

Senator McCARTHY. If you will give me that, I will show you where Bailey testified he personally saw somebody kneed in the groin.

Senator BALDWIN. Are you through with your questions, Senator?

Senator McCARTHY. I am.

Senator BALDWIN. You said that human life to you was very, very precious, and I am sure it is to every single one of us. Do you not think that the fact that human life is very, very precious has been demonstrated by the fact that in these Malmedy cases to date not a single one of the men who has been convicted has been executed?

Judge VAN RODEN. Is that accurately true?

Senator BALDWIN. That is accurately true.

Judge VAN RODEN. Probably so.

Senator BALDWIN. That shows the American inclination to be very, very careful.

Judge VAN RODEN. Yes.

Senator BALDWIN. These men's cases have been reviewed by two different commissions, yours and another, and by General Clay, and, as I observed it, great care has been given to not perpetrate injustice.

Judge VAN RODEN. That is so.

Senator BALDWIN. These men have had every opportunity to appeal.

Senator McCARTHY. I did not get the chairman's question.

Senator BALDWIN. These men have had every opportunity to be considered.

Senator McCARTHY. May I point out to the chairman that the Supreme Court yesterday, by a split decision, 4 to 4, with Justice Jackson not participating, held that it would not hear any petition for appeal. That is not the Malmedy cases, but a number of other cases. In effect that is a ruling that these men will have no appeal to any court whatsoever.

In other words, convicted with these fake confessions, these fake hangings, the kneeling and kicking to get confessions—our Supreme Court has held that under the circumstances of the case there is no court to which they can appeal. Originally, I believe, they could have appealed to the third—

Senator BALDWIN. It remains for the Army to say whether they are to be finally executed.

Senator McCARTHY. I beg your pardon?

Senator BALDWIN. It remains for the Army to say whether they are to be finally executed. It is a military court.

Senator McCARTHY. I am wondering now, Mr. Chairman, in connection with this, if this committee, in view of the unusual things which have developed in the Malmedy cases and the fact that Judge Van Roden, a perfectly disinterested witness, went over and investigated this matter—was sent over by Secretary Royall to investigate—says that the trials were not properly conducted, and the description of these thirty-niners conducting these trials, I wonder if this committee should not expand its investigation and not concern itself solely with the Malmedy cases, but concern itself with all of the criminal cases and the entire procedure, insofar as meting out American justice is concerned.

Senator BALDWIN. As indicated before when you raised that question—

Senator McCARTHY. If that is not being done, I would like to know this in view of the fact that I am not a member of this committee, as the chairman knows. There was some question originally in view of the fact that our Expenditures Committee went into the Ilse Koch case and whether or not we should have been investigating it. If this committee is not going to go into the entire picture and restrict itself

solely to the Malmedy case, I would like to give that information to the Expenditures Committee so they can decide whether or not that committee will go into the entire picture.

I know the chairman, who is chairman of the subcommittee, cannot answer that question, but I would appreciate it very much if he would discuss that with the Armed Services Committee and determine whether or not they will conduct such an investigation and, if so, whether there will be any request to stay the executions in the cases in which the Simpson Committee has recommended the executions be stayed until such time as the committee has finished its investigation.

Senator BALDWIN. I think that is a matter to be determined by our subcommittee, and by reference to the entire committee.

Senator McCARTHY. I believe it would be a mistake to continue executing men whom the Simpson-Van Roden committee said should not die; it would be a mistake to continue executing those men while this committee is operating, and I assume that will be done now in view of the Supreme Court's decision of yesterday, unless this committee takes some action.

Senator BALDWIN. I would like to say for the Army and for the Americans generally that I think in these particular cases, and I am not prejudging it as a member of the committee, and we have no power of judgment here; that I think we have demonstrated to the world in our conduct, the Army has by its conduct of this, that we are trying to live up to the statement of Abraham Lincoln, "with malice toward none and charity toward all," and I am wondering what chance for an appeal and review the men had who gave their lives at Malmedy crossroads and were shot down in cold blood, what right of appeal and review they had.

I think that one of the things which is bound to appear in this whole thing is that this trial was conducted so soon after this happened that it was extremely difficult not to have feelings run high, and I think that is regrettable, but, nevertheless, I think it is apparent and that also is evidence to the point that if this ever happens again and we have this kind of a trial, it ought to be conducted as dispassionately as possible under all circumstances because, obviously, that is one of the fundamentals of American justice, too.

Senator McCARTHY. The chairman just made a statement to the effect that the men killed over there had no appeal. That is obvious. I don't know why the chairman makes the statement. It is obvious. The chairman understands, of course, I am sure, that we all agree that any men who are guilty of war crimes should be punished, and these wild statements, if I may term them that, will appeal to the emotions and hatreds of the people, saying they have killed some of our men, let's do the same thing, let's turn around and kill them off without a fair trial, and I do not think it does justice to this committee.

When the chairman has said the Army demonstrated that they worked in this case with malice toward none, with charity to all, I assume you would have difficulty persuading those 16- or 17-year-old boys who were kicked in the testicles, crippled for life, where the Thirty-niners exacted their confessions from them, it would be hard to convince them that they were operating with malice toward none and charity toward all.

So there would be no question, I think, that we have one single issue, and that is not whether or not some Germans were guilty of some atrocious war crimes. We know that. The men who are guilty should be punished the same as any Americans who were guilty of war crimes should be punished.

However, the question here is, Shall those men of the losing nation have a fair trial? Shall we only execute the guilty or shall we pick them hit or miss and execute both the guilty and the innocent?

Now, we have two judges who went over and studied this matter, sent over by Secretary Royall at the President's approval. They came back and they said, "We don't know at this time whether you are executing guilty men or executing innocent men." It does not do any good, Mr. Chairman, to make statements about the atrociousness of the killings and that the American boys who died did not have any right of appeal. The question is whether or not we as of today are going to apply the principles of American justice which we have developed over long years, principles which we have found have been adequate to convict guilty men and have adequately protected the innocent.

I would say it would be a tremendous mistake to start killing off the enemy just because we have the power to do so because some of our men died without knowing whether they were guilty or innocent.

One thing the Army has proven so far is that they acted with the utmost malice, not the Army as a whole, I do not think General Clay can possibly know that we had in charge of the interrogation a team of refugees who made the statement and bragged about it that they felt that anyone who bore a German name should be convicted.

Now, before this hearing is over there will be testimony to the effect that Rosenfelt, the court member, who had so grievously erred in his rulings, made the statement publicly that anyone who was in that area that day should hang. That is the American, the man who is representing American justice, and you say who is proving we are operating with malice toward none and charity to all.

Senator BALDWIN. My remarks were directed to the conduct of the Army since the convictions and the effort on the part of the Army to see that substantial justice was done. That is where my meaning was.

Senator McCARTHY. They hung five men, Mr. Chairman.

Senator BALDWIN. We are still investigating here and have not yet come to any conclusions—at least, I have not in my own mind—as to what exactly happened and what we should recommend. We are in the process of the hearings. I will be the last one to say we ought to take a like number of Germans and execute them, and that is the thing that we want to build up, the proper procedures, both of investigation and trial, for the possibility of the future, so that we might avoid that very thing.

I do think that the cold-bloodedness of the original act probably generated in part a hard feeling that certainly has some bearing upon the case and has bearing upon the fact that if we go ahead in the future with this sort of procedure, we ought to take every precaution to see that it is utterly dispassionate and conducted by people who are completely impartial.

Senator McCARTHY. May I ask a single question of the witness before we leave?

Judge, may I ask this: Do you think the Army's action in executing five of the men whom your committee believes—two Army officers were part of that committee besides yourself and the other judge—executing five of the men whom your committee said should not be executed in view of the fact that the record was such you did not know whether they were guilty or innocent; do you not feel the Army very grievously erred in doing that and inexcusably erred?

Judge VAN RODEN. I am still an Army officer, but I do not know for how long after this hearing is over. My answer to that question will have to be said in two ways. When you realize that we examined 139 cases, that only 29 of those cases were found by us to be of such doubtful validity as to the convictions and sentences, and we found that 110 of those 139 cases, even though some things we did not like to see done, such as getting confessions, they were supported by competent evidence, it is my personal opinion as to the 29 out of the 139 that those 29 cases should have been commuted with a chance of review later on, and I was shocked when I heard that that recommendation was not followed, but it will not be the first time that I have been shocked when my superior officers have done things I did not approve of.

But I still feel that the Army and this committee here, gentlemen, is trying to save—I do not mean to be sensational, but I think if our Supreme Court did not save the conscience of our country, I hope the conscience of our Government and our country will be saved by the Army and by this committee in this Senate, and I hope you will do so and, therefore, the result of my feeling is that it was a mistake not to follow our recommendation.

Senator McCARTHY. I might say Secretary Royall, who appeared here, appeared to be very reasonable and promised us he was going to review these cases in detail and that none of the men whom your committee recommended not be hung, that none of them would be hung without first informing this committee a reasonable length of time before they were executed.

Judge VAN RODEN. The remainder?

Senator McCARTHY. Yes.

Senator HUNT. Any further questions, Senator?

Senator McCARTHY. No.

Senator HUNT. Senator Baldwin?

Senator BALDWIN. I would like to ask Judge Van Roden some questions.

Senator McCARTHY. I have something for Senator Baldwin. On page 401 of the record, Senator, Mr. Bailey's testimony, he says:

I saw prisoners come into cells shaky and nervous and with a few scratches or bruises on them, but nothing serious; that is the condition I have seen them in, in the cells. I have seen Lieutenant Perl slap them, and I have seen them knee a couple of them in the groin.

Senator BALDWIN. I asked Mr. Bailey a question as to whether he had seen any of the prisoners who had bruises and black eyes or anything of that kind, and Mr. Bailey said:

No; I cannot. They received black eyes, but they could have gotten it any way. They could have bumped their heads against the wall. I never saw anybody actually beaten by anybody except with the possible exception on one or two occasions by this fellow Perl.

To my mind, that was a very marked qualification of the general claims made. But we can spend the day here disputing what the record discloses.

Senator McCARTHY. Maybe he did not consider kneeling in the groin to be beating.

Judge VAN RODEN. You could probably find medical records over there and some of the records about the condition of these prisoners.

Senator BALDWIN. At the time these clergymen appeared before you, Judge Van Roden, Judge Simpson testified about that, did they make any claim that time about physical abuses of the prisoners?

Judge VAN RODEN. When who appeared?

Senator BALDWIN. Clergymen. You mentioned Bishop Wurm, who was the Lutheran bishop.

Judge VAN RODEN. Yes.

Senator BALDWIN. Do you recall those men made any claim about physical abuses of the prisoners?

Judge VAN RODEN. Some of them did. I don't recall which ones.

Senator BALDWIN. They made claims?

Judge VAN RODEN. There were petitions filed which also made claims, posttrial petitions that were filed made those claims.

Senator BALDWIN. When you say posttrial petitions, do you mean the ones that accompanied the petitions to the Supreme Court?

Judge VAN RODEN. No, sir; those petitions that were filed with the War Crimes branch over there in Munich, and we were referred to the various boards of review to investigate to see whether that would have any bearing upon any recommendation as to the sentence.

Senator BALDWIN. Those petitions were before you?

Judge VAN RODEN. Before us, yes, sir.

Senator BALDWIN. Did you examine any of the petitioners personally?

Judge VAN RODEN. You mean the defendants?

Senator BALDWIN. Yes.

Judge VAN RODEN. No, sir. We thought we should not do that.

Senator BALDWIN. You just examined the record?

Judge VAN RODEN. We spoke to about 50 or 75 people.

Senator BALDWIN. In your statement sometime ago that was made in February 1949, you said American investigators of the United States Court in Dachau, Germany, used the following methods to obtain confessions: Beating and brutal kickings. What evidence can you tell us there was of that?

Judge VAN RODEN. The only evidence I can recall was what the person who came before us talked to us about, and the petitions that were filed, and I suppose Colonel Everett, of course, spoke to us and told us what he knew, and he presented, I think, two affidavits he had while in Washington, either then or before that time. I cannot remember the specific stories for each of those various things, but we learned that in the course of our investigation over there.

Senator BALDWIN. Was there a transcript of these statements, do you know?

Judge VAN RODEN. Statements made to us?

Senator BALDWIN. Yes.

Judge VAN RODEN. No, sir. One or two were made, but they came to the office there sometimes as many as four and five or more people a day to talk to us. I cannot remember what each of them said.

They spoke to the three of us together, Colonel Simpson, Colonel Lawrence, and myself.

Senator BALDWIN. You also mentioned knocking out of teeth and breaking of jaws. What evidence was there of that?

Judge VAN RODEN. That was the dentist's report with which I think you are familiar.

Senator BALDWIN. Dr. Knorr?

Judge VAN RODEN. Yes, and that was also included in the petitions which were presented to the War Crimes Branch, the boards of review, by the accused themselves, by their counsel, by organizations, and by clergymen of different denominations.

Senator BALDWIN. Were they eyewitnesses to the beatings or not?

Judge VAN RODEN. No, of course not. They were done in the cells by investigators, one at a time. Nobody was there when it happened. Nobody could have been there.

Senator BALDWIN. Would you say the actual testimony you heard of that was the testimony, the claims of the accused themselves?

Judge VAN RODEN. Yes; but also we had access, we read, rather, the transcript of the testimony given by Lieutenant Perl to a commission—I would guess you would call it a commission—which was comprised of Colonel Raymond, who was here last Friday, Colonel, now General Harbaugh, and Carl Friedrich, and all of us read the transcript taken stenographically of Perl's investigation by that group of three persons, and there was something said in there—I have forgotten the details of it—but he made some comment about this being a tough case to break, couldn't break the Malmedy case on direct evidence, had to get confessions, the Germans were stubborn, and they couldn't get them to sign these statements without using expedients and persuasive methods.

Senator BALDWIN. Perl said that?

Judge VAN RODEN. Yes, to the group who interviewed him. Dr. Carl Friedrich. We lived in the same VIP house in Munich, and I met him at mealtimes, and he told me, I suppose off the record, what he had talked to Perl about and what Perl had said to him.

Senator BALDWIN. Was there a transcript of that?

Judge VAN RODEN. Yes. You mean what he told me?

Senator BALDWIN. What you are describing.

Judge VAN RODEN. This commission of two officers, General Harbaugh, General Krauss, judge advocate, whom I know and respect very highly, Colonel Raymond, and a civilian American, Dr. Carl Friedrich; they were appointed by General Clay, I believe, although I am not sure who made the appointment, and they had their investigation or examination of Perl while we were over there, not in line with our investigation, but a separate investigation of Lieutenant Perl.

There is a transcript of those proceedings. Gordon Simpson said he had a copy of it in his files. I do not have a copy.

Senator BALDWIN. It would be good to get that.

Judge VAN RODEN. We read about the investigation of Perl, the statements he made.

Senator BALDWIN. The reason I am asking these questions is this: In considering the methods used and the convictions of these people, we were judging the evidence on American standards of credibility.

Likewise, I think you have got to judge the claims of the adducers on the same standards of credibility.

Judge VAN RODEN. Of course.

Senator BALDWIN. Do you agree with that?

Judge VAN RODEN. Yes.

Senator HUNT. What is your pleasure, Senator?

Senator BALDWIN. I would suggest that we recess until 2 o'clock.

Senator HUNT. If that is agreeable, all right.

(Whereupon, at 12:05 p. m., the subcommittee recessed, to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

(Present: Senator Hunt.

(Also present: Senator McCarthy; Col. John M. Raymond.)

TESTIMONY OF EDWARD LeROY VAN RODEN—Resumed

Senator HUNT. The committee will come to order.

Senator McCARTHY. Judge, I understand Senator Baldwin has some further questions to ask of you, but in the meantime we have a few that we can fill in with.

I wonder if you would care to go into the rest of some of these death penalties just a little bit so we can show the type of recommendations that are made to General Clay and the type of action that he took on those recommendations.

Would you mind giving us the picture of the killing of the seven American fliers and the facts surrounding that and the death penalties that were meted out and—

Senator HUNT. Senator, might I ask this: That is not covered by this particular case, the resolution that we were requested to work under. Do you think we might be getting a bit far afield?

Senator McCARTHY. Here is my thought, Mr. Chairman. It is not strictly one of the Malmedy cases, and if Mr. Baldwin were here or if you had some questions to ask, I did not care to go into this.

Senator HUNT. I do have some.

Senator McCARTHY. This, I think, is important. I think when you hear the answer you will consider that it is important. It is important in that it establishes a pattern that is followed over there in the commutation of sentences and the confirmation of death sentences.

This is the situation which I am sure will interest you a great deal, and will only take the judge 3 or 4 minutes.

Senator HUNT. All right, go ahead.

Senator McCARTHY. I am sure you will consider this important when you hear it.

Do you recall the facts in that case, Judge?

Judge VAN RODEN. Well, Senator, we examined three categories of cases: One, the Malmedy case; the other called the "fliers' case," where our American fliers were compelled to land upon German soil, many of whom were killed, some killed by being shot, mercifully, shall I say, and some killed by being tortured.

Senator McCARTHY. I am referring to a case in which there were seven fliers going to be killed by a German naval captain.

Judge VAN RODEN. It has no hearing upon the Malmedy case, though.

Senator McCARTHY. I think that it might be important in that it gives us a picture of the pattern that is followed over there, the type of judgment used in commuting sentences and affirming sentences.

Judge VAN RODEN. As I recall it, the situation was that there were seven American fliers or airmen—I do not know whether they were bombardiers or what they were, bombardiers or fighters, probably a bomber group—seven Americans landed on a place called Borkum Island and they were taken as prisoners of war.

The record of trial showed the political head man was either a German captain, or a former German Navy captain by the name of Goebbel, I think, and he directed a certain Major Seiler who, as I remember, was a German Army major, to dispose of these seven American fliers.

Senator McCARTHY. Kill them?

Judge VAN RODEN. Have them killed, have them put out of the way. The major protested against that and said that he would not do it, which is rather unusual for an inferior officer to speak to a superior officer that way, but as I remember it then the record of trial to be examined showed that Major Seiler said he would tell a lieutenant somebody, a German officer of course, that Captain Goebbel had ordered this to be done, which was to have them marched through a village in that same locale at Borkum Island, a part of Borkum Island.

Senator McCARTHY. As I understand it, the major first refused to kill the Americans. Then the German Navy captain, the commandant said—

Judge VAN RODEN. I beg your pardon. He said, "I order them to be marched to a prisoner-of-war enclosure," which would take them through a certain thickly settled village. The major said, "No, I will not do that because they will be killed if they do that, and that should not be done."

But, after some talk on the telephone, as I remember it, Major Seiler said, "I will tell lieutenant so-and-so that you, Captain Goebbel, ordered them marched through this village to this prisoner-of-war enclosure," words something like that.

They were then marched through this village. In the meantime Goebbel got in touch with a man by the name of Ackerman who was the burgomaster or mayor, whatever his title may be of that village, and at Goebbel's instructions Ackerman called out the populace, the civilians there.

As I recall it, most of them were older people, women and children, maybe some older men. I do not know who they were. Of course, it did not develop in the record.

He aroused them to, I suppose you might say, fever heat and told them, "Here come these American murderers, here come the men who have been dropping bombs, destroying your churches and homes and killing your families," and so forth. "If the military will not kill them, the civilians can," and the result was, I think the civilians by sticks and stones, clubs, kicking and beatings, the German civilians killed all seven of those American fliers.

That is one of the trials that took place. I have the record here. You probably have it, too. There were several accused, tried for that unlawful—it certainly was unlawful—killing of American flyers by these German civilians.

The court sentenced Goebbel—I have it here somewhere, the actual sentence—to death, and Seiler to death. Yes, here it is.

Case No. 12-489. Ackerman, the mayor, got death; Goebbel got death, sentence of death by the court; Schmidt and Seiler were sentenced to death; and a man named Eric Wenzel was sentenced to death.

Then when we examined this record, I think about the time we were actually there in Munich, General Clay commuted Goebbel's sentence to life imprisonment.

Senator McCARTHY. Let us get the picture in chronological order. I understand when you went over this record you did not touch Goebbel's case at all. You felt that his crime was such that he should be hung?

Judge VAN RODEN. No; that is partly not true. About the time we were going over the record of trial we got word that General Clay had already commuted the sentence from death to life imprisonment.

Senator McCARTHY. In any event, you did not recommend that Goebbel be commuted?

Judge VAN RODEN. No.

Senator McCARTHY. You did recommend that Seiler's be commuted in view of the fact he refused to kill the men, refused to march them through town. All he did was tell what had been ordered, so you recommended that Seiler's be commuted?

Judge VAN RODEN. That is correct.

Senator McCARTHY. Am I correct that the ultimate result was that Seiler's death sentence was confirmed? The captain, however, who was directly actively responsible for the death of American fliers, seven of them, his sentence was commuted to life imprisonment?

Judge VAN RODEN. That is not entirely accurate. The story is this:

I have just told you what the sentences were. General Clay confirmed Ackerman's, that is the mayor, a man named Schmidt, and Seiler. As far as Goebbel is concerned, he commuted that to life imprisonment.

We made a recommendation that Seiler, the only one in that case, be commuted to life imprisonment. No, I believe that was two and a half years in that case.

I received a letter from an officer over there—I will not mention his name because it was a personal letter—who is on duty in that section in Munich, giving me a list of what General Clay had actually done, and on that list he sent me, which is not official, I find that General Clay has not followed our recommendations, but has recommended the death penalty. Whether Seiler has been hung yet or not, I do not know.

Senator McCARTHY. Mr. Chairman, the reason I brought this out is that it seems to follow the same pattern in the Malmedy case. The top man here, the naval captain Goebbel, who was directly responsible for setting in motion the machinery that resulted in the death of

seven American boys, his sentence, because of high rank, or something or other, he gets life in prison.

The major who has refused to carry out the order on two different occasions, refused to kill the Americans, refused to march them through the town so the civilians could kill them, for some unknown reason his death sentence is confirmed.

We find the same thing in the Malmedy case. We find that the privates, the privates who carried out the order are getting death and life imprisonment. The generals who allegedly made the order, who said, "We want these American boys killed," they are getting off with a lighter sentence than the 16- or 17-year-old kids who carried out the order.

It seems to be one of those fantastic things, and I think it is part of the case that you and I heartily agree on, Senator. Am I right?

Judge VAN RODEN. I do not agree with that entirely, because as I recall in the Malmedy case Colonel Peiper was given a death sentence. He was a superior officer, as I remember.

Senator McCARTHY. There were three generals who were tried.

Judge VAN RODEN. We did not examine their records.

Senator McCARTHY. Three generals who were tried got lighter sentences than any of the privates. In other words, the generals who issued the order got a lighter sentence than the private who followed out the order, and that is the reason I wanted to have you give us this other case to show that that apparently is the whole pattern in that area.

If your rank is great enough, you did not get the same punishment as the private who followed out the order. That is all on that point, Senator.

Senator HUNT. Judge Van Roden, this morning, if my memory serves me correctly, you testified or made a point of the fact that Lieutenant Perl, I believe it was, appeared before the Raymond committee.

Judge VAN RODEN. That is what I understand; yes, sir.

Senator HUNT. And had testimony directly that these were tough cases to crack and that unusual methods had to be used to develop the testimony.

Judge VAN RODEN. That is the substance of what we saw.

Senator HUNT. Well, it develops, Judge, that Lieutenant Perl did not appear before them, but he did give them an affidavit. The general tenor of that affidavit, of the testimony was it was a tough case to crack, but that stratagems and things of that type had to be employed.

Now, I am wondering if you wanted to clear the record or if you still say, as you remember it, Perl did appear, or did you just have his—

Judge VAN RODEN. As I remember it—maybe I am wrong—I read several pages of testimony before this commission. Colonel Raymond would know about that. I am certain it was Perl.

Senator HUNT. Colonel Raymond, would you mind telling us did Lieutenant Perl appear before the committee?

Colonel RAYMOND. No, sir. Lieutenant Perl I have never seen. He did not appear before us. I think the Judge is mistaken. I do not know what testimony he saw, but it was not Perl's testimony, anyway.

We had an affidavit from Perl, but that affidavit was not received until after your commission, Judge, had left the theater.

Judge VAN RODEN. Well, I read pages of testimony given by some investigators. I thought Perl was one of them.

Colonel RAYMOND. You may have read Perl's testimony at the trial.

Judge VAN RODEN. No, I am referring to what Dr. Carl Fredericks told me when he and you and Colonel Harbaugh were having this investigation while we were over there, several pages of typewritten notes which Colonel Simpson has a copy of. If it was not Perl, it was somebody else, Colonel Raymond.

Colonel RAYMOND. That is quite possible.

Judge VAN RODEN. Who were the investigators you examined?

Colonel RAYMOND. Kirschbaum, Thon, Steiner, who was an interpreter, I believe, Jacobs, who was an interpreter, and other people connected with the case, but not directly.

Judge VAN RODEN. The reason I recall it, gentleman, is this: Dr. Fredericks told me at breakfast time one morning that as a result of what you gentlemen had been talking to him about, that he was surprised that Colonel Ellis, knowing Perl's background, let Lieutenant Perl do the work that he did. He thought Colonel Ellis had made a mistake in picking Lieutenant Perl for the job.

Now that, of course, is just an expression of Dr. Fredericks' opinion, which is not official, but it is certainly my impression that these notes I read included Perl's testimony. If I am wrong, you should know more than I do.

Colonel RAYMOND. Well, the record is here.

Senator MCCARTHY. You did have Perl's affidavit, did you not?

Colonel RAYMOND. Perl's affidavit came in in January of this year, if I am not mistaken, December of last year or January of this year.

Senator HUNT. The only discrepancy seems to be then that Lieutenant Perl did not appear personally.

Judge VAN RODEN. Then my recollection certainly is faulty, but that is my honest recollection, gentlemen, that we read what he or some investigators told you—

Colonel RAYMOND. We have testimony, of course, that Perl had been one of the interrogators and so forth, but he did not appear before us. I have never seen the gentleman.

Judge VAN RODEN. Then I am mistaken, but I certainly got that impression. It is still hard for me to believe.

Senator HUNT. Judge Van Roden, I have here before me a magazine known as the Progressive, I believe it is called.

Judge VAN RODEN. I have seen that.

Senator HUNT. Which carries, I presume, a written article by you, at least it accredits the article to you, and that makes some rather serious, very serious and direct charges, and I would like to ask you some questions with reference to the source of your information for making those charges.

Judge VAN RODEN. Before you do so, Senator, I want this to be made very definitely of record. I did not write that article.

I had made a talk at a Rotary Club meeting in our county and a gentleman who was there took some notes on the talk, and I understand that is supposed to be a condensation of the things, some of the things that I said at that Rotary Club gathering.

The gentleman who actually did write that article, actually is the author of it, telephoned to me that it was to have a byline. I did not know what a byline was, believe it or not, gentlemen.

Then I was startled by receiving a copy of that as the author of that article. I am not the author of that article.

Senator HUNT. Let me ask you, Judge, after having read the article, would you like to say that the statements in there are statements made by you, or are they incorrect statements attributed to you?

Judge VAN RODEN. Well, some are correct and some are not correct.

Senator HUNT. Judge, in your report of January 6, 1949, which you signed along with Colonel Simpson and Col. Charles W. Lawrence, this paragraph appears:

There was no general or systematic use of improper methods to secure prosecution evidence for the use at the trials.

Now, does that statement reflect your position as a member of the board?

Judge VAN RODEN. I would say so as stated therein.

Senator HUNT. That certainly is in direct conflict. Judge, to my way of thinking, with the statements made in this article, and perhaps I should get specific and ask you just which statements in this article you do say that you made at this address, and which you did not make, because you could not make those statements in the article and at the same time sign this report with the statement in there, because they are entirely incompatible.

Judge, might I ask you on other occasions before other clubs in substance have your remarks been practically the same as in this article in the Progressive?

Judge VAN RODEN. I have said "No, sir." I did not write that article in the Progressive. Some of the things that are there I have said. Some of the things that are there I did not say at any time.

Senator HUNT. Well, I am glad to know, Judge, and for the record I think it should be noted, that you did not write this article.

Judge VAN RODEN. That is correct.

Senator HUNT. May I ask you, Judge, in your investigation of these cases did you talk to any of the Malmedy prisoners yourself?

Judge VAN RODEN. No, sir.

Senator HUNT. Did you interview any of the administrative or especially any of the medical personnel that were stationed there at Schwabisch Hall while the Malmedy prisoners were there?

Judge VAN RODEN. No, sir.

Senator HUNT. Would you mind telling us, if you know, why they were not questioned?

Judge VAN RODEN. I do not know as I can tell you except that we had available to us, as I have said before, all of these records. We have had reports of different people who were there. We had the benefit of the records of trial.

We had the petitions, and this Raymond report, if I can call it that, and we interviewed people who came there to see us, who were listed in this report that we have, in one of these tabs that we have on our report, and we just did not interview any other person than what we saw here.

Our time was full up as it was. We only had 6 weeks to do all this work in. We did the best we could in that length of time.

Senator HUNT. Let me ask you, Judge, did those who were interviewed make known to you their desire to testify, or did you request that they appear and testify?

Judge VAN RODEN. No; I think they came both ways. Many of them heard about us being there. It appeared in the Stars and Stripes, and I think other papers in that section of Germany, and most of the people who came to see us I would say came voluntarily.

They are listed here. They were lawyers. They were friends. They were clergy and other persons who I mentioned this morning.

I say most of them came voluntarily, having heard about our being there. We at the same time requested certain people to appear before us including Colonel Rosenfeld, the law member of the court that tried the Malmedy case; he was still there on duty, and some lieutenant—I have forgotten his name. He is rather a short and stout little fellow. I cannot remember his name.

We requested him to be there, and we requested, I think, somebody who had formerly been a major, now a civilian lawyer over there as a civilian lawyer in Munich, to visit us, and I would say we requested several people, but most of them came voluntarily.

Senator HUNT. Did you think it was necessary, or did you think of it at all that these stories such as having teeth knocked out during interrogations, broken jaws, having injury to the testicles of the men, did you think it was necessary to call in any competent medical authority at that time and make examinations with reference to X-rays and examination of the mouth and things of that kind?

Judge VAN RODEN. That was not for us. We were there to find out whether these persons received fair trials and whether we believed that these convictions were proper and that the sentences of death should be executed.

We heard this evidence here that I have told you about. We read the records of trial, the records that I have told you about, and that convinced us that these statements were secured in everything but a voluntary way and method.

Senator HUNT. In this voluntary way or method, Judge, as these various people appeared before you, did they give specific dates, definite names, and outline each particular situation, or were they general in their statements?

Judge VAN RODEN. Well, I do not remember. I think some of them gave some names. I am sure they must have given the names. We did not keep any record of them.

Some of them were general. I think that is the best answer I can give you. Some were general and some were specifically mentioned.

As I recall it one group came there, I think one man was a German Lutheran clergyman, as I remember it. He was a chaplain. He called himself that, at the prison where these men were, and I think he had with him a group of some other people. I have forgotten who they were.

I think it should be in our list of persons who we interviewed, and he gave us quite considerable detail of what he had seen in the prison and what the persons there had told him, and we interviewed him at some length. I think he spent several hours.

Senator HUNT. Did you see any certain person with any physical marks on him whatsoever?

Judge VAN RODEN. We saw none of the defendants, sir; none of the accused.

Senator HUNT. Now, when the testimony was presented to you of the improper actions of these interrogators, did you ask the interro-

gators to come before you and defend themselves or give their side of the situation?

Judge VAN RODEN. No, sir. There were not very many there. We did not know whether they were there or whether they were not.

Gordon Simpson felt that there was not any point. We should not see them. We therefore did not see them.

Senator HUNT. Judge, would it be necessary or would you say that none of the things which you think happened you know of your own knowledge to have happened?

Judge VAN RODEN. Will you repeat that again?

Senator HUNT. Of your own knowledge do you know any of the alleged atrocities here did happen?

Judge VAN RODEN. Of course not, I was not there until July of 1948.

Senator HUNT. Do you think, Judge, that in that intervening time and after the convictions, that these stories of brutal treatment could have been manufactured in order to prevent the execution of the convicts?

Judge VAN RODEN. Not when the investigators themselves made their statements as Colonel Raymond's board has indicated, and filed affidavits that they had actually done these things. They certainly could not manufacture them.

We were convinced when the investigators themselves made these statements that we had access to what I have just described, that certainly could not be manufactured by anybody but themselves.

Senator HUNT. Well, now, with reference to Lieutenant Perl, it being claimed that he admitted to the court that their persuasive methods, so to speak, included various expedencies including some violence, is there any place in the record of the trial where Lieutenant Perl is recorded as having made such a statement?

Judge VAN RODEN. I think you will find something similar to that. Do you have the record of trial in the Malmedy case? That was quite a voluminous record, as you know.

As I recall it, at the start of the trial—whether it was to disarm the defense or not, I am not concerned with; I have no opinion to express about it, but the record shows that at the commencement of the trial the prosecutor made a statement to the court—you have it here—that they wanted the court to know that they would have to rely to a great extent, I believe, or maybe principally upon these pretrial extrajudicial affidavits, and they had to use some of these methods to get these statements. The court should know about this.

That is in the record of trial itself, as I recall it.

Senator HUNT. Now, do you think the court took that statement into consideration in their deliberations, in their findings?

Judge VAN RODEN. Took what into consideration, Senator?

Senator HUNT. The statement that you have just made that was given by the prosecuting attorney when the trial opened.

Judge VAN RODEN. I have no way of knowing what the court did except the court found them guilty. The court seemed to find most of them guilty. Why they found them guilty is beyond me. I do not know.

I cannot delve into their minds and know what they were thinking about. They had this evidence before them chiefly in the form of these affidavits and pretrial statements.

Senator HUNT. But the court was aware of the situation as the trial got under way?

Judge VAN RODEN. Apparently they were. Yes, of course. The court received these papers knowing they were secured that way.

Senator HUNT. Judge, from your review of these cases, would you care to comment on what you think of the competency of the court? Was the court made up of men of capacity? Were they qualified members of the Court?

Judge VAN RODEN. You mean qualified as to experience and legal training?

Senator HUNT. And ability. Just generally speaking, do you think they were men capable of conducting such trials?

Judge VAN RODEN. Well, frankly I do not know. I only met two members of the court. I met Colonel Rosenfeld who was the law member when he came to visit us, and we had the interview with him in Munich last summer, and I think General Dalby was of the court, was he not? I met General Dalby in the summer of 1946, and these trials had taken place.

I so happened I was law member of a court in which he was president and we tried that WAC Captain Durant in the jewel case, and I met General Dalby in that connection then.

I will say he was a competent combat general in my opinion. What competence he had as to legal training, experience, is very little. That is all I know about the membership of the court.

Senator HUNT. Do you have any reason to believe there were incompetent members of the court?

Judge VAN RODEN. How can I tell, sir, except the results? Anybody can draw a conclusion as to the results. I do not know.

Senator HUNT. You could not judge after reviewing the records as you have in great detail whether the court was competent?

Judge VAN RODEN. I am afraid your question is a little obscure. I do not understand your question.

Senator HUNT. What I am trying to ask you, Judge, is do you think the members of the court were qualified to be members of the court?

Now you can answer it yes or no. You can qualify it or you can say you do not want to answer. I do not care what your answer is.

Judge VAN RODEN. I don't object to answering if I know, but I say I don't know. I have no means of knowing what their respective qualifications were.

I would say Colonel Rosenfeld impressed us as being a very able attorney. He told us he comes from Mount Holly in New Jersey and in civilian life was a member of the bar there. He impressed all three of us, including myself, as being intelligent and alert, and very capable, and I would say he would be in my opinion a very able lawyer.

Now he is the only one whom I can express an opinion about. The rest of them I do not know one way or the other about them.

Senator HUNT. Judge, let me ask you again, if I may, a question which I think I have asked you heretofore. That has to do with those men who prosecuted the case and the interrogators against whom these charges are made.

In your capacity in reviewing these cases, do you feel you did or did not have an obligation to give those gentlemen their day in court

before your reviewing board? Why did you not ask them to come in and testify?

Judge VAN RODEN. Well, Senator, we were giving nobody any day in court. We were not there for that purpose.

The orders of the Secretary of the Army were we were to investigate the trials themselves, the records of trials themselves and those facts surrounding the records of trial to ascertain, as I have said several times, whether these sentences of death were warranted by the evidence in all respects, and the way it was secured.

Senator HUNT. Well, Judge, if you heard just one side of a case, your conclusions might be somewhat prejudiced, might they not?

Judge VAN RODEN. Senator, if there was any dispute about these facts that we heard that these interrogators behaved in that way, that is true, but there apparently was no denial of the facts that they used violence. They had mock trials. They told us that.

It is a known fact they had mock trials, and if they did not have these mock trials it would not have produced that result because they admitted they had these mock trials.

Senator HUNT. There is no difference in your thinking and mine with reference to the mock trials.

Judge VAN RODEN. Yes, sir.

Senator HUNT. That has been freely admitted, but as I have listened to these hearings so far, Judge, I have not yet heard any witness say that he observed a single person having some of these cruelties of which you speak enacted upon him.

Judge VAN RODEN. Of course, we were not trying the case over there. These accusations that Colonel Everett made in his petition for writ of habeas corpus in the United States Supreme Court were very challenging.

I think that is putting it very mildly, and that is the reason the Secretary sent us over there, to see whether there was a merit in these accusations that he had made, and we went over there.

I have described in detail, I believe, this morning what we found and how we found it. We made our report to the Secretary, and that is all we were supposed to do. We were giving nobody trials. We were not trying the accused. We did not interview them. We were not trying the investigators, the interrogators or the interpreters.

We were not trying them, but the records that we found disclosed, may I say, in a very small percentage—that is why we have this paragraph in our report. "There was no general or systematic use of improper methods," because out of 139 cases of defendants that we examined, only a very small percentage, shall I say, only 29 of those did we recommend any commutation of sentences of death, and that is why we said there was no general systematic use of improper methods throughout all these cases, but in 29 cases—I have no ulterior motive except to give you the facts. I have nothing to gain or lose by this except criticism, favorable or otherwise.

We have tried to give you the information that we found had taken place in 29 cases, and recommended commutation so that the matter could be further investigated, and if appropriate and proper and illegal, to have a new trial. That is all our job was. That is all I am saying to you now, sir.

Senator HUNT. Then, Judge, do you subscribe to this statement: Your findings were based not on any personal contracts, not on any

personal observations with the prisoners, and further than the men who now stand accused before the American public of committing these atrocities were not given an opportunity to defend themselves.

Judge VAN RODEN. That is a double-barreled question. The answer to the first part of that question I would say is "Yes," we did not interview the defendants. We did not interview the interrogators.

We have told the Secretary of the Army what we found from the record, and it seems to me, if I can be bold enough and with due respect and suggest it to this committee, you have the equal opportunity of having the investigators here and probably are more of an official body to ascertain whether these things are so or not. They did not deny them, as far as I understand, unless they have done so in the public press.

We were not engaged in any trial over there of anyone. We made our investigation. The sources that we had to use, I say they were limited to a certain degree, but we found the evidence in these 29 cases was of so doubtful a nature and these things which had been charged, many of which I have described to you, they warranted withholding execution of these 29 men.

I am doing the best I can to give you a complete answer. I am not trying to evade it or avoid it.

Senator HUNT. Well, I am trying, Judge, for the benefit of the record, to establish the fact that your findings primarily, using a lay term, came to you second-hand, not from the parties definitely and personally involved.

Judge VAN RODEN. Of course not. We did not see any of the defendants. I repeated that many times. We did not see the accused and did not see the interrogators.

Senator HUNT. Do you have any questions?

Senator McCARTHY. Yes.

Judge, I have a few questions. It has been developed here that neither the Army board that made an investigation, nor your board—and I realize that your board was not expected to and did not have the time to interrogate all of these defendants. You had nothing to do with any of those except those sentences of death.

In view of the fact that neither the Army board, nor any other board has ever gotten down to the point of investigating the details of the physical force used. Do you not think it might be a good idea if some board would perform that function now?

Judge VAN RODEN. My answer to that is "Yes," and my answer may be further amplified by saying I think, I am sure it was the impression all three of us had, Colonel Simpson, Colonel Lawrence, and myself, that when we made this report there would be an investigation made to ascertain the extent and truth of these affirmations that we made as the result of our investigation.

Who would be the agency to do it, I do not know, but some appropriate agency I am sure we thought would take up this matter upon our recommendation and find out the extent of it and how much was true and how much was hearsay and how much was reliable and how much was unreliable.

Senator McCARTHY. In other words, your committee felt its function was to go to the point of determining whether or not those men should be executed or whether they should be held up.

Where there is doubt in a case it should be held up and then there should be the type of investigation that the Senator from Wyoming is questioning you about now.

Judge VAN RODEN. Yes, sir; because when we got over there some 150 were actually hung.

Senator McCARTHY. Judge, will you answer this question: You have had some contact with Colonel Rosenfeld, I gather?

Judge VAN RODEN. To the extent I told you. We interviewed him in our office.

Senator McCARTHY. Do you think that he felt friendly or unfriendly toward the German race as a whole?

Judge VAN RODEN. That is a difficult question for me.

Senator McCARTHY. Did he have an honest, fair judicial attitude toward the German people? If you were a German, would you feel that you would be willing to have a matter of life and death decided by this man Rosenfeld?

Judge VAN RODEN. I could not answer that question that way, Senator.

Senator HUNT. We will recess at this time until 2 p. m. tomorrow afternoon.

(Whereupon, at 3:40 p. m., the hearing was adjourned to reconvene on Thursday, May 5, 1949, at 2 p. m.)

MALMEDY MASSACRE INVESTIGATION

THURSDAY, MAY 5, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2:15 p. m., in room 212 Senate Office Building, Senator Lester C. Hunt, presiding. Present: Senators Hunt (presiding) and Baldwin.

Also present: Senator Joseph R. McCarthy; Colonel Ellis; Colonel Raymond; Mr. Finucane; and Mr. J. M. Chambers of the committee staff.

Senator HUNT. The hearing will come to order.

This may be off the record.

(Discussion was had outside the record.)

Mr. CHAMBERS. In the case of the seven flies referred to yesterday by Senator McCarthy, Burgomaster Akkermann was sentenced to death, and that was approved, and he was executed. There were several other people executed. I am going to read them off: Albrecht, a private sentenced to 6 years, and sentence approved for 6 years. Geyer, a lance corporal, sentenced to 4 years; sentence approved. Goebell, commander, sentenced to death; commuted to life. Heinemann, no rank, sentenced to 18 years, was reduced to 10 years. Krolikovski, sentenced to life; sentence approved. Mammega, sentenced to 20 years; sentence approved. Three defendants, Meyer, Gerhards, and Klass were acquitted. Pointer, an acting corporal, sentenced to 5 years; sentence approved. Chief of Police Rommel, sentenced to 2 years, and it was approved. Technical Sergeant Smith, sentenced to death confirmed, executed. Jacob Seiler, first lieutenant, sentenced to death; sentence commuted to life on December 27, 1948. Carl Weber, first lieutenant, 25 years; sentence approved. Wentzel, a naval lieutenant, death; sentence approved, executed in December. Witzke, private, first-class, sentence 11 years; sentence approved.

This was the trial of the *United States v. Kirk Goebell*.

Senator McCARTHY. Would you give me Lieutenant Seiler's sentence?

Mr. CHAMBERS. Jacob Seiler sentenced to death in November 1947; commuted to life.

Senator McCARTHY. And Goebell?

Mr. CHAMBERS. Sentenced to death; commuted to life.

These are not Malmedy cases, Mr. Chairman.

Senator McCARTHY. Mr. Chairman, the thing I think we should have cleared up then is under what theory of the law, what theory of justice, the naval captain who was directly responsible for the death of these seven men by beating, the most brutal type of death you

could find, under what theory of the law he would get the same sentence as Lieutenant Seiler who apparently opposed the actions of the naval captain at every step.

I would like to read into the record this, from the Simpson report.

Senator BALDWIN. May I say this, Senator: The only authority that this committee has as a subcommittee of the Armed Services Committee is to investigate the Malmedy prosecution and trial. We have not any direct authority to go outside of the record in an examination of all of these criminal trials.

Now, as I pointed out the other day, I said that we would confer among ourselves as a committee and would take it up with the main committee at the first opportunity that was offered to determine how much further this committee might want us to go into it; but I do not think that we have, under our present instructions, authority to go into a review of all of these criminal sentences.

I mean our job in the first place was not to sit as a court of appeals. That was distinctly understood when the main committee authorized us. We will take it up with the main committee and have the committee determine whether or not it wants to make an investigation of all of these war trials. Maybe that is desirable, but all we have got to do—and that certainly is a big job in and of itself—is to take action with reference to the Malmedy matter. That is all the instruction that we have.

Senator McCARTHY. Mr. Chairman, I do not want to press this unduly, but I believe, as a Senator, we not only have the right but the duty to check into anything that comes to our attention during the investigation of the Malmedy case.

I believe we should ask for an explanation of this case so you can intelligently recommend to the Armed Services Committee either that you should go forward further into the matter or that you should not.

Now, we have an unusual situation here. If I may read this one paragraph to show you what I have in mind, I am sure you will agree with me in principle, whether or not you do agree we should go into it. [Reading:]

The deputy judge advocate for the war crimes recommended the death sentence be commuted to life imprisonment and that the report of the War Crimes Board of Review No. 1 dated August 19, 1948, recommended that the sentence be commuted to confinement for 2 years and 6 months commencing February 6, 1946.

So that the men on the scene recommended a far different sentence for the junior officer who said, "This is a violation of all the rules of modern warfare. We shall not do it"—a different sentence from the naval captain who said, "Kill them; we do not care. We are going to arrange to have the civilians kill these boys."

It seems unusual to me that General Clay would disregard the recommendation of the deputy judge advocate of the review board, the Army Review Board of the Simpson committee, and give the junior officer who said, "No, we will not do that; you cannot kill prisoners of war; it is illegal"—give him the same sentence as the man who said, "We will arrange to have them killed."

Now, I assume that General Clay, as busy as he is with all his various problems, some of which he has certainly done an excellent job on in Germany, most likely he personally knows nothing whatso-

ever about this case. Undoubtedly, he has delegated this to someone else.

I do not think, Mr. Chairman, that you are going beyond your job given to you when you ask General Clay to explain this, so this committee will know why they are following this procedure. It does shed some light on the balance of the war-crime trials.

I think it will shed some light upon the type of review we have got in the Malmedy case. If there is a review so inaccurate and, I think you will agree, so unintelligent to arrive at this conclusion, we should know why, we should know who is doing it, we should know whether or not the same man is reviewing the Malmedy cases.

If the chairman of this committee does not think that he should do that, certainly someone should do it. I believe you will agree with me on that, I assume you will, that someone should find out from General Clay as to the why of this. Perhaps, you would call it to the attention of the chairman of the Armed Services Committee, Mr. Tydings. Certainly, he will not be going beyond his functions.

Senator BALDWIN. What I shall say to the chairman of the Armed Services Committee, if the other two members of the subcommittee are agreeable to it, is that in the investigation of this Malmedy instance we ran into several extraneous matters that apparently merited some investigation, and "Do we have the authority to go ahead in those particular cases?"

I think that is the most that we can do, but we have got a large number of witnesses on the Malmedy thing. We have got a man here tomorrow who came from Texas. Judge Simpson came up from Texas, and I would like to inconvenience them as little as we can, although they have manifested their willingness to cooperate to the full extent, but I think that we ought to confine our investigation to the purview of this particular investigation and have some order to the procedure, and then when these extraneous cases arise that merit being brought to the attention of the Armed Service Committee, we can do that without going into great detail about them now.

Senator McCARTHY. Just so that I will not be surprising the chairman of this committee, so he will be fully apprised of what I plan on doing, unless the chairman intends to call upon General Clay for an explanation, I will feel it is my duty to take this up on the floor of the Senate, explain the facts surrounding this case and ask publicly that General Clay explain why this was done, and, also, at that time I think that I am in duty bound to ask for an explanation for the Von Weizsaeker case. As the chairman knows, Von Weizsaeker was our prime listening post in Britain from 1936. He kept the British informed of negotiations—

Senator BALDWIN. That is the case we went into in some detail.

Senator McCARTHY. He kept the Bishop of Norway informed of plans for the invasion of Norway. In other words, he was our No. 1 spy.

The court said "in being that spy you got too friendly with these Nazis. Therefore, we are going to give you 7 years to purify you."

I think I am duty bound to take that up on the floor of the Senate also and call for an explanation of that.

Senator BALDWIN. Well, may I say to the Senator that I personally objected to the treatment that was given Ilsa Koch. I thought when

the Army commuted her sentence it made a grave mistake. However, that was a military matter within the military authority, and my recollection is, I was advised at that time that that was a matter that had been closed. It had been finally determined and there was nothing further that the Army purported to do about it.

Whether or not we should go into the question of the whys and wherefores of the Army doing that particular thing, that is another subject, too, but I would like, as chairman of this committee, in order to keep this thing on the line that we originally started and within the purview of our authorization, to confine the attention now of the hearings to the Malmedy cases because if we go into a great many extraneous cases we are going to delay this thing and confuse the record to the extent where it will not be as meaningful as it ought to be to get any real result.

Now, as I recall it, this case that you have just referred to was not a Malmedy matter at all. It was another criminal trial by another tribunal than those who tried the Malmedy cases.

Senator McCARTHY. Mr. Chairman, at the time that our Expenditures Committee started looking into the Malmedy cases, as you know your Armed Services Committee took the position they alone had jurisdiction in checking anything involving the military government and the Army over in Europe.

Now, we were primarily concerned with the Malmedy case because of the Army report on that, but many of us, on my committee, are also wondering about the entire system of justice over in Germany, and I do think within the fairly near future we would like to know—and I am not speaking with any authorization from the Expenditures Committee; I merely report back to them. I do think we would like to know in the fairly near future whether the Armed Services Committee intends to restrict its investigation solely to the Malmedy case or whether you intend to go into the whole picture over there.

As these other matters come up, to that I pointed out showing we have been following unusual reasoning, I think the American people might want to know the why's and wherefore's. I think General Clay might like to have them called to his attention. I would like to get some explanation from General Clay.

Within the fairly near future, I would like to know whether you intend to restrict your investigation solely to Malmedy or whether you, by this time, feel that there are other things which should be investigated and that the Armed Services Committee should branch out.

I am not asking for an answer to that today at all. I think the chairman agrees that is a reasonable request.

Senator BALDWIN. Well, I think I can say to the Senator that this subcommittee is just as desirous to see some good results come out of this thing as is the Senator from Wisconsin, but, on the other hand, under a direction to go into the Malmedy things, we would hardly be justified in branching out into a very wide study of the thing without direct authorization from the committee itself. As I said, the matter will be presented to the committee.

Senator McCARTHY. I think you are right. I do not think the subcommittee can go beyond what the full committee has instructed it to do.

Senator HUNT. Senator McCarthy, I might call to your attention just for whatever action you want to take, this matter, to be helpful.

We have just mentioned the Von Weizsaeker case. Yesterday in discussing that situation when we opened our hearings you made this remark:

I think this committee should see what type of morons—and I use that term advisedly—are running the military court over there.

Now, I have here the names of the men running the court and their positions in civilian life, and they apparently are three quite outstanding gentlemen, and I thought you might like the opportunity to delete that particular reference from the record.

Senator McCARTHY. I am not going to delete anything that I have said. Everything I have said, I have said advisedly. I only judge the men—I do not know what their names are—by the results.

I think any man who says that the captain, the ranking officer who is responsible for the clubbing to death of seven American boys, any court that says he should get the same punishment as a junior officer who resists that action, points out to the senior officer that it is contrary to all the rules of modern warfare, it should not be done, he will have no part of it, to say that he should get the same punishment, I think describing them as moronic is doing it gently, and I do not have any desire at all to delete it. I thank you very much.

I think if you have names of the men who are responsible for that type of activity, as Senator Baldwin says, this may be beyond the scope of this subcommittee. I hope that the Armed Services Committee as a whole decides to call those men and find out what type of reasoning dictated that action.

If you are referring to the court that sentenced Von Weizsaeker, I think any court that takes our No. 1 spy, the No. 1 man who gave us information, and sentences him to 7 years, admitting that he was the most valuable man we had, but they say that in getting this information in order to be of value to us he had to chum with some of those nasty Nazis, therefore we are going to give him 7 years to purify him, I certainly will not retract any statement that I have to say about that court, the type of reasoning that directed that.

Senator HUNT. At this point in the record insert those names.

(The information above referred to is as follows:)

Re Ernest Von Weizsaeker et al.: (Judgment April 14, 1949, 7 years sentence.)

William C. Christianson, presiding judge, formerly associate justice, Supreme Court of Minnesota (term ended January 6, 1947).

Leon W. Powers, formerly judge, Supreme Court of the State of Iowa; former member Iowa Legislature; general counsel. Farm Credit Administration of Omaha.

Robert F. Maguire, attorney. Oregon; former assistant United States attorney; assistant chief deputy attorney, Oregon; presently master in chancery, United States District Court, Oregon.

Senator HUNT. Is Major Fanton present?

Major FANTON. Yes, sir.

Senator HUNT. Major Fanton, may I ask you to be sworn. Will you hold up your right hand, please?

Do you swear that the testimony you are going to give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge, information, and belief, so help you God?

Major FANTON. I do.

TESTIMONY OF DWIGHT F. FANTON

Senator HUNT. Major Fanton, do you have a prepared statement that you would like to make?

Major FANTON. Yes, sir; I do.

Senator HUNT. All right, will you proceed, please.

In an effort to conserve our time, we will try to let you complete your statement and then we will question you afterward.

Major FANTON. Thank you very much.

I am making a prepared statement due to the fact that there are a great many details to my story and I believe this will be a saving of your time and will expedite the hearing as far as I am concerned.

Senator BALDWIN. Mr. Chairman, inasmuch as Mr. Fanton is a member of the law firm of which I have been a member in Bridgeport, Conn., and that point has been raised in this case, in the interests of complete disinterestedness on my part at this stage of the proceedings, I am going to ask you to conduct them and I am going to withdraw.

Senator MCCARTHY. I might say I think the chairman is absolutely fair, and I think it would be a good idea for him to sit in and watch this.

I might say that he at no time during the course of this proceeding has indicated any desire to shield Major Fanton from rigid examination, rigid cross-examination, and I personally would like very much to see the Senator sit down. I am sure he will not in any way try to protect Mr. Fanton more than any other witnesses that has appeared.

Senator HUNT. We will be pleased to have you remain as an unofficial observer.

Senator BALDWIN. If that is what the Senator desires, I will remain.

Senator HUNT. All right, Major, will you proceed, please?

Major FANTON. I was assigned to the investigation of the so-called Malmedy massacre in June of 1945. The investigation began with an analysis of the War Crimes Branch File 6-24 in an effort to secure all possible preliminary information with respect to the details of this crime and the identity of the units of the German Army implicated in it. Military intelligence maps and reports issued at the time this tragedy occurred were also examined and analyzed to this end.

The War Crimes Branch File 6-24 should be secured by this committee from the Department of the Army and examined if at all possible. It is replete with photographs taken at the scene of the crime immediately after the recapture of the area by our Army and contains the statements of survivors and captured prisoners of war secured at the time by the inspector general of the First Army and members of his staff. It brings home to anyone reading it the extreme brutality of this crime.

This preliminary work resulted in a determination that the Malmedy massacre had in all probability been perpetrated by units of the First SS Panzer Regiment Leibstandarte Adolf Hitler. The Army newspaper, Stars and Stripes, came out with a story in August 1945 about Col. Joachim Peiper, the commanding officer of this regiment, which indicated that he was being held in the military intelligence interrogation center at Freising, Germany. I interrogated Colonel Peiper at Freising on August 25 and 26, 1945.

Peiper gave me a great deal of valuable information about the composition of his march column at the scene of the crime. He also verified the identity of certain of his officers and men who had been mentioned by prisoners of war interrogated by the inspector general and supplied information which proved useful in apprehending them. He admitted knowledge of the Malmedy massacre and stated that his division commander, General Mohnke, had ordered him to investigate this crime which the American Government had reported to the German Government through Geneva. His investigation proved negative.

Following this interrogation a team of interrogator examiners under my command screened prisoners of war at various enclosures throughout Germany and Austria for further information with respect to persons and units implicated in this crime. During this time individual suspects were also being located in various parts of Germany, Austria, France, England, and this country.

While many key suspects were apprehended as a result of these activities, it soon became apparent that we could not properly interrogate suspects until we had facilities where they could be kept from communicating with each other before and after their interrogation. It was at this point that we began to plan for the detailed interrogation of the members of units suspected of being implicated in this crime.

The first step was the collection of all members of the First SS Panzer Regiment in one enclosure. Accordingly theater headquarters sent out a telegraphic order commanding all subordinate commands and requesting the Allied Governments to evacuate all members of this regiment to the war crimes enclosure near Ludwigsburg, Germany, known as I. C. No. 78. Approximately a thousand prisoners of war were evacuated in accordance with this TWX.

At I. C. No. 78 the prisoners formed themselves into their old units with their former officers in command with the exception of Peiper, who as the principal suspect was kept under continual individual guard. Conditions were provided insofar as possible which would conduce to the free exchange of information and encourage reminiscing on the part of the prisoners.

Interrogators were instructed to conduct a most extensive examination of prisoners who were not members of implicated units or who were clearly not implicated in the crimes being investigated in order to find out what was transpiring within the enclosure. Many of them divulged valuable information with respect to admissions made by individuals who were implicated in the crimes and indicated the nature of rumors circulating within the enclosure and the individuals most active in instigating collusion with respect to false accounts of the facts.

The remaining prisoners were given a quick screening designed to size them up as individuals and further verify their identification as to name, rank, duty, assignment, and organization. The interrogators were instructed to limit the interrogations to testing procedures. As a result of these testing procedures it quickly developed that many of the subjects had collaborated to devise certain types of false stories concerning the details of the crime, by which they hoped to avoid implication.

There were two or three types of these stories. The subjects either experienced vehicular break-downs which prevented them from reaching the scene of the crime until after it was committed, or were pro-

ceeding in the extreme point of the column and passed beyond the scene before the crime occurred. The order which occasioned the shooting of the American prisoners of war when admitted was always given by an officer who had been killed subsequently. Admissions with respect to this collusion were later secured in the course of the detailed interrogation of these witnesses and suspects.

While this screening was in progress, a large prison in Schwabisch Hall, Germany, officially designated as Internee Prison No. 2, was taken over to serve as an interrogation center for the detailed interrogation of the witnesses and suspects involved in this case.

Cases of mistaken identity and prisoners who would not be profitable subjects for interrogation were evacuated from I. C. No. 78 to Internee Prison No. 1 at Ludwigsburg, Germany. All the other prisoners were evacuated to the interrogation center at Schwabisch Hall in accordance with a carefully devised plan. There were over 400 of these prisoners evacuated to the interrogation center.

This evacuation proceeded in accordance with the provisions of S. O. P. No. 1, a certified copy of which is attached hereto. The prisoners were closely guarded during the evacuation and strictest security was maintained in order to prevent escape and communication between the evacuees. The movement was planned and coordinated to minimize the knowledge of the prisoners with respect to those being evacuated.

The prisoners were assigned a priority in accordance with their importance as witnesses or suspects. Prisoners who were in the highest priority were assigned to cells at I. P. No. 2 in solitary confinement—used in popular sense to mean close confinement.

I would like to explain there, Mr. Chairman, that the term "solitary confinement" as I use it here does not impute punishment. What it really means in the technical sense is close confinement, and that is where this footnote comes into this statement.

Where more than one prisoner was assigned to a cell, the assignment was planned in such a way that prisoners of different priorities and belonging to different units occupied the same cell.

Insofar as possible, officers were assigned cells in solitary confinement.

Wherever I have used that throughout this statement, it means "confinement."

Those occupying a cell together were usually of the same grade.

At the interrogation center I. P. No. 2—

Here I will have to deviate from my statement because as I understand it that S. O. P. has already been introduced in evidence. I believe Mr. Chambers introduced that in evidence. Am I correct in that regard?

MR. CHAMBERS. I am sorry. What was the question?

Major FANTON. Excuse me just a minute. I will get the copy of the record that you made available to me here and see if I can tell you the exact page, because I think it should be identified. This was the transcript for April 29, Colonel Chambers. It is page 456.

MR. CHAMBERS. Yes.

Major FANTON. Is that S. O. P. No. 2? You said:

I would like to place in the record a copy of the Standard Operating Procedures insofar as medical health is concerned.

Mr. CHAMBERS. Paragraph 8 only of S. O. P. No. 2 is here. The preceding paragraph says:

This is part of S. O. P. No. 2.

Major FANTON. I see. Do you have that S. O. P. in your possession? You have my only copy, I am afraid.

Mr. CHAMBERS. I think I have it. I will check our records and see.

Major FANTON. Fine. I would like to have it to attach to this statement.

Every possible precaution was taken to prevent communication between prisoners and to keep them from learning the identity of other inmates of the prison. They were closely guarded by American Army personnel assigned to the Six Hundred and Thirtieth Tank Destroyer Battalion which was the unit responsible for the security of the prison. A set of security and health regulations were printed in German and distributed to all the prisoners. They were at the same time given printed notices telling them that they were being held as war criminal suspects.

Upon receipt of this notice many of the prisoners who did not feel that they were implicated requested an opportunity to be heard. Others in this category asked the guards for paper and pencil. The detailed interrogation of the suspects was postponed until these requests could be granted. Some of these volunteers proved to be very cooperative witnesses. The more intelligent supplied us with many valuable leads and enabled us to reconstruct many important details of the various crimes committed.

The next step in preparation for the detailed interrogation of the witnesses and suspects was to organize the information we had secured through an analysis of the material in W. C. B. File 6-24 and military intelligence maps, the screening operations at I. C. No. 78 and the testimony of these volunteers, so that this information would be readily available to all interrogators. Files were assembled for each unit which might be implicated in these crimes containing the names of the men in the unit, their duty assignments, equipment used by the unit, history of the unit, gossip within the unit and all other information indicating the extent of the unit's implication. Personality index cards were made up on all witnesses and suspects detained in the interrogation center and all persons mentioned by them in their statements. Any information deemed of value in solving these crimes was entered on these cards. These cards and files are considered more in detail in S. O. P. No. 3, a certified copy of which is also attached to this statement.

The detailed interrogation of suspects who were members of implicated units was carefully planned and controlled to insure success. A particular cell block in the interrogation center which was set apart from the rest of the prison was selected for offices and interrogation cells. My office and the interrogation center office adjourned the cells in which the interrogations were actually conducted.

It was realized from the outset that any statements or confessions secured had to be voluntary and that such statements and confessions would be subjected to careful scrutiny by the court trying this case to determine whether or not they were admissible under Anglo-American rules of evidence. The key interrogators were all lawyers who

fully appreciated the importance of employing proper interrogation techniques which would cause the subjects to give truthful and voluntary accounts of what had happened. The other interrogators were carefully briefed so that they entertained a similar awareness of the importance of these considerations.

In order that the interrogations might be properly controlled and coordinated to insure maximum exploitation of the witnesses and suspects in this case, I issued S. O. P. No. 4, a duly certified copy of which is hereto attached. This S. O. P. described in detail the procedures which would be followed in conducting these interrogations. It was discussed with the various interrogators prior to its issuance. It was read and discussed paragraph by paragraph at a conference of all the interrogators after its issuance. I discussed it in detail with interrogators who joined my team later on in the investigation. I constantly supervised interrogations in progress to insure strict compliance with all of its provisions.

Paragraph 4a of this S. O. P. forbidding the use of threats, duress in any form, physical violence or promises of immunity or mitigation of punishment was strictly adhered to by all the interrogators in securing statements and confessions.

The various interrogation techniques used were designed to make the subjects feel that we knew the whole story; that we know what they had done, where, why and in whose presence. They were sold on the idea that they had nothing to lose by telling the truth and that justice would be done only if they did so. They were convinced that this investigation was so searching and thorough that they could not possibly succeed in hiding the truth. We made them believe that the plan for defeating this investigation had completely failed and that since others were talking and telling the truth about the orders that were given and the other details of the various crimes which were committed, they should stand with the others and tell all they knew.

While many of the suspects refused to tell the truth, it was surprising the number who talked freely. Many times suspects were left unattended to write out their preliminary statements and draw illustrative sketches. These statements were long and contained many irrelevancies but were an indication of the voluntary nature of the proceedings. As the interrogations progressed these statements accumulated faster than the translators and reporters could process them.

Each interrogator was assigned an implicated unit so that he would become familiar with all details which might be useful in interrogating the members of that unit. We then proceeded to interrogate those in these units who we felt would be most susceptible to our psychological approach. Most of these first subjects were younger men, privates and lowranking noncoms who had not been with the SS very long and were less well indoctrinated in the traditions and ideology of this infamous organization. There were some of these subjects who persisted in matching wits with the interrogators, but many of them became cooperative witnesses who were able to give us valuable leads.

The interrogation techniques which were used can be developed from an examination of the trial record of this case and the testimony of the interrogators themselves. However, from my knowledge of these techniques, which I believe is considerable, I should like to specifically refute the vicious charges contained in the petition for writ

of habeas corpus filed in the Supreme Court of the United States by Defense Counsel Everett on May 11, 1948. Most of these techniques were discussed with me by the interrogators before being used on particular subjects. I observed the interrogations frequently while they were in progress and witnessed certain important confessions secured through the use of such techniques.

In paragraph 12 of his petition Mr. Everett who will be hereinafter called the petitioner, claimed that the plan of interrogation and techniques used violated the Geneva Convention which prescribed certain rules governing the treatment of prisoners of war. It is rather ironic that such a defense should be invoked on behalf of these criminals who were found guilty of the wanton murder of American prisoners of war, but a consideration of the facts clearly demonstrates that the petitioner's claims in this regard are without substance.

The law is not clear regarding what must be done to change a man's status from that of a prisoner of war to that of a war criminal suspect. I discussed this matter with Colonel Bard, the judge advocate of the Seventh Army, and with the provost marshal of the Seventh Army, under whose jurisdiction these prisoners fell. They both approved the method of handling these prisoners called for by our interrogation plan.

As has been previously stated prisoners detained at the interrogation center were notified before detailed interrogation commenced that they were no longer prisoners of war but were being held as war criminal suspects. It is a certainty that long prior to the issuance of such notice, all those who were members of implicated units knew that they were being held for interrogation in connection with the investigation of the murder of American prisoners of war and Belgian civilians by their units during the Battle of the Bulge. This knowledge was gained from the screening activities which were necessary in order to determine the suspects who should be evacuated for detailed interrogation.

Realizing that they might be called to account for their crimes, several of those directly implicated escaped and attempted to conceal their identity during these screening operations. One of the principal suspects, a man by the name of Briesemeister who was later convicted and sentenced to hang, escaped and was finally apprehended in the Russian sector of Berlin.

It would have been utterly impossible to have investigated this case with any hope of success if the suspects evacuated to the interrogation center had been treated as ordinary prisoners of war. This was demonstrated by our experience over a considerable period of time in screening these suspects at prisoner-of-war enclosures and at I. C. No. 78. However, as indicated by the provisions of S. O. P. No. 2 and S. O. P. No. 4, those detained at this interrogation center were given the best treatment possible under the circumstances and were at no time subject to acts of violence, coercion, or threats in the course of their interrogation.

It was obviously impossible to determine which of the suspects evacuated to the interrogation center should be treated as prisoners of war due to their lack of implication in these crimes. As soon as such a determination could be made, those who were definitely cleared were evacuated to a prisoner-of-war enclosure.

The petitioner gives his version of the so-called mock trials, which have been the subject of so much discussion, in paragraph 13 of the petition. The allegations of this paragraph read like the flights of fancy associated with an Orson Welles dramatization rather than the carefully considered and solemnly sworn-to statements one would expect to find in a petition of this nature addressed to our highest Court.

Although a black cloth was thrown over a table and candles were lit before a crucifix at the taking of the oath in order to convey the impression of a court, the term "mock trial" used by the petitioner to describe these proceedings is a misnomer. There were no formal charges and specifications preferred against the subject. He was not represented by counsel. No sentences were ever pronounced by the three-man "board" or "court" before which the hearing was held.

This "board" or "court" usually consisted of three persons. Officers, enlisted men, or civilians were used. When important subjects were involved, I sat in on the proceedings.

We referred to this interrogation method as "the fast procedure." It was originally designed as a formality to impress the subject with the sanctity of the oath through the use of a ceremony which customarily attended the taking of the oath on the continent. This was true whether sworn testimony was to be taken in court or elsewhere. In this connection some of the interrogators used this ceremony of lighting the candles before the crucifix when they were taking the sworn statements of suspects in routine interrogations.

In this "fast procedure," when a subject was brought in, he was given the oath by the interrogator. It was then explained to him that the sanctity of the oath was of great importance and that he must tell the truth. This was followed by a statement that we knew all the facts of the case; that other prisoners had testified fully regarding them, and that, if justice was to be done, all prisoners implicated had to be given the opportunity of telling their stories under oath. The subject was then advised that this was a fast procedure and that we did not have time to listen to lies. The interrogator would then reconstruct the details leading to his implication in the crime and, having indicated that we knew what he had done and in whose presence, would ask the subject to tell his story. At the first obvious untruth, he would be cut short and dismissed.

When a subject refused to tell the truth and it was plain that he was unimpressed by this ceremony, we returned him to his cell. Further interrogation of such a suspect would be postponed until we could confront him with a witness to his crime or until we had better knowledge of the exact nature of his participation in one of the crimes in question.

If a subject appeared impressed by the ceremony but was afraid to tell the truth, he was usually temporarily assigned to one of the other interrogation cells. After he had had an opportunity to think about what had happened, he would be visited by another interrogator who would talk to him in a friendly fashion and advise him that he might have another chance to testify in a fast procedure but that it was doubtful due to the fact that we were so busy. In some cases the subject would ask for a second hearing, at which time he would tell a different story from that which he had told at the first hearing. A few of these subjects told the truth at their second hearing. Others persisted in lying. These had to be reserved for other techniques.

There was nothing about these "fast procedures" which in any way constituted coercion and intimidation or involved inducements. I am absolutely satisfied as was the court that heard this case that the confessions and statements secured through the use of this technique were in all respects voluntary and truthful.

I wish to refute specifically the claims concerning these proceedings made by the petitioner in paragraph 13 of his petition, as follows:

There was never any beating administered to any of the subjects being interrogated; this "fast procedure" hearing was conducted in a large interrogation cell during the daytime; there was at least one full-sized window which was not in any way covered or obstructed; the cell was fully lighted and never darkened in any manner; there was never any defense counsel or other person who represented himself as such appointed for the subjects being interrogated through the use of this technique; the interrogation was conducted by a single interrogator, although I understand that after my departure two interrogators, one friendly and other other hostile to the subject, occasionally participated in the proceedings; this represented to the subjects as a special procedure; the scene depicted in this paragraph of the petition with respect to the reading of the charges is entirely false; no attempts were made to force confessions from the subjects; witnesses were rarely used in this procedure because they destroyed the effect which was sought; however, when they were used, they were merely used to recite facts which they knew of their own knowledge or facts which they had been able to deduce from the circumstances as related by witnesses; there was no attempt to prove beyond a doubt by falsehoods that the subjects were guilty of many war crimes as claimed in this paragraph of the petition; the actions of the defense attorney in inducing confessions from these subjects and otherwise is entirely false; no death penalties or other sentences were ever passed as a result of these proceedings.

While they achieved outstanding results in one or two cases which I remember, I do not recall more than four or five of these controversial procedures. I am told that they were not used very much after my departure. I believe the number convicted through the use of this technique was small.

Thus even if their use be questioned they were of limited significance. However, the excerpt from Wigmore on Evidence, attached hereto as exhibit A, fully supports the propriety of this method of interrogation.

The petitioner claims in paragraph 18 of his petition that the prisoners were placed in solitary confinement immediately after capture—he means solitary confinement in the technical sense, I believe, from the context of the petition—that they were thus held incommunicado for weeks and months, and that after such periods "stool pigeons" would be put into the cells with them to tell them that they would be let off with light sentences if they signed dictated statements whether true or not. The account then goes on to claim that a few days after the talk with the "stool pigeon" the prisoner would be brought before one of these so-called mock trials with the hope and expectation of a light sentence, such as the "stool pigeon" had described, if he would sign an American prosecution dictated statement.

From my knowledge of these matters, I am certain that the charges made in this paragraph of the petition are entirely untrue. It was

many months after capture, and only after extensive screening, that the more important suspects were evacuated to the interrogation center at Schwabisch Hall, to be held in solitary confinement pending detailed interrogation. Most of the witnesses and suspects detained at Schwabisch Hall occupied cells in groups of two or more, with some of the larger cells accommodating as many as 15 or 20 prisoners. It was only the more important suspects who were held in solitary confinement. In view of the screening operations necessary to determine those who should be evacuated, it is a certainty that all the men convicted in this case knew why they were being held throughout the entire time of their stay at Schwabisch Hall.

As indicated by the provisions of S. O. P. No. 4, "stool pigeons" were sparingly used in connection with the interrogation of difficult subjects. There were only two or three prisoners who were intelligent enough to serve as "stool pigeons." These had to be very carefully briefed to avoid detection since they were usually employed in interrogating the older and more hardened members of the SS. The "stool pigeon" would remain silent for some time after assignment to a particular cell, and he would assume a suspicious and non-communicative mien. His success depended on getting the subject to talk to him and securing his confidence to the extent necessary to enable him to determine the true facts regarding the subject's implication in the crime.

Any such crude use of a "stool pigeon" as related in this paragraph of the petition would have immediately aroused the suspicion of the subject and rendered the "stool pigeon" valueless.

There were only a limited number of "stool pigeons," and they sometimes had to remain for weeks with a subject before they were able to report anything of importance. They could only be used with important suspects. To my knowledge, they were never used in connection with the so-called mock trials which were generally reserved for the interrogation of simpler subjects.

The remaining paragraphs of the petition, insofar as they concern the interrogation techniques used, relate a series of melodramatic episodes which are quite obviously the product of the imagination of desperate men trying to escape the consequences of heinous crimes. These accounts of beatings, threats, inducements, starvation, spiritual deprivation, and a variety of tortures are all untrue. They represent pure fabrication, and I have been told many of these stories have been admitted as such by those responsible for them. Knowing this, the petitioner should have recognized them for what they were and tested them thoroughly before swearing to their truth in this petition.

Repeated reference is made throughout this petition to dictated statements and confessions. There were no dictated statements and confessions in the sense intended by the petitioner.

All statements and confessions were taken in accordance with paragraph 5 of S. O. P. No. 4. They were discussed by the interrogators with the subjects so that all essential details would be included and all irrelevances omitted. Insofar as possible, the language of the subject was used. Every statement or confession was written by the individual giving it.

It was customary for the interrogator to rephrase the subject's language in the interest of an orderly, logical, and grammatical presentation of the facts. However, in several of the confessions and state-

ments which I myself witnessed, the subject would question the use of particular language when he did not feel his thoughts were expressed as he had expressed them when first telling his story. The interrogator and the subject would then discuss the matter until they could agree upon a proper statement of the facts in question.

Before any statement or confession was ever signed, the subject was asked to read it over and make certain that he was satisfied that it represented his true recollection of the facts. The signing of statements and confessions was usually attended with suitable formality, including witnesses and an acknowledgment under oath by the subject that he was signing the statement or confession voluntarily, and that it represented the truth. Every possible precaution was taken to insure that the statements and confessions represented the true recollection of the individuals making them. An examination of the statements and confessions themselves clearly indicates this fact.

In making such sweeping charges as those contained in the petition the petitioner has ignored the well-known fact that there is a very strong urge on the part of a person guilty of a serious crime to unburden himself through confession. The interrogation techniques employed were designed to make it easy for the subjects to satisfy this urge. They were convinced that it was useless to compound their crimes with false testimony and that justice would be done only if they told the truth.

Violence, threats, and inducements would have caused a wall of resistance to rise and would have thwarted the urge to seek relief through a full telling of the truth. Such methods would most certainly have failed.

Instead of a completely successful investigation resulting in the trial and conviction of all those responsible for these crimes, from the commanding general of the Sixth SS. Panzer Army on down, with the exception of a few individuals who were dead or could not be apprehended, there would have been a disgraceful debacle resulting in false and erroneous charges, an insufficiency of evidence to convict those really responsible, and an attempt to sacrifice a few hapless individuals to satisfy the demand for retribution.

It is inconceivable that the libelous charges contained in this petition were laughingly or jokingly admitted by the American prosecution team, as claimed by the petitioner in paragraph 19 of the petition. The claim that responsible Army officers and members of the bar would treat with levity charges that they employed terror tactics and practiced cruelty to force false confessions from innocent victims is so patently incredible as to be false on its face.

While I was not present for the trial of this case, the claims made by the petitioner with respect to this phase of the case are at complete variance with the facts as they have been related to me by reliable informants. I have every reason to believe that these claims are as distorted and untrue as those appearing elsewhere in this petition.

Those charged with the responsibility for trying the perpetrators of these crimes considered this one of the most important war-crimes cases. From what I know of their policies governing the preparation of this case for trial and from what I have learned about what transpired after my departure, I am certain that the accused were given a fair trial and that the petitioner was given every opportunity to

prepare his case and present all possible defenses on behalf of his clients.

Had the many claims contained in this petition not been completely false, the petitioner would have been compelled in the proper exercise of his duties as defense counsel to prove them at the trial through the testimony of competent witnesses, or otherwise. The various interrogators who actually secured the statements and confessions in question took the stand at the time of trial and were examined and cross-examined exhaustively with respect to all pertinent details of most, if not all, the interrogations resulting in the statements and confessions which were introduced in evidence. If there were any truth to the claims of the petitioner, the interrogators should have been required to affirm or deny such claims so that the court could judge their credibility. The trial is where these matters should have been tested. Spreading such sensationalism in the newspapers and indulging in improprieties in a petition of this nature in an effort to appeal to emotionalism rather than reason is not substitute for a timely and proper proofs of the facts.

The attempts of the petitioner to excuse his delinquency in this regard, appearing in paragraphs 19, 25, and 28 of the petition, are most unconvincing. The petitioner admits, in paragraph 28 of the petition, taking full responsibility for—

preventing the remaining defendants from taking the stand in their own behalf and further testifying as to the force, duress, and so-called tricks of the prosecution "because the fear of these prosecutors lingers on."

I have been told that the defendants who did take the stand and testify with respect to these matters were thoroughly discredited. It is clear that the petitioner and the remaining defendants feared, not the "prosecutors," but the truth which they would elicit on cross-examination.

I am confident that a consideration of the facts as established by the record, the statements and confessions themselves, and the testimony of witnesses heard by this committee will effectively give the lie to the false and unfounded claims set forth with such pathos in this petition. Unfortunately those giving these claims currency have been well placed and supposedly responsible individuals, publications, and organizations. It will be most difficult to undo the damage which has already been done.

Senator McCarthy charged at the outset of this investigation that because of my association with the law firm of which Senator Baldwin is a member, this committee was out to "whitewash" the Army. The newspapers made it look as though this were still another investigation of the prosecution. The fact of the matter is, of course, that I asked Senator Baldwin to take action because I was, and remain, highly critical of the manner in which the Army has handled this case since its trial and initial review.

If Senator McCarthy intended his claim of "whitewash" to apply to the investigation and trial of this case, I can only repeat Senator Baldwin's reply. The facts will speak for themselves. We who are testifying for the prosecution do not feel on the defensive. On the contrary we feel that defense counsel Everett, Judge Van Roden and all the others who have been hawking this sensationalism at the expense of their country and the cause of international law and order

should be publicly exposed and made to stand before the peoples of this country and other like-minded nations for proper judgment.

This case was tried 3 years ago. It was promptly reviewed initially. These claims of mistreatment were made during the trial and immediately thereafter. They have grown in enormity as time has passed, culminating in the fantastic accounts contained in the petition which I have heretofore discussed. With the passage of time has also come a series of acquittals and commutations by General Clay, all presumably based on successive reviews of the record in the light of these claims.

The claims themselves have been investigated four different times to my knowledge. None of these investigations was a thorough investigation aimed at hearing all competent testimony on the matters in issue, and none of them was in any way comparable with the investigation being conducted by this committee.

The Simpson Commission heard only the defense. It made no effort to secure the testimony of disinterested witnesses such as American Army personnel assigned to guard the prison, or American medical and dental personnel charged with responsibility for the physical well-being of the prisoners making these claims.

Although the Administration of Justice Review Board requested affidavits from the principal members of the prosecution staff, it likewise neglected the testimony of these disinterested witnesses. This board considered the false affidavit of a German dentist who never treated these prisoners, but neglected to contact American medical and dental personnel who would have given them a correct statement of the facts.

The detailed findings of this board entirely refute most of the claims made by Everett, yet the conclusions set forth in its report are vague and misleading and do not properly reflect these detailed findings.

These claims should have been thoroughly investigated immediately. If they were found true the judgments should have been promptly set aside. If they were found false the review of the case should have been concluded and proper sentences fixed for those whose convictions were sustained.

The prosecution should have been represented when the petition for writ of habeas corpus was argued before the Supreme Court of the United States. Had the Army investigated these charges thoroughly at the time and been in a position to present the facts it is extremely doubtful that Mr. Everett would have had the audacity to file such a petition. If he had done so under these circumstances it is probable that the Court would have been unanimous in rejecting this petition.

If a thorough investigation had been insisted upon by the Army, Judge Van Roden would not have written the completely false account of the use of brutality and other improper methods to extort confessions which appeared in the Progressive and would not have taken the rostrum so many times to shock uniformed audiences with similar recitals. The conduct of this man who as a judge must have known that his charges were based on extravagant allegations unsupported by proof, and who must have known that these charges would be seriously received by all who heard them, is indefensible and should have been denounced long ago. It is a credit to Mr. Gordon Simpson, senior member of the commission on which Judge Van Roden served,

that he realized the importance of refuting these unfounded claims and publicly repudiated Judge Van Roden for making them.

In conclusion, it is difficult to suggest effective action to salvage the situation at this late date. As has already been noted a detailed factual refutation of all these false charges even though given widest publicity will probably be unable to counteract the headlines which have cast a shadow over this case.

In view of the ineffectual investigations upon which many of the acquittals and commutations have undoubtedly been based, and the uncertainty that has characterized the handling of this case by General Clay's headquarters, it is felt that all action which has been taken with respect to the sentences originally imposed should be carefully reviewed so that a consistent policy with respect to relative guilt is adopted. The aim of the defense has been to obscure the question of innocence or guilt and commensurate punishment by creating a smoke screen of false charges designed to raise doubts with respect to the evidence. I do not know how successful this strategy has been, but I believe it is important to determine how much effect it has had on the reviewing authorities to date.

If murdering prisoners of war and civilians is a crime sufficient in importance to warrant the attention of the President of the United States and the commander in chief of the Allied armies, care should be taken to insure that this case is disposed of in such a manner that it will stand in international law as a deterrent to military leaders contemplating similar transgressions in the future. In this connection it will be well to bear in mind what happened in Germany after World War I. Where sentences are commuted to terms of imprisonment steps should be taken to prevent these "military heroes" from being released, legally or otherwise, upon the withdrawal of the occupation forces.

In my opinion, the final action taken with respect to this case should have three principal objectives. The first should be to clear the record of all the false charges which have been made. The second should be to rectify the mistakes of the reviewing authorities insofar as it is possible to do so. The third should be to take such action, legislative or otherwise, as shall be necessary to prevent a recurrence of the difficulties which have been experienced with respect to this case so that a clear-cut policy may be in effect governing the investigation, trial, and review of these war-crimes cases. If these objectives are achieved, this case can still be recorded in history as valuable precedent for the enforcement of those rules of international law which in the past have enabled civilized nations to retain some of the attributes of humanity while engaged in a life-and-death struggle.

(Exhibit A, above referred to, is as follows:)

EXHIBIT A

The following excerpts from the leading authority on the law of evidence indicate that the statements and confessions introduced into evidence in this case were properly received and considered by the Court which tried the case:

(a) "Section 832. Advice that "It would be better to tell the truth," or its equivalent.

"On principle, the advice by any person whatever that it would be better to tell the truth cannot possibly vitiate the confession, since by hypothesis the worst that it can evoke is the truth, and there is thus no risk of accepting a false confession (ante, Section 822). The confessor is not obliged to choose between silence and a false confession having powerful advantages; the advantages are attached to the utterance of the truth: and, however tempting we may suppose them to be,

there is nothing in the nature of the temptation to make the statement untrustworthy; for if it has availed at all, it has availed to bring out the truth." (2 Wigmore on Evidence, 2nd Edition, 156.)

(b) "Section 840. *Influence of a Religious or Moral Nature.*

"* * * No exhortations, then, of a moral or a spiritual nature have ever (since R. v. Radford) been regarded as vitiating a confession—a result commended alike by principle and by common sense." (2 Wigmore on Evidence, 2nd Edition, 168.)

(c) "Section 841. *Confession induced by Trick or Fraud: Confession While Intoxicated.*

"(1) Since the exclusion of confessions is not due to any principle of public faith or of private pledge of secrecy (ante, Section 823), it follows that the use of a *trick* or *fraud* (however reprehensible in itself) does not of itself exclude a confession induced by means of it. So far as the trick involved a promise which would tend to produce an untrue confession, it would operate to exclude—not, however, because it was a trick (i. e., because the representations were false), but because even if true, its tenor would have stimulated a confession irrespective of guilt. This principle is and always has been universally conceded." (2 Wigmore on Evidence, 2nd Edition, 169).

(Short recess.)

Senator HUNT. The committee will come to order.

Major Fanton, had you completed all of your statement?

Major FANTON. Yes I had, thank you.

Senator HUNT. You have nothing else to say at this time?

Major FANTON. No, sir; I do not. Excuse me a minute.

I do not know whether this is the time to do it or not, but I have gone through Mr. Bailey's testimony and there are a few inaccuracies that I think should be corrected for the record.

Senator HUNT. Do you have a statement prepared on them?

Major FANTON. I do not have any prepared statement.

Senator HUNT. Would you like to make a statement for the record?

Major FANTON. Well, I can go through them. I made some rough notes. I can await your pleasure on the matter.

Senator HUNT. Well, I think you might as well get in all your testimony at this time, if you can. We are going to have to recess at 4 o'clock. Will you go ahead, Major, please?

Major FANTON. There are references to a man by the name of Steiner in Mr. Bailey's testimony. Senator McCarthy characterized him as the chief interrogator.

Steiner was a relatively minor figure in our team. His arrival I believe was somewhere in the latter part of December. His first assignment was deciphering certain messages on methods that had been used as a means of communication between the prisoners.

I know there was a pile of them in my office there, and it took Steiner just about a week to get through them. He would go through the messages on the mess equipment and make a note of every message and every sign, saying or slogan that he found on the kits. He had two or three pages of that.

It is my recollection it took him about a week or so to get through it.

He served as an interpreter. To my recollection he interrogated only one or two suspects. He worked as an interpreter with Captain Shumacker initially, and one of the difficulties we had with Steiner was that his English was uncertain, and for that reason we did not feel that we could use him. He stayed with us for maybe 2 weeks, 3 weeks, 3 weeks at the most, I would say, at which time I called Colonel Ellis

and asked for his return to Weisbaden. He was not a figure of any consequence in the interrogation.

I think that should be made clear. There was a lot of reference to him.

I remember one instance where he was marching prisoners in the hall. While he did not do anything to them, he just let out a bellow, shouted or something of that nature, and frankly due to his background—he had lost his mother as I understand it, to the Germans, in a concentration camp.

Senator HUNT. Senator McCarthy would like to know if you know what he said when he let out this bellow.

Major FANTON. No, Senator, I do not know. It was some expression he used. I do not think there was any connected sentence or command. It was more in the nature of a command. I guess that would be a proper description of it.

I had some doubts, frankly, and I think this is very pertinent. I had some doubts about Steiner, and I did not want to get into any situation where we had anything that was questionable. I did not know just how he handled these prisoners.

He was quite a different character, I believe, from Dr. Perl, who has been mentioned many times. With this in mind I called Colonel Ellis and asked for his return to Weisbaden because we had a limited team. We had to have the best possible personnel on that team.

I had a small team. It was small purposely even though we had a large job to do, because I knew it was going to be difficult to control these people, and it was important that I have nothing but the best personnel, the best that we had available, so Steiner was returned after two or three weeks with the team.

Now, Mr. Bailey has indicated in a letter to Senator McCarthy, and also in the record, particularly in his letter to Senator McCarthy, that he became disgusted with what was going on in our interrogation center, and for that reason he requested a return home. That does not square with my recollection regarding Mr. Bailey.

He complained to me quite often about the fact that he was doing a mere stenographer's work whereas he was a court reporter and hired as such.

As I understood it, he was given quite a send-off when he left Pennsylvania to come to Weisbaden, and he felt it was kind of a minor assignment for him. He had hoped to be a court reporter in some of the actual trials, and he was homesick, no question about that. The man was homesick, at least that was the story he gave me.

I told him that I would ask for his return to Weisbaden. I did not want anybody that was dissatisfied on the team because we had a lot of work to do, the pressure was on, quite contrary to his testimony.

We worked long hours. We worked from 8 in the morning or 8:30 in the morning until 5:30 at night, and we had nightly critiques, so that we had our critiques on certain days, and there were certain days that were left free, realizing that some recreation was necessary.

Bailey did complain about the work, the amount of work, the volume as well as the nature of the work. He could not understand Lieutenant Perl. He was homesick, as I have said, and I told him, to repeat, that I would have him returned to Weisbaden as soon as I could get a replacement for him.

However, he submitted his formal resignation and there was some misunderstanding between us at the time because he felt that I was being inconsiderate of his request, and I told him that I had a job to do and that I was sorry, he would have to stay until we could get a replacement.

As I recall, I did process his request for return, and shortly thereafter he was returned.

One other thing, Bailey was not too much interested in our interrogations. He would sit there and go through the motions of typing up these statements, but he was not really interested. He had very little knowledge of our plan of interrogation. He had no comprehension, so to him it seemed haphazard.

I think before I am through testifying, I will have convinced you, I hope so, it was anything but haphazard.

He to my knowledge was in the interrogation cells, I believe, once or twice. He went in there once to take a question-and-answer affidavit for Captain Schumacker. By "question and answer" I mean the interrogator would ask the question and the subject would answer it. We could not use that procedure very much because it was a very time-consuming procedure.

At the outset of this investigation I discussed this matter with Colonel Ellis and Colonel Drake, as I recall it, and we agreed that in view of the volume of work we had to do, we would not use the question-and-answer form.

We would resort to expediency to keep these statements to a minimum because we were going to have a lot of them in the record, and we wanted to organize the thing administratively so that it could be handled with some facility. I do not think he was in the cells other than that one time when he took an interrogation. He might have been in there as a member of one of these boards, these fast procedures.

He certainly would have no first-hand knowledge of the interrogations, the techniques that were used, and what transpired in the course of the interrogations.

He was pretty much confined to the office typing up these statements because we had a lot of them to do and he was the only stenographer outside of Berg who I used as my stenographer to get this information collated and type up whatever letters and reports I was responsible for. Berg was also the chief clerk responsible for all the files and all the filing. Bailey was really the only stenographer we had.

Now he has made the claim in his testimony that I made trips to Weisbaden. He says that I started on a Saturday and came back on a Wednesday. Well, my superiors would never have permitted me to indulge in that sort of a rather lackadaisical approach to this investigation, even if I had been so inclined, which of course is not the case.

To my knowledge I returned to Weisbaden maybe three or four times during the entire time of the investigation, and then to report to Colonel Ellis regarding the progress of the investigation, to talk over problems that had arisen with respect to coordination of our activities with other commands, and also to coordinate our activities with the apprehension part of our organization charged with the responsibility of apprehending these criminals or suspects, I should say, that we

had not been able to locate prior to that time; so the trips to Weisbaden are somewhat exaggerated.

When I when, I left on a Saturday and returned on a Sunday, the successive Sunday. Most of my time was spent right there at the interrogation center supervising the activities of the team.

I had to be there. I was the only officer in command there at the time. Although Captain Shumacker was in command when I left, still and all I was primarily responsible for what went on, and I had to be there.

Now, there was also a claim in Mr. Bailey's statement, that I very rarely left the office. Well, I do not know how Bailey would have been competent to testify regarding that fact. He himself was in the office most of the time.

I had quite a job to do, and I had to ride herd on these people. I had to see that they were working, and working constantly, especially in the clerical end of things.

I would say that on an average of two or three or four times in the course of the morning I would interrupt the editing of these statements that I did constantly as they were translated. I would edit them, try and get out the material facts, the facts that were necessary in the course of interrogating certain witnesses or suspects that we had lined up for interrogation, and three or four times during a morning, more often during the afternoon, I would circulate around and spot-check on the interrogations.

Very often during the course of an interrogation, an interrogator would come out into my office and discuss the progress he was making, what he was finding out.

They were instructed to do that. That was part of our SOP. The minute anything of importance was developed during the course of interrogation, they were to leave and come into my office and tell me about it because we had four or five interrogations going on simultaneously, and very often the facts the one man developed would be very essential to the interrogation being carried on by another man.

Each man was assigned a unit and the units, of course, the vehicles of the various units were in a somewhat confused situation there at the scene of the crime, so that very often we would have one man testifying or one man being interrogated from the Seventh Company who would identify some of the men in the Third Company, the Third Pioneer Company, which was an engineering outfit who had their SPW which is like one of our reconnaissance vehicles, parked there at the scene of the crime. He would identify it through the bridging equipment that was on the side of the vehicle.

There was another engineering outfit involved, the Ninth Engineering outfit, but that did not have this bridging equipment. That is just typical of this information that would develop.

Senator McCARTHY. Mr. Chairman, may I interrupt? I see Judge Van Roden is here. I understand he will testify tonight.

In view of the statements which this witness had to say about Judge Van Roden, his committee, his activities, I think that Judge Van Roden should be given a copy of that statement so that he may know what this witness has to say about his committee before he gets on the stand and testifies. I assume there is no objection to that.

I assume that you will want a copy of that, Judge. In fact, I am sure you will, after you read it.

Major FANTON. Shall I continue?

Senator HUNT. If you have anything further.

Major FANTON. This is taking a little longer than I thought it would.

I was just elaborating a little bit in answer to this claim made by Mr. Bailey that I was more or less of a figurehead and did not participate too much in what was going on. That of course is not true, and I am sure you gentlemen will realize that when my testimony is completed.

I have already in my statement gone into the manner in which the so-called dictated statements and confessions were handled. I am not going over that again. Mr. Bailey made some absolutely untrue statements regarding that. What I have said in my statement is the correct version. It is what always occurred.

We would have been most unwise, and I would have been subject to proper criticism if we had permitted anything else but a carefully written statement containing the material facts involving an implication in a crime or relating to some material fact to establish the existence of the crime.

If I had allowed false accounts to be devised or written by my interrogators, I would certainly have been subject to correct and proper criticism.

I have a memo here that I wrote Colonel Ellis at the time I was re-deployed dated February 19, and I would like to enter it in the record as an exhibit. It is in great detail.

It probably demonstrates more clearly than any other single piece of evidence that you will have before you the detail that was developed with respect to these crimes that were committed, the individuals who were implicated in them, and the manner in which the investigation was developed.

Senator McCARTHY. What is the date of this?

Major FANTON. It is February 19, Senator McCarthy.

Senator McCARTHY. Of what year? This is prior to the trial, I assume?

Major FANTON. That is correct, sir; the 19th of February, 1946.

Now I do not know how you are marking your exhibits, but I have marked in the margins, incidentally, certain parts of this memorandum which I consider significant.

Senator McCARTHY. I wonder if I could have a copy of that, Mr. Chairman, to study tonight. Otherwise I will have no idea of what is in this memorandum.

Major FANTON. It is long and detailed. I am very sorry, Senator McCarthy, I do not have an extra copy. It was attached to my affidavit submitted to the Raymond Board, the Administration of Justice Review Board.

Mr. CHAMBERS. Is there a copy of this attached to the Raymond report?

Major FANTON. There is.

Mr. CHAMBERS. Then there will be a copy available to you.

Senator McCARTHY. Will you make it available tonight?

Mr. CHAMBERS. Yes.

Senator McCARTHY. Thank you very much.

(The document above referred to is as follows:)

FEBRUARY 19, 1946.

Memorandum to: Lieutenant Colonel Ellis.

Subject: Malmedy case.

1. In line with our conversation this morning, the first part of this memorandum will be devoted to a narrative account of the case, setting forth the phases of the case and the incidents to be proved, in chronological sequence, in order to present a clearer picture of the case as it will be tried. In referring to the various individuals involved, I shall, in most cases, use their last names only. If more information is desired regarding them, reference should be made to the personality card index file.

2. The first thing to be proved will be the existence of orders or a policy throughout Peiper's command, which resulted in the violations of the rules of land warfare and the Geneva Convention with which the defendants in this case will be charged. Through the testimony of Hennecke, Kramm, and Messner, we can show that a meeting of all company commanders of Peiper's regiment was held at Peiper's C. P. on 15 December, 1944. Kramm, who was the officer in charge of messengers in the 1st Battalion Headquarters, and who was captured during this offensive, undoubtedly has the complete story about what occurred in this meeting. He has been induced to give some information, but he is a very uncooperative witness, as are all the officers in Peiper's battle group, and it is believed that he is still matching wits with the interrogators and withholding much of what he knows. He has stated that he was present at a meeting held in Bliesheim, Germany, 3 weeks prior to the offensive, in which Poetschke stated that contrary to practices in the east, the fighting in the west had been governed by the rules of land warfare, but that as the coming offensive was a last desperate gamble, all rules were to be disregarded, and they should fight with utter ruthlessness to insure its success. Coming away from this meeting, everyone took this to mean that no prisoners of war would be taken, except Kramm, who claims he did not reach such a conclusion at this time. Messner, who was at first a very uncooperative witness, has turned stool pigeon and has been willing to tell us all he knows. He stated that he was present in the forest house near Blankenheim, which was being used as both a battalion and a regimental C. P., on the afternoon of the 15th of December, 1944, when a meeting was held attended by Peiper, Kremser, Christ, Junker, Klingelhofer, Arndt Fischer, Von Westernhagen (commanding officer of the Five Hundred and First Tank Battalion--King Tiger Mark VI tanks), Poetschke, an officer from Diefenthal's battalion, possibly Kramm and either Poetschke's orderly, U/Scharf, Walter Schaling (now detained in IP No. 2), or his gunner, Rtf. Alexander Kanger. Messner brought in wood for the fire as the meeting was in progress, and heard Poetschke say as he, Messner, left the room, "Now, gentlemen, sign." With further reference to this meeting Kramm admits having signed the roster of regimental officers made up in connection with the meeting. The roster included all company commanders and some other officers. His name was included through error. Arndt Fischer, Poetschke's adjutant, wanted him to sign the roster because his name appeared on it. The writing at the top of the roster stated that the officers signing it were agreeing to, under no circumstances, divulge the contents of the secret orders.

Christ, in his confession, states that Poetschke gave a talk to the company commanders at this meeting in the course of which he indicated that no prisoners of war should be taken and no mercy would be shown civilians. Christ does not remember whether or not Peiper was present, but inasmuch as Poetschke's C. P. was located in the same forest house as Peiper's in an adjoining room of that house, it is highly probable that Peiper was present at this meeting. In view of the fact that we have been able to prove that the companies commanded by Junker (6th Company), Sievers (3d Pioneer Company) and that the platoons commanded by Rehagel (1st Platoon, 7th Company), Munkemer (2d Platoon, 7th Company), and Siptrott (3d Platoon, 7th Company) were all given similar talks, and in view of the fact that we can prove further that members of these organizations committed atrocities during this offensive, it is hoped that some of them will break and identify Peiper more definitely with this meeting of company commanders that took place just before the offensive. Hennecke gives a very detailed account of what occurred at the forest house just prior to this meeting and goes on to state that immediately following the meeting his company commander Kremser (1st Company) gave a talk to his company, in the course of which he urged them to remember the terror bombing attacks against their women and children, to carry the battle forward in a ruthless and reckless man-

ner, fighting in the old SS tradition and giving no quarter to prisoners of war or civilians. Hennecke's credibility, however, is open to question, and the advisability of using him as a witness without further corroboration of his story seems doubtful.

Hennecke, Klaus Schneider, Plohmann, and Zitzelsberger, all members of the 1st Company, will testify that Kremser gave them a talk on 15 December 1944 in which he stated no mercy would be shown civilians and no prisoners of war would be taken.

Lichtwark and Ritzer, of the 2d Company will testify that Christ gave a talk on the evening of 15 December 1944 in which he stated that they would fight in the old SS tradition in such a ruthless manner that they would spread fear and terror before them and that prisoners of war would not be taken. In addition, we have Christ's confession that he gave such a talk.

Schlossnikl and Krug of the 6th Company state that their company commander gave a talk to his company late in the afternoon of the 15th of December, 1944, from which all members of the company concluded that no prisoners of war were to be taken in the coming offensive. Huber, in his confession, states that he was present on the 11, 12 or 13 of December at a villa between Bliesheim and Pliesheim, Germany, when Poetschke gave a talk in which he stated they would fight ruthlessly in this offensive shooting everything before their guns. He states further in this confession that on the afternoon of the 15th of December his company was assembled in the Blankenheim Forrest, and he was present when Junker gave a talk to the company and repeated these instructions. The next morning Junker gave another talk repeating these exhortations, in addition to telling his men what support they were going to receive. Later on Huber's platoon leader, Sieg (2d Platoon) gave them a final briefing prior to the attack in which he told his platoon to remember the orders they had to shoot everyone before their guns, including all civilians and all prisoners of war, but to remember that Skorzeny's men would be wearing American uniforms and would make themselves known by waving their helmets. Other members of this company, Mohr, Braun, and Ackermann claim that they were told not to take prisoners of war by their platoon leaders, but do not remember Junker making any such statement. These last two witnesses were initially cooperative and it was believed at first that their statements were true. However, in view of the number of presumably cooperative witnesses who have been discredited by subsequent developments, it is believed that these witnesses are attempting to shield their company commander, Junker, by placing the blame on two platoon leaders, both of whom are dead.

In the 7th Company it appears from the testimony of Siptrott that Klingelhofer called his platoon leaders together on the morning of the 16th of December, 1944, and told them to tell their platoons, among other things, that no prisoners of war would be taken. According to Fleps, Klingelhofer assembled the whole company on the 13th or 14th of December in an inn in the middle of town and gave them a talk, in the course of which he stated that no prisoners of war would be taken. Fleps also claims that Klingelhofer repeated this talk before his company on the evening of the 15th of December, 1944. Loehmann and Nohr, members of the 3d Platoon of the 7th Company, claim that their platoon leader, Siptrott, told them on the morning of the 16th that a new order existed, saying that no prisoners of war would be taken. Paeger and Clotten, members of the 2d Platoon of the 7th Company, state that their platoon leader, Munkemer, gave a similar talk on the morning of the 16th of December, 1944. Riecke, a member of the 1st Platoon of the 7th Company, recalls Rehagel, a platoon leader of that platoon, having given a talk to his platoon in which he stated no mercy would be shown civilians and no prisoners of war would be taken during the offensive. Riecke also recalls the talks given by Klingelhofer, mentioned by Fleps.

Besides these four Panzer companies, Peiper's battle group contained Diefenthal's Third Battalion of the 2d Panzer Regiment. Assenmacher, who was assigned to the Stabs Company of this battalion, and who served as radio operator in the vehicle in which Peiper and Diefenthal were riding during the first few days of the offensive, states that Diefenthal's Adjutant, Flacke, gave a talk to the Stabs company before the offensive in which he stated that no prisoners of war would be taken. The balance of the case on the existence of this policy or these orders throughout this battalion is still in the process of development. Freimuth, who is a member of the 11th Panzer Grenadier Company, stated that his company commander, Tomhardt (now detained in IP No. 2), gave a talk to his company prior to the offensive in which he stated

no mercy would be shown prisoners of war or civilians. Other members of this company have not been interrogated concerning this matter.

Lieutenants Jacob and Wolfe have been assigned the job of developing the case against members of these Panzer Grenadier units. So far they have established that Preuss, commanding officer of the 10th Panzer Grenadier Company, and also commanding officer of Peiper's point group, was utterly ruthless in his treatment of all opponents and gave orders to his company that no mercy would be shown prisoners of war or civilians. Just before I left to return to Wiesbaden, Preuss' driver, Kohles, was requesting a hearing in order to tell us about a prisoner of war whom he saw shot by members of his company.

Mr. Elowitz and Mr. Thon are now working on the 12th Panzer Grenadier Company. They are experiencing considerable difficulty in making the members of this company talk but have succeeded in securing two witnesses to establish that the company commander of this organization, Thiele, gave a talk to his company in which he stated that no prisoners of war would be taken during this offensive. The members of the 9th Panzer Grenadier Company have been interrogated by Mr. Thon with negative results.

Sprenger states that on or about the 14th of December, 1944, in a forest near Setzvey (272252) at about 3 p. m. U/Stuf. Seitz assembled the 1st and 2d platoons of the 3d Pioneer Company and read what he called a company order, in which, among other things, the company was told that they would not take prisoners of war. O/Stuf. Sievers (now detained in IP No. 2), company commander of this company, was present during this part of the reading. Jaekel gave some hearsay evidence with respect to the reading of this order, but it is believed now that the case against the 3d Pioneer Company is developing so well Jaekel, Hofmann, and Neve can be induced to give further evidence concerning these orders. Since the 3d Pioneer Company was a divisional unit before its assignment to Peiper's battle group, the fact that these orders existed in this company might indicate that they originated in some headquarters higher than Peiper's. However, it is probable that the company at this time was assigned to Peiper's battle group, and while these orders were read prior to the Blankenheim meeting on the 15th, it is very possible that Sievers was present when Poetschke gave the Bliesheim talk. If this proves to be the case, this may explain the issuing of such orders at this time rather than after the Blankenheim meeting which Sievers may not have attended.

At the present time Maute is the only one in the 9th Pioneer Company who says Rumpf gave a talk to his company telling them no prisoners of war would be taken. However, the 9th Pioneer Company was organic to Peiper's regiment and it is probable that he attended the Blankenheim meeting and gave a talk to his company afterwards in which he reminded them of the enemy's terror bombing attacks, and told them they would fight in the old SS tradition and allow civilians and prisoners of war no quarter. In fact, Rumpf himself asked for an interrogator recently, and told Mr. Thon that he thought he remembered a regimental order which stated that situations might arise where no prisoners could be taken. It is interesting to note that in his statement, which has not as yet been translated, Peiper sets forth a similar philosophy, using those same words. It is felt that as soon as the 9th Pioneer Company case breaks, it will appear that such orders were given the company by Rumpf.

3. Almost all of the best witnesses to prove the route of march will also be defendants in this case. The only officer available to serve as a witness in this matter is Hennecke. Hennecke is intelligent and well-informed, but his credibility is questionable, and it is believed he will be vulnerable to cross-examination. The following are intelligent witnesses who may be used to prove this part of the case: Weiss, Zimmermann, Landfried, Reicke, Freimuth, Rineck, Messner, Dethlefs, and Assenmacher.

4. Having once established the route of march, it would be well to introduce certain parts of the files in the Honsfeld case (WCB File 6-59), and the Ligneuville (Engelsdorf) Case (WCB File 6-47), to prove that prisoners of war were murdered by members of Peiper's column at these two places.

5. From the testimony of many witnesses interrogated in the 6th Company and in the 10th Panzer Grenadier Company, it appears that these organizations were at the point of Peiper's column and effected the initial capture of the American convoy which that column intercepted at the crossroads before Ligneuville (Engelsdorf). We have been unable to establish that any members of these organizations remained behind to take part in any way in the main Malmedy massacre. A platoon of the 11th Panzer Grenadier Company, under

the command of Hauptscharfuehrer Hendel (now detained at IP No. 2), and the KWK (self-propelled 75 mm. SPW) Platoon of the 12th Company were attached to the 10th Company in the point of the column. These units also proceeded on into Ligneuville (Engelsdorf) before the shooting occurred. There is hearsay evidence to indicate that an SPW commander from the 11th Company, by the name of Schuhmacher, participated in the shooting. Bergmann, of the 9th Panzer Grenadier Company, stated in the course of his interrogation that an U/Scharf., Niemeier (now detained in IP No. 2) told him in I. C. No. 78 that he knows Schuhmacher took active part in the shooting of the American prisoners of war at the crossroads before Ligneuville (Engelsdorf). Bergmann and Meier [Niemeier] had a discussion later on as to whether or not Meier's [Niemeier's] information was just based on rumor. Meier [Niemeier] denied that it was and stated that he was certain of Schuhmacher's participation. Groenger, of the 12th Panzer Grenadier Company, stated that Wallyer (now detained in IP No. 2), told him that Schuhmacher fired into the prisoners at the crossroads with his KWK cannon. We do not have Schuhmacher, but we do have his driver, Fredrichs. Fredrichs has not as yet been interrogated.

It also appears that most of the first and second platoons of the 7th Company had left the scene of the crime prior to the shooting. However, tanks commanded by Oberscharfuehrer Clotten (now detained at IP No. 2) of the 2d Platoon, and Oberscharfuehrer Koch of the 1st Platoon were mired along the route of march and were pulled out onto the road by the tank commanded by Oberscharfuehrer Dubbert of the 3d Platoon. These vehicles commanded by Clotten and Koch were consequently separated from the remainder of the vehicles in their respective platoons. According to the statements of Fleps and Siptrott, who were gunner and tank commander, respectively, of the lead tank of the 3d Platoon, the SPW commander of one of three SPW's parked before the field in which all the American prisoners of war were standing, stopped Siptrott's tank and requested assistance in shooting the prisoners of war. Siptrott was short of ammunition, but ordered Fleps to fire his pistol. According to the testimony of Fleps and Siptrott, the one or two shots fired by Fleps into the prisoners of war were the first shots fired. Reicke, who was in Koch's tank, three or four tanks behind Siptrott's tank, states that his tank commander, Koch, fired the machine gun on their tank into the group of American prisoners of war standing in the field, immediately following these first two shots. He also states that an SPW parked alongside their tank opened fire at the same time, with its machine gun, into the prisoners of war. Siptrott, Fleps, and Reicke state that this SPW that contributed to the firing with its machine gun was equipped with light bridging equipment, hung on the sides of the vehicles. The members of the 9th Panzer Pioneer Company are unanimous in stating that none of their vehicles was carrying this bridging equipment. All the members of the 3d Pioneer Company admit that vehicles of their company were carrying this bridging equipment. The case against members of the 3d Company who were occupants of these three SPW's is now in the process of development. The following occupants of these vehicles are now detained at IP No. 2, and are at present being interrogated in connection with this matter: Sprenger, Hofman, Jaeckel, Neve, and Goldschmidt. From the testimony of these witnesses, it appears that the SPW commander who stopped Siptrott was Beutner, platoon leader of the 2d Platoon of the 3d Pioneer Company. Beutner is now believed dead. The people of the 3d Pioneer Company referred to above are being reinterrogated, and indicate that they, along with other SPW and tank crews who were present at the scene of the crime, went into the field after the main shooting, and killed all the prisoners who showed any signs of life.

Siptrott has given us the following line-up for tanks of his company at the time the shooting occurred: Behind his tank came Clotten's tank; then Pilarczek's tank; then Dubbert's tank, and then Koch's tank. Siptrott is not sure whether Dubbert's tank preceded Koch's or vice versa. Dubbert, whom we do not have, later told Fleps that after the firing he had gone into the field with members of the crews of the SPW's, and administered to coup de grace to those of the prisoners who were still alive. We have Dubbert's gunner, Muling, but he has not as yet been interrogated. As a matter of fact, the 7th Company has not as yet been fully exploited. It is believed that Ziegler, Heinz Schrader, and Joseph Frank may be further exploited in the development of the case against the 7th Company, with respect to the part played by members of that company in the main Malmedy massacre.

The part played by the 9th Panzer Pioneer Company in the main Malmedy massacre has still not been established. Members of this company who were

interrogated proved to be extremely difficult subjects, and the results obtained were unsatisfactory. However, evidence has been secured in the development of the 3d Pioneer Company case definitely implicating Rumpf and the company medic, Maute, in other killings during this offensive. It is hoped that, using this evidence as a lever, both Rumpf and Maute can be induced to give us further information to clarify the situation at the crossroads with respect to their company. Vehicles from the 9th Panzer Pioneer Company were there present at the scene of the crime at the time the shooting occurred. Rumpf's vehicle was parked at the crossroads just before the turn of the road toward Ligneuville (Engelsdorf). The vehicle in which Maute was traveling had stopped farther on down the road, south of the field in which the prisoners were standing, at the time the shooting occurred. It is believed that the following occupants of these 9th Panzer Pioneer Company vehicles were implicated in the main Malmédy massacre: Franke, Hoppe, Elsinger, Buth, Pupkulis, Rieder, and Steckner. These people will all have to be reinterrogated if the case against the 9th Panzer Pioneer Company at the crossroads breaks. There is a story, substantiated by Maute's testimony and Rumpf's testimony, to the effect that Oberscharfuhrer Rudolf Dorr was given the order to shoot these prisoners, by some unidentified Obersturmfuhrer; that he objected to the job: asked Rumpf to be relieved of this assignment, and that after talking with Rumpf, he returned to his vehicle and spoke badly about Rumpf. Dorr was captured shortly afterwards and interrogated by the First Army inspector general, in January 1945 at the 168th General Hospital. We have undertaken to locate him by every known means, but have had negative results thus far. Rieder says Unterscharfuhrer Walter Haas, a member of the Straf Squad of the 9th Pioneer Company, shoot prisoners in the field after the main shooting.

There is testimony to indicate that tanks of the 1st Company participated in the main shooting, but the picture with respect to the activities of these vehicles at the scene of the crime is very confusing. Mr. Elowitz has been interrogating the members of this company, and has dictated a short statement concerning the organization and activities of the company. This statement has been filed in the organization file for the 1st Company. Zitzelsberger and Ernst identify Oberscharfuhrer Strehlow and Unterscharfuhrer Drexler, tank commanders of the First Company, as persons who fired into the group of American prisoners as they were standing in the field. Neither of these witnesses has been able to satisfactorily establish the location of the tanks commander by these two persons, or give a description of other vehicles at the scene of the crime at that time, which corresponds with the facts as established by other witnesses. Hennecke, platoon leader of the 1st Platoon, indicates that his gunner, Sturmman Rock, fired into the bodies in the field, as his tank passed by on the way to Ligneuville (Engelsdorf), after the main shooting had occurred.

The vehicles of the Regimental Communications Platoon, under command of Unterscharfuhrer Krause stopped at the scene of the crime after the main shooting. There were three SPW's in this communication platoon. We have the following occupants of these vehicles: Landfried, Weiss, Lehn, and Zimmerman. These men will all make excellent witnesses. Their testimony will establish that these vehicles stopped behind a Mark IV tank that was parked in the middle of the road, headed toward Ligneuville (Engelsdorf), that the crew of this tank was not in the tank at the time, that an Oberscharfuhrer or a Hauptsturmfuhrer, in a tankman's uniform, shot an American prisoner in the field who had been playing dead, after having made the prisoner remove his jacket and overshoes; that other men in the black leather tankman's combination were walking around in the field at the time, that several shots were heard coming from those men in the field, that the Ober or Hauptsturmfuhrer returned to the tank that was parked in the middle of the road, with the jacket and overshoes which he had taken from the American prisoner; that Unterscharfuhrer Hans Hillig left his SPW and went into the field; that shots were heard in the field after he entered the field; that he had his pistol with him as he entered the field, and that he cleaned his pistol shortly after returning to his SPW. The Ober or Hauptsturmfuhrer who shot the American prisoner in the field has been identified through admissions made to Dethlens, and through his own confession, as Oberscharfuhrer Hubert Huber of the 6th Company. Huber, in his confession, states that Strmn. Martin Grischatz, his gunner, was in his tank when its machine gun fired into the bodies in the field. He does not say that Grischatz entered the field and did any shooting, but in view of the facts that have been established it is probable that he did so. Huber has identified Schroder and Schreier as members of his crew who entered the field with their pistols at this time. We do not have any of these

crewmembers from Huber's tank, but we have information that when members of the LAH were asked to step forward in a recent screening at one of the labor camps near Wells, Austria, Grischatz with other members of the 6th Company remained in ranks to avoid evacuation. A teletype has been sent to War Crimes Branch, USFA, in order to secure transfer of Grischatz and these other members of the 6th Company to IP No. 2. If results are not forthcoming in the very near future, follow-up action should be taken in this matter.

At the time that Huber was shooting this American prisoner of war, the tank of Unterscharfuhrer Kurt Briesemeister of the 1st Company was parked at the intersection. A man by the name of Storm from Briesemeister's tank has been identified by Huber as having been in the field, walking among the American prisoners at this time, and as having been in the field at the time shots were heard in the field after he, Huber, had returned to his tank. Briesemeister told Plohmann (now detained at IP No. 2) shortly afterwards that he shot an American in one of the houses at the crossroads, and that he went among the bodies in the field and shot those who were still living. Briesemeister was interrogated in October of 1945 at the SS prisoner of war camp at Pocking, Germany. He has not been evacuated in accordance with subsequent directives. The rumor among other members of his company who knew him at Pocking is that he was assigned to a work commando at Plattling, Germany, and that he escaped from this commando to avoid punishment for his implication in this crime. A teletype has been sent to War Crimes Branch, 3d United States Army, requesting he be located and evacuated to IP No. 2. Proper follow-up action should be taken to insure his apprehension.

6. Peiper denies stopping at the scene of the crime in the main Malmedy Massacre. Diefenthal, who was riding in the same SPW with Peiper, admits stopping only twice. He states in his deposition that his SPW stopped for a minute or two at the crossroads, and then for a minute or two further on down the road beyond the field while the men in his SPW transferred some gasoline from a jeep in the American column to his vehicle. Assenmacher, who was the radio operator in this vehicle in which Peiper and Diefenthal were riding, states that Diefenthal left the SPW before the intersection; that the SPW then rounded the corner and drove down the road toward Ligneuville (Engelsdorf) to a point somewhat south of the field in which the prisoners were shot; that Peiper allowed him (Assenmacher) a few minutes for looting some of the American trucks which were parked alongside the road; and that after a lapse of about 20 minutes, Diefenthal remounted the SPW, and they continued on to Ligneuville (Engelsdorf).

Diefenthal states in his deposition that shortly after Peiper's column opened fire on the American convoy he and Peiper arrived on the scene and stopped the firing. At this time Peiper shouted an order to Poetschke, the battalion commander of the mixed battalion (First, Second, Sixth, and Seventh Panzer Companies) operating as the first element of his column. Diefenthal heard Peiper shouting at Poetschke, but does not remember what he said.

Freimuth, who was driver of an SPW belonging to the 11th Panzer Grenadier Company, which left just before the shooting occurred, states that he heard Peiper tell the point group, which had stopped at the crossroads to round up the American prisoners, to continue on into Engelsdorf, saying, as he gave the order, "The little that has to be done here can be done by those behind you." Diefenthal at the time was wearing a bright yellow leather jacket. Many of the survivors have identified an officer in a bright yellow jacket as having been present while they were being assembled on the road in front of the field. One survivor named Appman stated in his deposition that an officer in a yellow jacket looked over the prisoners on the road, and then waved them off the road into the field.

Eckman, of the First Company, and certain members of the 3d Pioneer Company, have tentatively identified Diefenthal as having been at the crossroads shortly before the shooting occurred.

This is all the evidence that we have been able to secure regarding the activities of Peiper and Diefenthal at the scene of the crime. Reinhard Maier claims to have witnessed the order which Poetschke gave to members of the 9th Panzer Pioneer Company, who were supposedly guarding the prisoners, ordering that the prisoners be shot. Maier has been given a preliminary interrogation, but before going further with his interrogation it is desired to better establish the facts in order to test his credibility.

It is evident that while these prisoners were being detained at IC No. 78 certain of their officers conspired to place the blame for issuing the order on Poetschke, who is believed dead. In view of this and the fact that many wit-

nesses who were questioned referred to this Maier's statement, it is believed that his credibility should be definitely established before his story is accepted. Reinhofer has stated that he was in a room at IC No. 78 with Raabe and Stehle. Stehle was visited by Arndt Fischer, Sternebeck, Kramm, and Messner. In the discussion that took place in that room between these people it was agreed to blame Poetschke for the orders because he was dead. All those participating in the discussion further agreed that they would never talk. Messner, however, has had a change of heart and talks freely. He is now being used as a stool pigeon. Kramm and Sternebeck have proved very difficult subjects, but Kramm is beginning to talk. A messenger from the First Battalion by the name of Waller (now detained at IP No. 2) was with Poetschke most of the time during this offensive, and may be able to give us additional information to further check this story.

7. Other incidents which occurred along the route of march of Peiper's column, involving the murders of prisoners of war and civilians will be related, as far as possible, in chronological order.

On the 18th of December 1944, between 3 and 3:30 in the afternoon, Rineck, Assenmacher and Plohmann (all now detained in IP No. 2) witnessed the killing of an American prisoner of war by Zwiggart (now detained in IP No. 2) in the presence of Peiper and Diefenthal. The evidence establishes that Peiper and Diefenthal witnessed this killing and had every opportunity to stop it. The American who was shot was the driver of a jeep which had been fired on and stopped by a Mark V tank. The American was playing dead. Zwiggart made him get out of the jeep. Zwiggart then returned to his SPW to get a machine pistol. At this time Diefenthal asked Zwiggart what was in the jeep and also leaned forward so that he could get his machine pistol. Zwiggart was the driver of the vehicle in which Diefenthal and Peiper were riding. At that time German soldiers from surrounding vehicles were shouting "Kill the American. Kill the dog." Peiper was sitting in the SPW on some folded blankets looking at his maps. Zwiggart has confessed to this shooting and has given us testimony which indicates the victim was clearly dead when he finished with him.

In the early afternoon of the 18th of December, 1944, in Stoumont, Belgium, Sprenger (now detained in IP No. 2) was ordered by his Truppfuehrer, O/Scharf. Wilhelm Schaefer, after Schaefer had had a conference with his company commander Sievers, to shoot two American prisoners of war who had just brought in a wounded German soldier. Sprenger has confessed this killing, and Hoffman (now detained in IP No. 2) is a corroborating witness. Sievers is also now detained in IP No. 2, but as yet has not been interrogated. There is evidence of another killing by Sprenger in Stoumont involving two American prisoners of war who were stretcher bearers, and a third American prisoner of war who was wounded, and whom they were carrying. This case is being developed in the course of reinterrogation of members of this 3d Pioneer Company.

Lehn, Weiss, Ebeling, Zimmerman, and Landfried (all now detailed in IP No. 2) give testimony to establish that Peiper ordered Millig (now being evacuated to IP No. 2) to shoot an American prisoner of war on the 19th of December, 1944, some time after the attack on Stoumont, and that Hillig executed this order.

Plohmann was present in La Gleize on the 19th or 20th of December, 1944, when Eckmann (now detained in IP No. 2) came into the First Company, C. P., and reported to his tank commander H/Scharf. Leo Skotz that the crew of Skotz's tank had shot several American prisoners of war. Eckmann later told Plohmann that the prisoners had continued to moan and groan after the shooting and that he and others had put them out of their misery. Eckmann has proved to be a very difficult subject. Mr. Elowitz has been interrogating him for some time. He has recently given us a statement which he claims is the whole truth. This statement is being translated at the present time.

Klaus Schneider (now detained in IP No. 2) was present on the 21st of December, 1944, in Wanne, Belgium, when U/Scharf, Bersin, a tank commander in the First Company, and Kotzur, his gunner, came over to Schneider's tank and stated that they had orders from U/Stuf. Heubeck to round up all male civilians 16 and over to be shot because Heubeck had found a closet full of German Army clothes in the house in which he had been staying. Schneider remained behind to guard his tank while his tank commander Pflueger, Kotzur, Bersin, Tigges, and Trettin went with Bersin to accomplish this mission. Kotzur and Trettin have confessed to shooting Belgian civilians pursuant to orders issued by U/Scharf. Bersin. Bersin has his own version of the incident,

but it is believed a full confession will be secured from him when he is reinterviewed.

Wischmann has confessed to shooting an American prisoner of war during the last 2 days of 1944, or the first 4 days of 1945, on orders of Stubaf. Sickel near the village of Petit-Thier. Peiper was present in the room when Sickel gave Wischmann the order. He had interrogated the American prisoner of war in English and exchanged glances with Sickel immediately prior to the issuance of the order. Ebeling and Lehn corroborate Wischmann's confession. Wischmann gave a statement in addition to the confession in which he establishes that the American prisoner of war was dead when he finished with him.

8. The defense which will most probably be common to all defendants, with the possible exception of Peiper, is the one of "superior orders." It is felt this defense will be unavailing as an absolute defense in all cases. It will not even serve in mitigation for most of the defendants, since, with the possible exception of Fleps, all of them could have avoided the full effect of the order. It is not likely that Peiper will attempt to use this defense, but when he realizes the strength of the case against him, it is possible that he will take the stand and tell of some division, corps, or army order to justify his action. Peiper may also invoke the case of Major, now Lt. Col., McCown (see WCB file No. 6-113 for McCown's deposition) to strengthen his defense. In this case rebuttal will be available, since the testimony of Lehn, Ehrhardt, and Wischmann indicates that McCown received his good treatment because Peiper intended to use him as a pawn in an exchange arrangement, rather than from any desire to comply with the rules of land warfare and the Geneva Convention. McCown was to be exchanged for certain wounded prisoners belonging to Peiper's battle group who would otherwise have to be left behind at La Gleize.

9. This paragraph will be devoted to considering the status of the investigation at this time.

The personnel of the detachment developing the case against the various units involved is as follows:

Captain Shumacher, 6th Company.

Captain Shumacher and Lieutenant Perl, 3d Pioneer Company.

Lieutenant Perl, the Regimental STABS Company, and the 2d Company.

Lieutenant Perl and Mr. Thon, the 9th Pioneer Company and the 7th Company.

Mr. Elowitz, the 1st Company.

Mr. Elowitz and Mr. Thon, the 12th Panzer Grenadier Company.

Lieutenant Jacobs and Lieutenant Wolfe, the 10th Panzer Grenadier Company.

Mr. Thon, the Ninth Panzer Grenadier Company.

There are two companies not mentioned elsewhere which should be interrogated before the investigation can be considered completed. These companies are the STABS Company and the 1st Battalion, and the STABS Company of the 3d Panzer Grenadier Battalion. It is suggested that as soon as Lieutenants Wolfe and Jacobs finish with the 10th Company they be assigned the job of interrogating members of these organizations. Mr. Elowitz started on the members of the STABS Company of the 3d Battalion and should be consulted for possible leads in that organization.

Before going to trial the 9th Panzer Pioneer Company case, and the 7th Company case, should be fully developed. With the confession of Rumpf, of which I have just been advised by Captain Shumacher over the phone, and the evidence that has been secured from members of the 3d Pioneer Company definitely implicating Rumpf and Maute in killings at Stoumont, the 9th Pioneer case should break in the near future. Using the information we have secured from Fleps, Siptrott and Clotten, Muling, who was a member of Dubbert's crew, should be made to talk without too much trouble. Greater difficulty may be experienced with the two remaining platoon leaders of the 7th Company, Rehagel and Muenkemer, but it is felt when the hopelessness of their position is shown them they will talk.

The 11th Panzer Grenadier Company should also be interrogated in order to definitely establish the part played by its members in the main Malmedy incident before the case can be considered ready for trial. In addition to what has been said about the testimony of Freimuth, and Schuhmacher's participation in the shooting at the crossroads, the possible implication of other members of the 11th Panzer Grenadier Company in the main incident must be noted at this point. Stock boasted to Wittenmayer (1st Panzer Company) at IC No. 78, that he went among the prisoners in the field after the main shooting, killing

those who were still alive with shots from his pistol. Stock has been interrogated but steadfastly denied ever having made such a statement, even after having been faced with Wittenmayer and a man by the name of Schartner, in whose presence he is also supposed to have made the boast. Wittenmayer was very positive about the statement and would make a good witness. Schartner is not positive, and being extremely nervous, would make a poor witness. Just before his interrogation Stock faked a kidney ailment. After the interrogation he was taken to the 216th General Hospital in Stuttgart where it was determined after exhaustive tests that he was perfectly normal. Freimuth and Heinrichs, driver and medic, respectively, who were riding in the same SPW with Stock stick to the story that their vehicle left the scene shortly before the shooting started. H/Scher Hendl who was commander of this SPW has not as yet been interrogated. It is believed he will be a very difficult subject. Lieutenant Perl has talked with him to verify his identity. One of Lieutenant Perl's "fast procedure" proceedings might be effective with Stock, but it is quite possible that Freimuth and Heinrichs are telling the truth, and that Stock was just boasting to keep abreast of the rest of his SS friends.

If at all feasible, all officers who are of possible interest should also be fully exploited before the case is brought to trial. The following officers, against whom a case has already been made, should be fully exploited in order to secure additional details to more definitely establish the origin of the policy which prevailed throughout Peiper's command, to disregard the rules of land warfare and the Geneva Convention, and to fight in the "old SS tradition," spreading terror and panic and showing no mercy to civilians or prisoners of war: Peiper, Diefenthal, Preuss, Tomhardt, Junker, Rehagel, Munkemer, Sievers, Rumpf, and Gruhle when and if he arrives. Their confessions would undoubtedly prove very useful. We already have Christ's confession. He might be reinterrogated in order to amplify it. Kramm is beginning to talk and may very well tell all eventually.

Frank stated that Zwiiggart, who was the driver of the vehicle in which Peiper and Diefenthal were riding at the time, told Schlachter, Moosebrugge, Frank, himself, and others that Peiper gave the order at the crossroads. Zwiiggart and others available have been interrogated in order to verify this statement, but the results achieved were negative. However, it is felt, in view of the importance of this lead, it should be carefully reexamined before the case goes to trial. Fackelmeir was riding in the vehicle with Peiper and Diefenthal at this time. According to witnesses interrogated by Mr. Elowitz he was evacuated from one of the Lagers at Ebensee to the prisoner of war hospital in Gemunden some time last fall. A teletype has been sent out to War Crimes Branch, USFA, in an attempt to have this prisoner evacuated to IP No. 2. If time permits there are other leads which should be followed to completion. Evidence exists from the testimony of members of the 3d Pioneer Company now being reinterrogated, that prisoners of war were shot generally by all of Peiper's men in Stoumont. These incidents will undoubtedly be more clearly established in the course of further developing the case against the 3d and 9th Pioneer Companies. Many leads were given by Josef Frank, a medic of the 7th Company. They are set out in full on his personality index card. We have the following people whom he mentions in connection with the shooting of prisoners of war and civilians: Woefel, Thorn, Siptrott, Clotten, Burg, Rehagel, Peiper, and Heinz Schrader. In evaluating Frank's testimony and the advisability of using him as a witness, it should be borne in mind that several people have identified him as a common criminal who was disciplined by German authorities for petty thievery. Frank has also confessed killing four wounded Canadians in Tilly, France, during the Normandy campaign. Ehrhardt, whom we also have at IP No. 2, also shot wounded Canadians at Tilly at this time, according to Frank.

Captain Schumacher advises over the phone that Mr. Elowitz and Mr. Thon have made out a case against certain members of the 12th Panzer Grenadier Company. There will be four additional defendants as a result of this development. We have these people at IP No. 2. If Thiele (commanding officer of the 12th Company) is located and evacuated we now have enough evidence to hang him.

Lieutenants Wolfe and Jacobs were making very good progress in developing a case against the 10th Panzer Grenadier Company. When I left they were securing evidence which may clear up the Honsfeld case (WCB file No. 6-59).

There is one other lead which has been covered in the last two subparagraphs of paragraph 6 above, which should be fully developed before the case is ready for trial. I am referring to the claim of Reinhard Meier that he witnessed Poetschke give the order to shoot the American prisoners at the crossroads.

10. In conclusion, I shall list a few administrative details which should receive immediate attention.

All the statements which had been taken and translated up until the time of my departure, have been edited. Their disposition is indicated on the file slip attached to each of them. Mr. Berg has them all and is following the instructions written on the file slips. Those that are ready for filing should be filed immediately to eliminate the possibility of their loss or misplacement. At the earliest opportunity they should be reexamined, and appropriate references should be made on the proper personality index cards. In the past the information entered on the personality index card has been too lengthy. The entry on this card should be confined to indicating the nature of the information, and should be a reference to the statement rather than an extract from it. When I left several very important statements were being translated. These should be edited as soon as possible and disposed of in accordance with the existing S. O. P.'s.

Major Brooks of the 7th Army War Crimes Branch has asked that we prepare Retention of Prisoner of War forms on all prisoners we intend detaining as witnesses or defendants. We are to notify Major Saxon as soon as a sufficient number of these forms has accumulated to warrant his sending after them. Major Brooks indicated that he wanted a description on every prisoner for whom one of these forms was prepared. However, since this will involve a waste of much valuable time, it is suggested that Major Brooks be contacted to see if this requirement cannot be eliminated. Once this question is settled, it should be a relatively easy matter for each interrogator to prepare one of these forms on the prisoners in whom he is interested, in accordance with the provisions of S. O. P. No. 4. These forms prepared might be checked against the names listed in the attached work sheet in order to insure that a form is made up for each prisoner who is of interest.

The attached work sheet is suggested as a means of keeping track of the prisoners who are to be witnesses and defendants in the case, and their statements and confessions. The work sheet attached is current as far as the names listed are concerned. As the case develops, new names, of course, will be added.

My affidavit has been taken to serve as evidence of the manner in which the interrogations in this investigation were conducted, and is in the file. It also indicates that the following confessions which I witnessed were made voluntarily without being influenced in any way by threats, promises, inducements, or duress of any form: Wischmann, Christ, Zwiggart, Fleps, and Siprott.

DWIGHT F. FANTON, *Major, QMC.*

I hereby certify that the within is a true and exact copy of the original memorandum to the Chief of the Investigation Subsection War Crimes Branch, Office of the Theater Judge Advocate, USFET, setting forth the status of the investigation of the so-called Malmedy massacre at the time I returned to the continental United States to be separated from the service.

DWIGHT F. FANTON.

Major FANTON. I think that memorandum better than any other single piece of evidence that I have any knowledge of will demonstrate that we were interested in the true facts: We were interested in the truth. We were not interested in any manufactured evidence or testimony.

There are references in there, and this memorandum is particularly good evidence for the reason that it was made at the time when my recollection was fresh and the details in there are accurate to the best of my knowledge and belief.

One part of that memorandum clearly indicates that we were interested in the credibility of the suspects who were being interrogated. If we doubted the credibility of a man, we were not interested in his statement without having it corroborated. I want to emphasize the importance of that memorandum.

There is one derogatory reference to Mr. Ellowitz as a playboy. I feel it is my duty to vindicate him. He was one of the hardest working members of our team.

Senator McCARTHY. It is a question of how rough he may have played.

Major FANTON. No; I think the lanugage that Mr. Bailey used on page 449 of the record was that he was a playboy. He was a hard-working loyal civilian employee assigned to me for this interrogation. Incidentally, he was not a thirty-niner.

Mr. Bailey has made the claim that Thon, who was another one of these interrogators who was accused of a lot of these improprieties, was Gorman-born. To my knowledge Mr. Thon was born in this country. He was raised in Germany but he was born here. All of these interrogators, as far as I know, were American citizens.

Mr. Bailey gives an account of bread-and-water punishment that was imposed on these prisoners for a deliberate breach of the security regulations governing their conduct in the prison. I do not recall the details of which he testified.

My best recollection is with respect to that incident that one of the trustees of the prisoners, a man by the name of Bart, brought in this mess equipment, the legend scratched in the mess equipment indicating it was a slogan of one of these organizations which indicated quite clearly that these people were trying to communicate, and at that time I asked Mr. Bart to round up all of that mess equipment that had any of those marks on it.

I asked him, of course, if the mess equipment had been without marks before it had been used by these prisoners, and he assured me that it had been. We had a pile of mess equipment in my office. It was about 3 or 4 feet high, a regular pile. I do not know how many were in there. I am sure that there were upward of 200.

That may be an exaggeration, but I do not think so. I know it took Mr. Steiner about a week to go through that mess equipment, and when we had gone through it we had all of those markings polished off.

We wanted some punishment because this was a deliberate violation. We were not interrogating just ordinary people. We were interrogating the cream of the German Army, some of the most ruthless troops that Hitler had.

This was the First SS Panzer Division, his bodyguards.

They were supposed to be the cream of the crop, and they were not stupid, not unintelligent, and they realized probably, I have no doubt the more intelligent certainly realized, that we were separating them so that they could not get their stories together and continue the collusion that we had discovered at the prisoner-of-war enclosure at which we had carried on our screening operations.

There was no exchange between myself and Captain Johnson regarding this episode. To the best of my recollection these men were on bread and water for 1 day, maybe more, but I am sure it was a very short period. Bread-and-water punishment of course is a standard discipline for special and general prisoners in the Army and the Navy.

It is not something unusual; it is not something cruel. It is the only way we could discipline these people.

Generally speaking they had a better diet than the German civilian population. They were better fed than prisoners of war. The caloric content of their food can be testified to better by prison personnel, security personnel, whom I understand the committee is planning to call.

Captain Johnson and I never had any misunderstanding. It was always clear that the supervision of these prisoners, providing food for them and providing guards to secure the prisoners against the escape of any of these prisoners—we had over 400 of them there. None of the guards carried any weapons. If we had a break, it would have been a very serious matter.

Everything of that nature was the responsibility of the security troops. I had no command function with respect to those matters, and I never had any difficulty with the security personnel.

They were most considerate of our requirements, and they did an excellent job in policing the prisoners and caring for these prisoners.

There has been a great deal of reference to Lieutenant Perl, and I think it is important that I give all the facts regarding Lieutenant Perl. I have a note here, but out of respect for Judge Van Roden's time, I will not go into that now because I know he is anxious to get on.

Now Bailey, on page 458 of the record, made the claim that he took 15 or 20 statements, in question-and-answer form. I am quite certain that that is not a true statement.

The record and files of the team will best demonstrate whether or not he is correct in that regard. My own recollection is that we abandoned that method of taking statements for the simple reason that we had to have them translated first from German into English, the reporter had to take them down, the reporter had to transcribe them, then they had to be translated from English back into German again at the time they were read back to him before he signed them, and it just took too long.

We did not have a staff that could process them, so we took our statements in accordance with this S. O. P. 4.

Now, I notice there is a letter which has been read into the record by Mr. Schuelingkamp, received by Senator McCarthy, and I assume he is going to be called before the committee. It was read into the record at pages 467 and 468. I will be glad to give further testimony regarding Mr. Schuelingkamp later.

At this time I will just pause to say that Mr. Schuelingkamp was a good soldier, a big help to me on the team. His return to Weisbaden was under most unfortunate circumstances quite beyond my control, quite beyond the control of Colonel Ellis.

I made a special trip to Weisbaden to vouch for the loyalty of Mr. Schuelingkamp because I was convinced that he was completely loyal and he was a valuable interpreter.

We had very few interpreters. It was difficult to find an interpreter who could accurately translate German into English and vice versa.

Senator McCARTHY. May I just get the record straight? You are referring to a letter written to Mr. Bailey or one written to me?

Major FANTON. I guess it was a letter written to Mr. Bailey. I am sorry, I thought it was written to you.

Senator McCARTHY. That is why I could not recall the letter.

Major FANTON. You are correct. It was one written to Mr. Bailey. I remember now, now that I read the rest of my notes, but I wanted to clear that up because I think it is important.

He was a good interpreter. He was a good soldier. I wanted him on the team.

Now he was sympathetic with Germans generally. He believed in that approach. There was nothing wrong with that, in my opinion. Everyone is entitled to their own opinion in those matters.

It did not affect his work except that he was not an effective interrogator. He would talk with them in a very friendly fashion and they would feel no insecurity. They would feel that they could tell him anything and he would be willing to believe it, so that I did not let him do much interrogation, but he was valuable as an interpreter.

I believe he worked with Mr. Ellowitz for a while. In fact, I think he may have started with Mr. Ellowitz when Mr. Steiner left, but nevertheless we were ordered to return him to Weisbaden, Colonel Ellis as well as myself.

We both went to bat for Mr. Schuelingkamp. Colonel Ellis I know made a special trip to Frankfurt to talk to the personnel people there.

He did so because I had requested it, and also because he himself was convinced, after discussing the matter with Schuelingkamp, and with me, when I returned to Wiesbaden, with Mr. Schuelingkamp, that he was completely loyal in every respect and was a valuable member of our team.

Mr. Schuelingkamp, incidentally, was German by birth, raised in Germany. He came to this country shortly after World War I.

There were some comments in there about ski paintings, and I think that should be cleared up. The oil painting that Mr. Bailey refers to was not a painting. It was drawn on paper with pencil colored with some sort of a crayon or water-color pencil. It was done by Karl Dobistch, who was a security suspect. He was a high-ranking SS general.

He had nothing to do with the Malmedy case. He was the commanding officer of the internees. There were two groups of prisoners at the prison, and he was the commanding officer of the internees. He was a security suspect by virtue of his high SS rank.

He had been a professor of art at Munich before the war. He was an accomplished craftsman and he was interested in his work. He wanted me to sit for a drawing, and I told him I did not have the time.

He asked two or three times about it, and finally after seeing his work and thinking—maybe it was vanity—my portrait might be of some interest to my wife back home, I sat for him on three occasions, probably 1 hour at the most, so that is the story about the portrait.

It is in my attic at home, and I intend to enter it as an exhibit. I think it is important because it indicates, I believe, that Mr. Bailey's testimony should be discounted to some extent at least.

The skis were skis that I had purchased. I had purchased those for my wife, also. They were too short for me. They had to be of such length that they could fit into a mail bag, and they were only about five, two, I believe; I guess only about 5 feet. At any rate, I purchased them through this Mr. Bart from a manufacturer of skis in Stuttgart. He went and got them for me. I paid, I believe, 50 marks for them, so that is the story regarding the skis and the painting.

I believe that is all I have to say with respect to Mr. Bailey's testimony.

Senator HUNT. If it is agreeable now with the committee, we will excuse this witness.

Judge Van Roden, will you take the stand again, please.

TESTIMONY OF EDWARD LEROY VAN RODEN—Resumed

Senator HUNT. Judge Van Roden, before any questions are asked, do you have any preliminary or further statements you would like to make?

Judge VAN RODEN. Well, Senator, it occurred to me when I referred to the figures of the number of accused whose cases we examined, and the number for whom we recommended clemency or from whom we recommended commutation, there may have been some misunderstanding caused by what I have said, and if that is so, this will clarify it.

As I recall, I testified from the record that of the 139 defendants or accused whose cases we examined, we recommended commutation for 29 of those 139. The other 110, we said in our report, we felt there was competent evidence to sustain the conviction and the sentence.

I thought I made that clear that of the entire group of 139, that there were 29 altogether for whom we made this recommendation.

Now it was brought to my attention that that meant they were all the Malmedy cases. Of course, that is not so. Only 12 were Malmedy defendants out of the 29, and also to clarify the question about the report in which we said the nature of the evidence here was so unreliable that it could not be considered proper with respect to these confessions, that did not apply, gentlemen, to the other accused other than the Malmedy defendants. In other words, of the 29 cases, only 12 of those, which were the Malmedy defendants, did we find and state in our report had, as we felt, not received fair trials by virtue of the nature of these confessions that were secured and the way they were secured as being the only evidence upon which they were convicted.

Senator McCARTHY. May I interrupt? Do I have this correctly in mind, now? Your recommendation was that in the 12 Malmedy death cases, in those cases the sentences should be commuted to life imprisonment because you felt that the evidence was such that you could not tell whether they were guilty or innocent, and you felt there should be a further investigation of those cases, but in the other 17 cases, the 17 that had nothing to do with Malmedy, those you recommended life imprisonment instead of death because you felt that the death penalty was too severe in view of the nature of the crime.

Judge VAN RODEN. That is correct; yes, sir. That is what I am trying to say.

Just for illustration—I will not take too much of your time or mine, either—in the case of Hans Schneider, we felt in our report that “the complicity of Schneider in this crime is not measurably greater than that of Pauley”—who got life imprisonment—“and it would appear appropriate that the death sentence should be commuted to life imprisonment.”

That is not a Malmedy case. The other 17 cases, the recommendations of various degrees of commutation, not all life imprisonment, which we recommended and which we concurred with some of the board of review’s recommendations, were made not upon the basis of

these confessions. The recommendations based upon these confessions that we have talked about relate only to the Malmedy cases.

Is that clear, gentlemen?

Senator McCARTHY. Let me get this absolutely clear.

As far as the other 17 were concerned, you felt that they had a proper trial, that they were properly tried, but that the penalty was too great, but as far as the Malmedy cases were concerned, those were in a class by themselves.

You felt that they did not have a proper trial, that you could not determine whether the men were guilty or innocent.

Judge VAN RODEN. That is substantially so; yes, sir.

I wanted to clear that up because I may have given the wrong impression that all 29 had received this treatment and were based upon confessions. That of course is not so, and is not included in our report. If I gave that impression, it was unintentional; but the 12 Malmedy cases which we are discussing in the hearings before this committee were the ones which we found and said in our report—which I think you have all read—the reason for our recommendation that they be commuted was so there could be an opportunity to determine whether they were guilty or not.

Maybe all are guilty. Maybe none are guilty. We felt we could not tell.

That is all I have to say, I think, Senator.

Senator HUNT. Senator Baldwin, did you have any questions?

Senator BALDWIN. No; I have not any further questions. I would suggest, Mr. Chairman, I think Colonel Chambers has some questions that he worked out on the basis of testimony.

Senator McCARTHY. I think if the judge has any comment about the charges made by Major Fanton, he should be allowed to make those comments. Whether or not he has any, I do not know.

Judge VAN RODEN. I have not had time to read it.

Senator HUNT. I was going to say, do you not think the judge should have time to read it before he is questioned?

Judge VAN RODEN. I would not attempt to, without reading it.

Senator McCARTHY. You have not had a chance to read it yet?

Judge VAN RODEN. No, sir.

Mr. CHAMBERS. Judge Van Roden, yesterday you testified in substance concerning this article that appeared in the Progressive Magazine, that it was an article which was based on a speech that you had made I believe before the Rotary Club, and you were very surprised, and I believe you said startled, when you found that you had been credited with being the author.

Judge VAN RODEN. That is so; yes, sir.

Mr. CHAMBERS. I do not know whether you are aware of it, but that same article has been inserted in the Congressional Record by Congressman Smith of Wisconsin, March 10, and it has apparently been the basis of considerable discussion in connection with this trial, particularly as it affected the events which took place at Schwabisch Hall.

Now I think for the purpose of the record, and in order to complete the testimony that was started yesterday, that we should get into a little detail in connection with this and find what parts you disagree with the article on, with which you are charged with being the author.

Judge VAN RODEN. That is entirely fair.

Mr. CHAMBERS. For that reason I wonder if perhaps we could approach it this way.

You said yesterday that you were not the author, but now did you repudiate the authorship to either the publishers or the author so that it could become perhaps generally known that you denied the authorship of this article?

Judge VAN RODEN. To the best of my ability; yes, sir. I first got in touch with the gentleman who actually wrote the article, and told him that I did not understand that, did not like it, did not appreciate it, and felt it should not have been done.

I wrote a letter to the editor—I believe his name is Rubin—and told him virtually the same thing in a short letter. I said I had not written that and was sorry it had been published, or words to that effect.

Mr. CHAMBERS. As far as you know—I do not know; this is the February issue—have they printed any retraction?

Judge VAN RODEN. I have not had any reply. I have not heard anything from that publication since. I never heard of the publication before that time, as a matter of fact.

Senator BALDWIN. May I ask one question. You said you got in touch with the man who wrote the article. Who was that?

Judge VAN RODEN. Well, he is here in the room at the present time.

Senator BALDWIN. What is his name?

Judge VAN RODEN. Mr. Finucane.

Senator BALDWIN. What is your full name, Mr. Finucane?

Mr. FINUCANE. My first name is James.

Senator BALDWIN. Are you the gentleman who is connected with the National Society for the Prevention of War?

Mr. FINUCANE. The National Council for the Prevention of War.

Senator BALDWIN. And is that the organization with which Mr. Libby is associated?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. I think the best way is to pick out some of the detailed items and see if those are the items that have been placed in this article by Mr. Finucane.

Senator McCARTHY. Do I understand, Judge, that you knew this article was going to be written; that you thought it was going to be a purported account of some speeches that you had been giving, but that you had no idea at all that it was to be done under your byline, in other words, under your name?

Judge VAN RODEN. That is only partially so. The situation is very simple. What happened is this:

Mr. Finucane, for whom I might say I have a high regard as a reporter—I did not know him until the evening of the occasion when he was present at this Rotary Club dinner, supper, and meeting. There were about 25 or 30 members of the club. He took notes of an extemporaneous talk that I had made.

The following Saturday I received in the mail a news release published by the National Council for the Prevention of War. A news release arrived at my office in the courthouse Saturday morning containing a report of this talk that I had made at the Rotary Club that night.

Some things were perfectly proper; most of them I say were proper that I had said on that occasion. I mean they quoted me accurately and proper. There were several things that were a bit exaggerated.

There were several things I had not said, and there were some things attributed to me which I had quoted as having been said by Colonel Everett in his petition.

Well, I saw immediately, if I was being quoted as having said these things, that it was a misquotation. I promptly tried to reach Mr. Finucane by telephone in Washington at the office of the national council; but, being Saturday, they were not officially open. I did talk to Mr. Libby, whom I had never met before, on the telephone. This is the actual chronology.

He then referred me to Mr. Finucane's home. As I recall, I tried to get him at his home. After some difficulty as to where he lived, the person sent out for him. He came to the telephone, and I explained to him the situation that confronted me when I saw that news release. He and Mr. Libby said they were afraid it was too late; it had already been sent out without my approval or disapproval of the article.

I then told Mr. Finucane the sections of that article which I certainly did not wish to be responsible for because I had not said them, and then following that I think they made another news release which eliminated these objectionable items, objectionable insofar as I was the author of them, and how far they got out or where they were circulated I have not any idea as to the dissemination of these releases.

Well, it must have been sometime following that that Mr. Finucane telephoned me, and he said that he wanted to publish the same story but he wanted to be sure he had it correct, as I remember it, in view of what had happened with this first article, and he read over the telephone certain items, and I said I felt that was not quite the way to do it by telephone, that I could not follow what he was saying, and I described as best I could what I had said, all I had said, and it was to be published in that way.

In all frankness he did say, "This is going to be under your byline." Now I will tell you frankly, gentlemen, and perfectly honestly, I did not know what the word "byline" meant. I did not know. I should have known. It means you are the author of it.

It did not impress me as being important. I said all right, but I said first I would like to see a copy before it goes to the press. Well actually I get a copy of the Progressive magazine and then I promptly got that.

I came to Washington, saw General Green, the Judge Advocate General. I spoke to him about it. He actually drove me in his car over to Mr. Finucane's building. I went in there.

I hope it was not too unpleasant, but it was rather an unpleasant interview. We had a discussion about it. I pointed out to him the things that I felt were not properly attributable to me, and I told him, if I was asked about it, I would have to say the very things I am saying now.

Does that give you the story of how the thing developed?

Then yesterday before you adjourned the session, in line with Colonel Chambers' query, Colonel Ellis and I sat down here at this table and he showed me this article and he and I penciled—I penciled with my own hand there the paragraphs or sections or phrases which I do repudiate and say that I am not responsible for having said at any time or any place.

Now that may be a little helpful, gentlemen. I do not know.

Senator BALDWIN. Mr. Chairman, may I say this: I think that Judge Van Roden has got into this thing very unhappily. I think in fairness to him that the corrections that he made in the article ought to appear in the record, too. I mean I think the copy in which he made the deletions ought to appear.

Senator HUNT. I would see no objection to that.

Judge VAN RODEN. If you can tell from those markings what they mean. I am sure you can tell from the X's I put there and my little notations in my very illegible handwriting. I want to be sure this is right this time, gentlemen.

Senator MCCARTHY. I think the Senator has made an excellent suggestion. We are all concerned with getting the facts. I would like to know whether the other parts are parts that were quoted with Colonel Everett, or where they originated.

Judge VAN RODEN. I made notations on that.

Senator MCCARTHY. In other words, you made a notation as to whether they were quotations from Colonel Everett or your own personal statements.

Judge VAN RODEN. I believe so; yes, sir.

Mr. CHAMBERS. Mr. Chairman, I believe that perhaps it might be well—these notes are very rough—I think it might be better, with the permission of the committee, that Judge Van Roden be literally given the opportunity of editing this article.

Judge VAN RODEN. Not for publication. [Laughter.]

Mr. CHAMBERS. No, no; for the purpose of clearing the record.

Judge VAN RODEN. No more bylines, gentlemen.

Mr. CHAMBERS. However, insofar as the reasons for some of the conclusions which you would affirm are concerned, I do believe that it is proper that we proceed with a line of questioning to develop the source of these conclusions.

I think I know, sir, from studying this copy, those items which you have affirmed as things that you did say in the speech, and what I am very anxious to have in the record is the source of the information. A little bit of it may be repetitious from yesterday.

Now specifically there is one item here which I do not believe you have scratched out in this copy.

“Posturing as priests” was one of the things charged in this article. Could you please tell us, Judge, where you got the evidence which led you to that conclusion?

Judge VAN RODEN. It was in some of the papers read over in Munich. What they were, I do not remember. We read so many, the petitions, the staff J. A.'s reviews, the Board's reviews. We read these various other applications and affidavits.

I am not sure. Frankly, I do not know where I got that information, but I know I learned it over there in Munich when I was there last summer. I am afraid I cannot tell you the exact source of that particular fact.

Mr. CHAMBERS. You were convinced at the time you made this speech that it was a fact that members of the prosecution team did posture as priests for the purpose of securing evidence to be used in the trials?

Judge VAN RODEN. Yes, sir, because when the three of us were coming home from Germany—Colonel Lawrence, Colonel Simpson, and myself were coming home from Europe—we talked about it con-

versationally, and that was one of the topics of our conversation. We all came back with the idea that that had been done.

How often, I do not know. It may have happened once; it may have happened more than once. We do not know.

Whether that came from the affidavits of the accused or their petitions, or the persons in their behalf, or whether it came from the Boards of Review's comments, I frankly do not know.

Mr. CHAMBERS. Judge, are you aware of the fact that Judge Simpson was asked this question and said there was no evidence to support that?

Judge VAN RODEN. I am aware of that, and he and I talked about that before he was called to testify. He said he was a bit disturbed, he could not think where that was. He was very indefinite about it.

I heard his testimony. I am simply giving you what my best recollection is. I certainly did not create that out of my own imagination. It may have come from the defendant's side of the case. I do not know.

That may have come from a petition which I read and he had not read. I do not know. He and I and Colonel Lawrence had talked about it in the course of our duties.

Mr. CHAMBERS. Well, now, insofar as the beatings and brutal kickings, the knocking out of teeth and the breaking of jaws are concerned, you I believe yesterday testified that you believed that those things did happen in some cases, and it was a proper part of your speech before the Rotary Club.

Judge VAN RODEN. Yes, sir.

Mr. CHAMBERS. I think it would be repetitious to ask you again what was the direct evidence that you had on it. I believe yesterday that you made much the same statement that you had just made about the "posturing as priests."

Judge VAN RODEN. Except the report with which you are familiar.

Mr. CHAMBERS. I notice you have eliminated from your article the charges that they used promises of acquittal or very limited rations in order to secure confessions. Now does that mean that you found direct evidence there, Judge, which led you to believe that they did not do that?

Judge VAN RODEN. All I can say is that I do not remember saying anything about limited rations to secure confessions.

Senator McCARTHY. May I interrupt at this time?

Judge VAN RODEN. I do not think I even testified to that.

Senator McCARTHY. Colonel Dwinnell, who is in the Regular Army and is one of the defense staff, has just informed us that one of the sources of this information in regard to the prosecution staff disguising themselves as priests to get confessions—one of the sources of information was himself. He described in detail the use of that procedure to you personally, so that there is no question about that.

Mr. CHAMBERS. Colonel Dwinnell will be on the witness stand tomorrow, and we will have an opportunity to question him on that point.

Senator McCARTHY. Just in fairness to Judge Van Roden, I want the record to be clear that this does not come out of his imagination.

Mr. CHAMBERS. I would like to make the point with Judge Van Roden, though, that he did not talk to anyone that had seen that method used or was hurt by that method, but he did get evidence,

really hearsay evidence, from one of the defense counsel on that point.

Judge VAN RODEN. Well, Colonel, all we had was from records. We were not in the cells.

I hope you gentlemen understand this. All you gentlemen question me about whether it is hearsay. We did not see any of the accused. We simply went over there to examine the records. All the information we have is based upon records.

Mr. CHAIRMAN. Judge, I well understand that, and in fact the defense counsel probably also had only hearsay evidence on the same point, because it must have been told to him by one of his clients, and he did not have an opportunity to see it himself.

Judge VAN RODEN. That is possible.

Senator HUNT. Judge, I would like to ask you a question here. In your approach to your assignment, would it not seem inherently the thing to do to have both sides of this case presented to you before you could arrive at any conclusions?

Judge VAN RODEN. No, sir. You do not understand the nature of this investigation apparently, Senator. You put me on trial here. I do not mind being put on trial, but I do not think it is quite the thing for you to do.

Senator HUNT. I do understand. I think apparently from your testimony you were interested in only one side of the case.

What I am trying to get at, if you wanted to be fair in your conclusions, why could you not ask witnesses, those connected with the situation; those who knew the facts from both the prosecution and the defense?

In other words, why did you consider just one line of evidence?

Judge VAN RODEN. Well, first of all, most of the investigators, if not all of them—most of them had actually left the country, as I remember. Whether they were available or not, I do not remember.

My recollection is most of them were not available, so we could not talk to those who were not there. That speaks for itself.

We did speak to Colonel Rosenfeld because he was the law member of the court. He is among the list of persons whom we interviewed. We interviewed everyone whom we thought was important.

As a matter of fact, Judge Simpson interviewed some persons alone when I think Lawrence and I were not there, but most of them were interviewed by all three of us, but not in every case.

Now you ask why. All I can say to you is that we went over there not to try the case, but to ascertain whether there was any merit in the accusations that Colonel Everett had made, and we did the best that we could.

I say to you I have no personal feeling one way or the other, either for the accused or against the accused, or for or against these investigators, except that we found from what I have described to you some of these things, the papers and records that we examined, had taken place, and we fulfilled our duty by reporting what we had learned to the Secretary, and it seems to me that is the official or someone under him to get the facts pro and con. We have not got the facts from one side or the other.

Senator HUNT. Colonel, the committee is in exactly the same position you were in, but is it not a self-evident fact that you could have come but to one conclusion from the type of testimony that you got?

Judge VAN RODEN. I do not understand that question, Senator.

Senator HUNT. Well, since you interviewed only those who claimed these cruelties had been exercised on the prisoners, you could not have come to any other conclusion if you had no testimony to the contrary.

Senator McCARTHY. Mr. Chairman, I think the record should show at this time the list of witnesses that they interviewed, including a preponderance from the prosecution staff. In other words, a majority of the defendants they interviewed were just the opposite from what we are led to believe by your questioning.

Only two of the defense staff in the Malmedy case were interviewed, and actually they were company at all times of the man who was in charge of the prosecution.

Mr. CHAMBERS. Mr. Chairman, I have a list of persons who were interviewed taken from the Simpson report. Since the main bulk of these charges have not to do with the prosecution of the trial after the interrogation, I think the record should show clearly that there is not a single person on this list of those interviewed who had anything to do with the developing of these cases for trial.

Now, there are two persons on here, and I would like to be corrected if I am wrong on this, Judge, Colonel Rosenfelt who was the law member, Colonel Harbaugh who was involved in the review of these cases. They are, so far as I know, the only ones who have had any connection with the prosecution.

Judge VAN RODEN. Lieutenant Moody also, First Lieutenant Moody. I do not know whether he was defense counsel or prosecution. I have forgotten. He was in some of those trials. I do not know which way he was.

Senator McCARTHY. I understood Colonel Harbaugh said they had statements from all the available investigators, that they had an affidavit from Perl who was alleged to be the principal offender.

Mr. CHAMBERS. Colonel Raymond, I believe you referred to, sir; and I think it should be borne in mind that the Raymond-Harbaugh was nothing with which Judge Van Roden had anything to do. In substance, I believe it was a board created by General Clay as the result of your findings—

Judge VAN RODEN. No, sir; before we made our findings, because we read their report before we even made our findings.

Mr. CHAMBERS. It was a separate board, I believe.

Judge VAN RODEN. Yes, sir; contemporaneously with us. They were doing it at the same time we were over there.

Senator McCARTHY. You read the affidavits and all the evidence gotten by the Raymond Board?

Judge VAN RODEN. Yes, sir; and the testimony taken.

Senator McCARTHY. And the Raymond committee had interviewed all available members of the interrogation staff?

Judge VAN RODEN. Just shortly before we left to come home, Colonel Simpson had a carbon copy, which he says he still has, of the Raymond-Harbaugh report.

Senator McCARTHY. May I ask you this: Am I correct, that the Raymond report, the affidavits consisted largely—I see that Colonel Raymond is here—consisted, to a great extent, of statements and affidavits by members of the prosecution and members of the interrogation staff as well as some from the defense, and those were available to you before you signed your report?

Judge VAN RODEN. Yes. Yesterday, I made a mistake. I was under the impression that Colonel Perl had testified before that Board. I find now I made a mistake. It was either Kirschbaum or someone else. Apparently, he was not there.

Colonel Raymond certainly is reliable. He knows who was there before him. There was so much to read there, gentlemen. There were so many pages of that testimony alone taken by the Raymond-Harbaugh Board, and I cannot recall at this time all that I read. That is only one of the documents that I read over a period of 6 weeks that I was over there.

Senator McCARTHY. May I ask the member of the staff, Mr. Chambers, if you are clear in mind on this, so the record will be straight, that the Simpson-Van Roden committee had available to them all of the affidavits, all the statements, all the evidence taken by the Raymond-Harbaugh Commission, and that they did have those available to read?

Mr. CHAMBERS. I think we had better clarify this point as we go along. The best evidence is Colonel Raymond who is here.

As I understand yesterday's testimony, many of these affidavits referred to, which were attached to the Raymond report, were not even taken at the time the Simpson committee operated.

Now, I would like to have Colonel Raymond clear the record so there will be no further misunderstanding on this point.

Judge VAN RODEN. That is probably true, may I say.

Senator HUNT. Colonel Raymond.

Colonel RAYMOND. Yes, sir; that is a fact. Our board had been appointed and had made part of our investigation at the time that the other board, of which Judge Van Roden was a member, came to Europe, and we filed preliminary report on the 18th of August, if I am not mistaken, and that is the report that you had.

We had certain testimony at that time. Subsequently we received quite a batch of affidavits from the United States. We did not have those at the time that Judge Van Roden was in the theater.

Judge VAN RODEN. That is correct; we did not see those.

Colonel RAYMOND. So what you saw must have been the August 18 report.

Judge VAN RODEN. That is so and is so set forth in the report.

Senator McCARTHY. The deputy judge advocate general, or whatever his title is, ordered an investigation of these allegations of brutality prior to the commencement of the trial. Now, did you have available to you the report of that group or individual or whoever made that investigation?

Colonel RAYMOND. Not a formal report. We had affidavits as to what that investigator stated when he returned from his investigation.

Senator McCARTHY. And were those affidavits available to Judge Van Roden?

Colonel RAYMOND. No; those came in later.

Senator McCARTHY. I am referring now to the investigation that was conducted long prior to your appointment in 1946.

Colonel RAYMOND. Yes; but we did not get that information until affidavits were received from the United States. I think Major Fanton's affidavit, or possibly Colonel Ellis—I forget, one or the other—

Senator McCARTHY. May I ask this further question now? The deputy judge advocate general also ordered the prosecution to make

an investigation of allegations of brutality in connection with getting statements and confessions. That investigation was conducted and report rendered also prior to the commencement of the trial by, I assume, Colonel Ellis. Did you have that report available?

Colonel RAYMOND. That was the report of Colonel Carpenter, and we did not. As I understand it, at least, I have never heard of any written report. I understand it was an oral report and it was reported to us through these affidavits as to what he said at that time.

Senator McCARTHY. So then there were four investigations as I understand it, two conducted prior to the commencement of the trial.

Colonel RAYMOND. One.

Senator McCARTHY. I get this from your report, incidentally, in paragraph 27:

It is to be noted that the deputy judge advocate for war crimes ordered an investigation of similar allegations April 1946, but the trial started at the time when all concerned were available. A similar report was rendered by the chief prosecutor after an inquiry of his staff.

You are perhaps right. One investigation, and two reports.

Mr. CHAMBERS. I might add, Mr. Chairman, that the staff here has made some investigation of the study or investigation made by Colonel Carpenter at the instigation of the deputy judge advocate.

Senator McCARTHY. Is it in writing?

Mr. CHAMBERS. We find that there was no written report made of this investigation, and it is our intention to call the officer concerned back, but I think that will have to be discussed later. He is at the present time on duty in Japan, and we want to be sure when we are ready for him and bring him back when it will be the least inconvenient to both himself and his command.

Senator McCARTHY. Was Carpenter in charge of the prosecution?

Mr. CHAMBERS. No, sir. This investigation was made as the result of a request by Colonel Corbin who, as I understand it, was the judge advocate of the Third Army.

Senator McCARTHY. What was Colonel Carpenter's status?

Mr. CHAMBERS. If I may finish, sir. This investigation was made as the result of a request by Colonel Corbin who was the JAG of the Third Army, Colonel Nickelwait who was the deputy judge advocate for the theater, and he designated Colonel Carpenter. I tried to develop whether or not Colonel Carpenter was completely unrelated to the prosecution staff. He was in the JAG office, and for that reason, Senator, I do not say it is possible to say it was a completely independent outside investigation.

The Third Army was responsible for these trials—to get an outside investigation to find out in effect if there was any truth to these brutalities. I have also been informed—I think the most direct evidence would be Colonel Carpenter. I came back and reported in substance what we now know about the mock trials and matters of that kind, and as a result of his discovering that, it was decided those matters would have to be reported after the trial was started.

Senator McCARTHY. Have you talked to Carpenter?

Mr. CHAMBERS. I am sorry, sir; Carpenter is in Japan. I talked to Colonel Nickelwait to whom Carpenter made his report. Colonel Nickelwait said apparently Carpenter found no substance to the charges of mistreatment, and for that reason they did not even think it was necessary to have a written report.

He further said—and again I would like to say it is pure hearsay—that Colonel Carpenter reported that at least four of the prisoners, and there may have been others—stated to him that they had made these allegations of mistreatment “in an effort to get out from under their confessions.” For that reason, I think it is essential.

Senator McCARTHY. You are quoting now from the Army report?

Mr. CHAMBERS. Also from what Colonel Nickelwait told me, sir.

Senator McCARTHY. At that time Colonel Ellis was the man in charge. He was in the JAG's office; right?

Mr. CHAMBERS. As I understand it, this prosecution staff was a part of which Colonel Nickelwait was the deputy commander.

Colonel ELLIS. Actually, we were on TDY to the Third Army at the time of the trial. Investigation was under USAFA headquarters, which was under Colonel Nickelwait. At the time of the trial we were under Third Army on TDY.

Senator McCARTHY. In other words, you were carried with regular JAG personnel?

Colonel ELLIS. And Carpenter was JAG personnel—I do not know. He was assigned to war crimes at that time.

Mr. CHAMBERS. I started to say presently JAG of the First Cavalry Division.

Senator McCARTHY. This seems to be an old Army practice of investigating yourself and rendering a clean report. In other words, JAG was investigating JAG.

Mr. CHAMBERS. I have several more questions that I would like to ask Judge Van Roden. I would like to ask, primarily because of what you have referred to as markings on the report of the Progressive, as to whether or not you have stricken out from this edited document the statement—

American investigators who abused the powers of victory and prostituted justice to vengeance should be exposed in a public process, preferably in the United States, and prosecuted.

Judge VAN RODEN. May I see that? Maybe it would save time if I tell you what my hieroglyphics mean and give it in one breath. Referring to this article, these are the items that I have struck out as not being accurate quotations of what I have said.

Senator HUNT. Would you give us the page and paragraph?

Judge VAN RODEN. There are only 2 pages. The paragraphs are not numbered.

The first paragraph there I have struck out the words “very limited rations” and “promises of acquittal.”

I heard talk about it. Maybe it happened; maybe it did not.

In the next to the last paragraph on the first column of that first page:

The tragedy is that so many of us Americans, having fought and won the war with so much sweat and blood now say, “All Germans should be punished!” We won the war, but some of us want to go on killing. That seems to me wicked.

Well, I do not recall having said that. That is extravagant language. I think I should disavow that for what it may be worth.

Senator HUNT. Judge Van Roden, we do not follow the location of that.

Judge VAN RODEN. Next to the last paragraph, the first column.

Now, then, the next column, the fourth paragraph from the top, it says, "After this investigation and after talking to all sides." Now, those words should go out. I may have said, and probably have no reason to know why I should not have said the rest of that paragraph, "I do not believe that the German people knew what the German Government was doing."

I am sure that is so, because I have talked to many Germans over there, as we all did when in Europe.

Now, the very last paragraph on page 21 there, the first page, "Lieutenant Colonel Ellis and Lieutenant Perl of the prosecution pleaded." Now, Lieutenant Colonel Ellis' name should not be included in there.

I may have said, probably did say, that Lieutenant Perl of the prosecution pleaded that it was difficult to obtain competent evidence. I got that from some of the records over there. Where I cannot tell. "It was difficult to secure competent evidence."

Then, the third line there where it says, "Perl told the court." I am sure I did not say, "Perl told the court." I am not sure Perl was ever in court. He may have been. I am sure I did not say "Perl told the court." Someone told, and said we had a tough case to crack, and I say that was so. We found that in the papers over there, but I will not attribute that to Perl.

Then, the next paragraph, I did not say, "There were no windows." The words "no windows" should got out. There must be windows there. I think we learned in some of the cases they were very small, but I did not say "no windows."

Now, in III you see there, "Our investigations would put a black hood." Now, there is where I quoted from Colonel Everett's petition. I said "Colonel Everett had said that is what had happened," and that paragraph should be attributed to Colonel Everett's petition and his charges.

Now, in the next paragraph where it says "All but two of the Germans, in the 139 cases we investigated, had been kicked in the testicles beyond repair," I did not say that. What I said was that all but two were recommended for commutation to life imprisonment, and the other two for other sentences. I do not know how many we heard or how many may or may not have been kicked or kneed in the testicles. We learned some had been but that figure is absolutely wrong. I do not know how many were kicked or abused in the testicles.

In the very next paragraph, "Perl admitted use of mock trials." No, I do not think Perl admitted that, and therefore I struck that out, but it was admitted on the record, and the papers that we examined, that these mock trials took place.

I understand that some members of the Army, some officers, have said that these were not mock trials; they were ceremonies. Whether they call them ceremonies, as they do in the record, or whether they are called mock trials seems to me to be a play upon words, and we did find that there was the admission of the use of the system of mock trials, and that is joined in with by Colonel Simpson and Colonel Lawrence in our report, as you already know, and I have said the same thing here, as we said in our report.

The last part of that paragraph was quoting what the prosecution said about the fact that of course all testimony was received.

Right down there where the words are quoted: "I will not utter another lie." I think that is, shall I say, a bombastic statement or a more colorful statement that I did not use that way. I know I have said that the record we found there was that this one boy, Freimuth, had committed suicide in his cell rather than sign these papers. Now, we learned there were 16 pages written out by him which we understood were not signed, but Colonel Ellis tells me he signed every page. That is news to me. Until Colonel Ellis told me, I did not know that.

The records we had over there indicated that when he committed suicide the paper was incomplete, and that was, as such, offered in evidence at the trial of the case.

I have almost finished, I think.

Now, in the next column, gentlemen, I crossed off the words "dimly light" in the first paragraph. That does not make any difference. I do not know how the rooms were light. There were two candles there and the crucifix, everyone admits including the prosecution staff. That is not important. These words about the prosecutor or investigator telling them that they would not have their American trial—the defendant was told—I think that again is a bit of an exaggeration of what I said, that they thought they were having, the records indicated they thought they were getting, their American trial.

That is the conclusion we reached from the nature of these ceremonies as they are called by the prosecution or the mock trials as they are called by the defendant, that they thought they were getting their American trial. That is the impression we had which, after all, is only a conclusion.

Senator McCARTHY. Mr. Chairman, I understand that Judge Van Roden will undoubtedly want to testify further after he has read the charges made by the major. And I understand no other witnesses besides the judge are going to testify tonight. If that is the situation, I am going to ask to be excused.

Senator HUNT. All right, Judge.

Senator BALDWIN. Excuse me a minute, Judge.

Would you have any objection, Senator, if instead of trying to keep the judge here, supposing he could read the statements made by Major Fanton and then submit what he might want to submit in the way of a letter. Would that save any time?

Senator McCARTHY. I have no objection at all.

Judge VAN RODEN. Now, I did say that "The court passed a sham sentence of death," because I got those words from some of the papers we examined over there. The source, I do not know. I said the papers read indicated there had been a sham sentence of death passed upon the accused.

Now, whether I said "He was told he would hang in a few days," I do not know, but I know we found in the papers there that the accused believed they were to be hung as a result of the sentence of death which they are supposed to have received at these ceremonies or mock trials.

I am again referring to the papers that we examined.

They may have been the papers furnished by the defendants or by their counsel or by other organizations. I am not sure of the source of that information. It was not at the actual trial of the case, of course.

It says here, "We were shocked by the crucifix being used so mockingly." That is not quite accurate.

We were first of all shocked about it, but what has been said here we learned to be true. I said, I think at that same meeting, we did learn it is customary in that part of Germany where most are Roman Catholics, to use the crucifix to take an oath instead of the Bible. Why they had the candles there we did not know. We thought that was part of the psychology used to secure these confessions.

Now the next paragraph:

In another case, a bogus Catholic priest (actually an investigator) entered the cell of one of the defendants, heard his confession, gave him absolution and then gave him a little friendly tip: "Sign whatever the investigators ask you to sign."

Gentlemen, I will say part of that is accurate. The other part may be somewhat of an elaboration.

I am not sure that I said that we found that from the petition of the accused, and of course not in the record of trial. May I say also to you, sirs, that it is my recollection—and we spoke to Colonel Everett in Washington before we made our report in writing and orally to the Secretary of the Army—that he at that time told us that that had happened and we got that, of course, from his lips here in this country.

We had found out from his petitions over there in Germany, and he went into some detail about how that was secured, and I am sure when I made those remarks I quoted Colonel Everett or the petitioner as having made that accusation.

We did find in addition to Colonel Everett's petition, some records over there to the effect that there were men either posturing as priests or representing themselves to be Roman Catholic priests. Who they were I do not know. It was very vague and very indefinite.

Now the third and last column just above the Roman figure IV, that paragraph is absolutely not my statement. As a matter of fact that information about five Germans having been ordered hung was not even known to me, and probably did not even exist at the time Mr. Finucane spoke to me on the telephone.

I spoke to Mr. Finucane about it. As I recall it—he will correct me if I am wrong—he said he got that information from somebody I think in New York or Washington and said:

We just found this out about it and they decided to put that in there because it made a more complete story.

I did not even know about the fact of these persons being hung. Is that correct, Mr. Finucane? Did we not talk about that paragraph?

MR. FINUCANE. That part of that particular paragraph, yes.

I hope the committee will remember that we would like to make comments on your comments on the article.

Judge VAN RODEN. That is up to the committee. I am just telling you what I know.

Senator HUNT. I might just say, judge, we will call the gentleman who wrote this article later on in the hearing.

Judge VAN RODEN. I think there are about two more here. I did not say that "the American investigators who committed the atrocities in the name of American justice and under the American flag are going scot free."

I do not recall making any comment about that. Of course the investigators are not on trial. I do not think they are even on trial here today. I do not want the committee to think I am trying them or prosecuting them, but of course they are subject to examination at the proper time, and I think they should be because of the information we had developed and submitted to the Secretary of the Army.

Now paragraph No. 2 there which reads:

American investigators who abused the powers of victory and prostituted justice to vengeance, should be exposed in a public process, preferably in the United States, and prosecuted—

I do not believe I said anything as extreme as that.

I may have said that these investigators, if they have done these things, should be called to account for it, which I firmly believe.

If they have done these things and it is proven, I think you as a committee would be the first ones to call them to account. If they have not done it, then of course that would not be done.

Now the rest of the information in this article here I think, gentlemen, is accurate. I either said it in those words or have no objection to it being attributed to me.

Mr. CHAMBERS. The record now shows the edited edition of the article in the Progressive, and I do have two questions, judge, that I would like to ask you on that, particularly in regard to these American investigators.

Now you said that you were not at all sure that you used this precise language, but that you felt that if they had done these things, that they should be certainly interrogated, and if necessary, punished.

Judge VAN RODEN. Yes, sir.

Mr. CHAMBERS. Now I would like to ask you, sir, is it not a fact that you have drawn certain conclusions in these items which you have left in your article which clearly would indicate that in your own mind at least they are guilty of these things because it has already led to a very substantial belief on your part that they are guilty of these things, and yet you arrived at that conclusion without having a single one of these people in to tell their side of the story?

Judge VAN RODEN. Well, of course you may if you wish defend the investigators, sir, but I think this committee is supposed to be impartial and not to defend the investigators unless you hear the other side, colonel.

Mr. CHAMBERS. I might say, judge, that you are the first witness, sir, whom we have had here from whom we have been able to get such complete and frank answers on this point, and it is most helpful because in our effort to find the facts in this case, I think it is necessary to try to get the record complete as to all the various facets of it.

Now there is no question in my mind, and I am sure in the minds of all of us, that some of the investigators feel that they have been convicted without having been given a trial. It appears from the record and from this article that you have written that at least in your own case you felt there was reason to believe that they had done things which seemed improper in the way of the treatment and brutality, and that being true I wanted the record to show—and I am certainly not trying to cover up for them—that in arriving at those conclusions

apparently there was no evidence in the record from the people about whom these conclusions have been drawn.

Judge VAN RODEN. In the record of trial itself, you mean.

Mr. CHAMBERS. In the record of trial or in the record of the Simpson committee report.

Judge VAN RODEN. You are wrong on that. May I read this? [Reading:]

Moreover, the prosecution testimony in this case was made up in large part of the extrajudicial statements of the accused. Many of these statements implicated to a damaging degree the other accused. Admittedly some of the statements were obtained by the use of mock trials in which one or more persons attired as American officers pretended to preside as judges and others attired in Army officers' uniforms pretended to be the prosecutor and defender of the accused.

The room where these proceedings were held contained a table covered with black cloth on which stood a crucifix and burning candles. The accused was conducted to this room with a black hood over his head. The mock trials were designed among other things to gain the confidence of the accused in his supposed defense attorney, and thus elicit a statement from him.

Other practices, some of which were not brought out during the trial, were developed in the testimony before the Administration of Justice Review Board for the European Command as reflected in its report of August 18, 1948.

The propriety of many of the methods employed to secure statements from the accused is highly questionable, and we conclude cannot be condoned. The extent to which the use of these methods operated to elicit statements from the accused cannot, in the nature of the situation, be accurately estimated. Sufficient doubt, however, is cast upon the entire proceedings because of these factors to make it unwise in our opinion to proceed with the executions of the death sentences which have been confirmed.

That is the Simpson report, and I think that in a few words summarizes what I am saying to you here in this investigation.

Mr. CHAMBERS. Yes, Judge. I accept that completely, sir.

The only thing I am trying to say is that insofar as the brutality and the mistreatment is concerned, you did not call in any of these folks to get their guidance on the story.

Judge VAN RODEN. We could not, sir. If they were not there, we could not call upon them.

Mr. CHAMBERS. Now there was one other thing I would like to ask about because it is important. I would like to know what was the Simpson committee's understanding of this solitary confinement thing.

Judge VAN RODEN. We thought that was not too bad. I have said that in talks I have made.

I have had some experience as a prosecuting officer in our county. I may have told it to you before. I recognize the fact if you have a number of codefendants and if they are not kept separated, they are bound to get together and make up a defense and a story, and they have to be kept separated.

I have said that, I think, down at that club that night. The solitary confinement which was complained about here was not so bad. It had to be done.

I do think though that being kept there for 2 or 3 or 4 months, as Colonel Ellis told me, was rather a long time to keep a man in a cell with no exercise and no reading matter.

We found they had no opportunity to consult any clergy or see their families or their lawyers until shortly before the trial. To me that was a rather exaggerated prolonged solitary confinement. That is my own personal opinion.

I think it had to be done. I think it was overdone a bit, but I think that is not too questionable.

Mr. CHAMBERS. I have no further questions, sir.

Senator HUNT. Senator Baldwin, do you have any further questions?

Senator BALDWIN. I have no further questions. Thank you very much, Judge, for coming down and helping us out.

Judge VAN RODEN. Let me say one more thing. I do not want you to feel I have any sides in this matter. I suggest, in answer to Colonel Chambers' question, we made our report in September. Somebody has waited for a period of 7 or 8 months to start this investigation.

I should not say that; if it had been done more promptly, if the investigators were available, they would have been heard and the investigators would not be under a cloud as they have been all these months. Of course, the wheels of justice turn slowly. These investigations have been suggested and have been opposed, and have been fought by various people in Washington.

It seems to me that what you are doing now, gentlemen, is a very splendid thing. It should have been done a little more promptly, but, of course, it is too late to say that now.

I feel that this committee will have the benefit of hearing these investigators. It was not our duty. It is more or less your job, perhaps, now, and if they have clean bills of health, I will be the first one to say "Hurrah"; but the information that we got over there, we were bound to report to the Secretary of the Army. It was our duty. That is all we did.

I am not taking any sides. If these things happened, they are very, very bad. If they did not happen, let them come in and say it did not happen.

Senator BALDWIN. I think, as you have already testified, Judge Van Roden, your primary job was to review this thing on the basis of the record and not on the basis of the examination of witnesses, in an effort to retry the case.

Judge VAN RODEN. That is correct, sir.

Senator BALDWIN. But in the process of the thing you did examine some witnesses in connection with the trial. For example, you talked to one of the judges, I think Colonel Rosenfeld.

Judge VAN RODEN. Law member of the court who corresponds to a judge, shall we say?

Senator BALDWIN. But you did make no attempt to bring in those who had taken part in the investigation and the prosecution.

Judge VAN RODEN. I will not say that.

Senator BALDWIN. Because they were not available.

Judge VAN RODEN. I think that Colonel Simpson, who had charge of this, got all the names of the persons who were available from Colonel Bresee, who was Chief of War Crimes. I believe he is back in this country, or he is supposed to arrive very shortly.

As I recall it, Colonel Simpson—this may be my imagination—I believe he secured from him the names of all the persons who were available, and I think that the list we have here are the names of all persons who were available to be examined by us over there in Germany, although I am not sure. That was Colonel Simpson's job as chairman of this board, and that is all I know about it.

Senator BALDWIN. I may be wrong about this, but it is my recollection—and I would like you to correct me if my recollection is not correct—that of the actual witnesses that you interviewed, I think you said there were only two who were actually connected with Malmedy.

Judge VAN RODEN. Well, I am not sure of that. Colonel Rosenfeld, the law member of the court, and I have forgotten whether Lieutenant Moody was in the Malmedy case or not.

Colonel ELLIS. He was the reviewer at headquarters. He never worked on the Malmedy case that I know of, even on review.

Judge VAN RODEN. We of course talked to Colonel Harbaugh, but he was the judge advocate for General Clay. He gave us all the information that he could. We talked to Colonel Dwinell who was defense counsel in Washington before we left.

I believe when we returned to Washington after we came back from Germany, Colonel Simpson saw him. I did not see him, but I believe Colonel Simpson saw him. We did talk to him before we went to Germany as one of the defense counsel, and he is still a lieutenant colonel in the Regular Army.

The rest of them, Senator, I do not know. I guess they probably were representing the defendants, but they were only persons who, we were able to ascertain, were available.

Senator BALDWIN. Just one further question, if I might ask it, Mr. Chairman.

I am referring to the testimony on page 545 of the record of Judge Simpson. I asked this question:

The one question I had in mind that I didn't ask you, unless I may have asked it of you before, was this: From a review of all of the records and an examination of all these witnesses, were you convinced in your own mind that the men for whom you recommended that death sentences be imposed were actually present and took part in the proceedings and that there was competent evidence upon which to establish their guilt?

To which Mr. Simpson replied:

Now, Senator, we didn't recommend that any of these death sentences be imposed. We recommended that all 12 death sentences be commuted because for the reason stated in our report here, and I will say for the added reason that we were not satisfied with the regularity of those pretrial investigations and didn't want to see anybody hung in a proceeding which had that particular blemish.

Senator BALDWIN. As I remember, you said before you felt that on the testimony and on the record these men were guilty, but that there was a question in your mind as to whether or not the evidence against the man had been procured in such a way that it warranted the lightening of their sentences.

Judge Simpson's answer to that is: "That is correct."

Then I said: "But you felt convinced in your own mind from reading the record that they were guilty," and Judge Simpson said, "That is correct, Senator."

Do you agree with that?

Judge VAN RODEN. No, sir. That was not my understanding. My mental reaction was I did not know whether they were guilty or not.

Senator BALDWIN. There was a doubt in your mind?

Judge VAN RODEN. Serious doubt. I did not know whether they were guilty or not. He may have felt they were guilty.

Senator BALDWIN. I think that answers the question.

Judge VAN RODEN. They may have been.

Mr. CHAMBERS. Judge Van Roden, I have one further question. As I understand it, your prime endeavor was to run down and search out pretty carefully the record on these 12 death sentences in the Malmedy case?

Judge VAN RODEN. Yes, sir.

Mr. CHAMBERS. And that inevitably led you into some of these other cases, but you did not make a full-dress study of the remaining 61 cases?

Judge VAN RODEN. That is correct; we did not.

Mr. CHAMBERS. So that these various charges and what not really stemmed out of those 12 cases and not the Malmedy cases as a whole?

Judge VAN RODEN. I cannot say that is so because they may have stemmed out of all the cases.

As far as we know, we read the record of trial which of course covered all 73 who were tried. Then we confined our study of the petitions, the post-trial petitions that were filed, and sent to the various boards of review to the 12 who had received the death penalty, because if we had gone over the entire 73, we would never have gotten through up until now, so we confined our study outside of the actual trial record to those 12 cases.

Mr. CHAMBERS. Judge, was there ever any doubt in your mind that these Malmedy defendants were members of the SS organization?

Judge VAN RODEN. I do not think so except that I had the impression that the SS was not part of the German Army. It was Hitler's own force.

It was not the German regular Army as we all know, but they probably were SS troopers. Whether they were the pick of the crop, I do not think that is true. They came from the Russian front. They could not have been the pick of the crop, but that is a matter of judgment.

They may have been good soldiers. I guess they were. That is all a matter of personal opinion.

Senator HUNT. Well, Judge, unless you have read Major Fantons' statement of this afternoon and you care to make a written statement to us in reference to that statement, then I think that your duties to this committee have ended. We are very grateful for your coming down and giving us your time.

Judge VAN RODEN. May I thank you all for being so courteous to me, including the cross-examination.

(Whereupon, at 5:10 p. m., the subcommittee adjourned, to reconvene at 10 a. m., Friday, May 6, 1949, in room 135 Senate Office Building.)

MALMEDY MASSACRE INVESTIGATION

FRIDAY, MAY 6, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10:15 a. m., in room 135, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senators Baldwin (presiding) and Kefauver.

Also present Senator Joseph R. McCarthy, Colonel Ellis, and Mr. J. M. Chambers of the committee staff.

Senator BALDWIN. Senator McCarthy, I want to say this for the benefit of the record. Senator Hunt could not be here this morning, because he is working on the District sales tax. I have tried to reach Senator Kefauver, and he has not yet gotten to his office. I do not know whether you want to go on with this cross-examination, perhaps with Mr. Chambers.

Senator MCCARTHY. Let me make it absolutely clear. I have no objection whatsoever to the Senator from Connecticut occupying the chair. As far as I am concerned, he has not been at all unfair. He has given me every opportunity to cross-examine the witnesses, and I have no conceivable objection to the Senator from Connecticut occupying the chair. I will object to a member of the staff occupying the chair.

Senator BALDWIN. Let us make one more effort to get Senator Kefauver.

Senator MCCARTHY. I do not see any reason, Senator, why you should not occupy the chair.

Senator BALDWIN. I would prefer not to while Major Fanton is on the stand.

Senator MCCARTHY. Why do you not occupy the chair, and if you think my cross-examination is such that there should be somebody here to object, let us wait for someone else. I am sure there will be no objection to my examination of this fellow. I have no intention whatsoever of abusing him. I intend to examine him at great length on this thing.

Senator BALDWIN. Suppose we wait another 10 minutes.

We might start with another witness. We will put on these other witnesses. I hate to lose time here.

Mr. CHAMBERS. Major Evans, will you take the chair, please, sir?

Senator BALDWIN. Will you hold up your right hand, sir?

Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth to the best of your knowledge and belief, so help you God?

Mr. EVANS. I do.

Senator BALDWIN. Will you give us your full name and address for the benefit of the record?

Mr. EVANS. John Temple Evans, Crystal City, Tex.

Senator BALDWIN. And what presently is your business?

Mr. EVANS. I work for the Farmers Home Administration, Department of Agriculture, county supervisor.

Senator BALDWIN. How long have you been there?

Mr. EVANS. I have been at this location about 2 years.

Senator BALDWIN. Now, Colonel Chambers, do you want to question this witness further?

Mr. CHAMBERS. Do you have any prepared statement that you care to read.

Mr. EVANS. Yes, sir; I have an affidavit that I have prepared.

Mr. CHAMBERS. I believe before you give that affidavit, perhaps you should tell us what your connection was with Schwabisch Hall and with the Malmedy case, so we will know in what capacity you were involved.

TESTIMONY OF JOHN TEMPLE EVANS, CRYSTAL CITY, TEX.

Mr. EVANS. It was in the last part of 1945, I was on duty with the Six Hundred and Thirtieth Tank Destroyer Battalion. My duties with the battalion was that of battalion executive with headquarters stationed in Bad Mergentheim. In the latter part of the year, our battalion received orders to take over the Schwabisch Hall prison.

Senator McCARTHY. I missed the date; I am sorry.

Mr. EVANS. That is the latter part of 1945.

Mr. CHAMBERS. Was that November of 1945?

Mr. EVANS. I would say about November of 1945, we took the prison over. A little later on we received orders to accept this special group of prisoners, what is known as the Malmedy prisoners.

About the latter part of December, somewhere between the eighteenth and the end of the month, I was ordered to take command of the prison. I was supposed to be there for just a week or 10 days. However, I remained there until I was returned home in the first part of May, as prison commander.

Senator McCARTHY. May of 1946?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Sir; was there anybody in charge of the prison before you took over, or were you the first commanding officer?

Mr. EVANS. No, sir; I was not the first commanding officer. There was a Captain Tormey.

Mr. CHAMBERS. Captain Tormey was not there during the time that the Malmedy prisoners were at Schwabisch Hall?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. He was there?

Mr. EVANS. He was there.

Mr. CHAMBERS. Very well, sir. Now, you say that you left Schwabisch Hall in May 1946?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Now, who relieved you at that time?

Mr. EVANS. Well, there was a lieutenant. I cannot recall his name. He was a second lieutenant with the Second Chemical Mortar Battalion. I cannot recall his name at this time.

Mr. CHAMBERS. Did the tank destroyer battalion remain as guards throughout the year at that time?

Mr. EVANS. No, sir; the tank destroyer battalion was returned, but I was transferred with my staff at that time to a Fifty-eighth Field Artillery Battalion. Our Fifty-eighth Field Artillery Battalion maintained their headquarters in Schwabisch Hall.

Mr. CHAMBERS. And were they American troops?

Mr. EVANS. They were American troops.

Mr. CHAMBERS. At any time did you have other than American troops under your command?

Mr. EVANS. We had Polish employees; Polish guards, we call them.

Mr. CHAMBERS. When were they employed at the prison, all the time, or did they come at a later date?

Mr. EVANS. They came at a later date. They came about, I think, the middle of March, as best as I can remember.

Mr. CHAMBERS. Now, I believe you say you have an affidavit or prepared statement you would like to read. Will you do that, please?

Mr. EVANS (reading):

The State of Texas, County of Zavala.

Before me, R. A. Taylor, Jr., a notary public in and for Zavala County, Tex., on this day personally appeared John Temple Evans, known to me to be the person whose name hereunto subscribed, and after having been by me duly sworn, on his oath says:

My name is John Temple Evans and I live at Crystal City, Zavala County, Tex. Being a reserve officer, I was ordered to extended active duty in the Army, effective February 28, 1942, and was relieved from further active duty and reverted to inactive status effective September 20, 1946.

On or about December 1, 1945, I was serving as executive officer with the Six Hundred and Thirtieth Tank Destroyer Battalion with headquarters at Bad Mergentheim, Wurtemberg, Germany. My rank was that of captain of Field Artillery, Army serial No. O-23824. Among other duties, the battalion was charged with the security and administration of the Seventh Army Internee Prison No. 2, which was located at Schwabisch Hall. On the above date, and in the temporary absence of the battalion commander, I made arrangements to receive at the Schwabisch Hall prison certain special prisoners charged with serious war crimes. These were principally former members of the First S. S. Panzer Regiment and were commonly known as the Malmedy prisoners. On orders from higher authority we were to exercise special surveillance to prevent communication between prisoners as much as possible.

On or about December 18, 1945, I was ordered to take command of the prison at Schwabisch Hall and I remained at this assignment until May 5, 1946, when I was ordered to return to the zone of the interior for separation from service. Although two other organizations succeeded the Six Hundred and Thirtieth T. D. Battalion in jurisdiction, I, as well as my prison staff, was transferred to these succeeding organizations.

As prison commander, it was my duty to see that prisoners or internees were guarded to prevent escape, fed, clothed, received suitable beds, received medical and dental care, order punishment for infraction of the prison rules if necessary, and other general administrative functions, and to make the prisoners available to the War Crimes Investigation team for interrogation.

The kitchen was inspected by either myself or a subordinate, and in addition the distribution of food to the Malmedy prisoners was checked daily to see that they got their proportionate share. The ration at the prison was from 2,300 to 2,500 calories daily. This was above the regular basic prison ration because of the large amount of fresh potatoes and sauerkraut in storage at the prison when taken over as an internee prison. The quality of bread was improved by drawing bread components and baking in the prison bakery. This ration was much above the German civilian ration which was about 1,700 calories at that time, as I recall. In addition all prisoners received the tobacco or other special ration that was available. No food or other ration was withheld unless the prisoner was placed on bread and water ration, as punishment for violation of some one or more of the prison rules, and in conformance with the Rules of Land

Warfare, and only after record was properly entered in the company punishment book. Solitary confinement with bread and water ration, or separately, was for violation of the prison rules and was entered in the prison record.

Senator McCARTHY. What?

Mr. EVANS. Solitary confinement with bread and water ration, or separately, was for violation of the prison rules and was entered in the prison record. All such records were at all times available to the War Crimes—

Senator McCARTHY. Either bread or water?

Mr. EVANS. Or solitary confinement or both.

Senator McCARTHY. Will you read that sentence again?

Mr. EVANS (reading):

Solitary confinement with bread and water ration, or separately, was for violation of the prison rules and was entered in the prison record. All such records were at all times available to the War Crimes Investigating team and upon my departure were turned over to my successor.

The prison was well heated. To assure adequate heat at all times, the central heating system was converted to oil burning. Heat for entire wings was controlled from the main boiler plant and could not be regulated for individual cells. I know of no time that heat was purposely withheld from any individual or any part of the prison in which there were occupants.

Daily inspections by me or my prison staff were made of the Malmedy prisoners in their cells. This was for the purpose of ascertaining the general cleanliness of the cell and occupant, and to check the general well-being of prisoners. On asking if they got enough to eat, the answer was always an unhesitating "ja" (yes). On no occasion did I see or hear about a prisoner who was beaten up or injured in any way, neither do I know of any instance where blankets were denied.

The prison plant included a well-equipped dispensary and a dental chair. An interne, a minor Nazi was the prison doctor. A dentist who had a private practice in Schwabisch Hall did the work for the prison on a contract basis. He and a technician came to the prison to perform the work on a prearranged schedule. I know nothing of this dentist other than he had been screened by the Counter Intelligence Corps. I observed much of his work and he appeared to be a first-class dentist. On none of the patients did I see any evidence of recent violence. These services and those of an interne barber were available to all prisoners. A written memorandum was sent to my office each day listing those patients treated for medical or dental ills.

A Protestant minister and a Catholic priest were allowed access to the prison. I know of no instance in which their services were denied.

During the time that I was in command of the prison I had daily contact with the War Crimes Investigating team. Never was I interfered with or prevented from performing my duties by any member of the team. I was never denied access to any prisoner. I neither saw nor heard of any misconduct on the part of any member of the investigating team during the course of their interrogations. The team appeared to be most conscientious and it always seemed to me that they were bending over backward, so to speak, to obtain information with duress, applied force, or threats.

Senator McCARTHY. You mean "without"; I assume you meant "without duress."

Senator BALDWIN. Do you want to read that sentence again?

Mr. EVANS (reading):

To obtain information without duress, applied force, or threats.

It is my present belief and recollection that I personally saw every prisoner at least once every week during the period of my command, and I never at any time saw or heard anything that would indicate misconduct or violation of rules and regulations on the part of any American military or civilian personnel.

I am informed that as against American military personnel and particularly against members of the War Crimes Investigating team allegations have been made of misconduct against the prisoners, such allegations being listed as follows:

1. Punching the prisoners in the face with brass knuckles.
2. Beating them with rubber hoses.
3. Knocking their teeth out.
4. Breaking arms and jaws.
5. Solitary confinement (as distinguished from close confinement).
6. Posturing as priests.
7. Withdrawal of blankets in winter.
8. Purposely withholding heat.
9. Allowing very limited rations.
10. Refusing to permit spiritual comfort and guidance.
11. Kicking prisoners in testicles.
12. Starving prisoners or causing them to be starved.

I here and now categorically deny each and every such allegation. It was impossible for me, of course, to personally inspect and see every prisoner every day, but I did see all prisoners on an average of once each week. I had good officers and good enlisted personnel serving under me. I trusted them and believed in them and still do. I had their confidence, trust, and respect. I can confidently say that if any prisoner had been so mistreated, I would have either seen evidence of it myself or it would have been reported to me.

About 2 or 3 weeks—a very short period of time—before I left to return to the zone of the interior, I saw all of these prisoners together. They were being moved to another prison, I forget where. I noted their appearance. None showed any evidence of abuse or mistreatment, and the thing that impressed me most was, and I remarked about it, how fat they had gotten.

I therefore state that such allegations are not true, and that no such act of misconduct, as alleged, occurred, at least not during the period of time I was in command.

It is my belief that no such acts as alleged occurred before I took over command. More the affiant saith not.

SENATOR BALDWIN. Do you want to ask questions?

MR. EVANS. I would like to add one thing. About the prison doctors, we used the prison staff, the attorneys, only in emergencies. They were used only in emergencies, this prison doctor that we had, a German.

MR. CHAMBERS. Well, on that question of medical and dental care, did you know the name of this dentist who treated the Malmedy prisoners for dental matters?

MR. EVANS. No, sir; I do not know his name.

MR. CHAMBERS. We have an affidavit from a Dr. Knorr.

MR. EVANS. That sounds familiar.

MR. CHAMBERS. Does that refresh your memory?

MR. EVANS. That sounds familiar; yes, sir.

MR. CHAMBERS. Dr. Knorr has submitted an affidavit. It is very short. It is already in the record, but I will read it again for your information. He says:

In my capacity as official doctor of the former prison at Schwabisch Hall, I came there twice a week (generally on Tuesday and Thursday) to attend also to the dental needs of the internal people. These duties several times involved the treatment of members of the Waffen-SS (all of them very young men) who were to be heard in the Malmedy trial. Unfortunately I cannot give any names, as it was forbidden to ask for names or other particulars. There may have been about 15 to 20 patients who had to be treated for injuries of the mouth and jaw. Maltreatments by blows could be clearly traced with nearly all of them.

Once when I asked a young man how he was, he replied: "What can you expect if you are beaten so much almost daily, at an any rate on the occasion of every hearing; look at my head." And indeed he was beaten blue all over the head which was bloodshot. Moreover, I can definitely remember two cases in one of which one tooth, and the other one four teeth, were knocked out of the upper jaw quite recently. Besides there was once presented to me a man with a rupture of the lower jaw which I was allowed to put in a provisional splint only because he was transferred to an American hospital at once. All of the men gave a very

intimidated impression and answered the questions either not at all or very vaguely for their statements might be the cause of further maltreatments.

It is known to me that people residing in the vicinity of the prison could definitely hear the cries of pain of the tortured men. That is why there was much agitation and indignation among the population.

Now, this is signed by Dr. Knorr and attested to by a notary public, and because this is a photostat, apparently his signature does not appear, but there is a signature of a man by the name of Pike who was Chief of the Translation Section, who certified to the thing.

I would like to ask your comments on that particular affidavit.

Mr. EVANS. In my inspection of the prison, I was in the prison dispensary each day. They had this chair there which he came with an assistant. I remember one patient who was an internee. He was not a Malmedy prisoner. He was an internee not charged with war crimes, as far as I know, that did have a rupture. Now, how he got it—it had been there for quite a long time.

I remember he was telling me how he was going to eventually heal that up, but now this man was not a Waffen-SS in the Malmedy case.

Mr. CHAMBERS. Now, were you there at the time that any of these Malmedy prisoners were treated?

Mr. EVANS. If they were treated there—I remember no one incident—but if they were treated they would be with one of our guards with him at that time. It would be only on an emergency case.

Mr. CHAMBERS. Was it the general practice to have these Malmedy prisoners treated by Dr. Knorr or the dentist who visited the prison?

Mr. EVANS. It was not the practice to have this doctor treat the prisoners.

Mr. CHAMBERS. Did they get their dental care if he did not do it?

Mr. EVANS. They went to either Ludwigsburg or Bad Mergentheim.

Mr. CHAMBERS. Mr. Evans, were there any records kept of these medical matters?

So far I do not believe this question was asked. Was there any record made when a man was sent over for medical care as to what was wrong with him or anything of the kind?

Mr. EVANS. Yes, sir; each day there was a report of anyone who had been treated both medically and dental by the local dispensary.

Mr. CHAMBERS. That is, the local dispensary that would be treating the internees. How about the Malmedy prisoners?

Mr. EVANS. If they were treated there—

Mr. CHAMBERS. But was there any medical record kept of the Malmedy prisoners who were sent out for treatment?

Mr. EVANS. I do not remember about that, but I am sure there are records of them being sent, because we kept the records on transferring them to the various places.

Mr. CHAMBERS. Well, over a period of some 4 or 5 months it would be entirely possible that Dr. Knorr could have treated about 15 to 20 Malmedy patients?

Mr. EVANS. I do not think so. It would be only in an emergency case, very much of an emergency, and only then with a guard, with one of the American guards or a Polish guard present, and I know of no instance that it happened.

Mr. CHAMBERS. Well, now, in connection with your supervision of these Malmedy prisoners as distinct from the internees, I believe you testified that you saw each of them at least once a week.

Mr. EVANS. Once a week, approximately once a week.

Mr. CHAMBERS. During that time was there any evidence, or did you see anybody, or did anybody complain to you that they were being mistreated either by the guards or this prosecution staff?

Mr. EVANS. No, sir.

Mr. CHAMBERS. You mean, all the time you were there, nobody said they got shoved around or pushed around or anything?

Mr. EVANS. No, sir.

Mr. CHAMBERS. During the course of this period of time there was a man by the name of Freimuth, one of the accused, who committed suicide.

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Now, there have been many statements made, some dealing with whether or not his uncompleted affidavit should have been put in the record, but others dealing with the way he died and the things he said just before he died.

Now, did you, as commanding officer of the prisons or the prison, make an investigation of the suicide of Freimuth?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Will you tell us what you found; what you know about it?

Mr. EVANS. In this particular block, it is a large cell block, there were two guards on there at all times. In the inside of the prison they carried clubs, and I believe about 8 o'clock, it was a standard operating procedure, the case—this particular night, I was called by telephone from the guardhouse that a man had hung himself. Well, I told them to take him down, try to get him back. I told them to do that, that I would be right down. I rushed down, but the guards had not done that. They had not gone into the room, so I went with the guards into the room, and he had hung himself, or more or less strangled himself.

I tried, before I left my quarters, to contact the investigating team doctor, medical officer. I could not get in touch with him, so I went down and I had the local doctor, the German medical doctor, come over to try to revive him, but he checked him very thoroughly and said there was no chance, that he had been dead too long to try to revive him and there was nothing else to do at that time, 4 o'clock in the morning, or about 4 o'clock. So we laid him on this bed and covered him up.

The next morning, I went in as soon as I got back to the prison, about 7:30 or 8 o'clock and went into the cell again to make a report on it, and I pulled the covers back and he was still warm. He seemed to be still warm. I was thinking, again, and I talked to the American doctor at that time about, well, how long would he stay warm, and he said he would stay warm for quite a long time.

Mr. CHAMBERS. Well, what did the guards say? Did they hear any cries, or him shouting or anything of the kind?

Mr. EVANS. I asked the guard, did he not hear anything; and he said "no". I asked him how did he come to find him in there. He said, he was making the checks. The lights were on the outside, the peephole. He was going along making his routine check and found the man hung; apparently standing up, he first thought. I asked him did he hear anything like he was trying to—any noise in the cell.

Mr. CHAMBERS. If this prisoner or any prisoner would raise his voice so that he could be heard by other prisoners, would the guard have been likely to have heard him?

Mr. EVANS. Yes, sir, if the guard had been in the vicinity.

Now, part of the prison I believe was about four stories and the other about six. It was not full, but it was all open on the inside. They had balconies on each floor inside. They made the rounds between—

Mr. CHAMBERS. Had there ever been any reason to suspect Freimuth? Had you ever had any difficulty with him? Had he been sick?

Mr. EVANS. I had no knowledge at all of that.

Mr. CHAMBERS. We have heard a great deal about the prison. I expect you are in a better position to tell us than anyone else. Could you give us a very brief description of the cells themselves? Now, apparently there is some difference between solitary confinement and close confinement. What that technical difference is, I am not prepared to say, but I would like to know how these cells were arranged. Were they as comfortable as any prison cell would normally be? Just what is the story on it?

Mr. EVANS. I thought it was very comfortable for prisoners. I intended to bring some photographs that I had. They were not very good, but I could not locate them.

The prison was first built in about 1848. It had later on been built onto. This particular cell block that was the newest part, I cannot recall the number of rooms, but it was fixed up very well with very good bunks in it.

Then, there was the old part that was—it was a wing that went around in a half circle. These Malmedy prisoners were also located in that part. In fact, the Malmedy prisoners were located in the best part of the prison.

Mr. CHAMBERS. Well, did these cells have normal bunks in them?

Mr. EVANS. They had bunks, and they had straw mattresses, the regular prison mattress that had been there.

Mr. CHAMBERS. Did they have toilets in the cells?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Did they have wash basins, or anything of the kind?

Mr. EVANS. No, sir.

Mr. CHAMBERS. That brings up a second question then, because there have been allegations made in the affidavits that frequently they were unable to get drinking water, and I suspect there are 20 affidavits at least in there that said they had to drink water from the toilet. How would they normally get drinking water if there was no running water in there?

Mr. EVANS. It would be brought in with the meals.

Mr. CHAMBERS. Only at mealtime. Suppose they wanted a drink between meals?

Mr. EVANS. They were left the equipment in there. All they could do was to call the guard.

Mr. CHAMBERS. Would the guard bring them water? Was that a part of their instructions?

Mr. EVANS. We had the internees there that would do that.

Mr. CHAMBERS. Well now, I have one other question I would like to ask you about. It concerns an incident which took place along toward the end of 1945 at which time certain of the prisoners had apparently scratched or otherwise marked their mess gear, and as the result of that there has been some testimony before the committee

that either those particular prisoners or all prisoners were placed on bread and water. Do you know anything about that incident?

Mr. EVANS. I remember seeing the mess kits after they were scratched on, but I do not remember the incident. Whether I was there then or not—

Mr. CHAMBERS. This was December 1945.

Mr. EVANS. Yes, sir, I was there in the latter part of December.

Mr. CHAMBERS. Well, now, you mentioned earlier in your testimony that the only time a person was placed on bread and water was for violation of prison regulations.

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Well, now, as the result of the scratching of these mess kits, do you know whether or not there was any punishment meted out to the prisoners?

Mr. EVANS. I cannot recall, but if I were there, there would be a record made of it.

Mr. CHAMBERS. Do you ever recall having any discussion with any of the prosecuting staff concerning this business of bread and water for prisoners?

Mr. EVANS. Yes, sir; there was some communication, tapping on the heating system. That will carry all through the building. It was in Morse code. I remember in that particular case, they were given punishment.

Mr. CHAMBERS. When you say "they," do you mean all the prisoners?

Mr. EVANS. No; those particular ones that violated the rules.

Mr. CHAMBERS. Well, now, you say they were given punishment. Was the punishment within your purview or was it the responsibility—

Mr. EVANS. It was my responsibility.

Mr. CHAMBERS. What punishment did they get?

Mr. EVANS. They either got solitary confinement and bread and water or one of the two. That was the only punishment that we gave.

Mr. CHAMBERS. Do you recall a man by the name of Bailey who worked with the prosecution staff?

Mr. EVANS. Yes, sir; I knew Mr. Bailey.

Mr. CHAMBERS. Do you recall a party at the end of the year, about New Year's Eve, at which time there was a discussion with Major Fanton concerning bread and water for the prisoners?

Mr. EVANS. I do not remember the discussion. I remember him there and probably at the party. I cannot recall, but I remember him.

Mr. CHAMBERS. Well, do you recall that you as commanding officer of the prison guards stated that you were going to take these people off bread and water and that it was your responsibility, or some such statement?

Mr. EVANS. No, sir.

Mr. CHAMBERS. Do you recall any arguments or discussions with Major Fanton as to whether they should be on bread and water or not?

Mr. EVANS. No, sir; I do not recall anything at all.

Mr. CHAMBERS. I have no more questions.

Senator BALDWIN. How were these prisoners moved from one part of the prison to the other; that is, the Malmedy prisoners? Assuming

that they were to be taken down to be examined, how were they taken down?

Mr. EVANS. It was arranged through our provost sergeant. He would gather them in the hall with hoods, a dark hood over their face, and they were to be led—if they had several of them, one would put his hand on the other soldier, and they would march down to the interrogation quarters.

Senator BALDWIN. There has been testimony here that these hoods—or at least the claim made that these hoods were bloody and dirty. Can you tell us anything about that?

Mr. EVANS. No, sir; I do not know that they were dirty or bloody.

Senator BALDWIN. Did you ever see any?

Mr. EVANS. Yes, sir; I inspected them when I first went to the prison just to see what they were.

Senator BALDWIN. Were they bloody and dirty?

Mr. EVANS. No, sir; those that I saw were not.

Senator BALDWIN. Were you ever present at any of these mock trials?

Mr. EVANS. No, sir.

Senator BALDWIN. I think you have covered in your affidavit all the other facts about the beatings and that sort of thing, and I have no further questions.

Senator McCarthy, have you any questions of this witness?

Senator McCARTHY. Are you a native Texan?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Now, as I understand your testimony, Major, you had heard no reports of any beatings, no reports of any mistreatment, nothing at all that was improper during all the time that you were at Schwabisch Hall?

Mr. EVANS. No, sir.

Senator McCARTHY. When did you first hear the rumors of mistreatment? Was that during the course of this hearing?

Mr. EVANS. Yes, sir; about a month ago.

Senator McCARTHY. Now, will you think very carefully because I am going to go into some other matters. Make sure you are correct.

You heard no rumors of mistreatment during all your time at Schwabisch Hall?

Mr. EVANS. No, sir.

Senator McCARTHY. Did you ever know that all the men were on bread and water at any time?

Mr. EVANS. I do not know that. I do not believe that they were at the time that I was at the prison.

Senator McCARTHY. Well, do you think you would remember if on any occasion you put the entire Malmedy group on bread and water?

Mr. EVANS. I think I would; yes, sir.

Senator McCARTHY. You think you would. Major Fanton testified that all of the Malmedy prisoners were on bread and water for, I think he said, about a day or so. Mr. Bailey testified that they were all on bread and water for either 5 or 6 days.

In view of Major Fanton's testimony, do you have any further comment on that?

Mr. EVANS. No, sir. I do not remember of any time when the whole group were on bread and water.

Senator McCARTHY. Well, would you question Major Fanton's testimony that they all were on bread and water, all of them?

Mr. EVANS. No, sir, I would not question it.

Senator McCARTHY. Now, I would like to get your thought on this: Can you give us any specific instance of any prisoner being on bread and water?

Mr. EVANS. I remember this occasion, when they were trying to communicate, and also they scratched up their rooms, defaced the property, and that is the only occasion.

Senator McCARTHY. And how many men were put on bread and water?

Mr. EVANS. Sir, I could not tell you how many.

Senator McCARTHY. Well, they were put on bread and water upon your order, I assume?

Mr. EVANS. Yes, sir; they were.

Senator McCARTHY. Would you give us some rough idea?

Mr. EVANS. Of how many, sir?

Senator McCARTHY. Yes, a rough idea of how many.

Mr. EVANS. I would say about five or six.

Senator McCARTHY. I would like to call your attention to this: In view of the fact that you are sure you heard no rumor of any mistreatment, no rumor of any investigation of any mistreatment, I want to call your attention to something that is in the Colonel Raymond report, which makes it rather difficult for me to understand your testimony. I quote paragraph 27:

Bearing on the likelihood of there having been physical mistreatment, it is to be noted that the Deputy Judge Advocate for War Crimes ordered an investigation of similar allegations in April 1946 before the trials started.

At the time of this investigation you were in charge; right?

Mr. EVANS. Yes, sir.

Senator McCARTHY. At the time of this Army investigation?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And you tell me now that you knew nothing about this investigation?

Mr. EVANS. No, sir.

Senator McCARTHY. Even though the investigation had been ordered; it was conducted in the prison over which you had control, and you never even heard any rumors of it?

Mr. EVANS. No, sir.

Senator McCARTHY. You did not. Can you tell us now how that investigation was conducted so secretly that you, who were in charge of all these prisoners, would not hear about it?

Mr. EVANS. We had at various times inspectors in from the Third Army, which was located at Heidelberg. We had large numbers of groups—I say quite a few of them came in, and we were having inspectors all the time, and I would not remember any particular inspections or investigations.

Senator McCARTHY. You are still sure that even while the Army was investigating the claims of brutal treatment, even while they were investigating while you were in charge of all those prisoners, that you knew nothing about it. You did not even hear a rumor about that investigation?

Mr. EVANS. I probably heard it at the time, sir, but I thought it was routine, would naturally think it was a routine matter.

Senator McCARTHY. Did any of those investigators come to you and say, "Now, Major, what do you know about these claims of brutality?"

Mr. EVANS. If they came, all I could tell them is what I knew, sir.

Senator McCARTHY. You just got through telling us you knew nothing about it. I am asking if they did come.

Mr. EVANS. I do not remember, sir, any particular instance, any particular group that came there.

Senator McCARTHY. Do you remember a single individual coming to you and saying "Now, Major, there are claims of mistreatment, there are claims of brutality. We are investigating them. What do you know about them?" Did anyone come to you?

Mr. EVANS. I cannot recall any now, sir.

Senator McCARTHY. Then, is it your thought that the Army actually did not conduct this investigation that the Raymond Board says they conducted in your prison, which was under your control?

Mr. EVANS. It would be my thought, sir, that they did it, and I thought it was a matter of routine, if they came. I am not denying that they came.

Senator McCARTHY. In other words, you never knew that anyone was in there investigating claims of brutality?

Mr. EVANS. No, sir.

Senator McCARTHY. Will you tell us when Polish guards took over?

Mr. EVANS. Approximately the middle of March.

Senator McCARTHY. And that is while you were there?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Was Major Fanton there at that time?

Mr. EVANS. I cannot recall.

Senator McCARTHY. How many Polish guards, roughly, were in charge?

Mr. EVANS. I suppose it was around 200.

Senator McCARTHY. And you had all Polish guards in charge of the Malmedy defendants, right?

Mr. EVANS. They were on our posts. Now, they did not take the prisoners out of the cells and bring them to the interrogation team. That was done by American military or civilian personnel.

Senator McCARTHY. Did the Polish guards take them back from the interrogation room?

Mr. EVANS. No, sir.

Senator McCARTHY. The Polish guards did not march the prisoners at all?

Mr. EVANS. They may have marched them, but only in the presence of the American guards, American personnel.

Senator McCARTHY. How many American guards were there?

Mr. EVANS. You mean the regular guards that manned the posts?

Senator McCARTHY. Yes; the guards that would be in charge.

Mr. EVANS. Well, I had charge of a prison staff of about 12.

Senator McCARTHY. About 12 guards?

Mr. EVANS. About 12 Americans—interpreters, supply, mess, and so forth.

Senator McCARTHY. How many guards did you have? How many men on guard duty? In other words, how many American soldiers were on guard duty after you brought the Polish boys in?

Mr. EVANS. We had five posts, outside posts. We had two roving.

Senator McCARTHY. By outside posts, you mean posts outside the prison?

Mr. EVANS. Outside the prison; yes, sir. We had five towers built. There were roving guards in the other halls. I would roughly suppose about 12 or 14 at all times.

Senator McCARTHY. And 5 of the 12 manned the outside posts?

Mr. EVANS. Yes, sir, the towers.

Senator McCARTHY. That left seven. Tell us where the other seven were?

Mr. EVANS. There were two—they were either roving the grounds or in the various buildings that had the posts. We had telephones to the various posts.

Senator McCARTHY. How many of those men were stationed in the Malmedy area of the prison, if you know? I do not want to ask you things you cannot answer?

Mr. EVANS. I suppose about six.

Senator McCARTHY. About six. Now, you had seven all told.

You said some of the seven were roving outside.

Mr. EVANS. Two were outside, about eight—somewhere about there. I cannot recall at this time all the posts.

Senator McCARTHY. You had 12. Five were on the towers outside?

Mr. EVANS. Yes, sir; 12 or 14.

Senator McCARTHY. And some were roving around outside, and the rest were in the Malmedy section of the prison?

Mr. EVANS. Yes, sir; that is the only part where we kept the guards.

Senator McCARTHY. I see. Were you in charge of the balance of the prison also?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And there were no guards, of course, in the balance of the prison?

Mr. EVANS. No, sir.

Senator McCARTHY. Roughly, how many men did you have charge of, I mean both Malmedy and other prisoners?

Mr. EVANS. Oh, at one time I think there were about 750.

Senator McCARTHY. About 750 all told?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And, roughly, about how many of those were Malmedy prisoners?

Mr. EVANS. Roughly, I think about half of them.

Senator McCARTHY. So you had about 350?

Mr. EVANS. Well, I am not sure of that, sir.

Senator McCARTHY. And you had six American guards and how many Polish guards taking care of those 350?

Mr. EVANS. The Polish guards would do the same work as the Americans. They were not there at the same time.

Senator McCARTHY. They were not there at the same time?

Mr. EVANS. No, sir.

Senator McCARTHY. So, when the Polish boys were on duty, the American boys were not on duty?

Mr. EVANS. No, sir; the Polish guards relieved the Americans. We were short of personnel. They took over the work, the same work that the Americans were doing, the guards were doing.

Senator McCARTHY. Then, am I correct in this? When the Polish boys were on duty, the American guards were not on duty?

Mr. EVANS. That is right, sir.

Senator McCARTHY. When the interrogation staff wanted to move a prisoner while the American guards were not on duty, would the Polish guards then move the prisoners?

Mr. EVANS. No, sir; that was done by our prison staff.

Senator McCARTHY. Your prison staff did that?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And the prison staff consisted of how many men?

Mr. EVANS. About 12 or 14.

Senator McCARTHY. 12 or 14?

Mr. EVANS. Yes, sir.

Senator McCARTHY. So that the regular guards, regardless of whether they were American or Polish, never moved any prisoners?

Mr. EVANS. No, sir.

Senator McCARTHY. I see.

Mr. EVANS. They could not leave their posts, sir.

Senator McCARTHY. Now, I do not quite have a clear picture on the type of treatment that Dr. Knorr gave the prisoners. Am I correct in this, that if a Malmedy prisoner, one of the 350, had something wrong with his teeth, he was not treated by Dr. Knorr unless it was an emergency case?

Mr. EVANS. That is right, sir.

Senator McCARTHY. And if it were not an emergency case, then what happened?

Mr. EVANS. Then, he would be transferred or taken to the dentist, either Bad Mergentheim or Ludwigsburg.

Senator McCARTHY. How far is that?

Mr. EVANS. Bad Mergentheim I suppose is 40 miles, something like that.

Senator McCARTHY. And was that your job to order the men taken to Bad Mergentheim?

Mr. EVANS. Yes, sir, on the request of the team.

Senator McCARTHY. On the request of what team?

Mr. EVANS. The investigating team.

Senator McCARTHY. The investigating team?

Mr. EVANS. Yes, sir.

Senator McCARTHY. If a man had a bad tooth, if he had a hole in his tooth, we will say, you would not order him taken out to a dentist unless the investigating team said, "I want this man to get dental care." Is that right?

Mr. EVANS. That is right.

Senator McCARTHY. And how often did Dentist Knorr come to the prison?

Mr. EVANS. I believe it was twice a week.

Senator McCARTHY. Twice a week, and he came to see if there were any emergency cases?

Mr. EVANS. No, sir, he came for the internees.

Senator McCARTHY. The internees?

Mr. EVANS. Yes, sir. We had about 350 there that had access to the prison, except certain restricted areas.

Senator McCARTHY. Was there a dentist or a doctor who took care of the 350 Malmedy prisoners there in the prison?

Mr. EVANS. Yes, sir, there was an American doctor.

Senator McCARTHY. There was an American doctor?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Do you know his name?

Mr. EVANS. No, sir. There were two or three at the time that I was there. I cannot recall any of their names. There was a dentist, I believe, that came in at times, but I am not sure about that.

Senator McCARTHY. You do not know about that?

Mr. EVANS. It is too long ago.

Senator McCARTHY. In view of the fact that there is an affidavit here to the effect that Dentist Knorr fixed up a lot of broken teeth as the result of beatings, fixed up broken jaws, it is very important for us to get the picture of what happened. You understand?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Now, am I correct in this, that if a Malmedy prisoner had a bad tooth, then he was not taken care of in the dentist chair in the prison; he was not taken care of by the dentist who would come in the prison, but he was taken some place 40 miles away to some dentist in the town, the name of the town you gave us, who took care of his teeth. Is that right?

Mr. EVANS. Well, he would be taken to an American installation.

Senator McCARTHY. An American installation?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And do you recall if you ordered any of those men taken out?

Mr. EVANS. I do not recall. I believe there were some taken out for medical or dental care, but I do not recall any particular instance.

Senator McCARTHY. You said if the Malmedy prisoners were guilty of any infraction of the rules they had, they would be placed in solitary?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Will you describe solitary?

Mr. EVANS. Solitary confinement as we used it up there was in a cell that had bars in it, and the windows were smaller. They were rather small. It was light.

You could see in there all right, but the room was smaller and the bed was not as good. It was a bed you could sleep on fairly comfortable; very plain.

The thing about it was the bars. Across the front end there was a grille, iron grille, which had only a little slot to put the food.

Senator McCARTHY. In other words, it was an enclosed cell with a slot?

Mr. EVANS. This was practically soundproof. As far as I know they were soundproof. It was very still effect on the prisoners.

Senator McCARTHY. I see, and when a prisoner was in solitary he, of course, could not communicate with anyone else?

Mr. EVANS. No, sir.

Senator McCARTHY. Can you tell me roughly how many solitary cells there were?

Mr. EVANS. Well, I think there were about four or five. I do not know.

Senator McCARTHY. About four or five. Now, you say the bed was different?

Mr. EVANS. Yes, sir.

Senator McCARTHY. From the bed in the close confinement?

Mr. EVANS. Yes, sir.

Senator McCARTHY. In what way did the bed differ?

Mr. EVANS. The bed was built up from the floor, and it had just an ordinary tag on it. It did not have a thick mattress that the other beds had. It was built up from the floor.

Senator McCARTHY. And blankets?

Mr. EVANS. They had blankets; oh, yes.

Senator McCARTHY. Will you describe the cell in which you had close confinement?

Mr. EVANS. A cell with close confinement had more window space. Some of them came down rather low. Others were up high, but they had adequate space according to the German specifications, and there was a toilet in it, bed; and in some of them they had tables.

Senator McCARTHY. Let us get the difference. One of the differences was there was a toilet?

Mr. EVANS. There was a toilet in both of them.

Senator McCARTHY. There was a toilet in both of them?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Now, tell us the difference between solitary and close. One of the differences was there was more window space?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And you say that there might have been a table also in the close confinement cells?

Mr. EVANS. Yes, sir.

Senator McCARTHY. So there is more window space and a table. What else?

Mr. EVANS. In the close confinement, inside the door there was that grillework of steel. You had to go in one, and then go through this grillework door.

Senator McCARTHY. That is in solitary?

Mr. EVANS. And the bed.

Senator McCARTHY. You are speaking of solitary?

Mr. EVANS. Solitary; yes, sir.

Senator McCARTHY. In close confinement, there was just one door?

Mr. EVANS. One door; yes, sir.

Senator McCARTHY. And was that a solid door?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And the walls were solid also?

Mr. EVANS. Yes, sir, there was a peephole in it that you could look from the outside. You could not look from the inside because the cover was on the outside.

Senator McCARTHY. Now, let us say I am in close confinement. Can I talk to my neighbors in other cells?

Mr. EVANS. Yes, sir; by talking very loud, you could hear. It is not soundproof.

Senator McCARTHY. You could shout to your neighbors; right?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Did the guards allow this shouting?

Mr. EVANS. No, sir.

Senator McCARTHY. I see.

Mr. EVANS. When I first went to the prison, I had the prison rules printed in German. That was pasted in each room, and they knew—

Senator McCARTHY. They knew they should not shout?

Mr. EVANS. They knew they were not to communicate in any form.

Senator McCARTHY. I am still trying to get the difference between close and solitary. In neither case could they talk to their neighbors; is that right?

Mr. EVANS. In close confinement, I believe they could, by shouting.

Senator McCARTHY. But you did not let them shout?

Mr. EVANS. No, sir.

Senator McCARTHY. So, in neither case could they communicate with their neighbors?

Mr. EVANS. No, sir.

Senator McCARTHY. Colonel Ellis has testified here the reason for the solitary or close confinement was to keep them from communicating so they could not be able to evolve a plan of escape or get together on their story.

Mr. EVANS. We discussed that at the beginning. By having these rules of no communication, they could not see each other—

Senator McCARTHY. Now, I still want to get some further difference. The No. 1 difference is there was more window space in close confinement. No. 2, instead of having two doors, they only had one door for close confinement. Was there any other difference?

Mr. EVANS. The bed.

Senator McCARTHY. The bed, a more comfortable bed?

Mr. EVANS. That is right.

Senator McCARTHY. Because there was a larger mattress on it?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Any other difference?

Mr. EVANS. None that I recall.

Senator McCARTHY. So that then your solitary and close confinement were one and the same thing except one had more light in it, one had a larger mattress and one had two doors instead of one; is that right?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Now, how long did you keep men in close confinement?

Mr. EVANS. Not to exceed 7 days.

Senator McCARTHY. Not to exceed 7 days?

Mr. EVANS. Usually much less.

Senator McCARTHY. Are you aware of the fact that Colonel Ellis testified that they were kept in close confinement until they confessed? After they confessed, then they were allowed to go up and mingle with the other prisoners?

Mr. EVANS. At all times we had one or two in the room—

Senator McCARTHY. Let us stick to the question. Colonel Ellis has testified—if I am wrong, I wish counsel would correct me—that these men were kept—I think he referred to solitary. He said they were kept in close confinement until they confessed, until they signed the confession. Is that correct?

Mr. EVANS. I do not know, sir.

Senator McCARTHY. You do not know?

Mr. EVANS. As I interpret it, they were kept in close confinement at all times that I was there.

Senator McCARTHY. Now, you said they were never kept in close confinement more than 7 days. Now, you say they were kept in close confinement at all times that you were there. Which is correct?

Mr. EVANS. They were not kept in solitary.

Senator McCARTHY. Let us get back to close confinement. How long were those men kept in close confinement; that is, in a cell alone where they could not communicate with anyone else?

Mr. EVANS. They were not kept—

Senator McCARTHY. I am not telling you you did something wrong. I just want to get the information.

Mr. EVANS. They were grouped around. Some of them had two men in the cells.

Senator McCARTHY. Let us take it where there is one man in the cell. Let us take some one individual where there is one man in a cell. How long was he kept in close confinement?

In other words, is Colonel Ellis correct when he says they were kept in close confinement until they signed a confession, and then they were released from close confinement? Is that correct or not?

Mr. EVANS. I do not know, sir.

Senator McCARTHY. You do not; but, as far as you know, some men were kept in close confinement as long as you were there?

Mr. EVANS. Well, I do not know for sure of that.

Senator McCARTHY. You inspected them every day?

Mr. EVANS. Because some of the rooms had two men in them.

Senator McCARTHY. Let me ask you this question: Did you go around personally and inspect the 350 Malmedy cells every week, as I believe you testified?

Mr. EVANS. I got around about once a week.

Senator McCARTHY. Then, did you find the same men in close confinement in No. 2, No. 3, No. 4, No. 5? I just want to get the facts.

Mr. EVANS. I did not check that. I just checked them for cleanliness; for their appearance.

Senator McCARTHY. Now, can you tell us at this time—if you do not know, all right—whether or not any of the individuals were kept in close confinement during all the time you were there. Do you know?

Mr. EVANS. I do not know, sir.

Senator McCARTHY. You do not know?

Mr. EVANS. I do not know.

Senator McCARTHY. Now, will you describe the death cells, what are referred to as the death cells? Are those the same as the solitary confinement cells?

Mr. EVANS. I suppose so.

Senator McCARTHY. Do you know?

Mr. EVANS. I do not know. There was one what we called the dungeon. As far as I know it was never used. That was in the basement of this big cell block. It was completely closed off it could be sealed up.

Senator McCARTHY. As far as you know, that was not used?

Mr. EVANS. That was never used.

Senator McCARTHY. Now, the witnesses, as I recall, agree there were certain cells referred to as death cells; do you know about those cells?

Mr. EVANS. No, sir; except the ones that I have described to you as solitary-confinement cells.

Senator McCARTHY. Did you ever hear any cells referred to as death cells?

Mr. EVANS. I do not know. I might have.

Senator McCARTHY. You do not know?

Mr. EVANS. I do not remember the particular term "death cell."

Senator McCARTHY. Now, can you tell me whether or not certain of these cells, either the solitary- or close-confinement cells, actually did not have blankets for a short period of time?

Mr. EVANS. If they did, I did not know about it.

Senator McCARTHY. Well, what is your thought on the matter?

Mr. EVANS. I think they had plenty of blankets. We had plenty for the prison, and I think they at all times had plenty of blankets.

Senator McCARTHY. In other words, you say if they did not, you did not know about it?

Mr. EVANS. Yes, sir.

Senator McCARTHY. In other words, you do not claim you got around and that you would personally know that they had blankets?

Mr. EVANS. Well, it might be that a man one night was cold. If he asked for another blanket, he was given it.

Senator McCARTHY. Do you know that of your own information?

Mr. EVANS. I do not know of any particular incident.

Senator McCARTHY. You do not know of any incident where that happened?

Mr. EVANS. I do not know of any incident.

Senator McCARTHY. Do not tell us things unless you know. The question is: Do you know whether some of the cells were deprived of blankets?

Mr. EVANS. No.

Senator McCARTHY. You do not know?

Mr. EVANS. I do not know.

Senator McCARTHY. You do not know whether they were or not; is that right?

Mr. EVANS. Yes, sir.

Senator McCARTHY. In other words, you cannot pass on that?

Mr. EVANS. I cannot swear to it.

Senator McCARTHY. I am going to read to you from the Raymond report, if I may:

The Board does find that certain cells did not have blankets for a short period of time.

That is page 4. Is that correct; do you know?

Mr. EVANS. I do not know.

Senator McCARTHY. You do not know. All right. Now, did you witness any of the mock trials?

Mr. EVANS. No, sir.

Senator McCARTHY. You knew they were going on? Did you know that they were having mock trials?

Mr. EVANS. I had heard that they did have some mock trials.

Senator McCARTHY. What had you heard about the mock trials?

Senator BALDWIN. Senator, is that really germane to this whole situation?

Senator McCARTHY. I think it is very germane. Here is a witness, Mr. Chairman, who has stated he heard not even the slightest rumor of any mistreatment, and it develops that during the time he was there the Army ordered, and there was conducted, an investigation into the

alleged brutalities, and here is a man who is in charge, who said he inspected the cells every week and he never even heard of that investigation, never even knew there was any investigation going on. It seems extremely unusual.

He tells us that he was——

Senator BALDWIN. Well, go ahead. I will save time, I think, by letting him answer. Go ahead, Senator.

Senator McCARTHY. He tells us that he knows nothing about bread-and-water rations, despite the fact that the major who is in charge does admit all men were on bread and water for, he says, about 1 day; the other witness says 6 or 7 days. I would like to find out just what this witness does know.

Now, Mr. Evans, will you answer now the question that I was asking: What had you heard about the mock trials?

Mr. EVANS. I had heard that they had had some mock trials.

Senator McCARTHY. Did you hear how they were conducted?

Mr. EVANS. No, sir.

Senator McCARTHY. You did not hear anything about how they were conducted?

Mr. EVANS. No, sir.

Senator McCARTHY. Did you see the room in which the mock trials were held?

Mr. EVANS. I saw some rooms that were fixed up for either that or something else.

Senator McCARTHY. How many rooms were fixed up for mock trials or something else?

Mr. EVANS. Oh, I remember one.

Senator McCARTHY. Will you describe that one room?

Mr. EVANS. It was a room fixed up with a good deal of black in it and a crucifix.

Senator McCARTHY. What was in it by way of furniture?

Mr. EVANS. I do not know.

Senator McCARTHY. You do not remember. Do you recall how large that cell was?

Mr. EVANS. No, sir.

Senator McCARTHY. Do you recall how many cells were fixed up?

Mr. EVANS. No, sir.

Senator McCARTHY. Do you recall any of the interrogation cells?

Mr. EVANS. Yes, sir.

Senator McCARTHY. How many interrogation cells were there?

Mr. EVANS. I could not tell the exact number. They used a separate wing there.

Senator McCARTHY. But, roughly, what did the interrogation cells look like?

Mr. EVANS. They looked just like the other cells, except they had tables and chairs.

Senator McCARTHY. Now, do you know whether your guards brought the prisoners directly to the interrogation cell or not?

Mr. EVANS. No, they brought them to the area, to the investigating team's area.

Senator McCARTHY. And you say that the guards on duty did not do that, but your own special personnel for that purpose did that?

Mr. EVANS. That is right.

Senator McCARTHY. In Major Fanton's testimony he says, referring to the Malmedy prisoners: "They were closely guarded by American Army personnel assigned to the Six Hundred and Thirtieth Tank Destroyer Battalion which was the unit responsible for the security of the prison."

Am I correct that Major Fanton was mistaken, that the guarding was largely done by Polish boys brought in?

Mr. EVANS. The guarding was done until the Polish came in, due to a shortage of American personnel, about the middle of March until they left.

Senator McCARTHY. And then the guarding was not done by Army personnel? It was done by Polish personnel?

Mr. EVANS. From March on, it was done by Polish personnel.

Senator McCARTHY. Getting back to the mock trials, I gather you did not know the mock trials were being conducted?

Mr. EVANS. Well, I had heard they were. I never witnessed any.

Senator McCARTHY. You did not know anything much about any of them at all?

Mr. EVANS. No, sir.

Senator McCARTHY. So, you cannot say, obviously, whether they were properly or improperly conducted.

Mr. EVANS. No, sir.

Senator McCARTHY. You do not claim to know what was going on in those cells where they had mock trials?

Mr. EVANS. No, sir, I never witnessed those. All I did know was by hearsay.

Senator McCARTHY. And you did not attend any of the interrogations?

Mr. EVANS. I have been in rooms when they were interrogating them, but just for a few minutes, because I did not think it was particularly my business. I had other duties to perform.

Senator McCARTHY. And how many of the interrogations did you attend?

Mr. EVANS. Oh, I would say about a dozen; just listen in for a few minutes, but they went so fast in German that I could not understand it, so it meant nothing to me.

Senator McCARTHY. Mr. Chairman, may I ask whether the committee plans upon bringing the doctors who were present in the prison so we can get to the bottom of this question of who treated the broken teeth, if any?

Senator BALDWIN. Well, I think I will say to the Senator that it is the intention of the chairman—and I think the other two members of the committee will probably concur with me—that we will go into the medical side of this thing in as great detail as we can possibly get available evidence.

Mr. CHAMBERS. I might say, Mr. Chairman, that we have already been in contact with two of the doctors who were there the majority of the time. We have not yet established contact with the third who was there. We have gotten in touch with several of the enlisted medical personnel, and they will be called as witnesses.

Senator McCARTHY. Have you been in touch with Dr. Knorr? Is he still living?

Mr. CHAMBERS. Dr. Knorr, according to the information I now have, is confined in a hospital in Germany as a mental case, but it is

our intention before we conclude the testimony to get some type of evidence, the best evidence we can get, concerning Dr. Knorr and his affidavits.

Mr. Chairman, I have one further question I would like to ask the witness.

Senator BALDWIN. You go ahead. I have a question I would like to ask, too. Are you all through, Senator?

Senator McCARTHY. No. Then, let me ask you this one further question: In view of the fact that you did not know about these mock trials, did not know how many went on, did not know what happened at the mock trials; in view of the fact that the Army conducted an investigation into the alleged brutalities while you were present, you did not know anything about that investigation that they were conducting, I assume that you do not claim that you can tell us whether or not there were brutal methods used in these interrogation cells?

Mr. EVANS. I could not tell you about the interrogation cell. I was there too little a time.

Senator McCARTHY. That is all, Mr. Chairman.

Mr. CHAMBERS. Mr. EVANS, I have two questions, one concerning the investigation by the Army. You stayed at Schwabisch Hall, as I understand it, up until the time you came back to the States, sometime in May?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. I believe Senator McCarthy—and this is subject to verification when we get Colonel Carpenter here—that the facts will show that Colonel Carpenter's investigation was made after the prisoners had gone to Dachau—from the prisoners themselves—and I do not believe that he ever went to Schwabisch Hall, but that is a matter for the record to develop.

One other question: Have you been, during the past year or so, contacted by anyone from Germany concerning this case and perhaps given information concerning it?

Mr. EVANS. I do not know about this case. About a year ago—it could be 3 months or 4 months one way or the other, or longer—I received a cable from Karl Debitsch.

Mr. CHAMBERS. And who was Karl Dabitsch?

Mr. EVANS. Karl Debitsch was an attorney at that time in the prison. He was what we referred to as the "Lagerfuehrer." He was the senior interneer. He asked that I get in touch with some attorney in Atlanta. That is all it said. I do not remember the exact wording, and I do not remember what I did with the cablegram, but I tried to contact this particular person in Atlanta by telephone.

Senator McCARTHY. Was it Colonel Everett?

Mr. EVANS. I do not know, sir. I cannot recall the name. I was not familiar with the name. I attempted to communicate with him. Well, I called, but I could not locate him in Atlanta.

Mr. CHAMBERS. As I understand it, the contact did come from Germany from Debitsch to you, asking you to contact an American attorney?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. And you were never able to establish contact with him?

Mr. EVANS. No, sir.

Mr. CHAMBERS. However, did anyone else approach you within the United States, or has anybody come to you for information on this case?

Mr. EVANS. Colonel Ellis wrote me about a month ago. That was the first that I knew of this particular Malmedy case.

Mr. CHAMBERS. Thank you.

Senator McCARTHY. When did you prepare your statement?

Mr. EVANS. The 18th day of April.

Senator McCARTHY. You are a good friend of Colonel Ellis, I assume?

Mr. EVANS. Yes, sir; I am.

Senator McCARTHY. A good personal friend?

Mr. EVANS. Well, just as a fellow officer; not special.

Senator McCARTHY. In answer to Colonel Chambers' question, if there is no objection, I would like to ask you what Colonel Ellis contacted you about?

Mr. EVANS. He asked me what I knew about this case and to prepare a statement of the facts.

Senator McCARTHY. How did he contact you, by telephone, by wire?

Mr. EVANS. By letter.

Senator McCARTHY. Do you have any objection to our seeing the letter?

Mr. EVANS. There is no objection on my part, if Colonel Ellis—

Senator McCARTHY. I do not want to ask for it, if Colonel Ellis has any objection.

Colonel ELLIS. No, sir; I would be very happy to have you see the letter or any communication I have written to anybody.

Mr. EVANS. It is dated the 29th of March.

Senator McCARTHY. Mr. Chairman, I am inclined to think this should be put in the record. It is essentially an honest, very friendly letter. I think there is one phrase here that is significant in view of the major's affidavits.

After listing the things that should be covered, the major certainly does not ask him to tell any lies or anything of the kind. He says:

In other words cover everything that you might conceive of that would help refute these false and malicious allegations.

If the colonel wants the entire letter entered, if the chairman does not object—

Senator BALDWIN. Do you want it in?

Senator McCARTHY. The only part I want in is this phrase that I read. I think the whole thing should be put in.

Senator BALDWIN. All right; it will be made a part of the record.

(The letter referred to is as follows:)

HEADQUARTERS, SIXTH ARMY,
Presidio of San Francisco, Calif., March 29, 1949.

Mr. JOHN T. EVANS,
Crystal City, Tex.

DEAR MAJOR EVANS: You will probably be surprised to hear from me inasmuch as I only knew you for a short time and it has now been close onto 3 years since last our paths crossed. In any event, by way of introduction, I am Lt. Col. Burton F. Ellis, who was in charge of the investigation at Schwabisch Hall of the Malmedy massacre. Noble Johnson gave me your address and I am writing you for your assistance in helping clear the characters and reputations of my subordinates and the Army with respect to their conduct in this case.

I presume that you have read some of the press releases concerning the various investigations conducted concerning the investigation and trial of the Malmedy massacre. I doubt if you knew the defense counsel, former Col. Willis Everett, of Atlanta, Ga., as he was only at Schwabisch Hall on one occasion. In any event Everett is still very active in the defense of these murderers and is desperately trying to do something for them, even at the expense of the characters of those of us who tried and investigated the case.

Everett and a Judge Van Roden, a member of the Simpson Commission, which purportedly investigated the case in Europe last summer, have alleged that the investigators did just about everything a human could conceive of doing to another in order to get confessions from the prisoners we had at Schwabisch Hall.

They accused us of punching the prisoners in the face with brass knuckles, beating them with rubber hoses, knocking their teeth out, breaking arms and jaws, solitary confinement (as distinguished from close confinement), posturing as priests, withdrawal of blankets in winter, lack of heat, very limited rations, spiritual deprivation, etc., and I quote from a published statement of theirs:

"All but two of the Germans, in the 139 cases we investigated, had been kicked in the testicles beyond repair. This was standard operating procedure with American investigators."

The Army has had two investigations, neither complete, and the Senate is now going to have another which promises to be a complete and thorough one. I hope it will give all of the boys on the investigation team a chance to be heard, something that has not happened heretofore.

Noble Johnson is preparing an affidavit refuting all of these allegations and Major Fanton, Captain Shumacker, Lieutenant Perl, Harry Thon, Moe Elowitz, and myself have all prepared lengthy affidavits as to our participation in the investigation and denials of all the false allegations made by Everett and Van Roden. Would you please likewise prepare an affidavit in as many copies as possible of what you know that took place at Schwabisch Hall? Would you start your affidavit out by stating your then grade, organization, and position; then follow up with the period you were there with as much exactness as possible; your duties in connection with the prison and the Malmedy prisoners in particular; when the Malmedy prisoners first arrived (early December 1945); what control your organization had over the Malmedy prisoners; whether the war crimes investigating team ever starved or caused any prisoners to be starved, placed on bread and water, withdrew any blankets, turned off heat; what the prisoners' ration was; a comparison between their ration and the German civilian ration; whether you ever witnessed or heard of any of the brutalities that have been alleged to have occurred; whether you or any of the other administrative personnel were ever interfered with or prevented from performing your duties by the war crimes investigation team; what you know about the medical and dental care provided for the Malmedy prisoners; whether you ever saw any of the prisoners who appeared to have been beaten up or injured in any way; how often you saw or inspected the prisoners; whether you were ever prevented from seeing any of the prisoners; whether you ever saw any misconduct by any investigators during the course of their interrogations. In other words, cover everything that you might conceive of that would help refute these false and malicious allegations.

A German dentist in the prison at Schwabisch Hall is alleged to have made a statement that he treated 15-20 prisoners for mouth and jaw wounds. State what you know about him. That is, was he S. S., Nazi, security suspect, party member, and an internee and whether or not you know if he ever saw and treated any of the Malmedy prisoners and, if so, for what purpose and under what conditions.

I know this sounds like a big task, but it is very, very important to all of us who have been accused of atrocities comparable, if not worse, than any the Germans ever committed. If you will do this, it will be sincerely appreciated by not only me but by all the boys with whom you worked at Schwabisch Hall.

May I add that it is important that I receive your affidavit as soon as possible. If you have the address of Captain Evans, I would be most appreciative to receive it.

One last thing. Has anyone else contacted you regarding your knowledge of the proceedings at Schwabisch Hall?

I'll be looking forward to hearing from you.

Sincerely,

BURTON F. ELLIS,
Lieutenant Colonel, JAGC.

Senator BALDWIN. Now, Senator Kefauver is here. He is another member of this committee, and he has kindly consented to come over and act as chairman while you continue with the examination of Major Fanton. Captain, would you just step down?

Mr. CHAMBERS. Are you through with the captain?

Senator BALDWIN. There may be one or two other questions.

Senator McCARTHY. Mr. Chairman, I would like to ask a personal favor of the Chair, if I may, having nothing to do with the facts of the case.

I have been having a sinus punctured and drained every day. I have got to report into Bethesda again tomorrow, and I would very much appreciate it if we could adjourn at 12 this noon over the week end, so I could try and clear up this condition if possible. That will, of course, mean that Major Fanton will have to come back. I think he will have to come back anyway, because I do want to spend a great deal of time with Major Fanton.

I think he is the most important witness in this case. I think we should be able to get considerable from him. After we get through with Major Fanton I think we will have a fairly good picture as to whether these claims made by the Van Roden committee, the Simpson committee, are true or false. I want to spend a great number of hours with Major Fanton.

Senator BALDWIN. Well, of course, we have got witnesses here from a long distance. Major Fanton has come down from Connecticut. On the other hand, when a Senator asks, because of his health, for this consideration, I certainly do not feel disposed to object to it.

Senator McCARTHY. As I say, I personally appreciate it an awful lot. I just do not feel that I can sit all day and do justice to the Army or the American public or these men who are about to hang with this thing bothering me as much as it does. I am sure, over the week end, I can get it cleared up.

Senator BALDWIN. I think it would be better then perhaps if we finished up with the captain from Texas.

Senator McCARTHY. I am through with the captain from Texas.

Mr. CHAMBERS. We have two other witnesses, then, sir, from out of town. They are both security people. I believe they will go pretty fast.

Senator McCARTHY. Who are they?

Mr. CHAMBERS. Jack Owens, assistant to the officer in charge of prison personnel; and William T. Fitzgerald, who was one of the security officers charged with guarding prisoners.

Senator McCARTHY. I have no objection to putting them on. Who is Fitzgerald?

Mr. CHAMBERS. He was one of the security officers charged with guarding prisoners. I would think we would complete in a matter of an hour or so. He was one of the security officers.

Senator McCARTHY. Owens, you say, was the assistant——

Mr. CHAMBERS. To the officer in charge.

Senator McCARTHY. To the man who just testified?

Mr. CHAMBERS. I think that is correct. I have not talked to either of them.

Senator BALDWIN. There is just one other question that I wanted to ask the captain.

Mr. EVANS. Yes, sir.

Senator BALDWIN. You were asked by Senator McCarthy some questions with reference to whether you knew there was an investigation going on. You said that there were occasional inspections made by, I assume, out-of-town personnel; is that correct?

Mr. EVANS. Yes, sir.

Senator BALDWIN. That is, personnel who were not permanently attached to Schwabisch Hall?

Mr. EVANS. Yes, sir.

Senator BALDWIN. How often did that happen?

Mr. EVANS. I suppose about once a month.

Senator BALDWIN. Where they came from or what their object was, you did not know?

Mr. EVANS. No, sir; some came from the Seventh Army Headquarters in Heidelberg, and some came from our headquarters, our next higher headquarters at Ludwigsburg, Germany.

Senator BALDWIN. All right, I think that is all.

Mr. CHAMBERS. Mr. Chairman, may I ask one more question?

Senator BALDWIN. Yes.

Mr. CHAMBERS. We had in testimony, again from Mr. Bailey, a reference to a prisoner being brought in to a mock trial with a robe on him, a hood over his head, and with a rope around his neck. His description was rather complete and graphic. Now, you have testified that your guards were charged or your prison staff, I believe you said, was charged with moving the prisoners from cells back and forth from interrogations and what not. Would you be in a position to know anything about circumstances of that kind?

Mr. EVANS. I do not know anything about that; no, sir.

Mr. CHAMBERS. Would you have been in a position to have known?

Mr. EVANS. I think it would have been reported to me.

Mr. CHAMBERS. And was it ever reported to you that the guards used a rope to lead the prisoners in or had it around their necks?

Mr. EVANS. No, sir.

Mr. CHAMBERS. What is this robe report? Do you have anything to put on the prisoners to take them around?

Mr. EVANS. No, sir; it is a hood, a black hood.

Senator McCARTHY. Just so this is clear, your guards turned them over to the interrogation guards, I understand.

Mr. EVANS. At their area; yes, sir.

Senator McCARTHY. If a robe was put on, it was after the interrogation team took over and their guards took charge, so you would not know about that.

Mr. EVANS. I do not know anything about it.

Mr. CHAMBERS. Did they have separate guards?

Mr. EVANS. No. We turned them over to the group. They had no guards there; it was their personnel.

Mr. CHAMBERS. Interrogation team personnel?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. Which consisted of interrogators, interpreters, and some typists and stenographers?

Mr. EVANS. Yes, sir.

Mr. CHAMBERS. It was your responsibility to take them to the interrogators, leave them and pick them up when they were through with them; is that right?

Mr. EVANS. Yes, sir.

Senator McCARTHY. Let us see if I have this straight. I do not know as it is very important. You took them to a large cell, the interrogators picked them up at that cell and took them to their interrogation cell; is that right?

Mr. EVANS. We took them to an area there. It was a large hall, kind of a triangular shape, a large area.

Senator McCARTHY. Then, the interrogators' guards, call them what you may, the interrogation team, picked them up in that large hall?

Mr. EVANS. Yes, sir.

Senator McCARTHY. They took them out of your charge? They took them over to your room. Is that right?

Mr. EVANS. Yes, sir.

Senator McCARTHY. And your guards did not follow them from the hall over to the interrogation room?

Mr. EVANS. Unless they were asked to.

Senator McCARTHY. I see. Then, you were in no position to know anything about whether robes were put on, whether they were led with a rope or how they were led from there?

Mr. EVANS. No, sir; I did not.

Senator McCARTHY. Did you know this man Steiner?

Mr. EVANS. What did he do?

Senator McCARTHY. Did you know a man by the name of Steiner? He was one of the interrogation team. I will refresh your memory. I might be asking you something that you cannot answer.

Mr. Fanton testified that Steiner was on the interrogation team but that he had to let him go. He referred yesterday on the stand to shouts or an order or something that he gave to the prisoners as he was leading them to the hall. It is not quite clear to me yet what he had in mind. In any event, Steiner was one of the interrogation team. Did you know him?

Mr. EVANS. I cannot recall him.

Senator McCARTHY. Did you know any of the interrogation team?

Mr. EVANS. Yes, sir; I did.

Senator McCARTHY. Will you name the ones that you knew, if you can?

Mr. EVANS. There was Major Fanton, there was Captain Shumacker, there was Lieutenant Perl, there was a Mr. Thon. That is all I can recall now.

Senator McCARTHY. At the time Steiner was discharged, did you have any information as to why he was discharged?

Mr. EVANS. No, sir.

Senator McCARTHY. Did you hear any reports to the effect that Steiner had bragged that he had put a hangman's noose around these prisoners' necks, led them up several flights of stairs, told them they were on the gallows, pulled the rope across.

Mr. EVANS. I did not hear anything about that.

Senator McCARTHY. In other words, you did not hear anything about brutalities, anything that was wrong at all?

Mr. EVANS. No, sir.

Senator McCARTHY. Were you in charge when the defense counsel took over, or were the prisoners still at Schwabisch Hall?

Mr. EVANS. I do not remember.

Senator McCARTHY. Do you recall when the defense counsel were appointed?

Mr. EVANS. No, sir; I cannot recall that.

Senator McCARTHY. When did the Malmedy men leave Schwabisch Hall?

Mr. EVANS. They must have left about the early part of April, somewhere about that time.

Senator McCARTHY. Then, am I correct that the first time you ever heard of any claims of brutality, beatings, mock hangings, mock trials, was when this hearing started, or I assume when Colonel Ellis wrote you this letter?

Mr. EVANS. Yes, sir.

Senator McCARTHY. That is the first you heard about it?

Mr. EVANS. Yes, sir.

Senator McCARTHY. You had not heard any such claims before that?

Mr. EVANS. No, sir.

Senator McCARTHY. You do not recall whether you were supposed to contact Colonel Everett, or whom it was, in Atlanta, Ga.?

Mr. EVANS. I do not remember the name.

Senator McCARTHY. Do you know why you were supposed to contact him?

Mr. EVANS. No, sir; the cablegram did not say.

Senator McCARTHY. It just asked you to contact him?

Mr. EVANS. Yes.

Senator McCARTHY. Thank you a lot.

Mr. EVANS. Is that all, sir?

Mr. CHAMBERS. That is all, Captain. Thank you very much.

I think it ought to appear in the record here, reading from the Raymond and Harbaugh report with reference to this question of investigation before the trial. In paragraph 27 of that report there appears the following:

Bearing on the likelihood of there having been physical mistreatment, it is noted that the deputy judge advocate for war crimes ordered an investigation of similar allegations in April 1946 before the trials started at a time when all concerned were available. Both Colonel Nickelwait and Lieutenant Colonel Ellis state that the investigating officer reported that he could find no evidence warranting the conclusion that allegation of improper action such as the use of violence or the threat of violence were true. A similar report was rendered by the chief prosecutor after inquiry of his staff.

It furthermore appears that four of the defendants admitted to the investigating officer that their accusations of violence and beatings were only made to get out from under their confessions and were not true, and this was admitted at the time by the chief counsel of the defense.

I put that at this particular place in the record because it has a bearing upon the question of how much the captain, who just testified, might have known concerning the so-called investigation prior to the trial.

Mr. Jack Owens.

Senator BALDWIN. Mr. Owens, hold up your right hand.

Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and noth-

ing but the truth to the best of your knowledge and belief, so help you God?

Mr. OWENS. I do.

Senator BALDWIN. Will you sit down, sir?

Mr. OWENS. Thank you.

Senator BALDWIN. What is your full name and address?

Senator McCARTHY. Mr. Chairman, I would like to say in connection with what was read into the record—

Senator BALDWIN. Could we get his name and address?

Mr. OWENS. Jack A. Owens, Maybeury, W. Va.

Senator McCARTHY. Mr. Chairman, I would like to say in connection with what the chairman has just read concerning Colonel Ellis that, while we have received a great amount of mail—I should not say a great amount, at least a half dozen letters—from men who were connected with the investigative staff, complaining of the treatment that the defendants have gotten, as a whole most of them were, the writers seemed to feel, rather kindly toward Colonel Ellis. They did not accuse him of any personal wrongdoing. In fact, two of the letters which I have did complain very bitterly about the type of treatment these defendants got, but they went on to say that they thought it was not Ellis' fault. They did not think he knew about this. I think, in fairness to Colonel Ellis, perhaps, those letters should be put in the record.

Senator BALDWIN. Well, I will say to the Senator that I will be glad to have him present here any letters that he has.

If he has letters complaining about the way in which this trial was conducted—

Senator McCARTHY. I hope to call as witnesses all those people who have written us. Some of them I think will be very valuable witnesses.

Senator BALDWIN. Of course, when we get down to the final analysis of this thing, it is what people actually saw themselves that really counts.

Senator McCARTHY. I question that, Mr. Chairman. I think that we will get very little from what people actually saw because, when, let us say, Perl—he is alleged as one of the prime offenders—is in a cell, if he did the things claimed, he did not have witnesses. It is like proving an adultery case in court. You do not do it by witnesses, because you do not call in witnesses when you are guilty of certain crimes.

You have got to prove it entirely by inference, by hearsay, by circumstantial evidence, by all the surrounding facts. That is one of the unfortunate things. I do not believe this committee will have any unbiased witnesses.

Senator BALDWIN. What I meant, Senator, was that evidence of physical abuse such as broken jaws, black eyes, and things of that kind, of course, are perfectly apparent, and the claim as to how they were made, of course, might well be disputed. One man might well say one thing and one man might say the other. That is what I had in mind when I said we want to get as near the physical facts, the actual facts, as we possibly can.

Senator McCARTHY. I merely mentioned during this interrogation I noticed that the staff questioned the witnesses as to what they saw, whether they saw these beatings. As I say, the only people who saw them, of course, is the alleged wrongdoer and the man who is about

to be punished, both of them very, very prejudiced witnesses. There is no question about that, and I do not think we will get any of the prosecution staff to freely admit that they beat up any of these witnesses. I do not think, if we interrogate any of the Germans who are about to hang, we can expect to get unbiased testimony from them.

We will just have to get all the surrounding facts and circumstances. I am convinced before we are through, Mr. Chairman, we will have a very good picture without eyewitnesses.

Senator BALDWIN. All right, sir. Do you want to question this witness, Colonel. You have talked with him, I assume.

Mr. CHAMBERS. Not except to find out what his name was, when he came in, sir.

TESTIMONY OF JACK A. OWENS, MAYBEURY, W. VA.

Mr. CHAMBERS. Will you tell us, Mr. Owens, what your position was with the prosecution staff?

Mr. OWENS. Prosecution staff?

Mr. CHAMBERS. With the prison staff at Schwabisch Hall.

Mr. OWENS. My job was supply officer. The responsibilities: I had to see that food, clothing, coal were brought in. I had the additional duty of recreational officer for the civilian prisoners—not for the Malmedy prisoners.

Mr. CHAMBERS. How long were you at Schwabisch Hall?

Mr. OWENS. Our company—I was in C Company, Six Hundred Thirtieth Tank Destroyer Battalion. I was ordered to go up to Schwabisch Hall in December. I do not know the exact date; some time during December; and I remained there at the prison until the time that they started back to the United States. During that time the Six Hundred Thirtieth Tank Destroyer Battalion, I had charge of the prison up until some time in February when they went home.

After that the Fifty-eighth Armored Field Artillery Battalion took over. Captain Evans and myself were transferred to the Fifty-eighth Field Artillery Battalion. We were familiar with the prison and the work there.

Then later on there was a chemical battalion took over from the Fifty-eighth, and they were in charge when we left. I left May 10, 1946.

Mr. CHAMBERS. Well, did your duties as supply officer require you to have any contact with the Malmedy prisoners?

Mr. OWENS. None other than what I might have in acting as officer of the guard.

Mr. CHAMBERS. Well, now, as officer of the guard did you have certain duties with the interior guard and the responsibility for the guard that was inside the prison blocks and guarding the prisoners?

Mr. OWENS. Yes, sir; we were in charge of those prisoners. We had to go around and check each post to see that they maintained proper security.

Mr. CHAMBERS. Do you have any knowledge of the circumstances that I am sure you have heard us discuss with Captain Evans here concerning alleged mistreatment of prisoners?

Mr. OWENS. I know of no alleged mistreatment of prisoners.

Mr. CHAMBERS. Let me see if I can phrase that a little more directly because I think you know we are all very interested in getting it exact,

the exact facts that happened there. You were there quite a few months?

Mr. OWENS. Yes, sir.

Mr. CHAMBERS. During that time did any of your boys say anything to you about anything that happened, or did any of the prisoners complain to you, or was there anything at all that would lead you to believe, from which you could have drawn a conclusion, that the prosecution staff or your own people were pushing these boys around a little bit, manhandling them or stuff of that kind?

Mr. OWENS. No, sir; none whatsoever.

Mr. CHAMBERS. Well, as supply officer you were responsible for seeing that these prisoners were supplied with food, and I presume clothing, blankets, and things of that type?

Mr. OWENS. Yes, sir.

Mr. CHAMBERS. Did they receive an adequate amount of food?

Mr. OWENS. Yes, sir; they did.

Mr. CHAMBERS. Well, now, did they get as much, for instance, as the other internee prisoners got?

Mr. OWENS. As well as I can remember they did, sir.

Mr. CHAMBERS. Were they being fed the same rations, or was there any difference?

Mr. OWENS. As far as I know it was the same ration. There might have been some difference.

We, of course, had to requisition the food and get it from a supply dump. I forget exactly where it was. I believe it was in Heidelberg or somewhere.

This requisition was signed by the prison commander, Captain Evans, and turned over to me. My job was to get the trucks down, pick it up, and bring it back in.

Mr. CHAMBERS. Were you also responsible for the preparation of the food?

Mr. OWENS. No, sir.

Mr. CHAMBERS. Merely drawing an issue of it. How about this blanket situation? Were the prisoners given an adequate amount of blankets, and I presume that should carry also the question of warm clothing?

Mr. OWENS. Yes, sir; in my estimation they were given enough blankets and enough clothing to keep them warm. The prison was well heated.

Mr. CHAMBERS. How was this prison heated? Was it a central heating proposition?

Mr. OWENS. Yes, sir. It was converted during the time Captain Evans and I were there from a coal furnace to an oil-burning furnace due to the fact that there was a scarcity of coal. We figured it was cheaper to convert the thing to burn oil, and that was done while we were there at the prison.

Mr. CHAMBERS. Were you responsible as supply officer for the maintenance and upkeep of the prison at all?

Mr. OWENS. No more than—well, the responsibility was that of Captain Evans, and I assisted him in any way I could.

Mr. CHAMBERS. Well, do you have any knowledge of windows being broken or windows that were stuck open so that the cells got pretty cold during those cold months there?

Mr. OWENS. No, sir, I have no knowledge of it.

Mr. CHAMBERS. If such a situation existed, would it have been called to your attention, or would you have known anything about it?

Mr. OWENS. I think I would have heard about it. My job as supply officer was not as much in direct contract with these Malmédy prisoners as was that of the prison commander. Of course, he had an executive officer. Mine was mainly supply job and to act as officer of the day.

Mr. CHAMBERS. Did you ever witness any of these mock trials?

Mr. OWENS. Yes, sir.

Mr. CHAMBERS. Did you take part in them?

Mr. OWENS. Yes, sir; I took part in one.

Mr. CHAMBERS. Could you describe it to us? May I ask you this first: Do you recall the case?

Mr. OWENS. No, sir; I did not know the prisoner; I did not know any of the surrounding circumstances. I was called to participate in this mock trial. It was carried on in German. I did not speak a word of German.

I was merely a figurehead sitting there. The trial was not completed, as I remember. It was postponed until the next day.

Mr. CHAMBERS. Were you in uniform at the time?

Mr. OWENS. Yes, sir.

Mr. CHAMBERS. Were the other people participating in uniform?

Mr. OWENS. Yes, sir.

Mr. CHAMBERS. Well, let me ask this—you must be familiar with American courts martial: Suppose you tell us what happened at the trial.

Mr. OWENS. As well as I can remember there was a room probably half as large as this room, and it was set up with a table and chairs in there. I cannot remember the exact number of people who participated in it.

I know I was made president of the court, or whatever they call it. They spoke in German all the time. They told me that they would like for me to participate in the thing, so I said, "O. K., I will help out," and I went in.

The trial was carried on, the witness was examined, he was asked questions of course in German. I did not understand what they were asking him.

I did not understand his answers, and after a period I would say of 10 minutes, the prosecution asked that the trial be postponed until the next day, and I never heard any of the results after that. That is the only one that I ever knew about occurring, and the only one that I participated in.

Mr. CHAMBERS. During the trial was there someone who was acting as a defense counsel?

Mr. OWENS. Yes, sir.

Mr. CHAMBERS. Now was he designated as such?

Mr. OWENS. Yes, sir. During that short period of time he would confer with the defendant in the case.

Mr. CHAMBERS. You say that he was designated as defense counsel. Did they say that in English or German? How do you know that he was the defense counsel?

Mr. OWENS. I was told by one of the officers there in charge that this particular fellow would act as defense counsel and the other fellow would act as the prosecutor.

Mr. CHAMBERS. How did he conduct himself during the trial? What did he do, the defense counsel?

Mr. OWENS. It was so short that the defense counsel never acted. He would confer with the defendant. He would give the answer. It was a very short thing, I would say not longer than 10 minutes. It was postponed over until the next day.

Mr. CHAMBERS. Now when the prisoner was brought into the mock trial, how was he garbed; how was he dressed?

Mr. OWENS. Well, he had the regular clothing that they always wore, a grayish uniform. All prisoners for purposes of security were moved from one place to another in the prison with a black hood on.

If there were three or four of them being moved from one place or another, they were required to put their hands on the man's shoulder in front of them, and there always was a Sergeant Scalise or another fellow—I forget his name—who worked with us in the prison. They were responsible for moving these prisoners from the cell up to the interrogation section, and there the guards stayed with them and they always moved with these hoods on for security purposes.

Mr. CHAMBERS. Did one of your guards stay with the prisoner during the mock trial?

Mr. OWENS. They were outside the door.

Mr. CHAMBERS. Let me ask you this: In this particular trial was there a rope used in connection with the prisoner?

Mr. OWENS. No, sir.

Mr. CHAMBERS. Was there any evidence that he had been beaten up? Were there any marks on his face or anything of the kind?

Mr. OWENS. No, sir.

Mr. CHAMBERS. And you heard nothing later as to what happened in that particular case? You did not have enough interest to ask the interrogation staff whatever happened to prisoner so-and-so?

Mr. OWENS. As well as I can remember they told me the next morning he wrote out some sort of confession that night after that trial. That is all the information I have on that.

Mr. CHAMBERS. Did you witness any other interrogations?

Mr. OWENS. Occasionally we would drop into the interrogation rooms. Going around the prison inspecting, we might stop off. I did not bother with too many because they were carried on in German. I did not speak German. I was not there too many times.

Mr. CHAMBERS. You must have had occasion to observe the demeanor of the prosecution staff as well as the prisoner. Were they going after him pretty hard? Tell us how they appeared while asking these questions, how they acted.

Mr. OWENS. Well, to me they were just asking questions just the same as any prosecutor would do to try to get the answers out. I never saw any beating or anything like that.

Mr. CHAMBERS. Did you ever see anybody shoved or pushed in the stomach?

Mr. OWEN. No, sir; never did.

Mr. CHAMBERS. I have no further questions.

Senator McCARTHY. I have a few. You were supply officer. Let me get your name again.

Mr. OWENS. Owens, sir; Jack A. Owens.

Senator McCARTHY. And you were a captain or a lieutenant?

Mr. OWENS. Lieutenant.

Senator McCARTHY. Still in the reserve?

Mr. OWENS. Yes, sir.

Senator McCARTHY. You were the supply officer, I gather?

Mr. OWENS. Yes, sir.

Senator McCARTHY. I know all of us who were in the service know the duties of a supply officer. It perhaps is not clear in the record to someone who may not have had that experience.

A supply officer has no duty insofar as finding out how the supplies are used. That is not his function to determine whether or not there are enough supplies. He merely takes the requisition of his superior officer and he does the procuring, right?

Mr. OWENS. Yes, sir.

Senator McCARTHY. So that if your superior officer would say, "Get me a thousand blankets," you would get the thousand blankets.

Mr. OWENS. The requisition would be made up.

Senator McCARTHY. It was not your duty to see that the men had the proper number of blankets or anything like that?

Mr. OWENS. No, sir.

Senator McCARTHY. You just got the supplies?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Now you were asked a question which rather surprised me, and that was this: Whether or not if there were any broken windows in this huge prison, whether you as supply officer would be notified that there were some windows broken. Obviously you would not be notified unless your commanding officer said, "Now I want you to get so many new panes of glass." Is that right?

Mr. OWENS. That is sight, sir. These civilian internees were used a good bit there for work around the prison. Anything that had to be done was done by them under the supervision of American guards.

Senator McCARTHY. Then you had the usual procedure of rotation so that different junior officers would have the title of O. D. for 24 hours?

Mr. OWENS. Yes, sir.

Senator McCARTHY. And as such you were theoretically in charge of the guard?

Mr. OWENS. Yes, sir.

Senator McCARTHY. But the sergeant of the guard was the man who would do all the work, write in the order and say, "Sign this, Lieutenant." the usual procedure, the usual duties of an O. D. who knows nothing about the duties of the sergeant of the guard. Is that right?

Mr. OWENS. Yes, sir.

Senator McCARTHY. So that you do not feel it was your duty to go around and check in the various cells and see if the men were properly treated or anything like that?

Mr. OWENS. The prison was so situated, there was one section over by itself, that most of these Malmedy prisoners were kept in. There was a man outside of that particular building, two, maybe three. I do not know the exact number on the inside.

Their job was to rove around through that prison and to check through these peep holes in the door. They were to be constantly walking around the interior of the prison. Their job was to go and check.

Senator McCARTHY. They checked through the peep holes in the various doors?

Mr. OWENS. That is right, sir.

Senator McCARTHY. Now on the question of food again, you were not the mess officer, so it was not your job to see that the men were properly fed. All you did was to take the requisition for so many cans of this, so many cans of that. You did the procuring.

Mr. OWENS. Yes, sir; and then too we did not have any special divided duties. Occasionally I would go in and inspect the kitchen for cleanliness to see how things were going, and just help out.

Senator McCARTHY. You would not have any way of knowing how many days men were on bread and water, what rations they got in various cases?

Mr. OWEN. No, sir; those records were kept in the prison commander's office. The executive officer would know through the war crimes team just what was being done as far as cutting off the food or anything like that was concerned.

Senator McCARTHY. Roughly how many junior officers were available to take over this duty as O. D.? In other words, how often did you get duty; every week, 10 days?

Mr. OWENS. As well as I can remember, once a week. Later on it got so we caught it much more frequently due to the fact of the shortage of officers.

Senator McCARTHY. This day that you were asked to come in and take part in this mock trial proceeding, would you recall offhand who contacted you?

Mr. OWENS. I would not be sure on it. I think it was Captain Shumacker. It could have been one of the others. I only remember Lieutenant Perl, Captain Shumacker, of course Major Fanton, Colonel Ellis, and Mr. Thon.

Senator McCARTHY. And you were in full uniform, I assume?

Mr. OWENS. Yes, sir.

Senator McCARTHY. And you were sitting behind the table as the president of the court?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Who were the other court members, do you know?

Mr. OWENS. I cannot remember, sir.

Senator McCARTHY. But there were two men flanking you?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Also dressed up in an Army uniform?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Do you know if Major Fanton was one of the men, or Colonel Ellis, or would you know?

Mr. OWENS. I would not know, sir. I cannot remember.

Senator McCARTHY. Do you know whether Colonel Ellis or Major Fanton was in the room at the time this mock trial was conducted?

Mr. OWENS. That I could not say, sir.

Senator McCARTHY. This was a very brief trial. They notified you that they were adjourning the case until the following morning?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Before the trial started there was a man appointed as defense counsel?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Do you know who was appointed as defense counsel?

Mr. OWENS. I am positive. I believe it was Mr.—

Senator McCARTHY. If you do not know, I am not going to pin you down.

Mr. OWENS. I am not positive, no, sir.

Senator McCARTHY. Who do you think it was?

Mr. OWENS. I think it was Mr. Thon. I could be mistaken.

Senator McCARTHY. Do you know who the prosecuting attorney was, the fellow who took that position?

Mr. OWENS. I am not positive about that.

Senator McCARTHY. Was the defendant sworn?

Mr. OWENS. Yes, sir; it was carried on as a court martial is carried on.

Senator McCARTHY. In other words, this defendant was, as you understood it, led to believe he was being tried at this time?

Mr. OWENS. Yes, sir.

Senator McCARTHY. You were the president of the court. The trial would end and the sentence would be pronounced upon him?

Mr. OWENS. Yes, sir.

Senator McCARTHY. But as far as what was said, you did not know because it was said in German?

Mr. OWENS. That is right, I cannot speak German.

Senator McCARTHY. Do you know who the stenographer was?

Mr. OWENS. No, sir. In addition to the officers there at this war-crimes team, I did not know.

Senator McCARTHY. This was at night, was it?

Mr. OWENS. It was in the afternoon, I would say 3:30 or 4 o'clock.

Senator McCARTHY. Tell me if the windows were open or if they were covered up with black cloth; how the room looked.

Mr. OWENS. It was just an open room—one of the larger cells which had been made into sort of an office, like. It was used by this interrogating team. We had several of those upon this one floor that were turned over to this war crimes team for their use.

Senator McCARTHY. I believe you said a room about half as large as this?

Mr. OWENS. I would say approximately half.

Senator McCARTHY. With tables and chairs, I assume?

Mr. OWENS. Yes, sir.

Senator McCARTHY. In other words, made to look like a court?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Were there any religious articles on the table—crucifix, candles?

Mr. OWENS. I do not remember seeing any of them.

Senator McCARTHY. You would not remember that?

Mr. OWENS. No, sir.

Senator McCARTHY. Just so we have this clear in mind—I do not want to bore you with too much repetition—

Mr. OWENS. It is all right.

Senator McCARTHY. I would like to have the record clear. There is no doubt in your mind but what the purpose of the court was to lead the accused to believe that he was having his trial, and no doubt in your

mind but what the accused thought he was represented by the defense counsel and he was actually being tried at that time?

Mr. OWENS. I think that is right.

Senator McCARTHY. While I do not want you to evaluate the testimony of any other witness, as that is the job of the committee, not the job of the witness, I am going to read to you Major Fanton's testimony. [Reading:]

There was never any defense counsel or other person who represented himself as such appointed for the subjects being interrogated through the use of this technique.

From your actual participation, let me ask you, can we safely assume that that statement is untrue?

I am not accusing the major of lying. The reason I asked whether he was there or not, he may not have been at these mock trials for all I know, but in any event he is not giving us the correct facts when he says there was no defense counsel; am I correct?

Mr. OWENS. No, sir; I would not say you are correct there because Major Fanton was in contact with the work all the time, and I very occasionally, and his testimony would be more correct than mine.

As well as I can remember now, I told you the facts about this particular trial as I remember it. I know that I was made president of the court and it lasted a very short period of time. It was convened until the next morning. During the night he must have signed some sort of a confession.

Senator McCARTHY. If you want to change your testimony, I want to know it. You know there was a man appointed as defense counsel?

Mr. OWENS. I do not know that there was. As well as I can remember now, I think that there was. I could be confused on that, but I know that I was the president of the court. That much I do know.

Senator McCARTHY. As president of this fake court, you could not very well be confused as to the facts that occurred in these 10 minutes; could you? I do not want to heckle you, but I have got to get the facts straight.

Mr. OWENS. It is all right. We can heckle each other.

As I said, Major Fanton would know more about this case than I do. As well as I can remember now, I thought there was a defense counsel. I thought someone was acting as defense counsel. It was carried on in German, spoken so fast.

Senator McCARTHY. You as president of the court were under the impression at the time that someone was acting as defense counsel?

Mr. OWENS. I thought that; yes, sir.

Senator McCARTHY. And an intelligent chap like you, thinking that, I assume there is no reason why the defendant did not think the same thing?

Mr. OWENS. Probably he did.

Senator McCARTHY. Did he confer with the defense counsel?

Mr. OWENS. I cannot be positive on that.

Senator McCARTHY. You just got through telling us that he did.

Mr. OWENS. I say to the best of my knowledge, as well as I can remember this mock trial, that is what took place.

Senator McCARTHY. To the best of your knowledge he conferred with defense counsel?

Mr. OWENS. I think that he did.

Senator McCARTHY. Were they sitting at the same table or how were they acting? In other words, was the defendant and the defense counsel sitting together?

Let me impress this on you, if I may. You are under oath. This is awfully important.

Mr. OWENS. Yes, sir; I understand that.

Senator McCARTHY. It is not your function to protect anyone. You have told us the story. Now because I call attention to testimony of another witness in the case, we do not expect you to change your story. We just want you to tell the truth. Unless you do that we cannot get to the bottom of this case, and this is the most important investigation, I think, that we have ever conducted.

Mr. OWENS. I understand that, and I am giving you—

Senator McCARTHY. It is extremely important that you forget all the other witnesses in the case and tell us exactly what you understand of the situation.

Senator BALDWIN. Now after that statement may I say for the benefit of the record—because the cold record will not disclose this man on the stand as he appears here today—he has been brought here and no one has gone over the testimony with him. He is testifying to a circumstance that occurred apparently nearly 3 years ago.

Mr. OWENS. That is right, sir.

Senator BALDWIN. Which was, as he is describing it here, a very brief affair. I want to say for the benefit of the record, since you have impressed upon the record the thought that possibly the witness is attempting to change his testimony, that this young lieutenant gives to the chairman of this committee the appearance of trying to tell the truth to the best of his knowledge, information, and belief, of a fact that occurred a long time ago, and an awful lot has happened since.

Now here is a young American officer, and I think something ought to be said a little bit in his behalf.

You are perfectly within your right, Senator, in saying what you said, but the cold record often discloses things when you read it that look a little bit hard and cruel.

I get the impression that this young man has a rather hazy recollection of this thing, but he is doing the best he can to reconstruct the facts as he remembers them.

Senator McCARTHY. Let us get back to this haziness of recollection now. I might say the young man appears to be very intelligent to me.

(No response.)

Senator McCARTHY. You are welcome.

I am going to ask you to tell us whether or not you knew a man called Steiner.

Mr. OWENS. No, sir.

Senator McCARTHY. You did not know him. You knew Perl?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Was Perl in the room this day?

Mr. OWENS. I believe he was.

Senator McCARTHY. Do you know whether he was defense counsel?

Mr. OWENS. No, sir.

Senator McCARTHY. I think you said before you thought it was Shumacker.

Mr. OWENS. No, sir; I did not make that statement.

Senator McCARTHY. You did not?

Mr. OWENS. No, sir.

Senator McCARTHY. Do you have any idea who the defense counsel was?

Mr. OWENS. No, sir.

Senator McCARTHY. Now there was a table behind at which you and the other two members of the court sat?

Mr. OWENS. Yes, sir.

Senator McCARTHY. Were there any other tables in the room?

Mr. OWENS. I do not recollect.

Senator McCARTHY. You do not recall?

Mr. OWENS. No, sir.

Senator McCARTHY. You do not have any idea who the defense counsel was?

Mr. OWENS. No, sir.

Senator McCARTHY. Are you sure of that?

Mr. OWENS. Yes, sir.

Senator McCARTHY. You could not even guess at it?

Mr. OWENS. No, sir.

Senator McCARTHY. Is my memory playing tricks on me? Did not this young man testify he thought it was Shumacker?

Mr. CHAMBERS. He said possibly it was Thon.

Mr. OWENS. No, sir; I made the statement that I thought Captain Shumacker was the man that asked me to participate. That is the statement that I made.

Senator BALDWIN. You admit, Senator, that your recollection might be hazy as to what happened just a few minutes ago?

Senator McCARTHY. Did you say you thought Thon was defense counsel?

Mr. OWENS. No, sir; I did not say that.

Senator McCARTHY. In other words, you do not have any idea?

Mr. OWENS. I did not make a statement as to who I thought was defense counsel. I said I thought they had one.

Senator McCARTHY. Was he in an Army uniform, the defense counsel?

Mr. OWENS. As well as I can remember, Lieutenant Thon wore an Army uniform, being a civilian. Lieutenant Perl wore an Army uniform because he was a second lieutenant.

Senator McCARTHY. What did you say about Thon wearing a uniform?

Mr. OWENS. He wore his regular uniform that all the civilians wore over there with the proper markings on it.

Senator McCARTHY. Was Thon's uniform an officer's uniform?

Mr. OWENS. I just remember it being just a regular O. D. uniform. Whether or not it was an officer, I do not know.

Senator McCARTHY. What do you mean by O. D. uniform?

Mr. OWENS. O. D. color.

Senator McCARTHY. Any officer's insignia on it?

Mr. OWENS. I do not remember any officer's insignia.

Senator McCARTHY. Do you recall anyone around there in a WAAC uniform at this interrogation?

Mr. OWENS. I do not recall.

Senator McCARTHY. You do not recall that?

Mr. OWENS. No, sir.

Senator McCARTHY. Do you recall anyone around the prison generally in a WAAC's uniform?

Mr. OWENS. It seems as if sometime during the time the Malmedy prisoners were there, there was someone there in a WAAC uniform.

Senator McCARTHY. Did you know Mrs. Perl?

Mr. OWENS. No, sir; I did not know her.

Senator McCARTHY. You did not know her?

Mr. OWENS. No, sir.

Senator McCARTHY. I think that is all. Thank you very much.

Senator BALDWIN. Just a question or two, Lieutenant.

Mr. OWENS. Yes, sir.

Senator BALDWIN. What opportunity did you have to see these Malmedy prisoners? When did they come, if ever, under your observation?

Mr. OWENS. During the time that I was officer of the day I might occasionally look—when these prisoners were brought in they were sent to their cell. That night, or as soon as we possibly could, we would go to each cell, a couple officers and enlisted men going along with us, and we would search all their clothing, have them strip and search them.

Senator BALDWIN. That was routine?

Mr. OWENS. Yes, sir; that was routine.

Senator BALDWIN. So on those occasions you had a pretty direct contact with the prisoners themselves?

Mr. OWENS. Yes, sir; on those occasions, because that was standard procedure. They were brought in and sent to their cells and as soon as we possibly could we went to each individual cell where they would be sent. They were stripped and searched.

Senator BALDWIN. That is when they first came there?

Mr. OWENS. Yes, sir; when they first came there.

Senator BALDWIN. Now during the time that you were officer of the day, did you have occasion to make routine inspections around in the prison?

Mr. OWENS. Not of each individual cell; no, sir.

Senator BALDWIN. But after you were there awhile did you have an opportunity to see the prisoners at all?

Mr. OWENS. Only when they were being moved from one cell over to the interrogation section.

Senator BALDWIN. You did see them then?

Mr. OWENS. I would see them then.

Senator BALDWIN. Did you ever see them when they were moved back?

Mr. OWENS. Yes; I saw them going back. They went back the same way.

Senator BALDWIN. How frequently did that happen?

Mr. OWENS. Oh, every day we would see some of them being moved. When the war crimes team needed them, they would be brought over and, of course, had to be taken back.

Senator BALDWIN. Now, during the time that you personally observed them, Lieutenant, did you ever see upon them any signs of physical abuse; black eyes or scars—evidence of anything of that kind?

Mr. OWENS. No, sir; I never saw anything like that.

Senator BALDWIN. Did there ever come under your personal observation, in what opportunity you have had for personal observation as you have described here, any occasion when any of them were slapped or kicked or punched or pushed against the wall or kned in the groin or anything of that kind?

Mr. OWENS. No, sir.

Senator McCARTHY. I did not understand that question. The question was, did you as supply officer—

Senator BALDWIN. The question was not "Did you as supply officer."

Senator McCARTHY. Obviously he did not.

Senator BALDWIN. Can you read back the testimony to Senator McCarthy?

Senator McCARTHY. Read back the question.

(The last question and answer were thereupon read by the reporter.)

Senator BALDWIN. This witness said as officer of the day he had occasion to make routine inspections and he often saw these prisoners when they were being brought in for interrogation and when they were being brought back. As I recall he said he saw them in small groups occasionally.

Mr. OWENS. Yes, sir.

Senator BALDWIN. I tried to develop the basis of what opportunity for observation he had.

Senator McCARTHY. Are you through?

Senator BALDWIN. Yes, sir.

Senator McCARTHY. There have been claims here that Judge Van Roden, for example, testified that a number of the defendants—he did not know how many—were crippled from being kicked in the testicles. Now you obviously never conducted any physical examination of these men to determine whether or not they were kicked or injured, I assume. Is that right?

Mr. OWENS. No, sir, I never did.

Senator McCARTHY. It has been claimed here by the dentist who took care of them that he patched up broken teeth, in one case a broken jaw. Did you have any occasion to ever examine their teeth, their jaws, or anything like that as supply officer?

Mr. OWENS. No, sir.

Senator McCARTHY. You do not claim that you knew what went on in these rooms when Perl or any other member of the interrogation staff were interrogating these men?

Mr. OWENS. No, sir.

Senator McCARTHY. You did not take part in the investigation?

Mr. OWENS. No, sir.

Senator McCARTHY. The only thing you claim to have personal knowledge of was at the time you acted as president of the court?

Mr. OWENS. That is right, sir.

Senator McCARTHY. No further questions.

Senator BALDWIN. I think that is all.

Mr. CHAMBERS. That is all, sir.

Senator BALDWIN. Thank you very much.

Now we have one other witness that comes from Pittsburgh, Pa., Mr. Fitzgerald.

Will you raise your right hand, Mr. Fitzgerald?

Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing

but the truth, to the best of your knowledge and belief, so help you God?

Mr. FITZGERALD. I do.

TESTIMONY OF WILLIAM T. FITZGERALD

Senator BALDWIN. Give us your full name, Mr. Fitzgerald.

Mr. FITZGERALD. William T. Fitzgerald.

Senator BALDWIN. Where do you live?

Mr. FITZGERALD. Pittsburgh, Pa.

Senator BALDWIN. What is your business now?

Mr. FITZGERALD. Insurance business, sir.

Senator BALDWIN. Will you give us your street address?

Mr. FITZGERALD. 738 Boggs Avenue.

Senator BALDWIN. Now, were you ever at Schwabisch Hall in Germany?

Mr. FITZGERALD. Yes, sir; I was at Schwabisch Hall in Germany. I believe I went there in October 1945, sir.

Senator BALDWIN. And what unit, what outfit were you attached to?

Mr. FITZGERALD. The Six Hundred and Thirtieth Tank Destroyer Battalion.

Senator BALDWIN. And how long did you stay at Schwabisch Hall?

Mr. FITZGERALD. I stayed at Schwabisch Hall until the very latter part of December.

Senator BALDWIN. 1945?

Mr. FITZGERALD. 1945; that is right, sir.

Senator BALDWIN. During that time were certain prisoners brought there—SS German troopers who were charged with the Malmedy massacre matter?

Mr. FITZGERALD. That is right, sir. They were brought there to my recollection in the latter part of November—somewhere around the latter part of Thanksgiving or the early part of December.

Senator BALDWIN. What were your duties with reference to these prisoners?

Mr. FITZGERALD. At the time that the prisoners were brought to me and during the time in which I was there, there was another officer who was over me in charge of the prison. Due to the fact that he was on leave in Switzerland practically at the time of their arrival, and then his 90-day furlough in the States, why, the responsibility of the prison fell more or less back on myself.

Senator BALDWIN. What was your rank at that time?

Mr. FITZGERALD. First lieutenant, sir. That is as far as the administration of the prison is concerned, the supply—well, every phase of it—supply and the store and housing of the prisoners, the food, everything concerning the prisoners at that time. I had one other officer with me.

Senator BALDWIN. During the time that you were there, you were really primarily connected with supply, were you?

Mr. FITZGERALD. Well, every phase of the prison, sir, in the operation of the prison itself.

Senator BALDWIN. During that time did you have opportunity to see these prisoners?

Mr. FITZGERALD. Yes, sir; I saw the prisoners every day. I would see them from time to time. I would make periodic checks of the cell

blocks and of the prisoners themselves. I mean the prisoners in the cells.

We were handicapped by only having 80 men in the company at the time which necessitated operating the company mess and the administration of the company and also guarding and operating the prison which left us quite shorthanded, and it forced quite a bit of the other details on the officers.

Senator BALDWIN. Would you say that you were in contact with these prisoners daily?

Mr. FITZGERALD. Well, I would not say I was in contact with 100 percent of the prisoners daily, but I did see any number of them daily.

Senator BALDWIN. In other words, every day you saw some number of the prisoners?

Mr. FITZGERALD. That is right, sir. I was in every part of the prison every day.

Senator BALDWIN. What were the occasions on which you saw them?

Mr. FITZGERALD. Well, it would be anything, sir. It might be just a security check to make sure the prisoners were behaving in their cells.

Some prisoners, as has been stated, were confined separately and other prisoners, there were two or three in the cell, whichever the cell would allow. Some would allow three, some cells would only allow for two prisoners. It depends on the number of beds, how this particular cell was equipped.

Naturally the individual prisoners required a certain amount of observation as well as did the ones who were together.

Senator BALDWIN. Now during that time there were men under you who were actually doing the guarding, were there not?

Mr. FITZGERALD. Yes, sir; there were guard posts. As has been stated by former witnesses, there were guard posts outside the cell blocks. There were guard posts inside the cell blocks as well as around the cell blocks.

Senator BALDWIN. Now will you go ahead and tell us what you observed concerning any maltreatment of the prisoners of any kind. Just go ahead and tell us in your own way what you observed.

Mr. FITZGERALD. Well, as far as maltreatment was concerned, sir, I did not observe, shall I say, intended maltreatment of any prisoner.

I remember one incident where the prisoners were first brought up to us there was one prisoner who refused to go into the cell and he was forced into the cell, at which time when he was forced into the cell he struck his face on the side of the cell and cut his jaw and part of the inside of his mouth.

Senator BALDWIN. Were you present?

Mr. FITZGERALD. That was one particular case that I can definitely recall. I was present at the time; yes, sir.

Senator BALDWIN. What was the conduct of the prisoner?

Mr. FITZGERALD. He was very belligerent, very arrogant, sir. He just refused to go in. He grabbed ahold of the sides of the doors. When the guards attempted to push him in, he tried to fight them off, so it necessitated two or three of the guards stepping up and putting him in the cell.

Senator BALDWIN. That was when the prisoner was first brought there?

Mr. FITZGERALD. That is right, sir. That was when they were each being assigned to the different cells into which they were going.

Senator BALDWIN. Did you ever see any other occasion of that particular kind?

Mr. FITZGERALD. No, sir; I did not ever witness any other occasion of that type. I am sure if it had occurred, I would have known it during my time there.

Senator BALDWIN. Did you ever hear of anything?

Mr. FITZGERALD. No, sir; I never did hear of any other mistreatment of the prisoners except—I would not call that a mistreatment. It was just circumstances that were derived by his arrogance.

Senator BALDWIN. Did there come under your observation any pushing or shoving or kneeling in the groin or slapping or punching or kicking in the abdomen or anything of that kind?

Mr. FITZGERALD. No, sir, there never came under my observation any such thing. I might state at this time in order to help the committee here that our guards, as you know, took the men to the interrogation center and right to the doors of the interrogation center where they were turned over to the interrogating officer who requested it.

They were taken back by our guards. In fact, there was one particular guard who did most of the moving, who was sergeant over the prison, Sergeant Scalise. He escorted the prisoners to the interrogation center and the majority of the times he escorted them back, and he had never reported any change in any physical condition of any of the prisoners to me, and I am sure he would have, had there been any.

That is my own assumption, but it is a point for the committee because there is a definite fact when they left the interrogation center and were taken back to the cell blocks, they were in the same condition that they left. It has never been reported to me otherwise. I am sure he would have.

Senator BALDWIN. You said that every day you saw some part of the prisoners during the period that you were there. Did you ever observe any evidences of physical violence on them, I mean insofar as you could observe it, of black eyes or bruises in the face or any other part of the body?

Mr. FITZGERALD. Well, right after the prisoners were brought to us, sir, well, let us say a good 2 weeks after they were brought to us, by the time we were able to get around to make this—we made an entire security check of the prisoner. We stripped each prisoner naked in the cell. Each prisoner was examined. The prisoner was examined for knives or any other implements that they may commit suicide with or injure any of the prisoners in the cell with them.

That security check was made of the entire prison at which time I was not able to see all 400 of them, approximately 400 which there were. There were two other officers that assisted in conducting that inspection, and the ones that I saw definitely did not have any marks of any recent violence on them. Of course they did have marks of war on them, but I saw there were no recent marks of violence whatsoever on them.

Senator BALDWIN. Was any complaint ever made to you as an officer by any prisoner, in behalf of any prisoners concerning the treatment?

Mr. FITZGERALD. No, sir, the prisoners—well, it would not be very well for the prisoners to contact me personally because they remained

in the cells the majority of the time. We were limited in personnel guarding them.

They remained in the cells the majority of the time, and therefore they would only see me in passing, and inspecting their cells.

Senator BALDWIN. Were there occasions when prisoners were put on bread and water?

Mr. FITZGERALD. I could not say, sir. Frankly it runs in my mind that there was, and then again I cannot recall anything about a particular incident, so I cannot make a statement to that effect whatsoever.

I know that Major Fanton and myself and the other officer did talk over the procedure on bread and water and what disciplinary action he might request of us, and at the time I recall very vividly of him referring to a war crimes circular concerning what the limits were, the allowable limits on punishment for a prisoner as far as bread and water or solitary confinement were concerned, the number of days and different things like that.

That was something that was brought up by Major Fanton in talks with us about that when the prisoners first came there.

Senator BALDWIN. What was the attitude of these men?

Mr. FITZGERALD. They were very arrogant, sir. You mean the prisoners?

Senator BALDWIN. Yes.

Mr. FITZGERALD. In some cases—I will not say 100 percent of them, but there were quite a few of them were naturally resentful and some of them were rather mean in different instances.

Senator BALDWIN. Were they all that way?

Mr. FITZGERALD. No, sir; they were not. There was just a limited few of them that were. Some seemed to try to be very cooperative, but there were some of course that would constantly try to break—infractions.

Here is your incident under bread and water. It just came to me. They tried to communicate to each other between cells between the upper and lower cells. They somehow got ahold of a pole and tried to drop a note down to the other prisoners who they were.

They were divided to be kept separate so one would not know where the other was. For means of communication they tried to contact each other. The guard noticed it and he called the sergeant of the guard. The sergeant of the guard came and got me, and we went up to the cell block in which they were doing it and they still had the pole out the window trying to drop the note down.

It was on a sheet, a piece of cloth. They were trying to get this note down to the people below them to try to find out who they were because the floors, they could possibly communicate through the floors in Morse code or maybe holler down. I do not know.

They were put on bread and water. The two prisoners in that cell were put on bread and water for 3 days.

Senator BALDWIN. What were the facilities for bathing there, for the prisoners bathing and washing?

Mr. FITZGERALD. Well, sir, frankly I cannot recall as to whether or not there was a sink in the cell or not. Sometimes I believe there was, and then again I cannot recall definitely seeing a particular sink in the cell, but I think if an examination or any pictures of the prison are

available, that will answer it better than I can because I cannot particularly say if there was a wash basin in the cell or not.

Senator BALDWIN. It has been testified here that part of this prison was old and part of it was comparatively new. It was a regular German civilian prison. Is that right?

Mr. FITZGERALD. That is right, sir. It was a complete prison in itself. It had everything in it.

Senator BALDWIN. In what part were the Malmedy prisoners kept?

Mr. FITZGERALD. The Malmedy prisoners were kept in both parts. As we said, the majority of them were kept in a separate cell block with approximately a half-block separation—I will not say that; I will say about 100-foot separation between one big cell block and a large circular building. A portion of the large circular building had been bombed out during the war, and necessitated shutting it off with wooden partitions and all so that heat could remain in the remaining part of the prison.

Senator BALDWIN. Did you ever participate in any mock trials, so-called?

Mr. FITZGERALD. No, sir; I did not.

Senator BALDWIN. Did you ever see any one of them conducted?

Mr. FITZGERALD. No, sir; I did not.

Senator BALDWIN. Can you tell us anything about blankets, whether or not these men had adequate blankets to cover them?

Mr. FITZGERALD. Yes, sir. The prison when we took it over—I do not know who took it over before us, but whenever the Six hundred thirtieth was placed in responsibility of the prison—there were numerous blankets in the prison storeroom.

After the Malmedy prisoners were brought there, Colonel Ellis had come down to the prison, and in fact that was my first meeting with Colonel Ellis, and he examined and went all through the cell blocks and he advised that more blankets be put where needed for the men, for these prisoners.

He made sure in checking there were adequate blankets, and we made arrangements for drawing of them if they were needed. It was in the early part of December. It had not turned quite cold yet, so therefore we could not tell exactly how much was needed. I know all through the time they were there, that I was there, there were adequate blankets for them.

Senator BALDWIN. Were there any instructions given to you about the treatment of the prisoners?

Mr. FITZGERALD. In what respect, sir?

Senator BALDWIN. I mean as to how they were to be handled? Was there any warning given against physical abuse or were you told to handle them rough if they were rough, or what were you told about them?

Mr. FITZGERALD. No, sir; we were not told to handle them rough whatsoever. We had prisoners there before, 23 Germans, quite a few number of civilian prisoners, and eight women prisoners there.

Senator BALDWIN. That was before the Malmedy men came there?

Mr. FITZGERALD. That is right, sir. Therefore we were told, of course, about the feeding process of the prisoners, due to the fact that we did not have enough guards and there was no large mess hall in which they could all be sat at one time, and also for security reasons to keep them from communicating with each other, it was

necessary to take the food to the individual cells in many cases due to the fact there not being any mess hall there.

That was hashed out at the time. The colonels and majors asked that the men be fed separate. It was the only way we could do it to keep them from communicating with themselves.

The disciplinary action, as I stated, with Major Fanton was talked over as far as bread and water and solitary cells, was limited, and as far as any added abuse, there was no reason to give them any abuse. The men were in the cells.

As long as they behaved themselves it was not necessary for anybody to abuse them, and they were (not, as I say, due to limited facilities and security reasons, they were not able to get into groups where there could be trouble and where they could be forced to be pushed around and do this or that.

When taken to the interrogation center and back, I do not know of any instance where anyone had to be dragged or anything of that sort to an interrogation center. They went.

They did not know where they were going. They went along with us; put the hoods over their heads as stated before. That was to keep them from communication—knowing who was going up there, who was coming back. They had to pass all the way through the cell blocks in order to get to the far cell block where most of them were stored.

Senator BALDWIN. You specified here you put a black hood over their heads?

Mr. FITZGERALD. That is right, sir. As I stated, that was to keep down recognition as much as possible.

Senator BALDWIN. Was there any rope used in connection with that?

Mr. FITZGERALD. I never saw a rope used, sir. It had a string at the bottom to keep it from coming off. It was a hood like on an army jacket.

Senator BALDWIN. I think that is all.

Senator McCARTHY. You have given us some information here which I think may prove very valuable. I understand that before the interrogation started, the men arrived at Schwabisch Hall—they were stripped, you examined them, and you found at that time none of them had the injuries which it is claimed they have since gotten, so that if we have a doctor examine those men now, if it is found that they have ruptured testicles and that sort of thing from being kicked, then we will know that that is as a result of treatment they got subsequent to the time you examined them; right?

Mr. FITZGERALD. Well, sir, as I say, the ones that I saw I can testify for that portion of those men. Also I might mention to you—

Senator McCARTHY. Let me ask you this: Did you examine all 400?

Mr. FITZGERALD. No, sir; I did not. It would be impossible for me.

Senator McCARTHY. You said they were all stripped and examined. Did someone examine them?

Mr. FITZGERALD. Yes, sir. Three of us officers handled it.

Senator McCARTHY. I see; and you examined, roughly, how many?

Mr. FITZGERALD. Well, I do not know, sir; one-third of 400 would be about 150 or 125 men.

Senator McCARTHY. And you found none of the injuries that have been described here?

Mr. FITZGERALD. The only think I wish to state in there, that there were some war injuries the men were still carrying. Now whether or not some of those ruptures could be considered in there, I do not know that.

Senator McCARTHY. Did you find any that were seriously injured?

Mr. FITZGERALD. No, sir.

Senator McCARTHY. In the groin or thereabouts?

Mr. FITZGERALD. No, sir.

Senator McCARTHY. Either war injuries or otherwise?

Mr. FITZGERALD. No; I cannot recall of any war injuries—

Senator McCARTHY. So if we have a doctor examine those men, if they find those injuries exist today, then we know that is the result of the treatment they received after you examined them?

Mr. FITZGERALD. The portion of the men I examined; yes, sir.

Senator McCARTHY. How about the two officers, did they report any injuries to the groin?

Mr. FITZGERALD. No; not that I know of, not a one.

Senator McCARTHY. Now, I believe that there is no question about it; it is entirely proper under international law and the rules of the Geneva Conference to put a man on bread and water for 3 days if he is violating the rules which are set up for his behavior; right?

Mr. FITZGERALD. That is right, sir.

Senator McCARTHY. So there can be no claim that putting a man on bread and water for an infraction of the rules is not proper. That is perfectly proper in any prisoner-of-war camp.

Mr. FITZGERALD. That is right, sir.

Senator McCARTHY. And you can put him in solitary confinement for a certain period of time?

Mr. FITZGERALD. That is right.

Senator McCARTHY. For an infraction of the rules?

Mr. FITZGERALD. That is right.

Senator McCARTHY. And you were aware of those rules and regulations for the treatment of prisoners?

Mr. FITZGERALD. I ws, sir, and Major Fanton also reminded me of them and referred me to the directive that covered that by the War Crimes Department of the Army.

Senator McCARTHY. And you determined under what terms and conditions you could put a man in solitary and how long you could keep him there?

Mr. FITZGERALD. That is right; we could not keep him there more than 3 days.

Senator McCARTHY. Will you tell us what, in your opinion, is solitary? In other words, under the rules of the Geneva Convention that you were operating with, what is solitary confinement?

Mr. FITZGERALD. Solitary confinement during my period of time there, as I say there was only one case of it, there was a separate cell, a separate area which was known as the solitary-confinement area.

In fact, the interrogators themselves had the majority of the solitary cells, although all the furniture was moved out, but the idea of it was it was separate from where all or most of the prisoners were stationed, were kept, so therefore it meant that they could take the prisoners off away from where the other prisoners could hear anything.

In fact, I recall particularly Major Fanton and I both, I believe it was Major Fanton conducted an experiment to see if one could be heard through the other cell, and we found you could not hear from one to the other.

Senator McCARTHY. How did you conduct the experiment?

Mr. FITZGERALD. We hollered to each other from one cell to the other. This solitary cell was pretty much as was explained.

You went into a steel door and there was a small, possibly a 4-foot space. Then you went into again another steel door of which there was a smaller window. There was a wooden bed, built of wood.

The other prisoners had mattresses with springs underneath them, just like an Army cot would be with a mattress. The solitary, of course, did not have the mattress in it. It had a small pad on the bed.

Senator McCARTHY. What is your title? Were you camp commander or what?

Mr. FITZGERALD. Well, see, sir, officially in the Army I was not on official records, but I was due to the fact the camp commander being away.

Senator McCARTHY. Who was the camp commander?

Mr. FITZGERALD. Captain Tourney. He had very little to do.

Senator McCARTHY. He came in October and left when Mr. Owens came?

Mr. FITZGERALD. No, sir; he left about Christmas time, somewhere thereabouts, and Capt. Nobel Johnson came down.

Senator McCARTHY. Nobel Johnson took over?

Mr. FITZGERALD. Yes, sir.

Senator McCARTHY. And during that time the camp commander was not present?

Mr. FITZGERALD. That is right; I was the acting camp commander at that time.

Senator McCARTHY. As such you talked over with Major Fanton, I understand, what rules would cover your treatment of the prisoners; right?

Mr. FITZGERALD. That is right.

Senator McCARTHY. You discussed how many days you would keep them on bread and water?

Mr. FITZGERALD. That is right.

Senator McCARTHY. You discussed under what conditions you would put them on solitary?

Mr. FITZGERALD. That is right.

Senator McCARTHY. Now, you apparently did not understand my question before. My question is this:

"Solitary" is defined as you understand it, under the rules of the Geneva Convention. My question is, what did you understand as solitary?

We have had a lot of conversation as to what was close confinement, what was solitary. Will you define, in view of the fact you and Major Fanton discussed this subject, what you and he considered as solitary?

Mr. FITZGERALD. The impression I got and the way I carried solitary confinement out, it was a particular cell in which a man was put into which had double doors, and had a wooden bed. That was solitary confinement. He was in there alone. It had a smaller window.

Senator McCARTHY. Do you mind if I interrupt you? The wooden bed and double doors had nothing to do with whether it was solitary

or not; right? I am not speaking about the cell you call solitary. I am trying to find out what you understand as solitary.

I am not telling you what you did was wrong. Maybe it was necessary for you to put those men in solitary for 6 months, for all I know. I am just trying to find out what you consider as solitary, what rules you were following.

The double doors had nothing to do with whether it was solitary or not. The type of bed had nothing to do with whether it was solitary. Can you tell me what you understood to be solitary confinement?

Mr. FITZGERALD. Sir, the only way I can answer that question for you is the fact that those cells were considered to be the solitary cells. When a man was put into there, he was considered to be in solitary confinement.

Senator McCARTHY. In which cells?

Mr. FITZGERALD. In the one with the double doors and the wooden bed. The other men, if they were confined alone, they had mattresses, they had the springs, they had daylight and the sunlight and everything else that any of the other prisoners had. They might have had two in a cell.

Senator McCARTHY. Let us take the close confinement now, where a man is alone.

Mr. FITZGERALD. Yes, sir.

Senator McCARTHY. That cell differed in that there was more sunlight?

Mr. FITZGERALD. Well, it was the same as any other cell in the prison.

Senator McCARTHY. Let us forget about the other cells. They had more sunlight, a different kind of a bed, and one door?

Mr. FITZGERALD. That is right.

Senator McCARTHY. But you say that was not solitary. Was there a peephole in the door?

Mr. FITZGERALD. Yes, sir; a peephole on the door.

Senator McCARTHY. You could see what he was doing?

Mr. FITZGERALD. That is right.

Senator McCARTHY. And there were solid walls?

Mr. FITZGERALD. That is right.

Senator McCARTHY. And how long did you keep a man in that type of room under close confinement?

Mr. FITZGERALD. Well, sir, those men that were in those cells were in those cells when I left. That was a period of approximately 3 to 4 weeks.

Senator McCARTHY. They were kept in what you call close confinement?

Mr. FITZGERALD. That is right, they were in there. I have no knowledge of them being moved.

Now if they were moved, it was certainly without any knowledge on my part, but we were limited in space.

As I said, part of the prison was bombed out. Due to certain interrogations, possibly we will call them clues or leads that the interrogators had, they requested that certain men be put in these cells.

Senator McCARTHY. I am not criticizing. I am trying to find out what you did. Now these men were in close confinement for 4 weeks that you know of?

Mr. FITZGERALD. That is right.

Senator McCARTHY. You brought the food to them?

Mr. FITZGERALD. That is right, as well as all prisoners.

Senator McCARTHY. That was shoved under the door, or was the door opened?

Mr. FITZGERALD. The door was opened and it was handed in to them.

Senator McCARTHY. Handed in to them?

Mr. FITZGERALD. That is right.

Senator McCARTHY. They were kept in that type of confinement until they confessed?

Mr. FITZGERALD. Well, no, sir; I could not say that. I left.

Senator McCARTHY. They were still there when you left? Had you and Major Fanton already discussed the matter, and you are both aware of the fact that you could not keep prisoners of war in solitary for the purpose of getting a confession?

You are both aware of that. You are both aware of the fact that would be a violation of the rules under which we operate?

Mr. FITZGERALD. I cannot swear that I was aware of it, sir.

Senator McCARTHY. Did you discuss that?

Mr. FITZGERALD. I cannot recall discussing that; no, sir.

Senator McCARTHY. You cannot recall that?

Mr. FITZGERALD. No, sir. We discussed punishment, rations.

Senator McCARTHY. I am finished. What time do we convene?

Senator BALDWIN. At 10 o'clock Monday morning, in the regular room.

Lieutenant, thank you very much for coming down.

(Whereupon, at 12:45 p. m., the subcommittee adjourned, to reconvene at 10 a. m., Monday, May 9, 1949.)

MALMEDY MASSACRE INVESTIGATION

MONDAY, MAY 9, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in the committee room, room 212, Senate Office Building, Senator Raymond E. Baldwin, presiding.

Present: Senator Baldwin.

Also present: Mr. J. M. Chambers of the committee staff; Mrs. Francis Flanagan and Mr. Howell J. Hatcher, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; and Colonel Ellis.

Senator BALDWIN. I was advised by Senator McCarthy's office this morning that he had been requested to go to Quantico as one of the two marines who are now Senators, to serve there as one of the hosts to the Members of Congress who are down at Quantico today, inspecting the base there and watching the marine maneuvers.

In view of that fact, and at his request, I have suggested to Major Fanton that we not put him on the stand today, but ask him to stay over until tomorrow, when Senator McCarthy says he will be back, so that he can conduct his cross-examination then.

I have talked with Senator McCarthy by telephone, and he is perfectly agreeable that we call Major Byrne today, and also as to Colonel Dwinell.

Mr. Flanagan and Mr. Hatcher, who are on the staff of the Investigating Subcommittee of the Committee on Expenditures in Executive Departments, and who have worked with Senator McCarthy on the case, are both here, and I want to extend to them, as I told Senator McCarthy I would, the privilege of asking these witnesses any questions that they may want answered.

We have got hearings scheduled for all of this week, and I think it is essential that we go forward with the hearings so, we will proceed today with these witnesses.

I also told Senator McCarthy that I thought that both of these two witnesses would probably be available tomorrow, too, and if he had any questions in addition to what Mr. Flanagan and Mr. Hatcher wanted to ask, that he would have that opportunity later on, upon examination of the record, to ask those questions.

Now, Major Byrne, will you stand up and hold up your right hand.

Do you solemnly swear that the evidence you will give in the matter now in question will be the truth, the whole truth, and nothing but the truth, so help you God?

Major BYRNE. I do.

**STATEMENT OF ROBERT E. BYRNE, MAJOR, JUDGE ADVOCATE
GENERAL'S DEPARTMENT, DEPARTMENT OF THE ARMY**

Senator BALDWIN. Give your full name, please?

Major BYRNE. Robert E. Byrne; major, Judge Advocate General's Department, presently stationed at Fort Knox, Ky.

Senator BALDWIN. How long have you been in the Army, major?

Major BYRNE. Since 1943, Senator.

Senator BALDWIN. And when you first went into the Army, in what capacity did you enter the Army?

Major BYRNE. As a private.

Senator BALDWIN. Were you a combat soldier, or assigned to the Judge Advocate General's Department?

Major BYRNE. I was initially trained as a second lieutenant in the Tank Destroyer Corps, and assigned or detailed in 1944 to the Judge Advocate General's Department. I have no combat experience. The war ended upon my arrival in the European Theater.

Senator BALDWIN. Did you have any duties in connection with these Malmedy cases?

Major BYRNE. Yes, sir; I did.

Senator BALDWIN. Will you describe to us what they were?

Major BYRNE. I was initially assigned to the War Crimes Branch of the then USFET, Judge Advocate General's section, in November of 1945. My first connection with the Malmedy case was in the last part of January 1946, when I was assigned to the Evidence Branch and made on-the-ground investigations in Belgium, based upon the information that had been secured by the interrogators from the German PW's in connection with the Malmedy massacre. In that connection I traveled with a small detachment to Belgium, and located in Belgium, individuals, some of whom had seen the actual atrocities committed; some who had, on the dates and in the places described in the statements and in the elaborate sketches prepared by these witnesses, found the bodies, or people who had seen the bodies as they lay on the ground after the various shootings.

I utilized in particular sketches that were prepared by one of the accused in the Malmedy case, Gustav Adolf Sprenger, who drew a very elaborate map of the village of Stoumont, and who fixed in his sketch, with particular accuracy, one killing in which he, himself, had participated, and others that had been participated in by other members of his organization, whose names presently slip me.

I was particularly impressed by the map prepared by this prisoner because of the geographic accuracy. It was almost accurate to scale, in addition to which it was 2 years since he had been in this particular little village, and it is just a little cluster of buildings. He had very accurately placed the principal landmarks, the church, school, butcher shop, the grocery store, principal roads, and even the little small paths with which he had personal connection, as far as these shootings were concerned.

I also located in the other villages, for example, Bulingen, if I am correct, LaGleize, Lutre Bois, and Petit Thier, the corroborative testimony in support of the confession statements of numerous members who had been interrogated.

For example, at Petit Thier I was able to locate with, shall we say, almost 100 percent accuracy, the location of the body of which, or

with which Colonel Peiper was connected. He was present when his regimental surgeon, Major Sickel, had directed a soldier, Wischmann, to take a man out and shoot him.

The body had not been discovered until several weeks later, but the personal effects that belonged to the soldier, I remember a toothbrush, a couple of small snapshots in a dilapidated billfold, were still among the leaves in a place, on the ground, within 10 yards of where this soldier had described leaving the body.

I also interrogated several Belgian civilian women, some widows whose husbands had been killed, particularly in Wanne, and other survivors in various families, and I arranged for those people, or a number of them, to attend the trials at Dachau and their testimony appears in the record of trial.

That I accomplished in, it is my recollection, two or three trips, two of which were from Wiesbaden to the vicinity of Malmedy, and a third which was made from Schwabisch Hall.

That part of the investigation consumed, it is my best recollection, the time up until about the middle of March, at which time I returned to Schwabisch Hall.

Colonel Ellis had taken command down there at that time, and Major Fanton had returned to the States some 6 weeks or 2 months previously, and I had been assigned as one of the prosecutors of the case and worked with Colonel Ellis, Captain Shumacker, Colonel Crawford, and other members of the team in assembling the material that we had in the manner in which we intended to present it at the trial.

During that period, I do not definitely recall whether I had occasion to witness any of the confessions, that is, swear the witness to any of the actual confessions that were taken. However, I did have occasion, during that period, to administer the oath to numerous of the accused, who signed statements identifying photographs of the various members of the units, in which they identified the photograph as being the individual referred to in this original confession, or confessions.

Of course the purpose of that was to tie the confessions and the individual in the dock at the trial, together.

I particularly remember an interesting incident with Colonel Peiper during that period. Colonel Peiper spoke very fluent English—

Senator BALDWIN. Let me ask you first: Who was Colonel Peiper?

Major BYRNE. Colonel Joachim Peiper was the commanding officer of the First SS Panzer Regiment, which organization had participated in the killings at Malmedy, and these other atrocities that have been described.

At the time Colonel Peiper signed this descriptive document, or several of these documents, identifying persons identified in his statement, I was talking to him in English. I did have an interpreter with me, and I asked him if they were correct, and he said they were.

I said: "Colonel, you speak English well enough so that we won't need an interpreter to swear you in." And he mentioned that perhaps he thought we should do it in German, that it perhaps would be more legal.

From that point I was there from about the middle of March until the prisoners were moved from Schwabisch Hall to Dachau on the 17th of April. In the early part of April I did take one additional

short trip to the areas in Belgium with the members of the prosecution staff, and pointed out to them, on the ground, the matters that would become of great importance during the course of the trial.

That, incidentally, was the first time that any of the members of the prosecution staff, other than myself, had ever been on the ground, physically, in Belgium, at the scene of these alleged incidents.

I assisted in supervising the loading of the prisoners, between 200 and 300 of them, on the 17th of April, I believe it was, the middle part of April, when the bulk of them were transferred from Schwabisch Hall, and it was a day or two later when we closed out our own quarters and the rest of our operations at Schwabisch Hall, and took the last 6 of our prisoners, who had just been returned from the United States, and moved our operations.

I participated in the trial up until the conclusion of the prosecution's case, which was about the 15th of June, at which time I was transferred. I returned on one occasion during the first 2 weeks in July, and assisted in conducting part of the rebuttal testimony and part of the cross-examination of one or two of the defense witnesses.

Senator BALDWIN. How much time did you spend on this mission of corroborating the confessions?

Major BYRNE. Over all, Senator, approximately 6 weeks.

Senator BALDWIN. As I understand it, you took these confessions, or at least some of them, and other material that had been secured or obtained from the prisoners who were interviewed at Schwabisch Hall—

Major BYRNE. That is correct.

Senator BALDWIN. And you went down to the scene of this so-called massacre?

Major BYRNE. That is right, Senator.

Senator BALDWIN. And as I understand it, then you tried to find out the witnesses, where they were located, and secure physical evidence that would corroborate the statements that were made in the confessions?

Major BYRNE. That is correct.

Senator BALDWIN. You say you obtained a map from one of these prisoners?

Major BYRNE. Yes, sir. There were several maps. The most important was the one that had been prepared by Springer, that is, it was the most accurate and the most in detail.

Senator BALDWIN. How many of the different defendants were affected, would you say, by this work of yours in finding corroborating evidence and testimony?

Major BYRNE. With the exception of some of the company commanders and the general who were involved in the thing from the standpoint of orders, the bulk of those who were charged with actual shootings, in one way or another, some portions of corroborating testimony or evidence were discovered on those trips; some conclusive, some inconclusive.

Senator BALDWIN. Were there any civilian witnesses to this shooting.

Major BYRNE. Yes, sir; to the shooting by this man Springer, and two other German soldiers, there was one witness by the name of Jordan, an elderly man in the village of Steuval (?). He had actually been in his house hiding, and saw the prisoners marched, and

the soldiers go by the side of his house, saw the shooting, saw people start to fall, and after the German soldiers left, actually saw the bodies on the ground.

Senator BALDWIN. And when you say he actually saw the shooting and the bodies on the ground, you mean that was the group that was in the field?

Major BYRNE. No, sir.

Senator BALDWIN. What group was this?

Major BYRNE. This is another group, another incident that occurred, another shooting. The shootings that occurred in Stoumont, occurred a day or two subsequent to the actual shooting at Malmedy. This was a separate incident by the troops of the same organization.

Senator BALDWIN. According to the list that Mr. Chambers shows me, it is at Stoumont on the 19th of December 1944. It was charged that there were 11 soldiers—

Mr. CHAMBERS. And 44 civilians, included.

Senator BALDWIN. A total of 44 civilians and soldiers shot there.

Major BYRNE. Yes, sir. They were not shot in one fell swoop, or in a large group, Senator. They were incidents scattered over that entire day—a small group here, perhaps behind a house—and there was a group some other place. There was a group, the figures varied between 10 and 20, near the store, down on the main street. There was another group shot behind the doctor's house in the city. It was not one group, as had occurred as Malmedy. They were scattered, sporadic shootings.

Senator BALDWIN. And were those shootings, as you were able to determine from the evidence, the shooting of men who had surrendered?

Major BYRNE. As nearly as we were able to determine from the statements given to us by these Belgian people, they were men who were surrendered and disarmed.

Senator BALDWIN. I think it will be a good thing at this point to put in the record what the claim as to the total number of different places is where these shootings occurred.

Mr. CHAMBERS. The Department of the Army has furnished the committee with a list of the alleged killings of soldiers and civilians at the places named, and at the time they gave it to me they said that the figures were a little indefinite and for that reason they have given us the most conservative estimate.

There were 13 different locations, including the crossroads incident; and, there were approximately 369 soldiers who were killed; 106 civilians; and then they have 37 others with a question mark after the "others."

I don't know just what they have in mind there. There is an approximate total of 512 individuals that were alleged to have been killed during the period covered by the cases tried in the Malmedy trials.

Senator BALDWIN. Is it fair to describe these all as the so-called Malmedy incident or Malmedy killings?

Major BYRNE. To the extent, Senator Baldwin, that the great number of them were tried in connection with the Malmedy case. The accused on trial in the Malmedy incident were not all specifically charged with shootings in the field at the Malmedy crossroads.

Senator BALDWIN. They were charged with other separate killings?

Major BYRNE. Yes, sir.

Senator BALDWIN. Did you have any confessions that concerned the shootings at the crossroads when you went down there to investigate it on the ground?

Major BYRNE. I cannot be absolutely positive, Senator. I believe—I know that on one of the trips that I went down on, I did have statements from individuals who were involved at the crossroads. I cannot be positive that I had them on the first trip. The first trip was directed—we had the most direct evidence with regard to the Stoumont killing. However, it was either the first or second trip that I made down, which was within a matter of a space of 2 weeks, when I did have that evidence, and had certain corroborative matters with reference to the crossroads killing, the actual Malmedy shootings, and was able to find witnesses who had seen the shooting occur, and who showed me the location, generally speaking, where the bodies had fallen in the field, the people who had lived within four or five houses at the intersection of the two roads.

Senator BALDWIN. This so-called Malmedy crossroads?

Major BYRNE. The so-called Malmedy crossroads; yes, sir; although Malmedy is approximately 4 kilometers, or about 3½ miles from the village of Malmedy itself.

Senator BALDWIN. Then, the investigation and the prosecution did make an effort to corroborate the claimed confessions by an investigation on the ground.

Major BYRNE. Oh, yes, sir.

Senator BALDWIN. And in the process of that investigation you found bodies, and you found other witnesses?

Major BYRNE. I did not find any bodies as such, Senator Baldwin. This was 2 years after the shooting occurred. I found persons who stated to me that they had seen bodies on the ground in these particular places, and in this one instance, as I suggested, I found a few of the personal articles that presumably belonged to the individual who had been shot there.

Senator BALDWIN. Let's see, the Battle of the Bulge occurred around Christmastime in 1944.

Mr. HATCHER. The 16th of December 1944.

Senator BALDWIN. And that was in—

Major BYRNE. This was in February of 1946, that I was down there.

Senator BALDWIN. You must have been there in March, too, if you were there 6 weeks.

Major BYRNE. Yes, sir; February and March. I believe I left about the last of March.

Senator BALDWIN. You did mention one case where you did find the personal effects of a soldier, that you were able to identify as one of the men that had been shot?

Major BYRNE. Yes, sir; that was the killing that was charged against Colonel Peiper, the regimental commander, and Major Sickel, the regimental surgeon, and a soldier by the name of Wischmann. Wischmann actually did the shooting.

Senator BALDWIN. These witnesses that you found there, were they called to testify at the trial?

Major BYRNE. Yes, sir. There may be some who were not called, but the bulk of them, some 30 or 35, were called to Dachau and testified at the trial.

Senator BALDWIN. Do you have any questions, Mr. Chambers?

Mr. CHAMBERS. I have several I would like to ask, if I may.

You say that you took out a group of confessions, and maps, and what not, in an effort to corroborate or find evidence that would support the facts.

Now, were there cases involved where you could not find evidence to back up the statements that had been made by the defendants?

Major BYRNE. Yes, sir; there were, Colonel Chambers. There were statements in which the people said that a body lay at, or was shot at, an intersection of a fence or behind a particular house, or in a general area where I found no one who actually saw a body in that spot, or saw any shooting at about that time.

Mr. CHAMBERS. In a case of that kind, what kind of a report did you turn in—a negative report?

Major BYRNE. Just that report, a negative report as far as that portion of a confession was concerned.

Mr. CHAMBERS. And later on, you were on the prosecution staff, I believe, and helped try the cases?

Major BYRNE. Yes.

Mr. CHAMBERS. Do you know whether or not the statements in the confessions for which you had not been able to find corroborative evidence were used in evidence against the accused?

Major BYRNE. Portions of them could have been, sir; because they were embodied in complete statements, many of them a number of pages long, covering numerous incidents, some of which I found actual on-the-ground corroboration for, some of which I found no on-the-ground corroboration, on either the land itself, or the civilian witnesses I was able to find, but in those cases, now, I can't say that in all those cases, most of those cases, there was some corroboration from the statements of others, others of the accused or other witnesses who were called by the prosecution at the trial.

Mr. CHAMBERS. Major, is it a fair statement, then, that if you had a confession given by one of the accused, which contained several things in which he either was making statements against his own interest, or accusing others who were jointly accused with him, if you found evidence to corroborate it, then the witnesses or that evidence was introduced at the court?

Major BYRNE. Yes.

Mr. CHAMBERS. But if you had gone out and made an investigation and either had not found evidence to corroborate it, or perhaps had found evidence to disabuse it, did the prosecution let it be known that that part of the confession had not been proven?

Major BYRNE. I cannot answer that question, Colonel Chambers, for this reason: That was not done at the time the confession was introduced; it may have been done in connection with the defense case or in final argument, and I was not present for that.

Mr. CHAMBERS. Let me ask you this: Did any of these negative reports come in before it was actually decided that you charge certain of the accused, so that in effect they might have decided not to charge an accused because of insufficiency of evidence?

Major BYRNE. I believe it worked more this way, Colonel Chambers, although I was not personally connected with the actual charging of the accused: Initially, there was a group of some—and I am estimating—25, who were positively implicated; and, as additional evi-

dence was secured during the course of the investigation, and this is from the first of March 1946 until the actual serving of the charges on the accused, there were additional names added to the list up until the time the charges were actually prepared and served on the accused. I do not believe, although there were so many I cannot state it positively, but I do not believe there were any who were brought to trial, or who were charged against whom we had solely their own unsupported confession. There were some against whom we had no physical corroboration such as the corpus delecti, but did have in those cases statements from other individuals who implicated them at or about the time that they stated that certain things happened.

Mr. CHAMBERS. Now, Major, in your investigations did you make a study of a case at La Gleize, that you can identify from this description, and this is contained in the petition before the Supreme Court of the United States, filed by Defense Counsel Everett on behalf of the accused in the Malmedy incident:

The defendants herein assert that incident within the churchyard at La Gleize, Belgium, where groups of surrendered Americans numbering 20 to 30 were placed against the inside wall of the churchyard and shooting them down in cold blood with machine guns.

Did you prepare such a case?

Major BYRNE. Yes, sir; I did.

Mr. CHAMBERS. And further:

The defense investigation developed the fact that there was no inside wall of the churchyard, and merely an outside retaining wall. The priest of this church furnished this defense officer with a sworn affidavit that he was present in the church the entire time of the battle and alleged crime; that he examined the outside walls of the churchyard and no sign of bullet marks were visible, no such atrocity had ever been committed in the vicinity of the church, and the only dead American he had seen was the body of one in an American tank which had burned beyond recognition; and, finally, on the afternoon the crimes were supposed to have occurred, he had walked along the outside wall and no dead Americans were there.

Many more of the plaintiffs herein—

and they were the accused—

corroborated these detailed purported crimes under oath but under false confessions.

There is a charge which, in effect, would say that none of the things that the accused had confessed to actually did take place.

What knowledge do you have of that incident and what did your investigation show?

Major BYRNE. In the course of my investigation, Colonel, I talked to, I presume it is the same priest, there is only one church, and it is a very small village, and he stated to me that he had been in the cellar of the church during the entire operation, and that he had seen no bodies. There were two witnesses who supplied some evidence to indicate that along what they described as the retaining wall, on the outside of the church and adjacent to the road which goes around the church, one of them I believe was the local carpenter, who, in the course of going across the road to get potatoes, said that he had seen bodies lying along this retaining wall, how many, he did not know, nor how they got there. There was other evidence showing individuals had been shot in one or two cellars in La Gleize.

The evidence as far as this particular incident was concerned was vague as to whether or not those bodies that were seen by this indi-

vidual were the bodies referred to in the confession they have reference to there, or not.

There was some evidence not at all conclusive, one way or the other.

Mr. CHAMBERS. Did you ask the priest whether or not he saw any bodies?

Major BYRNE. I asked the priest whether or not he saw any bodies, and it is my recollection I brought back an affidavit from him at the time; he had seen the body described as you have mentioned it, in the tank which was sitting near the church. In fact, it was still there a year and a half later when I was back. The body had been removed, but the tank was still there, and he stated that he had seen no other bodies.

There were also allegations of a shooting which I do not believe was charged; that allegedly happened somewhat east of the place he used as his home, and he stated that he had seen nothing there. His testimony was substantially negative to me and was reported back as inconclusive.

The statements of the two other individuals had some bearing on it, but were not conclusive in and of themselves. They may have been the same bodies referred to in the prisoner's statement, or they may not have.

Mr. CHAMBERS. And you reported to the people developing these cases for trial that the evidence, insofar as the massacre at the church at La Gleize was concerned, the evidence was inconclusive, and that the priest had given you negative evidence on it?

Major BYRNE. I am certain that I brought back the priest's statement and brought back the other two statements for such probative value as they might have and suggested that we call those people as witnesses, which was done.

Mr. CHAMBERS. Which was done?

Major BYRNE. Yes, sir.

Mr. CHAMBERS. Now, are you familiar with a charge which is alleged in the petition to have occurred in Wanne, Belgium, where it was alleged that one of the plaintiffs, again for the purpose of identification the plaintiffs in this case were the accused at the Malmedy trials, had entered the home of a Belgian civilian and without provocation murdered a woman while sitting in her chair?

Are you familiar with any case of that kind at Wanne?

Major BYRNE. No, sir; I am not familiar with the specific facts on that case.

Mr. CHAMBERS. Did you make an investigation at Wanne?

Major BYRNE. I made an investigation at Wanne; yes.

Mr. CHAMBERS. Did anybody else make any investigations of incidents at Wanne?

Major BYRNE. If that is the one I think it is, Colonel Chambers, it is in connection with the charge against a man named Tonk. The statements with reference to the shooting of another individual were made by another PW who was not tried, who could not describe to us with sufficient accuracy the place at which it had occurred. He was doubtful whether it happened at Stavelot, or at Wanne, or in the intervening vicinity. I found no case, no positive evidence on the ground, to establish it. However, again if this is the case I have reference to, that PW witness, together with an interpreter and another officer not connected with the particular group who specifically

investigated Malmedy, came down to Belgium while I was there; and this man, I did not go with them at the time they did this, but it was reported to me that he took them to a house, which house I do not know, which he pointed out as the house that he described as the one that he remembered as being the one where this individual had done the shooting.

Mr. CHAMBERS. Was anyone charged at the trial with having murdered a woman at Wanne?

Major BYRNE. I can't positively answer that question.

Mr. CHAMBERS. Sir, I wonder if I may at this point ask Colonel Ellis?

Do you recall whether or not—

Colonel ELLIS. There was only a man killed at Wanne; no women were killed at Wanne whatsoever.

And at this time I would like to read into the record an explanation of the La Gleize incident, the affidavit of the priest taken from the records of the trial which is completely distorted in Colonel Everett's petition.

Senator BALDWIN. You may proceed and read it.

Colonel ELLIS. When I used the word "petitioner" that is referring to the defendants in the trials. [Reading:]

In paragraph 23 of the petition a statement of a priest is referred to and cited in flagrant contrast to the actual trial record. The petition alleges that the priest asserts in his statement that he was "present in the church the entire time of the battle."

The trial record, page 2821, proves that exactly the contrary is asserted in this affidavit which by the way was introduced by the petitioner himself. The affidavit states that the priest was not in the church during the entire time of the battle. On page 2820 of the record, the priest states that he took refuge in the cellar of Arthur George, in La Gleize, on Monday, December 18, at about 1:45; that he left at 4:30 on Monday when darkness fell; that he did not go to the church but hurried while firing was going on all-around to the Communal House (the record page 2821), without being able to look around much, of course, due to the firing and falling of darkness; that he returned to Mr. George's house in about 10 minutes and that he did not leave the cellar until December 24.

The petition furthermore alleges that there was no inside wall to the churchyard, yet the priest in the fifth answer on page 2821 of the record states "I followed the road along the cemetery inside the wall between the cemetery and the church."

Equally incorrect and incomplete is the statement in the petition that the priest asserted that "no such atrocities had ever been committed in the vicinity of his church."

According to the trial record the priest never asserted anything like this; nor could he have asserted anything like this as he was hiding in a cellar practically the whole time of the battle, a full week. To the contrary, he states that he saw something which at least raised the suspicion that an atrocity was committed there. He saw an American helmet with brain matter in it.

Misleading by its incompleteness is also a statement in the petition that the priest examined the walls and no signs of bullet marks were visible. According to the trial record, the priest did not even look at the walls until about a year after the incident. At that time marks still were visible. However, to him they did not "appear to be from small arms and certainly not from mass firing."

There is no evidence whatever to show that the priest was able to distinguish small-arms marks or marks from mass firing from any other marks.

That is in connection with this La Gleize incident, and the affidavit introduced by the defense at the trial signed by the priest.

Senator BALDWIN. What was that you just read?

Colonel ELLIS. An affidavit prepared by Lieutenant Perl, and I furnished him this information in connection with the incident at La Gleize from the record of trial.

Mr. CHAMBERS. What were the page references?

Colonel ELLIS. 2820 and 2821, where the priest's affidavit is recorded in the record of trial.

Mr. CHAMBERS. The priest did not testify?

Colonel ELLIS. The priest did not testify, but this is his affidavit.

Mr. CHAMBERS. And this is on 2820 and 2821 of the record of trial of the Malmedy proceedings?

Colonel ELLIS. That is right. This affidavit was secured by the defendant and introduced by the defendant.

Mr. CHAMBERS. Now, coming back to this Wanne incident for a moment, the petitioner before the Supreme Court took exception to the manner in which evidence was used against one of the accused, and he referred to an incident whereby a woman was murdered while sitting in her chair.

Do I correctly understand your answer to my question a moment ago to be that you say no one was accused for such a charge?

Colonel ELLIS. No one was accused for killing any women at Wanne. There were four or five Belgian men killed in Wanne. I think Major Byrne developed the civilian witnesses, widows of some of these men at Wanne, and if you look at the R. and R., I am sure that is borne out. There were no women killed at Wanne. We never contended that there were women killed at Wanne.

Mr. CHAMBERS. What would be your comment to that particular part which is paragraph 23 of the petitioner's statement?

Colonel ELLIS. They are referring to what I presume to be an incident that took place either in Bulwingen or Hansville where there was a woman killed.

Mr. CHAMBERS. It is merely a mistake in location and not—

Colonel ELLIS. They make two errors in there, one in the location and the other that the affidavit was sworn to before a priest. It was secured by one of the defendants own investigators, Miles Rulian.

Senator BALDWIN. May I say for the benefit of the record that it will be quite impossible for the committee to examine in detail the testimony, pro and con, in every case. I think what the committee is primarily interested in is this, as developed by this witness this morning; that there was an effort made, and it is for us to say how thorough it was and how conscientious it was, but that there was an effort made to corroborate the statements that were obtained from the prisoners at Schwabisch Hall; and, if I think we could develop any further facts on that, that is what we want to know.

What the colonel just brought out is the great complexity of this whole thing.

Colonel ELLIS. May I make one additional statement of fact in connection with these La Gleize incidents?

In our rebuttal testimony we produced affidavits of members of the Graves Registration which had cleared the bodies from La Gleize, and they stated they had cleared, as I recall, upward of 200 bodies of American soldiers, and apparently they had been murdered at La Gleize.

Senator BALDWIN. Of course, they didn't know they had been murdered.

Colonel ELLIS. They could tell by the bullet holes in heads; it was their opinion that they had been murdered.

Senator BALDWIN. They were all shot in the head?

Colonel ELLIS. No, no; some of them were.

Mr. CHAMBERS. There had been fighting around La Gleize.

Colonel ELLIS. Yes, sir, there had been. That was fought over—well, Peiper was surrounded there for 3 or 4 days.

Mr. CHAMBERS Thank you.

Senator BALDWIN. There is a statement in one of these documents here, a review of this case, which I think ought to be somewhere in this record, and I think that is a statement we ought to have in connection with this thing. We ought to develop what the orders of these men were, and what their philosophy of going into this battle was.

Mr. CHAMBERS. Sir, I had intended, as a part of the later testimony when we got into the question of review board procedures to introduce this entire document.

Senator BALDWIN. Very well, that will be all right then.

Mr. CHAMBERS. One other question, or perhaps two, Major Byrne. This is a general question, and I just prefer to have your candid opinion on it: You investigated these confessions that had been made along with the maps and other data that was given to you. You got over there after the war was over so that you had not been directly connected with the Army at the time these incidents took place. Theoretically, you should have been a little more objective than some that came there at a different time.

Major BYRNE. Nobody shot at me; no.

Mr. CHAMBERS. And you were not mad at anybody?

Major BYRNE. No.

Mr. CHAMBERS. Major, what is your honest opinion of the type of evidence we were getting through these confessions?

Was it being corroborated to the degree where, in your opinion, you became convinced: (1) that the incident took place and (2) that the individuals had something to do with that?

Major BYRNE. I think I can answer that unequivocally. The evidence was not entirely of a type that would be admissible in normal municipal practice as far as proving these events, but as far as convincing me as a layman, or anyone as a layman, that the events occurred and that these individuals were in one way or another involved in it, yes, I was convinced that they were involved to some extent—whether or not they had been directed by specific orders in certain cases, the degree of guilt, as far as murder, manslaughter, or what have you is concerned, there, of course, was a question. But as far as these people having been about there and involved in these shootings, I can think of no exception in which I was convinced that they had not been there.

Now, I say, again, it might not have been conclusive evidence to establish that one individual perpetrated a specific crime in every specific case, but in general, without analyzing each individual accused, I was satisfied that we were at least trying the right man.

Mr. CHAMBERS. Did you find cases where you were convinced that a specific man did do a specific thing with which he was charged?

Major BYRNE. Yes, very definitely. I can remember some of them, Sprenger shooting that man at Stoumont in particular; it bears out in my mind, because I was particularly impressed. I knew this boy Sprenger. He was a good-looking soldier, had an excellent mind, and impressed himself on me. The Wischmann-Peiper-Sickel affair at Petit Thier was, to my mind, very conclusively established.

I may err on the names of some of these people, it's been quite a while, but the killings in Stavelot, some of the specific shootings in Stoumont, in my mind, were well identified and tied in by a confession on the part of the accused in many cases, corroborating statements by coaccused, or independent witnesses; and, in some cases, by far, not all, of finding people who had seen things on the ground that indicated that these offenses had occurred.

Mr. CHAMBERS. May I ask you about a particular case which I have read in the record? I am sorry I cannot tell you even the name of the town, but it was an incident in which a group of 28 civilians were brought out of a cellar, after a couple of grenades were tossed in, and all but three were shot, and as I recall the record of trial, the German soldiers said, "Who was that woman that spoke German here?" And she, and I think her two children, went over and escaped being shot by the soldiers.

Did you investigate that?

Major BYRNE. I did.

Mr. CHAMBERS. Did anybody confess to having done that, so you were corroborating a confession, or why were you investigating that particular case?

Major BYRNE. Colonel, I cannot fairly answer the question that we had a specific confession. I know that that event happened in Stavelot. I know the woman who spoke German was named Gregoire. I spoke to her, and she took me to the cellar where she had been first confined, and where the grenades were thrown in, and took me to the little lot across the street where they had been lined up and shot and very vividly described the manner in which she had, with her children, been separated from the group because she spoke German, and witnessed, in part, it was dark, the shooting of these others who were not so fortunate and could not speak the right language.

Mr. CHAMBERS. May I ask one further question, or series of questions?

You say you were at Schwabisch Hall for the period of time while these cases were being developed?

Major BYRNE. I was there roughly about 6 weeks.

Mr. CHAMBERS. Did you take part in the taking of testimony from the accused?

Major BYRNE. To the extent that I have described previously, Colonel Chambers, I was swearing, administering the oath, primarily on these picture-affidavits in which they described each other as being the individual referred to in their original statement which had been given some time before, there may have been one or two occasions, and I do not remember them specifically, in which I administered the oath to a full-scale confession, or to a what we normally refer to as confession or statement.

Mr. CHAMBERS. Did you take part in any of the mock trials?

Major BYRNE. I took part in none of the mock trials. I had occasion to observe part of one.

Senator BALDWIN. Let me ask a question here. I have to answer a quorum call and I must leave in a minute.

Were there ever efforts that you knew about, of your own personal knowledge, other than the one that you and your group made to secure corroborating testimony of confessions that were obtained at Schwabisch Hall?

Major BYRNE. I cannot say positively, Senator. I do not believe so. When more evidence was needed in Belgium, they usually sent me to get it because I knew the people and knew the area, and I might add that I received a great deal of cooperation from the Belgians who, once they learned my mission down there, the local grapevine worked efficiently—volunteered to come in and give any assistance they could, and this brought in evidence of numerous things that had happened but with which we were totally unable to connect with anything specific.

Senator BALDWIN. In other words, they told you more than you had confessions to cover.

Major BYRNE. That is right. On the basis of what they told me, it would indicate that there were far more people shot in that particular area than we had any proof of.

Senator BALDWIN. What was your experience as an attorney before you went in the Army?

Major BYRNE. I practiced 4 years in La Crosse County, Wis., and before my entry into the service.

Senator BALDWIN. Are you a graduate of any law school?

Major BYRNE. I am a graduate of the University of Wisconsin Law School.

Senator BALDWIN. Are you a college graduate?

Major BYRNE. I am also a graduate of the University of Wisconsin, with the degree of a bachelor of laws.

Senator BALDWIN. Did you have 4 years of college and 3 years—

Major BYRNE. Not exactly. We have a combined course which I finished in 6 years.

Senator BALDWIN. Then, you had 3 years of college and 3 years combined college and law training?

Major BYRNE. That is correct, sir.

Senator BALDWIN. And were you a member of the bar of the State of Wisconsin?

Major BYRNE. I was, sir.

Senator BALDWIN. We will now recess until 1:30.

(Whereupon, at 12:07 p. m., the subcommittee stood in recess until 1:30 p. m. of that same day.)

AFTERNOON SESSION

Senator BALDWIN. Do you have some questions, Mr. Chambers?

Mr. CHAMBER. I had finished.

Senator BALDWIN. I think Mr. Flanagan has some questions.

Mr. FLANAGAN. Major, this morning I believe you testified you conducted the investigation of the incident that occurred at LaGleize, Belgium.

Major BYRNE. Yes.

Mr. FLANAGAN. You were the only one of the prosecuting or investigating teams that conducted this investigation at LaGleize?

Major BYRNE. To the best of my knowledge; yes.

Mr. FLANAGAN. You were there alone at that time?

Major BYRNE. Alone, as an investigator. I had with me a traveling interpreter and a court reported to transcribe the necessary information that was obtained.

Mr. FLANAGAN. About how big was this village of LaGleize, how many buildings were in it?

Major BYRNE. They rambled, Mr. Flanagan. I would say there was in the vicinity of between 50 and 100. It was a small village.

Mr. FLANAGAN. About what was the population of the town?

Major BYRNE. About two or three hundred.

Mr. FLANAGAN. During your investigation, did you determine whether the civil population of the village of LaGleize were present at the time of these alleged atrocities at that place?

Major BYRNE. To a certain extent; yes. A number of them had fled ahead of the attacking and defending troops from both sides. There was heavy fighting in the village. There were some of the populace, if I am correct, of LaGleize—they sometimes have a tendency to overlap—it was the general tendency to hide in the basement of the church which was usually the strongest stone building in these villages, and there were some of the populace there; but, the bulk of the populace I would say, in most of the communities, had evacuated themselves from the immediate vicinity of the village.

Mr. FLANAGAN. About how many of the villagers did you talk to that were present during this period of the atrocities, around I imagine it would be, December 18, 19, and 20 of 1944?

Major BYRNE. In LaGleize, my investigation was directed primarily to what happened in the immediate vicinity of the church. I talked to the pastor of the church, and to probably not more than 10 or 15 of the inhabitants who had been pointed out to me by the pastor, or by the local burgomaster as those who were present during the action and in those buildings in the immediate vicinity of the church during the attack.

Mr. FLANAGAN. I want to confine my remarks here to one incident at LaGleize, that is, the incident where some 20 to 30 American soldiers were alleged to have been lined up inside the wall of the churchyard and executed by Germans.

Do you recall that incident?

Major BYRNE. I recall the incident; yes.

Mr. FLANAGAN. What evidence, if any, did you find in talking with persons in the village of LaGleize that this incident had occurred?

Major BYRNE. The only evidence that I found of that, sir, was the evidence I related this morning.

This church wall, which might help me to bring out the explanation of it, is on the rear portion of the church and around the cemetery, a retaining wall, that is, to keep the cemetery from sliding into the street which is somewhat below it at that point. The wall at one point, I would say, is possibly 12 or 14 feet high and tapers toward the front of the church to a height of possibly 4 or 5 feet. It is a wall on the inside, around the cemetery, to a height of perhaps 3 or 4 feet at the front, and running slightly higher. It was variable, and partially destroyed at the time I saw it.

There is only one wall which is in part a retaining wall and in part might be considered the fence around the churchyard.

The churchyard, if you are familiar with the churchyards in French and Belgian countries, are immediately around the church. You have to go through the cemetery to get into the church, and they are right on up to the church wall. They have their cemeteries around their churches in the same manner that we have our lawns around our churches; and the bodies that I found—I found no evidence of bodies

lying in the cemetery. I did find some evidence of bodies lying on the opposite side of the wall adjacent to it.

Mr. FLANAGAN. Well, I am reading here from the review of this case by the deputy judge advocate's office in the European theater, and the direct evidence shows that directly in front of the church, inside the wall, another group of approximately 20 or 30 unarmed and surrendered American prisoners of war had been collected and they were shot with rifles and so forth.

That being the case, would it not seem likely that the bodies of these men would be found between the church wall and the church, that is, in the cemetery proper?

Major BYRNE. That could be, Mr. Flanagan, and would normally be the interpretation. I can explain it only in this way: That the graves registration teams and collecting teams were present in the town immediately with our assault troops at this time, and the bodies referred to in the review there could very well have been removed to a collecting point either by the Germans or Americans prior to the time that any of the Belgians had an opportunity to see them in LaGleize, particularly. They were confined to the cellars and to their houses for the greater portion of the operation.

Mr. FLANAGAN. Now, as I gather from the records, this shooting in the churchyard took place either in the morning or the middle of the day of the 18th of December. That very day the parish priest left his cellar and walked around the church, or walked in the vicinity of the church.

Did you ask the parish priest whether he saw any bodies in the churchyard at that time?

Major BYRNE. I believe I did. I cannot state positively at this moment, but what I was asking was if ever at any time he was out of the cellar and saw any bodies.

Mr. FLANAGAN. Am I recalling your testimony correctly in quoting you as stating that he never saw any bodies around the church?

Major BYRNE. That is my recollection of his affidavit that I took at that time. I could be in error. He may have seen one or two somewhere in the village.

Mr. FLANAGAN. Did any of the native citizens, civilians in the town of LaGleize see any bodies in or near the churchyard at that time?

Major BYRNE. Near, yes; in the churchyard, I don't recall.

Mr. FLANAGAN. How close?

Major BYRNE. The wall is about 2 feet thick. The bodies were lying on the outside of the wall in the ditch toward what would be the south side of the church, as I recall it, within 30 feet of the church itself.

Mr. FLANAGAN. The civilians testified that they saw those bodies; they did see the bodies there?

Major BYRNE. How many were there, was vague in their testimony—as to how many they saw.

Mr. FLANAGAN. Was there any direct testimony you were able to obtain from any of these civilian witnesses to the effect that they heard or saw that shooting going on in this churchyard?

Major BYRNE. Only to the extent, Mr. Flanagan, that there was sporadic shooting in that vicinity, and in other portions of the community during that period; nothing that would be conclusive, that is, close enough from what they could hear that I could conclusively

state that they heard the shooting and that it happened at the churchyard.

Mr. FLANAGAN. It would be quite natural at that time, December 18, that there would be sporadic shooting in a town under attack?

Major BYRNE. Yes.

Mr. FLANAGAN. And that shooting could have been a part of the normal course of the warfare that was going on in the community?

Major BYRNE. It could have been.

Mr. FLANAGAN. Do you feel from your investigation there that if 20 to 30 American soldiers had been shot in this churchyard, that the villagers in that immediate area would have heard these concentrated reports of gunfire?

Major BYRNE. No more concentrated than the ordinary battle fire, Mr. Flanagan. They were close enough in the vicinity so they could have and should have been able to hear the shooting.

Mr. FLANAGAN. You conducted this inquiry, Major, and I am referring merely to this churchyard incident; and, based on the information you were able to obtain from the witnesses in the town, were you convinced in your own mind that 20 to 30 American soldiers had been killed in that churchyard?

Major BYRNE. Solely on that evidence?

Mr. FLANAGAN. Yes.

Major BYRNE. Eliminating all other evidence?

Mr. FLANAGAN. Yes.

Major BYRNE. No.

Mr. FLANAGAN. What other evidence did you have?

Major BYRNE. Evidence—that is straining my memory considerable on this—but I know there were probably, and I can only say “probably,” statements of people who were involved in it and probably corroborating statements on the part of either other accused or other witnesses.

Mr. FLANAGAN. Then, aside—

Major BYRNE. I would have to see the record of trial to see what the evidence was on that point, of course.

Mr. FLANAGAN. Then, aside from the statements or evidence presented by German soldiers themselves who were present there, you now state that your inquiry of the situation at LaGleize was not sufficient to prove the crime was committed?

Major BYRNE. Independently, no, I don't believe so; merely corroborative.

Mr. CHAMBERS. May I ask a question there, Mr. Flanagan, if you please?

I believe he testified this morning that you so reported back to the prosecution staff that the evidence you got there was negative in character.

Major BYRNE. Yes, sir, it was not conclusive. I could bring back only the testimony of the priest and these two individuals who had reported seeing some bodies in the vicinity of the church, and another one who saw bodies elsewhere in the village.

Mr. FLANAGAN. Now, to leave the incident at LaGleize, there was some discussion here this morning concerning an incident at Wanne, Belgium.

In the petition of the defense counsel, it is stated that a woman was shot in a chair at Wanne. We have now determined that that is

a misstatement in the petition, that this incident actually took place at Bulingen, rather than Wanne. The facts are correct but the name of the town was wrong—it is Bulingen?

Major BYRNE. Yes.

Mr. FLANAGAN. Did you conduct an investigation at Bulingen concerning the alleged shooting of a Belgian civilian woman in her home by a German soldier?

Major BYRNE. I don't recall that I did, Mr. Flanagan. I recall investigating the Goldschmidt shooting of six or seven in a yard at Bulingen, but do not recall investigating the killing of a civilian woman in that town.

Mr. FLANAGAN. And you would be in a position to state whether or not the petition of the defense counsel is correct in that respect?

Major BYRNE. In that particular; no. I found only one dead woman under the same or similar circumstances, and it is my recollection that I found her in LaGleize; but, I am testifying from my memory, of course. They really had no bearing on any of the matters that I was down there investigating at the time.

Mr. FLANAGAN. Did you also conduct inquiries at Stoumont concerning the incident that took place there?

Major BYRNE. Yes, I did.

Mr. FLANAGAN. Were you the only investigator, to your knowledge, that conducted inquiries at Stoumont and Bulingen?

Major BYRNE. To the best of my knowledge, yes; up to that time, up to the time when subsequently defense investigators went to the same village.

Mr. FLANAGAN. Do you recall the incident at Stoumont involving one Hans Pletz?

Major BYRNE. By name, I don't. However, if you will give me some of the facts, possibly I can recall it.

Mr. FLANAGAN. I will recite the facts set forth in the review. The facts are that Hans Pletz was a machine gunner in a German Mark IV tank. His tank, together with a column of tanks were traveling through the town of Stoumont, I believe, on the 19th of December. The facts in the case as presented in court were that the driver of the tank in front of Pletz' tank testified that he saw about 35 American soldiers lined up in front of a grocery store, and he saw machine-gun fire coming from somewhere, he didn't know where, because he was down in the tank, but it mowed down part of the line of men he could see. The driver of Pletz' tank also testified that he saw this line of men in front of a grocery store, and heard some shooting, but didn't see the men actually fall.

Major BYRNE. I remember the incident.

Mr. FLANAGAN. On the part of the defense, a German soldier who was in the tank following the Mark IV tank in which Pletz, the accused, was gunner, testified he followed Pletz' tank all through the town and his head was sticking out of the turret and he saw no gunfire coming from the tank at all, directed toward the prisoners. Those were the facts.

Do you recall investigating that alleged killing of some 30 American soldiers standing in front of the grocery store there?

Major BYRNE. I remember investigating that particular incident, and in connection therewith it is my best recollection that one of the citizens, and at this point I cannot state which one of them, did tell

me that between 5 and 10 bodies were found at a point slightly down the road—the road curves at that point and goes downhill—lying next to a stone wall, and at about the time that we are discussing.

Mr. FLANAGAN. Would it, by any stretch of the imagination, have been possible that these bodies that were down the road farther, were the bodies of men involved in another incident near the command quarters of Colonel Peiper?

Major BYRNE. If you say "by any stretch of imagination," yes.

Mr. FLANAGAN. By any reasonable stretch of imagination.

Major BYRNE. It seems to me, Mr. Flanagan, from the information I got from these people, that the bodies they saw there were probably a part of the group that had been assembled in front of the store. It was the only incident in which the villagers recalled a group being assembled at that particular spot.

Mr. FLANAGAN. Did the villagers recall that American soldiers were assembled in front of the store?

Major BYRNE. They recalled that they were assembled in front of the store.

Mr. FLANAGAN. Did any villagers see the firing going on?

Major BYRNE. There were not eyewitnesses to that shooting, as I recall.

Mr. FLANAGAN. Did any of them hear of it?

Major BYRNE. Heard of it; yes.

Mr. FLANAGAN. Hear the gunshot—sorry.

Major BYRNE. Again, I cannot say unconditionally that they heard that shooting. There was fighting going on in that town at the same time.

Mr. FLANAGAN. In that town, in that incident involving the American soldiers standing in front of the store?

It was also charged in the trial, and reading from the trial record, that on the same date, December 18, approximately 15 or 20 unarmed and surrendered American prisoners of war were shot and killed by a crew of a German Mark IV tank at a point next to a house which was thought to be the command post of the accused Colonel Peiper. That is an entirely different occurrence from the one in front of the grocery store.

Major BYRNE. Yes.

Mr. FLANAGAN. And as I gather, you were only able to obtain testimony concerning 10 bodies in the community.

Major BYRNE. Ten in the community? No.

Mr. FLANAGAN. Did you find other bodies?

Major BYRNE. My last answer was, it was between 5 and 10 bodies at this spot near the grocery store. That is not all we found in the community.

Mr. FLANAGAN. Was that spot near the grocery store anywhere near the command post of Colonel Peiper?

Major BYRNE. Near in that it was within walking distance. I would say, in city blocks, it would be about three or four blocks from it.

Mr. FLANAGAN. How big a town is Stoumont?

Major BYRNE. It is a long, narrow town, no larger than I have described for La Gleize, with a big church, and 25 to 50 scattered hovels, we might call them. The village was horribly destroyed at the time I saw it. How large it had been before the attack, I couldn't say,

except in area it probably covered a large area and was perhaps scattered over perhaps four or five square city blocks.

Mr. FLANAGAN. Now, back to this incident of the alleged shooting of American soldiers in front of the grocery store, can you recall about how many witnesses you found that had seen these bodies of dead Americans?

Major BYRNE. It is difficult to say, but it is my recollection that there were two or three who had seen the bodies in those places.

Mr. FLANAGAN. Did the two or three see any more bodies? There were apparently about twice that many involved.

Major BYRNE. As nearly as I know, they did not. The witnesses, again in this community, were taking cover in the cellar of the church and other cellars of the village.

Mr. FLANAGAN. Were you able to obtain any reasonable explanation as to why these bodies would have been moved away from the store, and part of them moved away altogether, before any villagers had an opportunity to see them?

Major BYRNE. Only the two explanations I have heretofore offered: Some were removed, it is known, by the Germans and buried. We found numerous American graves where they had been buried by the Germans in the immediate vicinity of Stoumont, some in the village cemetery, and the fact that the American Graves Registration squad moved in with our advance troops and picked bodies up as fast as they were able to locate them, is another factor.

Mr. FLANAGAN. Did the American Graves Registration make any report of finding bodies there that might have been massacred in a way described in the case?

Major BYRNE. I can't answer that question, I don't know.

Mr. FLANAGAN. In this case, as in the one at La Gleize, based on the situation at La Gleize, were you able to obtain sufficient evidence which in your mind would indicate that an atrocity had taken place there in front of the grocery store?

Major BYRNE. I was satisfied in that case, more so than in the LaGleize case, that the incident as described had probably happened in that spot.

Mr. FLANAGAN. In other words, you were satisfied, based on the evidence of two civilian witnesses, plus the finding of one-half of the bodies, that an atrocity had taken place or did occur involving some 20 men?

Major BYRNE. Involving not necessarily 20 men, Mr. Flanagan, but that it involved the shooting of American soldiers of that approximate number at that point.

Mr. FLANAGAN. What number are you talking about now, 10 or 20?

Major BYRNE. The allegation has run in that all the way, I think, from 10 to 35, and I would say probably between 15 to 20 were probably involved. Some may not have been killed, but shot and subsequently crawled off, as happened in the cross-roads massacre.

Mr. FLANAGAN. On that point, were there ever any survivors found that testified they were shot up in that area?

Major BYRNE. In that area; no, sir.

Mr. FLANAGAN. Isn't it likely, if Americans were lined up and ruthlessly shot by German soldiers, that any survivors would have reported that matter to their superiors?

Major BYRNE. Had there been one, I think so.

Mr. FLANAGAN. If—you think if there were survivors they would have reported it?

Major BYRNE. I would presume so. It is a normal thing for a soldier to report such an atrocity, if it happened.

Mr. FLANAGAN. This morning you stated that there were some cases that you investigated in Belgium, and you were unable to sustain the allegations as set forth in the confessions and statements of other persons that you were sent down to investigate.

Major BYRNE. I believe I said substantially that there were cases where I could find no corroborative testimony.

Mr. FLANAGAN. How many cases of that kind were there, can you recall?

Major BYRNE. One, I remember in particular, was a reported killing of some 150 or 200 in the vicinity of LaGleize. I could find the discarded vehicles of the Germans up in the hills where they told us they had discarded them, the SPW's, their half-tracks. I could find the spot; or a spot which substantially coincided with the description of the spot that was there, but could not find a soul that had seen any bodies in that spot.

Mr. FLANAGAN. Were there any civilians in that immediate vicinity?

Major BYRNE. It was somewhat isolated, Mr. Flanagan. I would say it was on the edge of a wood, and in a comparatively large field, which was rolling. The houses along that roadway, and the immediate farm houses on that place were not occupied at the alleged time this happened. People who were living there and owned the place, they had taken off southward at that time and were not at home.

Mr. FLANAGAN. Had you found any civilians in the area who had passed by this field, or wherever these Americans were supposed to have been killed, about or shortly after the alleged massacre?

Major BYRNE. I did not. I could find nobody that I could put in that spot at that time.

Mr. FLANAGAN. Did the Graves Registration make any report of the finding of 100 or 150 bodies of American soldiers in that area?

Major BYRNE. I can't state positively, but it is my recollection that there was a report of that sort.

You see, the Graves Registrations reports at that time, from the few that I have examined, placed their bodies solely by the name of the villiage that they were reasonably close to, and didn't give any further description whereby you might put any one body at any particular spot on the ground.

Mr. FLANAGAN. What was this incident? Can you relate what the facts were that you were supposed to determine by your investigation?

Major BYRNE. Only in part, Mr. Flanagan, and that was—I will have to put it within a span of a couple of days, now—it was within the period from the 19th to the 23d or 24th, when a large number of prisoners had been taken in the vicinity of Stoumont, Cheneaux, and LaGleize, and had been marched to the rear and assembled in a field near LaGleize, where they were in groups and were systematically shot. It was tied in by the fact that it was in the vicinity of where we abandoned some SPW's because we ran out of gas. I did find the SPW's, which were not visible from the road. They were well concealed in the woods. Who the names of the perpetrators or alleged perpetrators in that case were, I don't recall any longer, but I know that there were statements that connected the abandoned SPW's, and

the vicinity of the SPW's being abandoned in a wood on a hill behind LaGleize.

Mr. FLANAGAN. And some 150 to 200 American troops were supposed to have been killed there?

Major BYRNE. From my recollection, the figure was between 150 and 200. I know it was a larger group than initially alleged as being slaughtered at the Crossroads.

Mr. FLANAGAN. You know that at the Crossroads massacre, which is the chief one in this case, that according to the information I have, and it may not be correct, but that within a matter of hours the information of that massacre was known Nation-wide, and—as soon as our troops got in there, worldwide.

Major BYRNE. That could be true. I am not certain of it, myself.

Mr. FLANAGAN. I believe that the American Army field officers started an investigation shortly after that of this Malmedy massacre at the Crossroads.

Major BYRNE. I know it was not until, it is my recollection, that it was sometime in January that they found, actually found the bodies in the snow and dug them out.

Mr. FLANAGAN. Was there any such general information to your knowledge got out as to this other large massacre that was supposed to have taken place in LaGleize?

Major BYRNE. To the best of my knowledge, I didn't hear of it.

Mr. FLANAGAN. Was anyone tried for implication in that large massacre at or near LaGleize?

Major BYRNE. I do not believe there was. I may be wrong, I can't be specific and say that there were any 1 of the 624 accused who were tried for that shooting at LaGleize.

(Discussion off the record.)

Mr. FLANAGAN. The information I have is not definite at this time, whether any person was specifically accused of having taken part in this massacre in LaGleize, but let me ask you in that connection, do you recall from the set of facts that you had upon which your investigation was based, as to the number of Germans that may have taken part in that massacre?

Major BYRNE. I don't think I can answer that question fairly, Mr. Flanagan. I would be hazarding a guess if I did.

Mr. FLANAGAN. Was this by any chance a case where three or four Germans armed with machine pistols were supposed to have committed the act?

Major BYRNE. I don't believe it was limited to as small a number as that.

Mr. FLANAGAN. In this case would it be fair to ask you whether based on your inquiry, independent inquiry, you found sufficient grounds to show even that a crime had been committed?

Major BYRNE. As far as finding corroborating evidence on the ground, no, I found none.

Mr. FLANAGAN. And you found none as a result of interrogation of civilians in the area?

Major BYRNE. Civilians were unable to give me any information with reference to this large killing there.

Mr. FLANAGAN. Were there any other cases where you were unable to corroborate the facts as set forth in the statements of the accused,

and the witnesses, which have been given to the prosecution team at Schwabisch Hall?

Major BYRNE. Yes, in cases where specific number of dead were listed in various confessions, there were numerous occasions when I found less bodies, or information describing less bodies in these places than were stated in the various statements. In those cases, I found evidence that there were some bodies.

Mr. FLANAGAN. In every case did you find evidence where there were some bodies?

Major BYRNE. In every case, no, as I previously stated.

Mr. FLANAGAN. In any other case outside of the large alleged massacre, outside of LaGleize, where you found evidence of no bodies?

Major BYRNE. May I answer your question this way, Mr. Flanagan: I am certain that there were—I am sure there were, but I don't remember any, specifically.

Mr. FLANAGAN. There were other cases where you found no evidence of any bodies?

Major BYRNE. Right.

Mr. FLANAGAN. Where massacres were supposed to have taken place?

Major BYRNE. That is right.

Mr. FLANAGAN. Now, in those cases where you found no bodies, I assume you made a report back to the Prosecuting Team.

Major BYRNE. That is right.

Mr. FLANAGAN. And to your knowledge were any of those cases prosecuted nevertheless?

Major BYRNE. I cannot fairly answer the question.

Mr. FLANAGAN. Do you know of any cases where prosecution was carried on, although you in your independent investigation were unable to find the bodies of any of the alleged persons killed?

Major BYRNE. No, I have no personal recollection of any individual case of that sort.

Mr. FLANAGAN. You just don't know whether or not any cases were presented such as that?

Major BYRNE. No, I do not.

Mr. FLANAGAN. When you went out to conduct these investigations in Belgium, did you receive any instructions from Major Fanton, as to the type of inquiry you should undertake?

Major BYRNE. No, I didn't. Major Fanton passed me at Weisbaden, and said hello and goodbye at the same time, as he was going to the United States.

Mr. FLANAGAN. Did anyone give you any instructions as to any particular type of investigation?

Major BYRNE. General instructions, yes, from Colonel Ellis. I should say "suggestions" rather than instructions; and also from Captain Schumacker who was working there. We had a round-table discussion—I was recently assigned at that time—and we went over the statements, what they had, and they oriented me on what we were looking for.

Mr. FLANAGAN. Had you ever conducted any investigation of that type prior to this time?

Major BYRNE. I had not.

Mr. FLANAGAN. Had you ever conducted any extended investigation for the armed service prior to that time?

Major BYRNE. Extended investigation; no.

Mr. FLANAGAN. Had you ever conducted any extended investigation in your private practice of law prior to that time?

Major BYRNE. Other than the investigations of insurance matters, and things of that sort.

Mr. FLANAGAN. Automobile accidents, injuries, and personal damage cases?

Major BYRNE. Yes.

Mr. FLANAGAN. In your investigations, were you attempting to obtain evidence that could be used in court in accordance with the Anglo-American rules of law that we know?

Major BYRNE. May I have your question again?

Mr. FLANAGAN. Will you read the question, Mr. Reporter?

(The question was read by the reporter.)

Major BYRNE. Yes, I was.

Mr. FLANAGAN. Were you ever told that these courts would follow the Anglo-American rules of law?

Major BYRNE. I don't believe that I was ever told what rules of law we were going to follow.

Mr. FLANAGAN. Did you know what rules of law you were going to follow?

Major BYRNE. The rules of law—I investigated it primarily with a mental conception of the rules of Anglo-American law. The only variations, as far as rules of law are concerned in those trials, to my recollection, were the evidentiary rules.

Mr. FLANAGAN. Were you ever instructed as to the rules of evidence that would be used in this case?

Major BYRNE. Yes. We had considerable study of it, at the time we were preparing for trial.

Mr. FLANAGAN. Were the Anglo-American rules, as we know them in our courts here, in the United States, in use?

Major BYRNE. Evidentiary rules?

Mr. FLANAGAN. Yes.

Major BYRNE. No; to the extent, as I pointed out and is pointed out in the review, the one you have there, the hearsay rule was not applied in the same manner, nor was the use of the confession of one accused against another to be excluded merely because it was a confession of an accomplice.

Mr. FLANAGAN. This morning, you testified that you had never seen but one mock trial.

Major BYRNE. That is right.

Mr. FLANAGAN. Will you describe that to us, when and where, and the circumstances?

Major BYRNE. I can pin it down within 30 days, but that is as close as I can do it. It was on one of the first occasions that I was at Schwabisch Hall, being questioned myself as to the results of my investigation in Belgium and receiving additional information in connection with other matters.

The trial I saw, if you call it that, you had a play upon words as to whether that was a schnell proceeding, a fast procedure or a mock trial, but in any event I saw what substantially has been described

by other witnesses before the committee. It was brief. In fact, it was so brief, that it was over before I actually got a look at what was going on.

There was a table, as has been described. There were three persons sitting behind the table.

Mr. FLANAGAN. Who were those?

Major BYRNE. Who they were, I don't know.

Mr. FLANAGAN. Were they dressed in the uniform of American soldiers?

Major BYRNE. I can't state positively; it is my recollection that they were.

Mr. FLANAGAN. Were they supposed to be the judges or court members?

Major BYRNE. I frankly don't know what they were supposed to be.

Mr. FLANAGAN. Did you think they were?

Major BYRNE. No, I did not. I had been advised previously that this was a fast interrogation procedure that they used on some of the—shall we say—not too bright suspects?

Mr. FLANAGAN. What do you think these three officers, or these three persons were doing, sitting back of the table?

Major BYRNE. Absolutely nothing.

Mr. FLANAGAN. Just sitting there?

Major BYRNE. It is my recollection that at the time this one happened, that I saw, we did not have, other than Mr. Perl, any officer personnel who could speak the language, and they could not have participated a great deal.

Mr. FLANAGAN. And so, did you gather then that they did not participate?

Major BYRNE. I know that they said nothing.

Mr. FLANAGAN. I merely sat there?

Major BYRNE. Merely sat, as stage dressing.

Mr. FLANAGAN. Stage dressing, to observe the proceedings?

Major BYRNE. Yes.

Mr. FLANAGAN. What was your part in this mock trial?

Major BYRNE. I had no part in it. I was coming down the hall between the interrogation section and the administration office of the prison. The door was open. I had occasion to look in to see what was going on.

Mr. FLANAGAN. You were just a spectator?

Major BYRNE. Just a spectator.

Mr. FLANAGAN. In addition to the 3 men behind the table, was one of the accused there?

Major BYRNE. It is my recollection that he was.

Mr. FLANAGAN. Were there any other witnesses?

Major BYRNE. I do not recall that there were any other witnesses, Mr. Flanagan. It is my recollection that there was one and possibly two interrogators in the room.

Mr. FLANAGAN. Were they—

Major BYRNE. One of whom, or possibly both, were talking rapidly in German.

Mr. FLANAGAN. Who were they talking to?

Major BYRNE. To the accused.

Mr. FLANAGAN. Were they asking him questions?

Major BYRNE. It would be difficult for me to state whether they were asking questions or making speeches at that time. I could not understand the language.

Mr. FLANAGAN. Was the accused making replies back to them?

Major BYRNE. Yes. The accused on an occasion or two gave the proverbial "nein," meaning "no."

Mr. FLANAGAN. Were both interrogators questioning the man at the same time?

Major BYRNE. They seemed to be.

Mr. FLANAGAN. Was there any indication that one might have been taking the part of prosecutor and the other taking the part of a defense attorney?

Major BYRNE. Nothing that would indicate that to me. You might say that one of them seemed to be more aggressive than the other in his question, but that is all I could gather from that.

Mr. FLANAGAN. You think that the procedure described was one wherein one interrogator takes the part of friend and the other takes a more hostile attitude toward the accused?

Major BYRNE. It could be that procedure.

Mr. FLANAGAN. And one you think was unfriendly? Why do you think he was unfriendly?

Major BYRNE. Only because of the tone of his voice.

Mr. FLANAGAN. Was he shouting at the accused?

Major BYRNE. Shouting? No. Shall we say, speaking disdainfully and sarcastically, and that sort of thing.

Mr. FLANAGAN. Like the prosecutor, in making a speech?

Major BYRNE. You might say that.

Mr. FLANAGAN. And the other was speaking softly and leading him on?

Major BYRNE. No, the other was speaking less sarcastically, let us say, but equally loud.

Mr. FLANAGAN. In a manner such as the defense attorney might use to handle one of his own witnesses?

Major BYRNE. He might on occasion handle a witness that way.

Mr. FLANAGAN. I have no more questions.

Senator BALDWIN. From your examination of this whole case, are you in a position to say that these towns you have discussed and the places where you went to check up for corroborating testimony of the confessions taken, were in the area through which the First SS Panzer Regiment came?

Major BYRNE. Yes, sir; I can state that almost positively.

Senator BALDWIN. Was it the First SS Panzer Regiment that spearheaded this drive?

Major BYRNE. It is my understanding, from the tactical story that we now have of this offensive, that it was the First SS Panzer that was spearheading it.

Senator BALDWIN. Were there any other German troops from any other German regiments other than the First SS Panzer Regiment that could have been in, or were in that area, from your investigation of it, prior to the time that these shootings occurred, or at the time they occurred?

Major BYRNE. To the best of my understanding, Senator Baldwin, they were not. It was limited to a particular unit which had been set

up especially as combat group Peiper, to make this particular drive through this particular spot. It is my recollection of a portion of a lengthy history written by Colonel Peiper that their objective was to cross the Meuse in the vicinity of Liege, and it was only his troops who either were or should have been in that area at that time.

I did, in one particular place, in Stoumont, locate the house which had been Peiper's headquarters, and the local doctor, Dr. Robinson, had had contact with Colonel Peiper at the house at that time.

Senator BALDWIN. And you corroborated, from the doctor, that that was Peiper's headquarters?

Major BYRNE. Yes, sir.

Senator BALDWIN. How did the doctor identify Peiper?

Major BYRNE. He identified Peiper, it is my recollection, by his rank and—I forget; I can't state now whether Dr. Robinson stated that he knew his name was Peiper or not. I believe he did. Dr. Robinson worked with the German lazerettes—we call them medical-aide men—during that period, in patching some Americans and some Germans and some Belgians who were injured at that time, and after the impact of the battle was over.

I also, in reference to other headquarters, located Colonel Peiper's headquarters at Petit Thier, identified at that time by a bundle of mail that was left there when they evacuated the place in January of 1945, which had been found in the desk by the man who lived in the house, the old forester—I forget his name now, but he still had it and handed me the bundle of mail the first time I questioned him, when I had located his house.

Senator BALDWIN. You were at Schwabisch Hall, I believe you said, from some time in March until April?

Major BYRNE. That is my recollection, sir; from about the middle of March until we moved to Dachau in April.

Senator BALDWIN. Did you at that time have any opportunity to come in contact with these SS troopers that were prisoners?

Major BYRNE. Oh, yes.

Senator BALDWIN. Tell us what the nature and extent of your contact with them was.

Major BYRNE. Well, I had, in the course of just wandering through the prison, shall we say, I had some occasion to see them when they marched in groups or singly. Numbers of them were brought in on one occasion or another for questioning or other information that we desired from them, and Colonel Ellis' office, which I shared with Colonel Ellis, Captain Shumacker, and I think along about that time Colonel Crawford was there—we were all working in this one that was a large cell which had been rigged up as an office. I had occasion to go into the interrogation cells on quite a number of occasions to take the oath of these people when they were signing these identification statements that I saw. I had occasion, out of curiosity to go through the workings of the prison to see how it was located and where these people were confined.

There were a number of them that were only names to me up to the time that I went to Schwabisch Hall and out of idle or other curiosity, I was interested in seeing what they looked like, and was taken through the prison by, it is my recollection, one of the prison personnel, not our own personnel, but people from Captain Evans' office, the security people, who pointed out some of these people that I was

interested in, and in getting a physical view of the people who were connected with these things that I had worked with for the most part as theories and names.

Senator BALDWIN. Did you ever observe any of these prisoners being abused in any way, being kicked, slapped, or kneed in the groin, or pushed up against the wall, or things of that kind? Tell us anything about that that you know of.

Major BYRNE. I did not, Senator. I saw nobody abused. On one occasion when a group of 8 or 10 were being taken up a stairway in the prison wearing these hoods that have been described here, a man in the middle of the column stumbled and fell and was immediately helped up by the guards, and the line assembled and they moved on off. Apparently the guard who led the column knew at least some words of German, because they would be lined up at attention, he would give the German command for marching, and they would march off. This fellow missed his step in going up the stairway or stumbled.

Other than that I saw nothing to indicate to me that anyone had been maltreated physically.

Senator BALDWIN. Did you ever observe any evidences of any maltreatment on the prisoners themselves, I mean as to their faces, or marks on their arms or bodies such as you might be able to observe?

Major BYRNE. I have not, Senator. I have seen numbers of them that were brought in for questioning for one thing or another, and I have never seen any of them sporting a black eye, or a bruise, or anything of the sort that would indicate that they may have been maltreated.

Senator BALDWIN. These that you have seen brought in for questioning, did you hear any of them make any complaints?

Major BYRNE. No, sir.

Senator BALDWIN. In your presence about their treatment?

Major BYRNE. I did not.

Senator BALDWIN. How did they appear to be, so far as being fed was concerned?

Major BYRNE. I was not in a position, Senator, to make a comparative analysis, because I didn't know what shape they were in before they went in there; but physically they were in good condition when I saw them. All of them were much fatter than the German populace, on the average, that we were seeing on the street at that time.

Senator BALDWIN. I think that is all. Any further questions?

Mr. FLANAGAN. Nothing further.

Mr. CHAMBERS. Nothing further.

Senator BALDWIN. Thank you, Major Byrne.

Mr. CHAMBERS. For the purposes of the record and to complete the very partial testimony that Colonel Ellis gave this morning, I would like to place into the record at this time a statement by Father Blokian, of La Gleize, Belgium. This affidavit by Father Blokian starts on page 2819 of the trial record in the Malmedy case. It was placed in evidence not by the prosecution but by the defense, and I believe Colonel Ellis' discussion this morning was sufficient so that it need not be discussed further unless you have some questions on it.

I might say that it is substantially as stated by Colonel Ellis.

(The affidavit referred to is as follows:)

Lieutenant WAHLER. At this time the defense requests permission to read its exhibits into evidence.

PRESIDENT. Granted.

(Whereupon, Lieutenant Wahler proceeded to read exhibit D-32 as follows:)
LA GLEIZE, BELGIUM, *June 11, 1946*:

On the above date Lt. W. J. Wahler, in the presence of Miss Betty Young, stenographer, Corp. George M. Convérs, interpreter, and Mr. Miles W. Rulian, investigator, interrogated the following-named witnesses whose statements have all been given under oath.

Q. What is your name?—A. Father Louis Desire Joseph Blokian.

Q. What religious denomination are you?—A. Catholic.

Q. How long have you had this parish at La Gleize, Belgium?—A. Nine years.

Q. Do you recall during the month of December 1944 the occupation of La Gleize by German soldiers?—A. Yes.

Q. During the occupation of La Gleize by the German armed forces did you remain in your parish in La Gleize?—A. Yes.

Q. Did you take refuge while the town of La Gleize was under siege?—A. Yes.

Q. When did you take refuge?—A. On Monday, December 18, 1944, at 1:45 when the Germans entered La Gleize.

Q. Where did you take refuge?—A. In the cellar of the house of Arthur George.

Q. Who were present in the cellar at this time?—A. Mr. George's family; others arrived later, but at the present time I do not recall their names. On Tuesday, all the people living around the parish came to refuge in the cellar. There was also a German refugee there.

Q. When you went into the cellar, was there a lot of artillery from American forces being fired into La Gleize?—A. No.

Q. Was La Gleize ever under fire from American forces?—A. Yes; beginning on Tuesday.

Q. When the Germans came into La Gleize on Monday, were there any Americans in the village at that time?—A. No.

Q. When was the first time that you heard of American prisoners of war being brought to La Gleize?—A. I don't know exactly. It was probably Wednesday or Thursday.

Q. Where is Mr. George's home located with relation to the church?—A. About 30 meters away, on the main road of La Gleize.

Q. How long did you remain in the cellar before you left it?—A. I left it about 4:30 on Monday, just as it was beginning to get dark.

Q. And where did you go?—A. To the Communal House which has inhabited by the teachers.

Q. How long did you remain there?—A. Five minutes.

Q. Where is the Communal House located with relation to the church?—A. Across the street.

Q. In order to get to the Communal House, you had to walk along the road past the cement walls surrounding the church?—A. I followed the road along the cemetery inside the walls between the cemetery and the church.

Q. As you walked along the road to Mr. George's house, to the entrance to the cemetery, did you look down the road?—A. Yes; but there was a lot of rifle fire, and we hurried.

Q. Did you see anything as you looked down this road?—A. Nothing special. There were Germans there, as there was everywhere.

Q. Did you at that time see the bodies of any American soldiers lying on the road?

Q. When did you again return to Mr. George's home?—A. Perhaps 10 minutes at the most.

Q. Where did you go when you arrived at Mr. George's home the second time?—A. To the cellar.

Q. How long did you remain in the cellar the second time?—A. Until about 10 o'clock on Tuesday in the morning.

Q. Did you leave the cellar at that time?—A. Yes. I went to the kitchen, which was at the top of the stairs. The Germans were there, and the people of the house were there making coffee.

Q. And what did you do, Father?—A. I just looked and went back into the cellar.

Q. When did you leave the cellar again, if at all?—A. Sunday, December 24, 1944.

Q. And where did you go this time?—A. We looked all about. The Americans were there. I went up to the village and then back to my house. The American commander was in the last house of the village and was still doing a lot of phoning. I asked him where we should go. He said to go toward Stoumont.

Q. Did you go to Stoumont?—A. No; I went back to my people in order to tell them.

Q. And then what did you do?—A. We were given the order to evacuate, we were to get our things together and automobiles would come to get us at 4 o'clock.

Q. What, if anything else, did you do?—A. I went to my house. We remained there watching the troops. I was asked to go around the village to assemble the people.

Q. Did you ever leave La Gleize?—A. Yes; on the 24th.

Q. How long did you remain away?—A. Until the following Saturday, the 30th of December. I returned once during the period that we were gone.

Q. When was that?—A. Wednesday or Thursday, we buried a small boy who had died while we were away.

Q. What did he die from, Father?—A. The boy died from influenza.

Q. Between the period of December 18 and December 24, up to the time that you left the village of La Gleize, did you ever see the bodies of any dead American soldiers lying in La Gleize?—A. No.

Q. During this period of time, what was your church being used for?—A. As a hospital. I suppose the soldiers also took shelter there.

Q. Were these soldiers that you speak of Americans or Germans?—A. Germans.

Q. Do you know if there were any wounded American soldiers lying in this church?—A. People have told me there were.

Q. Were these American soldiers being treated by the Germans?—A. I don't think so.

Q. Did you ever examine the walls surrounding the church for bullet holes?—

A. About a year later, when an investigation was made by the Americans.

Q. Did you look at the wall?—A. Yes.

Q. When you examined the wall, Father, did you notice any marks which could have been made by bullets from small arms fire?—A. No, it does not seem to me, there are marks but don't appear from small arms and certainly not from mass firing.

Q. By mass firing, do you mean machine gun fire and machine gun pistols?—A. Yes. No proving marks were visible.

Q. Did you examine the outside wall of your schoolhouse?—A. Partially, yes.

Q. Did you see any marks that could have been caused by small arms fire on that wall?—A. No.

Q. At any time, Father, did you see the bodies of American soldiers in the town?—A. No, except those I told you that had been burned in tanks. I had seen only one body in a tank, the body was so burned that it could not be extracted from the tank. I saw the helmets of American soldiers with holes and brain matter inside.

Q. Where were these helmets found?—A. In a small path at the end of the church property, which is a small field about 50 meters from the church.

Q. How many helmets did you see?—A. One with brain matter in it, and another with a hole in it.

Q. Father, your church is in the center of the cemetery, is that right?—A. Yes.

Q. While you were in the cellar from Monday, December 18, 1944, until Sunday, December 24, 1944, did you at any time hear the moaning or groaning of human beings?—A. No; I heard cries, but they were from people in the village who were calling to see if we were there.

Q. Then, they were not cries in the sense that we use the word, they were one individual calling to another?—A. Yes.

(Signed) LOUIS DESIRE JOSEPH BLOKIAN,
Father Louis Desire Joseph Blokian, La Gleize, Belgium.

Subscribed and sworn to before me this 11th of June 1946.

(Signed) W. J. WAHLER, JAGD, *Second Lieutenant*.
W. J. WAHLER, JAGD.

I, Corporal George Convers, 42235314, being first duly sworn, state that I truly translated the oath administered by Second Lieutenant J. W. Wahler to Father Louis Desire Joseph Blokian, and that thereupon he made and subscribed the foregoing statement in his own handwriting in my presence.

Corporal George Convers.
Corporal GEORGE CONVERS.

I, Corporal George Convers, 42235314, being first duly sworn state that the foregoing is a true and correct translation of the sworn testimony of Father Louis Desire Joseph Blokian given at La Gleize on the 11th of June 1946, to the best of my ability.

(Signed) Corporal George Convers.
Corporal GEORGE CONVERS.

Subscribed and sworn to before me this 18th day of June 1946, by the above affiant, Corporal George Convers.

Second Lieutenant W. J. WAHLER, JAGD.
(Signed) W. J. Wahler, JAGD.

(Whereupon Exhibit D-33 was translated and read in the German language by the interpreter).

Senator BALDWIN. Colonel Dwinell, I believe, is next.

Colonel, will you please stand up and hold up your right hand?

Do you solemnly swear the evidence you will give in the matter in question will be the truth, the whole truth and nothing but the truth, so help you God?

Colonell DWINELL. I do.

TESTIMONY OF LT. COL. JOHN S. DWINELL

Senator BALDWIN. Will you give us your full name, Colonel?

Colonel DWINELL. John S. Dwinell.

Senator BALDWIN. And you are still in the Army?

Colonel DWINELL. I am in the Regular Army.

Senator BALDWIN. Are you a graduate of West Point?

Colonel DWINELL. No, sir.

Senator BALDWIN. How long have you been in the Army?

Colonel DWINELL. I came in the Army with a National Guard unit in September 1940. I have been in the Army since that date.

Senator BALDWIN. And when you came in, did you come in originally in the Judge Advocate General's department?

Colonel DWINELL. No, sir; I was with the Coast Artillery, a Coast Artillery officer, until July 1947, when integrated into the Regular Army in the Judge Advocate General Corps. At that time, I was commissioned a permanent major, and last July 1948, was promoted to a permanent lieutenant colonel in the Judge Advocate General Corps.

Senator BALDWIN. And you have had actual combat experience?

Colonel DWINELL. No, sir. I got to Okinawa about 2 days after VJ-day.

Senator BALDWIN. Were you an attorney prior to the war?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. Where did you go to school?

Colonel DWINELL. I went to Brooklyn Law School and graduated in 1928, was admitted to the bar of New York in April 1930; practiced with a law firm in New York from 1930 until 1940, at which time I came into the Army.

Senator BALDWIN. What was the name of the firm you were connected with?

Colonel DWINELL. Harris, Corwin, Moffatt & Schek, 55 Liberty Street.

Senator BALDWIN. Where are you stationed now, Colonel?

Colonel DWINELL. Governor's Island, Headquarters, First Army; a member of the Judge Advocate General's department with the staff judge advocate.

Senator BALDWIN. Were you assigned to this task of defending these war criminals?

Colonel DWINELL. I was.

Senator BALDWIN. Tell us about how it happened, or how you happened to get that assignment?

Colonel DWINELL. It came about by order issued by the Third Army in Europe, which was issued some time in the early part of 1946, I don't recall the date, but I came to Germany in March 1946 and was assigned to duty at Dachau, I believe it was the 11th of April 1946, by virtue of that order of which I have spoken, appointing me as one of the defense counsel in the war crimes case.

Senator BALDWIN. Do you have a copy of that order with you, Colonel?

Colonel DWINELL. No, sir; but it is in the record of trial, I am sure.

Senator BALDWIN. Now, prior to taking on this assignment, were you given any instructions by your superiors in the Army concerning this case?

Colonel DWINELL. Concerning this case?

Senator BALDWIN. Yes.

Colonel DWINELL. No instructions whatever. I met Colonel Everett, who is the chief defense counsel in this case, for the first time on the 11th of April. I had been sent down from Weisbaden the day before, and met Colonel Everett. He told me he was the chief defense counsel. He introduced me to one or two others who had been appointed as assistant defense counsel, and at that time I met for the first time Colonel Ellis, chief prosecutor, and I think at that time I met Major Byrne.

Senator BALDWIN. I think the committee is particularly interested in knowing, Colonel, whether or not you got any instructions of any kind, written or verbal, from your superior officers, or from the Army in any way, directing your conduct, the manner in which you were to handle the defense of this case?

Colonel DWINELL. I did from Colonel Everett, with respect to this particular case; and, those instruction were general, that this case would be conducted in a lawyer-like fashion and we would do the best we could for our clients despite the fact that they were enemy aliens,

that we would offer the proper defense and be vigorous in our defense and give them all the attention that the case deserved.

I speak of those instructions that way, because Colonel Everett specifically talked in that tone of voice and in that vein at the time I first met him.

As the rules of evidence, I didn't become acquainted with the applicable rules of evidence in war crimes until a few days after that, when I went down to Dachau, and we secured the military government ordinances that are applicable to these types of trials, and they set out definitely the rules of evidence that are to be applied in the war crimes cases.

I read those and studied them. That was one of the first assignments that Colonel Everett gave me.

Senator BALDWIN. In other words, the point I want to make out, I want to find out, because it seems to me that it is very important here, is whether or not when you entered upon the defense of this case, so far as instructions or anything is concerned, your hands were tied in any way.

Colonel DWINELL. No, sir.

Senator BALDWIN. That is, you were a free agent, to do whatever you thought was necessary for the defense of these war criminals?

Colonel DWINELL. That is correct.

Senator BALDWIN. What facilities were placed at your disposal, Colonel, if any?

Colonel DWINELL. We got down to Dachau about the 12th of April, and Colonel Everett handled the preliminary arrangements, I did not. He secured the use of certain rooms that were set aside for us. We had about six or seven fairly large rooms in a part of the buildings set aside exclusively for the defense. We secured the services of about five interpreters, local people, and we obtained the necessary typewriters and stationery, telephones, and things of that nature, and in other words, in a few days we had set up a small little law office for that purpose, with the exception of the fact that we had no textbooks of any kind, we were equipped with all the other needs that you would want for defending anyone.

Senator BALDWIN. I neglected to ask you whether or not, in your experience as an attorney you had had trial experience—trial court experience.

Colonel DWINELL. Yes, sir; I did, in civil life.

Senator BALDWIN. Tell us about that.

Colonel DWINELL. Well, I have tried a number of civil cases, damage suits, negligence cases, contract cases, and I would say about 10 or 12 in the various courts in New York State, and have argued appeals in the appellate division in New York; I have argued appeals in the court of appeals in Albany; foreclosed about three or four hundred mortgages in that period of time, incidental to which I was required to make the motions in court, litigated my motions in the Federal courts and State courts.

Senator BALDWIN. So it will be fair to say you had had, for a man of your age—incidentally, how old are you?

Colonel DWINELL. Forty-seven.

Senator BALDWIN. For a man of your age, you have had a fairly general legal experience in the trial work and in the general practice of law?

Colonel DWINELL. Yes, sir; because my experience with trial work goes beyond that. I was born and brought up that way. My father was a practicing attorney, and I practically lived in the courtrooms all the time, as a spectator and a student, off and on, for many years.

Senator BALDWIN. Where is your home, Colonel?

Colonel DWINELL. Brooklyn, N. Y.

Senator BALDWIN. So that reaches back prior to 1930?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. Did I ask you if you were a graduate of any college or law school?

Colonel DWINELL. I am not a graduate of a college, but of law school.

Senator BALDWIN. What law school?

Colonel DWINELL. Brooklyn Law School in Brooklyn—that is associated with the St. Lawrence University, in up-State New York.

Senator BALDWIN. That is a law school recognized by the bar examining authorities in the State of New York, as providing a competent legal education to warrant a man taking a New York bar examination, is it not?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. Well, after you had this organization, as you have described—and, by the way, how many attorneys were there in this group? You mentioned Colonel Everett. Who were the others; do you recall?

Colonel DWINELL. Yes, sir. Mr. Strong, Captain Norvid, Richard Wahler, Colonel Sutton, Colonel Everett, and myself constituted the team of American attorneys.

Shortly after we got there the chief defense counsel informed us that the rules provided that the accused could select their own German counsel, and therefore we sent Mr. Strong to Munich. Mr. Strong was formerly a German, and during the past years had lived in Germany, and particularly in Munich.

He went to see some Munich lawyers, some association on the order of a bar association up there, and made some inquiries, and as a result of his efforts there were five German lawyers assigned to our case. I think there was five. I will call their names:

Dr. Lehr, Dr. Hilling, Dr. Fiester, Dr. Rau, Dr. Willin, and Dr. Hurtkof.

They worked with us during the entire time.

Senator BALDWIN. Were you able to judge, Colonel, anything about their competency and standing at the German bar?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. What was it?

Colonel DWINELL. Not particularly with respect to the German bar, but I can judge from their ability as demonstrated in this particular case. Dr. Hilling and Dr. Lehr and Dr. Fiester I remember were very well educated men. Dr. Hilling had gotten his degree at Oxford and spoke English beautifully and had a very fine education, and so did the other German lawyers. They were all high-caliber men, and I base this upon the constant observation, daily observation for a period of 2 or 3 months, and I found that they were highly ethical and very competent, very sincere, and very energetic.

Senator BALDWIN. Well, so far as your group was concerned, you were determined not to pull any punches in the kind of defense you put up?

Colonel DWINELL. That is correct.

Senator BALDWIN. And to the best of your ability, you did it.

Colonel DWINELL. That is correct.

Senator BALDWIN. Did you have the Malmedy prisoners to defend?

Colonel DWINELL. Yes, sir.

Well, I might explain about that.

Senator BALDWIN. Tell us about the group that you had to defend.

Colonel DWINELL. Well, when we realized that there was such a large group—that is to say, 74 people—and when we found that they had varying ranks among themselves in the army, running anywhere from a private up to a general; and, that they had conflicting interests in this thing, as to who gave the orders to do what and so on, we had a number of meetings among the defense lawyers at the beginning to determine how we were to handle this matter, and it was finally decided to arbitrarily divide the accused into three groups. We divided them into groups like this: All of the officers, German officers that we were defending; all of the noncommissioned officers; and, all of the privates.

Senator BALDWIN. You didn't distinguish between general officers and others?

Colonel DWINELL. General officers were included with the officers.

Senator BALDWIN. How many general officers were there?

Colonel DWINELL. Three.

In that subdivision, I was assigned to the officer group with Mr. Strong. The others were divided into the other two groups. That was the initial assignment, but as the trial progressed it was discovered by Colonel Everett that both Lieutenant Wahler and myself had more experience in court procedure than the others, at least it appeared that way to Colonel Everett, so he moved us up into a position of, well, I might say I was an executive officer for Colonel Everett, in addition to running the group that I had been particularly assigned to.

I lived next door to Everett in Dachau and therefore was in his company to discuss these matters, the strategy, evidence, and law every day and every night during the trial.

Senator BALDWIN. Am I right in assuming that your task was the defense of those charged with the so-called Malmedy and associated killings there?

Colonel DWINELL. That is correct.

Senator BALDWIN. And all in all you had 73 defendants?

Colonel DWINELL. That is correct.

Senator BALDWIN. What was your first contact with the defendants?

Colonel DWINELL. About the 17th or 18th of April they came down to Dachau. Everybody had been transported from Schwabisch Hall and they came down there and were put in the "bunkers," which is the German expression for a group of cell blocks, or cells, and it was that very day or the day afterward that we had all of the 74 accused assembled in one large room, at which time Mr. Strong acted as interpreter and we introduced ourselves and explained our mission, what we were there for, and told them we wanted their confidence and that we needed to put forth the best defense that was available consistent with the truth and we wanted the truth and that is all we wanted, and we would do the best we could for them.

That was about the 18th of April.

In that connection, we had a meeting of the lawyers in the case afterward, at which we discussed the fact that it appeared to us that the accused would not cooperate, and so we had another meeting, I think the day after that, and discussed these things in general with them again, and asking them very general questions. We got very little answers; in fact, in some cases no answers at all.

That alarmed us to the extent that we called in for a special conference the three generals in the case and Colonel Peiper, and Peiper spoke English and I talked to him directly, myself, and Mr. Strong talked to him and we said: "Now, you people have got to have confidence in us or we can't do anything for you. You will have to go out and tell the youngsters out there that we are not out to do anything but to help, and we want the truth and you have got to get their confidence for us, or we can't do a thing." Then we had another meeting of all the accused, at which time Peiper got up and talked to his men for some length of time and then there was a gradual change after that and we noticed they began to be free and talked to us and gave us their version of the story.

We had the impression, however, initially that they were not willing to believe the fact that we said we were going to help them.

Senator BALDWIN. You started in the 16th of April, and when did the trial actually begin?

Colonel DWINELL. The trial began on the 16th of May.

Senator BALDWIN. How long did it take you to break down the resistance, or whatever you want to call it, that these men evidenced at first, which under the circumstances seems to be perfectly understandable?

Colonel DWINELL. I would say about a week or 10 days.

Senator BALDWIN. Now, after that were you able to confer with them?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. And how often?

Colonel DWINELL. As often as we desired.

Senator BALDWIN. And did you confer with them?

Colonel DWINELL. All day long, and all night.

Senator BALDWIN. Were there written charges preferred against them?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. When were there charges placed into your hands?

Colonel DWINELL. I know that they were served on the accused on the 1st of April, with the exception of six, and Colonel Ellis served six, the balance, the remaining down in Dachau about the 16th or 17th of April, or something like that.

Senator BALDWIN. Colonel, have we got copies of those? I think it would be a good thing for the benefit of the record to have a sample or two of what we would call, I suppose, indictments, or informations—what they amounted to.

Colonel ELLIS. This is my only copy, which doesn't include the four other names, and there is another one. This is my only copy.

I also have a photostatic copy of the signature of each of the accused.

Senator BALDWIN. I think if we could have that for the record—gentlemen, there is the second call for a quorum. We will recess for a few minutes.

(A short recess was taken.)

Senator BALDWIN. I think we are ready, gentlemen.

Let us show this chart sheet to Colonel Dwinell and ask him if it is typical of what was offered.

Colonel DWINELL. Yes, sir; that is a copy of the chart sheet.

Senator BALDWIN. Now, did you address any pleading of any kind to that information?

Colonel DWINELL. Yes, sir. Before that I would like to state that my memory was not too accurate on the date of the serving of the last six accused. That was probably on about the 22d of April. I have checked with Colonel Ellis on that, and also the time when the accused were sent down to Dachau, I believe I said the 16th of April, but it would more probably be accurate to say the 16th—

Colonel ELLIS. 16th and 19th.

Colonel DWINELL. Now, we addressed the motions to the pleadings. In particular, the prosecution, in advance of the trial, furnished us with what has been called the dossier, what appeared to be in the nature of a bill of particulars.

At any rate, it set forth with respect to each accused what the prosecution intended to prove.

Senator BALDWIN. Let me get that clear because that is very important.

What you say is that before you undertook the defense of the cases—was this before you went to work on them?

Colonel DWINELL. Yes, sir; but I do not recall when we first got that document, but I think it was about 2 weeks before the trial. I saw that for the first time then; that was given to me, or rather, a copy of it was given to me by Colonel Everett, and I believe he got that, in turn, from Colonel Ellis.

Senator BALDWIN. Do you know when he got that in turn from Colonel Ellis?

Colonel DWINELL. No.

Senator BALDWIN. For the benefit of the record here, I think it is very important. When did they get that? When did you give it to them?

Colonel ELLIS. I do not recall. We gave it to him as a souvenir copy of what we intended to prove against each of these people, and it was rather decorated up with an inlaid cover, with pictures of each accused. If he says 2 weeks before trial, I would have to go along with him, because I just cannot recall when we delivered it to him, but it was sometime before the trial.

Senator BALDWIN. Let me ask you this: Did you deliver it to him at about the time that they began to prepare the defenses, or after that?

Colonel ELLIS. I would say it was about the time they prepared their defenses.

Colonel DWINELL. That is correct.

Senator BALDWIN. In other words, this dossier, as you called it—will you describe it to us? What was it?

Colonel DWINELL. Well, it was printed, and it was bound up with a very large wooden cover; it had in red printing large words "Malmédy War Crimes Trial," on the outside of the cover, and it contained several printed pages, and each page had a picture of the accused, and the number that he was assigned, and under the picture a para-

graph or two stating that the prosecution intends to prove the following.

I have a sample here, for example, in front of me:

No. 51, Max Rieder: Intend to prove, one, on or about 17 December, 1944—and they mention the place in Belgium—

fired on Allied civilians; and two, on or about 17 December, 1944, at the crossroads south of Malmedy, Belgium, fired on prisoners of war.

In other words, they gave us notice that they were going to prove only those two allegations with respect to that particular accused.

Senator BALDWIN. Did that help you any in talking with the accused about his participation in that particular event?

Colonel DWINELL. Oh, yes, definitely.

Now, we made a motion, however, at the beginning of the case to ask the court to require the prosecution to be more definite and certain, more detailed in their alleged bill of particulars. In other words, it did help us; certainly it was better than just having the blanket charge, which was in very general terms, but as we got into the interrogation of the accused, we found it was necessary to be more definite and certain in many of the allegations in the bills of particulars and, therefore, we made a motion to require the prosecution to be more definite and certain, and that motion was argued on both sides and denied.

Senator BALDWIN. How much time was taken in the argument of it?

Colonel DWINELL. I would say half an hour, approximately.

Senator BALDWIN. Did the court take it under advisement or was it decided from the bench?

Colonel DWINELL. It was decided from the bench. However—yes, I recall it was decided from the bench; and I say that because that stands out in my memory permanently with respect to that motion and others because that was our first set-back with the accused; we lost their confidence immediately, and we had to regain it for the reason that the more clever of the accused had immediately notified us that it was quite apparent to them from the fact that the court read their decision immediately when we finished our argument, that the thing had been prejudged, and that is why that stands out in my mind.

Senator BALDWIN. Well, then, would you describe to us what happened after that in the defense—I withdraw that question.

Let me ask you this first: In this dossier that you got, there was a paragraph setting forth briefly what the particular participation was and where the participation occurred, and as it applied to each one of the prisoners.

Colonel DWINELL. That is correct.

Senator BALDWIN. Now, on the conduct of the trial, were they charged with any other participation or any other particular other than that of which you had notice?

Colonel DWINELL. No, sir. I can state that the prosecution never went beyond the bill of particulars.

Senator BALDWIN. In reference to this motion that you addressed to the indictment or the information, charging these prisoners with this crime, were there any arguments or any briefs or anything submitted to the court prior to the time of the oral argument?

Colonel DWINELL. I think so; but I do not know this of my personal knowledge. I am willing to state this, that I suspect that Colonel Everett gave the court an advance copy of our motion papers, but I am not certain. I would have to talk to him to recall now whether that was done or not, but I am of the opinion that that was done, but I am not certain.

Senator BALDWIN. Have we got, Colonel, a list of the names of the court, and the president of the court? Do we have that information?

Mr. CHAMBERS. We have, sir; we have a record of the entire proceedings in their entirety. There will be for later decision as to how much of this should be included as exhibits to our report.

Senator BALDWIN. Well, of course, it seems to me that Colonel Dwinell here, as well as Major Byrne, have developed some very helpful testimony from the standpoint of the actual procedure followed here. Certainly it is the most direct I have seen on this particular point.

Well, go on, Colonel, and describe what happened after this motion was acted upon and denied.

Colonel DWINELL. May I go back prior to that a little bit in connection with our preparation of our defense?

Senator BALDWIN. Yes, surely.

Colonel DWINELL. The accused, having arrived there in Dachau, about the 19th or 20th of April, the trial began on the 15th of May, and therefore, we had approximately 3 weeks' time to get this thing organized, and it was decided that our first task would be the making of these various motions with respect to these various pleadings, and with respect to the other forms of relief; and so most of us, and I know I concentrated mainly at that time on preparing these motion papers.

We made several motions, if I can refresh my recollection here for a minute, we made a motion for a severance, and we argued that for a considerable length of time.

Senator BALDWIN. Now, for the benefit of the record and a layman, a severance means a trial of the prisoners separately.

Colonel DWINELL. Separately, and we suggested in that motion how we thought it could be done with respect to incidents and with respect to the particular accused.

We also made a motion attacking the jurisdiction of the court on general grounds that we considered from the standpoint of international law, in general.

I do not recall what other motions we made. I am sure there were one or two others, but at any rate, all of the motions were prepared in writing, were orally argued before the court, and all of the motions were denied.

Senator BALDWIN. The name of this particular case was *United States v. Valentin Bersin et al.*, was it not?

Colonel DWINELL. That is correct.

Senator BALDWIN. By general military government court tried at Dachau, Germany, beginning May 16, 1946.

I wonder if this would refresh your recollection as to the different motions that you filed.

Colonel DWINELL. Yes.

Senator BALDWIN. Refresh your recollection from that, and then tell us, will you please?

Colonel DWINELL. We made a motion which we called a motion in the nature of a motion to strike as to certain named defendants in the charge sheets. It was a very lengthy motion, and it took considerable time to argue.

I believe, as I recall it from looking at the motion papers, it probably took the better part of an hour.

Senator BALDWIN. Were all these motions filed simultaneously, and considered simultaneously?

Colonel DWINELL. No, sir; they were considered consecutively, one right after the other.

It was the first order of business at the beginning of the case; and we made a motion then to strike certain portions of the alleged bill of particulars.

We then made a motion concerning the jurisdiction of the court to try this particular case, and a motion for severance, and I think that is all.

Senator BALDWIN. I am advised that Colonel Ellis has said that these motions were submitted in writing 2 days in advance, and then considered by the law members of the court.

Colonel DWINELL. That is probably correct.

Senator BALDWIN. Does that refresh your recollection?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. But of course, when the motions were orally made in the court, the defendants were there?

Colonel DWINELL. That is correct.

Senator BALDWIN. And they saw the matter decided off the bench?

Colonel DWINELL. That is correct; and our motions were made orally, and as soon as we finished our argument, their attention was directed so that the matter could be translated for the benefit of the accused, and then the prosecutor replied, and then that was translated.

Then, the court made a ruling, and that was translated in open court.

That took up a considerable amount of time, preparing all these motions. We sent one attorney up to Berlin to attempt to get some texts on international law, and write up the brief on certain phases of this subject, and the rest of us spent the evenings and all day preparing them.

Then, simultaneously with that, we began the interrogation of the accused in order to find out what their stories were.

Now, the next order of business we discovered that at the outset each accused had given one or more pretrial statements in writing, and when we discovered that, we notified the chief defense counsel, and what conferences we had with Colonel Corbin and Colonel Ellis, I am not able to state, but he came back after several conferences, and finally it was decided that we would be given a copy of those pretrial statements.

Accordingly, a few days before the trial, I am not sure when, but I think it was probably about 10 days before the trial—I may be wrong on that—Colonel Ellis would probably recall when we got the first delivery of the bulk of the pretrial statements—

Colonel ELLIS. Well, that could be correct; we had to get them all photostated, and they had to be photostated in Weisbaden, and we gave them to you piecemeal, as I recall it.

Colonel DWINELL. That is correct.

Colonel ELLIS. As we got them assembled we gave them to you.

Colonel DWINELL. As I remember, you gave us all of the pretrial statements, with the exception of about nine, and you stated that you would not turn those over to us for reasons of your own, and later on they were, however, offered in evidence, am I right in that?

Colonel ELLIS. That is right.

Senator BALDWIN. Do you remember what nine they were?

Colonel DWINELL. No, sir; I cannot recall.

Colonel ELLIS. I do not think there were nine accused, there were nine statements, as I recall, three generals and Peiper, just those statements not turned over to the defense prior to their admission in evidence.

Senator BALDWIN. Yes.

Colonel DWINELL. When they delivered those statements to us, we then noticed that some of them were 20 and 30 pages long, with diagrams and so on. There were not—there were approximately 75 statements.

Colonel ELLIS. Well, there were probably more than that, because some of them had two statements.

Colonel DWINELL. Two statements.

Colonel ELLIS. Some of them did not give statement.

Colonel DWINELL. Seventy-five to a hundred would be a correct statement.

When we got those I noticed the size of them, and the bulk of the pretrial statements; it necessitated sitting down, of course, and analyzing them.

In addition to that, we began interrogating the accused individually, and as we interrogated each accused he, in turn, would give us the name of certain witnesses whom we should call in their behalf for various reasons, and I recall setting up a box with cards in it, and had a girl there typing the name of each witness as it was given to me, and before the trial was over I had approximately 300 cards and, of course, it was physically impossible to interrogate all those people; but I mention that in answer to your question about our work prior to the trial; there was another task that we had, and so, therefore, at the time the trial opened, I can safely say that we had not interrogated actually to any extent that would be worth while any more than about a third of the accused.

We had not been able to physically get around to it and, certainly, had very little time to interrogate the witnesses that they had, so that our interrogations of the accused and of the witnesses was a continual process that really got under full swing at the beginning of the trial, and continued all throughout the trial.

Senator BALDWIN. Did you make any request for an extension of time for the trial?

Colonel DWINELL. No, sir. I can only state that I did speak to Colonel Everett, in fact all of us did, and we had many conferences on the subject, and I am not able to state why the decision was made. I was second in command, and Colonel Everett took that responsibility upon himself, and told me on a number of occasions that he had conferred with higher authority, and that the matter had been administratively determined that there would be no adjournment, and

in fact, Everett told me many times that there would be no person making a motion, and we would forget about it, and which we did.

Senator BALDWIN. So that no motion for a postponement was made?

Colonel DWINELL. No, sir.

Senator BALDWIN. Now, will you go on and tell us anything you want about this. I covered the main points insofar as I knew what you might know about it. Now, I would be glad to have you go on and make any statement—maybe Colonel Chambers has a question or two he might like to ask.

Mr. CHAMBERS. I am certain that Colonel Dwinell has a great deal of information and a great many things that he wishes to say, sir, and for purposes of getting first things first here, I would like to clarify a couple of points in my mind with him.

Senator BALDWIN. All right.

Mr. CHAMBERS. One is, I would like to get these dates clearly in mind as to when the defense counsel actually came into the picture. I believe it is sometime in April, is it not? Is that not correct?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. When these people were served?

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. Do you recall that date?

Colonel DWINELL. The bulk of the accused I know were served on the 11th of April 1946.

Mr. CHAMBERS. I presume at that time you started with your initial work in getting set up to start getting the defense organized?

Colonel DWINELL. The following day, yes, sir.

Mr. CHAMBERS. The following day. Now, the prisoners at that time were at Dachau?

Colonel DWINELL. No; they were at Schwabisch Hall.

Mr. CHAMBERS. When were they moved to Dachau?

Colonel DWINELL. They were moved about the 19th.

Mr. CHAMBERS. Now, between the 11th of April and the 19th of April, did you have an opportunity to work with any of the prisoners?

Colonel DWINELL. It may be that the prisoners were moved between the 16th and the 19th. They did not come down in one lot. During those 3 days they all came down.

Mr. CHAMBERS. What I am trying to get at is this: Did you, before they were removed to Dachau, have much of a chance to work with them?

Colonel DWINELL. With them, none at all.

Mr. CHAMBERS. You were merely getting this organization set up?

Colonel DWINELL. That is right.

Mr. CHAMBERS. After they got to Dachau on the 19th of April, how long did you have to work with the prisoners before the trial actually started?

Colonel DWINELL. From that day until the trial started.

Mr. CHAMBERS. That was when?

Colonel DWINELL. About the 19th of April.

Mr. CHAMBERS. When did the trial start?

Colonel DWINELL. The trial started on the 15th of May.

Mr. CHAMBERS. On the 15th of May, so that there is approximately—there is less than a month before the trial actually started.

During that time, you initially had six defense counsel, American defense counsel assigned for the handling of these prisoners?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. Which was supplemented at some stage of the game by the six German defense counsel that you have previously mentioned?

Colonel DWINELL. That is right.

Now, the six American defense counsel, however, did not all assemble precisely on the 11th of April. They came down a few at a time. I think we all got together for the first initial group meeting about the 20th of April, so that all that time prior to that was dead time, except that Everett and I and Mr. Strong, I believe, were there—busying ourselves with the mechanics of getting tables, desks, chairs, telephones, and so forth.

Mr. CHAMBERS. Yes, and I notice that you used the expression “We obtained typewriters and transportation facilities,” and so on and so on. Did that mean that you had to go out and locate it and scour it up, or did the Army officials make it available to you?

Colonel DWINELL. They did on our requisition. We told them what our needs were.

Mr. CHAMBERS. Now, did they get interpreters for you and typists for you?

Colonel DWINELL. Yes.

Mr. CHAMBERS. Because I notice in your petition there was some mention about the difficulties in getting—

Colonel DWINELL. Well, it was not a very smooth operation, but I personally have no quarrel with it. The interpreters and interrogators that we had were not the best. I will say that they were not as good by a long shot as the people available to the prosecution, but they were satisfactory. We had the advantage of having Mr. Strong with us, who spoke fluent German.

Mr. CHAMBERS. When did he join you, Colonel?

Colonel DWINELL. About the 12th.

Mr. CHAMBERS. So he was with you from the start?

Colonel DWINELL. That is right.

Mr. CHAMBERS. Just one further question that I would like to clear up at this point: You said that in your earlier interrogation of the prisoners you had a lot of difficulty in getting them to cooperate with you, and giving you any information, and it was not until you had called the generals in, along with Peiper, and had told them the story that they went back and, in turn, convinced the defendants that they should cooperate.

Colonel DWINELL. That is right.

Mr. CHAMBERS. I believe you made the statement that it was your impression that they just did not have confidence in you because of some of the things that had happened to them at Schwabisch Hall.

Colonel DWINELL. That is correct.

Mr. CHAMBERS. When you say it was your impression, was that based on things that had been told you by them, or was it that you just felt for some reason you could not quite fathom, and it was not until later when you had worked with these people that you began to know about the mock trials and what not which might have destroyed confidence in the actual defense counsel?

Colonel DWINELL. Yes. The initial impression was one that we could not understand. We could not understand why they would not talk to us, and it was not as you say, until we got into the facts of the case, and they began to tell us about the allegations of beatings and

duress and one thing and another, and then they actually told us before the trial, at a time just before the trial, that they did not talk to us originally because they thought it was just another set of tricks, by American officers, as they had been tricked in Schwabisch Hall.

Mr. CHAMBERS. When you say "they," do you mean that was a general statement or particular individuals who said that to you?

Colonel DWINELL. They all said that.

Mr. CHAMBERS. Well, now, not to argue the point here, sir, but we heard mock trials were only used in the case of 12.

Colonel DWINELL. That is right.

Mr. CHAMBERS. Of the people, and I wonder—there has not been much evidence in that, certainly, phony defense counsel were used, or anything of the kind, except in 12 cases. I wonder why all of them would make the statement.

Colonel DWINELL. I would say that 75 percent of the accused complained of some form of duress, trickery, or something of that nature.

Mr. CHAMBERS. I think from the statement, the percentage is higher.

Colonel DWINELL. Yes.

Mr. CHAMBERS. I would suggest that based on some of the things that you have told me informally, and Mr. Flanagan, that you open up on this procedural point, and then we will take this—if it is all right with Senator Baldwin—take this question of brutality and mistreatment as a separate item. I think we have two problems here, and I think if we try to discuss them interchangeably we may run into difficulty.

If you could lead off on the procedural aspects of what your objections to the way of the defense in handling the trial, what were the weaknesses in the system, and why you do feel as strongly, as I am sure you do, that the representations made in the petition by Mr. Everett are correct.

Colonel DWINELL. Well, I have many things to say. Just where to begin is the point.

I think I would like to begin talking about one of the basic weaknesses in the whole case, and this is purely a legal matter, but it ties in, in my opinion, with the fact that we did not have sufficient time to prepare this defense.

If we had had plenty of lawyers of the highest caliber, experienced in every field of trial practice, they could not have done it because of the physical limitation of time.

In connection with that, we saw fit to make this motion for severance, and we pointed out to the court that here we had a series of incidents running all the way from Blankenheim Forest up to La Gleize, some 13 incidents, some of which were entirely separate, unrelated with the other main issues.

Senator BALDWIN. Let me ask you a question there, Colonel.

Did these 13 incidents all involve the First Panzer SS troopers?

Colonel DWINELL. Yes, sir; they did.

Senator BALDWIN. And no other German personnel?

Colonel DWINELL. Well, I say that there were other German personnel involved in this whole thing, but they were not alleged—no other German personnel were alleged to have been part of this.

We found that it was a physical impossibility to properly coordinate the defense. We had six German lawyers with six different ideas. We had six American lawyers with six different ideas.

Senator BALDWIN. That is common to lawyers everywhere.

Colonel DWINELL. So, we had 12 ideas constantly conflicting with respect to 74 accused, allegations of some 600 murders, a space of time of several weeks, and 13 incidents. It was a physical impossibility to coordinate that thing, and the difficulties were so great that we put all of that in our motion for severance, and the strange part about this whole thing is that when this case was finally decided in Frankfurt last year, the Board of Review in Frankfurt agreed with us, although they came to an illogical conclusion because, if the Senator will look at the treatment of that subject by the Frankfurt Board of Review, it states this:

Severance: The question of severance raised by the defendants' counsel in this petition for review was treated by the deputy judge advocate for war crimes. The defense set forth 4 grounds in its motion, all of which were not without some degree of merit, the test being whether an injustice would result to the accused, as distinguished from a violation of a substantial right of the accused.

All the accused were jointly charged. Aside from the responsibility of certain accused for issuing the order not to take prisoners of war or of passing the order on to subordinates, the case is in fact a series of separate incidents occurring at different times and places. There can be no doubt that due to the large number of defendants and separate incidents combined in one trial, the defense was put to a heavy burden and suffered some disadvantage. To this burden was added the difficulties that naturally ensue when a large group of attorneys assemble to set up a common plan of defense and are given only 3 weeks' time within which to consolidate and coordinate their efforts and prepare their case in a reasonably efficient manner.

The three accused, Dietrich, Priess, and Kramer were charged with the issuance of illegal orders and the trial concerned itself only with that issue and they could have been separately tried. The accused, Bersin, Kotzur, and Trettin are concerned only with the isolated incidents occurring in the town of Wanne, and therefore they could have been separately tried. The accused Sickel and Wichmann were concerned only where an isolated incident occurred in the town of Petit Thier, which could have been separately tried. There are numerous instances of isolated and separate incidents that could properly have been divorced from the main trial and each considered as a separate issue.

It is apparent from the reading of the statements of several accused that as to most of them their interests were in conflict. This is particularly true in those cases in which an accused confessed to participating in the shooting of prisoners and then added that he would not have done so but for the orders or instructions he received from another accused. That, counsel for the defense were put in the difficult position of representing clients with vitally conflicting interests. How great this difficulty must have been is seen when considering the problem they had in advising which clients should testify and which should not. In performing that great duty of endeavoring to protect equally the interests of each client and the defense as a whole they could do no other than to advise those whose interests were in conflict not to testify. It follows that no unfavorable inferences should be drawn from the failure of any accused to testify.

Here is the conclusion from all of that:

While there is authority under certain circumstances for the granting of a severance—

and they refer to the trial manual which we used over there—

the granting of such a motion was in the sound discretion of the court and while some inconvenience was necessarily suffered by the defense, it does not appear that the denial of the motion resulted in an injustice to any of the accused to such a degree as would warrant a new trial.

I confess that is a very illogical conclusion.

Senator BALDWIN. You are reading from what?

Colonel DWINELL. The board of review that finally passed on this case at Frankfurt.

I mention all that because it is significant to note that our contentions were considered to be meritorious by the final board of review that passed on this case, and so that severance motion is definitely tied in with the defense preparation.

As a result of the shortness of time to prepare that defense and the denial of this severance motion, these accused did not get a proper defense. That shall always be my position.

Now, I do not know what point the Senator is interested in next, but I think I might go to this: There was a statement made here before the committee to the effect that the petition in the Supreme Court was merely inflammatory, the inference being that it was not based on sound reasoning or have any justification.

Now, that I want to correct, particularly do I want to correct that because Colonel Everett is not here to state anything in his own behalf, but the facts about that petition are these:

Last year I came back from Frankfort rather suddenly on an emergency leave. About 2 or 3 days after I came into New York, I received a message from Colonel Everett from Atlanta, and he said for me to please arrange for a hotel room for him in New York and to wire him to that effect and meet him, which I did, and when I met Colonel Everett, he had in his hand his draft of that petition that he later submitted to the Supreme Court, and these are his words to me:

I do not want to put it before the Supreme Court—I do not want to put anything before the Supreme Court that is not true; that has no basis in fact. I have prepared this thing as to form. I want you to read it with me and tell me if there are any inaccuracies—

and so we read line for line, and we made some changes at my suggestion.

We eliminated some things which I said were not strictly accurate. There were some things that he differed with me on, and insisted on leaving in the petition, although I differed with him as to the accuracy of them.

However, we did check each paragraph, and we had a basis in fact for each one.

If there are any slight inaccuracies, such as the one that was discovered this morning, it is due to my fault because I relied on my memory. I did not have the record of trial before me when we were in that hotel room, but I felt that I was able to give him the information correctly because I had just left Frankfurt, and I had just gone all through this review board finding, so I knew the record of trial very well.

I can take each paragraph in that petition and state the basis on which I came to the conclusion that it was accurate. For example, not to go through them all and take all that time, but I can remember one which was mentioned by a witness here also: He stated in effect that our allegation that the prosecution witnesses mockingly and laughingly discussed the mock trials in court was not true. Well, that is true. That I know from personal knowledge, because the record of trial, and I have just checked it on page 1503 or something very close to that, and there is my cross-examination of Mr. Kirschbaum in which he described the mock trials.

If you will read that evidence, you will see that he was doing it in a very facetious way, and he laughed in court, and so much so that we

all had to comment on it, and we commented on the fact that the court tolerated it, as a matter of fact, so when I made that statement in a petition, that was based upon my observations and not any hearsay.

That is true of all the other things.

As to duress and beatings and forms of mistreatment, those things, of course, I know only from what my clients told me, and what the witnesses told me.

The next thing in connection with procedure that I think was fundamentally wrong in any court, whether it be a military commission or what, if there is going to be any semblance of justice at all, and I feel very strongly about this and I always have, as a concession to continental practice, it was determined in advance of the trial that none of the accused would be permitted to take an oath. It was told to us that in Germany that is the custom, or that has been the law and, therefore, we very strongly objected on this basis. Our clients were prosecuted, and the case was proven against them by sworn testimony taken from them by way of pretrial statements in Schwabisch Hall and other places.

Those were sworn before officers of the Army and other people who are entitled to take oaths, and they went in against our clients as evidence; against which we were forbidden to rebut it with any sworn testimony of our own, so that it was a one-sided affair right from the start.

Senator BALDWIN. You mean you were not permitted to introduce in evidence affidavits of witnesses?

Colonel DWINELL. Yes, sir; but we were not permitted to put our accused on the stand and have them sworn to tell the truth, so there was no point in putting an accused on the stand to offer an unsworn statement against damaging sworn evidence that went in ahead of time.

Now, that rule was changed in the war crimes sometime after the Malmedy trial, and the rules were changed to the effect that an accused then would be given the option of being sworn or not; but that was not the rule in the Malmedy case.

At the Malmedy trial the accused were not permitted to take an oath.

Mr. CHAMBERS. At this point I would like to ask a question. Was that same rule being followed in other war crimes being tried at Dachau and other places at that time?

Colonel DWINELL. I do not know about any other place except Dachau.

Mr. CHAMBERS. Now, later I believe you had considerable experience both as prosecution and defense—on the prosecution side and on the defense side?

Colonel DWINELL. Yes, I say the rule was changed somewhat.

Mr. CHAMBERS. You said subsequently, and I was trying to find out whether the Malmedy trial was the only case in which the accused were not permitted to be sworn.

Colonel DWINELL. No; it was not the only case. I believe that rule was in effect at the time the Dachau trial was tried, and the Mathausen concentration camp was tried.

Mr. CHAMBERS. So your objection is not particularly applied to the Malmedy trial, but you think, as a general rule, it is poor practice.

Colonel DWINELL. Yes, sir; and we so objected at the trial. As a

matter of fact, the record is monotonously replete with my objection on that point. There was not a single confession that went in that I did not get up and object on that same basis.

Now, I have listened to a lot of testimony today about La Gleize, and I would like to state a few things about that.

La Gleize, there were a number of people charged with La Gleize. The list is quite long. As a matter of fact, I can give you the exact number, 24 accused were involved in some instances in La Gleize, either at the church wall or inside the church wall or in the school-yard or what have you; but La Gleize, the whole La Gleize incident, series of incidents, appeared to us to be preposterous, and for this reason: The defense was given an opportunity during the interim between the close to the prosecution's case and the defense opening to send a team up to La Gleize, and we did some investigating; also we got the affidavit of a Father Blokian, and also three other affidavits that are in the record of trial, but more particularly we got a live witness down there in the trial by the name of Colonel MacGowan, an American Army officer, who flew over from the States at our request, who testified for the defendants.

Now, Colonel MacGowan testified that he was in La Gleize, had been captured at Stoumont just a few days before that; had been taken there as Peiper's prisoner, and had spent several days there, together with 200 soldiers, American soldiers, that were put under his care and supervision as prisoners of war, and an enclosure was set up for these people; and MacGowan testified that there was no mistreatment whatsoever at the entire time he was there. He did confer with Peiper daily and every night, and so on; and Peiper moved his outfit out just prior to the capture of the town by the American forces. He blew up his tanks and escaped, and took MacGowan with him.

There has been some inference that MacGowan sold out and told Peiper when and how to get out. That came to my attention when I was questioning MacGowan, and for that reason, prior to putting him on the stand, I asked him if that was true, and he said positively not. I said in that event I am going to put him under oath, "I am going to specifically ask you that question before the court," which I did, and the question is in the record of trial.

"Did you give any tactical information to the enemy?" The answer was, "No."

Now, at any rate, MacGowan, when they got out of the La Gleize situation, MacGowan immediately escaped from Peiper and reported to his division commander all of the circumstances, and he made at that moment a G-2 report, in which he detailed everything that had happened at La Gleize, including the treatment of 200 prisoners, including the fact that he and Peiper made an exchange agreement in writing, exchanging the 200 prisoners for some German wounded, and then went on to testify and state in that statement also that that exchange agreement was not carried out on behalf of the American people, but nevertheless that is as far as the German side of it was concerned; but nevertheless 200 soldiers all returned unharmed and all so reported to their superior officers that there had been no mistreatment the whole time they were in La Gleize.

We got three other affidavits from residents of the town who were required by the Germans to carry cots, blankets, tended to the wounded,

and so forth, who were in that town all during the time that Father Blokian was there.

Whether that affidavit of Father Blokian specifically says he was in the church or not has never impressed me very much because he was in and out of the church, and all around the town, and so were all of these people that we got as witnesses testified that they never saw any of this business that we have been talking about.

Now, following the line of reasoning that Mr. Flanagan had here before when he was talking to Major Byrne, it seems quite unusual that 200 people would be fired at in one place and 20 in another, and 50 in another, in a town of that size, and no one know anything about it, except the marvelous memories of some of these accused, who made these statements.

Now, let us get to the next point, and that is the affidavit of the Graves Registration people. I do not have them right here in front of me, but if I had them I could read them to you. They are absolutely on their face without probative value. They are based upon the conclusions of people, Graves Registration people, who are back in the States, whose testimony was taken by affidavit by somebody in some town, somewhere, while the trial was going on, and it is replete—they are replete, with conclusions and opinions.

Now, that is the La Gleize situation. If that is incorrect, as an evaluation of it, however, it finally in this board of review of opinion in Frankfurt, has been decided that most of these La Gleize incidents, if not all of them, did not happen.

Now, the next thing I would like to talk about is my petition for review which I have here in front of me, I wrote every line of it in Dachau. It took me some 3 months to do it. There are some 228 pages in which I analyzed all of these things, and in that petition for review, I set forth what I claimed to be erroneous rulings of law, under the rules of evidence by the court, and while aware of the fact that there were not any binding rules of evidence, I am also aware of the fact that the court did attempt to be fair, but failed in their rulings, and I set forth a number of them. The most glaring ones I put here specifically, and the others I refer to only by page number.

However, it is my opinion from all of this, and from being at the trial, that the cumulative effect of all of that was prejudicial to the accused.

I state that not from reading the record of trial; I state that from being present at the courtroom every day, and to the point at the conclusion of the trial, I can honestly say that even though it is not a thing for a trial lawyer to do, I regret that I did it, but I did acquire a defeatist attitude, and toward the end of the trial threw in the sponge, so to speak, and that is the cause of the continual reversal and continual overruling of what were obviously proper objections; particularly when we were restricted in the manner of impeaching witnesses of the prosecution. That was an unwarranted restriction, and the inconsistencies, if these are analyzed, all of these rulings that I set out, if they are analyzed carefully, they set up a picture that is so inconsistent that I come to no other conclusion, and neither does anyone else who studies each one of these things, but that there was a set of rules for the prosecution and a set for the defense.

Senator BALDWIN. Just what do you mean by that?

Colonel DWINELL. That the same rule of evidence would be applied for the prosecution, but denied to the defense.

Senator BALDWIN. Do you have any specific examples?

Colonel DWINELL. For example, if the prosecution led a witness, we objected—I am not setting that specific case out, but as an example—and we objected, the objection would be overruled. If we led a witness, and they objected, the objection was sustained. That is what I mean by two sets of rules. There is evidence of that in this petition.

Mr. CHAMBERS. May I interrupt you to ask a question at that point? Awhile ago you quoted from the reviewing authorities as supporting your arguments for severance.

Colonel DWINELL. That is right.

Mr. CHAMBERS. You disagreed with their conclusion, but you felt that they had agreed with you in their reasoning.

Colonel DWINELL. That is right.

Mr. CHAMBERS. Did the reviewing authorities in going through the case also indicate that they felt that the court had been unduly restrictive in its interpretation, or prejudicial, or anything of that kind?

Colonel DWINELL. There is a note—the record reveals a number of erroneous rulings of the court—that is the finding of the board of review—they say:

The record reveals a number of erroneous rulings of the court. However, the case in the main, being in effect a series of different incidents or separate trials, it cannot be said that the rights of all accused were involved in every ruling of the court or that injustice to all accused thereby resulted.

The following record citations contain the more important errors committed by the court.

They are all listed here.

For instance, the court refused to permit “the defense to test credibility of witnesses on cross-examination.”

“The court refused to permit defense to test credibility of witnesses on cross-examination,” in another case.

“The court denied the defense a showing of combat conditions at the crossroads.” There is another page reference. [Reading:]

Defense not permitted to cross-examine on matter brought out on direct examination as indicated in the record on page 996. Page 1085, court refused to permit defense to test credibility of witnesses on cross-examination.

That goes on along those lines all the way down. The board of review picked out the most important ones and spoke about them.

Mr. CHAMBERS. What was their conclusion on that? I believe they made one?

Colonel DWINELL. Their conclusion I stated at first.

Mr. CHAMBERS. I see.

Colonel DWINELL (reading):

However, the case in the main, being in effect a series of different incidents or separate trials, cannot be said that the rights of all accused were involved in every ruling of the court or that injustice to all accused thereby resulted.

Mr. CHAMBERS. At the time that the board of review sat on this, did you have any contact with or relation with the board of review?

Colonel DWINELL. I certainly did.

Mr. CHAMBERS. Did you know that while you were working with the board of review that you were working on these cases?

Colonel DWINELL. I did.

Mr. CHAMBERS. Did you have anything to do with the preparation of this report?

Colonel DWINELL. I did not; not to this extent. The report that I have before me was written in the main by Colonel Scarborough of the review board, and every day he and I discussed the language therein, and wherever I could speak for the defense I did.

Now, I will frankly state so.

Mr. CHAMBERS. Then, you would say that the points of view of the defense certainly had adequate representation before the board of review?

Colonel DWINELL. They did, very vigorously did I advocate the defense.

Mr. CHAMBERS. Colonel, before we go on with the general discussion, may I go back to just one point, because I think it is important. You took some notice of prior testimony here and mentioned that this petition was wrong where they said they laughingly and mockingly described trial procedures, and I think you said that the testimony heretofore had been that this petition was largely inflammatory in character and, perhaps, they went further in their testimony—I do not recall what they said. But they said “laughingly and mockingly,” those were a couple of words that I would like to have you explain further, because the court actually appears to be amused, is the way I understood the testimony, and I would like to have you tell us whether there was a sort of mockery in their consideration of this thing when they were listening to, I believe you said, Kirschbaum on cross-examination.

Colonel DWINELL. That is right. It was generally laughter among the assembled spectators and accused, the defense—I did not watch the court particularly; I was concentrating on Kirschbaum.

Mr. CHAMBERS. What were they laughing at, Kirschbaum’s manner or what he was saying?

Colonel DWINELL. Both.

Mr. CHAMBERS. You feel that—

Colonel DWINELL. I feel that it was a disgraceful exhibition. I believe there is no doubt about it in my mind.

Mr. CHAMBERS. Thank you. I have no further questions at this time.

Senator BALDWIN. Do you want to ask any questions?

Mr. FLANAGAN. Yes, sir.

Colonel Dwinell, a little earlier in your testimony, you made statements concerning the limited time you had in preparing the defense in this case. Do you feel that this short time you had to prepare a defense resulted in your putting up an inadequate defense for these accused?

Colonel DWINELL. Yes, sir, very inadequate. I do not know what I could have proven if I had the time, if I could have searchingly gone into the witnesses that were proposed by the defense. Many, many people were given to me as witnesses of facts that were important to us, and it was physically impossible to develop that.

Mr. FLANAGAN. You stated that you had gathered the names of some 400 witnesses that you might want to use in the defense?

Colonel DWINELL. That is right.

Mr. FLANAGAN. In the preparation of this case?

Colonel DWINELL. That is right.

Mr. FLANAGAN. Were you able to get in touch with these 400 witnesses?

Colonel DWINELL. Oh, no; but we got in touch with quite a number of witnesses. I am trying to recall the number of witnesses we used, but about 60, I would say.

Mr. FLANAGAN. Would you have used more witnesses had you sufficient time to go out and interview these people whose names you had?

Colonel DWINELL. Oh, yes; certainly.

Mr. FLANAGAN. Do you think that had you been able to get more witnesses you would have been able to put in a better defense in this case?

Colonel DWINELL. Yes. Let me give you an illustration. I think this is a good place to bring this up. In fact, it was mentioned by Major Byrne this morning when they were talking about Le Gleize, when the Senators asked him whether or not there were other people involved besides the SS panzer army.

Our accused contended that Skorzini, the famous—the notorious Skorzini—was designated by Hitler himself to operate in advance of this particular spearhead. The operation was called Grief, was the name given, and Skorzini had, of course, recruited three or four hundred Germans who spoke English fluently, and had put them through a course of training to learn the American slang and habits of the GI, and equipped them with all the GI equipment, even the pay-data cards, and so forth. They were to go ahead and raise all kinds of difficulty in the communication lines, preceding this particular spearhead.

Now, Skorzini himself told me that the operation was a failure. It was difficult to control. The result of that was that his men were always mingled in with Peiper's. He lost them completely. Peiper confirmed that, and so did all the other officers, so did the general officers who were accused, that Skorzini's people were bobbing up all along the route of march, and also their flank was—they were flanked on the right by a Hitler Youth division, which was completely out of control because they were recently recruited and trained at the last minute, so I am quoting Skorzini and Peiper, and they were mingling in with Peiper's spearhead continually.

Now, to establish that fact would have been an important part of our defense, and we could not do that; we did not have the time to get into it. But later on that matter was pretty clearly established when they tried Skorzini and his 11 lieutenants for incidents right around these very places we are talking about here, and they were all acquitted.

Senator BALDWIN. Was there any man convicted of the La Gleize shootings?

Colonel DWINELL. Yes, sir; I believe there was. I would have to go through this thing very carefully, because there were so many of them, I do not remember exactly which ones.

Do you mean convicted by the court or finally—

Mr. FLANAGAN. Convicted by the court.

Colonel DWINELL. They were all convicted.

Senator BALDWIN. Well, I mean was there anybody convicted only on the La Gleize incidents?

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. Sir, may I interpose? You are talking about the several instances in which they were charged at La Gleize or the group

of 200 which we are talking about this morning, and which had no evidence to support it?

Colonel DWINELL. Well, there were three or four incidents in La Gleize involving groups of people; and, to answer your question precisely, I would have to go through the record of trial again, but there were accused convicted of one or more incidents in the La Gleize situation only, as I recall it.

Mr. FLANAGAN. Colonel, now in your discussion with the other defense attorneys for severance in this case, did you feel that if you could not get a severance that you could not adequately defend those accused?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. What effect do you think the lack of severance had on the total defense of your case?

Colonel DWINELL. It made it an impossibility.

Mr. FLANAGAN. In other words, it made it impossible to adequately defend these men who were accused of high crimes because of your inability to get a severance in this case?

Colonel DWINELL. That is right; that is correct.

Mr. FLANAGAN. Do you feel now that the lack of time and preparation, and the lack of a severance, resulted in depriving your defendants of rights which they should have had under the rules of war crimes in Germany? I am not talking about rules in American crimes, but I am talking about rules under which you operated in Germany.

Colonel DWINELL. Yes, I do.

Mr. FLANAGAN. In other words, you feel that they were deprived of the rights that were set up for them in Germany?

Colonel DWINELL. That is right.

Mr. FLANAGAN. Do you feel that the lack of time to prepare your case, and the fact that you could not sever these cases, resulted in a lack of justice in this trial?

Colonel DWINELL. Definitely.

Mr. FLANAGAN. You mentioned awhile ago that when you first met with your clients, the defendants in this case, that you were unable to obtain any information at all from them, and that then you called a meeting with the three generals and with Colonel Peiper, in an effort to convince them that you were in fact out there to be their defense counsel, and actually help them. Is that the fact?

Colonel DWINELL. That is correct.

Mr. FLANAGAN. At that meeting or any meeting, did Colonel Peiper or anyone else tell you why these Germans accused refused to talk to you people or to cooperate with you in the defense of their case?

Colonel DWINELL. Yes; he did.

Mr. FLANAGAN. What did he say?

Colonel DWINELL. He said they had been subjected—

Mr. FLANAGAN. Pardon me, was that Colonel Peiper?

Colonel DWINELL. Colonel Peiper, and most of the accused.

Mr. FLANAGAN. What did they say?

Colonel DWINELL. Well, it is a long story, but in the Peiper case, for example, his pretrial interrogations go way back to other places prior to Schwabisch Hall. Ebensee, Freising, and Zuffenhausen were interrogation centers where he was interrogated by Booth, by Perl, and I do not recall who else, but those two names I do remember, and Peiper so testified.

This is not just from memory, but Peiper so testified, all about that. But, at any rate, whether that is believed or not believed, from the mouth of Peiper, the point is that is one of the reasons they gave for not trusting us because so many promises and tricks had been made and played on them in these various places that an American officer was just another trickster so far as they were concerned.

Mr. FLANAGAN. Did these accused at that point come in explaining why they did not cooperate with you, tell you that on other occasions when they were incarcerated that members of the investigating teams represented themselves to be defense counsel to them?

Colonel DWINELL. Yes; that happened this way: It happened in connection with the mock trials, of course. They reported that to us on a number of occasions, and the way they described that, and I remember that specifically is: This was described to us by several of the accused, that Lieutenant Perl frequently represented himself as a defense counsel, the theory being that if he could convince them that they were being tried, he could interrupt the trial and the record shows that that was the common practice, to interrupt this mock trial, from time to time; but the record does not show what they told us, and that is that he would then confer with them and say in effect:

This court has the power to sentence you on the evidence now that is before them. It looks like the rope for you. However, if you will give me a statement involving so-and-so, I will get you off with a light sentence.

Senator BALDWIN. Excuse me, just for the benefit of the record there, what you are testifying to now is not what you observed, but what these German prisoners told you?

Colonel DWINELL. That is correct.

Senator BALDWIN. I did not want to have it appear on the record that you claim that you witnessed that.

Colonel DWINELL. No.

Senator BALDWIN. I mean it was what they told you.

Colonel DWINELL. I know nothing except what my clients told me.

Mr. FLANAGAN. Now, as a result of what these Germans did tell you, you did observe that they refused for several days to have anything to do with their own defense counsel; did you not?

Colonel DWINELL. That is correct.

Mr. FLANAGAN. Based on your own personal observation of this group of 74 men, do you believe that they were clever enough or had foresight enough to stand up before you, their defense counsel, and pretend that all this beating and this duress, and these other techniques, had gone on, merely for the purpose of convincing the court later on that they had been beaten?

Colonel DWINELL. No. I might have had that thought at the beginning, but after days and days of constant interrogation and personal contact with these people in my office, day and night, and comparing notes among our groups, everything matched up, and it seemed like it was not a fabrication.

Mr. FLANAGAN. In other words, based on your personal contacts with these prisoners, you are convinced that at least part of the allegations concerning duress and brutality are true?

Colonel DWINELL. That is right.

Mr. FLANAGAN. That is based on your own personal discussion with these men?

Colonel DWINELL. Personal observations of the accused while preparing the defense, yes.

Mr. FLANAGAN. Yes.

At the time that you and the other Americans were appointed as defense counsel for these men, did you know any of these other defense counsel prior to that time?

Colonel DWINELL. Not one.

Mr. FLANAGAN. Based on your experience with those men, did you feel that of them were qualified to act as defense counsel in a complicated, involved case of this type?

Colonel DWINELL. Well, I do not think I am that competent, so that I can pass on a lawyer's ability to that extent. They were all of varying degrees of experience. For instance, there were two or three of the defense counsel who frankly stated at the beginning of the assembling of the group that they had had no experience in the trying of cases.

Mr. FLANAGAN. Well, it would be almost necessary in order to put up an adequate defense to have had some trial experience; is that not so?

Colonel DWINELL. Definitely so.

Mr. FLANAGAN. Colonel Everett, had he had much previous trial experience?

Colonel DWINELL. None at all.

Mr. FLANAGAN. In other words, you tell me now that Colonel Everett, the chief defense counsel, had no previous trial experience?

Colonel DWINELL. He has told me that a number of times; that he had never tried any case.

Mr. FLANAGAN. And this Colonel Everett, who had no previous trial experience, was expected to try and run the trial of this case involving some 74 defendants?

Colonel DWINELL. That is right.

Mr. FLANAGAN. Did any of the defense counsel, American defense counsel, have the same amount of trial experience as you had?

Colonel DWINELL. Captain Narvid did.

Mr. FLANAGAN. Pardon me?

Colonel DWINELL. N-a-r-v-i-d did. Mr. Strong, and Lieutenant Wahler.

Mr. FLANAGAN. Awhile ago in your testimony you testified that prior to the actual beginning of the trial you had an opportunity, or your staff had an opportunity, to interrogate only about one-third of the accused.

Colonel DWINELL. That is right.

Mr. FLANAGAN. Before the end of the trial, did you have an opportunity to interrogate all the accused?

Colonel DWINELL. Yes, before the end of the trial.

Mr. FLANAGAN. Did you feel that you had had adequate time to interrogate these men before you had to put them on the stand, or at least put in a defense of some kind for them?

Colonel DWINELL. No, no; definitely not.

Mr. FLANAGAN. When you were at Dachau prior to the beginning of this trial, did it come to your attention that reports of brutality to these prisoners had been made to higher officials in the Army?

Colonel DWINELL. Yes; it came to my attention. I recall now that when we first went to Dachau, and Colonel Everett told us that he was going to report to higher authority these allegations of the accused, he so did. I believe he talked to Colonel Corbin about it, and how much further than that he went, I do not recall.

At any rate, he handled that, and as a result of that there was an investigation made, and Colonel Carpenter came down to Dachau; I remember being called in to talk to him, and I now remember that he asked me what I knew about it, and I had a chart prepared; in fact, it was a very large chart, that we all prepared, in which we set forth the 74 accused, and we put columns down: Beating, tortures, trickeries, "stool pigeons," and various other forms of duress; and we checked them all over, and I either showed him that chart or told him about it, and that is all I know about that.

Mr. FLANAGAN. Did he at that time indicate to you what other investigation he was conducting?

Colonel DWINELL. No; he did not.

Mr. FLANAGAN. Did he indicate whether he wanted to talk to your clients concerning the matter?

Colonel DWINELL. I do not recall that he did. He had some extensive conversations with Colonel Everett at which I was not present, so just how far he went on that part of it, I do not know.

Mr. FLANAGAN. I believe you may have stated this, but I think the record should have more explanation.

As I understood your testimony, you, or at least the defense, did not put in a motion for an extension of time in which to prepare this case.

Colonel DWINELL. That is right.

Mr. FLANAGAN. Did you discuss that matter of putting in such a motion with Colonel Everett?

Colonel DWINELL. I did several times.

Mr. FLANAGAN. What was his answer?

Colonel DWINELL. His answer was:

Do not make any motion. We will not consider any motion of that kind. It has been determined that this trial will go on on the date set. I have discussed that matter with higher authority. Any motion would be futile and of no purpose. It will be denied, so let's concentrate our efforts on the merits of the case.

Mr. FLANAGAN. In other words, the only reason you did not put in a motion for a continuance or for time was that the matter was already decided and would have been a useless gesture?

Colonel DWINELL. That is what he told me.

Mr. FLANAGAN. Did you personally discuss that with anyone else other than Everett, who conveyed the same information to you?

Colonel DWINELL. I discussed that with no one, except the associate counsel in the case.

Mr. FLANAGAN. You sat in and tried a number of other cases in war crimes trials, and would you say that was the general attitude there, or was that merely the attitude in this single case?

Colonel DWINELL. It was not the general attitude because I sat as president and law member of a court for several months and nobody ever asked me for an adjournment that he did not get it if there was any basis for it.

Mr. FLANAGAN. That being so, do you know of any reason why similar continuance was not granted to you in this case?

Colonel DWINELL. I do not.

Mr. CHAMBERS. May I interrupt there for just a second?

Did Colonel Everett say—he said that it had been decided by higher authority that it would not be granted.

Colonel DWINELL. That is right.

Mr. CHAMBERS. But in effect he never made that petition or request before the court?

Colonel DWINELL. He did not.

Senator BALDWIN. Are you through?

Mr. CHAMBERS. Going back before we get completely away from this investigation that was made by Colonel Carpenter, generally speaking, in view of the fact of the interest that all members of the defense staff must have had in these various charges of duress, and this being the only interest that was being displayed by higher authority in the form of Colonel Carpenter, the only knowledge that you have of it as to what he said or what he did was based on a conversation you had with him. You did not talk it over with Colonel Everett later, for instance, and say "What did Carpenter find out?"

Colonel DWINELL. I did not. I did not for the reason that I got lost in the maze of events. We were so busy on this case and so many miscellaneous things, that it never came up again, so far as I was concerned.

Mr. CHAMBERS. Now, in order to clarify my memory, you at this time were concentrating pretty much on the officers, is that correct?

Colonel DWINELL. Yes.

Mr. CHAMBERS. Officers, as a whole, or general officers?

Colonel DWINELL. Officers, as a whole. There were about 22 of them.

Mr. CHAMBERS. Can you tell me, and then we will be through here for the moment, of any of the officers who might have had, perhaps, the most drastic claims about brutality which they told you? I mean, the ones that you typify in your own mind as being, perhaps, the worst or a group of them, perhaps—it does not make any difference.

Colonel DWINELL. I cannot think for the moment of the particular names, but I do remember this: This I do recall, that during the trial, Colonel Everett sat at the head of the counsel table, and I sat at his right—and I mention this to show you that there were notes in front of me all the time about this—I had a clerical helper there, trained with a pile of files, one for each officer; I had 22 files stacked up on the floor, and this girl was trained by me to do this: As soon as the prosecution brought a witness in, in many cases we did not know what he was going to talk about—in most cases—and so we played sort of a game. We waited to hear what he was going to say. If the witness said, "I was at the Cross-roads, and Werner Kuhn was there," that was a cue to her to give me Werner Kuhn's file, and the very next question out of Everett's mouth was, "Was there any duress there," and I had it checked and marked down, and I would say that of all the officers I had about a third that I would say there were, that is, to the extent that it was worthwhile talking about.

Mr. CHAMBERS. About a third of the officers?

Colonel DWINELL. Yes.

Mr. CHAMBERS. Am I to draw the conclusion from that that two-thirds of the officers did not complain to the defense counsel of any duress of any particular note?

Colonel DWINELL. I am talking now, when I am thinking of physical—

Mr. CHAMBERS. Physical brutality, that is what we are talking about at the moment.

Colonel DWINELL. That is correct. The others complained about these other things that we have been talking about, the mock trials and stratagems and stool pigeons.

Mr. CHAMBERS. Have you had an opportunity to go through the affidavits submitted by the prisoners, by the accused, some 2 years after conviction?

Colonel DWINELL. I did look at a group of affidavits which came in one petition, and contained about 70 affidavits.

Mr. CHAMBERS. That is the group that I have reference to. Did you observe, in going through those, that with the exception of the general officers, practically every officer there put in an affidavit alleging brutality? I mean, brutality, not the minor types of duress, if we can call them that?

Colonel DWINELL. Yes, I did:

Mr. CHAMBERS. How could you explain that? At the time it was fresh in their minds, they did not say anything, but 2 years later they did.

Colonel DWINELL. I can explain it this way: There were varying degrees of brutality, and varying degrees of duress, and there were also instances of duress that could be proven one way or the other, and when I say I had notes of one-third, I mean I should clarify it this way: After sifting out a lot of things that we did not think were probative, that we could prove or that were of any importance, we had a result of about one-third of major items, serious things: Kicking a man in the testicles, and things of that kind. When we had something of that kind, and we had the name of the party involved, where we could put our finger on something, that is what I mean.

Now, I should say they all complained generally about mistreatment in one form or another. In some instances we gave it little weight, and said, "We have not time to bother about that; we have not time to get any witnesses on that score, and let us forget about it."

Mr. CHAMBERS. Colonel, I seem to have inadvertently stumbled into what I had hoped to keep as a separate part of this thing, but I think it is necessary to continue along with it because you are right in the middle of it.

As defense counsel, unquestionably you all were very much interested in proving that these things actually did happen; you did not just want to accept the words of your clients.

Now, one logical way to have proven it would have been to have asked for a medical examination of some of these people. Did you folks request that?

Colonel DWINELL. We did not.

Mr. CHAMBERS. Was that because of the lack of time or what is the story on it?

Colonel DWINELL. Now, just a minute. I take that back. I believe Everett did make some effort along those lines, but I did not, and he was

the only one who knows about that. I recall some discussions about that, but I have forgotten them.

Mr. CHAMBERS. Then, do you know what efforts he made or what he was thinking about—I hate to press your memory here, because I know you are trying to get all the details out, but to me, in talking to the prosecution people, we have been apprised by all the boards of review, and everyone else, that have not made some effort to establish some of these facts which probably either through X-ray or physical examination could still be substantiated.

Now, can you recall anything more than the fact that there was some discussion about it and Everett did make some efforts?

Colonel DWINELL. I cannot recall anything more than that; no.

Senator BALDWIN. May I ask a question here? You were in daily contact with these men for several days?

Colonel DWINELL. That is right.

Senator BALDWIN. Several weeks, as a matter of fact?

Colonel DWINELL. Well, I was in daily contact with the 22 that I had under my supervision.

Senator BALDWIN. Yes.

Now, from your personal observation of those men, did they show any signs of having been physically abused?

Colonel DWINELL. They did not.

Senator BALDWIN. There is some claim made here that these men, a large percentage of them, were permanently injured in the groin. Did you ever have any complaint of that kind from any of the men you represented?

Colonel DWINELL. Not from the men I represented. The people who can testify to that are those lawyers who handled the junior officers, the non-commissioned officers. They were separately interrogating their people, and they did tell me about that in our general discussion, but I did not get that from the accused themselves; no.

Mr. CHAMBERS. Did they—excuse me.

Senator BALDWIN. Let me ask you this: Other than the accused statements as to the physical abuse that they had been subjected to, was there any other evidence—I mean, judging it from the standpoint of being in terms of what would be competent evidence in an American court—was there any evidence that they had been abused physically?

Colonel DWINELL. There was some other evidence presented from witnesses that we interrogated on behalf of the defense.

Senator BALDWIN. Well, what witnesses were those? Do you know?

Colonel DWINELL. Let me see if I can remember a name. I think we had a witness by the name of Agather. It is my distinct impression that he complained, and I think he testified—I am not too sure but I think he testified.

Senator BALDWIN. Agather?

Colonel DWINELL. A-g-a-t-h-e-r.

Senator BALDWIN. Were there any other witnesses that you can recall, other than Agather?

Colonel DWINELL. That were—I do not know how many; I do not recall how many, but there were several and, of course, I do not recall their names. That name, Agather, stands out in my mind, because I saw it in the record of trial the other day.

Mr. CHAMBERS. It has been placed in the record, Colonel, that a great many of these people came to Schwabisch Hall quite late in the game. We have a list here of some 22—this is taken from Colonel Ellis' affidavit, and he indicated that this group of 22 came from the 5th of March up to—in fact, the 16th of April, after they had left Schwabisch Hall, and got them into Dachau, some of those persons have affidavits in here indicating duress of various kinds, and it would appear that the marks on them would be rather fresh.

Did any of the defense counsel or any of your staff come in and say that the accused so-and-so had a black eye or he still has got a broken jaw or his teeth are missing or things of that type?

Colonel DWINELL. No, I do not recall anything of that kind.

Mr. CHAMBERS. I am trying, as you know, to get the facts on this thing, and it would appear that you must have made some evaluation of that brutality situation. What was your honest evaluation of this thing? Was it as general as alleged in these affidavits with which you are familiar? What is your opinion on it?

Colonel DWINELL. My opinion is that it was true. That comes from what I might call not hearsay in a sense, but reputation. You know when you hear things orally daily, and check one story against the other, it becomes a greater thing than merely a lot of stories. It becomes a general thing, and every day, every day, day after day, somebody would come in and say:

"I just talked to accused so-and-so, and he has just told me this." So-and-so reports that to me the next minute, and somebody else, Colonel Sutton would come in and say, "Somebody told me something."

Well, that went on continually, and we cataloged this all down, and we made this terrific chart, and made notes on it, and we asked them over and over again, "Now, you are not lying to us? Were you hit in the groin?" The answer would be "Yes." "How long ago?" "A month, 2 months ago." I do not recall just whether I ever asked them particularly to show me any evidence of it, I do not think I did.

Senator BALDWIN. Let me ask you one question there: In the face of those complaints, did you ever ask for a medical examination of these men?

Colonel DWINELL. I did not, but as I said before, I think Colonel Everett did, but he would have to verify that.

Senator BALDWIN. I think that is a very important point, because if these affidavits, and these confessions that were used in this trial were obtained from these accused by threats of violence and by physical violence as grave as some of these affidavits indicate, it seems a strange thing to me that there was not at that trial medical testimony offered to demonstrate that these claims were so, because it seems to me—you say that you objected to the admission of these confessions, so-called?

Colonel DWINELL. Yes.

Senator BALDWIN. You must have objected on the basis that they were obtained under and as a result of violence or duress.

Colonel DWINELL. That is right.

Senator BALDWIN. Well, did you yourself ever think of pressing that medical side of this thing?

Colonel DWINELL. No, I did not; I did not.

Senator BALDWIN. You say Colonel Everett spoke of it. Can you tell us anything further than the fact that he had it in mind? Did he ever do anything about it?

Colonel DWINELL. I do not think he did. That is to say, he may have had some conversations with higher authority about that, but he did not report anything to me about that.

Senator BALDWIN. Was there any indication on the part of the Army authorities or on the part of the court that other than the overruling of these motions, and the fact that there would be no postponement that, within reason, outside of that, as you claim it, any other request of yours would not be granted?

Colonel DWINELL. No.

Senator BALDWIN. I mean, was there any consistent idea, any feeling on your part that no matter what you offered in the way of evidence these people were all going to be convicted?

Colonel DWINELL. Oh, yes; I had that feeling from the start, and I still have it. I will never change that opinion. It was a hopeless task. It was a hopeless case. Psychologically you could tell that from the trying of the case.

I have tried lots of cases, but that was the only one in my life where it was impossible to really go ahead with your evidence.

Senator BALDWIN. Let me ask you this question: Such evidence as you wanted to offer, was there any impeding that?

Colonel DWINELL. You mean at the time of offering it in the courtroom?

Senator BALDWIN. Yes.

Colonel DWINELL. Yes, sir. They are all listed here, all those instances are listed here; and, as a matter of fact, I must confess to another thing, that as I mentioned before, when you get a defeatist attitude on a trial like that, you do things that are not correct from a trial lawyer's standpoint. I think Colonel Ellis recalls one incident which I take the blame for myself.

I called a witness and qualified him—a very important witness, he was, a German general. I qualified him by having him testify at length of his experience in the German Army from 1909. He was a tank expert.

At the conclusion of qualifying him I began my direct evidence, and there was an objection made, and the objection was so worded that it would call upon the prosecution—the defense, I mean—for certain concessions that we should not have been called upon to make, and we stopped, and that was my fault.

I say this: A lawyer should not do that. He should not stop without continuing to press his objection, and state to the court definitely what he has in mind, what he seeks to prove; but this was toward the end of the case, and I quit, and that is not the correct attitude. But it comes from constant overruling of the normal things, normal objections.

Senator BALDWIN. Were you convinced in your own mind that so far as these prisoners were concerned, they were a part of the First SS Panzer Division?

Colonel DWINELL. Oh, yes; yes.

Senator BALDWIN. Were you convinced in your own mind that generally, in keeping with the whole offensive, there were American soldiers, American prisoners who were shot?

Colonel DWINELL. I will say this, that I have no doubt in my mind at all, and I never did have any doubt about the establishment of the corpus delicti, with respect to the crossroads; that is, that the crime was committed, American soldiers were killed.

I never have had any doubt about that, but whether my people, the ones I defended, did it or not, that I still doubt.

Senator BALDWIN. But you are convinced in your own mind, or are you not, that they were members of the SS Panzer Division, the First Division, the First Regiment?

Colonel DWINELL. Yes, sir, I am; yes, sir.

Senator BALDWIN. And that they spearheaded the attack?

Colonel DWINELL. And that they were there, among others.

Senator BALDWIN. What I am trying to get to is this—it is kind of narrowing down the field to this: Of the general shooting and the general participation of members of this regiment, you have no doubt in your mind, as I understand it, but what you do have a doubt in your mind is as to the particular part the particular individuals took in it; is that what you mean?

Colonel DWINELL. No, not quite that. I mean that as far as the crossroads incident is concerned, I have no doubt but that American soldiers were slaughtered there. I have not any doubt at all. I have no doubt that along the line of march and in that vicinity were members of the First SS Panzer Regiment, but I doubt that they were the only ones there, and I doubt the specific accused were the ones who did what they have been accused of doing.

Senator BALDWIN. Now, I want to have you base this testimony not on what any of these accused told you, but I want to have you base it on your general observation of the whole trial—I mean, on what the prosecution had to offer—because I do not think it is for me to ask you what these men told you, because you are their defense counsel, and these things that you have said, are they based on your general observation of what the prosecution had to offer, your knowledge, generally, of the thing, as distinguished from what individual defendants told you?

Colonel DWINELL. That is right. It is based on the record of trial, and the trial itself.

Senator BALDWIN. Yes.

Colonel DWINELL. And the reviews.

Senator BALDWIN. Well, there were some—to try to narrow this thing down, the crossroads was one of the 13 different incidents.

Colonel DWINELL. That is right.

Senator BALDWIN. And from hearing the whole trial of the case, were you of the opinion that there were soldiers, American soldiers, shot down at Honsfeld? Do you remember that?

Colonel DWINELL. I remember that; yes, sir.

I am of the opinion that American soldiers were shot down at Honsfeld and in a number of other places, but whether or not they were shot down as unarmed prisoners of war or shot in normal combat, I never will be able to state.

Senator BALDWIN. But the ones at the crossroads, you are convinced were shot as prisoners of war?

Colonel DWINELL. Yes; I am convinced of that.

Senator BALDWIN. There were some civilians at Stoumont who were shot. What do you have to say about that?

Colonel DWINELL. May I refresh my recollection?

Mr. CHAMBERS. To refresh your memory still further, that was the group that was in the cellar, and was supposed to have been called out. There was a German-speaking woman who hollered out to the Germans after a couple of grenades had been thrown in, and then—

Colonel DWINELL. Oh, yes! I am convinced that civilians were shot in that place, and other places, but I am not convinced from the record of trial, and from anything else, that they were unlawfully shot.

Now, that brings up another point. We tried desperately—I say, “We tried desperately”—that was one of the defense issues that we wanted to get before the court; with great difficulty we did, to some extent. There was common knowledge that in Belgium the maquis had been operating for a long time, the so-called Belgian-resistance movement, and the Belgian civilians themselves were shooting Germans from outside of windows and every place else.

That is a matter of common knowledge, so much so that I think any court could have taken notice of that.

Now, whether these people were lawfully shot or not, I do not know. The fact that there were some civilians who were shot, I am convinced of that, but, for example, in one outstanding case that the court decided against the accused—I have forgotten the name of the accused for the moment, but I do remember this—one accused was accused of shooting somebody in a Belgian town, some civilians, and it was established, at least I think it was, that there was a radio up in the church tower, and he was ordered to destroy the people and the radio, which is a perfectly normal thing.

Now, the review board has agreed with that theory. They state in here that is not a war crime, and yet the court found them guilty and sentenced them to death, and it was instances like that that I know and feel that the civilians, Belgian civilians, were shot, but whether they were shot lawfully or not, I do not know.

Mr. CHAMBERS. Colonel, may I ask a question? I am asking now—I have got a keen personal interest in this: In what cases can a civilian be shot lawfully?

Colonel DWINELL. As a spy.

Mr. CHAMBERS. All right, there are others. Would you mind enumerating them?

Colonel DWINELL. Well, if they actively engage in combat.

Mr. CHAMBERS. Right.

Colonel DWINELL. I cannot think of any others.

Mr. CHAMBERS. I have had a little experience in this business of cleaning out areas in which there were lots of civilians, and generally speaking, unless you have got some type of resistance from them, you certainly made an effort to round them up and not harm them.

There are times when you cannot fool with them, I am perfectly willing to concede that. It is your opinion that these facts here are so sufficiently clouded by the combat situation at that time that you are not convinced in your own mind but what the Germans were doing right in cases of civilians who were killed, including those cases at Stoumont, apparently, where there were a lot of women and children mixed up in the situation, who came out of the cellar before they were shot down?

Colonel DWINELL. My position is this: From the record of trial, and from the trial, I have a reasonable doubt, a very definite doubt.

Mr. CHAMBERS. No questions on that one.

Senator BALDWIN. I had a question that popped into my mind and then out again.

Mr. CHAMBERS. I have one I would like to ask: You stated some time earlier that you felt that the court was trying to be fair, notwithstanding which, because of their repeated decisions, either on recommendation of the law member or for other reasons, you, the defense counsel, became completely discouraged in your point of view and eventually, as you put it, you threw in the sponge.

Do you feel if this court was trying to be fair, and that if each of these accused had been given an opportunity to go on the stand and make these same charges which they later made in affidavit form, that this "fair" court would not have taken judicial notice of it and have demanded an investigation to either approve or disapprove those charges?

Colonel DWINELL. I do not think they would. I do not think they would have done that.

Mr. CHAMBERS. I believe in two cases, two of the accused, did allege brutality in the case of Christ, and if my memory is not too hazy, it may have been Hennecke or others.

Colonel DWINELL. I tried a case, prosecuted a case over there several months afterward, and there were 22 defendants, and I made sure there was not any duress. If there was the slightest indication on it, I put on no proof, and I did not find any, and to my surprise, during the course of the trial one of the CID men took the stand and testified to some duress. I was greatly surprised about it; he was called as a witness by the defense. That court stopped immediately on its own motion, and adjourned and investigated that thing. They were no incensed over it, and they wanted to make sure whether it was the truth or not. That was not this court.

Mr. CHAMBERS. But the court trying this Bersin case, in your opinion, would not have done that?

Colonel DWINELL. That is my opinion.

Mr. CHAMBERS. In fact, it did not do that when at least one of the accused had taken the stand on his own behalf and charged brutality?

Colonel DWINELL. More than one.

Mr. CHAMBERS. Well, I believe there were only two, sir, to be accurate, insofar as the accused are concerned, but at least in the case of Christ, which runs in my mind very clearly, he did allege brutality on the stand, and you feel that the court at that time erred in not adjourning and making a thorough investigation of this matter?

Colonel DWINELL. I certainly do.

Mr. CHAMBERS. Well, was there any discussion as to why they did not do it?

Colonel DWINELL. I did not discuss anything with the court.

Mr. CHAMBERS. I understand that, but there must have been discussions around the place as to what was going on.

Colonel DWINELL. No.

Mr. CHAMBER. Colonel, was there much heat in back of this Malmedy case, so that the methods of the prosecution—I am speaking of the court now, not the investigative staff—perhaps they were hurrying the thing along and endeavoring to get the thing through?

Colonel DWINELL. I think it was the psychology at the time. It was right after the war ended, and this thing was a shocking thing, the crossroads incident. It shocked the whole world, as a matter of fact, and I think that hate was there, present. I am not guessing at this, you see; I am not testifying by guess in any of these instances.

One member of the court, during the trial, told me how he felt. I did not solicit any information. Down at the hotel he walked by and he said, "Why don't you get all this mumbo jumbo over anyway. You're wasting a lot of time."

Mr. CHAMBERS. Would you not say that that member of the court violated his oath and probably disqualified himself?

Colonel DWINELL. They did not take any oath.

Mr. CHAMBERS. Do you not feel that he disqualified himself?

Colonel DWINELL. He did; he got off the court.

Mr. CHAMBERS. Well, did you bring it about or did he disqualify himself?

Colonel DWINELL. I brought it up by reporting it to Colonel Everett. What happened after that, I do not know.

Senator BALDWIN. He withdrew from the case?

Colonel DWINELL. He went home, and I never did exactly know why.

Senator BALDWIN. That is, he did not participate in the final judgment?

Colonel DWINELL. No, sir.

Senator BALDWIN. The question that I was going to ask before was this: Was this trial continued until you had an opportunity to offer all the testimony that you had then available to offer?

Colonel DWINELL. No, sir. We were given 10 days from the time the prosecution rested to the time the defense opened up, and there again that matter was a matter settled between Colonel Everett and Colonel Ellis, and I cannot speak for Colonel Everett on that point.

Colonel ELLIS. No; that was not discussed with me.

Colonel DWINELL. Well, I am not stating—I am only stating what Everett told me.

Colonel ELLIS. I had nothing to do with the amount of time that the defense would have. That was settled between Colonel Everett and General Dalby, if it was settled with anybody; it was not settled with me.

Senator BALDWIN. In other words, it was your impression that the length of time you would take was settled between Colonel Everett and somebody, presumably in authority?

Colonel DWINELL. Colonel Ellis was probably right, that he had a discussion with General Dalby, president of the court, and that arrangement was made.

Senator BALDWIN. General Dalby, was he a line officer?

Colonel DWINELL. He is a line officer.

Senator BALDWIN. Yes, sir.

Mr. CHAMBERS. You say you had 10 days between the prosecution resting and the time the defense began. In one of the paragraphs in the petition before the Supreme Court Colonel Everett stated that it was less than 2 weeks allowed to prepare the defense.

Now, I believe a little earlier you said there, and we figured that it was less than a month?

Colonel DWINELL. About 3 weeks is about all I can figure.

Mr. CHAMBERS. Then, in addition to that, there was an additional 10 days to get your defense ready?

Colonel DWINELL. Yes, sir.

Senator BALDWIN. Were there facilities made available to you to go out and look up witnesses, that is, such as going to Stoumont?

Colonel DWINELL. No; not until that 10-day period. That 10-day period came along and Everett made arrangement with the commanding officer down there to permit Lieutenant Wahler and two other people to go up to La Gleize and Stavelot, and Stoumont, and they had to go like the dickens. I remember they complained to us about the fact that they had to accomplish so much in so little time, but they did go up there, and that was the only time that they made available to us.

Mr. CHAMBERS. The prosecution took 3 or 4 days in that La Gleize thing, too?

Colonel DWINELL. I do remember discussing that with Colonel Everett, discussing it several times. I remember Colonel Everett—Lieutenant Wahler and myself pleading with him to go out and see if we could get a team assigned to us. We could not operate without an investigating team, and it was never accomplished.

Mr. CHAMBERS. Well, I believe also in the discussion with you, perhaps not in the record here, there was some reference made to some discussions you had with Colonel Everett on this business of putting the accused on the stand in their own behalf. Now, I believe because they could not be sworn and for many other reasons you have indicated the reason—part of the reason also was the fact that you felt the prosecution had not shown a prima facie case?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. And you felt it was perfectly safe?

Colonel DWINELL. That is correct. As a matter of fact, I will go further than that and say that when the prosecution rested I begged Colonel Everett, myself, to get up and rest, and the theory I had was among other things, as you have stated, that there was not a prima facie case. They had a case based on extorted confessions and what not, cases against accused based only on other confessions, and things of that nature.

Despite the rules of evidence over there and the latitude, I still did not think they had a case, and then to follow up I had a meeting of all the 74 accused the following day or two days after the prosecution rested, and here is what I did at that meeting. I read to the accused through an interpreter—I called them by name, "Werner Kuhn, stand up. This is all the prosecution has established. In my opinion, there is no case." Then I would say, "So-and-So, get up." And I read to him, "This is what the prosecution has put out in the record of trial, and in my opinion it is not a prima facie case."

Then, I said that under our system of doing things in the United States or rather Anglo-Saxon principles of trying cases where the burden has not been carried by the prosecution, we do not feel we are called upon to explain anything or do anything. The burden is on the prosecution. It is an old principle that I tried to drive home to them, but their German minds could not reason it that way. They said, "No, we don't see it that way."

Well, then, we had a lot of bickering. In fact, not only did we have it with them but particularly with the German lawyers. The German lawyers wanted to go ahead and put the whole 74 accused on the stand.

Well, it was voted—we decided, as long as 1 accused out of the 74 insisted on taking the stand, we would have to go along with them and let them all take the stand. Consequently when we came back and opened up our case we started off with Hennecke, Tomhardt, and one other fellow, and then we began to notice, like a bunch of drowning rats, they were turning on each other and they were scared, and like drowning men, clutching at straws, they would say, "No, I was not at the crossroads; I am certain I was not, but So-and-So was there," trying to get the ball over into his yard. So, we called a halt.

Now, how can we properly represent 74 accused that were getting so panicky that they were willingly saying things to perjure themselves?

Mr. CHAMBERS. Now, from the standpoint of the defense, I think your question is entirely sound, but from the standpoint of the prosecution, I imagine, they would have thought it was a mighty good thing to happen.

Colonel DWINELL. That is right, but suppose my client gets on the stand, in other words, to save his neck, and lies and hangs the co-accused, and that was being done in my opinion, and so I said to them after the second meeting, "I will not permit you, in charge of the whole defense as I am, to hang each other, to get out of a jam."

Mr. CHAMBERS. Now, these were the same coaccused who later all put in affidavits saying that the prosecution beat the dickens out of them, just to get those statements out of—

Colonel DWINELL. That is right. I am mentioning all that to say that that was the problem, and that is a problem that any defense counsel would have in handling a situation of that kind.

Now, as Colonel Ellis will recall, you will recall in the ensuing days, after three or four accused had taken the stand, when one of them finished testifying, I had a conference with Colonel Everett in the courtroom, and we asked the court for a 2-hour adjournment, and the court granted that 2-hour adjournment and cleared the courtroom, and allowed us to keep the accused in the room.

The purpose of that was to convince them again that they ought to quit; and, finally, they did, and they quit on that basis.

When the more intelligent ones, the general officers, General Kramer, in particular, volunteered to talk to the men, he got up and spoke to them quite at length in German. I do not know exactly what he said, and at the conclusion of that speech they all voted to quit, and then we quit.

Mr. CHAMBERS. May I ask, Colonel Dwinell, did not General Kramer previously testify?

Colonel DWINELL. That is right.

Mr. CHAMBERS. As had Priess and Dietrich?

Colonel DWINELL. That is right.

Mr. CHAMBERS. So that the generals had testified and Peiper had testified.

Colonel DWINELL. That is right.

Mr. CHAMBERS. Then, we had Christ, who was an officer, and several of the rest?

Colonel DWINELL. That is right.

Mr. CHAMBERS. When you began to get some of the enlisted men and some of the officers I presume they began to point the finger at another accused.

Colonel DWINELL. That is right. As a matter of fact, the best illustration of that is our good friend, the one who was taken out of the trial, Marcel Boltz, who insisted on taking the stand more at the German lawyers' insistence than his, and we had some bitter words over that. He took the stand, and pointed the finger at several people, and then he was taken out of the trial and set up to France, as I recall it, and I understand he was acquitted—tried as a war criminal.

Colonel ELLIS. Never tried.

Colonel DWINELL. But the members of the accused, in the group, were some bitter about him because as soon as that trial day was over they all could not wait to tell us how he had been lying, so, they said, to clear his own skirts.

So, I said that there will be no more of that. Each individual accused has his own interest, but I have the interests of the entire accused, and that was the theory under which we operated.

Senator BALDWIN. Well, it being 5 o'clock and we having been at this thing since a little after 1:30, I think we will take a recess until tomorrow afternoon.

(Whereupon, at 5 p. m., an adjournment was taken until 2 p. m., Tuesday, May 10, 1949.)

MALMEDY MASSACRE INVESTIGATION

TUESDAY, MAY 10, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2:25 p. m., in room 212, Senate Office Building, Senator Lester C. Hunt (presiding).

Present: Senator Hunt.

Also present: Senator Joseph R. McCarthy; J. M. Chambers of the committee staff; Francis Flanagan, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; Colonel Murphy, Colonel Ellis, and Colonel Raymond.

TESTIMONY OF LT. COL. JOHN S. DWINELL—Resumed

Mr. FLANAGAN. Colonel Dwinell, yesterday afternoon toward the end of your testimony you were discussing for the committee here the reasons why you cut your defense short and put on only a few of the defendants, and I think that we should make the record quite clear as to your reasons and the reasons of the other defense counsel for failing to put on all of the defendants in this case and allow them to testify on their own behalf.

Can you tell the committee your exact reasons for not putting on more of the defendants in this case?

Colonel DWINELL. The first reason, of course, I discussed yesterday, was the fact that they realized that their testimony would be of relatively little probative value, because it was not under oath; but aside from that, when it was decided to put some of the accused on the stand, we detected that when they were testifying they were incriminating some of the coaccused, and falsely so, and particularly in the case of Marcel Boltz, who took the stand for several hours. We checked with our accused, we checked with our notes, and compared all our facts.

We were also, as defense counsel, quite convinced that he was lying in order to save himself; and it was the fact that these accused in their desperation in that particular situation were reaching out and putting the finger falsely on other people, that we required them to stop testifying because we felt—at least I felt and Colonel Everett felt—that our responsibilities were not only to each individual accused but to the group as a whole.

Mr. FLANAGAN. In other words, you did not prevent your clients, the accused in this case, from taking the stand for fear that they would incriminate themselves with the truth?

Colonel DWINELL. Oh, no.

Mr. FLANAGAN. But rather that they would incriminate others with perjured testimony.

Colonel DWINELL. That is correct.

Senator HUNT. May I ask you a question, Colonel?

As I get your answer, then, you deferred asking any further testimony from the accused because it was injurious to your own case?

Colonel DWINELL. The case as a whole. I say injurious because of the fact that they were not telling the truth.

If it was injurious and still was the truth, that would be another matter, but I was sincerely convinced that they were not telling the truth in a good many instances while they were on the witness stand, purely out of the human nature angle that when they were cornered like that, as they said, and felt that they were, they instinctively put their finger on someone else. That happened particularly with respect to instances where one or two denied their being at a particular spot. "I was not there, but my captain was there," or "My sergeant was there, and he is the one that did all this," and so on.

Senator HUNT. Then, your conclusion was that placing these men on the stand was detrimental to the defense?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. In that regard it was detrimental to the defense not in that you would have your defendants justly convicted but that they would be convicted on perjured testimony?

Colonel DWINELL. That is right.

Mr. FLANAGAN. And unjustly convicted?

Colonel DWINELL. That is right.

Mr. CHAMBERS. May I interrupt?

Colonel Dwinell, there were nine of these accused that testified.

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. And during the course of their testimony—correct me if I am wrong—I believe there were three of the people who testified who were general officers, and then Colonel Peiper.

Colonel DWINELL. That is right.

Mr. CHAMBERS. Who would be four of the nine, and then there were several officers including Christ and one or two others and then perhaps some enlisted men. It was during the course of the testimony of these people that you felt that falsehoods were being put into the record which would be injurious to others of the accused?

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. Well, now you say they were falsehoods. I wonder how you knew they were falsehoods. In other words, were they statements which obviously were not true, based on the evidence that had been put into the record, or were they denied by the folks who were being accused by these witnesses?

Colonel DWINELL. They were denied by the folks that were being accused by these witnesses.

I put on, of those people who testified as part of my responsibility, I put Peiper on the stand. I did not conduct the direct examination of the three generals. Mr. Strong did that.

In their testimony the three generals testified about a situation that concerned itself only with the giving of the orders originally at the beginning of the campaign, but when we got down to the lower ranks—I mentioned Marcel Boltz as the outstanding example.

I, for one, had nothing to do with the preparation of his direct evidence. I did not interrogate Marcel Boltz to any extent at all, because he was under the supervision of one of the other groups of attorneys, and so I remember in that particular case that when Boltz was testifying I listened to him almost as carefully as though I were on the other side of the case and began to notice that he, through the questions asked of him, by his attorney for the defense, and the cross-examination particularly by the prosecution, was saying things that were damaging to the clients that I represented, and so we conferred with the German lawyers in particular, and some of them gave me the impression, actually gave me the impression, that it did not bother them so much as long as they freed their own man.

MR. CHAMBERS. Well, then, you gathered—and I believe yesterday's record would show—that there was considerable disagreement initially between not only the members of the American counsel but between the American counsel and the German counsel, and then I believe you also told us that it took considerable persuasion, and finally General Kramer, if I remember correctly—

Colonel DWINELL. That is right.

MR. CHAMBERS. Had to talk to the group as a whole, the group of accused as a whole, to convince them that they should no longer take the stand in their own behalf.

Colonel DWINELL. That is right.

MR. CHAMBERS. And you were convinced, I take it, at that time that the balance of these accused would continue to put falsehoods and untruths into the record for the purpose of clearing themselves at the expense of the other accused?

Colonel DWINELL. That is right.

MR. CHAMBERS. Again, to go back to the same question I asked you yesterday, these are the same accused who have signed these affidavits 2 years later?

Colonel DWINELL. That is right.

MR. CHAMBERS. Alleging the various brutalities that took place, and you still believe that those statements made by them are truthful?

Colonel DWINELL. Yes; but, of course, I have been talking about putting the finger on other people concerning the actual incidents that happened in the campaign. I was not talking about duress.

Marcell Boltz testified considerably as to where he had been along the route of march and what he had seen and who was present. Those are the things I was speaking about.

MR. CHAMBERS. Yes, sir. My only point was simply this: Their testimony, which was unsworn testimony before the court, you had reason to believe that the balance of those who had not testified and some of those who had testified might possibly be so untruthful in their statements that it would hurt the case of the accused.

Colonel DWINELL. Yes, sir.

MR. CHAMBERS. But on the other hand, we now have affidavits from all those people, the same ones made a little later on, these statements having been sworn to, but you do believe that the statements, generally speaking, in those affidavits are probably correct?

Colonel DWINELL. That is right; I do.

MR. CHAMBERS. Thank you.

Mr. FLANAGAN. One thing I am sure the committee wants to get here and that we have been trying to elicit from the various witnesses is the true facts concerning these allegations of brutality.

Now, yesterday, in your testimony you stated that you talked with various clients, the accused in this case, and that some of them alleged that they had been subjected to physical violence, and that you did not order physical examinations of these men.

Colonel DWINELL. That is right.

Mr. FLANAGAN. Now, could you tell the committee why you did not order physical examinations if you actually believed that these men had been subjected to physical violence?

Colonel DWINELL. Well, most of the cases that were told to me by the people that I was working with were of the nature that a physical examination would have been of no avail.

For instance, if a man tells me that 5 or 6 months prior to the time he talks to me some interrogator took him into a cell and punched him in the jaw and slapped him in the face and knocked him down a couple of times, incidental to obtaining a confession, that being so long ago it was quite obvious that the marks of that kind of mistreatment would not be evident, and I had a lot of those cases reported to me.

I recall now one incident. I do not know which accused it was, but I definitely remember one accused telling me that he was marched down the hall. He thinks it was Polish guards that had charge of this thing. He had a hood on his head and they allowed him to fall down the steps. He did not break any legs, but he was hurt.

That was several months ago. He looked perfectly all right to me at the time I was interrogating him.

Mr. FLANAGAN. The reason you did not request medical examinations in the cases that came to your attention was that you did not think that the men would have on them at that time any marks that could be proven or disproven by medical examination?

Colonel DWINELL. That is right. Now, you must understand, and I think I mentioned this yesterday, that this was a very large organization. When you are attempting to interrogate 300 witnesses, 73 accused, and prepare motions and what not with a set of 7 or 8 rooms in a row, half a dozen interrogators, all kinds of lawyers running in and out—I do not know now what Mr. Walters and Colonel Sutton and the rest actually know about some of the more serious beatings of their clients.

I did not have time to find out everything about the case, but I heard them discussing it. Whether they know of any serious brutalities to the extent that a physical examination is immediately necessary, you would have to ask them. I do not recall.

Mr. FLANAGAN. If you had had more time in which to prepare your defense, do you think that you would have, or would you have gotten together with the other defense counsel and tried to make further investigations into these charges of brutality?

Colonel DWINELL. Yes; I think so.

Mr. FLANAGAN. And the reason you did not was your lack of time?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. You knew they had to be ready for that trial on the 16th, come what may?

Colonel DWINELL. That is right.

Senator HUNT. Colonel, may I ask you a question at this point?

Did these purported acts of cruelty happen some time before you became connected with the case?

Colonel DWINELL. Yes, sir.

Senator HUNT. How long before?

Colonel DWINELL. Well, various periods of time, running anywhere from 5 to 8 or 9 months.

Senator HUNT. Did you mention this during the defense of the men during the trial?

Colonel DWINELL. Only through the testimony of those accused who took the stand.

Senator HUNT. Did they say in the open court that they had been beaten and things of that kind; that they had been tortured?

Colonel DWINELL. The ones that took the stand did not have any violent mistreatment, as I recall it. Christ did describe mistreatment, but my memory is not as clear as to when it was or just to the extent of it. I would have to refresh my mind from the record.

Senator HUNT. But as a defense attorney you had no plaster cast made of the mouth to show the teeth had been knocked out or you had no X-rays to show jaws had been broken or you had no physical examination to prove that they had been severely injured in the groin, or things like that?

Colonel DWINELL. No, sir; except that I would like to say that I do not know what efforts, if any, Colonel Everett, the chief defense counsel, might have made in that direction. I would have to check with him.

Senator HUNT. Now, I understand that you did not see any of these acts of cruelty yourself?

Colonel DWINELL. I did not.

Senator HUNT. So what you know, you would have to classify as hearsay. Is that right?

Colonel DWINELL. I know it as a lawyer being told those things by clients and witnesses; that is all.

Mr. CHAMBERS. A question, sir.

Christ did testify, as I recall the record of trial, as to these brutalities. Was he one of those witnesses who you had reason to believe might have been falsely bringing others into the picture and motivated you not to call further accused?

Colonel DWINELL. No, no. I say that for this reason: He was one of those assigned to me, and I would have detected that prior to putting him on the stand.

Mr. CHAMBERS. I believe yesterday you stated that you handled the commissioned officers exclusive of the general officers.

Colonel DWINELL. Yes, sir; 22.

Mr. CHAMBERS. And out of that 22, approximately one-third had alleged brutalities; is that correct?

Colonel DWINELL. Brutalities worth mentioning; yes, sir.

Mr. CHAMBERS. And I believe you also testified that in a hasty study of these affidavits you are aware now that they all had claimed brutalities?

Colonel DWINELL. That is right.

Mr. FLANAGAN. Aside from the approximate one-third that charged rather severe brutality, how many of the 22 that you defended alleged that duress and other illegal methods had been used to obtain statements of confessions from them?

Colonel DWINELL All of them, and when you use the word "duress," I mean all-inclusive, forms of trickery, deprivation of normal rations, no blankets, various things of that nature, some in a minor degree, some in a major degree.

Mr. FLANAGAN. The question was brought up here by Mr. Chambers, I believe, as to whether or not you had notified the court of this brutality. Now, is it a matter of fact that Christ at least alleged in open court, in the presence of the court, that he had been treated with physical violence by the interrogators?

Colonel DWINELL. That is right.

Mr. FLANAGAN. In addition to that, as you testified yesterday, the Army authorities must have been advised that brutality was being used because they conducted an investigation.

Colonel DWINELL. That is right.

Mr. FLANAGAN. Now, in view of that, do you know why the court did not order an independent investigation of these charges?

Colonel DWINELL I do not know what the mental processes of the court were, what they were thinking about. My impression was, as I stated yesterday—and my impression was all during the trial—that the court was somewhat prejudiced.

Whether that is the reason or not, I do not know. All I know is that they heard of these things, they knew that they existed, they had evidence of it to some extent right in front of them in the court and nothing happened.

Mr. FLANAGAN. Now, am I correct in stating, Colonel, that after the Malmedy case, you sat on a number of other cases as a member, a law member, of the courts trying war criminals?

Colonel DWINELL. That is right.

Mr. FLANAGAN. In any of those cases that you sat on, were charges of brutality ever made?

Colonel DWINELL None whatever except as I mentioned yesterday. I prosecuted a case, and the defense brought a couple of witnesses to testify to some mistreatment of one of the accused that I was prosecuting, and that was a surprise to me, and the court immediately investigated it to determine whether there was any truth in it.

Mr. FLANAGAN. In that case, as soon as the allegation was made, the court made a thorough investigation to see whether there was any truth or falsity to it?

Colonel DWINELL. Yes. As a matter of fact, in that same case General Stroop, the principal accused, testified that he had been mistreated right at Dachau in the bunker in the camp. He did that in the morning. I remember this well.

He talked about conditions in the cell where he was living and how cruelly they were treating him in that respect, and the court adjourned immediately, and General Kiel, the president of the court, personally went over to that cell and made a personal investigation to determine whether there was any truth in it.

Mr. FLANAGAN. As an experienced law member in a number of military court trials, war crimes trials, has brutality been alleged in any of the cases, would you have requested the court to stop the proceedings and make a thorough investigation?

Colonel DWINELL. Oh, yes; most assuredly.

Senator HUNT. Colonel, you were a member of the defense counsel and then later on you were a member of the reviewing board. Did you review cases in which you were a member of the defense counsel?

Colonel DWINELL. No, sir.

Mr. CHAMBERS. Purely for clearing the record, as I understand it, you did serve as an ex officio adviser to the review board that passed on these Malmedy cases; is that correct?

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. So that, in effect, while you were not technically a member of the board of review, you did assist in the review?

Colonel DWINELL. I did.

Senator HUNT. By whose orders?

Colonel DWINELL. By orders of the theater judge advocate.

Senator HUNT. You had no alternative but to carry out orders?

Colonel DWINELL. None whatever.

Senator HUNT. From the standpoint of technical, proper law procedure, you should not have accepted appointment on the review board after having been a member of the defense, should you?

Colonel DWINELL. I did not accept it.

Senator HUNT. You were just ordered?

Colonel DWINELL. No. Maybe this should be cleared.

Mr. CHAMBERS. I agree. May I ask a question of him, Senator?

He testified to this yesterday, rather he told us about it yesterday, and I think the record should show this clearly. As I understand it, you were ordered to this board and you objected to it, and they took you off of the actual board of review?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. And assigned you as an ex officio member?

Colonel DWINELL. Yes, if you want to use the term "ex officio member." I was directed to merely be in the room with the board and assist them in getting at this extremely long record, all the maze of facts, and help them get to the thing and acted in a mechanical sort of way, but, of course, I sat there in the room for 3 months and discussed it with them every day.

Senator HUNT. Then the fact that you were just in an advisory capacity is more or less of a technical term than it is a fact that you did not participate because if you were there for that time and actually in conference with them on the review board then you were functioning really as a member of the review board, although technically you were not so designated?

Colonel DWINELL. Well, I can say this without trying to evade any particular question, that when the conclusions were reached by the board I did not sign my name to any report. I refused to be a part of the board to any extent that I would go on record as agreeing with them. Naturally, as defense counsel I could not.

Senator HUNT. Did you at any time argue any of your points of view before the review board?

Colonel DWINELL. Every day.

Senator HUNT. And you participated just about as fully as you possibly could?

Colonel DWINELL. For the defense.

Mr. FLANAGAN. That was not a matter of your own choice. You were ordered to do that by your superiors?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. If you were in the private practice of law or were not responsible to Army discipline and Army authorities, would you have taken an assignment of that type?

Colonel DWINELL. No, sir.

Mr. FLANAGAN. During the course of your preparation and defense of this case, you had opportunity to discuss the facts of this case at some length with the accused, various accused in this case?

Colonel DWINELL. I did not hear the first part of the question.

Mr. FLANAGAN. I say, during the preparation of your defense in this case, you had opportunity to discuss the facts at some length with various of the accused?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. You also had opportunity to examine the confessions which these accused had given to the interrogation team of the prosecution?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. Based on your personal contacts and personnel interviews with the defendants and based on your careful examination of the signed confessions, do you think that these confessions expressed the true facts that were in the knowledge of the defendants?

Colonel DWINELL. As to the majority of them, no. I will say this: As to the majority of them, on the face of them, no. Just by looking at the confessions themselves, they were couched in such language that they were on their very face preposterous and incredible.

Mr. FLANAGAN. In other words, the confessions that were obtained by the prosecuting team were on their very face, in your opinion, preposterous and incredible?

Colonel DWINELL. That is right.

Mr. FLANAGAN. Do you have any examples of these incredible and preposterous statements?

Colonel DWINELL. I do. I picked out one today. I suppose it would be facetious, but I think it is apropos to say these were called by us, in the defense, The Tales of Hoffman. It is the confession of Joachim Hoffman. The German script was much longer than this, but the typewritten American translation takes in 12 pages of single-spaced typewritten matter.

Mr. FLANAGAN. Those are 12 legal-sized single-spaced pages?

Colonel DWINELL. Legal sized.

Mr. FLANAGAN. And this was the statement that was taken from the accused Hoffman by interrogators on the prosecution team?

Mr. FLANAGAN. That is correct. You read this statement, and it recounts in detail the events that this young man was concerned with in the month of December 1944, and he begins by tracing his movements from the very time that he first attended the critiques that were held in the Blankenheim Forest by his commanding officers.

He starts off by giving the precise date and place, the precise words of the people who spoke to him, and he goes on to trace his movement by date, by place, by road, by house, by bush, by pasture, and he details that page after page following the course of the route of march for several kilometers.

Mr. FLANAGAN. If I might interrupt right at this point, this detailed description that he was giving of what went on took place in December 1944, in the Battle of the Bulge?

Colonel DWINELL. That is right.

Mr. FLANAGAN. A very hard fought armored engagement?

Colonel DWINELL. That is correct.

Mr. FLANAGAN. And I assume, and you can correct me if I am wrong, that this German soldier who was in a Panzer division, a fast moving Panzer division, was in this country for the first time. He was going over country he had never seen before, or at least part of it was country he had never seen before.

Colonel DWINELL. I do not know that. I do not know whether he had ever been there before. He does not say that one way or the other here, although Peiper told me that most of his men had been recruited from the eastern front and that those men that he had in the Bulge, in the spearhead of the Bulge, had come from other theaters of operation.

Mr. FLANAGAN. Nevertheless, there was no evidence that he was familiar with this country other than in this fast moving military operation on the way through the countryside?

Colonel DWINELL. No.

Mr. FLANAGAN. And it was Belgium, a foreign country to where he lived?

Colonel DWINELL. That is right. This statement of Hoffman's was taken in March 1946, about 15 months after these incidents are alleged to have taken place. He very carefully begins by making references by coordinates to all the spots. He gives all the coordinates of the points on the map, which, of course, is possible because some interrogator gave him the map and pointed them out. That appears to be the fact, at any rate. At least, it is a very careful description of the localities by their coordinates. He then goes on to describe all these places in detail:

We left Honsfeld. We proceeded toward Buellingen. We made a right turn on the far outskirts of Honsfeld. I have shown the place, and it is marked "Exhibit D." Just before making this right turn, I remember passing an American truck, and on that truck was a machine gun mounted. This truck is shown on exhibit D by a symbol and the numeral "1".

When my tank was at the point marked by the symbol No. 2, I heard machine gun, machine pistol, and rifle fire from my right. I made a right turn at the intersection as indicated by the arrows and the route of march indicated by the number "3". I remember there were two houses on the right side of the road and some artillery pieces between the houses. These artillery pieces are No. 4.

When I reached the point indicated by symbol No. 5, I saw 8 to 10 prisoners standing in front of the house. They were unarmed, with their hands above their heads. These prisoners are indicated by the symbol "b".

I could go on reading for a long time. That is typical. It is more in detail as you go on, but in several places he precisely states the number of rounds that came out of his pistol, out of his machine pistol; in about seven or eight places, he said:

I fired about two or three bursts of approximately four to five rounds apiece—all of this occurring in the heat of battle.

At the cross roads I made a turn to the left, and after making this turn, there was a house and a barn on our right side of the road. Just south of this house and barn was a pasture. On the right-hand side of the road near the north

stood a Mark 4 tank, shown by symbol No. 6 on my sketch. Just as I passed this tank I saw 80 to 100 American prisoners of war standing in the pasture.

Another instance:

There was machine gun fire. From where I stood at the rear of my tank I fired four or five salvos. I fired approximately 50 shots.

In another place:

I put a new magazine in, holding 32 rounds. I entered the field. I stood next to two wounded American soldiers and fired six or eight shots.

When Schaefer gave this order to Sprenger, Sievers was standing next to Schaefer and certainly heard the order. I heard it without difficulty and was standing approximately 3 meters from Schaefer, and Sievers was standing approximately half a meter from him.

MR. FLANAGAN. Would it be fair to say that either this soldier had a phenomenal memory or a very vivid imagination who wrote this?

Colonel DWINELL. He had a vivid imagination without doubt. I cannot conceive of anyone having a memory of that kind. I do not think we have people in the world who have memories of that kind.

MR. FLANAGAN. Or someone may have written this for him.

Colonel DWINELL. Certainly, somebody carried him along through the tale.

MR. FLANAGAN. And there were other statements, other than this Hoffman, of the same type as this?

Colonel DWINELL. Yes, sir; several.

MR. FLANAGAN. And that is the reason why you say, or one of the reasons why you say, that you have serious doubts whether many of these statements express the true facts as known to the defendants?

Colonel DWINELL. That is right.

MR. FLANAGAN. In that same regard, did you talk to Colonel Peiper concerning three or four of the statements that he had made?

Colonel DWINELL. Yes; I did.

MR. FLANAGAN. And what did he say about those statements?

Colonel DWINELL. You mean his own statements?

MR. FLANAGAN. Yes.

Colonel DWINELL. Well, his own statements were not of this nature. His own statements were brief. He talked about matters that were not so much in detail as to places and times, and so on.

He talked about, discussed whether orders had been given by various commanding generals and things of that kind. Those things I can conceive can be remembered by a person in a situation.

MR. FLANAGAN. Did Colonel Peiper make any statements that would reflect on the truth of the statement that he gave?

Colonel DWINELL. Of his own statements?

MR. FLANAGAN. Yes; of his own statements.

Colonel DWINELL. Yes; he did. Of course, he testified to that in court. He testified with respect to all three statements that were put in evidence, and in general he gave the impression to me, and he told the court generally that he had decided to follow along with the suggestions made by the various interrogators that if these orders had been given by Hitler or by General Priess, Kramer, and so on, "if there is any possibility of my saving 73 of my subordinates who worked with me in this campaign, I will go along and put this stuff down on paper." That is about generally what he stated.

MR. FLANAGAN. When was the last time that you saw or talked to Colonel Peiper?

Colonel DWINELL. I saw Peiper—Colonel Ellis, do you remember when the trial was?

Colonel ELLIS. August of 1947, I think it was.

Colonel DWINELL. August of 1947, when the Skorzini trial was being conducted at Dachau. I met someone that told me Peiper was there as a witness and would I like to talk to him. He had been in Lansburg Prison for some time, and I went in merely to say "Hello."

Mr. FLANAGAN. Did you have any discussion with him at that time?

Colonel DWINELL. I did.

Mr. FLANAGAN. What was the discussion. Can you relate the discussion?

Colonel DWINELL. Well, it was something like this: I said, "Hello, Peiper, how are you; how are you feeling?" and so on. I had known him during the course of the trial to be very much of a courteous individual and very much of a gentleman and very correct in his manners, and he shocked me by his attitude. I will quote him. I remember it. It stands out in my mind. He answered me when I greeted him by saying, "God damn, why don't you hang me and get it over with?"

I remember that expression very well, because it shocked me that he used that type of language. He had always been very polite, and I said something to the effect, "Well, we are continuing with the review and the appeals in this case. Colonel Everett is very active back in the States on this matter," and he said that he wished that we would cut it out and let him alone and get it over with, because he said:

I have been in solitary confinement since May or June of 1945, and every day somebody walks down the aisle near the cell block, and I think that is it—

and he also told me that he was suffering from battle wounds and matters that were causing him excruciating pain and he wanted that cleared up but that he had complained to someone, I believe he said someone at the jail, who told him that since he was going to be hung, there would be no point in doing that.

Mr. FLANAGAN. What was your feeling about keeping this man in solitary confinement that period of time while his case was being reviewed and reviewed, and the death sentence was hanging over him all that time when he was sick or said he was sick and suffering from wounds?

Colonel DWINELL. My feeling then was quite definite and is more so no.

Mr. FLANAGAN. Well, what is that feeling?

Colonel DWINELL. Well, I think that there is something wrong with a judicial system that permits an accused to be in solitary confinement for 4 years without even knowing whether he is going to hang or not. I do not think our system of justice advocates anything—

Mr. FLANAGAN. Just to keep the record straight here, your concern over the treatment of this man was based upon your personal knowledge and the fact that you were his defense counsel?

Colonel DWINELL. And I still am his defense counsel.

Mr. FLANAGAN. You were not basing this concern on any sympathy for his actions at all, if he committed any—

Colonel DWINELL. I have no personal sympathy for Colonel Peiper at all.

Mr. FLANAGAN. You know that Colonel Peiper was the commander of an SS Panzer Division which was, at least, charged with very

brutal crimes. You know that Colonel Peiper was the adjutant or alleged to be the adjutant to Himmler and was said to be a high-ranking Nazi?

Colonel DWINELL. That is correct.

Mr. FLANAGAN. But your concern is not so much with his record as a Nazi but the treatment that he got as a human being and as an individual?

Colonel DWINELL. In the name of American justice.

Mr. CHAMBERS. May I ask a question at this point?

You have just said, "And I still am his defense counsel." I wonder, can you explain that further, Colonel Dwinell?

Colonel DWINELL. Well, I do not believe that a defense counsel's obligations cease with the ending of the trial. I think while there are any forums open for appeal, unless you are specifically relieved by that client or by some one who has the power to do so, your duties still continue.

As a matter of fact, my commanding officer is in full accord on that, and I am referring to the Judge Advocate General with whom I have talked about that, and he is in thorough accord with that principle, that my duties still continue as defense counsel in this matter, and any other matter of that kind.

Mr. CHAMBERS. Well, now to reverse the situation, had you been the law member, for instance, would you have still felt it your job to argue against any mercy or any mitigation being shown this man?

Colonel DWINELL. Yes; I think the court always has the duty with respect to a case.

Mr. CHAMBERS. This is aimed at procedures, Colonel Dwinell, not at you at all, sir. I am trying to find out the way these things in your opinion should operate.

Colonel DWINELL. That is the way I think they should operate.

Mr. CHAMBERS. Of course, you did have a subsequent relationship to this case by being the ex officio member of this board of review, but that interest is carried on through and you believe that that should be true of all defense counsel in the military service?

Colonel DWINELL. Yes, sir.

Senator HUNT. Colonel, may I ask you a question at this point as to what I understand the theory is under which law operates? I am not a lawyer. If you are defense counsel, regardless of how guilty you may think your client may be, you still have a duty to go through to the limit to defend him. Is that the theory of law?

Colonel DWINELL. I have a duty to see that the people who are prosecuting the case prosecute it to the point where there is no reasonable doubt as to the man's guilt, and that they carry the burden of proof right to the very end.

Senator HUNT. Of course, in this case, there is no question in your mind about the guilt?

Colonel DWINELL. I would not want to make any expression of opinion as to my client's guilt or innocence.

Mr. CHAMBERS. Well, Colonel, even though there have been within the Army, I believe, four reviews of this case—

Senator McCARTHY. Seven.

Mr. CHAMBERS. Four on the record. There are others that apparently do not appear on the record. Do you feel that your client has

not yet been given adequate reviews all the way through, even though you yourself participated in the fourth review?

Colonel DWINELL. Adequate reviews, did you say?

Mr. CHAMBERS. In other words, I am trying to find out—and again I am talking procedurally because I really believe this is one of the crucial points in this whole case. The record from yesterday shows that there were four reviews, the fourth at which you, an eminently able defense counsel, participated.

In spite of those four reviews and the fact that in each one, in the case of Peiper at least, has been consistently adverse to the defendant, you feel that there still should be other reviews, and in fact that is why you are testifying before us now because you feel like you want to get all the facts out on this particular case.

Colonel DWINELL. Yes. I felt that the review that was made in Frankfurt was very sincerely and honestly and correctly made. I think it was a very, very sincere effort to solve this problem, and I think most of the bad spots were taken out of the thing by that review.

However, I then determined in consultation with Colonel Everett that although that review had accomplished considerable in the interest of justice and fairness, that we still had a duty, and I emphasize the word "duty," to go to the United States Supreme Court and see whether we could get them to hear the very facts about this case that we were not able to get before the court and the reviewing people.

For that reason we pursued it to the point of going to the Supreme Court, who turned us down without hearing us, that is, they turned us down on the jurisdictional question.

Now after further consultation on the matter, and when I say "consultation," I am talking about consultation with Colonel Everett, who still feels that he is chief defense counsel in the matter, Colonel Everett, who still feels that he has the duty as chief defense counsel, and incidentally who spoke to General Green last summer and asked him if he had any objection to my being available to him in my duty.

General Green said I was always available for that purpose, and with that in mind we considered what other avenues of appeal we had and what other forums we could go to. It was at that time that the Simpson committee called on us to argue before them, and Colonel Everett and I did. The next forum to be heard became this committee.

Mr. FLANAGAN. Would it be a fair statement in line with the examination at this point, to state that your only interest in this case is your interest as a lawyer and soldier to see that justice is done to the accused?

Colonel DWINELL. Yes; and also I think that the duty goes even to the extent of seeing to it that the principles of American justice and democracy are fairly demonstrated to the people that we occupied over there in Europe. I do not want to have to apologize to any German lawyers for our procedure.

Mr. FLANAGAN. Did you have to apologize to German lawyers in this case?

Colonel DWINELL. I certainly did.

Mr. FLANAGAN. You were present in the court at the time that this court that found the accused guilty reversed and went out and made their decision?

Colonel DWINELL. I was.

Mr. FLANAGAN. How long did it take this court to reach its decision that these 73 men were guilty of the high crimes as charged?

Colonel DWINELL. It took them 2 hours and 20 minutes. I have to check the record on that to make sure of the time.

Mr. FLANAGAN. It took the court 2 hours and 20 minutes to find the 73 men were guilty?

Colonel DWINELL. Yes, sir.

Mr. FLANAGAN. If they considered the case of each man, that would take them about a little less than 2 minutes a man?

Colonel DWINELL. That is correct.

Mr. FLANAGAN. When you sat as a law member on other courts, was it your procedure to consider the case of each individual charged, or to consider the case as a whole?

Colonel DWINELL. Each individual always.

Mr. FLANAGAN. In this case they did either one of two things: They either took 1 hour or 2 hours and 20 minutes to consider the whole case, or about 2 minutes to consider each individual case.

Colonel DWINELL. That conclusion is the only one you can draw from the facts in the record.

Mr. CHAMBERS. Colonel Dwinell, I believe it is a proper place to ask for the record, in your opinion, based on one who served both as defense counsel, prosecution, and then as I believe you told us, the senior member of the courts, one of the things which seems to have most handicapped the handling of this case has been the short time at every stage in which it was processed. Is that correct?

First of all, the short time allowed the defense to prepare its initial defense. Second, it was not until, I believe you testified yesterday, during the 10-day period between the resting of the prosecution and the starting of your case that you could go out and make any field investigation, and then apparently here is another very short time element that has been injected into the picture, namely, the consideration by the court of the evidence and the facts on which they arrived at a decision.

Colonel DWINELL. Yes; but I mentioned this 2-hour-20-minute deliberation by the court because yesterday Senator Baldwin asked me the question whether or not I had the feeling from the very start that these people would be found guilty. In other words, do I have the feeling, the impression, that the court was prejudiced, and I answered that question "Yes," because I did have it through that entire trial.

That is borne out by the fact that a case involving 73 accused and so many incidents and so many allegations, so many complicated facts which required the review people 2½ years to settle and determine and they have not accomplished that; yet, that court did it in 2 hours and 20 minutes, so I cannot help but come to the conclusion that they had made up their minds in advance of the deliberation.

Mr. CHAMBERS. Colonel, I believe yesterday at one point in the testimony you made the remark that you believed that the court tried to be fair.

Colonel DWINELL. Yes; I did.

Mr. CHAMBERS. Their taking such a short time in their final decision in these cases certainly does not indicate that they were approaching the evidence with an open mind from the standpoint of reaching a verdict.

Colonel DWINELL. I realize that that statement is on its face somewhat inconsistent. Is that what you mean?

Mr. CHAMBERS. That is the point.

Colonel DWINELL. I mean by that that the court did not deliberately try to be unfair. I think that they were motivated by the war-crimes psychology at that moment—that they thought, and sincerely thought, that they were doing the right thing.

Mr. FLANAGAN. Would it be fair to state, to finish that up, that they tried to be fair but were not?

Colonel DWINELL. Yes; that is correct.

Senator McCARTHY. May I ask a question?

I might say, Mr. Chairman, I purposely am refraining from asking any questions of this witness because you spent half a day with him yesterday, and I know if I start questioning the witness, not having heard yesterday's testimony, not having had a chance to read it, I will be needlessly going over ground that you fully covered, but there will be times I will want to ask questions, nevertheless.

Did the law member of the court at any time ever comment to you on the fact that you should not spend so much time and energy trying to defend these men—that they were going to be convicted anyway?

Colonel DWINELL. Not the law member, but one of the members of the court did.

Senator McCARTHY. That is before the trial was completed?

Colonel DWINELL. Yes, sir; but that instance, I might say, that particular court member withdrew from the court before the end of the trial, but he did make that statement to me while he was on the court, and it was indicative to me of the attitude of the court.

Senator McCARTHY. In other words, he said, "Why bother trying to defend these men? They are going to be convicted anyway." This particular man withdrew, but you feel that was the general attitude of the court?

Colonel DWINELL. Yes, sir; that is right.

Senator McCARTHY. In other words, give them a fair trial and hang them.

Colonel DWINELL. He did not use that language.

Senator McCARTHY. That is the general idea.

Mr. FLANAGAN. There has been a great deal of discussion here. Colonel, about the number of times this case was reviewed, and I know that you probably know as much about all aspects of this case as anyone.

Could you tell us the number of times that you know this case has been reviewed?

It was tried. The trial was finished sometime in the early summer of 1946. Can you tell us the number of times that you know the case has been reviewed?

Colonel DWINELL. I can from personal knowledge. It was first reviewed by a four-man review board appointed—where was that?

Colonel ELLIS. I presume it was Weisbaden or Augsburg. I am pretty sure it was Weisbaden.

Colonel DWINELL. Well, that may be correct, but at any rate it was the headquarters of the war crimes group at that time, right after the trial was over.

Mr. FLANAGAN. Do you know any of the members of that four-man board?

Colonel DWINELL. I remember going up and talking to that board. That is why I know that board was reviewing the case.

I went up and talked to them in connection with the defense and our petitions for review. In fact I went up to that board and asked them if they would hold up their final decision until my petition for review was in, would be considered by them, and the only one I can remember on that board was Mr. Kessler. I think he spells it K-e-s-s-l-e-r, Maximilian Kessler.

Colonel ELLIS. I believe that is right.

Mr. FLANAGAN. What was the next review?

Colonel DWINELL. The next review was Mr. William Denson.

Mr. FLANAGAN. Who is he?

Colonel DWINELL. Formerly Lieutenant Colonel Denson in the Army, and while he was at Dachau he resigned from the Army, but continued to prosecute war crimes cases. He prosecuted the Buchenwald concentration camp case as a civilian, and I know this personally because I was on that court and I saw a lot of Bill Denson.

He was given the second review of this Malmedy case while he was working on the trial of the Buchenwald case.

Senator McCARTHY. May I interrupt? Just to refresh your memory, was there not also a review by a two-man board before Denson had the job?

Colonel DWINELL. Not that I know of.

Mr. FLANAGAN. Who did Denson represent? Who was he reviewing it for?

Colonel DWINELL. He was appointed by Colonel Straight.

Mr. FLANAGAN. For the deputy judge advocate?

Colonel DWINELL. That is right.

Mr. FLANAGAN. And what the next review?

Colonel DWINELL. The next one to my knowledge was the one that finally came up to Frankfurt, from Colonel Straight. It was made by Maj. Richard Reynolds, and then signed at the bottom of it as having been verified and approved by Colonel Straight.

Mr. FLANAGAN. After Denson finished—

Senator McCARTHY. May I interrupt? Do I understand that the other two previous reviews never got beyond Straight to get up to Frankfurt?

Colonel DWINELL. As far as I know they did not.

Senator McCARTHY. In other words, the first two reviews as far as you know were cut off at Straight, never did get up topside?

Colonel DWINELL. I never saw them.

Mr. CHAMBERS. May I interrupt there, because I have a little knowledge that I would like—

Senator McCARTHY. I wonder, Joe, if you could tell us. This is practically all from hearsay. I understand you have had seven reviews and a great number of them did not get beyond certain intermediate officers. I wonder if you have any clear picture of the number of reviews where the different ones were shut off, how far they progressed up the line of command.

Mr. CHAMBERS. I believe with Colonel Dwinell's help—incidentally I think it is important to get this in, although we intended to get

this in at a later time when we had the reviewing authorities here. I would like to get his information on this, if we can, on these things.

The first review which you discussed was made by, I believe you mentioned his name.

Colonel DWINELL. Mr. Kessler, K-e-s-s-l-e-r.

Mr. CHAMBERS. By Kessler, a four-man review. Now I believe from some conversation that we had yesterday there were some technical difficulties with that review, and that there was a review of the review, if it could be called that, made by the then JAG of the First Division. Is that correct?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. And based on the review of the review, it was decided that they could not use the first formal review that had been made, and then another one was started which I believe was made by Denson. Is that correct?

Colonel DWINELL. That is correct.

Senator McCARTHY. May I interrupt to get this straight? What happened in that review, Joe? In other words, is that available today?

Colonel DWINELL. Well, I would suspect that it is available. The Kessler review which I understand was—

Senator McCARTHY. Is there anyone here who knows whether it is available?

Mr. CHAMBERS. I am sorry. That we will develop. It is a matter we have to dig out as we go along with the hearings.

Senator McCARTHY. May I say this: I would like very much, if we possibly can do it—I am not asking you for some impossible task, but from all of the information I have, I get the impression that there were seven reviews, either partial reviews or entire reviews, that all of those did make some very important recommendations.

I have got the partial information, if we can call it that, to the effect that the four-man board never did get beyond Straight, because he thought it was too detailed in each individual case, and that was just thrown out and that the four men who conducted the review were dismissed from the board and a different board was appointed to conduct a new review that would be satisfactory to Straight.

I think unless we can take each one of those reviews and start right from the beginning and follow it through and see where it was cut off and why, it will be difficult to get the type of picture we have.

Mr. CHAMBERS. It is our intention to do that, Senator. The only thing we were trying to do here is to get, while Colonel Dwinell is with us, his ideas on the thing.

Senator McCARTHY. Let me say to the chairman, I have a very serious request I would like to make of the Chair. I would like to ask the Chair to call an executive session of the subcommittee. I would like to ask the Chair to have someone from General Bradley's office present. I would like to have someone from the State Department present, and I would like to give to the subcommittee the various pieces of information that have come to me, all voluntarily, you understand.

I have not had a chance to check on any of them. I have not made any attempt to check on them. I say I have not made any attempt. Mr. Flanagan has made an attempt to check on the background of some of the individuals making the charges of a very serious nature

that go beyond the Malmedy case, involving a number of things that I do not think should be perhaps tried in the headlines of the papers throughout the country until we have had a chance to discuss with the Army and the State Department what, if any, check they have made into these matters, whether they would like to make a check of it, and I think it is entirely possible that after the subcommittee receives this information, that they may want to hold up calling the witnesses publicly until they have had a chance to go into these charges, and if they are true, corrective action perhaps can be taken with other than newspaper headlines, and I would like very much to have the committee do that before we go beyond today's testimony.

If that is not done, I have no choice whatsoever but to bring before this committee, and publicly, all the charges that have been made. It may develop that some of them have no basis in fact whatsoever.

If so, they can do irreparable damage to the Army, to some of the individuals concerned, and make it difficult for our State Department to operate, so I do not want to take that responsibility unless I first know that either the Army or the State Department will take it upon themselves to check into these matters.

I would like to have the chairman call that session. As I say, I do not think anything can be gained by having it unless we have someone from either General Bradley's office or someone from the State Department present.

Senator HUNT. Senator, we discussed that procedure yesterday. I do not think the subcommittee did come to to any conclusion with reference to it, but the suggestion you have made was discussed. Now we do have some other witnesses lined up for the rest of the week.

Senator McCARTHY. Are they very important witnesses?

Mr. CHAMBERS. Some of them are coming, sir, as we discussed yesterday, from all over the country specifically to testify on these Malmedy matters. The matter that was brought up yesterday goes beyond the Malmedy case.

Senator McCARTHY. It goes beyond that, but you understand it completely covers the Malmedy case.

Mr. CHAMBERS. Oh, yes; it is an important part of it.

Senator McCARTHY. My position is this: I will have to, in examining these witnesses, not knowing whether they will return again or not, unless I have some assurance that corrective action is to be taken, I will have no choice at all but to go into all those matters in detail. I hesitate doing it. You know the reason why.

Mr. CHAMBERS. Surely, Senator McCarthy, as you know this was discussed at some length yesterday. We met in executive session at your request yesterday and you were away on other business.

Senator McCarthy. I guess you would call it business. I was watching the Marine Corps putting on a demonstration of new combat techniques.

Mr. CHAMBERS. In my book that is new business. We feel the position you have taken was correct. On the other hand, we have people on the train coming through from California, and I think that it would be probably best to go ahead and clean them up and certainly I am sure that the Chair and subcommittee will meet in executive session at any time on the terms that you suggest. I think it is an important matter that should be looked into.

Senator McCARTHY. Thank you very much. Pardon the interruption. I merely wanted to get that on the record so if I am forced to bring out all these facts, it is the decision of the subcommittee. I must bring them out.

Colonel DWINELL. There are one or two other things, may I state, in this matter that I discussed before about the court.

Mr. CHAMBERS. Colonel, the record is a little interrupted here, but can we finish these various reviews?

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. We had gotten up to the point where there had been the original four-man board, then a review of that board made by the JAG of the First Division, and then the review made for Colonel Straight after the decision was made to reject the initial review by then Colonel Denson, and then I believe that there were two additional reviews before the sentence was finally approved. Is that correct?

One was the review made by Colonel Harbaugh in which I believe you were an ex officio party, and then there was a final review or check of some kind by General Clay before these sentences were approved. That is the sixth. It gets pretty close to the seventh.

Mr. FLANAGAN. I have lost track of them. I have the first review by the four-man board, then a review of that review by the judge advocate general of the First Division, then the third one, Colonel Denson, the fourth one, Major Reynolds.

Who is the fifth?

Colonel DWINELL. The board in Frankfurt. In the case of all war crimes cases, when they are completed and approved one way or the other by the theater judge advocate, they go to General Clay and he has an attorney up there who advises him.

Mr. FLANAGAN. That is the sixth.

Colonel DWINELL. I do not know whether you would call that a review actually as we term a review, but he has a legal adviser there in Berlin.

Mr. FLANAGAN. And then the Simpson-Van Roden Commission reviewed part of it?

Colonel DWINELL. That came afterward.

Mr. CHAMBERS. I think, if I may correct you on that, I would say that the Simpson-Van Roden review of the Malmedy cases was confined to the 12 death cases.

Mr. FLANAGAN. We were talking about whole or partial reviews of the case.

Senator McCARTHY. May I ask you this question? Did any of those reviews give a clean bill of health to the trials? In other words, did any of those words reviews say "It is proper, let the sentences stand," as far as you know?

Colonel DWINELL. The only review that I know anything about is the one that I read, the one that came up from Major Reynolds and Colonel Straight to the board. It was considered and read by the board in Frankfurt.

Senator McCARTHY. Let me ask you this: I have gotten the impression from talking to a great number of individuals, some of them in the Regular Army like yourself, but who are reluctant to come here and testify—and I can understand why they would not, for fear it would

hurt their future situation—that the Malmedy case is one that sort of stands by itself, that all your reviews without exception have pointed out that the trials were properly conducted, that it is impossible to tell whether the men were guilty or innocent in effect and suggested that sentences be cut down not because of the fact they felt the punishment was too great for the particular crime charged, but because they felt that a man should not be punished that much when there was so much doubt as to whether he was guilty or innocent.

Now is it your thought, from your own knowledge, do you know if that was actually the picture of the seven reviews or the six, whatever the case may be?

Colonel DWINELL. You are only referring now to the Malmedy case?

Senator McCARTHY. The Malmedy case.

Colonel DWINELL. As I say, the two reviews that were previously mentioned in the four-man board, Colonel Denson's review, I never saw those. I do not know what they had in them and what they reasoned out.

I did see the one that Major Reynolds made which came up to the board in Frankfurt. In fact, I read it entirely. That I am familiar with, and, of course, I am familiar with the board of review in Frankfurt.

Senator McCARTHY. Major Reynolds' review, how about that? Did that recommend cutting down some sentences?

Colonel DWINELL. Some.

Senator McCARTHY. And did that indicate that they felt the sentences should be cut down because there was some doubt of the man's guilt, or was it because they felt that the punishment was too great for the crime charged?

Colonel DWINELL. No, where they cut sentences down they did it for reasons of age. If the accused was extremely youthful, 17 years old, something like that, or that the extent of his participation was not great enough to warrant a death sentence.

Senator McCARTHY. Let me ask you about this particular case of Pletz. He was accused of shooting American prisoners of war who were helpless with their hands over their heads. The charge was without any reason whatsoever, without any order of any superior officer, he comes along in a tank and as a sport he kills off a number of American prisoners of war.

Now he was given life imprisonment. That was cut down to 15 years. Certainly it was not cut down because 15 American boys marching along the street with their hands over their heads, that did not warrant death on his part. The evidence is—and you can correct me if I am wrong—there were a number of tanks along the street. The tank in A position saw some shells coming from what he thought was a moving vehicle traveling somewhere behind him, the tank immediately behind him or three or four or five behind—there was no testimony on that point whatsoever, but he said from the trajectory there seemed to be twin automatic weapons and it was from a vehicle at a height.

Testimony of the driver of the next tank was that he saw American prisoners beside the road, that he did not see any of them fall. He heard several bursts of fire from his own tank, what direction he did not know.

The third tank in line said that none of the tanks in front of him fired at these prisoners, and as he passed the prisoners they were all living.

Then I understand Mr. Byrne, the captain or lieutenant, came into this town to look for evidence of American prisoners being killed in that town, and he found evidence of 10 bodies in the town. He did not know whether they were prisoners of war or whether they were men killed in combat.

Now with that picture the sentence was cut from life imprisonment down to 15 years.

The question I have in mind is this: If they felt this boy was guilty of killing some American prisoners with no excuse whatsoever, no order for it, just doing it as sport, certainly they would not have felt that death was too great a penalty, or life imprisonment. If he was not guilty, then anything is too much. Am I right?

Colonel DWINELL. That is right.

Senator McCARTHY. So the question is, in that case why did they take a life sentence and cut it down to 15 years? What theory of the law is that, I wonder? This is important in that I think it indicates perhaps the type of review you have in all of these cases.

Colonel DWINELL. In the first place may I refresh my recollection from the Frankfurt Review Board.

Mr. CHAMBERS. Can you tell me what book that is in?

Mr. FLANAGAN. You can find that in that little book you have.

Senator McCARTHY. Colonel Ellis has it, I believe.

Colonel ELLIS. This is the R. and R. from Colonel Straight.

Senator McCARTHY. Colonel, let me get this straight in the record. I think that you and I will heartily agree that if this boy killed those American prisoners of war, that he should definitely hang, period. There is no reason whatsoever why he should not hang, whether he is 18 years old, 19 years old.

Colonel DWINELL. No, I do not quite go along on that, for this reason—

Senator McCARTHY. Let me finish. If he did not shoot the boys, if he did not kill them, then he should not be punished at all.

Colonel DWINELL. I think there is one other—

Senator McCARTHY. Do you want to see the review before you answer?

Colonel DWINELL. This refreshes my recollection on that part of it, at least.

Senator McCARTHY. In other words, I want to know why they recommended that his sentence be cut down.

Colonel DWINELL. The recommendation by Colonel Straight in connection with that particular case said that the court apparently concluded "that the accused willingly killed surrendered prisoners of war."

In other words, his theory in that case, as it was in many cases in this Malmédy affair, was that before the court we had controversy in fact, we had conflict of evidence and facts of varying degrees, but that the court, having heard the witnesses and heard these confessions, determined as a matter of fact that he willingly killed those prisoners.

Now he recommended the cutting of the sentence down, however,

because he said, and this is also his reasoning in a number of these cases:

In the absence of positive evidence that some compulsion did not result from the immediate presence of the accused's superior, it cannot be inferred that some compulsion did not exist. This circumstance should be considered in mitigation notwithstanding the accused's rank as sergeant and position held as a tank commander.

In other words, the theory of superior orders came in constantly in this case. Where a soldier of the rank of sergeant even willingly shot prisoners of war, the question was now, if his captain was standing right alongside of him and ordered him to do that, and it was in his presence and he, the sergeant, knew that if he disobeyed that order he in turn would be shot, that was taken into consideration in mitigation.

Senator McCARTHY. Now let us get back to this case. I can certainly understand where that is true. I think that is the rule in all military courts of justice. Let us get back to this case.

Where there is no evidence whatsoever that any superior officer says, "Kill those boys," in fact, the record is just to the contrary, the record is to the effect that they were alongside of the street or the road, that the first tank, the leading tank passes, the commanding officer is in the first tank; his gunners do not do any firing at all.

The second tank, the gunner in the tank who is under no compulsion whatsoever, the record is clear on that that the commanding officer does not even know what he is firing at. He fires several bursts.

Now under the circumstances, you or I could not conceivably find there is any compulsion, could we, and no intelligent court could.

Do you not get the feeling—if I am wrong, tell me—that in all of these cases where there was some doubt as to whether a man was guilty or not where the court said he may have been guilty, he may not have been guilty, then they proceeded to recommend that his sentence be cut down, just arbitrarily picked a sentence and said, "It does not appear that the evidence proves that he is guilty. Therefore, we will give him a light sentence."

Is that your impression?

Colonel DWINELL. I think I follow you. The point is in my opinion the reviewing authorities should have weighed that evidence carefully and decided that matter of fact which they had the power to do.

There being so much doubt, in this particular case as I recall from reading the Frankfurt Review Board that resolved that doubt in favor of the accused, they could see very readily that there was such a conflict and so much doubt that the direct evidence was insufficient to warrant a finding of guilty at all.

Senator McCARTHY. Did the Frankfurt Board do that?

Colonel DWINELL. They did that.

Senator McCARTHY. In other words, the reviewing board, did they set the verdict aside?

Colonel DWINELL. Completely set aside. They discussed the evidence, said there is no evidence that any American prisoners were killed. There is no evidence that any of the residents of Stoumont saw any bodies in front of the grocery store, nothing from the owner of the store who presumably had to step over the bodies to get into his place.

It is apparent that Lesser's testimony amounts to nothing more than slight corroboration of Werner's statement, and so forth.

Conclusion: The evidence is insufficient and recommends that the sentence be disapproved.

Senator McCARTHY. In other words, the reviewing board went into the evidence and they say, "No. 1, we have found no evidence that prisoners were killed." Of course obviously there is no evidence in the record that he did any shooting himself. They therefore set the record aside. At Frankfurt, however—what do you refer to this as?

Colonel DWINELL. A review by the deputy judge advocate. That is not the final one.

Senator McCARTHY. This review in effect says, "We are not going to go into the evidence to decide whether or not the man is guilty." They say the court apparently decided he was guilty, "and we, in the absence of any evidence whatsoever, who find that maybe he was under some compulsion, even though the evidence is clear that there was no compulsion, therefore we will cut his sentence to 15 years."

I think everyone will agree with me. Is that not about the most unusual system of meting out justice that you ever heard of, the most unusual ground?

Mr. FLANAGAN. If I may interrupt, before you answer that question, to get the record clear, Straight's board had cut his sentence to 15 years and this board said, "Let him go altogether." Now the final sentence was what?

Mr. CHAMBERS. Fifteen years.

Mr. FLANAGAN. Finally they put it back up to 15 years?

Colonel DWINELL. Oh, no. This board that I read about here from Frankfurt was a recommendation made to General Clay, and he acted on that.

Colonel MURPHY. It went from there to Colonel Harbaugh's office. He made the recommendation.

Colonel DWINELL. That is the one I am reading from.

Colonel MURPHY. He made a further recommendation.

Senator McCARTHY. The board after that put it back up to 15 years.

Colonel DWINELL. I think Colonel Murphy is referring to whether or not Colonel Harbaugh agreed or did not agree with the board of review in Frankfurt. You are right on that. I do not know what the final decision on that particular one that was made was.

Mr. CHAMBERS. The final decision was 15 years. Now the record that I have in front of me does not show at which point it was reinstated. At this time I would like to ask a question.

Senator McCARTHY. Let us first get this. The Frankfurt review is an intermediate review, in effect. That is the one that says there is no evidence to find him guilty, no evidence of American prisoners of war being shot in this town. They say:

Therefore, there is no evidence of men being killed, no evidence to find him guilty. We will recommend the conviction be set aside.

Then there is a higher board that reviews it before it goes to Clay.

Colonel DWINELL. Not a board. I think I can explain that. Colonel Harbaugh, the theater judge advocate, makes the final recommen-

dation to General Clay, and he appointed this board to assist him, and this board made certain recommendations to Colonel Harbaugh, and he agreed or disagreed as he saw fit.

Senator McCARTHY. I see. I think we should have this man Harbaugh here sometime. Do you plan on bringing him?

Mr. CHAMBERS. We are planning to have Colonel Harbaugh here. May I ask a couple of questions, Colonel Dwinell?

Colonel Dwinell, this board that Harbaugh appointed to assist him in the review, is this the board we have been referring to of which you said you were an ex officio member?

Colonel DWINELL. That is right.

Mr. CHAMBERS. So that in effect you were an ex officio member and a party to that particular recommendation?

Colonel DWINELL. Yes, I would say so.

Mr. CHAMBER. I think it is important to know that at least the defense side of this picture had adequate representation in review procedures.

Senator McCARTHY. Joe, you are a lawyer; are you not?

Mr. CHAMBERS. I am a graduate of the law.

Senator McCARTHY. I do not think you or any man who ever tried a lawsuit in his life, anyone with any concept of how justice should be meted out, but would agree that that is the most fantastic method of meting out justice I have ever seen.

You find that there is no evidence whatsoever that any men were killed, you find that there is no evidence that this man killed them, but you say "Let us give him something for it anyway."

Mr. CHAMBER. Senator, pardon this privilege on the record. I do not think but that one review has said that, and that is the one we have in mind here. There have been four reviews, and probably others as you have pointed out.

Senator McCARTHY. I think you will find there were seven.

Mr. CHAMBERS. Whatever they are, the record shows four official ones. We will certainly get the other three. Of the four that we have, only one recommended disapproval, and I am merely quoting from the record when I say that Colonel Dwinell was a part of that particular thing, and that the defense had a very good representation.

Senator McCARTHY. May I ask you this, Joe? Am I correct? This is the only board that went into the evidence to decide whether or not there was sufficient evidence to uphold a conviction?

Mr. CHAMBERS. No, sir; I do not believe that is correct.

Senator McCARTHY. Can you find me any review that analyzed the evidence? That does not. He says the court apparently found he was guilty. Can you find any review that analyzed the evidence in these cases and says, "This evidence is sufficient to uphold a verdict of guilty"? I would like very much to see that, and I think it should be part of the record. I think Dwinell's analysis of the evidence is the only one we have gotten so far of any reviewing—

Mr. CHAMBERS. To answer your question specifically, this particular review, which is the report of the board and not the detailed notes of it, as I understand it Colonel Straight's group did review all the evidence, all the record of proceedings.

Colonel DWINELL. That is correct.

Mr. CHAMBERS. Did not your board review the review made by Colonel Denson, which was the forerunner of this report?

Colonel DWINELL. No, sir.

Mr. CHAMBERS. Did you review any detailed report?

Colonel DWINELL. We reviewed Colonel Straight's review.

Mr. CHAMBERS. You reviewed Colonel Straight's review?

Colonel DWINELL. Yes, sir.

Mr. CHAMBERS. And this was based on the evidence. Is that correct?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. And that is going into the record, but we agreed yesterday we would put it in at a later time.

Mr. FLANAGAN. Not to take too much time on this business of reviews, but we were trying to find out the total number of full and partial reviews that were made of this case, and I am down now to No. 7, which was the Simpson-Van Roden review.

Am I correct in saying that either after that, or sandwiched in between that review and some other one, the Raymond Board made a review of certain phases of this case?

Colonel DWINELL. I do not know anything about that review. I know a review was made, but I do not know anything about it.

Mr. CHAMBERS. The record, I believe, would show—and Colonel Raymond is present to correct me if I make a wrong statement—that they did make a complete review of the record of proceedings of the Malmedy trial. Is that correct, Colonel Raymond?

Colonel RAYMOND. We did not review the evidence of the Malmedy trial. We went into the question of the allegations in the petition filed by Mr. Everett.

Mr. FLANAGAN. They made a partial review.

Senator McCARTHY. Can I ask the colonel a question?

Were you a party to this Frankfurt review?

Colonel RAYMOND. I had nothing to do with any of the reviews that have been mentioned.

Senator McCARTHY. Let me ask you this: Do you know any boards that have reviewed the evidence and said in each individual case, not taking the 74, but saying the evidence in this case is sufficient, the evidence in this case is not, so that you had an intelligent review in each case other than the Frankfurt board which apparently went into the evidence. Is there any other board that did that?

Colonel RAYMOND. Well, I cannot say from my personal knowledge, Senator, but that would be the normal procedure.

Senator McCARTHY. I know it would be the normal procedure, but we are getting so far from normal here in some cases. Let me ask you this: As you know, there is a review by a four-man review board that never got beyond Straight. The members of that review were discharged from their duties and sent to different parts of Europe. Do you know what happened to that review?

Colonel RAYMOND. I do not recall that I ever heard of it until this afternoon.

Senator McCARTHY. I think that is significant also. Do you know if there is anyone that can tell us what happened to that detailed review?

Mr. CHAMBERS. I think Colonel Dwinell and Colonel Ellis have a very vague recollection of it. Since we are going to bring in Colonel Straight and others, I expect we can go into it in detail at that time.

Senator McCARTHY. Let me ask Colonel Ellis, if I may, am I correct in that, that Straight was very much dissatisfied with that review by the four-man board and refused to send it any further and discharged the board and appointed a new board?

Colonel ELLIS. You will have to ask Colonel Straight about that.

Senator McCARTHY. You did not stay in the theater after you finished this case?

Colonel ELLIS. I left immediately after trial, returned in October. I had nothing to do with the reviews, did not concern myself with them and was not interested.

Mr. FLANAGAN. After the Raymond board, then a petition was made to the Supreme Court, and the Supreme Court reviewed this case and turned it down on jurisdictional grounds?

Colonel DWINELL. That is correct.

Mr. FLANAGAN. So that is No. 9.

No. 10, General Clay recently completed a review of the death sentences in this case, which is a matter of public knowledge.

Mr. CHAMBERS. And the record.

Mr. FLANAGAN. And the record. That is No. 10. At the same time, former Secretary Royall announced that he was making a review of all the death sentences before they were carried out. So, that is No. 11. And No. 12 would be this committee. So, this case has been reviewed, with the exception of this committee, 11 times by various judicial groups, bodies, or commissions.

Is that correct?

Mr. CHAMBERS. Reasonably so. I think it is subject, perhaps, to some correction in detail.

Senator McCARTHY. That is, of course, meaningless, the number of reviews that have been held, unless we know which of these boards actually went into the evidence.

For example, Straight reviewed the review by the four-man committee and threw it out, according to the information we have, because it did not satisfy him.

Senator HUNT. Colonel, do you have a statement you want to make?

Are you through, Senator?

Senator McCARTHY. I have just one or two questions. If these were asked yesterday, then stop me, please.

Am I correct in this, Colonel, that some men were sentenced either to prison terms or death for shooting a sizable number of American prisoners of war at La Gleize? At the time they were allegedly shot, Colonel Peiper was in La Gleize; he had 200 American war prisoners, and the commanding officer—the ranking officer—of the American war prisoners was a Lieutenant Colonel McCown, and that McCown was riding with Peiper in the jeep, traveling with him, negotiating for the exchange of prisoners?

He was in the town at all times, and McCown testified first he came back, made a report when he was exchanged, setting forth the details of the stay in that town; then he testified in the trial. His testimony in the trial was about identical to the report he initially made when he went back to the American lines.

His testimony was there were no American prisoners shot in that area; that Lieutenant Byrne went over into the area, could find no evidence of any sizable number of prisoners shot, allegedly shot near a church wall; that the priest who was living in the basement of the

church most of the time knew of no American prisoners having been shot; in spite of that, in spite of the fact that an American officer was present at all times traveling in that area and charged with the American prisoners, charged with the prisoners in that area, said none of them had been shot, that some men confessed having shot those American prisoners.

Colonel DWINELL. That is correct.

Senator McCARTHY. And have been convicted and sentenced, their sentences upheld for that alleged crime.

Colonel DWINELL. They were convicted for those things. Now, whether each individual who was convicted for the incidents in La Gleize are still under sentence of death, I would have to recheck the reviews.

Senator McCARTHY. They are all under sentence?

Colonel DWINELL. Some of those cases were disapproved.

Senator McCARTHY. Am I correct that all 73 have had their sentences approved to some extent? Some of them have had their sentences cut down?

Colonel DWINELL. About 12 of them were disapproved altogether.

Mr. CHAMBERS. There were approximately 12 disapproved altogether.

Senator McCARTHY. 61, I mean.

Mr. CHAMBERS. 61, and in addition to that there were many commutations and reductions.

I might say, Senator McCarthy—you asked that we tell you if this was discussed yesterday. There are several pages in here on this particular incident, and Colonel Dwinell did discuss it in detail yesterday.

That is correct; is it not, Mr. Flanagan?

Mr. FLANAGAN. Yes.

Senator HUNT. Colonel, do you have a further statement you want to make before we excuse you?

Colonel DWINELL. I just want to amplify what I said a little while ago, so that the committee will understand when I make statements concerning my feelings about the court at the time of the trial. It was based on many, many things. I am trying to recall all the various incidents, but one now that I recall was the incident concerning the confession of one of the accused, the accused Sickel. Sickel was charged with being present at a castle—it was called a castle—in a little Belgian town—and he and Colonel Peiper were in this castle when a man by the name of Wickmann, also an accused German soldier, brought in an American soldier who was frozen, who they said was in such bad condition he would not talk.

Sickel, who was a medical officer for Peiper's regiment, a doctor, stated that the American soldier had third-degree frostbites on his legs and arms. In order to save his life it would require an amputation of all his limbs; that was the evidence.

Sickel also stated that, in a confession to the effect, that the conversation between he and Peiper resulted in ordering Wickmann to take the man out and dispose of him. The body was found. An American investigator went up. The Belgian man who owned the house testified at the trial that he found the body. There was no clear testimony from him, however, that the body had any bullet holes in it. Be that as it may, the prosecution proved that case principally by the confession of Sickel, but that confession was divided into two parts,

and part 1 of the confession of approximately two pages thereof outlined that Sickel had been the chief doctor in one of the notorious German concentration camps in occupied Poland and that he had been responsible for the gassing of some 20,000 inmates.

Now, Sickel in the Malmedy trial was not charged with being a member of a German concentration camp, and immediately when that confession was read to the court, it was impossible to defend that man before that court, because anyone who gassed 20,000 people in a concentration camp could not get a fair trial in this type of case, and we objected very strenuously to that but it was read to the court.

Senator McCARTHY. Was he ever tried for this gassing?

Colonel DWINELL. I do not know; I do not think so. I think he is still at Lansburg.

Senator HUNT. Anything else?

Colonel DWINELL. The taking into evidence of the confession of a man who committed suicide, interrupting his confession and not signing the balance of the confession, is a most unusual procedure in any court, and we objected strenuously to that. That man was named Freimuth.

Senator McCARTHY. Going through the affidavits upon which the appeal to the Supreme Court was made. I find excerpts from the court proceedings including the rules of the law member of the court, Rosenfeld.

I find that the defense counsel would attempt to ask the witness questions about how his statement was obtained, how many times he was interrogated before he made the statement, not a man testifying against him, as I understand it, but testifying as a codefendant.

Then, I find when defense counsel attempted to find out how the statement was obtained, Rosenfeld always ruled that that was not part of the direct examination and therefore you could not go into it on cross-examination.

Under the circumstances, was it possible for you to prove how the various statements were given, what type of duress was used?

Colonel DWINELL. No; we were restricted in that matter. I testified at length about that yesterday.

I also commented on the fact that the review board at Frankfurt mentioned all that and did point out in their report the number of instances of incorrect rulings by the court.

Senator McCARTHY. I was thinking of this consistent ruling. I noticed he warned the defense counsel. He said:

I want to warn defense counsel to this effect, again. That is improper and you cannot do it.

I have not gone through all the record, but I assume after that there was not any attempt to—I believe Everett or one of you said, “I am going to try to do this in every case. Will the court make the same ruling at one time so we can save time?” The court made the ruling; that was his ruling? You are a lawyer in civilian life, are you not?

Colonel DWINELL. I was.

Senator McCARTHY. Under the circumstances, is there any way that you could conceivably give the man a fair trial if the statement of other interested parties are used to convict him?

Colonel DWINELL. There was not, and I stated that definitely yesterday. Now, in addition to that, I would like to state this—

Senator McCARTHY. Your answer was you do not think he could possibly get a fair trial with that consistent ruling?

Colonel DWINELL. No. We tried to do that for a very, very definite reason. A number of witnesses came to us at our request. We requisitioned them. They came into our office and stated that they would not be a witness for the defense. They would not talk to us, because if they did they would become a perpetrator in a subsequent case to this, and that the prosecution had told them that.

We could not determine who of the prosecution said that. I know Colonel Ellis knows nothing about it. I am not certain that he does not know anything about it, never did know anything about it.

Whether one of his subordinates or one of his interrogators did that, I am not sure either, but I know this, that those witnesses, more than one, a number of them, came into my office and told me, "We will not talk to you because we have been threatened with being accused." We have found witnesses who changed their testimony. We had one witness who testified for Colonel Ellis' side of the case and came in to us and told us that he had lied, and we made a desperate attempt to rehabilitate him, and we were restricted in that respect. That was the reason why it became apparent to us we could not succeed.

Mr. FLANAGAN. In other words, you thought your witnesses were intimidated by members of the prosecution team?

Colonel DWINELL. That was my opinion.

Mr. FLANAGAN. And that was based on the fact that the witnesses refused to testify for you?

Colonel DWINELL. That is correct.

Mr. CHAMBERS. Was that reported to the court or any effort made to run it down and verify it?

Colonel DWINELL. Yes; that is in the record of trial.

Senator McCARTHY. You could not possibly report it to the court through the witnesses when the law member ruled that the court would not listen to that. I think this is a very important point.

If you have go a lawsuit and you are using interested parties as witnesses, it is elementary of course that the defense counsel can show what interest they have. They can show for example what the size of the witness fee is. You can show what, if anything, the witness has been offered. You can show what he has got to gain by his testimony, what he has got to lose. In other words, if he has been told that he will be tried in the case at some later time, and the law member, who apparently either knew no law or else was guilty of just a gross perversion of justice, ruled consistently that you could not do that because it had not been done on direct examination, under the circumstances, of course, the court had no way of knowing, nor did the reviewing body have any way of knowing just what these various witnesses were offered and what they were threatened with.

I heartily agree with the colonel when he says with that ruling alone it is impossible to get a clear picture of the case.

Colonel DWINELL. One thing I want to say—

Senator McCARTHY. What is this fellow Rosenfeld doing now; do you know?

Colonel DWINELL. I do not know, sir.

Senator McCARTHY. Is Rosenfeld still in the Army?

Mr. CHAMBERS. I believe Colonel Rosenfeld is retired; isn't he?

Colonel ELLIS. No; he is still in the Army.

Colonel DWINELL. Now, in connection with all these things that I have been saying, I want to say in fairness to Colonel Rosenfeld and in fairness to Colonel Ellis this: About 3 days ago I was talking to Colonel Ellis about this case.

We live in the same place, in the same hotel, and we are good friends, and we have been talking about a lot of things, and I said, in talking about this case, or he said for the first time that he and Colonel Rosenfeld in 1947, April of 1947, had prepared, signed, and submitted a petition for clemency on 26 of the accused, a very definite petition in which they specifically set out what clemency they recommended and why, and I expressed quite a bit of surprise about that, because I had never heard of it before.

Colonel Ellis replied that he assumed that everybody had known about it. He had a copy—I believe he has a copy with him now of that petition—and showed it to me. Now, I know that that petition was not considered by Colonel Straight, never got to him. It is not Colonel Straight's fault, I am sure. It did not get to him. It never got to the board of review in Frankfurt, and I know that because I was there. I know it did not go to Colonel Straight because he mentioned in his review every one of those things that he got, and I know that he has said that he has never seen it.

Now, that is a very important thing, because that petition would have been considered by the board of review in Frankfurt and by Colonel Harbaugh and mentioned.

Senator McCARTHY. That was cut off. That is why I am so interested in knowing where and why these various reviews and recommendations were cut off.

Do you know where that was cut off?

Colonel DWINELL. No; I do not.

Senator McCARTHY. I might say also in fairness to Colonel Ellis, I have been receiving a great number of letters pointing out improper conduct of the interrogation team, improper conduct during the trial, and almost without exception most of the men who have volunteered this information—you understand that the trial was improperly conducted—have felt rather kindly toward Colonel Ellis and seemed to think that he was, well, as one of the defense staff said, he was certainly one of the lesser evils there.

Colonel ELLIS. Thank you. [Laughter.]

(Discussion was had outside the record.)

Senator HUNT. Did you have anything further to state, Colonel?

Colonel DWINELL. Just one final thing. I made an error yesterday when in the beginning of the testimony Senator Baldwin asked me to name the associate defense counsel that worked with us. He also asked me about their experience as trial lawyers, and I omitted—and I would like to have this in the record—Mr. Walters' name. Mr. Walters, who is now an attorney in Seattle, Wash., was associated with us, and it is my recollection that he had had considerable experience in trying cases before the Malmedy case.

Senator HUNT. Thank you, Colonel. I have not been here during most of the time you have testified, but counsel here tells me that you have made a very splendid witness, that you have attempted to be very fair, and that you have presented your evidence in a most gentlemanly manner, and the committee wants to thank you for coming in

and giving us the testimony which you have and conducting yourself in the manner which you have.

Senator McCARTHY. I would like to not only thank the colonel but compliment him. I have had such an unpleasant experience so far with witnesses who volunteer detailed information. Then, if they happen to be in the position of yourself and are making the Army a regular career; that is as far as I could get. I could not get them to come down here and testify.

Even though this may be personally embarrassing to you, the fact that you come down here and freely testify certainly should be a compliment for you. I want to thank you very much.

(Discussion was had outside the record.)

Senator HUNT. The committee will adjourn until tomorrow morning.

(Whereupon, at 4:05 p. m., an adjournment was taken until 10 a. m., Wednesday, May 11, 1949, room 212, Senate Office Building.)

MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, MAY 11, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10:10 a. m., in room 212, Senate Office Building, Senator Lester C. Hunt presiding. Present: Senators Hunt (presiding) and Baldwin.

Also present: Senator Joseph R. McCarthy; J. M. Chambers of the committee staff; Francis Flanagan and Howell J. Hatcher of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; Colonel Murphy, Colonel Ellis, Colonel Raymond, and Lieutenant Colonel Dwinell.

TESTIMONY OF MAJ. DWIGHT FANTON—Resumed

Senator HUNT. The committee will come to order. I have no questions to ask Major Fanton at this time; so, Senator McCarthy, the witness is yours.

Senator McCARTHY. I know we have kept you waiting a long time; major; however, that was unavoidable.

Just for the time being forgetting that part of the war crimes trial that you were directly in charge of, I would like to get just a general picture, if I could, of the chain of command, insofar as your war crimes trials were concerned.

For the record, I don't think it has been put in the record yet, were you a part of the military government at that time, or were you—well, were you part of the military government?

Major FANTON. No; I was assigned to USFET—United States forces, European theater—to the Office of the Judge Advocate General, war crimes branch.

Senator McCARTHY. And who was the Judge Advocate General at that time?

Major FANTON. General Betts was Judge Advocate General at that time.

Senator McCARTHY. Is he still JAG?

Major FANTON. I don't believe so, Senator. I think he is—

Colonel ELLIS. He died in 1946.

Senator McCARTHY. The Deputy JAG was who, at that time, if you know?

Major FANTON. Was Colonel Mickelwait the deputy judge advocate? I believe he was.

Senator McCARTHY. And who is Deputy JAG, if you know.

Major FANTON. Sorry, I don't know.

Senator McCARTHY. You were directly responsible to whom?

Major FANTON. I was directly responsible to Colonel Ellis, while I was there.

Senator McCARTHY. And Colonel Ellis was responsible to whom?

Major FANTON. I believe he was responsible directly to Colonel Mickelwait, through Colonel Straight. Colonel Straight was the executive officer for the branch.

Senator McCARTHY. And Colonel Straight was with the Third Army; was he?

Major FANTON. No; he was with United States forces, European theater, USFET. General McNarney was the commanding general at that time.

Senator McCARTHY. And Straight was also technically in the JAG's office?

Major FANTON. That is right.

Senator McCARTHY. He was colonel at that time?

Major FANTON. He was a full colonel.

Senator McCARTHY. So that Straight was largely directly in charge of your operations?

Major FANTON. I would not say so.

Senator McCARTHY. Ultimately.

Major FANTON. Ultimately, possibly he was. I think he certainly was interested in what everybody in the branch was doing.

Senator McCARTHY. He was the man that signed the order assigning the defense attorneys to their jobs, assigning the prosecution attorneys to their particular tasks, also—in other words, he was in charge of both the prosecution and defense, to a great extent?

Major FANTON. I can't answer that question, Senator, because I wasn't there. I really don't know. At the time of the trial I was not there and don't know what the picture was.

It is my understanding that it was under the Third Army. I have seen the orders, but I don't recall how they were worded.

Senator McCARTHY. I am trying to get the general picture of the set-up.

Can you safely say this: That at practically all levels, the same officer was in charge of assigning attorneys to the defense, assigning attorneys to the prosecution, so that one officer was in charge, largely, of the defense and of the prosecution? I don't mean down at the level of going in to court.

Major FANTON. I know what you mean, and I would like to be as definite as I can. Unfortunately, I wasn't there at the time. I am not certain, but I believe you are correct. I believe one officer here at headquarters was responsible for both, and I think the Third Army was in charge.

Senator McCARTHY. In other words, there was no particular, in effect, defense set-up; there is no organization charged with the job of seeing that all the alleged war criminals had a proper defense? The same organization that said they would have proper prosecution, in effect protected the defendants under it also?

Major FANTON. Well, of course that is a little bit of a loaded question. I think they were both interested in seeing that the prosecution was properly represented and the defense was properly represented.

I mean, we have had testimony here of course from Colonel Dwinell, evidencing that he was eminently well qualified. Before I arrived, I understand Colonel Ellis gave similar testimony.

Senator McCARTHY. I don't mean to belabor this testimony. I am not speaking of the prosecution or defense in a case, but am I correct in that the same individual, the same organization, had the task of assigning the prosecution, making sure that the prosecution was properly handled, as took care of the defense of it?

Major FANTON. I believe that is correct. If it is not, I would like to be corrected on it.

Senator McCARTHY. Is that correct?

Mr. CHAMBERS. That is correct, as I understand the situation. The war crimes branch or group at theater level, literally had a pool of people who, at one time, might handle prosecution cases, and the next time they might be handling another group of cases from the defense standpoint.

Now, specifically Strong, who will testify this afternoon, told me when he was down earlier, and didn't have a chance to testify, that he handled both sides. I believe Colonel Dwinell said that generally speaking, he was on the prosecution side; but I think he was assigned twice as defense counsel, once in this case, and once in the case of the WAC who was accused of stealing jewelry; so, I think what we had was a pool of lawyers and assignments were made and at what level is something I think that we should clear later.

Senator McCARTHY. Could I ask you this, Major: Forgetting, for the time being, the handling of the specific cases at Malmedy, take the over-all set-up, first let me ask you how long did you practice law before you went in the service?

Major FANTON. A year and a half.

Senator McCARTHY. And graduated where?

Major FANTON. Yale Law School.

Senator McCARTHY. Where did you practice for that year and a half?

Major FANTON. I practiced in Hartford, Conn., and Bridgeport.

Senator McCARTHY. Who did you work with?

Major FANTON. I started off with the Aetna Life Insurance Co.

Senator McCARTHY. How long were you with the Aetna?

Major FANTON. I was there about 11 months.

Senator McCARTHY. And worked there investigating—

Major FANTON. No, my work there was as a counsel for the mortgage loan department, a particular type of specialized work, involving negotiable instruments laws, real property laws, and local laws for all States in which they made loans, 32, about, out of the 48.

Senator McCARTHY. And the other 7 months, where did you spend that time?

Major FANTON. I spent that in Bridgeport with the law firm of Pullman & Comley.

Senator McCARTHY. Now, in the 11 months you spent with the Aetna, did you have occasion to go into court at all?

Major FANTON. I was in court almost continually. I might add—I think your next question will bring it out—I was not of course in charge of the cases.

Senator McCARTHY. But you were sitting in?

Major FANTON. That is right.

Senator McCARTHY. And this was on what type of work?

Major FANTON. Mostly negligence work.

Senator McCARTHY. Defending—

Major FANTON. We had some contract work, I remember one or two contests, and I remember one will contest, but mostly we had negligence work and—

Senator McCARTHY. Largely automobile?

Major FANTON. That is true.

Senator McCARTHY. Defending cases—

Major FANTON. We represented an insurance company, defending these claims.

Senator McCARTHY. Speaking of the time you spent with Aetna—

Major FANTON. Excuse me?

Senator McCARTHY. The first 11 months.

Major FANTON. No; during that time I was not in court.

Senator McCARTHY. You were not?

Major FANTON. Because I had a different type of practice. It was an office practice.

Senator McCARTHY. For the other 7 months you were engaged largely in defense work for insurance companies, largely in automobile injury cases?

Major FANTON. That is true.

Senator McCARTHY. And did you try any criminal work during that time?

Major FANTON. I had two criminal cases that I handled myself. I was in charge of these cases.

Senator McCARTHY. What was the nature of those cases?

Major FANTON. One was an attempted rape case, and the other was a traffic violation.

Senator McCARTHY. I won't ask you whether you were successful or not.

Major FANTON. I was with one, and not in the other.

Senator McCARTHY. That would be a fairly good average, anyway.

Then, when you got into the service—you went in the service when, what year?

Major FANTON. April 29, 1942.

Senator McCARTHY. At what rank?

Major FANTON. I went in as a private.

Senator McCARTHY. A private?

Major FANTON. Yes.

Senator McCARTHY. This was in 1942, and then when did you receive your commission?

Major FANTON. I received it in—I think it was November 1942.

Senator McCARTHY. What month did you go in?

Major FANTON. I went in in April.

Senator McCARTHY. And then you went to officers' candidate school?

Major FANTON. That is right.

Senator McCARTHY. And was commissioned in November?

Major FANTON. That is right.

Senator McCARTHY. Did you go directly to OCS from civilian life?

Major FANTON. No: I went through what was called infantry basic training, out at Fort Francis Warren, Cheyenne. That was 13 weeks.

Senator McCARTHY. Then, when did you get into the combat theater?

Major FANTON. Well, there is quite a lapse of time. If you want me to relate it to you, I can do it quickly.

Senator McCARTHY. Principally, I would like to lead up to the time you got into court work in the Army.

Major FANTON. Of course, when I was commissioned, I was sent to the Third Air Service Command for assignment. I was sent down to the Mobile control depot at Mobile, Ala. Incidentally, I was commissioned a quartermaster officer. I was assistant quartermaster there for, I guess, 2 or 3 months, and then Mobile became the headquarters for the air service area command and moved from Atlanta to Mobile, and become the Mobile Control Area Command. It was an Air Corps installation, air service command installation; and then, I was, I guess you would say, promoted to the assignment of assistant staff quartermaster for the area. I served in that capacity for about 2 years.

Then, I went to the Command General Staff School, Fort Leavenworth. After I completed my training there, I went, on an Air Corps quota, and I was selected to go to this staff officers' course, which was a specialized course for Air Corps staff officers, and I was the only non-flying officer in there. I still think there was a clerical error somewhere, but I enjoyed the training very much.

When I returned, I was assigned to an air depot group as quartermaster supply officer. That was a tactical unit, and while we didn't have any readiness date at the time I was assigned, we eventually headed for the Pacific theater.

While I was serving in this capacity, I was selected to go to Europe to participate in this war crimes program which was then in June 1945.

Senator McCARTHY. June 1945? And then, what particular war crimes trial were you first assigned to?

Major FANTON. Well actually, I was assigned to this investigation subsection.

Senator McCARTHY. Of the Malmedy case?

Major FANTON. It wasn't the Malmedy case at that time. We spent about a month, I guess it was, the first month organizing—this was a new organization.

Senator McCARTHY. Yes?

Major FANTON. And in Paris, we had to set the thing up, promulgate rules and regulations and orders to govern the procedure within the organization, administrative work, and that I would say consumed about a month.

Then, I was sent out and questioned witnesses and suspects on a variety of small cases. I remember one that I interviewed or interrogated, however you want to term it, an American citizen living in Paris who had been an inmate of one of the concentration camps.

That was one particular assignment I recall.

Senator McCARTHY. How long did you stay in this work of interrogation?

Major FANTON. I was in that for about, I would say, another 3 or 4 weeks.

Senator McCARTHY. What was your rank, then—major?

Major FANTON. No; I was a captain.

Senator McCARTHY. When did you make major?

Major FANTON. In December of 1945.

Senator McCARTHY. December of 1945?

Major FANTON. Yes.

Senator McCARTHY. In other words, you were a major when you were in charge of the Malmedy cases?

Major FANTON. That is right.

Senator McCARTHY. When did you have your first court experience in the Army? Was that in the Malmedy matter?

Major FANTON. No. I am glad you came back to that because all during the time I was at Mobile, and after I went from Mobile to San Antonio, Kelly Field, San Antonio, with this air depot group, I was constantly engaged in judge advocate work, either as trial judge advocate, defense counsel most of the time, I might say, and as a court member many times.

Senator McCARTHY. Then, when did you have your first experience in Europe in connection with the trial of any of the so-called war criminals?

Major FANTON. I never had any experience in connection with the trial, if you mean limiting it to the trial phase—

Senator McCARTHY. As defense counsel or prosecution?

Major FANTON. No. I was, of course, I suppose you would say, on the prosecution staff in this case. However, at the time I was involved, I was—it was another investigation assignment.

Senator McCARTHY. And you never went into court in connection with the Malmedy cases; did you?

Major FANTON. No; I did not.

Senator McCARTHY. You were over there long enough so that you had a fairly good chance to size up the general set-up, I suppose, the general administration of justice, insofar as the war crimes trial was concerned?

Major FANTON. Well, that is a difficult question to answer. I can give you the facts as I know them, but that calls for a conclusion that I do not think I would really be qualified to answer.

Senator McCARTHY. Let me ask you this, and if you don't care to answer, all right:

Do you feel that the experience has been such, and the general set-up has been such that we should follow the same pattern, if and when there is another war and we should win that, in trying war criminals?

Major FANTON. I am glad you asked that question, because it is a very important one.

I think there are undoubtedly many improvements that can be made. I do not know that I am qualified to say just what they should be. I do think that the program was very well conceived, initially, in view of the practical difficulties that we were faced with at the time. It is very difficult for someone sitting now and judging it to really understand how it developed.

There was, of course, some lost motion, and there always is in the development of something entirely new.

I might say, before I went to Europe, I spent 3 or 4 days here in Washington—

Senator McCARTHY. Let me interrupt for the time being.

In this part of the question, I am concerned largely with what, if any, recommendations for changes you think should be made. I am not worried about any reasons why the thing may have been badly

set up, or well set up. Perhaps a good job was done, perhaps a bad job, in the haste of the moment; but, you are a lawyer, you have been over there looking over the situation and I wonder if you have any definite ideas for the improvement of the picture.

Major FANTON. Now, I take it you are referring to the way the program was set up and administered.

Senator McCARTHY. The way it functioned, principally.

Major FANTON. Yes?

Senator McCARTHY. For example, one of the questions I planned to ask you later, after you answered that, is whether you think it is well to have the prosecution, the defense, and the appeal all concentrated under one head so the man who appoints the prosecution staff, appoints the defense staff, and also passes upon the appeals, in effect, if you can call that the effect of it. Do you think that is a good judicial system to be followed in the future?

Major FANTON. Of course, in answer to your question, that is the way military justice functions, and I understand in the Navy, as well as the Army, that you do have under your command, commanding general, or commanding officer, a unit who is responsible for the administration of justice within his unit, and in discharging that responsibility he is obliged to have a qualified trial judge advocate to handle the prosecutions of cases involving military offenses, involving military personnel; and also, he is obliged, I would think, to assign qualified defense counsel.

I would think, just to try and answer your question briefly, I think it is quite important that qualified personnel be available so that, and then of course it is a matter for the individual who is in command, it is a command responsibility, and I think generally my experience in the Army was that both sides were fairly well treated.

Senator McCARTHY. I am going to ask you to do this for me: Try and concentrate on the questions I ask and stick to an answer to that.

Major FANTON. I was trying to answer.

Senator McCARTHY. The question is this: Do you feel, I know you don't have much of a legal background to qualify as an expert in this, but you did have some experience—do you feel that you get a good brand of justice when you have the defense, prosecution and the appeal—

Major FANTON. And the court.

Senator McCARTHY. And the court, the whole complete set-up under the same head? Do you think so?

Major FANTON. I am trying to answer your question. I don't want to appear evasive, but in the light of practical difficulties as I know them, I think it would be difficult to devise any other system. I believe that that is a good system, if properly administered. There are certain dangers there, and I don't think it fair to compare the military justice system with the civilian system. I don't think you can compare the problems involved, because they are entirely different.

Senator McCARTHY. Do you think then that it is essentially a good system, as it is, with the court, prosecution, the defense, and appeal concentrated under one head, and with no appeal from that particular head, as we have today? In other words, with our United States Supreme Court saying that we have no right to review the case, do you think that is a good system of justice? Do you think we should

follow that in the future, or do you think we should recommend changes?

Major FANTON. I can't go along with your claim that there is no appeal. I believe there is appeal. I know, within my own experience with military justice, I remember one desertion case I had that I fought with all the tenacity I could summon, and I recall that the sentence was reduced and the charge of desertion was set aside on appeal, or on review, by the service command. That was a case in the States, but the same thing applies, I believe, to the war crimes cases, because the set-up is similar.

Senator McCARTHY. Did you have any occasion to make any study of the rules of the General Convention; that is, the agreement that we made prior to this war with Germany and other nations for the treatment of prisoners of war?

Major FANTON. Yes.

Senator McCARTHY. You had occasion to go into that?

Major FANTON. Well, I started to tell you a while back there, there were 2 or 3 days of an orientation course before we went over to Europe on this war crimes program, and in the course of which I have forgotten the exact designation of the text, we were briefed on the rules of land warfare as adopted at the Geneva Convention.

Senator McCARTHY. And you feel that when you were in charge of the interrogation, you were sufficiently acquainted with those rules?

Major FANTON. That is correct.

Senator McCARTHY. And you were investigating violations of those rules on the part of German war prisoners?

Major FANTON. That is correct.

Senator McCARTHY. German combat soldiers?

Major FANTON. Yes.

Senator McCARTHY. Your job was investigating and providing the evidence to convict any of these German soldiers of violations of the rules of the Geneva Convention?

Major FANTON. That is correct; if they committed them we were supposed to get the material facts.

Senator McCARTHY. That was the ground rule—

Major FANTON. That is correct.

Senator McCARTHY. Which governed your actions, right—the Geneva Convention rules?

Major FANTON. Well, I think it is fair to say that of course we wanted to comply with them insofar as it was possible.

Senator McCARTHY. Did you find at the time it was impossible to comply with the rules of the Geneva Convention?

Major FANTON. Of course, as I said in my statement, I don't think the law has ever been completely cleared as to just when a prisoner of war, suspected of war crimes, changes from a prisoner of war status to that of a war criminal status, or war criminal suspect. We did our best, Senator McCarthy.

Senator McCARTHY. Let me interrupt you there. What is there in the rules of the Geneva Convention covering that point—is there something in the rules of the Geneva Convention that states at a certain stage of the investigation a man ceases to have the protection accorded by the Geneva Convention rules, and that then he is put in

a different status and treated in a different fashion? Is there anything in the Geneva Convention rules to that effect?

Major FANTON. Not that I know of. I believe international law—and you have a manual there, so maybe you can correct me if I am in error—but I believe international law, and I think it is cited in Colonel Straight's review and recommendation here, holds that if you have a war criminal suspect, with reasonable grounds to suspect him of implication in a war crime, he is no longer considered as an honorable prisoner of war, and while he certainly has some basic inalienable human rights, all the niceties and technical rules of the Geneva Convention do not apply.

Senator McCARTHY. In other words, you say after you suspect a man of violating the rules of the Geneva Convention—

Major FANTON. As I understand it, any war crimes—

Senator McCARTHY. Any war crimes?

Major FANTON. Violating the laws of war, or the international law.

Senator McCARTHY. Let's get it straight. The law that controls is the formal agreement that we signed, that Germany signed, the rules covering land warfare, killing prisoners of war, any of the crimes we have alleged that the German soldiers did were violations of the rules of the Geneva Convention—right?

Major FANTON. That is correct.

Senator McCARTHY. And you were sent over there to investigate and get the evidence to convict these men of a violation of the rules of land warfare; is that right?

Major FANTON. That is correct.

Senator McCARTHY. And now, in doing that, you say you tried to follow the rules of the Geneva Convention, the rules of land warfare yourself, insofar as possible; is that right?

Major FANTON. That is correct.

Senator McCARTHY. Will you tell us under what circumstances you found it impossible for your staff to follow the rules of the Geneva Convention?

Major FANTON. I will be glad to, because I think it is an important point and one that should be clarified.

We did, of course, have a lot of screening before we ever took the prisoners to the Schwabisch Hall interrogation center. Of course, it was not my responsibility to see that they were treated as prisoners of war—

Senator McCARTHY. It wasn't your responsibility?

Major FANTON. No, because I didn't have any command responsibility. It was all a matter of professional courtesy, for the camp commander to let me come in and interrogate prisoners. I never had any difficulty, and I also had a pass to go in, when we went to Ebensee, and Plattling, and several others—I don't remember the exact designations now—and internee center 78 was a war crimes enclosure. However, there again we had a Third Army unit that I believe was in command—maybe it was the Seventh Army, I am not clear—and they were treated as prisoners of war, all these prisoners who were evacuated in accordance with a command TWX that was sent out, they were assembled and treated as prisoners of war.

Senator McCARTHY. Was it your function to make sure that your interrogation staff, your team, call it what you may, treated the Ger-

man war prisoners in accordance with the rules of the Geneva Convention? Was that your function?

Major FANTON. Well, I would say so, or certainly we were not—
 Senator McCARTHY. You would say so—

Major FANTON. There was no license for us to violate those rules, just because I didn't have command responsibility of the enclosure, in answer to your question. I think that is correct.

Senator McCARTHY. You found that it was your responsibility to make sure that your team over which you had control, I assume, would act in accordance with the Geneva Convention?

Major FANTON. That is correct.

Senator McCARTHY. You didn't feel you were entitled to violate the rules in proving that the German soldiers had violated them?

Major FANTON. Now, I will have to explain things a little, in answer to your question.

Senator McCARTHY. I wish you would.

Major FANTON. We, as I say, screened those prisoners. We eliminated as many as we could from our suspect category and those that we eliminated were sent to another prisoner of war enclosure. We had a time limit. We made mistakes, of course, I remember one in particular, one of our principal accused in these cases, was evacuated through error, to a PW enclosure because we did it so quickly. We had to make room for other criminals. It was quite an assignment. In 2 weeks I think we screened over a thousand prisoners.

Now, when we had determined that they had an affiliation or connection with these units, and it was such that they might be implicated in this thing, they were then evacuated to Schwabisch Hall. There, of course, we could not follow the rules of the Geneva Convention with respect to the treatment of prisoners of war. We did so, as far as we could, and gave them very good rations, better rations than we were required to, and took care of their physical needs.

There has been some testimony here, a little testimony as to whether they had washing facilities. They had wash basins brought to their cells—I may be incorrect, but I believe it was at least once or twice a week.

That may not sound like very much, but it was an attempt to handle the situation and cope with the practical difficulties.

We had trustees—

Senator McCARTHY. May I interrupt and get you back to my question?

After you screened them and decided that they might be war criminals, in other words they that might have violated the rules of the Geneva Convention, that is our definition of war criminals, I assume.

Major FANTON. In this case.

Senator McCARTHY. Anyone that didn't violate the rules of the Geneva Convention, that followed the rules insofar as land warfare was concerned, he was not a war criminal?

Major FANTON. That would be right.

Senator McCARTHY. So, when you say "war criminal," you refer to a man who violated the rules of the Geneva Convention?

Major FANTON. War crimes suspect, one suspected of such a violation.

Senator McCARTHY. After you suspected them of having violated the Geneva Convention rules, then they were moved to Schwabisch Hall?

Major FANTON. That is right.

Senator McCARTHY. Then you say you no longer followed the rules of the Geneva Convention insofar as those men were concerned?

Major FANTON. With the exception that we did, insofar as possible, follow them. We could not for instance—could not let them exercise, in answer to your question; we didn't humiliate them, or assign them to dangerous missions, of course it wasn't wartime, and I assume other things of that nature, but to my knowledge, none of that was done.

I remember Peiper had a cell in the hospital ward. He was given reading material. I myself gave him some stuff to read, as I recall. He was well treated, and the other officers, insofar as possible were treated, insofar as it was consistent with our interrogation and with the job we had to do.

Senator McCARTHY. In other words, if you felt that following the Geneva Convention rules was inconsistent with your interrogation, you felt justified in violating the rules yourself, is that right?

Major FANTON. I don't like the word "violation" but I suppose that is a correct statement, because I felt about it this way: I don't think the rules apply, I may be wrong, and if I am I am willing to stand on that. I don't think they do—

Senator McCARTHY. You don't think the rules apply after you suspect the man of having violated the rules?

Major FANTON. That is right. Of course, I am assuming you do so on reasonable grounds. There were undoubtedly some people who were evacuated to this prison who never committed a war crime, and were perfectly decent soldiers. I don't know how many, but there were undoubtedly some in that category.

Senator McCARTHY. Were you not instructed in your briefing, or didn't you determine yourself, as a major, a rather important rank in the Army, that the Geneva Convention rules were to apply in all circumstances until it is proven that the man himself has violated those rules, proven in a regular court, and after it has been proven that he has violated those rules, that then he could no longer claim the rules and protection, but up to that point, some lieutenant or major or sergeant could not determine when and under what circumstances this law of nations applies—isn't that your understanding?

Major FANTON. I am not trying to dodge responsibility, because I don't think I have to. I did take this matter up—

Senator McCARTHY. Forgetting for the time being, your own situation—it is a question of to what extent—

Major FANTON. It is difficult to answer.

Senator McCARTHY. Forgetting your own situation, it is a very important question, to determine to what extent our interrogation teams or courts felt they were bound by these laws which we signed. Now, as I understand the rules of the Geneva Convention, and I did some defense work and prosecution work myself in the service and out of the service, and I spent a lot of time as a judge, it is my understanding though, that those rules are for the protection of the enemy soldiers,

prisoners of war, for both sides to observe those rules until it has been proven in any court that they themselves have violated the rules and that under no circumstances could some junior officer in the Army or Navy or the Marine Corps decide, upon his own responsibility, that because he suspected a man of having violated the rules, that then he himself will violate those rules in the treatment of those men. You see, when we passed those rules it is assumed that they are adequate to protect both sides, and that you can get convictions of men who have violated those rules without violating the rules yourself. You understand that to be the situation, don't you?

Major FANTON. Well, I think you have put it quite well, with this exception—that in a situation such as this, and in many criminal cases I might say in this country, as well as other countries, if you allowed a man to go free, you would never be able to investigate him. Now, of course I don't mean to get off the track, we are talking about the Geneva Convention, and the fact of the matter is that this case would never have been investigated, it would just as well be forgotten about, if we had to comply strictly to the rules of the Geneva Convention.

I talked that over with everybody who was in a position of responsibility in this thing, including the Army provost marshal, and the Army judge advocate, and we all came to the same conclusion; we were faced with a practical field problem, where we either had a choice of accomplishing our investigation, apprehending these people, identifying the ones who were implicated in this thing, or turning around and reporting to our commanding generals, commanding officers all the way up the line to the commanding general of the Army, that this case might just as well be forgotten, it couldn't be investigated, and these people would never be able to be brought to trial.

That was the practical situation with which we were dealing.

Senator McCARTHY. In other words, see if I have it right: You decided after talking to some of your superior officers up and down the line, that if you were to be bound by the rules of the Geneva Convention, that then you never could get convictions in the cases?

Major FANTON. Insofar as this group was concerned that we had interrogated.

Senator McCARTHY. You understand that every time the district attorney is brought before a court, or the prosecution in any case in this country, when they are accused of violating the rights of individuals, the rules we have set down, that that is the claim in about every case, that we couldn't have convicted a man unless we beat the hell out of him, in a cell—

Major FANTON. Wait a minute there.

Senator McCARTHY. Do you know that any court ever approved of that, in our courts, in this Nation?

Major FANTON. Certainly not, not the way you put it, Senator. You have a few words in there that don't belong in there.

Senator McCARTHY. Well, let's make it more gentle. Let's say the district attorney No. A comes before a court, and he is accused by the bar of violating the rights of the defendant in criminal cases.

Major FANTON. You mean by—

Senator McCARTHY. He is up before the court on a disbarment proceeding. It is claimed that he has violated the law consistently in attempting to get confessions. He doesn't follow the rules and regulations our courts have set down. In every case that I ever heard of,

the defendant always says, "Well, I had to do it. We couldn't get convictions if we didn't do it," and I don't know of a single court in this country that has said, "That justifies your violation of the rules. You can take it upon yourself to decide when these rules are to be followed and when they are to be violated."

That is an analagous situation.

Major FANTON. I am interested in your discussion, because I have in mind that this might come up, I did have, and so discussed this matter with the public defenders in Fairfield County, Superior Court, the highest appellate court, to determine what his experience has been. After all, I had had limited experience in this matter, and I went to experts, and he is defending criminals every day, and of course my inquiry was directed more at these claims of duress, and so forth, not specifically in the matter you mentioned, but from his replies I judge that it is quite common to have a man arrested, suspected of a misdemeanor or a felony, and having been questioned, and of course if he is treated unfairly, if confessions were extorted from him that are not true, and that fact comes out and the methods have sufficiently reprehensible, I would expect him to be disciplined.

Senator McCARTHY. I thought you were going to proceed further for a moment.

Major FANTON. No, I am sorry. I was answering your question, directed as I understand it, to our civil procedure in this country rather than the military procedure that we discussed initially.

Senator McCARTHY. We have rules in this country covering the treatment of men who are accused of crimes.

Major FANTON. That is correct.

Senator McCARTHY. We have decided after long years of experience, how to properly protect the accused, and at the same time properly protect society; and, our law enforcement officers are bound by those rules. They cannot take it upon themselves to decide when it is necessary for them to violate the rules, isn't that right? They are running into difficulties then.

Major FANTON. Anybody who is in a position where they have to take some action, where they are the moving party, always has to make those decisions.

Now, if they do violate the law, then it is their responsibility and they have to take that risk, if they violate the law. I am assuming there is a violation.

This is very argumentative.

Senator McCARTHY. What risk do they take in violating it? The risk of being caught?

Major FANTON. Of being disciplined.

Senator McCARTHY. Disciplined?

Major FANTON. Every man has to decide whether he is violating the law, or conducting himself properly.

Senator McCARTHY. You told us you decided, over in Europe, after discussing with your superior officers, that you had to violate it.

Major FANTON. I didn't say that.

Senator McCARTHY. You had to violate the rules of the Geneva Convention, the rules that bound you, and said if you followed them, you couldn't get convictions. I wonder what risk you thought you were taking by violating the rules of the Geneva Convention.

Major FANTON. Senator, I don't want to be argumentative. I said that the rules did not apply, that was our conclusion, that they did not apply. If we were incorrect, I am not going to dodge my responsibility, and the people who know all of the facts of what we were up against feel that we acted—if they feel we acted improperly, I think we all ought to be censured.

Senator McCARTHY. You said that the rules did not apply after you suspected a man, is that right?

Major FANTON. That is correct.

Senator McCARTHY. Now, will you tell us what rules did apply?

Major FANTON. I think that all the rules applied except those that you had to—well, say, we were talking about—

Senator McCARTHY. Those that interfered with getting a conviction?

Major FANTON. That was a lawyer's question, and a good one. Mr. Flanagan trapped me on that one.

No, I did make that statement, but it was ill-advised. The rules did not apply, anyway. However, there are certain rules we have. We all have a conscience in that matter. I am sure of that, and we certainly were not going—we knew what those rules were, and we knew that they required us to feed prisoners properly, clothe them properly, care for their health, see that they were not assigned to dangerous missions, see that they were not humiliated, and, insofar as possible, since those rules were expressive, we will say, of international common law with respect to treating prisoners of war, humanly, of course we wanted to do that. I don't think there has ever been any question about that, among those of us who know what happened.

Senator McCARTHY. You say the rules did not apply after you suspected them. What instructions did you give your team in this questioning? Did you tell them that the rules did not apply and that they were to follow their conscience?

Major FANTON. Well, that is another very difficult question for me to answer, because to be honest—

Senator McCARTHY. It is important.

Major FANTON. I don't recall. I do know that we had set procedures for handling those people, reduced to writing, a couple of weeks before I left.

Senator McCARTHY. Well then, did you inform your staff that the rules did not apply, after you had listed these men as suspects?

Major FANTON. I don't think, Senator, to be honest with you, that I discussed the matter of the rules with my staff, for this reason: That I gave them instructions regarding what to do and what not to do. We had no responsibility with respect to clothing these prisoners and keeping them warm and feeding them and seeing that they were not abused, except insofar as it involved our interrogation of them.

Now, of course all the people on my staff, I am sure, understood that they were obliged not to—there has been some claim of deprivation of foods. I am certain that was never done. There has been no testimony I have heard—

Senator McCARTHY. Getting back to my question again. Did you ever instruct your team that they were not bound by the rules covering the treatment of ordinary prisoners of war?

Major FANTON. No; I didn't, Senator.

Senator McCARTHY: I find in your statement, the statement—

it would have been utterly impossible to have investigated this case with any hope of success if the suspects evacuated to the interrogation center had been treated as ordinary prisoners of war.

Did you discuss that with your team—the impossibility of getting convictions, if you treated them as ordinary prisoners of war?

Major FANTON. Oh, yes. You mean, in other words—we did discuss it to this extent, I am glad you asked that question, because it should be explained.

We could not allow these people to communicate with each other. That stands to reason, because—we found definite evidence, it was admitted later on in the courts of the interrogations that they had colluded, they got together and conspired and are still doing it for that matter, or trying to do it.

Senator McCARTHY. I am not asking you to give any justification for the things that happened at that time. I am asking you whether or not you communicated to your staff what you stated in this committee—

it would have been utterly impossible to have investigated this case with any hope of success if the suspects evacuated to the interrogation center had been treated as ordinary prisoners of war.

Did you tell them any of that?

Major FANTON. You asked me if we did?

Senator McCARTHY. You did?

Major FANTON. Certainly, we discussed it.

Senator McCARTHY. And did your staff understand that they were not bound to treat these men as ordinary prisoners of war, not asking for your justification, but whether or not they understood that.

Major FANTON. I know what you are asking me, and I will do my best to answer, to the best of my recollection.

Senator McCARTHY. Thank you.

Major FANTON. Your question implies that they were given license to disregard all rules. Of course they were not. They were instructed carefully and repeatedly that there would be no manhandling, no brute force exercised—in fact, it was never brought up in that way. I issued the instructions, but we planned this thing out. Some of the techniques used were discussed, but they were told that there must be no force used, there must be no duress and most of these interrogators were lawyers. They knew what those words meant and they had necessarily to be, to interpret and apply them. They were not told anything about clothing and food, because that was not our responsibility. They were told, however, that these other rules would be followed.

You see, after all, we didn't want anything to be questioned, if we could avoid it.

Senator McCARTHY. Did you instruct your staff that any type of deception was all right, as long as they didn't use physical force?

Major FANTON. I did say that ruses and stratagems, if you want to call it that, deception, certainly, I said so. We had to. Some of these witnesses were cooperative. Some came forward and volunteered stories. Most of them, however, the great number I should say, I don't know exactly what the number was, were not cooperative. The very nature of the relationship was such that they were not cooperative. They had to be tricked.

Senator McCARTHY. Not cooperative? Let's take a case and see what we mean by "cooperative."

How about the case where the soldier confessed that he went into this home and killed a Belgium woman and signed a confession to that effect? I assume that when he signed that confession he thought he was cooperating. Let me ask you this question: When you later discovered that the husband signed an affidavit to the effect that no German soldiers had even been in his home, that his wife had been killed by American artillery fire, did you still think that the man that signed that confession was cooperative? Or did you think he was uncooperative?

Major FANTON. I'm sorry, Senator, I don't recall the man. If you could give me the facts, I might be able to.

Senator McCARTHY. Max Rieder.

Major FANTON. Max Rieder? I don't recall him at all.

Senator McCARTHY. The confession is in the file. It was testified to yesterday. Now, when that was called to your attention—another confession in this case, I assume when your staff got that confession, and finally he signed it, you felt that that was a nice cooperative boy; but when he refused to sign it you considered it noncooperative?

Major FANTON. That is not properly—

Senator McCARTHY. You went in the cell, one of the interrogators to try to get the fellow to confess to a crime. You thought he was guilty and let us assume that he was guilty, thought this fellow was guilty of killing that woman in her home, and he went in the cell and the soldier said, "I never killed her. I wasn't there and I won't sign a confession." Up to that point, you would say he is extremely uncooperative.

Major FANTON. You have given me the facts, sir?

Senator McCARTHY. I know it.

Major FANTON. And, you are asking me to draw a conclusion from that. I think it was obvious that—let me put my meaning a little more clearly. He had been cooperative, and some of them were, there has reference been made to these Tales of Hoffmann—

Senator McCARTHY. Let's stick to that man.

Major FANTON. We are on the issue of cooperative witnesses, and I am trying to explain what I mean.

Senator McCARTHY. I am going to get this from you if I keep you here a week, and I will make you answer all the questions asked. I don't care how much you—

Senator HUNT. Let's be a little more courteous with the witness. Let's not attempt any browbeating or that type of proceeding.

Senator McCARTHY. I am going to get the answer from the witness. I don't care how long it takes, unless the Chair rules that I can no longer cross-examine.

Senator HUNT. The Chair is certainly not attempting to limit your cross-examination.

Senator McCARTHY. I asked a question—what you consider cooperation. He said he did violate the rules when a man was noncooperative, and I was giving him an example of a confession extracted from that man, a confession proven to be absolutely false; and I have asked him whether he felt that man was noncooperative and he said he was not guilty of that crime. I think it is an honest and fair question.

Senator HUNT. The witness may answer in his own way, and amplify his answer as he wishes, Senator.

Senator McCARTHY. If you think I am being unfair, Major, I wish you would tell me. It is possible that in my desire to get you to answer these questions I may be. I certainly appreciate the Chair calling my attention to the fact, anytime I am unfair to the witness.

Major FANTON. I want to get this thing clear. I think it is important. I wanted to give you an example of a cooperative witness, because I think it is important to get that clear. We had testimony here yesterday indicating that one of these witnesses whose statement or confession was introduced in evidence, had manufactured or had given an implausible story.

Senator McCARTHY. Can I read to you the confession this man signed, according to the record?

Major FANTON. If you can give me the page.

Senator McCARTHY. It was on page 126, the man was Max Rieder, the town was Bullingen, a little village, and the statement is as follows:

Bullingen: The accused stated in his extrajudicial sworn statement that about 1100 hours December 17, 1944, he and Sergeant Haas reached the village of Bullingen and entered the kitchen of a house where they found a woman about 40 years of age. Haas asked the woman whether there were any American soldiers in the house. When she replied in the negative Haas ordered the accused to "bump her off." The accused then took his rifle and while standing approximately 2 meters away from the woman, shot her through the forehead and she collapsed dead.

And, another one:

Bullingen: An extrajudicial sworn statement dated June 26, 1946, and signed by the mayor and registrar of the community of Bullingen certified that a Mrs. Anton Jonsten died in Bullingen on December 17-18, 1944, and that list in the registrar's office contained no other case of death from unknown causes during 1944. In an extrajudicial sworn statement Anton Jonsten, stated his wife was killed by American artillery fire on the 16th or 17th of December 1944 in Bullingen while she was outside her house attempting to flee from combat and that her body bore marks indicating that death was caused by the explosion of a grenade.

If you could explain to me, and I think this is very important, how your interrogators got not only a confession but a statement from one of the witnesses to the effect that he had witnessed this shooting, a shooting which never occurred, that would be of great benefit to us. We would like to know how you got it, in this particular case. It may shed light on how they got it in other cases.

We want to know, for example, who took the statement. I want to know where it was gotten, want to know how many times the man was interrogated, how long he remained uncooperative before he got cooperative and signed the statement.

Major FANTON. May I have a minute to read that, Senator?

Senator McCARTHY. We will get you the statement, too.

Major FANTON. Yes, I will be interested to see it.

(There was a brief recess.)

Major FANTON. Senator—excuse me.

Senator McCARTHY. They are getting the statement, if you prefer that.

Major FANTON. I would, because that would be more in detail.

Senator McCARTHY. Then, you would be able to know who took the statement.

(There was a brief recess.)

Senator McCARTHY. Mr. Chairman, it develops now that Major Fanton was not in charge at the time this particular confession was taken, and with the chairman's permission, I would like to put Colonel Ellis on.

(There was discussion off the record.)

Senator McCARTHY. Mr. Chairman, Colonel Ellis informs me that this was taken at the time he was in charge. I think this is a very important point, to find out how they got a confession which obviously is untrue, and with the chairman's permission I would like to call Colonel Ellis to clear this matter up for us, if he would.

Major FANTON. Senator, I don't want to interrupt your train of thought on this, but I think I have an explanation here that is important, and it is one that we have encountered before on these things, and may have some bearing on your line of questioning.

Senator McCARTHY. I would like your explanation.

Major FANTON. I personally think you have got the wrong person. I don't think it was Mrs. Anton Jonsten. I am aware of the fact that the list in the registrar's office contained no other case of death, but of course we are presuming to judge a very serious matter, and it seems to me without having the registrar here, or without having any way of determining how the records were kept, how accurate they were, whether they were partially destroyed, or what the situation was, this may be an entirely different person, and in my opinion it does not prove that the confession is incorrect. I don't think this man, I may say further I am certain this man wasn't convicted. While this was certainly in evidence, he wasn't convicted on this incident primarily because it is one of the few cases where I notice there is no corroboration and I am almost certain that he was convicted on the crossroads incident as related in this R. and R., that is my explanation and I think it is a good lawyer's explanation.

Senator McCARTHY. Let's stick to this confession. I find that Lieutenant Perl signed as a witness. From that, can we assume that Perl took this confession?

Major FANTON. Not necessarily.

MR. CHAMBERS. Senator McCarthy, may I answer that? I have the record of trial before me, and it shows that Lieutenant Perl did take the confession.

Senator McCARTHY. All right.

Now, you say that you think you have got the wrong person here?

Major FANTON. I say that is a possibility. I am not making any positive statement on it. This was an explanation. I personally don't believe it is a false confession, because I know how these things were secured. I am in a better position in that regard, I believe, and necessarily so, than anyone else would be.

Senator McCARTHY. I think this is interesting. You think the confession was not false?

Major FANTON. I don't know, because that is opinion on my part, of course.

Senator McCARTHY. It is your opinion that the confession was true?

Major FANTON. That is my opinion.

Senator McCARTHY. And are you taking into consideration the fact that the mayor and the registrar said that was the only death that

was from other than natural causes in that town during that month or year?

Major FANTON. Yes, sir.

Senator McCARTHY. And that the husband of the woman testified that no German soldier shot her, and that she died——

Major FANTON. I think so——

Senator McCARTHY. You still say that is your opinion?

Major FANTON. Oh, yes. I don't think you were indicating that this was a false confession based on these deductions, and I am saying that they are not conclusive by any means, because we have no way of knowing whether Mrs. Anton Jonsten was the person involved at all in the shooting. We have no way of knowing that.

Senator McCARTHY. You think you have it right down, do you?

Major FANTON. Well, I would imagine so. I haven't read the statement.

Senator McCARTHY. It is important. You tell us you think this is a true confession, this village described was a very small crossroads town—do you follow me?

Major FANTON. I don't know.

Senator McCARTHY. I wanted what you base your opinion on. You say you think this confession is not false.

Major FANTON. I will be glad to tell you what I base my opinion on, because I have a high regard for Lieutenant Perl, because I worked with him, and I know how he interrogates. He is an extremely able interrogator.

Senator McCARTHY. I gather as much.

Major FANTON. He is; there is no question about it. He has a remarkable background. This is very important, because he is being judged without being present to speak for himself. I think he will be his own best witness, but I would like to put this in, because it is very important, and it played an important part in our selection of Lieutenant Perl.

He was a man approaching 40, and—in his late thirties, with a very unusual background of interrogation. He has an M. A., Ph. D., and an LL. D. from the University of Vienna, which, I think, speaks for itself.

Senator McCARTHY. I would like to go into the background of Perl later.

Major FANTON. I brought that in; you asked my opinion, and I thought this was a true confession. My own opinion is that we had no false confessions. If it can be demonstrated definitely that some of the confessions were beyond any doubt false, then I would have to admit that there was something peculiar.

Senator McCARTHY. Let's say you are sitting in judgment on that——

Major FANTON. There should be an explanation——

Senator McCARTHY. I would like to know what you need in addition to what we have. You have a little crossroads village, the mayor of the village says that no woman was killed in this village except Mrs. Anton Jonsten. She is the only one. The registrar says the same thing—no woman was killed except Mrs. Anton Jonsten. The husband signs an affidavit to the effect that his wife, Mrs. Anton Jon-

sten, was not shot, as this witness and the accused says she was shot, by a German soldier, shot in the forehead—they say she was killed as she was running away from the combat zone.

Now, what more do you want to convince you that the confession was false?

Major FANTON. A lot more.

Senator McCARTHY. I would like to know what.

Major FANTON. I would like to have a chance to observe these people and see what their credibility was, know, not that they are lying, but see how well their recollection stacks up with the facts as we know them. Here they have given an affidavit—

Senator McCARTHY. You introduced this into evidence, didn't you?

Major FANTON. I didn't.

Senator McCARTHY. You know it was introduced, you know that, don't you?

Major FANTON. I know that it is in the R. and R.

Senator McCARTHY. You know that when the defense counsel tried to show how the confession was gotten, not the confession of the other witness, how it was gotten, Mr. Rosenfeld says, "You can't go into that because it wasn't brought out on direct examination."

You know that.

Major FANTON. Senator, I know this—I am very glad you raised this question, it is very important—I know this: That the defense was given an opportunity on voir dire, when all the statements were introduced, to get up and question the methods in securing them, to my knowledge, and, of course, I am relating this from what I have been told by Colonel Ellis—that was not done in a single case.

Senator McCARTHY. Do you know, let me ask you, did you go over the—

Major FANTON. The record? No.

Senator McCARTHY. The affidavit submitted to the Supreme Court with excerpts from the record.

Major FANTON. I certainly did.

Senator McCARTHY. And did you find in that, that when the defense would try to show how statements were obtained, before the court, that is, that the law member would rule that they could not do that, because it was not gone into on direct examination, in other words, because the prosecution didn't show how the statement was obtained, the defense could not obtain that.

Do you know of your own knowledge that that is in the affidavit, with the page of the record cited, the verbatim record, showing that that is what Rosenfeld did? Do you know that?

Major FANTON. Senator, let me answer it this way: I have the petition here, and if you allow me to refresh my recollection, maybe you can tell me where—

Senator McCARTHY. Do you know it now without refreshing your recollection?

Major FANTON. I don't know it now, because I have to refresh my recollection. The petition contains so much that was untrue and distorted that frankly I had a hard time believing anything contained in it.

Now, if it referred to the record and the record bears it out, then of course it is in the record.

Senator McCARTHY. If you find that, on the record, the law member did refuse to allow the defense attorney to go into the question of how the statement was obtained on cross-examination, would you then say it was impossible for the court, or any reviewing body to determine whether the statements were properly obtained or improperly obtained, keeping in mind cases such as the one I just gave to you.

Major FANTON. Senator, I have got to answer that question this way: I don't think you could possibly determine, from looking at one except from the record whether the law member ruled correctly or incorrectly. I have talked with many people who have gone over this record, who have studied these issues, these rulings, because this point you have raised, you have raised it several times, and I think it is a good one and should be answered.

Senator McCARTHY. I think so, too.

Major FANTON. And, their opinion is that no error was committed on these rulings. Some were questionable matters on which reasonable men might differ, but I am told that at no time, you are talking about the Pletz case, are you, you read that a couple of times, but I don't know what the direct examination was, and I can't tell whether or not his ruling was proper from just some short excerpt from the record. If I could study it, maybe I could give you an opinion.

Senator McCARTHY. Let's see how much you do know about the rules of evidence.

If, on direct examination, the prosecution staff did not ask the witness, witness No. X, how his statement was obtained; if they did not ask him anything whatsoever about any inducements given to him for signing the statement, such as lack of prosecution, if he signed a statement involving someone else—let us assume that was not gone into on direct examination at all—is it your thought that it would be proper or improper to allow the defendant to go into that fact on cross-examination?

Major FANTON. Now, I am going to try and get this clear. You have a witness on the stand—

Senator McCARTHY. Let me restate it for you, if it is not clear.

You are on the stand, you are a witness against John Jones, accused of being a war criminal. You have previously made a written statement, pointing out John Jones' crimes. You got on the stand and you testified in accordance with your statement. Then, I am the defense counsel, defending John Jones and I want to find out why you signed that statement, whether you were offered freedom from prosecution, whether you signed that statement because of threats or duress, and the question is—is that correct cross-examination on my part, or is it not?

Major FANTON. The statement is introduced in evidence?

Senator McCARTHY. All right, say the statement was introduced in evidence, also.

Major FANTON. That is a difficult question. That is a technical question—

Senator McCARTHY. You think it is difficult?

Major FANTON. Yes. If I may explain myself, ordinarily you would never have a statement introduced into the record if you had the witness to testify. The best evidence is the witness' testimony, so you have an unusual situation.

Senator McCARTHY. Let's make it easier and say the statement is not introduced in evidence. Let's assume the statement is obtained and not introduced in evidence. That will make it easier. The statement is not introduced.

Major FANTON. And, he is on the stand?

Senator McCARTHY. He is on the stand.

Major FANTON. And he has testified with respect to a particular fact or, say he admitted implication.

Senator McCARTHY. One of the prosecution witnesses.

Major FANTON. And, I believe your question is, if I am correct, whether or not he can be cross-examined with respect to his credibility?

Senator McCARTHY. That is right.

Major FANTON. Of course.

Senator McCARTHY. And any ruling to the contrary is obviously improper?

Major FANTON. Yes. The witness' credibility can always be tested, I think.

Senator McCARTHY. Then, you would agree with me that Rosenfeld in so ruling made a fair trial impossible?

Major FANTON. No; I would say he was incorrect. Now, I don't think anything would prevent you, the defense, if you have a statement and it is introduced—on voir dire there is nothing to prevent the defense from putting a man on for the limited purpose of testifying as to how that statement was secured, and the cross-examination of the witness is limited to that one scope of inquiry. We couldn't have gone into, and I use the "we" editorially, we couldn't have gone into the matter of his implication, we could have gone into nothing but what would test his credibility with respect to the methods used in obtaining the statement.

Senator McCARTHY. I don't follow you at all.

You are again on the stand. You are a prosecution witness. Will you explain how I can get—

Major FANTON. Your question, Senator, was whether or not a man would have a fair trial if such a ruling existed.

Senator McCARTHY. Yes.

Major FANTON. Now, in answer to that, because I think it is important—

Senator McCARTHY. Yes.

Major FANTON. I say that the man could perfectly well have had a fair trial if there was some question about how the statement was secured, if there was something that led you to believe, as defense counsel, that this statement was secured through duress, or force, or represented dictated statements, or untrue, or any other reason, when they went into evidence. At that time the man who gave the statement should be put on the stand and examined with respect to the methods used and it could have been done, it is done all the time when statements are introduced.

Senator McCARTHY. You say it could have been done. I am calling your attention—did you find that—in other words, you say that it should have been done, therefore, it could have been done.

I want to call your attention to the fact that it could not have been done in this trial.

Major FANTON. All right.

Senator McCARTHY. This is the cross-examination of the witness Kramm:

Question. Now, how often would you say you were approximately interrogated at Schwabisch Hall?

PROSECUTION. I object.

Colonel ROSENFELD. Objection sustained.

Mr. STRONG. May I very respectfully point out to the Court, with due deference, that this is cross-examination.

Colonel ROSENFELD. It is not cross-examination, because it is without scope of the direct examination. The Court has ruled. The objection is sustained.

Question. Kramm, isn't it a fact that you, during the time you were in Schwabisch Hall, signed a statement for the prosecution, in question-and-answer form, consisting of approximately 20 pages?

PROSECUTION. I object again.

Colonel ROSENFELD. This is not cross-examination. It is the last time the Court will notify you.

In view of that, do you want to change your statement that they could have put the witness on the stand and cross-examined about the statement?

Major FANTON. No; I don't want to change. Nothing you read, or that I have seen or have been told about that case indicates the defendant was ever denied the right to get on the stand and explain how the statement was secured.

Just let me go back to that point——

Senator McCARTHY. Not speaking of the witness, the defendant, but witness X, who was a witness against the defendant; and, the prosecution attorney knows how the statement was obtained, he knows that the witness, for example, was promised, as you say, in your statement, that he can be promised, immunity from trial if he signs a statement, if he is more valuable as a witness—the defense—the prosecution knows, from an order put out, that his man was promised immunity if he signed a statement helpful to you in the prosecution of the witness, and the defense attorney wants the court to know that. The defense attorney starts inquiry of the witness how the statements were obtained, what inducements were offered, and you understand now that Rosenfeld said that is not proper cross-examination. You understand that, don't you?

Major FANTON. Senator, I don't want to be argumentative, because I want to give you a direct answer, if possible. I couldn't answer that question without knowing the direct examination. He said it was without the scope of the direct.

Senator McCARTHY. I will tell you the——

Major FANTON. Read it to me.

Senator McCARTHY. The direct didn't go into that question in any way whatsoever. The direct examination of the witness did not go into the question of how the statement was obtained, what inducements were offered, and—is that sufficient?

Major FANTON. Was this statement, I mean, I want to get it clear in my mind—was this a statement or was the witness on the stand?

Senator McCARTHY. I will read that again:

Question. Kramm, isn't it a fact that you, during the time you were in Schwabisch Hall, signed a statement for the prosecution, in question-and-answer form, consisting of approximately 20 pages?

The defense wants to know whether this man who was testifying had previously signed a statement of 20 pages. From that, he wants to find out what inducements were offered, and Rosenfeld says that can-

not be done, because it was not gone into on direct examination, and I want to warn you again, I am asking you again, is it conceivable that you can get a fair trial in this case with that type of ruling by the court?

Major FANTON. It seems as though every time I have to ask a question, but I don't understand the picture, and I want to get it clear.

It was the statement that was being introduced, or was it Kramm's testimony? I know there was reference in the questioning to the statement. I don't know whether the statement was being introduced in court or whether he was being asked that question for some other reason.

Senator McCARTHY. This is cross-examination, and from the question you know as much about it as I do, it asks whether or not he signed a statement. If the statement was before them, if he had signed the statement—

Major FANTON. And your point is that—

Senator McCARTHY. If it is being introduced.

Major FANTON. This was a matter of testing his credibility?

Senator McCARTHY. Certainly, certainly, certainly.

Major FANTON. Well, that is—

Senator McCARTHY. Get down to the simple question: Can you have a fair trial without the right to test the credibility of the witness? Do you think you can, or do you think you cannot?

Major FANTON. You have to have the right to question the credibility of the witness; there is no question about that.

Senator McCARTHY. You say that Rosenfeld denied that right to them, and then they simply did not have a fair trial?

Major FANTON. No, I wouldn't say that. I would have to see the record.

Senator McCARTHY. You say you have to have the right to test the credibility of the witness. I say, if you are denied it, can you get a fair trial?

Major FANTON. I think, if you are denied it, it is inconceivable, if you had a lawyer sitting as a law member of the court, I can't imagine these rulings occurring one after another, I don't know—I didn't see the man on the stand, Mr. Kramm; didn't see Mr. Strong, or observe his conduct in the court. It looks as though the court was being a little severe. I don't know. Maybe the man was being a little obstreperous, I don't know. I really can't answer the question, Senator, with an answer that would be worth anything.

I can answer a general question—

Senator McCARTHY. I think you are right on that. You cannot; but let me ask you, not because I think you are an expert in these matters, but because the Army had you in charge, you see, and in view of the fact that they apparently considered you competent in these matters, that is why I ask, not because you are considered an expert on this: but, if the trial record shows that Rosenfeld consistently, during the trial, denied the defense counsel the right to question the credibility of the witness, in other words go into the question of how the statement was obtained, what inducements he was offered, if the record shows that was done consistently, then would you say that those men did not have a fair trial?

Major FANTON. No, I wouldn't say that. I would say this, that the ruling might be erroneous, don't misunderstand me, I am not con-

doing a ruling that prevents anyone from testing a witness' credibility, I say the man still had an opportunity to get on the stand when the statement was introduced. I have seen or heard nothing, and I heard Colonel Dwinell testify yesterday, and he said nothing about that point, maybe he can clear it up, but to my knowledge none of these people took the stand to explain how their statements were secured at the time they were introduced, and hey had that right and it was never denied them.

Senator McCARTHY. Is there anything more important in a criminal case or a lawsuit than the credibility of a witness? And, if he can impeach a witness and show he is lying, that is very important in a case.

Major FANTON. Certainly.

Senator McCARTHY. There is nothing more important in a lawsuit than the truthfulness of the witness you have on the stand.

Major FANTON. That is very important.

Senator McCARTHY. And is recognized by every court, that you cannot even have the semblance of a fair trial unless on cross examination you can thoroughly and completely test the credibility of the witness, and you and I agree on that, do we not?

Major FANTON. I certainly do.

Senator McCARTHY. I ask you this question again:

If the record shows, and we will put this in the record later—if the record shows that Rosenfeld consistently refused to allow the defendants to test the credibility of the witness, and that, you tell me, is the most important phase of any lawsuit; and if Rosenfeld says you can't test the credibility of the witness, is it conceivable that they could have had a fair trial? It is a simple question.

Major FANTON. I don't think it is. It may seem so, but I would like to answer it this way—

Senator McCARTHY. All right.

Major FANTON. I would answer in the affirmative, if they were prevented from telling their story on the stand, if they were prevented under circumstances—

Senator McCARTHY. By "they"—

Major FANTON. The accused, under circumstances—

Senator McCARTHY. Talking about the witness.

Major FANTON. Excuse me.

Senator McCARTHY. Talking about the witness, not the accused.

The general rule, I don't believe you understand this from the statement you made, you said you can put an accused on and show how statements were obtained and he would not be subject to any other questioning. You apparently are not aware of the fact that the general rule of all our courts is when a defendant is put on the stand on any one subject, then he is opened to cross examination on all subjects and in that respect Rosenfeld ruled, and that is one of his correct rulings, he notified the defense counsel in the record that if the defendant was put on the stand on any subject he could be cross-examined on all subjects, that is absolutely correct.

Major FANTON. I agree.

Senator McCARTHY. So, you will understand—

Major FANTON. I would like to make a distinction. There is a distinction between him getting on the stand—

Senator McCARTHY. Yes?

Major FANTON. For general examination, and cross-examination; and, getting on the stand to tell how the statement which is being introduced in evidence again, was secured or obtained.

Senator McCARTHY. Let me interrupt—

Major FANTON. I understand that—

Senator McCARTHY. Stop there.

You say he can get on the stand, and he can tell how a statement used against him was obtained. Keep in mind the defendant was down in what you would call close confinement, maybe four or five floors from the witness whose statement was being obtained. Obviously, he couldn't know anything about how it was obtained. You say the defendant can get on the stand and testify how the statement of his accuser was obtained, and I call attention to the fact that he was in close confinement, and had no way of being in contact with that witness, may never have seen him before as a matter of fact. The witness gets on the stand and gives a story. In this case, let's say the defendant knows it isn't true, such as this Belgian situation in the town Bullingen, then the defense counsel cannot put the defendant on the stand and say "Here is how that statement was obtained," because he would be lying. The defense counsel wants to know how it was obtained.

I ask you this: If the court says you can't inquire as to how that statement was obtained, you can't show that this witness was offered freedom from any prosecution, as your order says you were entitled to make him that offer, you can't show that he was threatened, you can't show why he made the statement, why he so testified.

Now, I ask you under that set of circumstances can you conceivably get a fair trial, Major? It is a simple question?

Major FANTON. It would be a simple question if your premise or facts leading up to it were correct. My information is to the contrary. My information is that Kramm, or any other witness was never prevented or made unavailable, as far as the defense was concerned. They could put him on, if they wanted him, if they really thought some improper—

Senator McCARTHY. He is on.

Major FANTON. I mean, as their own witness. This is a question, as I understand it, this ruling—I may be wrong, but I have talked this over with people because I listened to your examination, and I think it very proper that you go into it completely—if this is just a technical ruling with respect to whether or not the cross-examination is within the scope of the direct, as it appears to be, I would say that, without looking at the whole record, seeing what was done generally, you cannot possibly conclude from that, that the men didn't have a fair trial. I don't think that is a fair conclusion.

Senator McCARTHY. Is the testing of a witness' credibility ever within the scope of direct? That can be within the scope of the direct examination. You say you don't know whether it is within the scope of—

Major FANTON. I can't quite agree with you on that.

Senator McCARTHY. You can't quite?

Major FANTON. No. If I considered it important, to tell how a witness in this case explains the circumstances regarding this statement, that is being referred to, and I think conceivably it might have been important, I don't know, I wasn't there, but let's say it was im-

portant, I certainly could go into it on direct, to give my witness added credibility, to explain how he came to give this testimony against the accused.

Senator McCARTHY. Major, let's start all over again.

You say you can do it on direct. I am speaking of the prosecution. Let's say there is only one witness against this defendant. The defendant has never seen the witness before, so he can't testify as to how the statement was obtained. Understand?

I am going to call attention now to your T. X., so you will know what I have in mind, if I may :

Where a prisoner being interrogated in a crime is implicated in that crime, it is permissible to tell him that he will be recommended as a witness, if such a statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant.

In other words, your T. X. says you can tell a man who is being interrogated that if his statement, the statement he signs will be of more value in convicting other men than having him as a defendant, himself, then you can tell him that he won't be used as a defendant, he will be used as a witness, you see, and then this man signs a statement, all right?

Major FANTON. Let me—

Senator McCARTHY. Let me finish. Let us assume that your interrogation staff has followed your T. X., and has instructed the witness exactly what you tell them he can be instructed. If you want to refresh your memory, I will hand that to you.

Major FANTON. I don't need that.

Senator McCARTHY. Let's assume the interrogation staff instructed him exactly as you told them to, assume, with that in mind he does tell a story that your interrogation staff thinks will be more valuable, using him as a witness than as a defendant, you don't put him on as a defendant but as a witness, he is the only witness against this defendant, the defendant has been down in close confinement, he has not seen the witness, does not know how the statement has been obtained, counsel has read your directive and, of course, doesn't know either, because, we will assume if he could take the witness—he has been offered immunity if he so testifies, he wouldn't very well back down, but the man is on the stand now, and this man's testimony determines whether or not your defendant will live or die, whether he will be hung or not, he has been charged with some atrocious crime and I am defense counsel—I wasn't there when the witness' statement was gotten, and I say I want to examine this man, to the president of the court. I say I want to find out what he was offered, find out how many times he was interrogated, I want to find out whether or not he was told, as your T. X. says he can be told, that he will be used as a witness if he is more valuable, and not used as a defendant. I want to get that information from this man, so the court can determine whether or not this man is telling the truth, or merely telling a story that will get him out from under, in view of the promises.

The court says: "No, McCarthy; you can't question that witness because that was not gone into on direct examination."

I ask you now, under what conceivable circumstances can that man, the defendant, get a fair trial?

Major FANTON. I think he can get a fair trial if he is allowed to put that man—of course we are assuming—

Senator McCARTHY. Put what man?

Major FANTON. If I were defense counsel and a witness appeared against my accused, this is just my opinion of the thing, of course, I don't know what happened at this trial.

Senator McCARTHY. Go ahead.

Major FANTON. This is in a vacuum—if I were defense counsel and a witness testified against my client—

Senator McCARTHY. Yes?

Major FANTON. To the extent that it really involved him in a serious crime, and for any reason I was prevented by the judge, we will say, or the law member of the military court, from testing his credibility, whether the ruling was correct or not, let us assume it was incorrect—

Senator McCARTHY. Yes?

Major FANTON. Or, let's assume it was correct, that would be better.

Senator McCARTHY. You can't assume that, we agreed that it was incorrect.

Major FANTON. Then, let's make no assumption.

I would be certain to get that man on the stand, that witness, and find out just how, if there were any inducements involved.

Senator McCARTHY. Let's assume you know some law. You mean you would put this man on the stand as your witness and the court will allow you to cross examine your own witness?

Major FANTON. He is a hostile witness, Senator. Certainly I would be able to do it.

Senator McCARTHY. All right, then, in this case, to get the record straight, this man Kramm refused to testify for the defense, and said "I won't go on the stand for the defense." Under those circumstances, what do you do?

Major FANTON. Under those circumstances I would appeal to the court.

Senator McCARTHY. What court? You appeal to the court, and the court says what? "I won't warn you again."

You appeal to the court, or appeal to the court here, and the court says this: "This is not cross examination. It is the last time the court will notify you."

You have appealed to the court, and the court says don't try it again. Then, what do you do in the case for the man being tried?

Major FANTON. With respect to that particular ruling, I don't know what was done when Kramm refused to testify. I don't know what was done when he refused to testify—it may be in the record.

Senator McCARTHY. I am asking you, you say you would appeal to the court. I say the defense attorney appealed, it is on the record, page 216, and Colonel Rosenfeld says:

This is not cross examination. It is the last time the court will notify you.

Defense counsel then gave it up.

I wonder if you would have been more competent than that defense counsel and in some mysterious way could have convinced the court—

Senator BALDWIN. At that point, may I ask a question? I have come in here recently, and have to pick up the thread of the examination.

Does this discussion now pertain to any affidavit or confession or anything in which the witness was involved?

Senator HUNT. Not that I know of, Senator. I assumed that the line of questioning that would be directed at Major Fanton would be as to what part he played, if any, in these cruelties, supposedly, that were enacted against these prisoners. So far, we have not gotten around to that this morning. We have just more or less so far discussed the technicalities of procedure.

Senator BALDWIN. I wonder if we are not going to prolong this thing to unnecessary lengths, and I don't want to see the Senator from Wisconsin prevented in any way from asking any questions that he might feel would be helpful to the committee, but I don't understand that this witness was present at the trial of the case.

Senator McCARTHY. I will tell the Senator this, for his benefit, he wasn't present during the examination:

We have had a number of unusual developments all having to do with the Malmedy case. This man is a lawyer, gave his background, and the Army had enough confidence in him to put him in charge of the interrogation and prepare the case for trial, in effect.

To show what this witness' attitude is, between right and wrong, we had part of the record here this morning read, to the effect that a statement—a witness got on the stand and testified that he saw a German soldier stand 2 feet from the woman and shoot her through the forehead and kill her. The man was convicted——

Senator BALDWIN. Let me ask a question there——

Senator McCARTHY. Let me finish.

Senator BALDWIN. Was this confession one taken by the witness?

Senator McCARTHY. I am telling you why I think this is proper. This witness, who is a major, not a corporal, the Judge Advocate General's officer in charge of this work, was questioned in regard to this case of the Belgian town in which the witness got on the stand and said he saw the man shoot her through the forehead and she dropped dead. That was a statement taken by Lieutenant Perl, one of the interrogation staff, hired, and we will go into that later. The mayor of the town signed an affidavit that no woman had died from unnatural causes during that period of time except Mrs. Jonsten. The registrar testified to the same thing. It is a little cross roads town, you understand, where everybody knew each other's name. The husband of the woman, the one woman that died from unnatural causes during that time, signed an affidavit saying no German soldier had shot her, that they didn't observe any bullet wound in her, but that she was running from the combat zone and was killed, and her injuries indicated that she had died from the bursting of a grenade.

The major tells us, in view of that, that he believes the confession was properly obtained, it was a proper confession, a proper thing to introduce in evidence, and I am trying to find out how much law this man knows, in view of the fact that the Army considered him an expert. I wanted to find out whether or not he thinks the trials were properly conducted. I think it would be very, very improper, if we were to take one of the principal men the Army relied on to prepare the prosecution and make sure the men were convicted—if anyone was to limit my cross-examination so that I can't find out in my examination, just exactly what these men who were in charge knew, what they thought the rights of the defendant were, what they thought was proper and improper in court; what they thought was right in the way of interrogation.

The witness testified, for example, that in certain circumstances he did not feel himself bound by the rules of the Geneva Convention. I am going into that further, and find out why. This has nothing to do with the particular case of kicking a man in the groin, but I think it is part of the entire picture and unless the chairman rules that I cannot freely examine the man, I frankly would no longer sit on this committee. I think it would be completely improper and without any justification whatsoever. You have a man, allegedly an intelligent witness. He is a lawyer. He should know more about that situation over there than we do and with the permission of the Chair, I am intending to examine him at great length. I may have to be repetitious. It is difficult to get an answer from a witness, not because he doesn't want to answer, he makes lengthy answers, and he is justified in so doing. He is painstaking in his answers, and it takes a long time to get down to the information. I may bore the audience, or the press, and the people in the room, but unless the Chair rules that I cannot do it, I intend to continue examining this witness until I think I have extracted every grain of truth from him that can be extracted. I am not intimating that he is lying at all. He was not in position to observe much of this, but his judgment, or his thoughts as to what is right and wrong, to me is awfully important.

Let me ask, don't you substantially—

Major FANTON. I agree with you, Senator, as far as the testing is concerned.

Senator McCARTHY. I am glad to know we agree on some of these things.

Senator BALDWIN. Let me see what we are trying to find out from the witness here.

You see, I just came in recently, and want to pick up the threads.

As I understand it, you want to examine this witness to get his opinion as to the manner in which the trial was conducted.

Senator McCARTHY. I may ask him that if he develops enough information on it. As of this time, he wasn't present. He might know, he may be in position to give us that. This time I have been asking whether certain things that were done at the trial, and are a part of the record, were right or wrong.

I think this is very, very important in view of the fact that this is being taken from the affidavit which the witness so thoroughly condemned the other day, as being so full of falsehoods. I want to find out just what falsehoods he refers to.

As I say, I notice—this may be boring, before I get through, but it is the only way I can get information, to go into detail—but I think this gentleman, and I use that phrase advisedly, is one of the most important witnesses we have had or will have in this case.

Major, may I ask you this: I have your S. O. P. No. 4—

Major FANTON. That is correct.

Senator McCARTHY. And in it, you say "any ruse or deception may be used in the course of the interrogation, but threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment should be scrupulously avoided."

I call your attention to this, you say "or promises of immunity or mitigation of punishment, should be scrupulously avoided."

In the next paragraph you say it is permissible to tell him, referring to one of the defendants, one of the suspects, one of the men you

suspected of being a criminal—it is permissible to tell him he will be recommended as a witness if such statement is such that it will cause the prisoner to tell a full or more complete story, so that he will be of more value to the case as a witness than as a defendant.

See if I understand this correctly: Your order to your team, as I understand it, is you can tell John Jones, whom you have screened out and who you think is a war criminal—your interrogation staff can say to him, “Jones, if your statement will be such that you will be of more value to us as a witness than as a defendant in this case, and if you will sign such a statement, then we will use you as a witness rather than a defendant.”

Is that a correct understanding?

Major FANTON. No; it is not.

Senator McCARTHY. Will you explain?

Major FANTON. I would like to clear it up. It will require—

Senator BALDWIN. Tell me what he is reading from.

Senator McCARTHY. Reading from the S. O. P. No. 4, the order prepared by Fanton and posted, I understand, at Schwabisch Hall. Am I correct? This was posted at Schwabisch Hall?

Major FANTON. It was in the file, it wasn't on the bulletin board.

Senator McCARTHY. These were instructions, anyway.

Major FANTON. They were instructions.

Senator McCARTHY. That you gave to your staff?

Major FANTON. Yes.

Senator McCARTHY. And there is no question but what this S. O. P. No. 4—

Major FANTON. What you read was a correct quotation from the S. O. P., except—

Senator McCARTHY. There is no question but what it was brought to the attention of all the interrogators?

Major FANTON. It was discussed, paragraph by paragraph, as I said in the statement.

I do want to explain, because it needs explanation, I am sure.

The Senator did not go far enough in reading from the S. O. P. You will notice, in every case, that clearance was required from me before a witness was ever told—

Senator McCARTHY. Clearance was to be required from the commanding officer?

Major FANTON. From me, personally, or whoever was the commanding officer.

Senator McCARTHY. In other words, before John Jones, one of the men you suspected of being a war criminal, before he could be promised immunity because of a statement he was—

Major FANTON. No.

Senator McCARTHY. They had to say, “Major Fanton, is it all right to make this promise?”

Major FANTON. No; I want to explain. You are probably right, in a way. There is nothing on the face of the S. O. P. that would explain it; that is, of course, we had to construe the thing consistently that it was only to be used when a man had given a statement so that we could get him to tell more details. We had examples of that. We had the so-called Tales of Hoffman that was talked about so much yesterday.

After those men, Hoffman and three or four others had given their confessions, after they had told their story, we knew most of the details and they went into greater detail with respect to the incident. They were questioned over a long period of time, brought together in a room to go over these things and refresh each other's recollection just as any of us would, if we were in a similar situation, to get a detailed account.

Sprenger has given us just as long an account. I don't have Jakel's here, or several others that were given. The facts are similar in many, but each individual was encouraged to give his own recollection. That is the proper explanation of that paragraph.

I know it sounds inconsistent when you read it.

Senator McCARTHY. Don't you have the explanation—

Major FANTON. He was allowed to be a state's witness, if he was an intelligent witness.

Now, this Sprenger was amazingly intelligent.

Senator McCARTHY. Sprenger was amazingly intelligent?

Major FANTON. He was.

Senator McCARTHY. Your order says that he can be told he will be used as a witness rather than a defendant.

Major FANTON. That was permitted. I don't—

Senator McCARTHY. Permitted?

Major FANTON. I may say this, Senator: That prior to my leaving, that was not told to a single witness, that I can recall.

Senator McCARTHY. Now, you say it was told to Sprenger.

Major FANTON. I don't say it was. I don't know. I know he became a cooperative witness. I don't think any such representation was made to him.

Senator McCARTHY. He became a cooperative witness?

Major FANTON. That is correct.

Senator McCARTHY. And you know your staff had the right to tell him, if he would be a cooperative witness, then he would not be a defendant, he would be a witness.

Major FANTON. They didn't have this right unless they cleared it with me.

Senator McCARTHY. If they cleared it with you, they had that right?

Major FANTON. That is correct.

Senator McCARTHY. And you say they never cleared anything like that with you?

Major FANTON. No.

Senator McCARTHY. You started to tell me under what conditions you would clear him. You said this man, what is the name—

Major FANTON. Sprenger.

Senator McCARTHY. Yes.

Major FANTON. I said I was giving him as an example of a cooperative witness who had a retentive mind, and might have been used; we didn't know it at the time we were interrogating Hoffman and others who were going to be used as witnesses, the staff was instructed specifically—oh, I remember them, because I know this thing was turning over in my mind, and originally I had the notion that we would maybe only try the officers responsible for those orders, and the thinking had not jelled so I didn't really know who would be used.

Senator McCARTHY. When you put it down in writing it had jelled quite a bit, had it not?

Major FANTON. Yes.

Senator McCARTHY. When you put in in writing you say:

It is permissible to tell him that he will be recommended as a witness—

I am calling your attention to that, and—

If such a statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant.

Major FANTON. That is right.

Senator McCARTHY. In other words, the purpose of telling him this, that he would not be a defendant but that he would be used as a witness was to get him to give a story that would be of value to you in the prosecution; is that right?

Major FANTON. That is right, within limits.

Let me define the limits.

Senator McCARTHY. All right.

Major FANTON. We, of course, as I have said repeatedly, and I will make that point even stronger a little later on—we were not interested in hanging any innocent men, never have been, and would not want anything like that to happen, or to be on our conscience. I don't know of any—

Senator McCARTHY. I thought you were trying to convict only the guilty.

Major FANTON. We were as careful as we could conceive it to be possible, to test the credibility of all the people giving statements. This is analogous to our use of the witnesses in criminal proceedings here in the States, as State's witnesses. Frankly, I was a little uncertain about it as far as this particular proceeding was concerned, and I never gave any clearance, never gave anybody the authority to make such representations. I am certain that they never did, because I discussed that thing. I remember perfectly Lieutenant Perl telling me repeatedly that he never made any promises of immunity, and might I say, Senator, because I think you are going off on a tangent prompted by my statement, that really had no bearing on your line of questioning, sir, I will discuss that, but what it does have a bearing on is techniques—

Senator McCARTHY. Let me decide what has a bearing and what does not.

Major FANTON. Certainly.

Senator McCARTHY. I think it has a very important bearing, if you have an order that says in one paragraph never promise immunity, and in the next, you say what you can tell a man is he will have immunity if he will be a witness.

Let's assume first—let me ask you this: Do you know whether or not the witness in this Belgian case that said he saw a soldier shoot a woman in the forehead standing two meters away, and saw her drop dead—do you know whether he had been promised this sort of immunity if he would be cooperative and sign that sort of a statement?

Major FANTON. I don't know. That was the case of Max Rieder, the one you are talking about?

Senator McCARTHY. Yes.

Let me say again, I am the defense attorney—

Major FANTON. I would like to make this point, because it is important: This was his own confession, and there was no corroboration.

Senator McCARTHY. Let me get this question in, will you? Let's assume that one of the defense staff, assume that I know or knew of this order that says that you can offer prisoners immunity if their statement will convict some of the codefendants. That is in effect what you say, and a man gets on the stand, and I know, and he knows that he is not going to be tried as a defendant. I know originally he was one of the men you suspected of being a war criminal, and brought him over there and during the course of the interrogation you decide personally to grant him immunity without going to court, even though you were convinced that he was a war criminal, you grant him immunity and he gives a statement that will convict the man I am defending.

Again, going back to this question, the one that Senator Baldwin said we should not go into, do you think when the court rules that I cannot inquire from that defendant whether he was promised this immunity or not, then why he has testified as he had, whether he is doing that to clear himself in view of the fact that he was one of the alleged war criminals, I can't ask him those questions, do you think that I can possibly have any way of knowing that my man gets a fair trial?

Major FANTON. I will answer your question. I think the way you want it answered, too. I don't mean to imply that I am being a cooperative witness.

Senator McCARTHY. I know, you mean as to form of answer.

Major FANTON. I mean in the form I think you want it.

In that case that you gave, if I could not go into this man's credibility, I would certainly think that was a reversible error.

Senator McCARTHY. Now, let me ask you a question I have asked you several times before: Then if the record does show, the full record, does show that the law member consistently refused to allow the defense counsel to go into the question of credibility of witnesses, because it was not gone into on direct examination, then will you agree with me that at least in all those cases if the law member so ruled, the defendants did not have a fair trial?

Major FANTON. I want to answer it the way I did before, because that is the correct answer in my opinion.

You mentioned the basis of the law member's ruling, that he could not go into the question because it was not covered on direct?

Senator McCARTHY. Yes.

Major FANTON. He may have erred in that ruling, I won't argue that point, because I think there is a possibility.

Senator McCARTHY. A minute ago you and I agreed, I thought, wholeheartedly that any denial of the right to go into the question of credibility was an error; and, just a minute ago you said in that case I gave you, it would be reversible error. By "reversible" you mean the conviction would be set aside?

Major FANTON. Correct.

Senator McCARTHY. So you and I agree that that is reversible error, is that right?

Major FANTON. No, I don't.

Senator HUNT. May I say, in 5 minutes the hearing will recess until 1:45.

Senator McCARTHY. May I ask you to do this: Give that question some thought over the noon hour, and give me an answer.

Major FANTON. I have the answer now.

Senator McCARTHY. All right, go ahead.

Major FANTON. I think it is a good one.

Senator McCARTHY. Good.

Major FANTON. The answer is this: That that error would be error, assuming it is error without question—but now if the man is prevented, or if the defense is prevented from testing that witness' credibility in any other way, really prevented, I would say it constituted reversible error; but on the other hand, if he has the right and is not denied the opportunity to put a hostile witness on the stand and cross-examine, it can be done, I have done it myself, I say he has had a fair trial, had an opportunity and there must be some reason why he didn't want to do it. I understand, here, to go a little further, because I think it is important and I may be anticipating a question, I don't want to, but I think it is important to clear it up—you told me before that Kramm didn't refuse—

Senator McCARTHY. He did refuse.

Major FANTON. I don't know what was done about that type situation.

Senator McCARTHY. Let me ask the defense attorney. Is it not correct, Colonel, that this man refused to take the stand?

Colonel DWINELL. He did. I interrogated him and asked him to be a defense witness and he refused to give any statement. He said he would only state his name if I put him on the stand.

Senator McCARTHY. Do you know why he refused, Colonel? Why he refused to take the stand?

Colonel DWINELL. I can only tell you what he told me. He said, "I have been instructed not to testify for the defense," and that is all I know about it.

Senator McCARTHY. Do you know that this fellow Kramm was originally one of the men who had been carefully screened, as the major told me they were, so carefully screened, and brought over as suspected war criminals, and then he was released as a defendant and used as a witness?

Colonel DWINELL. We know that.

Senator McCARTHY. And at the time you saw him you were aware of the major's order that said:

It is permissible to tell him—

the witness—

that he will be recommended as a witness, if such statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant.

Colonel DWINELL. I was aware of that, not because I had seen that S. O. P. In fact, I had not. I had been told of that fact a number of times by the witnesses being interrogated.

Senator HUNT. The hour of 12:06 having arrived, the committee stands recessed until 1:45 this afternoon.

(Whereupon, at 12:06 o'clock p. m., the committee stood in recess until 1:45 o'clock p. m., of the same day.)

AFTERNOON SESSION

(The committee reconvened at 1:45 p. m., upon the expiration of the recess.)

Senator BALDWIN (presiding). The committee will come to order.

May I say for the benefit of the record that I am in a rather anomalous position. Senator Hunt, who has been acting as chairman in my place while Major Fanton was on the stand, is engaged on the floor this afternoon because he expects momentarily a bill involving his subcommittee will come up. He is expected to be there to handle it.

Senator Kefauver, the other member of the committee, is busy, engaged on another important subcommittee, and here I am. If you have any objection to my acting as chairman I will have to recess this meeting.

Senator McCARTHY. I have absolutely no objection, not even the shadow of an objection.

TESTIMONY OF MAJ. DWIGHT F. FANTON—Resumed

Senator McCARTHY. Major, going back to your S. O. P. No. 4, in connection with that can you tell me whether this man Kramm—the one we were referring to this forenoon—was he not given immunity if he would testify in this case?

Major FANTON. I cannot answer that, Senator, because I really do not know. He was not, as I said before. We had not taken the step because frankly, I had not made up my mind about it myself. Later on I understand there was some discussion as to whether or not we would use people who could be accused as witnesses.

To my knowledge he was not set aside—he was not implicated in any of the crimes—he was not set aside, at the time I left, as a prosecution witness.

Senator McCARTHY. In other words, you had not set him aside. When you left he was still one of the defendants in the war crimes cases?

Major FANTON. He was still a suspect.

Senator McCARTHY. Let me ask you this: I assume that you and I both agree that anyone who was in any way implicated with the murder of unarmed prisoners of war should, of course, be punished; is that right?

Major FANTON. That is correct.

Senator McCARTHY. I assume we both agree that only the court itself could determine what punishment they should get, with, of course, the usual review?

Major FANTON. That is correct.

Senator McCARTHY. I assume we would both agree that it should not be the function of any officer, any investigator, and anyone other than the court to determine whether or not guilty men should go free.

Major FANTON. Whether or not guilty men should go free?

Senator McCARTHY. Yes. Men guilty in taking any part in the shooting of unarmed persons.

Major FANTON. Assuming they were guilty, regardless of the court's action?

Senator McCARTHY. Yes; assuming they were guilty. In other words, you do not feel that any man who was guilty of any of these

crimes should be allowed to go free because of some decision made by some member of the prosecution staff?

Major FANTON. That is correct.

Senator McCARTHY. In view of that, I cannot reconcile that with paragraph (b) of your S. O. P. 4. You say—

Where a prisoner is being interrogated in a crime is implicated in that crime—in other words, referring to a man implicated in the crime—

it is permissible to tell him that he will be recommended as a witness if such statement to the prisoner shall cause him to tell a full or more complete story, so that he will be of more value to the case as a witness than as a defendant.

In other words, you say here that if a man is implicated in the crime, if he has taken a part in shooting these American boys, that nevertheless he can be promised, told, that if he will sign a statement that you consider valuable enough in getting convictions of his codefendants, that then you can promise him immunity. I am wondering whether you think that was not going far beyond your power.

As I understand the set-up you were not to decide which of these men, as you say were implicated; in other words, guilty, which of them should go free. Your order says that we can decide which ones will go free, and we will base that not upon their degree of guilt, but we will base that upon the value of the statement which they will give us in regard to their codefendants.

Major FANTON. Senator, I would like to answer your question this way: As I stated before, we wanted to be absolutely sure that the people we were trying were implicated in this thing, that they were the people who were guilty. We were faced with a difficult problem, admittedly, in determining that.

Senator McCARTHY. No doubt about that.

Major FANTON. I weighed this thing very carefully. Maybe I erred. That is not for me to judge; that is for the committee to judge. You want my opinion on it. When I say "implicated," I mean he might have been there, we do not know just what his connection was, but he was implicated in some way.

Senator McCARTHY. In other words, he was guilty to some extent.

Major FANTON. Yes; to some degree of guilt. I want to emphasize the fact that we were very careful, and I tried to control this thing as carefully as I could. I issued this order that whenever such representations were made to a subject being interrogated, the matter would have to be cleared with me.

We stayed away from it, frankly, because we had not reached that stage of the investigation where we were deciding or reaching a decision that would determine who were eventually going to be tried, and who were eventually, for insufficiency of evidence or other reasons, not going to be tried.

I am being long in my answer, and I am sorry, but I think it is important to get the answer full and complete.

That being the case, and in view of the fact that we were anxious to be sure that we were trying the proper people, if a man would give us a full story, if he were an intelligent witness, a man who had knowledge of these matters, and a good witness, a competent witness, I felt that it would be better to use him as a witness rather than as an accused.

Senator McCARTHY. In other words, you felt that you did have a power to decide that certain of those who were guilty—you say impli-

cated, meaning guilty—certain of the guilty men would be promised immunity, in other words, would be told that “You will not be tried for your crime if you will sign a statement that is helpful enough in convicting the other codefendants,” or call them what you will?

Major FANTON. No, Senator; that is not correct. It was not a matter of signing a statement. It was a matter of being a witness on the witness stand. I was as careful as I knew how to be to make sure in my own mind at least, that there were no promises of immunity made which would stimulate a false story.

Senator McCARTHY. You say:

It is permissible to tell him that he will be recommended as a witness if such statement—

in other words, such statement to him that he will be recommended as a witness—

if such statement to the prisoner—

listen to this, your own order—

if such statement to the prisoner will cause him—

will cause him—

to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant

You just told me you did not want to stimulate him to tell a more detailed story or false story. But you say here “If it will cause him to tell it.” I do not know the difference between stimulate and cause.

Major FANTON. You ought to read the whole thing. “A full or more complete story so that he will be more valuable.” By that I mean, this was a familiar technique, as I understand it, in intelligence matters, and it worked well in our case.

Senator McCARTHY. I assume it would work very well.

Major FANTON. If a witness had told his story, and told a truthful story, we felt that we should treat him as decently as we could, regardless of whether he was going to be an accused, a defendant, or a witness in the case. He was given tobacco rations—

Senator McCARTHY. Let us forget about the tobacco.

Major FANTON. I think it has a bearing on it, that is the only reason I mention it. Not with the idea of stimulating any false story.

Senator McCARTHY. It is correct, is it not, that you took the position that you did have the power, without consulting the court, to promise immunity to guilty men if they would tell a story that was helpful enough in convicting some of the other defendants?

Major FANTON. No, that is not correct.

Senator McCARTHY. You say that is not correct.

Major FANTON. No, sir. It was not up to me to judge whether a man was guilty or innocent. He could be implicated, but it is up to the court to say whether he is guilty or not.

I agree with you, and I see what you are driving at. I am just trying to explain why this order was issued. It was never actually enforced.

Senator McCARTHY. Wait a second. You say it was up to the court to determine whether or not he would be tried?

Major FANTON. No, sir. Whether he was guilty.

Senator McCARTHY. If you promised him immunity, did you feel that you could promise him immunity without consulting the court

then? This says nothing about clearing with the court. You said you can promise him immunity if you will clear with your commanding officer. The court was not constituted at that time, as I understand it, so you could not conceivably clear it with the court.

Major FANTON. Maybe that is the reason I never exercised the authority. I had some doubts about it myself. I will tell you honestly I did have some doubts about it. We were up against a very difficult problem. That authority I had was never exercised by me.

Senator McCARTHY. Mr. Flanagan, do you have a question to ask? Is it O. K., Mr. Chairman?

Senator BALDWIN. Surely.

Mr. FLANAGAN. Assuming a hypothetical case so we could find out how this system would have operated: If a defendant was present and took part in the shooting of one American soldier, that this same defendant observed the mass massacre of the crossroads and could give complete and total descriptions of what went on, and make a very good witness for you; under your orders in that case, would you have the power to say to that defendant "We will use you as a witness in the crossroads incident, if you can give us very valuable information, and will not try you for the crime for which you are implicated?"

Major FANTON. I would say no, I would not have had that power, and I do not believe I would have exercised it in that manner. It is difficult to answer a hypothetical question of that nature intelligently. Whether he shot one American, assuming that was proved, to my satisfaction, corroborated, because all these things were corroborated, the way we developed the story, we had corroboration, we had to have corroboration on every fact.

Mr. FLANAGAN. On that subject, I do not know whether you investigated the case or not, but just so the record will be straight, let us go back to the case of Max Rieder. There was no corroboration whatever.

Major FANTON. That is correct.

Mr. FLANAGAN. So every man was not convicted on corroboration.

Major FANTON. I am not certain, as I pointed out to Senator McCarthy—

Mr. FLANAGAN. Just a minute.

Major FANTON. I am answering your question. As I pointed out to Senator McCarthy this morning, there was more than just one shooting involved as far as Max Rieder was involved.

Mr. FLANAGAN. True. But for the murder of this woman there was no corroboration.

Major FANTON. That is right.

Mr. FLANAGAN. And that was one of the things with which he was charged.

Major FANTON. That is right.

Mr. FLANAGAN. So your statement that every act was corroborated is not a completely true statement.

Major FANTON. Wait a minute. I was just going as far as my knowledge permits me to go. When we were developing the case we were careful about corroboration. If he was charged with this crime and was tried for it, without corroboration, in my opinion it might be a mistake.

Senator McCARTHY. In other words, you do think that was a mistake then, trying this fellow without corroboration?

Major FANTON. I think it might very well be. I would not want to venture an opinion without studying the thing carefully.

Senator McCARTHY. Going back to one thing we covered this forenoon: We have this case in which a witness confessed, under the examination of Perl, that he went into this house, stooped back two meters, put up his rifle, and shot the woman through the forehead.

Senator BALDWIN. What case?

Senator McCARTHY. Max Rieder. It is on page 177.

She fell dead, and that was the major part of his confession. It was subsequently found the mayor of this Belgian town, not a Belgian, then swore to a statement, also the registrar of the community—it was not a town, just a little crossroads—in the community of Bolligen, that there was only one person who died from natural causes, and that was Mrs. Anton Johnson. Her husband, under oath, swore she was not shot by any German soldier but was killed while running away from combat, there were no bullet wounds, she was killed from the explosion of a hand grenade or shell, whatever it was.

You testified this morning that in spite of that fact, in spite of the fact of all the evidence of disinterested witnesses in the crossroads to the effect that this woman was not shot by a German soldier, you say you still think that confession was a true confession?

Major FANTON. I think so, Senator, because I am not at all convinced that we have the right woman.

Let me state this, and I will say also maybe I should not have volunteered to answer the question this morning: Colonel Ellis and I, during the recess, discussed this. He said it was established that there were refugees going through here at the time, and it could very well have been someone who was an entire stranger to the town.

Senator McCARTHY. Do you know the size of the town?

Major FANTON. No, sir.

Senator McCARTHY. Then how can you say that you think the confession is true if you do not know whether 10 or 20 people live in that town?

Major FANTON. I am basing that on my knowledge of how these confessions were obtained.

Senator McCARTHY. You think in view of the fact that the mayor of this Belgian town, the registrar, people with no reason at all to feel kindly toward the Germans, made this statement, and the husband of the woman who was killed, do you feel that this man should be found guilty and punished for that crime without the prosecution staff making a further check? Do you think it should drop there and say, "Well, because Major Fanton thinks the confession is true, we will let him go and let him serve life"? What do you think?

Major FANTON. If that were the only thing he were charged with, the only crime, and we had his confession, uncorroborated, and we were satisfied—let us not go into this issue of the identity of the woman, there is some evidence for the defense on that—I think further investigation should have been made. But that is not the only crime with which this man has been charged, and his sentence has been commuted to 15 years.

Senator McCARTHY. Now let us say you can go to the town and convince yourself that the mayor of the town is lying.

Major FANTON. I do not say that he is lying for a moment.

Senator McCARTHY. Convince yourself that the registrar is neither lying nor mistaken, convince yourself that the husband of the woman killed is neither lying nor mistaken. In other words, you go there and convince yourself, as apparently everybody except you were convinced, that there was no German woman shot by a soldier in that town.

Suppose you do that—and that should not be too difficult for this committee, I do not know if we can convince you but it convinces the committee, there are people still living in that town—then you, of course, know that his confession, that part of it, is untrue, that part in which he said “I shot a woman, I killed her, a defenseless woman.”

Major FANTON. You mean if it could be established definitely—

Senator McCARTHY. If you can establish to your satisfaction the things that all the rest of us cannot help but be convinced of. In other words, convince yourself that the mayor and everyone else is right, that the woman was not killed.

Major FANTON. No, sir; I cannot agree with you. I am sorry.

Senator McCARTHY. Let us say that you can convince yourself that the affidavits of the mayor, the registrar, and the husband are correct, that no other woman was killed in that town except Mrs. Anton Johnson, that no other woman was killed during that month, that is their affidavit. Assuming that you can convince yourself that is true. And also that this woman was not shot, that the husband is correct.

Then you would say that that part of his confession was false; right?

Major FANTON. If you are assuming everything like that; yes. If you are assuming it is clearly proved there was no woman shot in the town, and he confesses to having shot the woman in the town, that is a question that does not need an answer.

Senator McCARTHY. So you would say that part of his confession was false?

Major FANTON. Under your facts; yes.

Senator McCARTHY. If that is proven, that that part of his confession is false, it is proven that Perl got that part of his confession falsely, could you give any of the balance of his confession any credence, the balance on which you say he was convicted? Do you follow me, Major?

Major FANTON. I follow you.

Senator McCARTHY. If he falsely confesses shooting a woman in this town in Belgium, and in the same confession says he shot other people 20 or 30 miles away, will not you and I, as logical men, assume that all of the confession must be thrown out if it is all gotten by this same man Perl?

Major FANTON. I would say “Yes,” Senator, to the question you pose to me, of course. No question about it.

Senator McCARTHY. This man Kramm, he was the adjutant to Peiper?

Major FANTON. Yes, sir.

Senator McCARTHY. He was Peiper's adjutant?

Major FANTON. I believe so.

Senator McCARTHY. He was promised immunity, he was given immunity, I am telling you that now. He was Peiper's adjutant all during this campaign. He was given immunity.

Senator BALDWIN. May I interrupt, Senator. Does that appear of record? I would be interested to know that.

Senator McCARTHY. Mr. Flanagan said it does. Is that right? Was Kramm tried?

Colonel ELLIS. He was not tried and was not given immunity.

Senator McCARTHY. He was given immunity. He was not tried?

Colonel ELLIS. No, sir.

Senator McCARTHY. You did not promise immunity but you gave him immunity?

Colonel ELLIS. We had no reason to give him immunity because we could not connect him with any crimes.

Senator McCARTHY. Was he not Peiper's adjutant?

Colonel ELLIS. No. Dwinell was Peiper's adjutant. I believe Kramm was the adjutant of one of the battalions.

Senator McCARTHY. Working under Peiper?

Colonel ELLIS. One of the regimental battalions.

Senator McCARTHY. He was originally listed as a suspect?

Colonel ELLIS. Absolutely.

Senator McCARTHY. When you decided to use him as a witness you removed him from the suspect list?

Colonel ELLIS. No, sir. We were not able to establish him as having committed any offense, so we removed him from the suspect list.

Senator McCARTHY. Do you know, Colonel, that the prosecution staff called him in to talk to him and he said he had instructions from you to under no circumstances talk to the defendants, and that he had the assurance that he was not going to be tried if he would be the prosecution's witness?

Colonel ELLIS. I knew that allegation had been made.

Senator McCARTHY. You know that has been made?

Colonel ELLIS. Yes, sir.

Senator McCARTHY. And you know he has told the defense staff that he received a promise of immunity?

Colonel ELLIS. Defense counsel has told me that is what he said.

Senator McCARTHY. And you did instruct him not to talk to the defense counsel?

Colonel ELLIS. No, sir, I surely did not.

Senator McCARTHY. You know that he refused to talk to them and said he had instructions?

Colonel ELLIS. I know that is what the defense counsel said.

Senator McCARTHY. Major Fanton, you heard what Colonel Ellis has said, that this man Kramm was the adjutant in one of the battalions in this activity.

Major FANTON. Yes, sir.

Senator McCARTHY. That he told the defense counsel he would not testify, that he would not talk to them, he would do nothing but give them his name. He said the reason for that was that he had been instructed not to talk to them, that he had been promised immunity.

You understand that that is at least what the defense counsel say this man told them.

Major FANTON. Yes, sir.

Senator McCARTHY. In view of that fact, in view of the facts he was one of the prosecution's principal witnesses, had a diary from which he testified, do you think that in view of Rosenfeld's ruling that Kramm could not be cross-examined on a question of his credibility,

do you feel that any of the men who were convicted on Kramm's testimony had a fair trial?

Major FANTON. Senator, that is an awfully hard question to answer, and I will tell you why if you will listen. I was not there at the trial. I do not know what motions the defense made, if any. I would think if they were faced with a witness of this character, all the details of his claims would have been brought before the court, and fully argued. I do not know what was done.

I would be surprised, if he was that important a witness, I cannot conceive of the defense counsel just sitting back and letting the thing go by default. I cannot conceive of that.

Senator McCARTHY. You made a statement that the affidavit of Everett was false.

Major FANTON. It was as far as I knew it to be.

Senator McCARTHY. And you examined that affidavit?

Major FANTON. I certainly did.

Senator McCARTHY. And you say you cannot conceive of the defense counsel sitting back and doing that. If you examined that affidavit you must know what efforts they made to cross-examine this man Kramm, or have you forgotten?

Major FANTON. No, Senator; that is not what I am referring to. I am referring to the story by Kramm that he was instructed by the prosecution not to talk to anybody and that he would not give them more than his name. If that story is true—and I do not say it is not, I do not know what the truth is—if it is I cannot conceive of them sitting back and doing nothing about it.

Senator McCARTHY. Did you read Everett's affidavit in which he sets forth what they tried to do and the lawmen of the court said "Do not go into it, I warn you not to try it again"?

Major FANTON. May I refresh my recollection?

Senator McCARTHY. I wish you would.

Major FANTON. You read that more recently than I have, so you may be correct.

Senator McCARTHY. I do not know. When you said Everett was lying, and that his statement was false, I assumed you had a fairly detailed knowledge of what was in that affidavit.

Major FANTON. I did not say that.

Senator McCARTHY. Let us see what you said. It was carefully prepared, I assume. Let us see what you did say.

Major FANTON. I think you will find it on page 12, the last paragraph.

Senator McCARTHY. You say:

Spreading such sensationalism in the newspapers and indulging in improprieties in a petition of this nature, in an effort to appeal to emotionalism rather than reason, is no substitute for timely and proper proof of the facts.

You say this was spreading sensationalism and indulging in improprieties. So I assume you have gone over this petition rather carefully. If you have, then you realize that the defense counsel were not allowed to cross-examine the prosecution's most important witness on his promise of immunity, what he was getting out of this.

I again ask you, if you will turn to page 64 of the petition, a petition that I had frankly assumed you had read very carefully——

Major FANTON. Sixty-four?

Senator McCARTHY. I do not believe the pages are the same.

Major FANTON. I would like to say in connection with the excerpt of my statement from which you read, I was of course referring to all these charges of brutality and so forth, which I think should be quite apparent from my statement as it reads.

Senator McCARTHY. This statement, of course, is the most important statement, I think, in the whole affidavit, this question of whether or not—

Major FANTON. I will not argue about that.

Senator McCARTHY. Whether or not defense was entitled to examine the witnesses properly.

Major FANTON. That is page what of this file?

Senator McCARTHY. Sixty-four.

Let me call this to your attention: you say that Colonel Everett did not make false claims. You say on page 13:

Had the many claims contained in these petitions not have been completely false, the petitioner would have been compelled in the proper exercise of his duties as defense counsel to prove them at the trial through the testimony of competent witnesses or otherwise.

Let me read that to you:

Had the many claims—

Major FANTON. I am very mindful of what it says, and I make the claim again, those claims are all false. Not this, here, because I was not present at the trial. I said in my statement, of course, all my comments on sections or paragraphs of this petition relating to the trial are based on my information received from reliable informants.

Senator McCARTHY. You admit that this allegation on page 64 of the document you have, that that is not a false allegation?

Major FANTON. Senator, I do not admit anything regarding this petition, except this may be an accurate quotation from the record.

Senator McCARTHY. You do not question that this is accurate?

May I ask the colonel now: Colonel, have you examined, and is this an accurate quotation from the record, the objections, the attempted questions, the ruling on page 64 of the petition, the question as to the credibility of the witness?

Colonel DWINELL. I think it is.

Major FANTON. I am willing to concede it is.

Senator McCARTHY. You can give the defense counsel some advice, Major. You say had these claims been true, then defense counsel had the duty to prove them at the trial through the testimony of competent witnesses, or otherwise, either through competent witnesses or otherwise.

In view of the fact that defense counsel was not present when Kramm was interrogated, and offered immunity, if he was—in accordance with your SOP No. 4—and in view of the fact that defense counsel had no witnesses who were present during this interrogation of Kramm, in view of the fact that Kramm had refused to talk to them, do you know of any way that they could prove this, prove the competency of Kramm, except by rigorous cross-examination of Kramm, which the court said they could not do?

Major FANTON. I have stated several times, I think that Kramm should have been made to take the stand. Either that, or the thing

should have been explored thoroughly by the court, and a proper decision reached with respect to this matter.

I do not again—if I may say so, Senator, you are putting me on a spot with this thing because I do not feel that I should judge the competency of defense counsel with respect to this one matter. I do not know what the situation is.

Senator McCARTHY. You criticize, on page 13, defense counsel. You say: "Had the many claims contained not been completely false"—

Major FANTON. That is right.

Senator McCARTHY. That is promises of immunity, that is one of the claims, the promise to grant a witness immunity if he would falsely testify. You say: "Had that not been completely false, then the defense counsel should have proven through the testimony of competent witnesses."

Now I ask you this question, in view of that criticism which you have made of defense counsel: Is there any conceivable way that they could prove why Kramm testified as he did unless they had the right to cross-examine him on that point?

Major FANTON. I have already said, and I will repeat it again—

Senator McCARTHY. I am asking you: Do you know of any way?

Major FANTON. Yes, I do.

Senator McCARTHY. What is the way?

Major FANTON. The man could be made a hostile witness, put on the witness stand and cross examined at length. It is done.

Senator McCARTHY. I know it is done, Mr. Fanton. Do you not realize that Mr. Rosenfeld said you cannot examine this witness?

Major FANTON. No.

Senator McCARTHY. And you do not think this brilliant man Rosenfeld, when they turned around and said he is now my witness, that he would then have referred to his ruling and said: "I warn you again that you cannot question that man"?

Major FANTON. I think he would.

Senator McCARTHY. You do?

Major FANTON. I certainly do. I think any lawyer sitting on a court, if he were asked—sitting on the court as a law member, if he were asked by the defense counsel whether or not he could put a hostile witness on the witness stand, and test his credibility, stating to the court the grounds for the request, I cannot conceive of it being denied.

If that were done, Senator, I would be willing to admit it was an error. I do not believe it was. I have never heard of it being done in this case.

Mr. CHAMBERS. May I ask—

Senator McCARTHY. Let me ask this question, if I may. If the chairman wants to object—

Senator BALDWIN. If the staff member wants to ask a question I do not see why not.

Senator McCARTHY. I do not want the staff to interrupt me unless the Chair rules that he can.

Senator BALDWIN. I rule that he can. You asked your staff member to take over the examination. If a staff member on the other side wants to ask a question, very well.

Mr. CHAMBERS. I ask the question because both copies of these petitions in the hands of people testifying are not available to us.

I would like to ask what that shows. Did the defense ask that Kramm be made a hostile witness and put on the stand for examination?

Major FANTON. I cannot find it here. It certainly is not in the petition.

Mr. CHAMBERS. And that is an excerpt from the record of trial?

Major FANTON. Yes, sir; it is.

Mr. CHAMBERS. Colonel Ellis; do you know whether or not that request was made to the court?

Colonel ELLIS. Not to my recollection.

Mr. CHAMBERS. Colonel Dwinell, was that request made to court?

Colonel DWINELL. It was not.

Mr. CHAMBERS. Why not?

Colonel DWINELL. Because the ruling made at that time was the ruling that came at the end of a series of rulings of that nature that made it impossible to go forward with any hope of success.

Mr. CHAMBERS. This ties in with that pattern yesterday that we discussed, in which you said that you all had more or less become discouraged by repeated adverse rulings, and you had sort of thrown in the sponge?

Colonel DWINELL. That is correct.

Senator BALDWIN. Is that all you have?

Mr. CHAMBERS. That is all, sir.

Senator MCCARTHY. Mr. Fanton, when you said this forenoon this ruling that we had here—the ruling to the effect that you could not test the credibility of a witness—was an erroneous ruling, you said it would be a reversible error in a case that affected only one, in case of the men, and there was only one witness whose testimony convicted the man, you said in that case it would be a reversible error? Is that right?

Major FANTON. No, sir. Would you like me to say what I did say this morning as I recall it?

Senator MCCARTHY. I do not care what you said this morning. We will repeat it this afternoon. We will take Mr. X, who is being tried, and Y is the only witness against him. Y is on the stand. On direct examination he testifies to things that implicate X in the murder of American boys, and such.

Counsel of course have read your SOP in which you say that you can offer him immunity if you think he is more valuable as a witness than a defendant. They have reason to believe this man may be offered immunity. They know he has. And they want to find out why, to test this witness.

They think he is trying to clear himself in order to implicate X. That is their position. Then they start questioning, "Where were you interrogated, and what promises were you made?"

The court says:

We will not hear that because that was not gone into on direct examination.

The court goes further and says:

I have warned you several times and this will be the last time.

Then counsel for the defendant stops. They never have a chance to prove what this man has been offered for testifying as he did. You and I agree that that ruling on the part of the court is in error, do we not?

Senator BALDWIN. Senator, would you mind if your question was read again? I was trying to read something and I did not get it.

(Question read.)

Senator BALDWIN. There is one thing that is confusing in my mind. There is a statement in the question to the effect that "you have read your SOP in which you say you can promise him immunity." I have read the SOP and it says this:

Any ruse or deception may be used in the course of the interrogation; but threats, duress, in any form, physical violence or promises of immunity or mitigation of punishment should be scrupulously avoided.

(b) Where a prisoner who is being interrogated in a crime is implicated in that crime, it is permissible to tell him that he will be recommended as a witness if such statement of the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant.

However, before any such statements are made to the prisoner the matter must be cleared with the commanding officer.

(c) Stool pigeons may be employed, but prior to their selection or preparation the matter of their employment must be cleared with the commanding officer.

The reason I raise this point is that I did not hear all of this witness' testimony this morning. The question assumes a statement in the SOP-4 which does not appear to be in the SOP.

Of course the witness may have said that he did promise immunity; I do not know.

Senator McCARTHY. In view of the fact that the chairman is going to take over the job as Supreme Court Justice, I certainly wish I could ask the chairman whether or not, if in a criminal case he finds that the defense attorney is refused the right to test the credibility of the prosecution's witnesses, he would reverse the case and send it back for a new trial or not.

But I know that I do not have the right to ask the Chair that question. I would be very interested in knowing what his answer would be. I know there could be only one answer.

Major FANTON. I think I can answer your question.

Senator McCARTHY. All right.

Major FANTON. Of course there were some assumptions in there that I cannot agree with. And the one that to me is controlling of the whole question is the assumption that he does not have a chance to test the credibility of the witness.

Now, if that ruling, coupled with subsequent rulings, absolutely cutting off any chance to test the credibility of this witness, is considered, I, of course, think it is a reversible error.

Senator McCARTHY. Let us stop right there. Let us assume that you are right, and that the defense counsel had some other track they could have followed. Let us assume the defense counsel, if they had only known it—that they could have put this man on, told the court he was a hostile witness, and then been allowed to examine him and test his credibility.

Let us assume if they knew the law they could have done that. Let us take the case as it is. We discover they did not do that. You, I gather, think it is because of incompetence?

Major FANTON. No, sir.

Senator McCARTHY. I think it is because they did everything they possibly could. In any event, we know from the record that here they stopped. In other words, when they get to the point of saying, "What

were you offered?" "Why do you so testify?" "Were you promised immunity?" the court says, "Do not do that, and I will not warn you again."

Then the defense counsel stops. So the credibility of this witness is not tested. Under those circumstances, regardless of whether it is the fault of an incomplete defense counsel or the ruling of the court, we know the witness's credibility is never tested.

Would you say that that man X who is being tried had a fair trial?

Major FANTON. I would like to say this, Senator: I am not questioning the competency of defense counsel. What I am questioning is that they believed that this man Kramm had actually been induced by promises and what not, promises of immunity or what you want to say, to give a false story. I think his story probably jibes with the facts.

That may have been a very good reason for not putting him on to test his credibility. The court has discretion with respect to the control of the examination of witnesses. I do not know what went on before here.

I would like, however, to read Colonel Rosenfeld's statement. It is in the record that I am reading. It says:

Both the prosecution and the defense will be permitted to cross-examine witnesses other than the accused according to the rules and regulations of cross-examination.

Where the credibility of the witness is to be attacked, the credibility will be attacked in the prescribed manner, and the court will permit such attack.

Senator McCARTHY. Do you think testing the credibility by cross-examination is a prescribed manner?

Major FANTON. Certainly. Depending, of course, on the——

Senator McCARTHY. Depending on what?

Major FANTON. You mean just the credibility of a witness?

Senator McCARTHY. Just testing the credibility of a witness.

Major FANTON. I believe that is correct.

Senator McCARTHY. The prescribed manner is by cross-examination?

Major FANTON. That is right.

Senator McCARTHY. So when Rosenfeld said, "You can test it in the prescribed manner," and then said, "You cannot test it by cross-examination," he is contradicting himself; is he not?

You know from the record that Rosenfeld said:

If you do not try to test the credibility under direct examination you cannot test it on cross-examination.

This forenoon you and I agreed that the most important thing in any criminal case is the question of a witness's credibility.

Major FANTON. That is correct.

Senator McCARTHY. And I believe we agreed that unless you can test the credibility of a witness and show what interest he has in the case, and why he is testifying as he does, you cannot give a defendant a fair trial. Is that not correct?

Major FANTON. That is correct.

Senator McCARTHY. Good. So that you and I then agree that if, because of either incompetency of defense counsel, or because of the ruling of the court, or for any reason, the credibility of these witnesses was not tested, they did not go into that question; then we agree that the trials were not fair; do we not?

Major FANTON. No, sir. I may see a witness on the stand who obviously is credible. The story he tells jibes with the fact as I know the case. If I cross-examine him I may open the door up and let him really strengthen his story further.

There are plenty of times when you do not test the credibility of witnesses.

Senator McCARTHY. In view of the fact that one of the defense counsel is here in this room, and he says they felt that this man was not telling the truth, that he had an interest in the case, that he was promised immunity, and they wanted to examine him on that, in view of that fact it is not a hypothetical case—we have defense counsel here, we have the record; in view of the fact that defense counsel thought that this man was testifying so as to clear himself because of a promise of immunity, in view of the fact that the chief prosecution counsel says, "Yes, the defense staff did tell me that; they told me that this man told them that he had been promised immunity," and the chief of the prosecution staff says, "We did not promise him immunity, but we never did try him." In view of that does not any logical man have to assume that some defendants were convicted because of the testimony of this man Kramm, and did not have a fair trial?

Major FANTON. You are assuming, of course, that the man is guilty of some crime?

Senator McCARTHY. I am not assuming anything. I am assuming he is a witness on the stand, and the defense counsel said, "We have read your order saying that you can promise a witness immunity if he is valuable enough." This man tells the defense counsel—

Senator BALDWIN. Senator, is that in the order? Is there anything in the order that they can promise him immunity?

Senator McCARTHY (reading):

It is permissible to tell him that he will be recommended as a witness if such statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant.

This is very, very clear.

Senator BALDWIN. Let me ask you to get it clear in my mind. You assume from that statement that that is equivalent to a promise of immunity?

Senator McCARTHY. Mr. Chairman, this is a statement by the man in charge of the interrogation team to the effect that it is permissible to tell a man being interrogated, one of the men suspected of a crime, that he will be recommended as a witness, and that he will not be a defendant in the case.

In other words, that if you are not going to be a defendant, that means you are getting immunity, if his story is good enough. And it is so clear that there can be no question about it whatsoever.

If I may get back to my question. May I ask you, Mr. Chairman, in view of the fact I may be mistaken in this:

Do you not understand paragraph (b) to mean that if a witness' story will be valuable to convict the other defendants, then he can be promised immunity?

I think we both understand it the same way.

Senator BALDWIN. In the light of the first paragraph, which says no promises of immunity can be made, I frankly do not know what to make of that second paragraph. It does say that he will be more valuable as a witness than as a defendant.

I am willing to put a broad construction on the thing to the effect that the witness might very well assume, from that, that he would not be a defendant, but would be a witness.

Senator McCARTHY. I think we both agree on that.

Then, Mr. Fanton, in view of the fact this man Kramm was one of the important witnesses, in view of the fact that the counsel for the defense did attempt to interrogate him to show whether he was lying or telling the truth, to show what reasons he would have for lying, whether he was lying because he was being let off, or why, and in view of the fact that counsel for the defense, as I say, either because they did not know the law—I think they knew it very well, in that case—

Major FANTON. I do, too.

Senator McCARTHY. Or because of improper rulings by the court, were denied the right to question this particular witness and show what interest he had in the case, show what he would gain by testifying as he did, in other words prove whether he was telling the truth or lying—in view of the fact that they were not allowed to do that, is it not very obvious that anybody who was convicted because of his testimony just simply did not get a fair trial?

Major FANTON. The fact is, as I understand it, the request was never made. I do not know why. Colonel Dwinnell is here. Maybe he can explain it.

Senator McCARTHY. He has explained it.

Yes, Colonel?

Colonel DWINELL. I recall also the discussions we had on that very point. We failed to see how we could gain anything more by a hostile witness even though we made him our own witness than we could have gained by cross-examination, which normally should provide you with the greatest latitude possible.

Senator McCARTHY. No question about it. Under cross-examination you had infinitely more latitude than you had with a hostile witness. It is elementary. There is no question about it.

Major FANTON. I do not think there is any distinction at all between the cross-examination of a witness if he is hostile and making him your own witness and cross-examining him.

Senator McCARTHY. Then you feel the ruling would have been the same if they made him a hostile witness?

Major FANTON. Not necessarily. I think the court has discretion to control the examination of a witness as long as the ruling is correct. I do not know what went on at that trial, Senator, and I would be happy to give you my opinion if it had any value.

Senator McCARTHY. You say the court had discretion to control the examination. You and I agree. I ask you, Does the court ever have the discretion to deny the defendant the right to question the credibility of a witness?

Major FANTON. Of course not.

Senator McCARTHY. So you say this was an abuse of any purported discretion?

Major FANTON. I cannot answer that "Yes," because I do not know all the facts.

Senator McCARTHY. In other words, you say they had no discretion in a case like this?

Major FANTON. Certainly they had discretion. I think they might very well have been exercising it properly. I do not know; I think.

Senator, I am happy to do my best to answer your questions. But I am not informed about what took place at the trial.

Senator McCARTHY. Let me ask you this again. Perhaps I misunderstood your answer. You said the court had discretion in determining whether or not defense counsel can test the credibility of a witness on cross-examination. Do you say that ruling was within the discretion of the court?

Major FANTON. I think there are situations where it might be. I do not know. There is something that leads me to indicate—

Senator McCARTHY. Mr. Fanton, is it not elementary that in every criminal case the defense counsel has unlimited right to examine a witness to test his credibility?

Major FANTON. Yes.

Senator McCARTHY. If he does not do that in all cases an appeal court would set the conviction aside and send it back?

Major FANTON. That is right.

Senator McCARTHY. Good. Now, Mr. Fanton, when did you leave Schwabisch Hall?

Major FANTON. As near as I can recall it was the middle of February, February 14 or 15.

Senator McCARTHY. Then Colonel Ellis took over; is that right?

Major FANTON. No. I think there was a period of 2 or 3 weeks when Captain Shumacker was in charge. Was it longer than that?

Colonel ELLIS. About 3 weeks.

Senator McCARTHY. While you were in charge at Schwabisch Hall, all of the defendants in these cases occupied the position of prisoner of war; is that right?

Major FANTON. I do not know technically what their status was. I suppose you would say so; yes.

Senator McCARTHY. Do you know that on the 6th of April, or thereabouts, an order was signed purportedly removing them from prisoner of war status?

Major FANTON. I believe you are correct. Technically, I think they were still prisoners of war.

Senator McCARTHY. You do not claim that you treated them as prisoners of war?

Major FANTON. I have outlined, I believe, how we treated them. We certainly did not treat them as ordinary prisoners of war; no. That is correct.

Senator McCARTHY. In other words, you did not treat them as ordinary prisoners of war?

Major FANTON. No.

Senator McCARTHY. I believe you testified that you would not have been able to convict them if you had to treat them as prisoners?

Major FANTON. We would not have been able to go on with the case at all.

Senator McCARTHY. In your SOP No. 4, you have that before you?

Major FANTON. Yes; I do.

Senator McCARTHY. I will not read the entire paragraph, just the first part:

Any ruse or deception may be used in the course of interrogation.

I gather it is your position that it was proper to naturally outsmart these men and get confessions from them, and your job was to convict all those who were guilty and employ every legitimate means to do that?

Major FANTON. That is correct.

Senator McCARTHY. I believe there is no claim that while it is proper to use stool pigeons, that is generally done?

Major FANTON. Yes.

Senator McCARTHY. What I would like to get from you is the extent to which you feel it was proper to use ruses and deceptions.

Major FANTON. It is a very difficult question to answer categorically.

Senator McCARTHY. I know it is.

Major FANTON. Of course, there were a great many of these, with variations. Generally speaking, they are described in my statement. I think the interrogators themselves probably can give you clearer pictures of exactly what they do.

I have general knowledge of the techniques that were used. I can give you one example, if you like, because it is an important one.

Senator McCARTHY. Yes.

Major FANTON. There was a statement or confession, one of the first we secured, from this man Fleps, who admitted firing the first shot, what he believed was the first shot, into the group of prisoners.

As I recall it I was in the cell when that statement was secured from him. He came in, and was interrogated by Lieutenant Perl. Without going into all the details of preliminary questions, the results were negative.

As I recall it, Lieutenant Perl told him to take his shirt off. The man took his shirt off. Perl circled around as though he were looking for something important. He saw a mole or something on his back. He noted the mole, made a great claim about the mole.

Then he circled around some more, looked at Fleps, and said, "So you are Georg Fleps?"

It seems that Fleps had boasted to some of the inmates in the room that were with him that he had fired the shots. Perl said:

Fleps, we know you fired these shots. We are not interested in that; we want to know who told you to fire them.

And the man came right back with the answer:

My tank commander, Hans Siptrott.

That is a typical example. I do not know that that was brought out to the court. I have not examined the record on that score. But there is one example that I recall because I was right there when it occurred.

Senator McCARTHY. Certainly nothing improper about that. One of the other ruses, I gather, was to convince the man being interrogated that you had other confessions which already implicated him?

Major FANTON. Either that, or that we knew the story about him. We had to build the fact picture up. It was almost like an intelligence operation, except it was more exact, really.

Senator McCARTHY. Did you think it was proper also to tell him that the ration cards would be taken from his family, in other words, his wife, children, or whatever the case may be?

Major FANTON. Senator, that certainly would have been improper. I do not know of any case where that was done.

Senator McCARTHY. I have the Army report.

Major FANTON. I read that same report. And I know the claim was made.

Senator McCARTHY. It was not a claim; it was the Army board that was appointed to study the situation.

Major FANTON. It was the testimony of one of the witnesses. I am not certain which one.

Senator McCARTHY. Paragraph 22, page 5, of the Army report. I wonder if the pages are the same?

Major FANTON. I doubt it.

Senator McCARTHY. If you will turn to page 5, Major, paragraph 22:

It is alleged that representatives of the prosecution threatened harm to relatives of the accused if they did not confess, such as deprivation of ration cards. There was evidence that this did occur.

What is your thought on that? Do you think the Army board was wrong when they made that statement?

Major FANTON. It is very hard for me to judge, Senator. It was certainly contrary to my instructions. If we can establish the interrogator who was supposed to have done these things——

Senator McCARTHY. In other words, you do not know whether that was done or not?

Major FANTON. I cannot say whether or not it was done. I do not believe that it was. But I cannot say "Yes" or "No."

Senator McCARTHY. But the fact is you yourself do not know?

Major FANTON. No; I do not.

Senator McCARTHY. You do not claim to——

Major FANTON. I know it never came to my attention, if it was done.

Senator McCARTHY. You do not claim that you sat in all these interrogations, of course?

Major FANTON. No, sir.

Senator McCARTHY. Obviously not. [Reading:]

The board finds that it is probable in certain instances such threats may have been made, but the board is unable to identify the particular instances involved.

Here is another one I would like to ask you about:

It did appear that during the trial certain members of the prosecution staff invited relatives of the accused to attend a party at the officer's club.

There is evidence, I believe by Colonel Ellis, to the effect that some of the prosecution staff did take some of the wives of the accused up to the officers' club?

Major FANTON. I know about that.

Senator McCARTHY. Do you know anything about that situation?

Major FANTON. I know about it from hearsay.

Senator McCARTHY. Did this not occur while you were in charge, I gather?

Major FANTON. No. But I know there was some talk about it, and it is mentioned, of course, in here.

Senator McCARTHY. Do you know who the officers were?

Major FANTON. I am sorry; I do not.

Senator McCARTHY. You had to get rid of one man, Steiner, you testified the other day, as I recall. Will you tell us why you had to get rid of him?

Major FANTON. I would not put it that way. Steiner, I think, was a conscientious interrogator. His position really was that of interpreter. I think he did interrogate one or two subjects.

His initial assignment, as I said when I testified the other day, was to decipher the messages on these mess kits. His big trouble was that he had difficulty with the English language, translating from German into English.

That is the official reason I gave, and that was primarily the reason why he was returned. I did mention an incident, because I wanted to be completely honest about it and tell all the facts.

There was an incident where I heard him bellow at some prisoners who were marching in the hall, and there had been a lot of emphasis on the fact that we used personnel who were described as "39-ers." Mr. Steiner could be put in that category.

Senator McCARTHY. Was Perl a 39-er?

Major FANTON. Yes; he was.

Senator McCARTHY. How many 39-ers did you have?

Major FANTON. Perl was the only one who was an interrogator.

Senator McCARTHY. How many others did you have on your staff?

Major FANTON. Kirschbaum, I believe, came there shortly before I felt. I think he would be in that category. He was an interpreter.

Senator McCARTHY. Will you name what you would call the key interrogators?

Major FANTON. Lieutenant Perl, Captain Shumacker, Mr. Harry Thon, and Mr. Ellowitz.

Senator McCARTHY. Just what you would call the key interrogators, not all of them?

Major FANTON. That is right. There were others.

Senator McCARTHY. I just want what you would refer to as your key interrogators.

Major FANTON. I call them key interrogators because they were with the team right through the entire time that we were investigating this.

Senator McCARTHY. Am I correct, that you got four that you would refer to as key interrogators?

Major FANTON. That is right.

Senator McCARTHY. Perl, Shumacker, Thom, and Ellowitz.

Major FANTON. Yes.

Senator McCARTHY. Which were lawyers?

Major FANTON. All with the exception of Thom.

Senator McCARTHY. Thom is not a lawyer?

Major FANTON. No, sir; he is not. He has had interrogation experience in prisoner-of-war interrogation, and I think also he had experience in the Berlin document section.

Senator McCARTHY. Is Perl a lawyer?

Major FANTON. Yes; he is.

Senator McCARTHY. And Shumacker?

Major FANTON. Yes.

Senator McCARTHY. And Ellowitz?

Major FANTON. Yes, sir.

Senator McCARTHY. Do you know if any of them practiced law before or since?

Major FANTON. Shumacker, I think, is an experienced lawyer. He took active part in the prosecution and was a big help to me.

Senator McCARTHY. Do you know whether Perl ever practiced law?

Major FANTON. Perl practiced in Vienna for, I think, 6 years. He would be better qualified to tell you, to give you the exact information, than I.

Senator McCARTHY. Will you tell me something about the background of Steiner? Steiner was, I gather, a refugee from a German concentration camp.

Major FANTON. He arrived at the detachment one evening. I made some inquiries at the time about his training and background, and I did discover that he was a 39-er. I believe, as I have already stated, that his mother was supposed to have been killed in a concentration camp.

Senator McCARTHY. In other words, his mother was killed in a concentration camp in Germany?

Major FANTON. That is correct.

Senator McCARTHY. How long has he been out of Germany himself?

Major FANTON. That I do not know.

Senator McCARTHY. Did you go into that?

Major FANTON. I may very well have gone into it. I cannot say now. I do not recall.

Senator McCARTHY. Was he an American citizen?

Major FANTON. I believe he was.

Senator McCARTHY. Do you know?

Major FANTON. I do not know.

Senator McCARTHY. And you knew that he felt, naturally, as his mother was killed by the Germans in a concentration camp, you knew he felt very bitterly toward the Germans?

Major FANTON. That is true.

Senator McCARTHY. You knew that?

Major FANTON. I would have, if I had been in his position. I think so.

Senator McCARTHY. Did you know, according to the testimony of Mr. Bailey, one of the court reporters, that Steiner bragged about the way he would march some of the defendants up the flight of steps?

Major FANTON. I read that testimony.

Senator McCARTHY. And put a rope around their neck and jerk it and get a confession. For a man whose mother was killed in a German concentration camp, who told you ahead of time that he hated all the Germans, is it not incredible that such a man should be assigned to getting confessions and told to use any deception or ruse? Is it not incredible that he would use such methods?

Major FANTON. I would like to say something that I think is important. I do not want to do Mr. Steiner an injustice. I myself felt that the man was a very conscientious person—worked as hard as he could. He never told me he hated all the Germans. I never saw any sign of animosity, with the exception of that one little incident in the hall, which may not have been representative of anything.

It is inconceivable to me that he could have used such a ruse without my knowing about it, and I never heard of it. I do not know. Mr. Bailey said it is so. It is a matter of just incredibility.

Senator McCARTHY. Do you think it is good judgment to hire as your interrogator, put him in charge of the job of getting confessions—

Major FANTON. I did not hire him.

Senator McCARTHY. Whoever did him give him that job, and getting confessions from men, by a man who had every reason to dislike the German race, a man whose mother was killed in a German concentration camp; is it not unusual?

Major FANTON. The way you state the question, of course, the answer would be "No."

But here is the story on Mr. Steiner: He was not an interrogator. He usually worked with one of the other men—one of the other interrogators. I do not recall now with whom he worked. I do not know. I could not tell you.

Senator BALDWIN. What was the little incident in the hall you referred to? Has that been described here?

Major FANTON. I described that, Senator.

Mr. CHAMBERS. In Bailey's testimony.

Major FANTON. I do not think it was in Bailey's testimony. It was in mine. He let out a bellow once. There were some prisoners marching up, and he gave them some "Achtung" but I heard it. It was quite a loud command. I had some doubts about the situation. I thought we might also be subject to criticism, frankly, for using him.

Senator McCARTHY. I realize, of course, the mere fact a man is a refugee does not make him incompetent to do that work. We have one of the refugees, defense counsel, who fought harder or as hard as anyone over there, for the defense of those men, a refugee from Hitler in Germany. He will be a witness here, Mr. Strong, and completely fair and completely honest, apparently.

So I was not intimating that the mere fact he was a refugee would make him incompetent. Who did hire this man Steiner?

Major FANTON. I assume personnel in Frankfort. I cannot answer that.

Senator McCARTHY. He was not part of the Army personnel.

Major FANTON. He was a civilian employee of the Army. He had been in the Army, I am quite certain, and I think he is one of the soldiers who was transferred over to a civilian status.

Senator McCARTHY. He was sent down to you, assigned to your command?

Major FANTON. That is correct.

Senator McCARTHY. And you assigned him to this job of interrogation and interpretation?

Major FANTON. I assigned him first, as I say, first to try to find out what was on these mess kits. That took him about a week.

Senator McCARTHY. You say finally the thing that brought things to a head and caused you to discharge him, was his shouting some command to the prisoners in the hall?

Major FANTON. No, that was not it, Senator. I do not know exactly when that happened, frankly, during his stay. It was a cumulative matter. I had a talk with Mr. Steiner and I talked it over with him. I think he understood why he was being returned. Frankly, I think he realized that he really could not handle the English language well enough to interpret for our interrogators.

Senator McCARTHY. Do I understand that it is your testimony today that the reason you let him go was not because you thought he was improperly examining the witnesses, not because you thought he was doing anything improper, but because of his difficulty with the German language?

Major FANTON. That is the primary reason, for this reason: he did not do any interrogating, I am almost certain. He worked with other people, he was an interpreter, and a translator. That was the reason I sent him back. He did not have sufficient command of the English language.

Senator McCARTHY. Will you give us Perl's background?

Major FANTON. Perl has quite a background. He attended the University of Vienna for 8 years, post-graduate work. He has an master of arts degree, and doctor of laws degree, and doctor of philosophy degree. The doctor of philosophy, I believe was in psychology. He studied criminology, he was a practicing attorney in Vienna, he was an instructor at the military intelligence training center, Camp Ritchie, Md. He was one of the few intelligence officers in this country assigned to CISDIC, which stands for "Combined intelligence services detailed interrogation center," which was the highest level of combined British and American intelligence.

He came to us with the highest recommendations. He was quite above sadism, in my opinion, he was quite above taking unfair advantage of these people.

Senator McCARTHY. Just give me his background first. Was he in a concentration camp?

Major FANTON. He never was in a concentration camp.

Of course, when he was on his way to the concentration camp, as I get the story, he escaped from the train.

Senator McCARTHY. Do you know whether he had been sentenced to death?

Major FANTON. No, I never heard that story.

Senator McCARTHY. What was the sentence, do you know?

Major FANTON. I do not know that he was sentenced to anything.

Senator McCARTHY. He was sentenced to the concentration camp.

Major FANTON. He was segregated to be sent to the concentration camp. As I understand it—and this is the story that he told me himself—

Senator McCARTHY. And then he escaped?

Major FANTON. Yes. When Hitler's troops marched into Vienna they went right down the main street, they took all the doctors and all the lawyers, anybody who was of any prominence, and immediately sent them off to the Gestapo headquarters, and from there they sorted them out, those to go to the concentration camp, and those going elsewhere, and he was on the way to Dachau.

Senator McCARTHY. His wife was in the concentration camp for how long?

Major FANTON. She was not in the concentration camp at first. She was apprehended by the Gestapo for indulging in underground activities and was sent to a concentration camp and was there, I believe, for a year and a half.

Senator McCARTHY. Did she escape?

Major FANTON. No. She was released.

Senator McCARTHY. Released from the concentration camp?

Major FANTON. Yes.

Senator McCARTHY. What happened? Did she come to the United States?

Major FANTON. No. She was released and returned to Vienna as I understand it. Then, after a while, she rejoined Lieutenant Perl in Germany.

Senator BALDWIN. At this point, I think we will have to take a recess and go over to vote. We will be back as soon as we can.

(Thereupon, a short recess was taken.)

Senator BALDWIN. The committee will come to order.

Senator McCARTHY. Mr. Chairman, I forgot a matter this morning that I promised to call to your attention. I do not think it is technically part of this investigation except insofar as the Malmedy prisoners are still quartered in Landsberg. I have a number of letters principally from the clergy in that area, from the Protestant bishops and the Catholic clergy.

This one is from A. G. Mentz, a bishop, the apostolic delegate in Germany. He writes:

In view of the Senate investigations that the Senate Armed Services Subcommittee is making, the enclosure may be of interest. I had a communication from Bishop John Hoya Housler with respect to some of these charges. There seems to be more foundation for them than the investigation made by the post commander cared to reveal. Needless to say, such incidents hurt our interests in Germany very much.

Our over-all policy has been excellent. Top level administration has been good but malfeasance on lower levels of administration has produced incalculable and maybe irreparable harm. In writing you I assure you I am motivated only by the thought of keeping unsmirched the good name of our American people.

Then he introduces an article which has to do with claims made by both the Catholic and Protestant clergy in regard to—

Senator BALDWIN. An article from a German newspaper?

Senator McCARTHY. I do not know. It does not say. It is in English, apparently American. It is in regard to the religious discrimination over there. For example, here are some of the charges.

(Discussion off the record.)

Senator McCARTHY. I have a number of other letters in my office which I would be glad to let the staff have, also.

Was Mrs. Perl present in your command, Major?

Major FANTON. Yes, sir; she was.

Senator McCARTHY. And was she a member of the WAC's?

Major FANTON. No, sir.

Senator McCARTHY. Did she dress in a WAC uniform?

Major FANTON. No, sir. I can explain that if you will let me.

Senator McCARTHY. Yes.

Major FANTON. Lieutenant Perl, I believe, purchased some of this regular officer material, the OD and so-called pinks, and had tailor-made a suit or skirt for her out of that. But she did not wear any uniform.

Senator McCARTHY. Was Lieutenant Perl an officer?

Major FANTON. Yes, sir.

Senator McCARTHY. And he must have been an American citizen I assume.

Major FANTON. Yes; he was.

Senator McCARTHY. Did you hear of these charges of Perl mistreating the suspects in order to get confessions?

Major FANTON. I did not hear of any of these charges until, I believe the first time was when I read this petition. That is not correct. I saw them in a newspaper at first. Then one of these investigations started. Last July—July 13, 1948—I wrote Senator Baldwin about the matter, because I felt it was a thing that should be gone into thoroughly.

In view of my knowledge of the operations there at the prison I was certain that all of these charges were false. And I thought it was doing irreparable damage to the reputation of this country abroad to have such charges made. I felt very strongly about it, and still do. I do not want to continue. I would rather have you question me.

Senator McCARTHY. On page 16 of your statement, I would like to have you elaborate:

In view of the ineffectual investigations on which many of the acquittals and commutations have been based, and the uncertainty that has characterized this case by General Clay's headquarters—

and then you go on making recommendations. I gather it is your general feeling that Clay's headquarters has handled these matters rather badly?

Major FANTON. That is a tough one, Senator, but I stated my position in the statement. I would rather not elaborate on it for obvious reasons.

Senator McCARTHY. This is too important for us to let you—

Major FANTON. I want to go a little further and explain why I say that. Here again it is a newspaper account. I may be judging the thing unfairly. It is all I had to go on. I understand that the sentence of Christ was commuted on the basis that he was mistreated, tortured or beaten, or some other story. I happened to be present when Christ signed his confession. I saw the man. I know, I am absolutely certain, that there certainly was no physical force used. And Lieutenant Perl, I am sure, when he testifies, will be able to explain how Christ's confession was secured.

I have the story second-hand. I would rather have him explain it. If you want me to I will undertake to describe the technique used. There is one case.

Another case is the case of Preuss, also sentenced to death, and was also commuted.

Senator McCARTHY. How do you spell that?

Major FANTON. P-r-e-u-s-s, I believe.

Senator McCARTHY. What was the first man's name?

Major FANTON. Christ—C-h-r-i-s-t.

Preuss, I am given to understand, his confession and his admissions were secured by none other than Peiper himself. The story is typical of the techniques used, and it is a very interesting one. I do not know that I can do it justice. I will undertake, however, to describe it as it was related to me, if you are interested.

Senator McCARTHY. I do not want the individual cases.

Major FANTON. Those are two that indicated to me that commutations were being granted on the basis of claims which I considered false, and claims which were very serious. I mean if these charges were true they were extremely serious.

They prompted such articles as the article appearing in Time magazine on January 17's issue. Very serious matters.

Senator McCARTHY. You felt the reviews were rather haphazardly conducted?

Major FANTON. I would not undertake to characterize them. I felt that they had reached an improper result. I felt that the investigations of this thing were certainly one-sided.

Senator McCARTHY. I assume you heard Judge Van Roden tell the case of commutations from death to a life sentence for a naval captain who ordered the clubbing to death of seven American fliers. I have not read the record myself. I am just depending on what the judge told on the stand. The clubbing to death of seven American fliers.

Also the testimony that the junior officer—I forget whether he was a lieutenant or a major—who refused to carry out the old captain's order that he kill the Americans, and then the old captain said, "March them through the town. The civilians are not bound by the Geneva convention." The junior officer refused to do that, refused to take any part in it. The deputy judge advocate recommended that the sentence be cut down to 2½ years.

The Van Roden-Simpson committee, as I recall, agreed with that, that he should get 2½ years. I am not clear why he got 2½ years, in view of the fact he opposed all these moves. But the end result is that the junior officer, who refused to follow the orders of his commanding officer to kill these American fliers, the fliers were finally beaten to death directly because of the order of this naval captain, Clay's headquarters finally gave the captain the identical sentence that they gave the junior officer who refused to take any part in it.

I take it that is the part of your feeling that these reviews were badly and incompetently handled.

Major FANTON. That is a question, frankly, that I would rather not answer. If you press me for an answer, I will give you my opinion. On the facts as you stated it would certainly appear that there was something strange about the relative guilt of these two people.

Certainly if the junior officer did refuse or remonstrate with his superior officer over the violation of the convention, and received the same sentence, if those facts were revealed at the trial, it seems very strange.

Senator McCARTHY. You say "The uncertainty that characterized the handling of this case." In other words, you feel that there has been a great deal of uncertainty. Do you think there was any incompetence in the handling of this case by Clay's headquarters?

Major FANTON. I would rather not characterize it.

Senator McCARTHY. I have got to ask you not to be delicate in these matters. This is a very important matter.

Major FANTON. Certainly.

Senator McCARTHY. We are dealing not only with the life and death of a number of our enemies who were defeated, but also with how the rest of the world regards American justice, and American democracy, on which we are spending billions of dollars to do it. For that reason we cannot afford to have any of our witnesses refrain from answering because their answer might embarrass—

Major FANTON. You misunderstood me. I am not going to refrain from answering. I will give you my opinion. I would rather not, however, classify anyone as competent or incompetent. I certainly do not feel that I am qualified to judge a person, whoever is responsible for this, without knowing all the circumstances. I do feel this, and I feel it very strongly, and have so stated in this statement: that

such serious charges should have been thoroughly and completely investigated at the earliest possible moment.

I mean thoroughly investigated, a searching investigation.

Senator McCARTHY. In other words, you do not feel that there ever has been complete, intelligent, and thorough investigation of all the vast welter of charges that have come out of the Malmédy trials.

Major FANTON. I think the Raymond Board, the Administration Justice Review Board, came closest in their conclusions, but I think they should have come out and said definitely that they found no beatings, that they found none of that alleged cruelty and torture, and putting splinters under fingernails and things of that nature.

Senator McCARTHY. You say the Raymond Board comes nearest to arrive at the actual facts and you said they should have come out and said definitely there were no beatings. I might point out that the Raymond Board came out and definitely stated just the opposite. If I may call your attention to page 9.

Major FANTON. That is what I am quarreling with: the conclusions.

Senator McCARTHY. You differ with their findings?

Major FANTON. I certainly do.

Senator McCARTHY. That physical force was not systematically applied in order to obtain statements but that undoubtedly in the heat of the moment on occasions an interrogator did use some physical force on a recalcitrant suspect. Do you differ with that finding?

Major FANTON. I certainly do. I want to know what they mean. I would make a motion for a more specific statement. I do not know what they are talking about.

Senator McCARTHY. We will go through this a little further.

In certain instances interrogators made threats to the accused that if they did not talk their relatives would be deprived of their ration cards.

You have told us some time ago that you could not state whether or not your men had done that, but that they were told they could use ruses and deceptions. If the Raymond Board found that your interrogators did tell John Jones that his family would starve unless he signed a confession, certainly you do not quarrel with the Raymond Board putting in a report.

Major FANTON. I would like to explain this because it is very important, and it underlies my statement and underlies the strong feeling I have about this case. I lived with this thing for 6 or 7 months. I saw the case develop. I believe that I knew the facts better probably than any of my interrogators. I had an opportunity to weigh the factual information that they were securing. I had an opportunity to observe them in action.

I knew their techniques. I understood the picture, I think, very clearly. To me these statements do not ring true. I do not believe it was necessary to do these things. I do not think they entered in any way into the evidence that was accumulated.

Senator McCARTHY. May I interrupt you, Major? You said the Raymond report came the nearest to giving a true picture—

Major FANTON. I said the investigation came nearest to being a complete investigation; at least they did request statements from the prosecution. But they never did, to my knowledge, get any information from the prison personnel or any statements or information from the medical personnel that were assigned to this prison.

I understand some of these witnesses are coming here to testify to this committee. I think you will see the importance of their testimony.
 Senator McCARTHY. Here is what the Board says:

The practices referred to in A, B, C, and D above—

that is with regard to threats, taking away ration cards, physical force, mock trials—

the practice referred to in A, B, C, and D above, in certain instances exceeded the bounds of propriety.

You do not feel that this board was prejudiced against the prosecution's staff or anything when they made this investigation?

Major FANTON. I would not say so; no, sir.

Senator McCARTHY. Would you say—

Major FANTON. I would say they were trying to do a fair and impartial job.

Senator McCARTHY. And you said this board made the most thorough investigation of any of the investigations, and you feel in making this report that they were trying to render a fair report so that Clay would know it?

Major FANTON. I believe so.

Senator McCARTHY. So that under the circumstances, do you not think that any disinterested individual is bound to believe that all of these things actually did occur? In other words, the use of mock trials, physical force, telling the man they would deprive the family of ration cards and let the family starve unless he signed a confession? I guess that generally covers it. Do you not feel that in view of this report that any individual cannot help but believe that the trials were improperly conducted?

Major FANTON. Of course, that is where I take exception to the Raymond report. I think it did convey that impression. I want to make this very clear, because it underlies this whole thing—

Senator McCARTHY. You have testified previously that you did not know, for example, whether or not your investigators would tell a man "unless you confess your family will starve." You testified you did not know that, and you testified that you did not attend a great number of the interrogations, I believe, or at least you did not attend all of them.

Major FANTON. Certainly not all of them.

Senator McCARTHY. In view of that you, of course, cannot tell us in detail what threats, what physical beatings occurred, can you?

Major FANTON. I cannot tell you because I do not believe anything like that occurred. I can answer that this way, Senator: These witnesses will be before you, you will have a chance to judge them.

Senator McCARTHY. Which witnesses?

Major FANTON. I assume all the interrogators are being called. I knew these men quite well. I was with them daily. I observed their techniques, I observed their results, which is even more important. I might say that at the outset I went through each one of the statements of the survivors taken by the IG, within a few days of the occurrence—this relates to the Malmedy massacre, the crossroads killing—and picked out the facts, established the pattern of facts, those facts which all the witnesses testified to, and did the same with the statements of captured prisoners of war.

That was the basis. Then I did everything possible to check the information that was being secured.

Senator McCARTHY. Good. Let us get down to that.

Major FANTON. I honestly believe that the statements are all correct, to the best of the knowledge and belief of the people giving them.

Senator McCARTHY. Let us get down to the investigation you made. There were confessions of the men to the effect that they had mowed down a sizable number of American prisoners, shot them down in cold blood, near a church wall. There were corroborative statements of other witnesses; some of them got immunity and were not tried, others of whom were codefendants.

At the time of this alleged massacre of American prisoners you, of course realize that Colonel Peiper was in La Gleize, and that at that time he had 200 American prisoners of war at La Gleize, that the American commanding officer of those American prisoners was Colonel McCowan, that Colonel McCowan was with Colonel Peiper, riding around, and had free access to the American village, that this massacre supposedly occurred while he was in the village supposedly negotiating for exchange of prisoners.

After the negotiations were completed and he returned he gave no report whatsoever of any American prisoners being massacred. He testified at the trial that while he had the full run of the town, the churchyard and everything, he knew of no prisoners massacred.

The parish priest living in the basement of the church, up and down, testified there were no bodies around, heard no shooting, no indication that there was a massacre.

In view of that, and in view of the detailed confessions you had to the effect that those American prisoners were massacred, right in Lieutenant Colonel McCowan's area, who visited the area, does not that give you some reason to suspect that those confessions were not true, or do you think that McCowan was blind, and could not see what was going on?

Major FANTON. I heard Colonel Dwinell testify yesterday. I think he argued his case well. And I think Colonel Ellis will be allowed to answer those arguments.

I am told, and I believe it to be a fact, that Lieutenant Colonel McCowan was thoroughly discredited at the trial. However, I am not competent to testify regarding that fact.

Senator McCARTHY. Can you tell us in what way he was discredited? I think we have his testimony.

Major FANTON. I cannot tell you, Senator, because, as I say, I have no knowledge of the incident. I think when Colonel Ellis resumes the stand, and answers the arguments that have been made by the defense counsel, as he certainly should, I believe that it will be clear to the committee just what the situation is.

Senator McCARTHY. Did you discuss this with Colonel Ellis?

Major FANTON. I have discussed that one aspect of the matter. I, furthermore, Senator—I did not mean to be inattentive, but I was looking for it here in my memorandum. We had a couple of witnesses who testified—

Senator McCARTHY. Let us get—

Major FANTON. This is important with respect to McCowan. That is what I am doing.

Senator McCARTHY. In other words, you think McCowan was lying when he said that—

I was in that area, I was in charge of the 200 American war prisoners, those 200 prisoners were released, I was in charge of all the prisoners in the area, and none of my prisoners were shot, none of the men over whom I had control, and no other American prisoners, were shot.

Is it your thought now that he was lying at that time?

Major FANTON. I do not know whether he was or not. When I say a witness' testimony was discredited I do not mean necessarily that he was lying. He may tell an implausible story.

Senator McCARTHY. The affidavit of Everett, which was drafted in large part by Colonel Dwinell, one of the things set forth was this particular La Gleize situation. You say in your statement that these were complete falsehoods set forth in Everett's statement, so I assume you must have something on which to base that.

Major FANTON. I think you are going a little further than my statement.

Senator McCARTHY. May I read it to you, on page 13?

Major FANTON. You have to read more than just page 13.

Senator McCARTHY. On the top of the second paragraph, if you will refer to that, page 13, you said:

Had the maney claims contained in this petition not been completely false—then you go on to say what the defense counsel should have done.

In other words, you do claim those statements were completely false in Everett's petition?

Major FANTON. Insofar as they relate—and I think you ought to read this, because I did prepare this statement carefully—insofar as they relate to these claims of brutality. They are listed at such length I cannot remember them all, to be honest with you.

Senator McCARTHY. The brutality is all tied up with the getting of confessions.

Major FANTON. That is right; to the mock trials, and so forth.

Senator McCARTHY. Colonel Everett says that an American lieutenant colonel was present and swears that no American prisoners were shot in this area. You produced detailed confessions of German soldiers saying they shot American prisoners in that area. Do you follow me?

Major FANTON. Absolutely.

Senator McCARTHY. So Everett said those confessions were obtained by force, brutality, and threats. If Lieutenant Colonel McCowan is not lying, if he is not lying, then the confessions are false. That follows as night follows the day.

In other words, you are in charge of 200 American prisoners of war, here in this area. You are in complete charge of them, and you say you had the complete free run in the area. You were negotiating for the return of prisoners, and you come to court and say that even though confessions state on such and such a date some 20 or 30 American war prisoners were mowed down in the area over which you had control, the confession stated that:

I was there, all of my men are still living, they have all been exchanged, and no American prisoners were killed.

Now, if you say that, either you are a complete liar or the confessions are false. Is that not right?

Major FANTON. No; not necessarily.

Senator McCARTHY. All right. Go ahead.

Major FANTON. I do not think it necessarily follows at all.

Senator McCARTHY. Tell me why.

Major FANTON. I think you have to identify the group concerning which you are talking about. It is conceivable that McCowan had a group of soldiers under his control, and in fact we had, when we were interrogating, a couple of witnesses say that Peiper treated McCowan, gave them good treatment, that he wanted to exchange certain German wounded prisoners for the prisoners that he had taken.

I was trying to find it. Have you read the memorandum that was introduced in evidence on February 19, 1946? It is in there.

Senator McCARTHY. Lieutenant Colonel McCowan's testimony apparently is that he was in this small Belgian village of La Gleise.

Major FANTON. Right.

Senator McCARTHY. And that he had free access to discuss any matters with the local people, with the Belgians. He was there on the very day of the confessions that your men obtained, saying there was a massacre of American prisoners.

He said:

There was no massacre. If there had been I would know about it.

Is it not obvious that either he was lying or the confessions you obtained were false?

Major FANTON. I cannot say that. If all the facts you are giving me are correct, and if they are both talking about the same people—

Senator McCARTHY. Could somebody get the testimony of McCowan?

Major FANTON. I think it is quite obvious what the answer is. If you have a direct conflict as to a particular shooting, either one party or the other is mistaken.

Senator McCARTHY. Do you plan being here in the morning?

Major FANTON. I will be here as long as you would like me. Except I would like to return to Bridgeport tomorrow. I have some matters coming up on Friday that I have to attend.

Senator McCARTHY. I realize that this \$3 a day allowed the witnesses—

Major FANTON. It is not so much that, as it is taking care of clients.

Senator McCARTHY. It is rather a costly procedure for any of the witnesses to remain here.

Senator BALDWIN. Senator, do I understand that you are not going to complete with this witness tonight? I understood, coming over from the Senate Chamber, you thought you could.

Senator McCARTHY. I thought I could. I do not know. How long could we continue?

Senator BALDWIN. How many days have you been here, Major?

Major FANTON. I really have not counted them up. About seven I think. Seven all told.

Senator BALDWIN. There is a young man here who has been here 2 days from Washington-Jefferson University. If you are going to continue this, or keep the major overnight, anyway, I would like to try to get this young man on. He is in the middle of his examinations and would like to get back to school.

Senator McCARTHY. Surely.

Major FANTON. Are we going to have a session tomorrow morning?

Senator BALDWIN. Not until tomorrow afternoon.

Major FANTON. I have to catch a train back at 4:10 to be on hand in the office on Friday. That is the difficulty there. I will not have much time tomorrow.

(Discussion off the record.)

Senator BALDWIN. Go ahead.

Senator McCARTHY. Before you go, Major, there is one thing that I would like to clear up, and that is the question of mock trials. Did you attend those mock trials yourself?

Major FANTON. I attended two of them.

Senator McCARTHY. You attended two of them?

Major FANTON. Yes.

Senator McCARTHY. Will you describe in detail those two that you attended?

Major FANTON. I have undertaken to do that in a statement, but I will do it as best I can.

Senator McCARTHY. Will you tell me who was chairman of the court, if you can?

Major FANTON. It would not be fair, I do not believe, to say there was a chairman. I was the highest ranking officer so it could be assumed that I was president of the court.

This technique was originally designed to impress the witnesses, the subjects, with the ceremony attending the taking of the oath.

Senator McCARTHY. Will you do this for me? You have gone into that in detail, the other day. Will you describe actually, physically, what was done? Who sat where, not what you or anybody else had in mind.

Senator BALDWIN. Did he go through this the other day?

Senator McCARTHY. Yes.

Senator BALDWIN. Then why do we need to go through it again?

Major FANTON. I can, for Senator McCarthy's benefit, describe the scene, what it actually looked like.

Senator McCARTHY. You have not covered that yet. I wish you would.

Major FANTON. I have not.

Senator McCARTHY. Give us the size of the room.

Major FANTON. It was a large room, one of the end rooms in our cell block. Both the end rooms were larger rooms. There was a large window, about half the size of one of these windows. We had a small table, with a black cloth over it.

We had a crucifix on the table, with two candles. And as the suspect came in his hood was removed, and the oath was explained to him, the sanctity of the oath, and the importance of telling the truth.

The candles were lit, and he took the oath. Then the interrogator started in and described a particular incident concerning which we had information. I have been searching my memory for the name of the subject, because in one case I remember he started to talk right away and told us a complete story; a very successful procedure.

Senator McCARTHY. Will you get back to what was in the room? How many men were sitting behind the table?

Major FANTON. There were three of us behind the table, including the interrogator. Two others besides the interrogator. I think there

was myself, but I cannot remember the other person. But he was an officer.

Senator McCARTHY. Besides the interrogators, how many court members?

Major FANTON. Just us two.

Senator McCARTHY. Just two?

Major FANTON. Just us two, with the interrogator.

Senator McCARTHY. You and who else; do you know?

Major FANTON. I cannot recall the name.

Senator McCARTHY. Who was the interrogator on this occasion?

Major FANTON. Lieutenant Perl was the interrogator.

Senator McCARTHY. How many interrogators were there?

Major FANTON. Just one; just Lieutenant Perl.

Senator McCARTHY. Was this for the purpose of impressing the defendant with the idea that he was being tried?

Major FANTON. No.

Senator McCARTHY. It was not?

Major FANTON. It was called a fast procedure. There was an element of compulsion in it. We were interested in the point that Mr. Flanagan has just called to your attention. I made the statement that there never was any defense attorney appointed. There never was.

It is my understanding, as I said there, that after I left, the ceremony changed a little bit, there was one man who would argue in favor, say "Let the man have a chance to talk," and the other interrogator would be——

Senator McCARTHY. Stick to the ones that you saw. At the time of the two at which you were present, was there anyone who held himself out as defense counsel?

Major FANTON. No; just one German-speaking interrogator, and that was Lieutenant Perl.

Senator McCARTHY. You heard Lieutenant Owens testify the other day that he was asked to act as president of the court. There were two other members of the court?

Major FANTON. That is correct.

Senator McCARTHY. That one man was assigned as defense counsel, one man as prosecutor, and that there was no doubt in his mind but what the accused thought he was being tried. You heard that testimony?

Major FANTON. Yes.

Senator McCARTHY. You were not there that day, were you?

Major FANTON. No.

Senator McCARTHY. So that you have no way of disputing that testimony of Lieutenant Owens?

Major FANTON. None, other than hearsay, what I have been told by the people who were there, or had an opportunity to evaluate the situation.

Senator McCARTHY. Did you talk to someone who was in the room the day that Lieutenant Owens acted as president of the court?

Major FANTON. No, sir.

Senator McCARTHY. So that then you do not accuse him of lying?

Major FANTON. No.

Senator McCARTHY. So that when he says there was a man assigned as defense counsel, who held himself out to the accused as defense counsel, you assumed he was telling the truth?

Major FANTON. I think he was the victim of clever cross-examination. I do not mean to be facetious, Senator, because I think it is true. I do not think Lieutenant Owens realized just what you were driving at. He may have had the impression that one man was prosecuting. I do not think he was in a position to know.

Senator McCARTHY. Have you read over Lieutenant Owens' testimony?

Major FANTON. No, sir.

Senator McCARTHY. When you read it over you will find that before I cross-examined him, that on direct examination, the examination on the part of Mr. Chambers, Colonel Chambers, he testified that he was president of the court; he testified that one man held himself out as prosecutor, one man as defense counsel; that this man who was defense counsel discussed the case with the accused.

You heard him testify to that?

Major FANTON. That is right.

Senator McCARTHY. You would not accuse me of eliciting that on cross-examination merely because I was waiting to cross-examine him later?

Major FANTON. No. It am not sure. Did you bring that out, Colonel? I have not read the record.

Mr. CHAMBERS. I endeavored, in examining Owens, to bring out all the evidence I could get as to whether or not he took part in the mock trial. Certainly if he made mention of it I would have pushed those points just as vigorously as Senator McCarthy.

If he said I said them, I know he is correct. He read the report.

Senator McCARTHY. You did not say it, Colonel. The witness said it. In fact you were rather disappointed, rather surprised. The witness stated on direct examination that he was not prodding at any time at all, no pressure, that he was present, that one man held himself out as defense counsel.

Major FANTON. Do you have the transcript? I am quite clear, that it was in response to your line of questioning that he made the statement.

Senator McCARTHY. In other words, you think Owens was mistaken, that he was not telling the truth?

Major FANTON. No, sir. I think he was doing his best to answer your questions.

Senator McCARTHY. Would you like to see the record?

Mr. CHAMBERS. I am checking it now. I am interested.

Major FANTON. I am interested, too, because my recollection is quite clear. I remember at the time noting.

Senator McCARTHY. While Colonel Chambers is going into the record, can you tell me who conceived of the idea of the mock trial?

Major FANTON. Lieutenant Perl conceived this technique, because having in mind the continental practice with respect to sworn testimony he felt it would be more impressive, and some of these subjects would be impressed by the oath, and that it might succeed in securing a truthful statement.

Senator McCARTHY. He discussed that with you and you agreed to hold these mock trials?

Major FANTON. Yes.

Senator McCARTHY. The Raymond Board, which I believe you said was the more competent of the various boards that heard this—

Major FANTON. I said they made the most complete investigation.

Senator McCARTHY. They said this:

No sentence was pronounced but the accused was made to understand that it was his last chance to talk, and undoubtedly in some cases understood he had been convicted.

Major FANTON. Where are you reading from, Senator?

Senator McCARTHY. Page 4, the last of the first paragraph.

They say also:

One member of the prosecution team would play the part of prosecutor, another would act as friend of the defendant.

Let me ask you this: In view of the fact that you only witnessed two of these, and there were a sizable number conducted, do you have any way of knowing whether the Army report is correct or incorrect?

Major FANTON. The Army report—

Senator McCARTHY. May I see that?

Mr. CHAMBERS. Surely.

Major FANTON. Do you have another copy, colonel?

Mr. CHAMBERS. I am sorry there is not. I will try to find one.

Senator McCARTHY. Page 832:

Mr. OWENS. As well as I can remember there was a room probably half as large as this room, set up with a table and chairs in there. I cannot remember the exact number of people who participated in it.

This is not my examination.

I know I was made president of the court or whatever they call it. They spoke in German all the time. They told me that they would like for me to participate in the thing, so I said: "O. K., I will help you out." And I went in.

The trial was carried on. The witness was examined. He was asked questions of course, in German. I did not understand what they were asking him. I did not understand his answers, and after a period I would say of 10 minutes, the prosecution asked that the trial be postponed until the next day, and I never heard any of the results after that.

That is the only one that I ever knew about occurring and the only one that I participated in.

Mr. CHAMBERS. During the trial was there someone who was acting as defense counsel?

Mr. OWENS. Yes, sir.

Do you think that answer was the result of clever cross-examination, or that he was the victim of clever cross-examination, when he said "yes, sir"?

Major FANTON. No.

Senator McCARTHY. So when you said a little while ago that you thought Mr. Owens was the victim of clever cross-examination, when he said there was a defense counsel, you no longer believe that is true, I gather?

Major FANTON. If you will bear with me for a second, I will find the passage that I had in mind.

Senator McCARTHY. Page 832.

Major FANTON. I am looking for your examination.

Senator McCARTHY. Let me read the rest of it:

Mr. CHAMBERS. Was he designated as such?

Mr. OWENS. Yes, sir. During that short period of time he would confer with the defendant in the case.

Mr. CHAMBERS. You say that he was designated as defense counsel? Did they say that in English or German? How do you know that he was a defense counsel?

Mr. OWENS. I was told by one of the officers there in charge that this particular fellow would act as defense counsel and the other fellow would act as the prosecutor.

Mr. CHAMBERS. How did he conduct himself during the trial? What did he do, the defense counsel?

Mr. OWENS. It is so short that the defense counsel never acted, he would confer with the defendant, he would give the answer. It was a very short thing. I would say not longer than 10 minutes. It was postponed over to the next day.

Major FANTON. I do not want to quibble. I want to read to you what I had in mind.

Senator McCARTHY. Forgetting what he said in cross-examination, in the original examination he said yes, sir, there was defense counsel. He was designated as such, one man designated as defense counsel, and the other man as prosecution. Up until that point, up until the time he had said that, he was not the victim, up until then, of any clever cross-examination, was he?

Major FANTON. No.

Senator McCARTHY. So up to that point, where he said yes there was a defense counsel, there was a prosecution counsel—up to that point he was telling the truth, do you think?

Major FANTON. I think he was truthfully trying to answer the question.

Senator McCARTHY. And he was there and you were not?

Major FANTON. That is correct.

Senator McCARTHY. So he would be in a better position, right?

Major FANTON. He would be in a better position to tell what he saw, that is correct.

Senator McCARTHY. When he said, "There was a defense counsel, and prosecution counsel, and I was president of the court, we conducted a trial," he being there, there is no way that you can dispute what he had to say?

Major FANTON. I think there is, because I think his statement there was a defense counsel is clearly a conclusion.

Senator McCARTHY. I have used up more than 5 minutes, Mr. Chairman, I am afraid. I have no further questions at this time.

Senator BALDWIN. I have tried to be as considerate and thoughtful of your position in this case as I possibly could be, and you have consumed a good deal of time on the examination of these witnesses. This man has been here several days. If it is agreeable to you he can be excused now and then he can arrange with Colonel Chambers to come back at some later date, a week or two hence, to complete any further questions that anybody might want to put to him.

Senator McCARTHY. I think that would be an excellent idea, to give us a chance to go over the record in the meantime.

I appreciate the Chair's calling the witness back.

Senator BALDWIN. Is that agreeable to you, Major?

Major FANTON. Perfectly agreeable.

Senator McCARTHY. I might say that I appreciate your waiting around here so long. I know the arrangement we have for the payment of expenses of witnesses is completely inequitable. We drag you down here for 100, 200, or 500 miles, and you have to stay in a hotel and cannot conceivably get a room for the expense that you are allowed.

It is a bad situation, but all witnesses are subject to the same thing. I think the Senate should do something about it, not only in this case but in all cases.

Senator BALDWIN. If you are through with Major Fanton, we will ask Mr. Teil to take the witness stand.

Senator McCARTHY. Mr. Chairman, in view of the fact that I wrote Mr. Flanagan, who has been doing the investigation with the colonel on this matter, and talked to this witness, and arranged for him to come in, with the Chairman's permission I would like to refrain from any examination of this witness, and let Mr. Flanagan do it, because he is better acquainted with the facts than I am.

Senator BALDWIN. You mean Mr. Teil?

Senator McCARTHY. I do not know what the facts are that this witness is going to testify to.

Senator BALDWIN. All right, Mr. Teil, will you hold up your right hand, please? (The witness was then sworn.)

TESTIMONY OF KURT TEIL, PITTSBURGH, PA.

Senator BALDWIN. What is your full name and address?

Mr. TEIL. Kurt Henry Teil.

Senator BALDWIN. Where do you live?

Mr. TEIL. 5454 Wilkins Avenue, Pittsburgh, Pa.

Senator BALDWIN. Mr. Flanagan?

Mr. FLANAGAN. Mr. Teil, were you assigned to war crimes work in Germany after the war?

Mr. TEIL. That is correct. Assigned, that is, I had a job, was hired by the War Department and worked with the war crimes group.

There was no assigning in a Regular Army sense, that somebody told you to go there. I actually applied for the job myself.

Mr. FLANAGAN. What type of work did you do at that time?

Mr. TEIL. I worked there for 2 years. I was working, assigned to the investigations section, and at first I was hired as an interpreter-investigator, and conducted independent investigations of war crimes cases.

Mr. FLANAGAN. What period of time did you work on war crimes trials in Germany?

Mr. TEIL. From, I believe the exact date is about November 20, 1945, until August 28, 1947.

Mr. FLANAGAN. Prior to the time you worked on war crimes trials, were you in the United States Army?

Mr. TEIL. That is correct.

Mr. FLANAGAN. And how long were you there, and what did you do in the Army?

Mr. TEIL. I was drafted on March 13, I think, 1943, and assigned to the Air Corps. After being for some time in the Air Corps medical department, I was later trained as an aerial gunner, and I went overseas with the Eighth Air Force and I flew 22 missions on a B-17 over Germany.

Then, in May, that is, when the war ended in Europe, there was a circular issued by the armed forces asking German-speaking personnel to volunteer for extra duty. The volunteering was to be done without knowing what the mission was going to be.

I volunteered and later was assigned to A-2, section staff, at that time, now called USAF, St. Germaine, Paris.

Mr. FLANAGAN. While working on war crimes in Germany, did you have any occasion to make the acquaintance or work with any of the men assigned to the prosecution team in the Malmedy case?

Mr. TEIL. With some of them, yes.

Mr. FLANAGAN. Which ones in particular?

Mr. TEIL. I mean I knew the team that was at Schwabisch Hall. Do you want me to name them, every one of them?

Mr. FLANAGAN. As many as you can recall.

Mr. TEIL. Mr. Thon, Lieutenant Perl, Mr. Ellowitz, and, of course, Captain Shumacker. Right offhand, there were quite a number of people there.

Mr. FLANAGAN. In addition to those, you probably knew some others?

Mr. TEIL. If I were told the name, if I knew them, I could say "Yes" or "No."

Mr. FLANAGAN. Did you ever have any occasion to work on any phases of the Malmedy case for Colonel Ellis?

Mr. TEIL. I was not assigned to the Malmedy case, the investigation of the Malmedy case. However, on some occasions, I would say it was the general set-up that investigators were making trips into areas where there were suspects, areas in Germany. They were at times called upon to help transfer those prisoners from the various camps in Germany to the jail at Schwabisch Hall, and I did that at several times.

Mr. FLANAGAN. When you were in Germany, about the time this Malmedy case was being investigated, did you ever have occasion to discuss this case with your coworkers, or with men actually assigned to the case?

Mr. TEIL. You mean this Malmedy case?

Mr. FLANAGAN. Yes.

Mr. TEIL. There was considerable discussion going on.

Mr. FLANAGAN. When you say considerable discussion, that was discussion between you and other war crimes investigators in the Malmedy case?

Mr. TEIL. I would say that there was considerable discussion among several investigators. I do not remember just exactly at what time or who they were. I would not name anybody. I do not remember. I just remember there was discussion. It was one of the big cases; it was natural there would be discussions about that case.

Mr. FLANAGAN. In connection with those discussions, was there anything stood out in your mind as to the statements concerning the case, as to handling of the prisoners?

Mr. TEIL. Any specific incidents?

Mr. FLANAGAN. Yes.

Mr. TEIL. No.

Mr. FLANAGAN. Were there any general incidents that stood out in your mind concerning the handling of prisoners in this case?

Mr. TEIL. No, not incidents.

Mr. FLANAGAN. Were there any general rumors among you investigators who were then in Germany concerning the handling of prisoners in this case?

Mr. TEIL. I know what you are trying to arrive at. The thing is this: Among any investigators, working on any job, for anybody, whoever they may be, there is always a certain amount of argument or discussion about the possibility of using physical violence, and not using it, the so-called third-degree method.

Of course, among all the investigators there was a certain amount of discussion about that possibility.

Mr. FLANAGAN. Did any of the interrogators assigned to the Malmedy case ever express the belief that it would be a good thing to use physical force to get confessions of this type?

Mr. TEIL. There were members, a few individuals, at war crimes that, of course, represented the view that it was more efficient, that it would be more efficient to use it. They did not say they were using it; they said they felt it might be more efficient, quicker to do that.

Mr. FLANAGAN. It would be a fair statement, then, to say that there were those, investigators assigned to war-crimes cases, who thought it would be more efficient, in this type of case, to use physical force?

Mr. TEIL. That was their opinion. They did not say that they would use physical violence.

Mr. FLANAGAN. It is very clear they did not say they used it?

Mr. TEIL. That is right.

Mr. FLANAGAN. They thought it would be more efficient if used?

Mr. TEIL. That is right.

Mr. FLANAGAN. Who were the interrogators or the investigators that made such statements?

Mr. TEIL. Well, I mean, as far as I remember, now—I am going on memory—over a period of 2 years, it was common knowledge, well, it was knowledge, that the attitude of certain members was that way.

If I name them, I might name somebody whose attitude it was not. There were a certain number of investigators who felt that way. But I hate to name them by name because I would be pinning them down and saying this man had that attitude. I cannot say that any more with certainty who they were exactly. There are certain possibilities. I can exclude definitely some people.

Mr. FLANAGAN. Who would you include?

Mr. TEIL. Exclude?

Mr. FLANAGAN. Who would you include in that group, that felt it would be more efficient to use physical force?

Mr. TEIL. In one particular instance, I would say Mr. Thon. That I remember.

Mr. FLANAGAN. Tell us about that incident.

Mr. TEIL. I just remember it was a discussion, in a cafeteria or something, that he made that remark. He was, I would say, among the other investigators, when this was brought up. He represented that one side of view. It was generally known that it was his personal opinion.

Mr. FLANAGAN. In this conversation that you had in the cafeteria, or some other place, among a group of investigators, at which Mr. Thon was present, he expressed the opinion or made the statement that, in his opinion, he felt it was more efficient to use physical force?

Mr. TEIL. Yes.

Mr. FLANAGAN. You say yes.

Mr. TEIL. I just remember that was his opinion, that is right. I cannot remember the exact occasion at which it was said, but that was his opinion.

Mr. FLANAGAN. I realize that might be difficult. But you cannot definitely remember his expression of that opinion?

Mr. TEIL. No. He was generally known for that.

Mr. FLANAGAN. You mean he had the general reputation for being a man of the opinion that physical force would be efficient in this type of case?

Mr. TEIL. I would not say reputation. He was known to have that opinion. That is what I am saying.

Mr. FLANAGAN. In addition to the statement he made to you, he was known to have that opinion?

Mr. TEIL. That is right.

Mr. FLANAGAN. Did you ever have a similar conversation, or overhear similar conversations on the part of Lieutenant Perl?

Mr. TEIL. No, I did not. I personally did not have any conversation that I remember.

Mr. FLANAGAN. Did Lieutenant Perl have the reputation of being one of those that was of the opinion that the use of physical force would be efficient in the investigation of war crimes trials?

Mr. TEIL. I would include him in that group, yes.

Mr. FLANAGAN. You would include Mr. Perl?

Mr. TEIL. Yes, sir; that is right.

Mr. FLANAGAN. Were there any other members of this prosecuting team in the Malmedy case that had similar reputations?

Mr. TEIL. That group might have included a few others. I could not name them.

Mr. FLANAGAN. But you know it included Thon, and you know it included Perl?

Mr. TEIL. Yes. Whenever reference was made, people thought of those two.

Mr. FLANAGAN. On one occasion, did you go to Schwabisch Hall, and were you taken on a tour of the Hall by Mr. Thon?

Mr. TEIL. That is right. I delivered a prisoner that I had, I think, picked up at a hospital or some camp, and turned him over to Colonel Ellis.

Thon was standing around the room and asked if I would like to see the jail.

Mr. FLANAGAN. When was that, approximately?

Mr. TEIL. The date?

Mr. FLANAGAN. Yes.

Mr. TEIL. I do not remember. I would say January, February 1946. About that date.

Mr. FLANAGAN. In January or February?

Mr. TEIL. Somewhere around there.

Mr. FLANAGAN. And after you received this invitation from Mr. Thon to take this tour through the prison where these Malmedy prisoners were stationed, did you go on the tour with him?

Mr. TEIL. That is correct.

Mr. FLANAGAN. Do you recall any incident at the time of that tour?

Mr. TEIL. When we went into the jail, that is, where the cells were, the part of the jail where the cells were, there was a long, pretty wide hall. Mr. Thon said: "These are"—he pointed out what he called the

death cells. He said: "These are people who will probably hang. You can look into some of these cells." So I looked into a number of them, three or four. I did not notice anything unusual. I saw the prisoner, but I did not see anything unusual.

Then Mr. Thon walked away from me, from the cell where I had been sort of peeping into, and two or three cells in one direction, away from me, either to the right or to the left—I don't remember that. I was still looking in one cell when he said: "Kurt, come here and look here."

Mr. FLANAGAN. You were looking in one cell? Mr. Thon was several cells away from you?

Mr. TEIL. Yes.

Mr. FLANAGAN. Several feet away from you?

Mr. TEIL. He had walked away, after I had looked in two or three cells.

Mr. FLANAGAN. And at that point, did he call to you and say: "Kurt, come over here and look at this"?

Mr. TEIL. That is right. I went over there.

Mr. FLANAGAN. At his instigation, at his call, you went over to this other cell?

Mr. TEIL. That is right.

Mr. FLANAGAN. Did you look into that cell?

Mr. TEIL. That is correct.

Mr. FLANAGAN. What did you see?

Mr. TEIL. I looked in it. By looking in you mean through the peephole? As far as I know, there was no window in the cell. It was a sort of an eyeglass you look through.

There was a prisoner lying on the floor, on his side. That is, he was lying on the side, in a sort of crumpled—had his legs pulled up, lying on his side, and had a black hood over his face. I looked at the prisoner and he did not move.

Mr. FLANAGAN. This prisoner was lying on the concrete floor?

Mr. TEIL. I do not remember whether it was a wooden floor, linoleum, or concrete.

Mr. FLANAGAN. But he was lying on the floor in a crumpled position with a hood over his head?

Mr. TEIL. One of those black hoods.

Mr. FLANAGAN. And he was lying motionless?

Mr. TEIL. I looked at the man, I would say, for 30 seconds and he did not move.

Mr. FLANAGAN. What time of day was this?

Mr. TEIL. 9:30 or 10 o'clock.

Mr. FLANAGAN. And at this time of day when you looked in all the other cells, were the prisoners standing up or moving around their cells?

Mr. TEIL. That is right.

Mr. FLANAGAN. None of them were sleeping?

Mr. TEIL. I did not see any of them.

Mr. FLANAGAN. But this one man was lying motionless on the floor in a crumpled position?

Mr. TEIL. It appeared to me he was motionless.

Mr. FLANAGAN. And you looked at him for about 30 seconds?

Mr. TEIL. That is right.

Mr. FLANAGAN. Then, did you say anything to Mr. Thon, or did Mr. Thon say anything to you?

Mr. TEIL. After I had looked in there, I turned to Mr. Thon, still standing next to me, and said: "Harry, what is the matter with this man?" He said: "He just got out of interrogation and probably got roughed up a bit."

Mr. FLANAGAN. He said he just got out of interrogation and got roughed up a bit?

Mr. TEIL. Yes. That is exactly what he said.

Mr. FLANAGAN. Then, what else was said?

Mr. TEIL. I did not say anything else.

Mr. FLANAGAN. What did you do?

Mr. TEIL. I walked back to the office, and after that I left.

Mr. FLANAGAN. Did that end the tour right there?

Mr. TEIL. Yes. I was not interested in any more.

Mr. FLANAGAN. You said you did not want to see any more? Why did you not?

Mr. TEIL. I would not say I did not want to. I did not have anything to say. It was none of my business. I walked back to the office. Somebody else was with me, and we drove off.

Mr. FLANAGAN. As a result of what you say, that motionless man on the floor, and as a result of the actions and the words of Mr. Thon, what impression did you get as to the condition of the man on the floor?

Mr. TEIL. The only impression that I could get was exactly what Mr. Thon had said, that the man had been interrogated by someone, he did not say who, and during the interrogation perhaps his face had been slapped a bit. He was not bleeding. I did not see any blood. I could not say for certain that the man was unconscious.

All I could say was that the man was not moving while I looked at him. He was not in a sleeping position, for that time of day.

Furthermore, I do not think Mr. Thon would have pointed out a man that was sleeping, that he especially would have called me back from where I was to see a man that was sleeping. I have seen plenty of prisoners that were sleeping. It would not be a novelty.

Mr. FLANAGAN. It is not likely that a man who was put back in his cell would go to sleep with that hood over his head?

Mr. TEIL. That was not—I do not know. I do not know what the procedure in that jail was.

Mr. FLANAGAN. He did not appear to be handcuffed or manacled in any way?

Mr. TEIL. No, sir. I do not think he was handcuffed. I do not remember, but I am pretty sure he was not.

Mr. FLANAGAN. Would it be a fair statement to say that as a result of your conversation with Thon at that point, and as a result of your observations, your personal observations, you had the impression that that prisoner had been subjected to some type of physical duress or physical violence?

Mr. TEIL. I am afraid so.

Mr. FLANAGAN. You mean, yes?

Mr. TEIL. Yes, I am afraid so.

Mr. FLANAGAN. Is there anything else that you would like to state at this time?

Mr. TEIL. Yes. I have a statement, if I may make it. I would like to say that when I came to War Crimes I was fully aware what its mission was. I was in accord with the objective and I tried to do my best to achieve it. It is possible that there might have been even better ways to achieve this mission than those that were set up.

Senator BALDWIN. May I interrupt you there? What was the objective as you understood it?

Mr. TEIL. I have that later.

Senator BALDWIN. Go ahead. I will not interrupt you.

Mr. TEIL. If I do not answer it—

Senator BALDWIN. Go ahead. I will ask you at the end.

Mr. TEIL. There might have been even better ways to accomplish this mission. By that I mean that perhaps it might have been better if the whole war crimes procedure had been handled by a neutral country. It is my personal opinion, since then, and perhaps even at that time, that if it was really a matter of dealing out justice, since there has been some doubt, as told to me by various people, that to a certain extent these crimes were happening on both sides, if one wanted to set a precedent and wanted to punish people for violating the rules of war, that actually, in order to make that thing stick, it would have been better to have a neutral country try war criminals.

However, I am glad to say that, as far as I am concerned, under the existing rules and regulations I feel the best was done that could be done. By that I mean the regulations at hand which were not set up by my immediate superiors but were set up at a much higher level.

Operating under those procedures I think we did the best that could be done. I feel a very deep respect for Lieutenant Colonel Ellis—a friend, a lawyer, and an administrator. I feel he is a very able man. I think that this feeling is shared by all those who ever worked under him or, better, with him: I do not think anybody actually worked under him; everybody always had the feeling that we were working with him to achieve the objective that War Crimes had.

I know that he personally was strongly opposed to the use of any physical violence. We received repeated warnings from him. He called us together, two or three investigators at a time, and made this point very clear at repeated times: that no physical violence was to be used under any circumstances.

I remember that, in one case, at least in one case, a man was sanctioned. By that I think he was actually fired, or at least his contract was not renewed when it came up at that time, and he returned to the States. This man had been accused of beating somebody.

Furthermore, I would like to say that in the period that Colonel Ellis was not in charge of the war crimes investigations group another man who was in charge fired another investigator upon the first violation. That is, the man had been reported as having kicked a prisoner, and he was immediately sent back to the States.

Senator BALDWIN. When was that?

Mr. TEIL. That, I believe, was during Colonel Ellis' absence, when Colonel Ellis had returned to the States for a leave of absence. I do not remember the exact date.

Mr. CHAMBERS. Mr. Teil, may I interrupt? This man who was discharged for brutality to prisoners, was that in connection with the Malmedy case or was that in some other matter that Colonel Ellis was handling?

Mr. TEIL. I think it was the one case that I remember—just a minute. At that time I think that was in connection with another case.

Mr. CHAMBERS. Thank you.

Mr. TEIL. It is beyond my imagination that Colonel Ellis ever sanctioned the use of physical violence at any time in any case. I knew his personal opinions. He made a definite effort, repeatedly, to impress it upon the investigators not to use force. I would say that actually the number of violators were very small, and when they did occur they were punished.

I would like to say further that some remarks have been made about the so-called 39-ers, and I am very happy to be one, as far as that is concerned, but I would like to say that, without the use of not only German-speaking—it was not only a matter that you had to have somebody who spoke German; you could get plenty of college-trained personnel who spoke German—but you had to have, for apprehension and investigation purposes, people who had lived in Germany after and during the Hitler regime—at least during the Hitler regime—in order to understand the emotions, the ideologies, that were really prevailing, to what extent they were prevailing, and in what areas the tendencies were stronger toward nazism, and you had to know the governmental set-up, you had to know where to find records, and what records were kept.

There were innumerable things that you could not learn from a textbook, where the Army had to use those men. I do not think anybody else would have been as well qualified and would have been able to do any type of job that would have helped in the rapid apprehension of any of these perpetrators.

It has been brought out here by other testimony that some of these 39-ers used physical violence, and that they used it because of a certain sense of bitterness against German nationals in general.

Senator BALDWIN. Do you make that statement in connection with Schwabisch Hall, Malmedy, or in general?

Mr. TEIL. Schwabisch Hall. I do not think it applies generally. If, however, the statement that was made here—that the 39-ers should not have been employed because they were biased or they had a feeling of bitterness in them—then I would say, if that is a general statement, then this is a general answer.

I would say that I myself would have disqualified myself from ever working for war crimes, if I had felt that I could not control my emotions to the point of not letting my rage out on prisoners. I am coming to that in a few minutes.

What I thought, as I said before, the mission of war crimes was: I certainly felt that it did not involve stooping to a level of those that we condemned. On the contrary—very much to the contrary—if anything was to be done we should try to avoid everything possible that would put us in the same class as those people.

I felt, and I still feel, that out of—I do not know how many investigators there were; I do not know the exact number of 39-ers there were—but I can say that 80 percent of those, at least, felt the way I felt. The other 20 percent may have felt the other way, but

that does not mean they used physical violence. They may have expressed an opinion, as I stated before, that it was more efficient to do that, but that does not mean they did it.

I would say that by far the largest majority of refugees never used that method and would not use it under any circumstances whatsoever. I know that I would not, and I know of others who would have immediately disqualified themselves from working with war crimes if they had ever come into the situation where they no longer could control themselves.

That is my own personal opinion. I feel that perhaps a lot of this could have been avoided—a lot of this stuff that has been brought up here—if more of the court members had been law members, and perhaps international lawyers, that is, had some experience in international law.

Finally, I feel that, since we proclaimed these trials to be democratic and fair, they would have to be just that and nothing else.

As you all realize, we are engaged in an east-west conflict. I do not feel that we can win this conflict with bread alone. There are certain ideologies involved in this. I sometimes think that they are more important than bread, or butter and bread.

We have certain ideas that we call democratic. I for one am fully convinced of the ideals of our ideology. Some feel that our ideas are too idealistic and therefore unattainable in this realistic age. I think they are attainable provided each and every one of us lives up to them at all times, even under adverse circumstances.

War crimes were started with the idea of approaching one ideal of western consolidation, namely, justice. In general I feel we have succeeded in this. However, in this particular case, through the actions of a few—a very few—individuals, we stooped, or seemed to have stooped, to the level of those we condemned.

This is regrettable, but perhaps out of this investigation something may yet come that will undo at least partially the damage done.

If you would publicize what has been happening here, in these last 2 weeks, as much as it is publicized in the United States, if you would publicize it in Germany, one could perhaps create the impression that, whatever happened, at least it was not the official policy of the American Government to condone those actions, which is of course in definite contrast with what happened in Germany where apparently it was the official policy.

I think perhaps by that we can reaffirm the impression over there that we do mean what we are saying. That is about all I have to say, Senator.

Senator BALDWIN. When did you go to Schwabisch Hall? Do you remember the date?

Mr. TEIL. I think January or February 1946.

Senator BALDWIN. You merely brought prisoners down there from time to time?

Mr. TEIL. That is correct.

Senator BALDWIN. How many different visits did you make there?

Mr. TEIL. I think I went there once or twice after that occasion.

Senator BALDWIN. Altogether how many times?

Mr. TEIL. I would say two or three times at the most. Three times at the most. I do not remember any more.

Senator BALDWIN. When you went there, how long did you stay?

Mr. TEIL. This incident was the first time I went down. This incident that I described was the first occasion I had to go to Schwabisch Hall. We came in there at night and delivered the prisoners to some guards, turned them over to some guards, then left. I was staying in a transient hotel in that town.

I came back the next morning into the jail to pick up some more orders or something, to take them back to Weisbaden. That was the occasion that I was taken to the jail.

Senator BALDWIN. That was the only time that you were in the jail?

Mr. TEIL. As I said, I had been there after that two or three times.

Senator BALDWIN. What I am trying to find out is what opportunity you had for observation there.

Mr. TEIL. Only what I described.

Senator BALDWIN. Just that one time?

Mr. TEIL. For any observation. The other times I just went in there to the office and turned in the prisoner, maybe got a receipt for him, and walked out again. I did not want any details.

Senator BALDWIN. Do you have any questions, Colonel Chambers?

Mr. CHAMBERS. I have a couple I would like to ask Mr. Teil.

When you first got in contact with Senator McCarthy's office and the call was reported to the committee, it was reported that—I am anxious to see if this is correct—you had seen one of the men lying unconscious on the floor with a black, bloody hood over his head, and you asked Mr. Thon who it was, and Mr. Thon said he was one of the men who had just finished his interrogation.

Did I understand you properly a moment ago when you said that you saw no signs of blood or anything of the kind?

Mr. TEIL. That is correct. I do not know where that information came from. The letter that I wrote did not mention a bloody hood. I have a copy of it here. However, I did talk to the secretary on the phone and she may have gotten the impression that I said "bloody hood" and "unconscious." I did not say that.

Mr. CHAMBERS. You actually observed him for 30 seconds and did not necessarily believe he was enjoying a nap on the floor, but you saw no blood?

Mr. TEIL. That is correct.

Mr. CHAMBERS. So this particular thing is a misquote of what you said?

Mr. TEIL. That is correct.

Mr. CHAMBERS. Senator Baldwin brought out that you were at Schwabisch Hall on three occasions.

Mr. TEIL. That is right.

Mr. CHAMBERS. During which time you were in Schwabisch Hall Prison a very short time and you looked into several cells in which you observed nothing out of the ordinary. You did see one cell in which this man was on the floor?

Mr. TEIL. That is correct.

Mr. CHAMBERS. Based on that, you have said that "apparently we have stooped to the same level as the people we have been fighting over there," and you did not believe that was proper?

Mr. TEIL. That is correct.

Mr. CHAMBERS. Is that the only reason for that? or was there perhaps a general rumor about Schwabisch Hall? or were things being

said about Schwabisch Hall which would make you believe that these were common matters that were going on there?

Mr. TEIL. As I said before, it was the impression that was among some of the investigators anyway, from statements—I cannot name anyone specifically—from statements that were made at various occasions, the impression was that physical violence was used at times. This was just one instance that I saw. I will not say it confirmed my impression of these things that I heard, but it certainly did not do the opposite.

Mr. CHAMBERS. You would say Colonel Ellis was a good administrator?

Mr. TEIL. That is correct.

Mr. CHAMBERS. And a good administrator certainly should have known what his men were doing, and what the people working for him were doing?

Mr. TEIL. That is right. I do not know whether that is always possible.

Mr. CHAMBERS. I understand, but if Colonel Ellis was a good administrator and energetic, he should have known pretty well what was going on within Schwabisch Hall; is that correct?

Mr. TEIL. As I said, I do not think Colonel Ellis could possibly attend all interrogations. There were 70 prisoners there. He could not know of every single instance of what went on.

Mr. CHAMBERS. What I really had reference to was matters of men being beaten, which would of course show up physically and probably require medical attention, and things of that kind.

Mr. TEIL. I have no evidence of any physical beatings where medical attention was needed.

Mr. CHAMBERS. Do you believe that, if such beatings did take place and medical attention was required, that Colonel Ellis would have known about it?

Mr. TEIL. I think so.

Mr. CHAMBERS. And if he had known such things were taking place, certainly, based on your opinion of him, he would have taken prompt action to see that they were discontinued?

Mr. TEIL. That is correct.

Mr. CHAMBERS. I have no further questions.

Senator BALDWIN. Senator McCarthy?

Senator MCCARTHY. Mr. Chairman, I would like to say that this young man volunteered to come over. He certainly should be complimented. He is a religious and political refugee from Hitler in Germany. He had every reason in the world to refrain from taking the time to come here. It has cost him some money to come here. I think he should have the thanks of this committee, and frankly I think an individual such as he, who as I say is a political refugee from Germany and who comes here to give what he knows, to make sure that the American brand of justice will be meted out even to some who might be considered our bitter enemies, is definitely the kind of a young man we would like to have as a citizen.

Mr. TEIL. Thank you.

Senator BALDWIN. Just one further question. This incident that you described as having seen, did you report that to anybody?

Mr. TEIL. What do you mean by "report"? To any authorities?

Senator BALDWIN. Yes.

Mr. TEIL. No. I did make mention of that to several other individuals later.

Senator BALDWIN. You did not officially report it?

Mr. TEIL. No, sir.

Senator BALDWIN. You thought there was no occasion to do that?

Mr. TEIL. That is correct.

Senator BALDWIN. I want to express the thanks of the committee to you for coming down here. I am sorry we took so much of your time. You have performed a public service for us.

Senator McCARTHY. So that the record is clear, the contact that you made with my office was completely voluntary?

Mr. TEIL. That is correct.

Senator McCARTHY. My office, I believe, then phoned you; you talked to someone in my office?

Mr. TEIL. I think it was your secretary.

Senator McCARTHY. And I had no conversation with you prior to this time?

Mr. TEIL. That is correct.

Senator McCARTHY. I want to make it clear that the memorandum that I read into the record was a memorandum that my secretary made when she talked to you over the phone.

Senator BALDWIN. We will adjourn to 2 o'clock tomorrow afternoon.

(Whereupon, at 4:50 p. m., the committee recessed to reconvene at 2 p. m., May 12, 1949.)

MALMEDY MASSACRE INVESTIGATION

THURSDAY, MAY 12, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 p. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senator Baldwin (presiding).

Also present: Senator Joseph R. McCarthy; J. M. Chambers, of the committee staff; Francis Flanagan and Howell J. Hatcher, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; Colonel Murphy; Colonel Ellis; Colonel Raymond; and Lieutenant Colonel Dwinell.

Senator BALDWIN. The meeting will be in order. We have two witnesses here today. One is a young man from Maine who, I understand from the staff, is going to be a short witness, and I thought we might call him first.

Senator McCARTHY. Is that all we have for today?

Senator BALDWIN. We have another.

Will you take the stand, Sergeant? Will you stand up and hold up your right hand, please?

Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KING. I do.

TESTIMONY OF JOHN WYCKLIFFE KING, PORTLAND, MAINE

Senator BALDWIN. Will you give your full name, please?

Mr. KING. John Wyckliffe King.

Senator BALDWIN. Where do you live?

Mr. KING. Portland, Maine.

Senator BALDWIN. What is your street address, please?

Mr. KING. It is outside of Portland; it is a rural-delivery route.

Senator BALDWIN. Colonel Chambers, will you examine the witness, please?

Mr. CHAMBERS. Now, Sergeant King, I believe you were assigned to duty at the Schwabisch Hall?

Mr. KING. That is right.

Mr. CHAMBERS. Can you tell us the dates at which you were at Schwabisch Hall, approximately?

Mr. KING. I went to Schwabisch Hall the last of December 1945.

Mr. CHAMBERS. When did you leave there?

Mr. KING. I left there in the last of February 1946.

Mr. CHAMBERS. So, you were there, roughly, 2 months or 2½ months.

Mr. KING. More or less, yes.

Mr. CHAMBERS. During that time, what were your duties?

Mr. KING. Well, the first week I was there I stood sergeant of the guard, and shortly thereafter I was assigned by the first sergeant to escort the prisoners from their cells to the interrogating rooms, and when they were finished interrogating them to take them back to their cells or the cells that Major Fanton told me to take them to.

Mr. CHAMBERS. You were a part of the security detachment?

Mr. KING. That is right.

Mr. CHAMBERS. Was Captain Evans the commanding officer of that detachment?

Mr. KING. Yes; he was.

Mr. CHAMBERS. And you have mentioned the first sergeant for whom you worked; could you tell us his name?

Mr. KING. No; I do not recall his name.

Mr. CHAMBERS. Do you remember a Sergeant Scaleez (phonetically) or Scalise?

Mr. KING. Yes; I do.

Mr. CHAMBERS. Did you work with him?

Mr. KING. Yes, sir; in a way. I didn't come under him, but I did work with him. When he wanted me to do anything to help him out, I did it when I had time.

Mr. CHAMBERS. Your duties, then, required you after the first week to take the prisoners to the interrogation center, turn them over to the prosecution staff of the interrogation center, and then take them back from the interrogation center to the prisoners' cells?

Mr. KING. Whatever they gave me the number of to put them in; yes.

Mr. CHAMBERS. That meant you took the prisoner out of the cell, put the hood over his head, and took him down and brought him back in reverse procedure; is that right?

Mr. KING. That is right.

Mr. CHAMBERS. You must have had occasion then to observe these prisoners. Do you recall whether or not you have seen cases where they had marks on them indicating they might have been beaten up or abused physically?

Mr. KING. No, sir; I never did.

Mr. CHAMBERS. Did you ever see any evidence of brutal methods or rough methods in handling these prisoners?

Mr. KING. No, sir.

Mr. CHAMBERS. Sergeant, did you know a chap by the name of Deitrich Schnell who was stationed at Schwabisch Hall as a part of the medical detachment that was servicing the internees or civilian prisoners there?

Mr. KING. No; I never heard tell of him.

Mr. CHAMBERS. Sergeant King, we have here an affidavit, and I would like at this time to insert it in the record, which discusses at great length certain of the matters that took place at Schwabisch Hall. It was made by Deitrich Schnell, a medical student, who says he was born July 1, 1921, at Copenhagen or Goepinhagen. Schnell was not an accused, and he was not one of the Malmedy prisoners.

He states in his memoranda—and for the purpose of identifying it, I am merely giving background here—that he worked in the hos-

pital while he was a prisoner of war in the internee section at Schwabisch Hall and that he saw many things that happened in the way of handling the so-called Malmedy prisoners.

As a part of his affidavit, he has made certain statements about a Sgt. John W. King, which I am going to read to you in detail, and then I would like to ask you some questions on them.

There was, so far as you know, no other John W. King at Schwabisch Hall?

Senator McCARTHY. Has the sergeant seen the affidavit, Mr. Chambers?

Mr. CHAMBERS. No.

Senator McCARTHY. Do you know what the claims are, Sergeant?

Mr. KING. I haven't any idea.

Senator BALDWIN. What was your answer to whether or not there was any other John W. King? There was no other John W. King?

Mr. KING. Not that I know of, sir.

Mr. CHAMBERS. I am sorry. I said Sgt. John W. King. He said Tech. Sgt. John W. King. Are you a tech sergeant?

Mr. KING. No; I wasn't.

Mr. CHAMBERS. I hope I have the right man here.

Senator McCARTHY. What were you?

Mr. KING. I was a buck sergeant.

Mr. CHAMBERS. For the purpose of the record, I would like to ask Colonel Ellis:

Did you have another King, or know of another King, that was there?

Colonel ELLIS. I don't know. The sergeant had left before I got there. I know of no other King other than this Sergeant King. If there was, I do not know.

Senator McCARTHY. Colonel, could you check the personnel records in any way, or could that be done at Army headquarters, to find out if there was a Sergeant King in the area at that time, a Technical Sergeant King?

Colonel MURPHY. We would have to go to Germany on that.

Senator McCARTHY. How long would that take to do, that is by air mail?

Colonel MURPHY. We could do it within a week.

Senator McCARTHY. I wonder, Mr. Chairman, if we could ask them to do that?

Senator BALDWIN. Surely.

Senator McCARTHY. Find out if they had another enlisted man by the name of King, or men, and what their ratings were, at Schwabisch Hall.

Senator BALDWIN. Ever, at any time.

Mr. CHAMBERS. I might say at the time I asked the Army to look into this and locate King for me, this was the only King they came up with. I do believe we should go further and make sure we have the right man here.

Senator McCARTHY. I believe that—due to the fact that he referred to Technical Sergeant King and this man was not a tech sergeant—while he may be the same man, it is important from any standpoint to find out.

Mr. CHAMBERS. I would like to ask you, Sergeant King, you have already said you did know this man Schnell or remember knowing him.

Mr. KING. I don't believe—I don't remember ever seeing or hearing tell of him.

Mr. CHAMBERS. He has a statement in here that Technical Sergeant King repeatedly said to us (internees) he "was not able to stand this beastly business" neither physically nor mentally, and that he wanted to get back to the United States as quickly as possible.

That is the end of the statement that was alleged to have been made by this Technical Sergeant King. Do you recall ever making a statement generally along that line, Sergeant?

Mr. KING. No; I don't recall ever making that statement.

Mr. CHAMBERS. Did you feel that way about the situation at Schwabisch Hall, Sergeant King?

Mr. KING. No; I didn't.

Mr. CHAMBERS. You left there quite early and came back to the United States. How did you come back? Did you request transfer?

Mr. KING. Oh, no, sir.

Mr. CHAMBERS. You were just ordered back, were you?

Mr. KING. My points were enough to get me home, so they just shipped me out with the rest of the outfit. At that particular time they shipped us home on 53 points; so, I went home.

Senator McCARTHY. You did not object to coming home?

Mr. KING. Not a bit.

Mr. CHAMBERS. Let me ask one other question, then, Sergeant. I am assuming for the sake of argument that we will lay this aside until we can find out if there is another Sergeant King.

Senator McCARTHY. I think that might be well.

I may suggest, Mr. Chairman, in view of the fact it may develop this was the only Sergeant King in the area, in which case we would have to call this young man back, that you go ahead and examine him as if he is the right Sergeant King and if it develops he is the wrong one and there was some other King there, then we can throw this evidence out as being of no value. Would you not think so, Mr. Chairman?

Senator BALDWIN. I think so, but it seems to me that discrepancy there may be a comparatively minor one, because the only way you could tell the difference between a tech sergeant and a regular staff sergeant would be the insignia on his sleeve. It is very minor.

Senator McCARTHY. We can get it from the Army, the infallible—if I can call the Army infallible in any respect—the infallible information, so we will know.

Mr. CHAMBERS. I think we should proceed, Mr. Chairman, on the assumption we have the right Sergeant King, and nail it down if we can.

Senator BALDWIN. So do I.

Mr. CHAMBERS. In your duties at Schwabisch Hall, were you required to have any contact with this medical set-up?

Mr. KING. No; I wasn't.

Mr. CHAMBERS. Did you ever take prisoners over to the hospital?

Mr. KING. The only time I ever went over to the hospital was to get Colonel Peiper and bring him back for interrogation.

Mr. CHAMBERS. While you were at the hospital getting Colonel Peiper, did you have occasion to talk to any of the people there?

Mr. KING. No; because he was at one end of the corridor, and there was a long corridor leading down through the hospital. I had no occasion to go down there.

Mr. CHAMBERS. Sergeant, in your normal duties, not involved with Colonel Peiper, you have already stated you did not see any signs of people being beaten up or physically mistreated, but I wish you would tell us more about that.

Did you ever see anybody with a black eye or bruises on them or anybody ever claim to you they had been mistreated or anything of the kind?

Mr. KING. No, sir, they never did.

Mr. CHAMBERS. While you were there, do you recall one of the persons on the guard being taken off the guard for mistreating a prisoner?

Mr. KING. I heard of that incident, but it happened, I think, before I got there. In fact, I know it happened before I arrived there.

Mr. CHAMBERS. Did you receive any instructions as to how you were to treat prisoners?

Mr. KING. Yes. When I went to work taking these prisoners back and forth from the interrogating room to the cell, Major Fanton told me that he would take severe action on anybody that came to his notice that they were abusing prisoners or stepping out of line one way or another with them; that they were to be taken to their cell and brought to the interrogating room and that would be all there would be to it.

Mr. CHAMBERS. Did this instance in which a man was taken off the guard for abusing a prisoner appear to be a violation of some instruction that Major Fanton might have given you, or general instructions you had as to the treatment of prisoners?

Mr. KING. Well, he must have violated his instructions.

Mr. CHAMBERS. Do you recall anything about that case, Sergeant King?

Mr. KING. No; I do not recall anything about it other than hearing it discussed, that this particular fellow, whoever he was, was taken off guard duty.

Mr. CHAMBERS. You must have known the boys on the guard detachment as well as the prosecution staff fairly well. Did you hear them talk? And I would like to say that I would like to have as accurate an answer as you can give me now. Did you ever hear them talking about the way the prosecution staff or perhaps others handled prisoners, that they might have abused them or threatened them, or tricked them, or things of that type?

Mr. KING. No, I never did.

Mr. CHAMBERS. Did you ever use a rope to lead the prisoners to the prosecuting staff?

Mr. KING. No.

Mr. CHAMBERS. Did you ever stay within the interrogation center and go into one of the mock trials, or anything of the kind, as a guard?

Mr. KING. No, never.

Mr. CHAMBERS. Did you ever observe any of the mock trials? -

Mr. KING. No; I never did observe any mock trials.

Mr. CHAMBERS. Did you ever see any man who might have had medical attention as the result of an injury or anything of the kind?

Mr. KING. No; I never did.

Mr. CHAMBERS. I have no more questions to ask at this time.

Senator BALDWIN. Senator McCarthy?

Senator McCARTHY. Sergeant, who contacted you in regard to coming here today?

Mr. CHAMBERS. Perhaps, I should give the story on that.

Senator McCARTHY. I would like to get it from the sergeant.

Mr. CHAMBERS. All right.

Senator McCARTHY. Who contacted you with regard to coming here today, Sergeant?

Mr. KING. Mister——

Senator McCARTHY. Mr. Chambers?

Mr. KING. No.

Senator McCARTHY. You were subpoenaed?

Mr. KING. Yes; I was subpoenaed.

Senator McCARTHY. In other words, somebody served a subpoena on you and you were subpoenaed in the usual manner?

Mr. KING. That is right.

Senator McCARTHY. Has anyone discussed your evidence with you today?

Mr. KING. No.

Senator McCARTHY. Has anyone discussed with you the facts of the case, what you knew, and what you did not know?

Mr. KING. No.

Senator McCARTHY. When was this matter first discussed, here on the stand today?

Mr. KING. That is right.

Senator McCARTHY. You are sure of that now?

Did any of the prosecution staff or anyone talk to you about what you were going to testify today?

Mr. KING. Nobody did.

Senator McCARTHY. Nobody did?

Mr. KING. No, sir.

Senator McCARTHY. When did you get to town?

Mr. KING. 3:15 this morning.

Senator McCARTHY. 3:15 this morning, and went where?

Mr. KING. Well, I stayed down to the airport until about 7 o'clock and then came uptown, went to the hotel, and called Colonel Ellis up to see if he was in.

Senator McCARTHY. You called Colonel Ellis?

Mr. KING. That is right.

Senator McCARTHY. What time did you call the colonel?

Mr. KING. Half past seven or a quarter of eight.

Senator McCARTHY. What time?

Mr. KING. Half past seven or a quarter of eight. I do not know the exact time; I have no watch.

Senator McCARTHY. Had you ever met the colonel before?

Mr. KING. No; I never had.

Senator McCARTHY. Will you tell me why you called Colonel Ellis?

Mr. KING. Why?

Senator McCARTHY. Yes.

Mr. KING. I had no other place to go, and I knew he was there at the hotel, and so I called to get a place to stay. I didn't have any money to go anywhere else.

Senator McCARTHY. I realize that \$3 a day is not much, you can't very well do too much on it. That is the fee, is it not, Mr. Chambers?

Mr. CHAMBERS. Yes.

Senator McCARTHY. It certainly covers all the expenses, does it not?

Then, you went up to the colonel's hotel?

Mr. KING. That is right.

Senator McCARTHY. And met the colonel?

Mr. KING. That is right.

Senator McCARTHY. And you have been with him since 7 o'clock this morning?

Mr. KING. No; he has been out all day. I stayed in the room and went to sleep.

Senator McCARTHY. A good idea. When did you meet the colonel? Did he bring you down here?

Mr. KING. Well, yes; he came back, and I got up and got dressed and came down here.

Senator McCARTHY. Did you discuss this matter with the colonel at all?

Mr. KING. I asked him what had gone on before, what the thing was all about.

Senator McCARTHY. He told you what the evidence had been so far?

Mr. KING. Yes; he told me what the story was.

Senator McCARTHY. He told you there were claims that he had improperly conducted trials of the prisoners; did he?

Mr. KING. That is right, sir.

Senator McCARTHY. And asked you what you knew about the case?

Mr. KING. Yes.

Senator McCARTHY. And you told him what you knew and what you would testify to today?

Mr. KING. Well, yes; I told him what I knew about it.

Senator McCARTHY. You discussed that in considerable detail, did you, with the colonel?

Mr. KING. No; I told him I never heard tell of any of those beatings or ever saw any take place.

Senator McCARTHY. Mr. Chairman, I am sure Colonel Ellis did not do anything at all out of the way in this case, but I do believe when a witness comes to testify, I think, unless he is part of the prosecution staff, in which case they certainly ought to discuss matters with the committee, or part of the defense, or they may want to discuss matters with your staff or my staff, I believe the other witnesses, the so-called independent witnesses, should not be contacted by either the prosecution in the case, the defense in the case, or contacted by Mr. Chambers or Mr. Flanagan unless both Mr. Flanagan and Mr. Chambers are present. Otherwise, the inclination is too great. We saw it on the stand when Owens was on the stand and heard the major who outranks him and under whom he worked, and heard other men testify differently, squirmed and tried to get from under his testimony.

I know Colonel Ellis has been completely honest in this matter, but it does create a bad picture.

I met the sergeant having lunch downstairs with the colonel today. I think if I had been the colonel I would have done the same thing. These men are not paid adequately for coming here, and I would invite him to lunch, too. But it just does not create the impression of a fair hearing when the witness comes to town and gets in touch with the man who should be principally interested in having a clean bill of health given the prosecution staff.

And, as the sergeant says, he discussed the evidence heretofore, discussed the fact that the prosecution staff was under fire, and I frankly just do not think it is proper at all. I think the prosecution staff, the defense staff, should be instructed they should not under any circumstances discuss the case, with the witnesses coming in, and if Mr. Chambers wants to discuss the matter with the witness, I think Mr. Flanagan or the colonel here should be present, and if Mr. Flanagan wants to discuss it Mr. Chambers should be present. I do not think it should apply to your discussions with Mr. Ellis or persons of the prosecution staff. I do not believe it should, or Flanagan discussing with Colonel Dwinell or Colonel Everett.

I believe the Chair will agree with me on that.

Senator BALDWIN. Obviously, we do not want to have any testimony here that is influenced in any way, shape, or manner. But, of course, the committee staff is under considerable difficulty in preventing any witness who may come here from getting in touch with Colonel Ellis or anybody else. The man is under oath. Of course, you are fortified by that.

Of course, I agree with you: I do not think they ought to talk.

Senator McCARTHY. It just does not look good.

Senator BALDWIN. I do not think they ought to discuss their testimony, and I do not think that Colonel Ellis would do anything, or the other officers, that would in any way affect that.

So far as the staff is concerned, the job of the staff is to present this testimony in as brief a form as it can be presented, and I do not see how you can do that if the members of the staff cannot find out in advance something along the line what the witnesses' testimony is going to be. I mean he does not need to go over it in detail with them, but it seems to me, in the interest of brevity and conciseness and the saving of as much time as possible, that the staff has got to have some knowledge of what the range of information is that the witnesses or the particular witness may have.

Of course, that is generally practiced in court. As you know, lawyers for both sides are expected to go over the testimony of the witness ahead of time and know something about the field of their testimony, and I do not think that you can avoid that.

The staff is not going to—this is not a trial of any individual. It is an attempt to ascertain the facts and what did happen. Nobody is being charged here with anything. It is an effort on the part of the committee to find out what goes on.

We have got to use normal processes in order to do this.

Senator McCARTHY. Mr. Chairman, as the Chair knows and the staff knows, I have been turning over to the staff the names and addresses of the young men that have contacted me and given me information. I want to say that I could not feel free to do that unless the Chair instructs the members of the prosecution they are not to discuss this case with the witnesses who come in.

Senator BALDWIN. I think that is fair. I think as a matter of—
Colonel ELLIS. I will be very glad to comply.

Senator BALDWIN. I think as a matter of practice, the members of the prosecuting staff or investigating staff should not discuss the details of this case with the witnesses.

Senator McCARTHY. I think you are right, Mr. Chairman, about the necessity of the staff discussing this matter, certainly in prelimi-

nary fashion, to find out whether or not the evidence—for example, when a man turns over a letter to Mr. Chambers, he may want to call a witness and check the background to find out whether or not he has got evidence of value.

I think Mr. Chambers and Mr. Flanagan have been getting along very well on that.

Senator BALDWIN. I do not understand, in this situation, that Colonel Chambers represents the defense and you and Mr. Flanagan represent the prosecution. I thought we were all sitting in here together as a committee to investigate the facts.

Colonel ELLIS. I will be glad to comply with your request.

Senator, I have no reason to talk to any of these people, and I will take it upon myself to comply strictly with your desires on the matter.

Senator McCARTHY. I certainly was not accusing you of anything wrong, but it looks bad when an independent witness comes in here and is seen conferring with the prosecution staff and discussing all aspects of the case.

I am convinced if Mr. Owen had had a chance to talk to Major Fanton before he testified he never would have testified as he did. Once he learned that was not the thing Mr. Fanton said, he tried at a very late moment to twist and change his testimony.

Mr. CHAMBERS. Mr. Chairman, purely for the record, I think I would like to have a chance to make a very brief statement here.

We have had some 15 witnesses before us, and because of Senator McCarthy's remarks at the start of this hearing about not wanting the witnesses to be interviewed even by members of the staff in advance, I have been meticulous in avoiding talking to them.

Senator McCARTHY. I know you were.

Mr. CHAMBERS. I would like to, however, clearly point out I told Mr. Flanagan as far as I was concerned—and I thought I was speaking for the committee at the time—we did not care who you all talked to. I am sure Colonel Dwinell, Mr. Strong, and many others—not many, but some—have been talked to for the purpose of finding out what information they had and discussing what the best way was to present it.

Unless I find it will be necessary to require a statement in advance from some particular witness, or I have reason to believe I should interrogate him in some detail, I do not intend to talk to these witnesses before we put them under oath except to take care of administrative arrangements that are necessary.

Senator McCARTHY. I might say that I appreciate very much the fact you have not talked to Owens ahead of time, certainly had not coached him, and I might say I have no objection to what you have been doing here, none at all.

Sergeant, let me ask you this—

Mr. KING. Yes, sir.

Senator McCARTHY. You said there was some discussion about the discharge of a guard who had acted improperly.

Mr. KING. That is right.

Senator McCARTHY. Or beaten up the prisoner. Will you tell us exactly what that discussion was?

Mr. KING. Well, that is a long time ago, sir.

Senator McCARTHY. I realize that.

Mr. KING. I do not know, I guess I heard them—

Senator McCARTHY. Pardon me?

Mr. KING. I guess it was just talked freely around that one of the guards had stepped out of line with one of the prisoners and was taken off guard duty and put doing something else where he had no contact with them.

Senator McCARTHY. You say "stepped out of line." Was the rumor he had been hit, kicked, beaten up, what had he been doing? You said there was considerable discussion. Can you remember any part of that considerable discussion? If you can, it will help.

Mr. KING. I guess they just said in the mess hall so-and-so was taken off guard duty.

Senator McCARTHY. Would you speak a little louder, please.

Mr. KING. I guess it was just discussed in the mess hall that so-and-so—I cannot remember his name now—was taken off guard duty for mistreating a prisoner. I don't know what he did now, I can't recall that. He did something to warrant taking him off guard duty.

Senator McCARTHY. When you took the man to the interrogation room—did you say?

Mr. KING. That is right.

Senator McCARTHY. That room in which they were interrogated?

Mr. KING. Rooms, there was more than one room there.

Senator McCARTHY. Some of the prior witnesses have stated that the guards would bring the prisoner to a certain center, and then the interrogation staff would pick them up from there and take them over to the interrogation room. Is that correct?

Mr. KING. Pardon me?

Senator McCARTHY. Is that correct?

Mr. KING. There is a long corridor about as wide as this room here. On the right-hand side of that corridor there are probably six or seven or eight rooms.

Senator McCARTHY. Yes.

Mr. KING. And usually when I brought a prisoner over I would go down and stand in the corridor with him, and one of the interrogators would take the prisoner from me and take him in whichever room he wanted to interrogate him in.

Senator McCARTHY. So then the previous testimony that under no circumstances did the guards bring the men directly to the interrogation room but that they brought them to this center, that is incorrect? You actually brought the men from their cells right directly to the interrogation room?

Mr. KING. That is right.

Senator McCARTHY. May I ask, Mr. Chairman, Colonel Ellis if that is incorrect?

Colonel ELLIS. They did not explain it fully. He explained it right. There is a big hall there, and they left the prisoners there, and the interrogator came out and picked up the prisoner—just like walking across this room. That is what they meant by the interrogation center. He is substantially correct and the others are substantially correct.

Senator McCARTHY. Then, after the interrogation hall was reached, one of the interrogators would take the prisoner from you?

Mr. KING. That is right.

Senator McCARTHY. Then what did you do?

Mr. KING. I would go back up the hall and go in the room where the clerks were doing the typing.

Senator McCARTHY. Go back up where the clerks work?

Mr. KING. Yes.

Senator McCARTHY. How many other guards were doing the same work you were doing?

Mr. KING. Only myself and Corporal Gray. I do not know where his home is.

Senator McCARTHY. You were the only two men that ever brought them from the cells to the interrogation rooms?

Mr. KING. The only two I can recall while I was there. Before I came Sergeant Scalise used to do it.

Senator McCARTHY. You did that from December until February, is that right?

Mr. KING. That is right.

Senator McCARTHY. When you took them back to the cell who opened the cell door and put them in, did you do that?

Mr. KING. I took the key over, opened the door, and put them in, and brought the key back.

Senator McCARTHY. Did you take the hood off their heads?

Mr. KING. That is right.

Senator McCARTHY. In all cases?

Mr. KING. That is right.

Senator McCARTHY. Mr. Tiel testified yesterday that he came down to Schwabisch Hall and Mr. Thon said, "Come up here. I want you to see something."

That he came up and looked through the peephole in the door and saw a man lying there who appeared to be in an unconscious condition on the floor of the cell with a black hood over his head. And he said, "Thon, what is wrong with him? What happened to him?"

And Thon said, "He just finished interrogation and perhaps was roughed up a bit."

The testimony there was that this man had a hood over his head. If in all cases you took the hoods away from them and put them in the cells, how could he still have had a hood tied over his head when lying on the floor? Have you any idea? Had they any extra hoods in the cell he could have slipped on?

Mr. KING. I don't know. I don't know how he could have possibly had a hood on his head when I had taken it off him unless—I don't know.

Senator McCARTHY. You do not know of any extra hoods hanging in the cells that the prisoners might use if they wanted to have a hood?

Mr. KING. No. Usually all the hoods were up in Major Fanton's office.

Senator McCARTHY. And you used to hang around Major Fanton's office, did you?

Mr. KING. No; I didn't, sir.

Senator McCARTHY. Were you on duty when a Mr. Steiner was one of the interpreters or interrogators?

Mr. KING. Interrogators?

Senator McCARTHY. When Mr. Steiner was there working. I believe that Major Fanton testified that he interrogated only one or two. Mr. Bailey testified he had interrogated several at least. So

he was an interrogator for at least some time while Major Fanton was in charge.

The question is: Did you know Steiner?

Mr. KING. I can't recall him. I might have known him.

Senator McCARTHY. Were you around there every day during interrogations?

Mr. KING. Practically every day.

Senator McCARTHY. Will you name the other interrogators if you know them?

Mr. KING. Well, there was Lieutenant Perl.

Senator McCARTHY. Perl?

Mr. KING. Lieutenant Perl.

Senator McCARTHY. And?

Mr. KING. Ellowitz and Thon.

Senator McCARTHY. Lieutenant Thon?

Mr. KING. Yes.

Senator McCARTHY. Do you ever recall having brought a prisoner to Steiner for interrogation?

Mr. KING. No, I truthfully don't recall that Steiner. I might know him by sight.

Senator McCARTHY. You said you left in February. What time in February, if you know?

Mr. KING. Close to the last of February, because I went to Bad Mergentheim for a couple of weeks to process, and I spent a week in Belgium. And I think I was home the 20th of March—when I landed in the States.

Senator McCARTHY. You said you thought you left the first part of February?

Mr. KING. No; I left along toward the last.

Senator McCARTHY. Along toward the last part of February?

Mr. KING. Yes.

Senator McCARTHY. You did not have anything to do with the feeding of the prisoners or anything like that, did you?

Mr. KING. No, I did not.

Senator McCARTHY. Can you speak German?

Mr. KING. No.

Senator McCARTHY. Did you leave before the Polish guards took over?

Mr. KING. Oh, yes.

Senator McCARTHY. So when you were on duty they were all American guards?

Mr. KING. That is right.

Senator McCARTHY. You only know of one guard who was discharged for beating or mistreating prisoners?

Mr. KING. That is the only instance I know of, sir.

Senator McCARTHY. I see. You do not know what that man's name was?

Mr. KING. No, I don't recall.

Senator McCARTHY. Was he one of the men under your command?

Mr. KING. No, he was just in the company—B company.

Senator McCARTHY. I understood you did not witness any of the interrogations or any of the mock trials.

Mr. KING. No, sir; I did not hang around down there at all.

Senator McCARTHY. There has been a claim here that there were fake ministers and fake priests who would go into the cells and get statements. I assume, not having seen the mock trials and interrogations, you would not know anything about that either, would you?

Mr. KING. No; I wouldn't, Senator.

Senator McCARTHY. I see. You of course never saw any of the prisoners undressed to know whether they had been bruised or beaten?

Mr. KING. No.

Senator McCARTHY. You said you do not speak German?

Mr. KING. No, I don't.

Senator McCARTHY. You did not talk to the prisoners as you marched to the interrogation room?

Mr. KING. No.

Senator McCARTHY. Am I correct that there was a strict order that none of the guards talk to the prisoners?

Mr. KING. There were none that could speak German that I know of, sir.

Senator McCARTHY. I see. Do you know whether there was such an order or not, not to talk to prisoners?

Mr. KING. I never heard of it.

Senator McCARTHY. In view of the fact you could not understand the German language, the prisoners could not possibly tell you whether they had been beaten up or what had happened to them in the interrogation cell?

Mr. KING. Not unless they could speak English.

Senator McCARTHY. Thank you, sir.

Senator BALDWIN. Just a question or two, sergeant.

Mr. KING. Yes, sir.

Senator BALDWIN. You were there from the last of December to the last of February?

Mr. KING. I think I went there about the 25th of December.

Senator BALDWIN. That would be Christmas.

Mr. KING. Well, yes, right around Christmas, or a little before Christmas.

I think, as far as I can remember, that was about when it was. I will say sometime in December, but I thought it was towards the last of December. But I know I was home in March. I do know that.

Senator BALDWIN. During the time you were there you had frequent, many opportunities to take prisoners from the cells and take them to the interrogation place and back again?

Mr. KING. Yes, sir; I did.

Senator BALDWIN. Have you any idea how many you may have handled? How many times did that occur a day, Sergeant?

Mr. KING. I don't know. Some days I would probably take 5 or 6 and some days I would probably take as high as 20 or more.

Senator BALDWIN. During the time you were there did you ever see anybody, any prisoner, slapped or kicked or punched, or slammed up against the wall, or kneed in the groin or manhandled?

Mr. KING. No; I never did.

Senator BALDWIN. When they were through with the interrogation you took the prisoners back to the cell?

Mr. KING. That is right, sir; I did, wherever Major Fanton told me to take them. Sometimes they put them in a large room; they would not go back to the cell. They would be through with them. They had two or three large rooms, I would say, rooms as large as this room here with bunks. They were double-tier bunks like we had in the Army.

Senator BALDWIN. How is that?

Mr. KING. They had double-tier bunks like we had in the Army, double-deckers, and they put them in that room there after they got through interrogating them, and I guess they shipped them out some place.

Senator BALDWIN. Who would handle them? Would some of the guards put them in there? Did you ever do that?

Mr. KING. I would take them down.

Senator BALDWIN. You would take them down and put them in the room?

Mr. KING. That is right.

Senator BALDWIN. I want to have you tell me if at any time you ever saw a man come out of one of these interrogation rooms who appeared to be injured or unconscious, or semiconscious, or suffering from any physical abuse of any kind.

Mr. KING. No, sir; I never did. I can't recall of an instance where I ever saw anybody that had ever been molested by anybody. I can't recall ever seeing one of those prisoners ever bothered.

Senator BALDWIN. I think that is all.

Anything further, Mr. Chambers?

Mr. CHAMBERS. One question. You mentioned going over to the hospital to get Colonel Peiper.

Mr. KING. That is right.

Mr. CHAMBERS. I believe for a while he was billeted over there.

Mr. KING. Yes.

Mr. CHAMBERS. Did you ever have occasion to take Malmédy prisoners to the station hospital or prison hospital?

Mr. KING. No, sir. Sergeant Scalise, I think, took care of those, took them over or had somebody take them over. I never did.

Mr. CHAMBERS. Was the hospital in the prison used to treat the Malmédy prisoners?

Mr. KING. Yes, it was. They had a dentist, in there and a nurse, or a woman who came with him. I suppose she was his assistant.

Mr. CHAMBERS. Outside of dental care—and by the way do you know the name of the dentist?

Mr. KING. No.

Mr. CHAMBERS. A German dentist, was it not?

Mr. KING. Yes, it was. I don't know his name. I saw him come in.

Mr. CHAMBERS. You never heard him referred to as Dr. Knorr by any chance?

Mr. KING. No; I never did.

Mr. CHAMBERS. Outside of the dental cases, did they take prisoners over for other injuries, or sickness, or anything of the kind to the hospital?

Mr. KING. I don't know that. I know they took them over there for dental cases. Yes; they had them over there for being sick. I don't know whether any surgery or anything like that was performed, but I know there were prisoners over there to the hospital.

Senator McCARTHY. Where was the prison hospital?

Mr. KING. Right inside the prison.

Mr. CHAMBERS. That is where the German doctors and German medical personnel handled mostly the internees, but they also apparently were treating some of the Malmedy prisoners?

Mr. KING. I think they were, sir. I know they were handling the internees there at that time.

Mr. CHAMBERS. That is correct.

Mr. KING. At that hospital.

Mr. CHAMBERS. And you are pretty sure in your own mind that they were handling the Malmedy prisoners?

Mr. KING. I would say yes.

Mr. CHAMBERS. No more questions.

Senator McCARTHY. I have one or two more.

Senator BALDWIN. Senator McCarthy.

Senator McCARTHY. First, may I suggest I understand this man Knorr has lost both legs and is now in a hospital in Germany.

I wonder if it would be possible to get his records. I assume, doing his work for the Army, he must have kept some records of treatments and charges he made. That would be very helpful if we could get those.

Mr. CHAMBERS. Senator, I think this is a matter of long-range planning as to how we shall go after this testimony in Germany, but definitely we are going to try to pick up any medical or dental records available.

Senator McCARTHY. I see.

Senator BALDWIN. Any further questions?

Senator McCARTHY. Yes, I have some, Mr. Chairman, a number of them.

Were you present on duty the night one of the prisoners committed suicide?

Mr. KING. I never heard tell of anyone committing suicide.

Senator McCARTHY. You say you were not on duty?

Mr. KING. I couldn't have been, I never heard tell of anyone committing suicide.

Senator McCARTHY. The records show a man hung himself, and he has been buried, so he committed suicide; take my word for it. In other words, you were not on duty when he committed suicide?

Mr. KING. No, I was not. It is news to me.

Senator McCARTHY. Colonel Chambers, do you know if we have a record of the date this man committed suicide?

Mr. CHAMBERS. We have it, I am sure. It will be a matter of locating it.

Senator McCARTHY. Do you know, Colonel Ellis?

Colonel ELLIS. The 7th or 8th of March.

Mr. CHAMBERS. That was after this man left.

Colonel ELLIS. Yes, sir.

Senator McCARTHY. Did you ever see a priest or a minister or a rabbi in the Malmedy section of the prison?

Mr. KING. No, I never did, sir.

Senator McCARTHY. And you were on duty practically every day?

Mr. KING. That is right, sir.

Senator McCARTHY. And you knew there was some sizable number of Protestants, Catholics, or Jewish boys. I understand then there was no chaplain assigned to these boys.

Mr. KING. I did not see one.

Senator McCARTHY. You never saw one?

Mr. KING. No. I know they were given Bibles by Sergeant Scalise and myself. There were a few there in the prison library. I guess a dozen or a dozen and a half.

Senator McCARTHY. You said none of the guards could speak German?

Mr. KING. Not to my knowledge.

Senator McCARTHY. Let us say a prisoner was sick, or he wanted to see a minister, or wanted to see a priest, something like that. How would he convey that information in view of the fact you could not understand any German?

Mr. KING. He would have to convey it to one of the interpreters. That is all I know.

Senator McCARTHY. How would he go about getting an interpreter?

Mr. KING. If he rapped on the door, the guard was supposed to go to the door and see if he was sick. I assume. I was not on guard duty there. I just worked in the daytime. But if it came to my notice in the daytime, I would go up and get one of the interpreters and bring him down and find out what the man wanted.

Senator McCARTHY. How many people were kept in solitary, in a single room, with the doors locked, so they could not communicate with other prisoners?

Mr. KING. Well, I don't know, sir. There was a lot of single cells throughout the prison.

Senator McCARTHY. I see. Those were closed-in cells, were they, except for the peephole in the door?

Mr. KING. And a window.

Senator McCARTHY. And a window?

Mr. KING. Yes.

Senator McCARTHY. Some men were kept in solitary all the time you were there, were they?

Mr. KING. All the time I was there?

Senator McCARTHY. Yes.

Mr. KING. I don't know, sir. They were interrogating them and they changed around so much, I do not know how long one man would stay in a cell by himself.

Senator McCARTHY. Do you know how many of those cells there were that were closed-in cells with the peepholes in the door and a window?

Mr. KING. I wouldn't know.

Senator McCARTHY. Would you guess there were 25 or 50 or 100 roughly?

Senator Baldwin. If he does not know, Senator McCarthy, what good is his guess?

Senator McCARTHY. I would like to know, Mr. Chairman. He was in charge there 2½ months. He testified to a number of things.

Mr. KING. I should say—I don't know—probably six or seven hundred prisoners were there. I never did see the actual count and nobody ever told me. I could guess six or seven hundred.

Senator McCARTHY. You testified for 2½ months you would go to the cells?

Mr. KING. That is right.

Senator McCARTHY. And take a man out, and take him up to the interrogation room?

Mr. KING. That is right.

Senator McCARTHY. And you and another sergeant would bring him back.

Mr. KING. That is right.

Senator McCARTHY. Can you tell me whether or not there were more than 50 of those solitary cells?

Mr. KING. I would say there were 50; yes, sir. But there were some men in large cells all by themselves that would hold two and three men.

Senator McCARTHY. You say there were some men in large cells all by themselves that would hold two or three men?

Mr. KING. Yes.

Senator McCARTHY. I see. Do you know whether it is a fact that these men were kept in solitary until they signed a confession?

Mr. KING. I don't know that.

Senator McCARTHY. You do not know anything about that?

Mr. KING. No.

Senator McCARTHY. No further questions.

Senator BALDWIN. That is all, Mr. King. Thank you very much for coming down here.

Mr. KING. Yes, sir.

Senator BALDWIN. Come around, Mr. Strong. Will you raise your right hand?

Do you solemnly swear the evidence you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STRONG. I do.

Senator BALDWIN. Will you give your full name?

TESTIMONY OF HERBERT J. STRONG, NEW YORK CITY

Mr. STRONG. Herbert J. Strong, 118 East Ninety-first Street, New York City.

Senator BALDWIN. Do you have a statement there, Mr. Strong?

Mr. STRONG. I would like to read a very brief statement.

Senator BALDWIN. You would like to read it?

Mr. STRONG. Yes.

Senator BALDWIN. Go ahead, read your statement.

Mr. STRONG. I, Herbert J. Strong, was born in Germany in 1904. Because of my non-Aryan origin, I was compelled to leave Germany in 1936. I arrived in this country in July 1936; became an American citizen on May 28, 1943, and was admitted to the bar of the State of New York, after having attended law school for 4 years, in the fall of 1943. I have been, since shortly after my arrival, with the law firm of Scribner & Miller, first as law clerk, then as associate attorney. I am the only attorney in this firm who is not native-born.

I did not volunteer for the war-crime-trials job. I had communicated, early in the summer of 1945, with the office of Mr. Justice Jack-

son, as I was, on account of the singularly interesting legal aspect of the case, interested in participating in the first Nuremberg trial. The War Department approached me in the fall of 1945, and asked me to go to Germany to take part in the war-crime trials to be conducted there. I considered it an obligation to this country to comply with this request and went on a 6-months' contract, which was later extended to enable me to stay on until the Malmedy trial was complete.

I wish to state that I, personally, despite all unpleasant accusations and innuendos to which the former Germans who were members of the occupation forces have been subjected, consider it a privilege to have been able to work for the War Department. I wish, further, to state that in the various war crime trials, primarily the so-called flier cases, in which I defended Germans accused before various military government courts, the attitude of court and prosecution was exemplary. I encountered quite a few defendants who had executed confessions and in no case did any one of those defendants ever try to repudiate his confession or claim that it was untrue or had been obtained by fraud or duress. The courts leaned over backward to give the accused a fair trial. The files of the prosecution were open to me as defense counsel and vice versa.

I still remember with pride, a certain trial against two Nazi officials who were accused of murdering American fliers in the neighborhood of Frankfurt. This trial took 6 days. The courtroom was filled with Germans most of the time, who during and after the trial, repeatedly expressed to me their admiration for the scrupulously fair way in which it was conducted and the lengths to which defense, with the court's permission, went to bring out everything in the accused's favor. I had the same experience when I, after the Malmedy trial, prosecuted a flier case in Dachau. I also had the same impression of absolute fairness in the conduct of the Mauthausen and Flossenburg concentration camp trials which took place in Dachau, the former one prior to the opening of Malmedy trial and the latter one simultaneously with it, which I at times attended.

I wish also to state that by the very nature of the war-crime trials it has very often been, and in my opinion again will be impossible to use ordinary rules of evidence. Most of the witnesses, who were interrogated by prosecution teams at the early stages and who gave affidavits, were not available any more. Many of them were foreign nationals and had returned to their respective countries. If their statements could not be used at all, the prosecution would, in a majority of the cases, have been unable to prove its cases. The best-evidence rule should, of course, prevail; but where the witnesses, with due diligence, cannot be found, their statements should be admitted and given the probative value the court will see fit to attach to them in each particular case.

The Malmedy trial was in a category by itself. To the best of my knowledge, it was the only case where there were complaints about improper conduct on the part of the prosecution and improper methods used to obtain confessions. It was the only case where, with the exception of a few Belgian civilians and American survivors, there were no witnesses to the crimes, apart from the comrades of the accused.

I am now prepared to answer any questions your distinguished committee may wish to ask me in connection with the Malmedy trial.

Mr. Flanagan, do you want to question Mr. Strong?

Senator McCARTHY. I prefer that Mr. Flannagan question Mr. Strong because I have not had a chance to get familiar with any information Mr. Strong might have. I think Mr. Flanagan can handle it very well.

Mr. FLANAGAN. Mr. Strong, would you give the committee a very brief résumé of your legal education and experience?

Mr. STRONG. I studied law in Germany from 1923 to 1930. I passed the first judicial examination in Germany before the Supreme Court of Cologne in 1933 and was appointed referendar, and as such remained in the legal attendership service.

It is pretty hard to explain. May I explain off the record about referendar, Mr. Chairman?

Senator BALDWIN. You may make an explanation on the record if you like to.

Mr. STRONG. Very well, Mr. Chairman. The referendar, as I called it, in Germany is a stage between the passing of the final university examination and final admission to judgeship or bar. The last 3 years in which time the so-called referendar is assigned by the presiding judge of the particular district to various parts of the court civil chambers, court of general sessions, district attorney's office, registrar's office, in which he also acquaints himself with the practice of attorneys.

The so-called referendar substitutes for attorneys frequently when attorneys are away, and by this various legal experience he acquires a practical experience which he needs in addition to his legal training in law school, which enables him to pass the second examination—the assessor examination—which was held in Berlin. And upon passing this examination he is either, according to his marks, admitted to the bar, or if his marks are high enough he is offered a judgeship.

I spent 3 years in the so-called preparatory stage. In fact, I extended this period because I had quite a few periods in which I substituted for attorneys and took care of their office.

I was close to the passing of the last examination when I was, in August of 1933, suspended because of my non-Aryan origin. I stayed in the law in Germany as a legal assistant to various attorneys until the end of 1935 when I came to this country where I arrived in July 1936, after having spent 4 months in England.

I immediately joined the law firm of Scribner & Miller, as I said before, first as a law clerk.

I went to New York University in 1937. I took my L. L. B. degree in 1941. During all this time I stayed with the law firm I have just mentioned.

I continued to stay there from 1941 until 1943 because I could obviously not be admitted to the bar until I became a citizen. On account of the declaration of war the citizenship of mine was delayed, so I became a citizen in May 1943, and as I said, was admitted in the fall of 1943 and have stayed on and am still with the same firm where I handle primarily civil matters of a commercial nature.

Does that answer your question?

Mr. FLANAGAN. Yes, sir. When did you arrive in Germany to take part in these war crime trials as a civil lawyer?

Mr. STRONG. In the early part of January 1946.

Mr. FLANAGAN. And from early January 1946 until April 1946, I assume, you were assigned various war crime cases in Germany?

Mr. STRONG. That is correct.

Mr. FLANAGAN. When were you first notified that you were to be assigned to the trial of the Malmedy case?

Mr. STRONG. I had been assigned to the trial of war crimes in Ludwigsburg where I stayed from March 7 to April 18. During that time I tried as defense counsel approximately six to eight cases.

It was during one of these cases in which I defended one or two people accused of having murdered one of our fliers when Colonel Everett, who happened to be in Dachau to assist in the trial, on the evening of the first day approached me—and incidentally Mr. Walters was stationed in Dachau at that time, who is now a civilian attorney practicing in Seattle, Wash. He approached and asked whether Mr. Walters and I would be willing to join him in Dachau. We accepted this offer. I told Colonel Everett I would have to complete one or two trials I had already prepared.

I did so, and I would say that about a week or 10 days after Colonel Everett had approached me, I left Ludwigsburg and via Weisbaden proceeded to Dachau and arrived April 18.

Mr. FLANAGAN. You arrived April 18, and at that time began the preparation of the defense of the Malmedy accused?

Mr. STRONG. That is correct.

Mr. FLANAGAN. Could you relate for the committee your first experience with these defendants at Dachau?

Mr. STRONG. I remember that Colonel Everett had been waiting quite anxiously for me for the very simple reason that I was the only one on his staff who spoke fluently German. And he told me that—I am not definite in my recollection in this regard—I think the defendants had just arrived. But there must be a slight discrepancy as to dates. I think the defendants had just arrived, and he asked me on the first day to talk to the defendants the next morning.

We went out to the camp. There was a very big room adjoining to our temporary office. All the defendants were lined up, and at the request of Colonel Everett I delivered a speech to them in German in which I told them that we were their defense counsel; that we had just arrived; that there was not terribly much time left to prepare; that we were very much in a hurry to prepare the case as carefully and as well as we could; and that we could do it only by obtaining their full cooperation.

Senator BALDWIN. Thank you very much.

Mr. FLANAGAN. What was the general attitude of the accused at that time toward you, the defense counsel?

Mr. STRONG. That particular day we had no opportunity to observe any attitude because after the speech was made—I presume there was a question if any of the accused had anything to ask. I do not think there were any questions and the accused were led back into their cells.

About 1 or 2 days later, we started to interrogate the accused and Colonel Everett had divided us into three teams: One to handle officers, one for noncommissioned officers, and one for privates.

Mr. FLANAGAN. Which team were you assigned to?

Mr. STRONG. I was, together with Lieutenant Colonel Dwinell, handling the officers.

Mr. FLANAGAN. When you first began to interview the officers you were to defend, what did their attitude seem to be?

Mr. STRONG. We encountered rather indifference, and I would say uninterested attitude. Let me put it this way: It was our impression that the defendants felt it would not make any difference what we could do, or what we would do, and they were not particularly interested in our assistance.

Mr. FLANAGAN. Did you ever have any discussions with the defendants right at that time in an effort to win their confidence so you could properly defend them in the court?

Mr. STRONG. We tried in our initial interrogations to win their confidence, and I remember when Colonel Dwinell and I came to report to Colonel Everett, he had in the meantime received similar reports to ours from the other two teams handling noncommissioned officers and privates, and we agreed it was absolutely useless and hopeless to go on with this attitude of the accused.

So he called a second conference at which I think I made a second speech in German on my own initiative, in which I told them, I think quite forcibly, that none of us loved the Nazis, and that none of us stood for anything they had known, but on the other hand we, as attorneys, considered it our duty to give them the very best defense we could put up for them, and that it was absolutely now in their hands whether they wanted to avail themselves of our offices or not.

And the reaction was rather disappointing again. I mean we obtained some statements, we obtained some cooperation, but we did not obtain the cooperation we needed.

So about, I would say, a week passed between our first conference and the meeting I am now going to describe.

At the request of Colonel Everett we had one evening all the officers—I think they were only officers. I am not definite, but I think only officers were present. All the accused officers were brought to the rather small office of the doctor of the camp—Dortmueller. And I think Colonel Everett was present. And Colonel Dwinell and myself. I do not know offhand whether the other defense counsel were present.

In addition we had a Lieutenant Gugh who had taken part in the Mauthausen trials, if I remember correctly, who was also a former German, and who first talked to them and told them that from his experience in the Mauthausen trial the surest way they would hang themselves would be to lie to their counsel and then be trapped on the stand.

Then we made our speeches again, Colonel Everett and myself, and finally Colonel Peiper, with whom we had discussed it at the time—he was a coaccused—talked to the others and told them he had known us now for about a week, and from his personal opinion, and from his exchange of opinions with us, it was definitely his belief that we were sincere, that we wanted to give them a fair trial, and then he, as senior officer, excepting the generals, of course, as senior officer of the Leibstandarte, would definitely advise them to give us their full confidence, and that the noncoms and privates should be accordingly instructed.

Mr. FLANAGAN. Were you ever able to determine later on why these Germans absolutely refused to have any confidence in their defense counsel when their very lives were at stake?

Mr. STRONG. We found out later on, especially during our interrogations, it was because they felt that they had in their opinion received rather rough treatment at Schwabisch Hall; that they had signed confessions; and they had in their opinion in quite a few cases been guided into signing this confession by false pretenses, and that their confidence in the American justice and impartiality had definitely been shattered. They would not believe anybody now meant well with them.

Mr. FLANAGAN. Would you say one of the reasons they took this attitude was because they were not really convinced you were true defense counsel but merely impersonating defense counsel?

Mr. STRONG. That is correct.

Mr. FLANAGAN. Did they indicate that prior to their contact with you other persons had told them, or represented themselves to these Germans as being defense counsel for them?

Mr. STRONG. I would not put it that way, Mr. Flanagan. I think they knew we were defense counsel to go on with their defense during the trial. But they thought we were the same type of defense counsel they had occasionally encountered in Schwabisch Hall and would not put up a defense with us.

Mr. FLANAGAN. In other words, they indicated they had contacted what they thought were defense counsel at Schwabisch Hall?

Mr. STRONG. In certain cases; yes.

Mr. FLANAGAN. At that time, or shortly after that, did these men, the accused, begin to tell you about duress, of various types, including physical violence, that may have been used upon them by the prosecution interrogators?

Mr. STRONG. We had already heard some gossip and rumors before going to Schwabisch Hall when we accumulated in Dachau, and when we encountered this attitude of accused, Colonel Everett himself prepared a questionnaire, which I have not seen any more for 21½ years, and which my memory is rather vague about, but I would say that questionnaire contains questions as to the type of treatment rather specific to which the accused were allegedly subjected in Schwabisch Hall.

These questionnaires were handed to the accused, and they received the pencils and were told to take the questionnaires back into their cells. I went over the next morning and collected the questionnaires filled out from the respective defendants.

And this questionnaire—again testifying from memory which is not too exact—contained questions about mock trials, about beatings, about other types of duress, and we received these questionnaires back filled out by the accused.

Mr. FLANAGAN. Now, the purpose in sending out these questionnaires by the defense was to find out if any of the accused had been subjected to the duress which the various defense lawyers had heard had gone on; is that correct?

Mr. STRONG. Correct.

Mr. FLANAGAN. In other words, you did not send out the questionnaire before you heard about the duress but after you heard about the duress?

Mr. STRONG. We could not very well have put in questions about mock trials or beatings unless we had heard about them before.

Mr. FLANAGAN. Your purpose in doing that was to gather information that might be helpful in the defense?

Mr. STRONG. Our purpose was to find out definitely what actually went on and what the particular complaint of the accused was.

Let me say one thing in this connection. We did not start in this case with the intention to believe everything our accused told us; obviously not.

And when the questionnaires came back—testifying from my recollection—they showed something quite remarkable. They showed that the accused had filled out the questionnaires with rather large variations. Whereas some of them denied they had ever been mistreated and some of them said they had never received a mock trial, others admitted it, and it was our opinion at that time, if the accused would have been willing to lie and to make up false stories, it would have been very easy for them to answer every one of these question with "Yes."

And judging from the fact that only a certain percentage complained about mistreatment, and another percentage about mock trials, we regarded these questionnaires, the answers, as more or less correct.

Mr. FLANAGAN. In other words, after your examination of these questionnaires which were sent to the various accused, you were convinced that there had been no concerted plan on the part of this group of accused to untruthfully allege duress or physical violence?

Mr. STRONG. We were convinced.

Mr. FLANAGAN. You were convinced of that from your examination of the questionnaires?

Mr. STRONG. From our examination of the questionnaires, and following interrogation of the accused and of witnesses.

Mr. FLANAGAN. Now, did any of the accused that you personally represented allege physical mistreatment or other types of duress or terrorism?

Mr. STRONG. I remember General Deitrich had complained in a statement that he had been kicked in the groin by some Polish guards.

Very frankly, Mr. Flanagan, my recollection in this regard is rather vague. I represented mostly the officers. I think Colonel Peiper testified to mistreatment in court and the record will speak for him. Priess and Kraemer, I do not think complained about any physical mistreatment. And as to the other officers, I am vague.

Mr. FLANAGAN. You are sure about-Kraemer?

Mr. STRONG. I am sure of Deitrich.

Mr. FLANAGAN. I mean Deitrich. He complained of being kicked in the groin by the Polish guards?

Mr. STRONG. Yes; I am sure of that.

Mr. FLANAGAN. Being a defense lawyer and trial lawyer, you realized it was an important thing for your case to show whether or not these men had been subjected to duress or physical violence?

Mr. STRONG. Certainly.

Mr. FLANAGAN. With that in mind, could you explain to the committee why you did not go to the extent of having physical examinations performed on these various of the accused that alleged they had been mistreated in any way?

Mr. STRONG. For the simple reason that all the mistreatments about which we received complaints had occurred in Schwabisch Hall and

not in Dachau, and that all of this so-called mistreatment was of a nature which ordinarily would not have left any prominent damage.

We figured out that to examine somebody as to some bruises or kickings which he received 4 weeks or 6 weeks ago would have been useless.

Mr. FLANAGAN. Did you in your interrogations and observations of these prisoners ever notice any marks of physical violence on them?

Mr. STRONG. I did not.

Mr. FLANAGAN. And I suppose that would be one of the reasons why you did not request physical examination.

Mr. STRONG. That is correct.

Mr. FLANAGAN. You thought it would not prove or disprove anything.

Mr. STRONG. That is correct.

Mr. FLANAGAN. Now, when you began the defense of this case—you got there on April 18, and the record shows that the trial started on May 16, which was a period of about a little less than 30 days in which to prepare this defense of some 73 men.

Mr. STRONG. That is correct.

Mr. FLANAGAN. In this short period of time did you experience any difficulty in the preparation of your defense?

Mr. STRONG. We were short of time to begin with. When we arrived we had to spend quite a few days to actually set up the technicalities of the trial. We were billeted first in a hotel. We had to look for our billets, which, I remember, we had to requisition a couple of houses for, and it took 1 or 2 days.

We were short of stenographic help, of typewriters, and interpreters. I was, as I said before, the only member of the defense team to speak German. So Lieutenant Dwinell and I did not need an interpreter. The other two teams needed them.

Whenever the accused had given us any statements embodying their version, nobody could read it until it was translated, which took a considerable time.

Mr. FLANAGAN. In other words, it took you some time merely to get organized?

Mr. STRONG. To get started.

Mr. FLANAGAN. In an effort to even start your defense?

Mr. STRONG. That is correct.

Mr. FLANAGAN. About how much time of this 30 days, or 28 days, would you say, was spent in merely getting organized?

Mr. STRONG. I would say a week, to the best of my recollection.

Mr. FLANAGAN. Was part of this first week also taken up, or was more time than that taken up, in attempting to win over the confidence of your defendants, your clients?

Mr. STRONG. I would say these two periods ran concurrently.

Mr. FLANAGAN. Ran concurrently. So that the first week you made absolutely no progress so far as the preparation of your case was concerned; is that right?

Mr. STRONG. Hardly any.

Mr. FLANAGAN. Which left you a period then of about 20 days in which to get organized for a very long and complicated trial?

Mr. STRONG. That is correct.

In addition, we had to line up German defense counsel. The accused were asked whether any of them wanted to be represented in

addition to us by German civilian defense counsel. We had about 8 to 10 requests to the best of my recollection.

I, for instance, had to spend, I remember, 2 to 3 days in Munich trying to find German attorneys who were permitted to practice, trying to obtain information about their legal and scholastic background, trying to get permission of the Secretary of Justice in Munich to have them take part in the defense.

Then we had to make necessary arrangements for the German defense counsel who were not too much tempted by the offer if they would come over of promising food rations, cigarettes, and gasoline, and all this took up additional days.

Mr. FLANAGAN. I understand prior to the time the defense team took over that the prosecution team had obtained confessions from various of the accused and confessions from witnesses, sworn confessions?

Mr. STRONG. That is correct.

Mr. FLANAGAN. Concerning the participation of your clients in this case.

Mr. STRONG. That is correct.

Mr. FLANAGAN. Did you attempt to get these confessions in order to properly prepare your defense?

Mr. STRONG. We did.

Mr. FLANAGAN. Did you have any difficulty in obtaining these confessions from the prosecution?

Mr. STRONG. I would say we did at last obtain these confessions, but we obtained them at a very slow speed, and only piecemeal. I would say that when the trial started we probably had obtained practically all of them. There might be a few exceptions which I do not remember.

Mr. FLANAGAN. During the preparation period, when you needed them very badly, you were not able to get them fast enough to adequately prepare the defense of your various clients?

Mr. STRONG. We did not get them fast enough. They should have been turned over to us for the purpose immediately in one block.

Mr. FLANAGAN. Who had control of these confessions?

Mr. STRONG. Prosecution.

Mr. FLANAGAN. In other words you had to go to the prosecution to get these confessions in order to prepare your defense?

Mr. STRONG. That is correct.

Mr. FLANAGAN. By the same token, I assume, when you did get the defendants to cooperate with you and did go into the facts, that it was necessary to obtain certain witnesses to use on behalf of the defense; is that so?

Mr. STRONG. That is correct.

Mr. FLANAGAN. About how many witnesses do you recall had to be obtained in order to prepare an adequate defense for these men?

Mr. STRONG. I cannot give you a figure. Let me explain how we prepared our list of witnesses.

We talked to the various accused and obtained their stories. And during their interrogation names cropped up; somebody mentioned some lieutenant or some private who was present at that and that place, and who would be able to testify that Private Jones did not commit that particular crime. So whenever a name came up which we considered essential, we immediately put that name on our list of prospective witnesses. And on the evening of each day Colonel Ever-

ett handed our list of prospective witnesses, which occasionally might have run up as high as 50 or 60 or even 100 names, to the prosecution.

And then we received, a certain time later, information from the prosecution whether the prosecution knew anything about the whereabouts of these witnesses, whether some of the witnesses were in Dachau, or whether some witnesses were somewhere else, or whether some of the witnesses were not available.

Mr. FLANAGAN. What percentage of the witnesses normally would you get when you requested a hundred—about how many would show up?

Mr. STRONG. Again, from memory, I would say 10 to 15.

Mr. FLANAGAN. Ten to fifteen percent of the witnesses you needed you were able to get?

Mr. STRONG. That is correct.

Mr. FLANAGAN. With regard to these witnesses were you in the same situation as you were with your confessions; namely, did you have to depend pretty much upon the prosecution to get certain of these witnesses? That is, was it necessary for the defense to depend upon the prosecution to obtain witnesses for you?

Mr. STRONG. Certainly. I mean we—let me put it this way. We had to depend upon the notification by the prosecution whether or not the witnesses were available.

Mr. FLANAGAN. In other words, the prosecution pretty much controlled what witnesses you would have for the defense?

Mr. STRONG. The reply from the prosecution controlled the number of witnesses whom we could interrogate.

Mr. FLANAGAN. Do you feel that your inability to get witnesses, and your inability to properly examine them, had the effect of weakening your defense of this case?

Mr. STRONG. Yes, sir.

Mr. FLANAGAN. You say "Yes"?

Mr. STRONG. Yes. I would say that in my opinion if we would have had time to look for witnesses in the prisoner of war camps, or internment camps, or maybe through independent investigation teams combed the countryside for witnesses, we probably would have been able to find quite a few of them who might have been helpful.

I realize that probably a lot of the witnesses given to us were probably dead or prisoners of war in Russia, or nobody knew what became of them. But I would say with some more time at our disposal, the percentage of the witnesses whom we could have found would have been larger.

Mr. FLANAGAN. Would you care to comment to the committee, or give your statement to the committee, as to the conduct of the prosecution in this case?

Let me be a little more specific. Did you encounter any difficulty as the result of a rule they had over there about questioning defense witnesses in the presence of the accused?

Mr. STRONG. Yes. There was a definite ruling that no witnesses could be interrogated in the presence of the accused.

Now I admit frankly that we violated this ruling occasionally, not intentionally, but because in the heat of battle, so to speak, we wanted to find out what actually happened. When we knew the witness was right in the camp we called for him.

I remember distinctly that on several occasions Colonel Everett was approached by the prosecution with the request that this practice stop, and as a result of this we were called down quite frequently by Colonel Everett.

Senator BALDWIN. Let me interrupt you a minute. I do not quite understand what you mean.

Mr. STRONG. There was a ruling against witnesses being questioned in front of the accused.

Senator BALDWIN. You mean outside of court?

Mr. STRONG. In our pretrial stage, and outside of the court.

Mr. FLANAGAN. These were defense witnesses.

Senator BALDWIN. Yes, that is what I mean.

Mr. FLANAGAN. Did that same rule apply to the prosecution?

Mr. STRONG. I would not know.

Senator BALDWIN. How could it? How could it? I do not quite understand what you mean, counselor, on that.

Mr. FLANAGAN. In other words, do you know, Mr. Strong, whether or not the prosecution in their investigation of the case were allowed to call various witnesses in and question them in the presence of the accused?

Mr. STRONG. I cannot answer that question with any degree of certainty.

Mr. FLANAGAN. The record shows that at least in some instances during these mock trials witnesses were brought in and questioned in the presence of the accused. I think the record will show that.

Senator BALDWIN. You mean in the investigation?

Mr. FLANAGAN. Yes, and of course, what I am talking about with Mr. Strong at this point is the defense investigation of the case. He thought it was necessary to conduct the same kind of an investigation so they could prepare the defense in the same manner the prosecution conducted an investigation to prepare the prosecution.

Mr. CHAMBERS. Off the record.

(Discussion off the record.)

Senator McCARTHY. May I ask Colonel Ellis: Was there any rule to the effect that you could not have the accused present while you were interrogating the witness?

Colonel ELLIS. That is not my recollection, sir. My recollection is the dispute arose over the fact that the accused were allowed to be alone with the defense witnesses, and that is where the argument arose.

Senator McCARTHY. See if I have this correctly in mind now. There was a rule that under no circumstances could the defense counsel have both a defense witness and a defendant present in the same room.

Colonel ELLIS. That was not my understanding; no, sir.

Senator McCARTHY. Could we ask Colonel Dwinell? Is that correct?

Colonel DWINELL. My understanding of the rule was the defense counsel could not interrogate a witness at the same time in the presence of the accused. In fact, I know that to be so because on two or three occasions I violated that rule inadvertently. On one occasion I did not know the rule existed. When I found out it existed, on one or two occasions I did it accidentally.

I remember being called down for it by Colonel Everett and his telling me under no circumstances to do that again.

Senator McCARTHY. Who had reported this to Colonel Everett?

Colonel DWINELL. That, I do not know. Some way they had it worked out that somebody got back to Colonel Everett. How it got back, I do not know.

Senator McCARTHY. See if I have this correctly in mind. In other words, you have the defendant in this room and you want to talk to a defense witness and discuss the facts. The rule was you could not do that under any circumstances?

Colonel DWINELL. Not if the accused was present.

Mr. FLANAGAN. That was your same understanding of the rule, Mr. Strong?

Mr. STRONG. That was my same understanding of the rule.

Senator McCARTHY. That rule did not apply to the prosecution, I gather.

Senator BALDWIN. I do not want to argue the point, but I do not see your point in connection with that, because I do not see what particular advantage it would be to the prosecution. It seems to me it would rather be to the advantage of the accused.

If I was preparing to prosecute a case and was questioning the accused and brought in in front of him one of the witnesses who was going to testify against him, and confronted him with that witness, I think it would be to his advantage.

Senator McCARTHY. Mr. Chairman, we are discussing defense witnesses, not prosecution witnesses. In other words, here is what happened in case there is any doubt about it:

The prosecution would bring in a defense witness and had full right to talk to him before the accused or anyone else. The defense could not sit down and discuss the matter with a defendant and a defense witness, which, of course, obviously you know as a lawyer makes it impossible to prepare a case.

It was just the rule and they had to abide by it.

Mr. FLANAGAN. I think possibly the witness can clear it up for us.

Senator McCARTHY. It is obvious; there is nothing to clear up about it.

Mr. FLANAGAN. Mr. Strong, do you think it impaired your ability to prepare a proper defense because of this rule which did not allow you to discuss the case with defense witnesses in the presence of the accused?

Mr. STRONG. It did impair the preparation of the defense.

Mr. FLANAGAN. In the preparation of the defense, or during the trial of the case, did it ever come to your attention that members of the prosecution team were tampering with your witnesses?

Mr. STRONG. Yes; I remember several cases in which, usually after the end of the court in the evening, we called in witnesses whom we had not interrogated before, or whom we wanted to again interrogate, to ask them either about testimony which had been given that previous day in court or about testimony which we expected the next day. And we talked to these witnesses and sent them back to their cells. And sometimes we needed the same witnesses again the next day or the day after next. And then we called in these witnesses then, and we encountered, quite frequently, witnesses who had been very ready to testify were very reluctant to testify, or their memory had suddenly gotten rather bad.

We tried to find out what was behind it. We got in several cases informaiton that after these witnesses had been interrogated by us they had been called into the office of the prosecution, had been asked what questions we had asked them, and had been told to be careful in the testimony to avoid that they would find themselves instead of witnesses, accused.

Mr. FLANAGAN. In other words, did some of these witnesses after they had given you one story on behalf of the defense then change the story after being interviewed by members of the prosecution team?

Mr. STRONG. Could I have the question read?

Mr. FLANAGAN. Read it back, Mr. Reporter.

(The pending question was read.)

Mr. STRONG. I would say they became reluctant, and usually when we appealed to them and to their sense of loyalty to the accused and so on, then they usually stood up. But there may have been cases of which I am right now not particularly cognizant in which—in fact, I remember one case of a certain private whose name I cannot remember, but who, when I called him in the next evening, said flatly he would not go on the stand, he was afraid. That was the exception.

Mr. FLANAGAN. What was he afraid of?

Mr. STRONG. Afraid of changing his status of witness to the status of accused.

Mr. FLANAGAN. In other words, he was afraid of being charged as a war criminal if he testified on behalf of the defense?

Mr. STRONG. Correct.

Mr. FLANAGAN. Would you call that duress?

Mr. STRONG. I would call it trying to influence a witness.

Mr. FLANAGAN. And that would be one of the worst types of duress?

Mr. STRONG. It is a conclusion, and I don't want to draw conclusions.

Mr. FLANAGAN. Do you recall an instance during the time of this case where Lieutenant Perl allegedly entered the cells of some of the defendants in this case and stole papers from them?

Mr. STRONG. I recall the following incident, which I did not see myself: I remember that one day, I think it was during the lunch recess, Colonel told myself, and, if I am not very much mistaken, Colonel Dwinell and other defense teams the following story: He had observed, while the trial was going on, Lieutenant Perl entering the bunker. I have to explain that from the benches on which defense counsel were sitting you could look through the windows into the rear yard which joined the bunker where the accused were kept during the night. And apparently he saw Lieutenant Perl entering the bunker which was a kind of unusual thing. And he told us afterward he saw Perl coming out with papers.

Again quoting Colonel Everett. He called this to the attention of the officer of the security guard and either the officer or Everett or both went into one of the rooms of the prosecution where they found Lieutenant Perl looking at quite a lot of papers which he had collected from the cells of the accused who were in the prisoners' dock.

And I think he was trying to translate them. And I think Colonel Everett made some complaint. I don't know whether it was to the security guard officer or Colonel Coleman. I don't think that happened again.

Senator McCARTHY. Was he forced to give the papers back?

Mr. STRONG. I presume so.

Senator McCARTHY. Was there anyone else in the room with Perl that you know of that was studying these papers at the time?

Mr. STRONG. I don't know.

Senator McCARTHY. You know that Perl was there?

Mr. STRONG. I know from Colonel Everett's story he found Perl in that room. I would not know.

Senator McCARTHY. Do I have this correctly in mind?

Perl was caught after he had been in the cell of different defendants that were in court being tried?

Senator McCARTHY. And took private papers into one of the prosecution rooms, and he was caught there examining those papers by the security guard?

Mr. STRONG. That is correct.

Mr. FLANAGAN. Would it have been possible that any of these papers he took were privileged communications between these defendants and their defense attorneys?

Mr. STRONG. That is quite possible, but I would not know.

Senator BALDWIN. May I ask one question there? It has an excellent bearing on this thing. At the time this thing is alleged to have taken place by Perl, did that happen up at Dachau?

Mr. STRONG. Yes, sir.

Senator BALDWIN. Did that happen after the trial had started?

Mr. STRONG. Yes, sir.

Mr. FLANAGAN. Mr. Strong, you were present during the entire trial of this case, were you not?

Mr. STRONG. Yes, sir; with the exception of, I think, 3 or 4 or 5 days when I was confined to the hospital with a cold.

Mr. FLANAGAN. Did you form any opinion concerning the attitude of this court as a result of your presence and participation in this trial? In other words, do you think they were fair and judicial in their treatment of the case or do you think they were unjudicial or unfair, or biased, or prejudiced?

Mr. STRONG. I have no criticism of the court with the exception of the fact that I had the the personal impression that the law member—

Mr. FLANAGAN. Colonel Rosenfeld?

Mr. STRONG. Rosenfeld; yes. Ruled too often against us in cases where, in my opinion, the rules of evidence were clearly on our side, and on the other hand, too often he denied objections which we made to prosecution questions which, in my opinion, should have been sustained.

Senator BALDWIN. May I interpolate a question there?

Mr. FLANAGAN. Surely.

Senator BALDWIN. Was it the generally accepted view at that particular time that whatever the trial came out there would be a review of it by the Judge Advocate General Department, or by some other high reviewing authority, or was it the general accepted view this was a final trial from which there would be no appeal?

Mr. STRONG. I would say, Mr. Chairman, not being a specialist in court-martial and war-crime trials, that in this regard probably all of us took it for granted that every finally completed trial would pass through the reviewing authorities.

Senator BALDWIN. Would pass through the reviewing authorities?

Mr. STRONG. In fact, we filed petitions for review, and I remember I filed, myself, eight or nine petitions before I left Dachau.

Senator BALDWIN. Were those petitions granted?

Mr. STRONG. I have no idea. I have had no connection with the case until February of this year.

Senator BALDWIN. The reason I asked the question is that I got the impression this was a trial from which there was to be no review or appeal or anything like that, and, of course, in ordinary courts-martial it is always possible to have reviews, as I understand it.

Is that not correct, Mr. Chambers?

Mr. CHAMBERS. That is correct, sir; no matter who orders the court, a superior authority will finally review it.

Senator BALDWIN. As I understand you, Mr. Strong, that was the generally accepted understanding as to this particular trial that there could and would be a review?

Mr. STRONG. It was definitely my understanding, Mr. Chairman, that we would ask for a review, and we took for granted—at least, I took for granted—that if defense counsel asked for review, there would be a review.

Mr. CHAMBERS. May I ask a question at this point, Mr. Flanagan, because I believe it will preserve the continuity?

Mr. FLANAGAN. Yes.

Mr. CHAMBERS. Did not the proceedings under which these military courts operate provide for at least one review before the decisions of the court or the sentences of the court would be approved?

I am asking both Colonel Dwinell and Mr. Strong.

Colonel DWINELL. Yes, that is correct, the reviews were automatic.

Mr. CHAMBERS. And so the petition for reviews were just extra and an impetus to what would be a normal operating procedure?

Colonel DWINELL. That is correct.

Senator MCCARTHY. May I ask a question at this time?

Do you know of any review of the individual convictions on the evidence other than the so-called Frankfurt review? Do you know of any reviewing body who sat on the case of No. X and said the evidence is sufficient or insufficient to uphold the verdict of guilty?

Mr. STRONG. You are speaking of the Malmedy trial?

Senator MCCARTHY. Yes.

Mr. STRONG. I would not know. I have been absolutely out of touch with it.

Senator BALDWIN. I think that ought to be a matter of record, and I think it ought to be in the record, too, because I think it is an important factor.

Mr. STRONG. Let me say this: After I left Dauchau in August 1946, I had no connection with this case any more until Colonel Everett sent me a copy of his petition for a writ, and the New York Times interviewed me in 1949.

Senator BALDWIN. I understand that. The thing I wanted to get fixed in the record firmly is the fact whether or not this was a so-called drumhead court-martial from which there is not any review, or whether or not it was contemplated all around there could and would be a review.

Mr. CHAMBERS. Mr. Chairman, at this time, in fact, on the suggestion of Mr. Flanagan, I requested the Department of the Army to

give us a letter and any other information they had on the various reviews that took place in connection with these Malmédy trials.

I think the letter, while we should probe further, is appropriate to place in the record.

Senator McCARTHY. Could you read it?

Mr. CHAMBERS. All right. It is short and perhaps of interest to all of us.

Senator BALDWIN. Let me make it perfectly clear that I am not asking this question to in any way excuse the law member of the court or any member of the court for his rulings. I mean the law member was supposed to make the correct rulings, whether there was any review or whether there was not. But I do think it is an important factor in the whole matter of procedure.

Mr. CHAMBERS. We endeavored at some length, Mr. Chairman, to put together in the record the other day the various reviews given this case. I believe this does it rather concisely.

Senator BALDWIN. Do you want to read the letter so Senator McCarthy and Mr. Flanagan can know about it, too, and also the witness?

Mr. CHAMBERS. The letter is from the Judge Advocate General and reads:

DEAR SENATOR BALDWIN: With respect to your request for information concerning the reviews of the record of trial in the Malmédy case, the following information, obtained from records available to the Department of the Army, is submitted:

On 20 October 1947 the initial review for legal sufficiency was completed by Maj. Richard D. Reynolds, Ord., Office of the Deputy Theater Judge Advocate for War Crimes, European Command. This was concurred in by Lt. Col. Clio E. Straight, JAGD, Deputy Theater Judge Advocate for War Crimes, on 2 December 1947.

Thereafter, the record of trial was reviewed by a War Crime Board of Review in the Office of the Theater Judge Advocate. This Board consisted of Col. Howard F. Bresee, AGD; Lt. Col. Richard F. Scarborough, JAGD; and Lt. Col. James B. Costello, Cml C. The Board considered the review made by the Deputy Theater Judge Advocate for War Crimes and on 4 February 1948 completed its review of the record.

On 8 March 1948 the Theater Judge Advocate, Col. James L. Harbaugh, Jr., completed his review of the record of trial and his consideration of the reviews made by the Deputy Theater Judge Advocate for War Crimes and by the War Crimes Board of Review.

All of the officers concerned with the above reviews of the record of trial were officer lawyers. Copies of each of these reviews are contained in the copy of the record of trial submitted to the Committee on Armed Services.

The record of trial and the reviews were submitted to the Commander in Chief, European Command, who, as final Reviewing Authority, took his action on the sentences on 20 March 1948.

A chart is inclosed listing the name, rank, and duty of each of the seventy-three (73) accused, the sentence as adjudged against each by the court, the recommendations of the reviewing officers, and the approved sentences.

In addition, the record of trial and the various reviews were considered by the Administration of Justice Review Board, European Command, in its investigation of the allegations of irregularities set forth in the Everett petition. This Board was composed of Col. John R. Raymond, Legal Adviser to the Military Governor; Col. James L. Harbaugh, Jr., JAGD, Judge Advocate, European Command; and Dr. Carl J. Friedrichs, Adviser to the Military Governor for Military Government Affairs.

The Malmédy case was also considered by the Simpson Commission in the fall of 1948 in its general survey of the Dachau war crimes cases, which survey was directed principally but not exclusively to that portion of the record involving one hundred and thirty-nine (139) confirmed death sentences which at that time remained unexecuted. This Commission was headed by Justice Gordon Simpson, of the Texas Supreme Court, assisted by Judge Edward L. Van Roden, Delaware County, Pa., and Lt. Col. Charles W. Lawrence, Jr., of the Judge Advocate Gen-

eral's Department, Department of the Army. Its study of the Malmedy case was primarily directed to so much of the record as concerned the twelve (12) confirmed death sentences.

The Malmedy case was again considered by Colonel Harbaugh, Theater Judge Advocate, in light of the recommendations of the Administration of Justice Review Board and the Simpson Commission, insofar as the twelve (12) death sentences were concerned, after which the Commander in Chief, European Command, reconsidered these twelve (12) death sentences, reaffirming six (6) and commuting six (6) to life imprisonment.

The report of the Administration of Justice Review Board and the report of the Simpson Commission have been made available to your committee. Also, the cabled reports of the action of the Commander in Chief, European Command, on the twelve (12) death sentences have been made available to your committee.

At the request of the Secretary of the Army I made a study of these various reviews, reports, and parts of the record of trial, and of the petitions and affidavits in which mistreatment and brutality were alleged, relating particularly to the then twelve (12) confirmed death sentences. A memorandum of my review is now before the Secretary of the Army.

Sincerely yours,

THOMAS H. GREEN,

Major General, The Judge Advocate General.

Senator McCARTHY. May I ask you—

Mr. CHAMBERS. Let me make a statement on that.

Senator McCARTHY. Surely.

Mr. CHAMBERS. In addition to this, we have been informed that there were certain other reviews that are not listed as official reviews in this letter.

Senator McCARTHY. Not by Green. You found by investigation?

Mr. CHAMBERS. That is correct, and we will make further study to get the information on those reviews.

Senator BALDWIN. Let me ask this question: Was there attached to that letter a list of the disposition of the sentences?

Mr. CHAMBERS. That is correct.

Senator BALDWIN. To bring it up to date?

Mr. CHAMBERS. That is correct.

Senator BALDWIN. I wonder if that should not be put in at this time? Is that it?

Mr. CHAMBERS. That is the attachment, sir, and brought up to date as of March 20, 1948.

(The document referred to is as follows:)

1st Platoon.....	Armin Hecht (21)	Cpl.....	Pers. Carr. Driver.....	Life.....	15 yrs.....	Disappd.....	Disappd.....
	Heinz Gerhard Godicke (17)	Pvt.....	Radioman.....	Life.....	10 yrs.....	Disappd.....	Disappd.....
	Wolfgang Richter (50)	Pvt.....	Rifelman.....	Life.....	15 yrs.....	Disappd.....	Disappd.....
2nd Platoon.....	Willi Heinz Hendel (22)	M/Sgt.....	Leader.....	Death.....	Death.....	15 yrs.....	Life.....
	Oswald Stegmann (38)	Sgt.....	Motor Mechanic.....	Death.....	Life.....	15 yrs.....	Life.....
4th Platoon.....	Heinz Tomhardt (57)	1st Lt.....	C O.....	Life.....	Life.....	20 yrs.....	20 yrs.....
	Edmund Tomczak (66)	Cpl.....	Driver.....	Death.....	Life.....	Disappd.....	Life.....
	Theo Raub (47)	Cpl.....	Gunner.....	Life.....	15 yrs.....	Disappd.....	15 yrs.....
	Willi Braun (4)	Pvt.....	Rifelman.....	Life.....	15 yrs.....	Disappd.....	Disappd.....
	Fritz Rau (46)	Pvt.....	Driver.....	Life.....	10 yrs.....	Disappd.....	10 yrs.....
	Heinz Friedrichs (15)	Pvt.....	Rifelman.....	Life.....	10 yrs.....	Disappd.....	Disappd.....
	Fritz Gebauer (16)	Pvt.....	Rifelman.....	Life.....	10 yrs.....	Disappd.....	Disappd.....
12th Pz GR, CO:	Rudolf Schwambach (56)	Sgt.....	Pers. Carr. C O.....	Death.....	Death.....	Disappd.....	Life.....
1st Platoon.....	Anton Motzheim (38)	Sgt.....	Leader.....	Death.....	10 yrs.....	Disappd.....	Disappd.....
2nd Platoon.....	Axel Rodenburg (35)	Sgt.....	Pers. Carr. Driver.....	Death.....	15 yrs.....	Disappd.....	25 yrs.....
	Gunther Weis (71)	Pfc.....	M/Gunner.....	Death.....	15 yrs.....	Disappd.....	25 yrs.....
1st Pz Pioneer Bn.	Franz Stevers (59)	1st Lt.....	CO.....	Death.....	Death.....	Life.....	Life.....
3rd Pz Pioneer Co.	Willi Schaeter (65)	S/Sgt.....	Group Leader.....	Death.....	Death.....	Life.....	Life.....
Hq. Platoon.....	Friedl Bode (2)	Sgt.....	Group Leader.....	Death.....	Death.....	Death.....	Death.....
2nd Platoon.....	Erist Goldschmidt (18)	Cpl.....	Pers. Carr. Driver.....	Death.....	Life.....	Death.....	Death.....
	Max Hammer (20)	Cpl.....	Messenger.....	Death.....	Life.....	Life.....	Life.....
	Joachim Hofmann (26)	Pfc.....	Pers. Carr. Driver.....	Death.....	20 yrs.....	20 yrs.....	20 yrs.....
	Siegfried Jakes (28)	Pfc.....	Rifleman-Gunner.....	Death.....	20 yrs.....	20 yrs.....	20 yrs.....
	Friedel Kies (30)	Pfc.....	M/Gunner.....	Death.....	20 yrs.....	20 yrs.....	20 yrs.....
	Gustav Neve (40)	Pfc.....	Pers. Carr. Driver.....	Death.....	20 yrs.....	20 yrs.....	20 yrs.....
	Gustav Adolf Sprenger (61)	Pfc.....	Pers. Carr. Driver.....	Death.....	15 yrs.....	Life.....	Life.....
	Heinz Stöckel (63)	Pfc.....	M/Gunner.....	Death.....	15 yrs.....	Life.....	Life.....
	Herbert Stöck (64)	Pfc.....	Rifelman.....	Life.....	15 yrs.....	Disappd.....	Disappd.....
	Johann Wassenberger (70)	Pvt.....	Rifleman & Asst M/G.....	Life.....	15 yrs.....	Disappd.....	Disappd.....
	Erich Rumpf (54)	1st Lt.....	CO.....	Death.....	15 yrs.....	15 yrs.....	15 yrs.....
	Willi von Charmier (6)	Sgt.....	CO.....	Life.....	Death.....	Death.....	Death.....
1st Platoon.....	Erich Maute (36)	Pfc.....	Medic.....	Life.....	Life.....	Death.....	Life.....
	Max Rieder.....	Pfc.....	Rifelman.....	Death.....	Death.....	Death.....	Death.....
	Werner Kuhn (34)	2nd Lt.....	Leader.....	Death.....	15 yrs.....	Disappd.....	Disappd.....
3rd Platoon.....	Gustav Knittel (31)	Major.....	CO.....	Death.....	Death.....	Life.....	Life.....
1st Pz RCN BN.....	Manfred Coblenz (9)	1st Lt.....	CO.....	Life.....	Life.....	10 yrs.....	15 yrs.....
2nd RCN CO.....				Life.....	Life.....	7 yrs.....	15 yrs.....

Senator McCARTHY. Am I correct that there are unquestionably two other reviews that were conducted, one by a four-man board which never got beyond Straight for some reason or other, and another review of recommendations made by Colonel Ellis and the law member of the court?

Mr. CHAMBERS. The Colonel Ellis review you refer to was not—

Senator McCARTHY. Let us forget it. One by a four-man board, and also one by Colonel Denson?

Mr. CHAMBERS. I am informed that prior to the review referred to here in which Colonel Straight was involved, there was a review made by a four-man board.

I am also informed there were a great many technical objections to it, and that is where they had a review of the review and decided it was too inaccurate to use, and then make the review referred to here as the No. 1 case.

Senator McCARTHY. I had information the reason they did not use it was not because of its being inaccurate but the JAGD did not like the conclusions.

Mr. Chairman, I would like to request that counsel be instructed to write Major General Green again and inform him his letter is incomplete and the staff has found other reviews which have been made; that we are dissatisfied with this letter and ask him to give us a complete picture of all the reviews made; and that not to again write us a letter giving us information leaving out two or three reviews we know have been made.

We know the one by the four-man board was made. We know the review by Colonel Denson has been made. And I think it is an imposition on the committee for Major General Green to write us a letter which purports to give a complete detail of all the reviews which obviously is incorrect.

Senator BALDWIN. I think we will receive this in the record for what it purports to be subject to your recommendations.

Senator McCARTHY. I might say, so the record is clear, that this is how I feel, and I would like an explanation from General Green: I think for him to write us a letter such as this, which is purportedly a detailed accord of all the reviews, which we have stated repeatedly is very important for us to know, and leave out a sizable number of reviews, is an insult to the intelligence of this committee and, I think, completely inexcusable. And I hope the general sees fit to answer and tell us why he left out certain reviews, whether because he did not know about them, or why they do not appear.

Mr. FLANAGAN. Mr. Strong, we were talking about the opinion which you had that the court member, Colonel Rosenfeld, in this case was biased, and you based that opinion upon his rulings.

Do you recall rulings which he made which prevented you, the defense, from attacking the credibility of prosecution witnesses?

Mr. STRONG. I would not have recalled the particular instance if I would not have been present yesterday and would not have had in the meantime an opportunity to read that particular part of the minutes in which he tried to stop me from cross-examining Kramm. But I do remember that on quite a few occasions myself, as well as the other members of the defense team, were stopped when we either tried to attack the credibility of the prosecution witness

or when we tried to bring out under what conditions statements of the accused and of witnesses had been obtained in Schwabisch Hall.

Senator McCARTHY. With the Chair's permission. Mr. Strong, I consider this one of the most important things that appears in the record of the trial, one of the things that we need not rely upon anyone's truth or veracity to see. This is uncontradictory and uncontradictable, the fact that the court apparently in all cases, in effect, said to you, "You cannot under any circumstances attack the credibility of a witness."

Let me ask you this: As a lawyer, do you think you could conceivably give a defendant in a criminal case a fair trial if the court says to you, "Attorney Strong, we will not let you question these witnesses as to their interest in the case, what they have been offered, whether they have been offered immunity, why they are testifying as they are"; in other words, if you cannot attack the credibility of a witness?

Mr. STRONG. I think it is vital and essential to proper examination to bring out any interest which a witness might have in testifying according to a certain line.

Senator McCARTHY. And I assume that in German courts where you practiced as well as in American courts, as far as you know, every court considers it reversible error if it is found that the defense attorney is not allowed to question the credibility of a witness.

Mr. STRONG. To the best of my knowledge, that is correct.

Senator McCARTHY. Can I say this: Where the court refused to allow to attack the credibility of these witnesses—and this is especially true under the circumstances when we find a formal order signed by the man in charge of the interrogation staff saying that if we see fit then we will take a man guilty of war crimes, one of the defendants, and we will tell him, "If your statement is valuable in convicting your codefendants, then we will offer to give you a reward, the reward being you will no longer be a defendant in a case in any action of the court. We on the staff will make you a witness." In view of the fact that there is a formal order saying that this is proper, I assume this question of denial of right to attack the credibility of a witness would be doubly or of 100 times the importance normally it would be considered to be.

Mr. STRONG. I would say, Senator McCarthy, that any directive or order to that effect, of which we incidentally never knew, would certainly make it doubly appear that a witness might have considerable degree of self-interest in certain lines of testimony.

Senator McCARTHY. I would like to—

Senator BALDWIN. May I ask a question right there. Was there, to your knowledge, or do you now believe there was any ruling that required any such conduct as that on the part of the law member of the court? Do you understand my question?

Mr. STRONG. Not quite.

Senator BALDWIN. In other words, I understand Senator McCarthy's question is to the effect there was a directive or order requiring that the credibility of the witnesses could not be gone into a cross-examination. Was there any such order or ruling to your knowledge?

Senator McCARTHY. May I say—

Senator BALDWIN. Wait a minute. Could he not answer the question?

Mr. STRONG. I understand, Senator Baldwin, Senator McCarthy, differently. I thought when he spoke about the order, he spoke of the order issued in Schwabisch Hall to investigation teams permitting them to indicate to witnesses they might retain the status of witnesses if they testified—

Senator McCARTHY. Referring to this order, S. O. P. No. 4, which Major Fanton said he issued.

Senator BALDWIN. I must be confused about the thing. I thought you were directing your inquiry to the question of a directive as to the limit or scope of the cross-examination.

Senator McCARTHY. I perhaps did confuse the chairman. Let me say, so there is no doubt in the Chair's mind, I have before me excerpts from the record which show repeated rulings on the part of the law member of the court that you could not attack the credibility of the witness, in other words, you could not ask him what he was offered; you could not ask whether he was threatened that he would be sent to Russia to be tried by the Russians; could not ask if he was offered immunity—which may of them got from standing trial as a defendant if he would testify as he did.

I say you take that ruling and couple that with Major Fanton's order: "It is permissible to tell him," meaning one of the defendants, one of the accused rather, "he will be recommended as a witness if such statements to the prisoner will cause him to tell a full and more complete story so that he will be of more value to the case as a witness than as a defendant."

In other words, an order which, I believe, the Chair and I agree is in effect saying, "You can take an accused and you can tell him that if his story is so good that it can be used to convict his codefendants, that then he will not be a defendant himself," which, of course, is the greatest conceivable inducement to lie.

If you have 73 or 150 men in a paddock, and you go in and say, "Any man who will tell us a story which is good enough, which is effective enough, in convicting the other men in this paddock, he will not be a defendant, he will merely be a witness."

My question is to the attorney, and I think he has answered it. In view of the directive published by Major Fanton, do you not think then this refusal to allow defense counsel to attack the credibility of witnesses becomes doubly vicious and made it completely impossible for you to give those men a fair trial?

Mr. STRONG. I would say I consider it important in every case to be permitted to attack the credibility of the witness, but if such an order existed, certainly the grounds for being permitted to attack a witness should certainly be doubly more in existence than otherwise.

Senator McCARTHY. May I say this: In view of this order which, I say, Major Fanton has admitted was issued, and he tells us was brought to the attention of all the interrogation staff, particularly subsection B, in view of that, and in view of Rosenfeld's ruling would prevent you from testing the credibility of witnesses—I have before me your attempt to attack the credibility of Kramm who, I gather, was one of the prosecution's key witnesses. He was never tried himself, even though he was adjutant of one of these divisions.

In view of these facts, is it your thought today, Mr. Strong, that those men who were convicted simply did not have a fair trial regardless of whether some of them are guilty or innocent? And I assume some of them are guilty.

MR. STRONG. I would say that the fairness of the trial to which they were entitled was definitely prejudiced by the inability of defense to cross-examine witnesses.

SENATOR BALDWIN. On the question of their credibility, you mean?

MR. STRONG. On the question of the credibility and, as I said before, on the question of bringing out these other two points where Colonel Rosenfeld and the defense did not see eye to eye—the question of attacking the credibility of witnesses, and the question of being permitted to bring out how some of the statements which were placed in the record had been obtained.

MR. FLANAGAN. I believe you also made some passing remarks here, and I would like that clarified in the record, that another indication of the bias on the part of Colonel Rosenfeld was some of his rulings which made it impossible for you as defense counsel to show the conditions under which certain confessions were obtained.

MR. STRONG. That is correct.

MR. FLANAGAN. Is that true?

MR. STRONG. Yes.

MR. FLANAGAN. Can you recall any specific cases in which you were unable to show the conditions under which confessions were obtained?

MR. STRONG. I cannot recall any particular name of an accused, but I can recall that myself and all the other members quite often started to ask how long they were in Schwabisch Hall; how often they had been interrogated; were they in the death cell; or something like that. And quite often this line of questioning was stopped short by the law member.

MR. FLANAGAN. Did you object to these rulings on the part of the court?

MR. STRONG. We most certainly did.

MR. FLANAGAN. And you would be overruled?

MR. STRONG. Correct.

MR. FLANAGAN. And, as a lawyer, you feel it was your legal right under the rules of Anglo-American law, or under the rules of law you were following over there, to at least find out how these confessions were obtained?

MR. STRONG. I would say if there would have not been the slightest scintilla of anything being incorrect, I would say in pursuing this line we probably would have misused the leniency and time of the court. But in view of the fact there were so many rumors and gossip, if 10 percent were founded, we should have been permitted to go into that matter.

MR. FLANAGAN. You felt it important to go into this matter as to how the confessions were obtained, particularly inasmuch as some of your clients told you some were obtained by physical violence and other forms of duress?

MR. STRONG. Correct.

MR. FLANAGAN. Is that correct, Mr. Strong?

MR. STRONG. Correct.

MR. FLANAGAN. One thing I meant to mention before when we were talking about the conduct of the prosecution. Do you recall that it

ever came to your attention that the prosecution team were using forged confessions to obtain true confessions, or obtain other confessions from some of the defendants?

Mr. STRONG. We were told by accused that in certain cases privates or noncoms had been shown statements and affidavits signed by their officers and admitting certain facts, and implicating these noncoms and privates. And on the strength of these confessions the noncoms and privates signed their own confessions. And then later on the officers were shown these confessions of the privates and on the strength of the confessions, they, in turn, signed their confessions.

But the original confessions which were shown to the privates with the signatures of the officers, as we were told, the signatures were false. And the only way we could possibly prove that is by checking the dates of the confessions.

Let me give you an example. If Private Jones signs a confession on March 10, and Lieutenant Smith signs a confession on March 20, and Lieutenant Smith says that is the only confession he ever signed, and Private Jones says, "I signed my confession on March 10 because I saw a confession signed by Lieutenant Smith dated March 5." That confession of March 5 must be under ordinary reasoning not genuine.

Mr. FLANAGAN. In other words, it came to your attention that members of the interrogation team were using deception to obtain confessions from other men?

Mr. STRONG. We received complaints to this effect, and when we checked with several accused we were informed they had never signed statements which would fit into the time schedule of subsequent statements.

Mr. FLANAGAN. You were present here yesterday when we discussed S. O. P. No. 4 prepared by Major Fanton who was then in charge of the prosecution interrogation team, were you not?

Mr. STRONG. Yes, I was.

Mr. FLANAGAN. And in paragraph 4 (a) he sets forth these rules:

Any ruse or deception may be used in the course of the interrogation but threats, duress, in any form, physical violence or promises of immunity, or mitigation of punishment should be scrupulously avoided.

In view of the fact that he says any ruse or deception short of threats or duress may be used, it seems quite logical that these prosecution interrogators would use this forged confession system to obtain data for their case?

Mr. STRONG. That seems possible.

Mr. FLANAGAN. It seems to follow.

Mr. STRONG. It seems quite possible. I never saw any, but we received complaints, and we believe on the basis of complaints received this was so.

Mr. FLANAGAN. You believe the complaints were true based on facts surrounding them?

Mr. STRONG. We believe them based on the circumstances.

Mr. FLANAGAN. You did not take the mere word of the accused?

Mr. STRONG. We used to check the testimony with the dates. We used to use that.

Mr. FLANAGAN. In other words, you were able to corroborate it to some extent?

Mr. STRONG. We tried to.

Mr. FLANAGAN. In your prepared statement, Mr. Strong, I find this language, and I want this cleared up if possible.

At the end of the third paragraph, the last sentence in the third paragraph, you make this statement, and I quote: "The courts leaned over backward to give the accused a fair trial."

When you made that statement in your opening statement, you were not talking about the Malmedy case?

Mr. STRONG. I was talking about the cases I had tried prior to Malmedy.

Mr. FLANAGAN. And as far as the Malmedy case is concerned you do not think the accused were given a fair trial? Or do you?

Mr. STRONG. I do not.

Mr. FLANAGAN. As a result of the shortage of time—I want you to listen to this question carefully. As a result of the shortage of time to prepare your defense, the tactics of the prosecution, and some of the rulings of the court, do you now feel that at least some of the accused in this case received illegal and unjust convictions?

Mr. STRONG. I cannot answer the question the way it is put, Mr. Flanagan.

I would say this: The proof that every one of the accused is guilty of that particular crime of which he was accused is not in every case so satisfactory it should have been sufficient for conviction.

Mr. FLANAGAN. In other words, you have serious doubts all the men accused in this case, or convicted, were in fact guilty of crimes as charged?

Mr. STRONG. I have serious doubts that all of the men have been proven to be guilty for crimes they have been charged with.

I think they might be, but I think in some cases the evidence is too shaky and not sufficient to permit a conviction.

I do not know, Mr. Flanagan, whether or not these men were innocent.

Mr. FLANAGAN. You do not think some of them, at least, were proven guilty in this trial?

Mr. STRONG. I do not think so.

Mr. FLANAGAN. That is the important thing, and under our system of law or justice, or any system we would advocate, that is probably the only way we would convict men, that is, by a fair trial.

Mr. STRONG. That is correct.

Mr. FLANAGAN. I have no further questions.

Senator BALDWIN. Mr. Chambers?

Mr. CHAMBERS. Mr. Strong, while this point is fresh in your mind, perhaps, the question I want to ask could be put in the record at this time.

Apparently your doubt is not to the guilt of all these people, but is to the proof of guilt and the manner in which it was established.

I believe you said that in all cases you were not satisfied as to whether or not the proof was proper to properly established their guilt.

Am I to infer from that you do believe that in some cases the proof was adequate to support the finding of guilty?

Mr. STRONG. I would have to have a better recollection of the particular cases, Colonel Chambers. I would say that presumably in some cases—I remember Preuss, I remember Fleps, two cases

which stick out in my mind. There is no doubt these people were guilty.

And like them there are probably other cases.

The only point I was trying to make is I have no point about the guilt or innocence of the defendants, but I would say in quite a few cases on account of the particular incidents of this trial their guilt, if any, has not been proved beyond a shadow of doubt as it should have been.

Mr. CHAMBERS. A moment ago in your testimony, in reply to a question from Mr. Flanagan, you said you were told by some of the accused, privates, they had been shown forged statements alleged to have been written and signed by their officers.

Mr. STRONG. That is correct.

Mr. CHAMBERS. Based on which they then gave their confessions which, in turn, were used against, presumably, their officers. And you said that you "tried to corroborate" this story as to whether or not the items were forged by checking dates.

In this effort to corroborate it, did you succeed in your own mind in establishing the fact there had been forgeries?

Mr. STRONG. Yes. The only particular case I do remember is one statement by Colonel Peiper, because I remember that certain of his privates signed statements implicating him on the basis of a statement he was supposed to have signed. And Peiper is one of the accused with whom we dealt quite extensively, Dwinell and myself.

At that time, when we tried to find out from him how many statements he signed and on what dates, we came to the conclusion that he could not have possibly signed any statement as early as it would have been necessary to form the basis for the subsequent statement of the privates.

Mr. CHAMBERS. Did you ask Colonel Peiper whether or not he had signed that particular statement?

Mr. STRONG. We did that at a later stage.

Mr. CHAMBERS. Did he at that time say he had not signed them?

Mr. STRONG. He did say he did not sign them.

Mr. CHAMBERS. A moment ago we were talking about, and you were being asked about, the right to attack the credibility of witnesses through cross-examination, and the fact that the court had very definitely precluded you from cross-examining Kramm in an effort to find out how his statements were obtained.

Yesterday Colonel Dwinell and some others were asked as to why Kramm was not placed on the stand as a hostile witness. I would like to ask you the same question: Why did you not endeavor to put him on the stand as a hostile witness and on direct examination?

Mr. STRONG. I can only say my memory has been refreshed by attendance yesterday, and that which I would not have remembered before, I remember now.

Colonel Everett called Kramm in and Kramm said he would not testify for the defense, and he repeated this statement in Colonel Dwinell's any my presence. In view of that fact, we did not see any point in putting anybody on the stand who would merely give his name and could have been guilty of contempt of court which, in this particular case, would not have meant anything.

Mr. CHAMBERS. Colonel Dwinell said yesterday the reason why they did not attempt to do so was partially because they had become dis-

couraged and thought they could not possibly get any consideration from the court on these matters. Did you share that feeling?

Mr. STRONG. I shared the feeling that our chances of succeeding with our objections as far as the court was concerned were rather bad. I personally would have run against it again and again and would have forced the court again and again to deny our objections, but probably the better view of Colonel Everett prevailed, and in some cases he probably desisted from doing things because of this attitude of the court.

Mr. CHAMBERS. Now, Mr. Strong, when Kramm refused to take the stand for the defense when you told him you were going to call him, did he give any reason why he would not testify for the defense?

Mr. STRONG. No. Excuse me. He indicated in some way he was a prosecution witness. He had given all he had to give to the prosecution, and there was nothing else he could say.

Mr. CHAMBERS. Were you present when they asked him to testify?

Mr. STRONG. I was called in to Colonel Everett's office or my office.

Mr. CHAMBERS. And Kramm was there at the time?

Mr. STRONG. Kramm was there. It is possible in addition to that I interrogated him one occasion myself. I think I did, but I am kind of hazy about that.

Mr. CHAMBERS. I realize you are taxing your memory over things that happened a long time ago, Mr. Strong. I would like to get this point rather clear in my mind because, as I recall yesterday's record, there was an inference Kramm said he would not testify because he was told if he did he would cease being a witness and become an accused.

Do you recall any statement to that effect?

Mr. STRONG. I can only recall the general outline of his statement, which was to the effect he was a prosecution witness, and that was that.

Mr. CHAMBERS. Do you believe that had he made a statement of that kind, Mr. Strong, in view of your rather clear memory on some of these other matters of a similar nature, that you would have probably remembered it?

Mr. STRONG. Frankly, no; because my recollection is only as to very few details. If you ask me about details, I will have to be unable to answer, I am afraid.

Mr. CHAMBERS. A while ago, I believe a statement was made that one private, when asked to testify, to take the stand as a witness for the defense, said he was afraid to.

Mr. STRONG. Yes.

Mr. CHAMBERS. I am a little curious as to what efforts were made by the defense staff, if any, to get this matter thoroughly brought before, 1, the court, and, 2, higher authority to make it pretty clear that witnesses were being tampered with, or prospective witnesses were being placed under such duress they would not have an opportunity to, or were afraid to, testify.

Mr. STRONG. I have no recollection whether that was ever brought to the attention of the court. You mean our experiences with witnesses whom we tried to interrogate outside of court?

Mr. CHAMBERS. And who claimed they were afraid to.

Mr. STRONG. I remember one occasion, I was trying to remember the name and cannot, where I examined one witness—one witness one

morning. It was before the 10 o'clock recess, and he went out, and I saw somebody from the prosecution following him immediately.

I went later back to him, and he told me that as soon as he had left the courtroom, prosecution talked to him. I don't know who it was. He said he had warned him and had some conversation with him which, we, in our opinion, considered improper.

I called that man back on the stand, and he testified about that conversation, and it happened one morning during the defense case just before the 12 o'clock recess.

I have no other recollection.

Mr. CHAMBERS. You testified in your opinion this court was fair. You had some objections to the law member. In fact, you felt that you differed strongly with him on the way he ruled against you, and frequently in favor of the prosecution, but you did make the statement you thought the members of the court tried to be fair. Do you feel that if you had gone to the court and called to their attention that witnesses, or prospective witnesses, were being threatened or placed under duress by prosecution staff, this so-called fair court would not have taken judicial notice of it?

Mr. STRONG. I said, Colonel Chambers, I had no criticism to make of the court apart from the fact the court relied too heavily on the counsel of Colonel Rosenfeld. I presume, at least, that would have been my reaction at that time, if we would have brought before the court this matter, the court would have asked Colonel Rosenfeld's legal opinion, which would have been absolutely against us, if that would have been the answer.

Mr. CHAMBERS. That apparently seems to have been pretty much the attitude after this trial had been going a few days of most of defense counsel, that they could not possibly get a favorable ruling so why ask for it.

Mr. STRONG. It is a difference of opinion, as I said before, I would have tried time and time again. It was a question of diplomacy and what course to follow.

There were points both for and against.

Mr. CHAMBERS. In the early days of preparing the cases for defense, you handled the three German generals pretty much?

Mr. STRONG. The three generals, and followed up in part of the defense case. I tried to show the chain of command, Nauheim, from Hitler down, of orders of the day, and I was not too much, frankly, familiar with the details of the particular privates and noncom cases.

Mr. CHAMBERS. Did you have some familiarity with the other officers?

Mr. STRONG. Colonel Peiper, and primarily Peiper, and at the end I concentrated on Hennecke, Tomhardt, and two others whose names I do not remember.

Mr. CHAMBERS. There are two points of particular interest to me I would really like to get your opinion on.

1. I read Colonel Everett's petition in which he argued very strongly the court erred in not granting the severance because of opposing needs to defend these various people stemming from the chain of command you have been talking about.

Mr. STRONG. Yes.

Mr. CHAMBERS. Do you feel that actually existed to the point where perhaps there was a definite conflict of interest between some of the enlisted accused and some of the officers?

Mr. STRONG. Definitely.

Mr. CHAMBERS. In that case, then, I notice that the three generals—my memory may be wrong on this—the generals took the stand—

Mr. STRONG. General Diétrich did not. General Pries and General Kraemer did.

Mr. CHAMBERS. And Colonel Peiper took the stand and some of the other officers.

When did you all decide that you should not put the rest of the accused on?

Mr. STRONG. During the case of defense.

Mr. CHAMBERS. Was it after about the ninth man had taken the stand? It does not make any difference whether the eighth or the tenth.

Mr. STRONG. I tell you what happened. We started the defense case with the generals' case.

I think the first witness I put on was some general officer who was liaison officer between Hitler and the Army. And we had him and several other high-ranking SS generals testify to the chain of command for orders of the day.

Then we had two generals and Colonel Peiper on the stand for 1 or 2 days, to the best of my recollection. Then we put on several privates and maybe officers, junior officers. I do not remember exactly. And some of them obviously were lying on the stand, and some of them got trapped and implicated in inconsistencies and contradictions. And they definitely did not help their particular cases by going on the stand.

And there was quite some discussion among defense counsel, whether we should go on putting everybody on the stand or not.

And shall we say, I again was in the hopeless minority because I said "Put everybody on." I said "Let everybody tell his story; if he is lying they will hang him."

But Colonel Everett, I think, was of the opinion that by accusing each other and trying to implicate each other the particular defendant who would take the stand would not only hang himself, but also might hang somebody else who might be innocent. That the defense of a certain accused might be jeopardized by the defense of other accused.

After very heated discussion, the consensus was 6 to 1 not to put any others on. That ended the defense case.

Mr. CHAMBERS. Colonel Dwinell on that point discussed this at some length, and I must say his story and yours as to the way it happened is almost completely the same.

He, however, told us these boys got on the stand and they began in their desire to get out from under themselves to lie about others.

I was quite interested in that because a great deal of the facts that we have to go on, particularly as it applies to brutality and mistreatment and things of that kind, comes from affidavits of those very boys and men whom you were afraid to put on the stand because they were going to be lying about each other.

I am just wondering in view of your fear there and the evaluation of credibility for that purpose, how much we should believe the affidavit we now have.

Mr. STRONG. You mean about mistreatment?

Mr. CHAMBERS. About mistreatments. They are the same people.

Mr. STRONG. They are the same people; that is correct, Colonel Chambers. I would be the last to take everything they say at face value. I would say even if you deduct 50 percent of what they say, if 50 percent remains, certain things remain which should not have happened which happened in the creation of these affidavits, which helped to admit them into evidence and which definitely made it very, very difficult, if not impossible, for us to give them the proper defense which they should have had.

Mr. CHAMBERS. Mr. Strong, solely in the interest of trying to again get your evaluation of it, there are certain more or less uniform charges in all these affidavits for which there has been a great deal of supporting evidence: such matters as mock trials, solitary confinement, use of hoods, and matters of that kind. Those very definitely are in these.

Then in addition to that, in quite a few of the affidavits there is a strong pattern in similarity in charges of mistreatment and brutality, being deprived of food and things of that kind.

Those really are two different types of matters.

In your own mind is there any difference as to their credibility on those points?

Mr. STRONG. It is my personal opinion that mistreatment did occur, probably not so often as the defendants claim. Probably primarily by the Polish guards, but I remember very often when I asked the accused who mistreated them, the answer was the "Poles."

But I do believe, especially from talking for hours and hours with men like Peiper and Dietrich, and all of the other officers, there was mistreatment.

Mr. CHAMBERS. As I recall Peiper's affidavit, Peiper has not alleged any mistreatment. I believe at one point he said he did get kicked in the back side by a Polish guard.

As I recall Dietrich had one instance to report, and I do not recall any other of the generals.

Mr. STRONG. Dietrich reported one instance, and I remember that the Stars and Stripes at that time had once or twice headlines about Peiper claiming about these mistreatments. I probably have the clipping somewhere, otherwise I would not remember it, so he definitely did.

Mr. CHAMBERS. I think we do have an affidavit from Colonel Peiper.

Senator McCARTHY. Could we have the affidavit, I wonder, Mr. Chambers.

Mr. CHAMBERS. I think it is in the record of the trial and not the affidavit. I wonder if I could enlist your staff to figure it out for me while I go on to another point, and we will come back to that.

Senator McCARTHY. Yes.

Mr. CHAMBERS. The line of questioning I was trying to pursue was merely in my own mind to try to establish the amount of credibility which we should give to these affidavits we have here. We do have this matter of General Peiper, which we will try to clear up.

You have said you believe that some of these mistreatments did take place because in talking to these people they frequently said these Polish guards had treated them roughly.

Mr. STRONG. And, in addition, Mr. Thon had some reputation for treating these people rather roughly.

Mr. CHAMBERS. In addition to Mr. Thon, did they mention others particularly?

Mr. STRONG. I am definite they mentioned frequently Mr. Thon. I think they did mention two other people, but my recollection as to that is only 90 percent.

Senator BALDWIN. Do you recall their names?

Mr. STRONG. I would recall that they mentioned Lieutenant Perl and Mr. Kirschbaum. I don't think I have recollection of anybody else ever having been accused.

Mr. CHAMBERS. Mr. Strong, I would like to ask you the same question we asked Colonel Dwinell. Did you ever feel it necessary to have physical examinations made or, as Senator Hunt asked, take casts of broken jaws or missing teeth or things of that kind?

Mr. STRONG. I don't remember ever having heard anything about a broken jaw and never heard anything about missing teeth. I only heard about beatings, rather tough beatings, but figuring the time which passed, we thought it absolutely pointless to examine them because even if it had been blue and black in Schwabisch Hall a few weeks ago, the marks would have disappeared.

Mr. CHAMBERS. That is correct.

You are aware, however, we have another affidavit we all know about from Dr. Knorr who did allege treating a certain number of these people for broken jaws and matters of that kind.

Mr. STRONG. That is new to me.

Mr. CHAMBERS. You say you knew nothing of any broken jaws?

Mr. STRONG. I have no recollection. I should have recollection if I would have received a complaint like that.

Mr. CHAMBERS. There is one other point I would like to discuss with you again, because it is a matter of some interest to me in this case. That is, you said that you all had extreme difficulty in getting these defendants to accept you as defense counsel.

Mr. STRONG. That is correct.

Mr. CHAMBERS. And it was not until after a couple of meetings with them, finally there was a meeting which practically all of the officers attended, and you all told them again you were there to help them and do the best you could for them, and Colonel Peiper got up—

Mr. STRONG. Correct.

Mr. CHAMBERS. And said that he had known you for a week or so and was convinced you were there to help them and for them to fall in line, to go along.

Mr. STRONG. Correct.

Senator McCARTHY. Could I interrupt?

Mr. CHAMBERS. Yes.

Senator McCARTHY. I do not know that Knorr testified about any broken jaws. I do not have the affidavit, but the Army report:

Treated 15 or 20 suspects for injuries to mouth and jaw apparently inflicted by some blows.

I wonder if the affidavit as to broken jaws is available?

Senator BALDWIN. Do we need to stop to get it?

Senator McCARTHY. I think the witness should know that in view of the fact you stated there was an affidavit from Dr. Knorr.

Mr. CHAMBERS. It is my recollection there is an affidavit to that effect, and I will be glad to check and can put it in the record at a later time unless you want to stop now and get it.

Senator McCARTHY. I do not want you to stop. I wonder if somebody else could find it.

Mr. CHAMBERS. I think they could. It is in the files in the rear of the room.

Colonel Murphy, will you get that please?

Peiper, apparently, had a very tight control over these people; they trusted him?

Mr. STRONG. They trusted him blindly.

Mr. CHAMBERS. There was apparently a period of time after they got to Dachau in which they had a chance in meetings of this kind and others to get together on some of these things.

Mr. STRONG. I do not think there were any other meetings. The only meetings were those two meetings where everybody was guarded, which I mentioned, and then the meeting which, in my recollection, was only attended by the officers.

I don't think the accused ever had any opportunity to be among themselves and talk among themselves freely.

Mr. CHAMBERS. Do you believe that if Colonel Peiper, back before they went to Schwabisch Hall, concentration camps, and what not, where they were held for interrogation, had passed the word that they were not going to talk and that they would really keep quiet about this thing and try to put the responsibility on a battalion commander since killed and that they would have, in fact, followed those instructions?

Mr. STRONG. Quite a few of them would have. But whether everybody would have, I do not know. With the guys on trial for their lives, I do not know how intensely Peiper's influence in that case would have been.

Mr. CHAMBERS. As a matter of clearing up the record, I think it should be pointed out that the questionnaire you have, Senator McCarthy, did not make any mention of mock trials. It did bring out other matters of solitary confinement, but there was no mention of mock trials there.

Senator McCARTHY. Which questionnaire?

Mr. CHAMBERS. The exhibit there.

Senator McCARTHY. I have it.

Mr. CHAMBERS. Now, this matter of difficulty in locating witnesses.

Mr. STRONG. Yes.

Mr. CHAMBERS. I am informed, and I would like to check your memory on this because it is absolutely at variance with your testimony, did you request witnesses through the prosecution or through the apprehension section which had headquarters in Weisbaden but had a local apprehension section in Dachau?

Mr. STRONG. According to my recollection, we handed our list of witnesses every evening to Colonel Everett who went over with them and gave them to prosecution.

Mr. CHAMBERS. Colonel Dwinell seems to have a little different memory of that.

Purely for the purpose of clearing the record, Mr. Strong, I think we should try to get the information.

Colonel DWINELL. Mr. Strong is correct in that. I remember several instances where Colonel Everett reported to us the following day he had turned his requisitions over to prosecution, over to the prosecution section. I did not accompany the requisitions. I am only report-

ing what he said. I do know there was an apprehension section in Dachau. I remember we filled out our requisitions directed to them. As I remember the form, they had some kind of a mimeographed form we filled out and put down the names of the witnesses we wanted.

It is my best recollection that form had on it something directing it to the attention of the apprehension section. But Mr. Strong is right when he says that we turned them over to Colonel Everett or his secretary. He had his secretary working with him all the time. And many, many times I remember their reporting to us our requisitions had been turned over to prosecution.

Whether Colonel Everett meant by that the whole Dachau administration when he used the word "prosecution," I am not able to say.

MR. CHAMBERS. Colonel Ellis, purely for the purposes of the record, you were the prosecutor. Did you get the witnesses for the defense?

Colonel ELLIS. We did not. My recollection is, on a few occasions they checked with us to see if we knew the whereabouts of some of the witnesses who had once been at Schwabisch Hall and we had released to a PW camp, Heidelberg, or some place else. We did not have anything to do with actually getting the witnesses. We only were information sources for those people.

MR. STRONG. May I say something, Mr. Chairman?

Senator BALDWIN. According to my recollection, we got the list of witnesses back the next day with check marks as to whether the witness was available or not. And unless I am very much mistaken, we got this list back with this check mark from prosecution.

Colonel ELLIS. You are substantially correct on that. We had about 150 we brought down from Schwabisch Hall as witnesses that were in the camp. Those were the ones, not the ones that were released—whether we had the named ones there and checked them off for them.

Senator BALDWIN. Let me ask a question here which seems to me important at this time. Did you ever have a feeling, Mr. Strong, that the prosecution and the Army authorities were not exercising due diligence and care in trying to produce witnesses? Tell us frankly what your view is on that.

MR. STRONG. I have certainly no criticism to make, Mr. Chairman, of the Army authorities, and I have no doubt that prosecution, after some checking—I have no idea how thorough or how superficial their check was—gave us the best information they had available.

But I do think we were at a disadvantage: No. 1, by having to submit our requests for witnesses to prosecution, and by, secondly, not having the opportunity to send out our own investigation teams and making our own efforts to get witnesses, which would have been possible.

Senator BALDWIN. In other words, you feel it would have been much better and much fairer if the defense had had a team of its own to send out for witnesses and to corroborate statements and things of that kind?

MR. STRONG. I would say, Mr. Chairman, if, after we got the list of witnesses back from whoever gave it to us, we should have been in a position to check and to look for these witnesses who were reported to us as nonavailable, it would have been better.

Senator BALDWIN. In other words, you think there should have been a check on the prosecution check?

MR. STRONG. No; do not mean that. I accept at face value the list of prosecution which says: out of 100 witnesses 90 are not available. But then we should have been in a position, and that needed time and investigation teams, to look for these 90 witnesses ourselves in prisoner-of-war camps, internment camps, at the places where these people resided.

I remember at a later stage of the trial we were assigned one or two investigators, and I think we had somebody to send to interrogate General Von Runstedt.

If we would have two or three investigation teams at the beginning and maybe, sometimes, quite more, I think we would have been able to line up quite a few more witnesses which might or might not have had an effect.

Senator BALDWIN. Are you through, Mr. Chambers?

Senator McCARTHY. Before you go on, this is the Knorr affidavit:

There may have been about 15 to 20 patients who had to be treated for injuries of the mouth and the jaw. Maltreatment by blows could be clearly traced with nearly all of them. Once when I asked a young man how he was, he replied: "What can you expect if you are beaten so much almost daily, at any rate on the occasion of every hearing; look at my head." And indeed he was beaten blue all over the head which was bloodshot. However I can definitely remember two cases in the one of which one tooth and in the other one four teeth were knocked out of the upper jaw quite recently. Besides, there was once presented to me a man with a rupture of the lower jaw which I was allowed to put in a provisional splint only because he was transferred to an American hospital at once.

This, of course, was at Schwabisch Hall before you got there.

MR. STRONG. It might not even have been an accused. It might have been a witness whom we never saw.

Senator McCARTHY. Yes, that is right.

Senator BALDWIN. Any more question; anybody?

Senator McCARTHY. I do not think I have any more.

Senator BALDWIN. I would like to ask one or two here.

How many different accused were there? My recollection is of the testimony, that there were 70?

MR. STRONG. I think 74, and 1 I think was a French national and his case was severed.

Senator BALDWIN. And how many of them did you talk to personally?

MR. STRONG. 15 to 20.

Senator BALDWIN. And you said that these questionnaires were sent out and that some of these questionnaires claimed physical abuse of one kind or another. You said a percentage of them. What I would like to know: Can you help us on how widespread this claim of abuse was; what percentage do you recall? Did most of the affidavits, or half of the affidavits, or less than half, or what percentage of them claimed some form of physical abuse?

MR. STRONG. I have no independent recollection. I would say half or less, but I remember Colonel Everett prepared a chart which showed exactly each accused and the type of treatment he claimed to have received. What happened to that chart I do not know.

Senator BALDWIN. When you say "chart"; those were the affidavits that accompanied the petition that went to the Supreme Court; is that the one you refer to?

MR. STRONG. I am afraid I do not know.

Senator BALDWIN. Did you feel, Mr. Strong, that enough time was given for this trial? What can you tell us about that?

Mr. STRONG. You mean for the trial itself?

Senator BALDWIN. Let us take the question of preparation first.

Mr. STRONG. No; I would say we definitely should have had more time.

Senator BALDWIN. Was any request made for more time?

Mr. STRONG. I understand that Colonel Everett negotiated with somebody higher up about extension of time, but I am not familiar with it.

Senator BALDWIN. My recollection is that Colonel Dwinell said something. I do not know that it was him, but somewhere in the evidence is the claimed fact this trial had to start at a certain time, and there was not much you could do about it.

Mr. STRONG. I have some recollection to that effect, that somebody told Colonel Everett that.

Senator BALDWIN. You mention one general who claims to have been kicked in the groin. Were there any others that you recollect?

Mr. STRONG. Any other generals?

Senator BALDWIN. Any other men that came to your attention.

Mr. STRONG. I think quite a few of the officers to whom I talked claimed about mistreatments, but it is terribly difficult, Mr. Chairman. I talked in detail to maybe 15 or 20 people, and I know some of them claimed mistreatment.

Senator BALDWIN. Did they make any particular complaint about who had done it?

Mr. STRONG. I encountered always the same names, either guards, or Mr. Thom, or the last two names, according to the best of my recollection, Lieutenant Perl and Mr. Kirschbaum. Those three names stick out in my memory.

Senator BALDWIN. Apparently you were under the impression the trial had to start at a certain time. Was there any pressure of any kind as to how long it could continue? In other words, what I am trying to get at is this: What opportunity did you have to put on the witness stand the accused or such witnesses who might have been available?

Mr. STRONG. I do not think we had any pressure which should influence us not to put anybody on. According to my recollection we were at liberty to stretch the defense case as long as we wanted to.

Senator BALDWIN. Senator McCarthy yesterday questioned Colonel Dwinell and Major Fanton with reference to a ruling on evidence. I think it concerns one of the accused named Kramm.

Senator MCCARTHY. He was not an accused, he was a witness and given immunity.

Senator BALDWIN. He was a prosecution witness apparently.

Mr. CHAMBERS. The prosecution yesterday made the point they did not have enough facts on which to try him, so they did not have to give him immunity.

Senator BALDWIN. You fellows can argue that. The fact remains he was not an accused, he was a witness.

And it appears from looking at this record here—the full amount of cross-examination does not appear in what I have before me here. But it does appear it was a witness whom you were examining. Do you remember that incident on that ruling?

Mr. STRONG. I remember that now; yes.

Senator BALDWIN. Can you tell us about it?

Mr. STRONG. I remember distinctly Kramm testified, and I remember his memory was simply marvelous. It was too good to be true. I tried to trap him because I had heard something about his diary. So I tried to trap him with a diary question.

I asked him if he had a diary. He said, "I had a diary and noted everything down that was important after I became an officer."

I said, "What did you do with the diary?"

"I burned it before I got captured."

I was a little bit ironical, I wanted to attack his unusual good memory, and wanted to switch to Schwabisch Hall, and wanted to show he made this statement in order to gain immunity for himself. I tried to bring that out, and that is where Colonel Rosenfeld stopped me short.

Senator BALDWIN. In other words, you were cross-examining the witness on the basis of his diary?

Mr. STRONG. I was cross-examining the witness with the intent to show to the court, No. 1, his statement which was so absolutely detailed could not have been true because he would have had to be super-human to remember all that; and secondly, he definitely had a personal reason for testifying as he did.

Senator BALDWIN. That was Colonel Rosenfeld who was the law member of the court prevented you from pursuing that line in examination?

Mr. STRONG. That is correct.

(Discussion off the record.)

Mr. CHAMBERS. For the record. A moment ago we were discussing whether or not Colonel Peiper had claimed to have been abused or beaten. In his examination when he took the stand in his own behalf, he stated that he had on his last day at Schwabisch Hall been beaten by a Polish guard.

Senator McCARTHY. Why do you not read it verbatim?

Mr. CHAMBERS. All right.

Senator BALDWIN. I think you should.

Mr. CHAMBERS [reading]:

Q. Will you give the court the details of the beating you alleged you received at Schwabisch Hall?—A. On the last day of my stay in Schwabisch Hall I was called for interrogation and received, as was usual, a black hood over my head. And I had to wait down there in the hall of the prison for about 5 minutes, since the American sergeant who came for me went to get some other comrades of mine from their cell. During this occasion when I was standing there quietly waiting, I was struck in the face by a person unknown to me, and several times in my sexual parts with a stick. I was of the opinion that they were Poles since they were guarding this house.

That is the entire quotation.

Senator McCARTHY. In addition to that I understand he testified he was kept in solitary confinement, and told he would remain in solitary confinement unless and until he signed a confession. Is that correct?

Mr. STRONG. That is more or less my recollection.

Mr. CHAMBERS. What was the statement?

Senator McCARTHY. Am I correct in understanding you will find in the record he testified in addition to physical beating he was kept in solitary confinement, and was told he would remain in solitary

confinement unless and until he signed a confession? Am I correct Peiper did say he would sign any confession at all they would ask him, anything that would free his men?

Mr. STRONG. That is right.

Senator McCARTHY. That they did not have to beat him to get a confession; he said he would sign anything at all that would serve to clear his men?

Mr. STRONG. That is right.

Senator BALDWIN. Just one or two questions that occur to me now. I think this appears in the record, but I would like your recollection on how many of these accused took the stand in their own behalf.

Mr. STRONG. I would say in addition to the three senior officers, two generals and Peiper, maybe six.

Senator BALDWIN. Do you want to make any explanation in connection with that?

As I recollect, Colonel Dwinell yesterday said something to the effect, and you intimated today something to the effect, when they got on the stand they began to tell stories in conflict with one another. What do you want to tell use about that? Do you recall that?

Mr. STRONG. I recollect that the privates whom we put on the stand were rather bad witnesses for themselves and for their co-accused. And at least some of them—I think our opinion differed. I had Hennecke at that time as my particular accused, and I think when he came up on the stand some of us thought he had absolutely testified honestly and not very cleverly, but honestly, and I think some of the other defense counsel thought he made an awful witness and absolutely insincere.

We had a conference at that time, and based upon that we reached the decision not to let anybody else take the stand.

Senator McCARTHY. Let me ask this: You were representing 73 defendants. Let's say you are representing 10.

Mr. STRONG. Yes, sir.

Senator McCARTHY. We will call them Nos. 1 to 10. If you know that No. 1 has a story which he is telling you, and you think he is telling the truth, which will clear him, but which will hang No. 10; No. 10 in turn has a story which, if believed by the court, will clear No. 10 and hang No. 1. You represent both men. I am wondering what ground rules can guide you, or is it conceivable you could give men a proper defense when you have such a divergence of interests and the same lawyer representing the same defendants?

Mr. STRONG. You cannot.

Senator McCARTHY. In other words, you feel the motion for severance should have been granted, and not having been granted it is impossible for you to give them a fair trial because, while in the interest of No. 1, you thought you might have to put him on the stand, nevertheless you are representing Nos. 9 and 10, and in the interest of Nos. 9 and 10 you have got to keep No. 1 off, and perhaps keeping him off might actually result in his being hung.

Mr. STRONG. I would definitely say the failure to grant severance did undermine the conflicting interests, and going simultaneously to trial with 73 defendants whose interests in many cases conflicted, you prejudiced their cases and their chances for a fair trial.

Senator McCARTHY. Let me ask you this, Mr. Strong: If the men were given a fair, honest trial, with proper rulings by the court, do

you think they could have convicted the guilty men all right and let the innocent men go?

Mr. STRONG. I would say if we would have had sufficient time to prepare our case, and if we would have been permitted to bring out the conditions under which the confessions were allegedly obtained, the court should have been able to get an absolutely, or as clear a picture as is under the circumstances possible, and definitely much clearer than it has been given under the conditions under which we worked.

Senator McCARTHY. In other words, you do not feel it was necessary under the circumstances to conduct this type of trial in order to convict the guilty men?

Mr. STRONG. No.

Senator McCARTHY. I think that is all; thank you.

Senator BALDWIN. Thank you very much, Mr. Strong, for your helping us with this investigation.

Colonel DWINELL. May I make a statement before Mr. Strong leaves, Mr. Chairman?

Senator BALDWIN. Yes.

Colonel DWINELL. I think Mr. Strong inadvertently made a remark concerning the getting of German defense counsel. He said there was difficulty in the matter of time and they were not attracted by the offer to come down and had to be given cigarettes. I think that has to be amplified.

That matter of cigarettes was legal rations authorized to war crimes headquarters for all German civilians that worked in that capacity, in addition to gas and payment in marks. That was done through normal military government channels and perfectly proper.

Senator BALDWIN. I understood it that way. I understood from Mr. Strong's testimony these German counsel were employed with the understanding they would get compensation.

Mr. STRONG. That is correct.

Senator BALDWIN. And that the gasoline and rations and the cigarettes were something that was added to the thing which they would get in the normal course.

I did not understand there was anything improper about it?

Senator McCARTHY. Before you leave, Mr. Strong, let me say this: We have often heard the claim made which I have always felt there was no foundation for, and I think you have done considerable to prove it—the claim made the non-Aryans who suffered persecution in Germany and were forced to leave Germany have carried a feeling of vengeance toward the whole German race. I think the fact you, yourself, who was a refugee from Hitler in Germany because you were not a pure Aryan, in the fact you went back there voluntarily and did all you could to see that the German people accused of war crimes for a fair honest trial and only the guilty punished and the innocent be freed proves many of those claims false that have been made. And I want to compliment you very much.

Mr. STRONG. Thank you.

Senator BALDWIN. I think that goes without saying, from the effort he manifested in putting up the defense.

The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 5 p. m., a recess was taken the subcommittee to reconvene at 10 a. m., Friday, May 13, 1949.)

MALMEDY MASSACRE INVESTIGATION

FRIDAY, MAY 13, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senators Baldwin (presiding) and Hunt.

Also present: Senator Joseph R. McCarthy; J. M. Chambers, of the committee staff; Howell J. Hatcher, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; Colonel Murphy; Colonel Ellis; Colonel Raymond; and Lieutenant Colonel Dwinell.

Senator BALDWIN. The meeting will be in order.

Dr. Perl, will you take the stand over there? Take that chair down there.

Mr. PERL. Yes.

Senator BALDWIN. Will you stand up and hold up your right hand?

Do you solemnly swear that the evidence you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PERL. I do.

TESTIMONY OF WILLIAM R. PERL, MAMARONECK, N. Y.

Senator BALDWIN. Doctor, will you give us your full name and address?

Mr. PERL. 205 Lawrence Avenue, Mamaroneck, N. Y.

Senator BALDWIN. Dr. Perl, what is your business now?

Mr. PERL. I am a personnel consultant.

Senator BALDWIN. For whom do you work?

Mr. PERL. I am advising commercial establishments whom to hire, whom not to hire, whom to place into which position.

Senator BALDWIN. You have a business of your own as consultant?

Mr. PERL. I am self-employed.

Senator BALDWIN. May I ask how old you are?

Mr. PERL. Forty-two.

Senator BALDWIN. Where were you born?

Mr. PERL. In Prague, Czechoslovakia.

Senator BALDWIN. When did you come to the United States?

Mr. PERL. In 1940.

Senator BALDWIN. And you are now a citizen of the United States?

Mr. PERL. Yes, sir.

Senator BALDWIN. How long have you been a citizen?

Mr. PERL. Since April 1943.

Senator BALDWIN. Can you tell us something about your education?

Mr. PERL. Yes, sir. I graduated from high school in Vienna. I studied sociology, economics, psychology, and law. I graduated from a college of social science—it is the approximate equivalent—those schools are approximately equivalent—in 1928 with M. A. in economics or social science. And in addition, a Ph. D. in law.

I have had extensive courses in psychology. I passed examinations in law which approximate the LL. B. in law.

It is not exactly education, but it is professional background.

Senator BALDWIN. Tell us about your experience; what you have done.

Mr. PERL. I have been a member of the bar of Vienna from 1930 to 1938. I was in one of the biggest law firms in Vienna, and most of the other partners did not like to handle criminal cases, so it came that I handled during these 8 years of law experience quite a number of criminal cases. I tried—I could not say the exact number, but certainly more than a hundred. I would say between 100 and 250—rather near to 200 criminal cases, some of them before the Supreme Court of Austria.

Austria has a federal state system and has a supreme court which in small dimensions resembles the set-up of the Supreme Court of the United States—criminal cases. This is my background in law.

Senator BALDWIN. You left Vienna in 1938?

Mr. PERL. That is right.

Senator BALDWIN. Where did you go then?

Mr. PERL. I first went to England.

Senator BALDWIN. And how long did you stay in England?

Mr. PERL. For a few months; about 3 or 4 months.

Senator BALDWIN. Can you tell us why you left Vienna?

Mr. PERL. Yes, sir. At the time I left I was not disbarred yet. I could still practice my legal profession—disbarred because I am Jewish, and when the Germans took over it was evident that all Jews would be disbarred. But it was the first country they occupied, and they were not so well organized yet as they were later, so a few months we could still practice. But I know that the time was running out, and the faster I left, I believed the better, so I left before I could get into any trouble.

I noticed in the papers it was mentioned I had been 4 years in concentration camps or something of this kind. I never have been in a jail there, neither in a German or German-controlled jail, nor in any concentration camp. I left before this.

Senator BALDWIN. Do you say you stayed in England several months?

Mr. PERL. Yes, sir.

Senator BALDWIN. And then you came to the United States?

Mr. PERL. Not directly so. I had only a short permission to stay, and I went then to Italy and then to Greece and then to Switzerland, and then again to Greece, and then Lisbon. And from Lisbon I went to east and South Africa, and from South Africa I finally received a visa for the United States.

Senator McCARTHY. May I ask counsel to brief me on why he left Germany? Was he a refugee?

Senator BALDWIN. He was a refugee; yes. He said he practiced law in 1938, and being Jewish he realized when the Germans took over he would eventually be disbarred; and seeing that coming, he voluntarily left the country. He said he had never been in a concentration camp.

Mr. PERL. I left on a regular passport with a regular German exit permit.

Senator BALDWIN. That is, your departure was entirely legal?

Mr. PERL. Absolutely legal; yes.

Senator BALDWIN. Then you came to the United States when, Dr. Perl?

Mr. PERL. In September 1940.

Senator BALDWIN. What did you do then?

Mr. PERL. For a few months I just tried to adjust myself to circumstances here.

Senator BALDWIN. Are you married and have a family?

Mr. PERL. I am married, sir, and I have a child.

Senator BALDWIN. And your wife and child were with you?

Mr. PERL. No, sir; my child was born only about 2 years ago here in the United States.

Senator BALDWIN. Then your wife was with you?

Mr. PERL. She was not with me; she was back in Europe still at that time.

Senator BALDWIN. Is it fair to state that what you were trying to do—

Mr. PERL. My wife is not Jewish. She is what the Germans called Aryan, so I did not see any danger, and I left her there.

Senator BALDWIN. Is it fair to say what you were trying to do is find a place where you could pick up your life again after you left Austria?

Mr. PERL. That is right, sir.

Senator BALDWIN. After you had been in New York a while, tell us something of your experience then.

Mr. PERL. Yes, sir.

For a few months I just looked around, and then I started lecturing on conditions in Europe and on psychology, which I did for a few months.

And the war started in December 1941 here. Immediately, or a few weeks after Pearl Harbor, I volunteered for the United States armed forces. I first volunteered for the United States Navy, and the Navy did not take me because I was not a citizen at this time.

I have a letter, if you want to see it, where they say they are sorry they could not take me.

Senator BALDWIN. We do not need it, do you think, Senator McCarthy?

Senator MCCARTHY. No.

Senator BALDWIN. All right, go ahead.

Mr. PERL. Later on, I went into the Army. My proceedings to get into the Army started at the beginning of the summer of 1942, and at the end of 1942. I was inducted on January 11, 1943, as a private.

Senator BALDWIN. Pardon me?

Mr. PERL. As a private.

Senator BALDWIN. I was going to ask you that. Then, what did you do?

Mr. PERL. After my basic training—I speak quite a number of languages, in addition to my other background—I was transferred to the Military Intelligence Training Center at Camp Ritchie, Md. I was assigned there to the interrogation school. I graduated from this interrogation school and was kept there. Most of the people were shipped out to various outfits, but I became an instructor at Camp Ritchie Military Intelligence Training Center, and had my own small section. I had nine men under me. I was promoted to corporal, then to T-3.

In the spring of 1944 I asked for an overseas assignment. I had what you would rather call a “soft” job there, but I wanted to get over, and I got an overseas assignment.

I was 1, I would say, of 100 to 150 graduates at Camp Ritchie. I believe 4,000 to 5,000 graduated there, but I was one of 100 to 150 graduates that got commissioned.

Senator BALDWIN. As a second lieutenant?

Mr. PERL. As a second lieutenant.

Senator BALDWIN. Then, after that, what did you do?

Mr. PERL. When I arrived overseas I worked for a short time with the psychological warfare which was an interrogation job.

Senator BALDWIN. Where were you then?

Mr. PERL. In a PW enclosure near Broadway, England; like “Broadway” in most of the American cities. Our job was there not to interrogate the prisoners but to converse with them. We had a little, approximately 40 questions which SHAEF wanted to find out: What the morale was in Germany and what they thought would happen, who would break first, how the food situation is, and all this.

To get this information actually and truly we could not interrogate those people. They had to have the feeling that they were in conversation. We worked with Red Cross officers who were interested in their welfare which made them talk easily. I was there, I would say, about 5 or 6 weeks, and then I was transferred to the highest level interrogation center for both the United States and the British Army. It was called Combined Services Detail Interrogation Center, CSDIC being the abbreviation, which was a top-secret place. The highest ranking prisoners were brought there and interrogated, again in the form of interview mainly, because these persons could not be broken. This is the terminology used—could not be broken by any but psychological means. They knew what they wanted; and we had to convince them first, before we went into any kind of interrogation, that Germany had lost the war already and, after this, to convince them that if they were good Germans it was their duty to cooperate with us to tell us everything they knew freely so that less Germans should be killed, less German cities destroyed, and the German living potential after the war should be higher.

I was in charge of the political section, working under Major March, the British intelligence officer, who is now a professor of law at Oxford University.

Major March was in charge of the whole sociological center. There were others set up for information on V-2, German secret weapons, atomic and bacteriological warfare, and so on. I was in the sociological department.

This outfit was more or less a British outfit, although officially a combined unit. There were not more than a dozen American officers there.

When the Battle of France started, the Americans demanded my transfer to their unit. Colonel Kendrick, the commanding officer of the Combined Intelligence Interrogation Center, the British intelligence officer, requested that I should stay there to finish the work on which I was engaged, the subject of which was "Leftist Underground in Germany and Austria," and the purpose was to determine whether any help could be expected from them prior to their official German surrender.

I finished this work and came to the conclusion that no help could be expected from them because they are concentrating their forces on taking over, if possible, afterward; that they were certain of German collapse anyhow.

Senator BALDWIN. In other words, you came to the conclusion from your work with the German war prisoners that there was being built up a plan so that after Germany's collapse the same group would take over?

Mr. PERL. Try to take over. They tried to preserve their forces for the fight after the official Nazi collapse, and this was one of the main purposes, not to be caught and executed by the Nazis. They were certain of German defeat anyhow.

I was then shipped over. I would like to mention that during this time, while I was at CSDIC, I was sent several times to France to collect prisoners and to interrogate them right after their surrender, when they were still under the shock of the capture. For which, by the way, I received the Battle of Normandy Star. I did not see actual fighting there, but I was within artillery range and in range of mortars at occasions.

When I came over, I was assigned to one of the mobile field interrogation units which had about the same purpose which I just described, to interrogate prisoners, first to screen them, those who seemed to be important, and then to interrogate them when still under the shock of battle.

I stayed with this unit up to the end of the war, and with them I participated in part of the campaign of northern France and Belgium, in the Rhineland Battle, and in the Battle of Central Europe, for which I received a battle star, too. Again, without being in the fighting units; but, again, I was often in range of mortars.

At the end of the war I was transferred to the war crimes group.

Senator BALDWIN. Did you request this transfer?

Mr. PERL. No, sir.

Senator BALDWIN. You were directed?

Mr. PERL. Military intelligence did not seem so important at this time any more, so I was transferred to war crimes, which was badly handicapped, I was told in the interview, by its lack of German-speaking personnel, and particularly as I was a lawyer at the same time, I appeared to be valuable for them.

Senator BALDWIN. When did you come to Malmedy?

Mr. PERL. In November 1945 after I had worked on a number of other cases before I was informed by Colonel Ellis that I had been

assigned to the Malmedy massacre case which I considered a promotion because it was the American War Crime Case No. 1. And other cases on which I had worked so far: One or two were Americans, and hundreds or thousands of displaced persons had been killed. While this was the first massacre in American history.

Senator BALDWIN. Have you a statement, Dr. Perl, you want to read in connection with this?

Mr. PERL. No, sir; I do not have a prepared statement.

Senator BALDWIN. Go on then and tell us in your own way what your experience at Malmedy was. That is in connection with the Malmedy cases. You were assigned to that in the latter part of November?

Mr. PERL. Yes, sir.

Senator BALDWIN. Now, tell us what you did, what you observed, and what happened.

Mr. PERL. At this time, Major Fanton was in charge of the investigation, and all the prisoners were together at Zuffenhausen which was a war criminal or war suspect camp.

He advised me no information could be obtained from them until then of any value.

I told him that one of the prime rules which we learned at Camp Richey, the military intelligence training center, was to separate these suspects, to separate the officers from the enlisted men, to break the esprit de corps; and we should try to find a prison where we could keep them segregated, because he told me that after the interrogations the interrogated came back and reported it to his commanding officer, and the next one came with orders from the commanding officer.

The prisoners were put in Schwabisch Hall, Germany, and interrogation started there.

Before this, already, at Zuffenhausen—I had not been at Zuffenhausen only a few days. Those who were obviously not connected were screened there and sent away.

Before any interrogation started at Schwabisch Hall, considerable administrative work was done to get all the detailed information on the set-up of the unit, the number of battalions, the number of companies, who was in each company, exactly who belonged into which platoon, and the crew of every single tank, the crew of every single half-track, and so on, that we should be able to impress the suspects with our knowledge.

The case was exceptionally hard to handle, because practically all the witnesses were dead, and the Germans were sticking together.

We soon found out that some officers were particularly well hated. One of them was George Preuss.

Senator BALDWIN. They were particularly well—what?

Mr. PERL. Hated—hated by their own men.

The other one, Friedrich Christ. And we decided first to make a try with Christ.

We collected the information which we got on him by asking those people who were obviously closely connected with the unit but not the crime, because we knew that their units must have arrived later at the cross-roads. At this time we knew only of the crime at the cross-roads.

After some time we found a very valuable man, and I think I should explain the interrogation of Christ and how it branched out in

a little more detail, because I feel, sir, that this will give you a better idea than many separate interrogations of how it worked.

Senator BALDWIN. You go ahead and explain it.

Mr. PERL. We found a man, Messner, who was not connected with it—at least, he claimed—and figured if he tells us the truth the investigation will be shorter, and he might be out earlier.

He told us that he had been an orderly at a C. P. of the battalion to which this Christ belonged, and that all the officers had met there; and gave us exactly the lay-out of this battalion C. P.; and all the company chiefs, commanders; had met there just prior to the offensive; that he made a fire in this room, and then he had been sent out. He did not see or hear what they were talking about, but right after this he heard from other soldiers. He, himself, was not present at any one of those meetings as far as I recall. He heard that the company commander issued orders that no prisoners of war should be taken. At this meeting he stated Christ was present, too. I had him draw in detail the lay-out of the little lodge in the woods, where everyone was seated. He had a good memory. And when I had all this detail and a few stories about Christ, why the soldiers disliked him, I called Christ in for an interrogation.

Senator BALDWIN. At that point, Dr. Perl—

Mr. PERL. Yes, sir.

Senator BALDWIN. When you called in for an interrogation, what was the set-up you had; how did you do it; what kind of a room was it? Describe that for us.

Mr. PERL. It was a room—it was an interrogation cell. The building had only cells, larger and smaller cells. It was an interrogation cell, one of the larger ones. I would say 6 feet to maybe 8 feet. The furniture was a table and three chairs. That was all. Besides the chair, there was a toilet bowl in this room. It was well lighted.

For the interrogation, because I considered it very important, and because I wanted—I was certain with the information I had could get Christ and maybe also because I wanted to show to Major Fanton—maybe I wanted to show off a bit—I called Major Fanton in.

A week or so ago, 2 weeks ago, Major Fanton said, "I believe I was in during the whole interrogation. Do you remember?"

I said, "I do not know. I knew you were in the interrogation; I do not know for how long."

When I now read again Christ's statement, I recall he was in during the whole interrogation. Christ was—

Senator McCARTHY. Do I understand that Major Fanton called you 2 weeks ago and asked you whether he was there when Christ was interrogated?

Mr. PERL. Pardon?

Senator McCARTHY. Do I understand that Major Fanton called you 2 weeks ago and asked you whether he, Major Fanton, was present while you were interrogating Christ?

Mr. PERL. Major Fanton asked me whether he was present all the time while Christ was being interrogated. He was present. He remembers this, but he did not know for certain whether it was all the time from the beginning to the end.

Senator McCARTHY. In other words, Major Fanton called you 2 weeks ago and asked you whether he was present at all times during Christ's interrogation?

Mr. PERL. That is right.

Senator McCARTHY. What did you tell him?

Mr. PERL. I said, "I know that you were present during the interrogation, but I cannot recall whether you were present the whole interrogation."

And now, on my way down to Washington, I read the statement in the train again, and I remember that he was present during the whole interrogation.

Now, I believe he was brought in with a hood over his head. I do not see the picture of him any more, how he was brought in with the hood, but I know all the prisoners were brought in with the hood on their head for the purpose that they should not know who else was kept; because when they marched through our cells they could see, maybe, other people in there from the windows, and other prisoners were standing outside on this corridor, and if these knew who was there, they could easily figure out what to say. Because if they knew someone who was not there who saw them committing a certain crime, it boosted their morale.

I told Christ first in a very nice way, the way I have been interrogating very high ranking prisoners before at CSDIC, "What do you know about the case, about the killing of prisoners at Malmedy?" He said, "I do not know anything about it."

Of course, I cannot repeat the words, but the meaning of the conversation.

I said, "Are you certain of this?" He said, "I am certain." "All right; write it down." So, he sat down and wrote down the following statement. I still have it here, and which was not made part of the trial record.

Senator McCARTHY. Was it offered as a part of the trial record?

Mr. PERL. It was not offered as a part of the trial record, to the best of my knowledge.

Senator McCARTHY. Was it ever given to defense counsel?

Mr. PERL. I do not know this, sir, but I have reason to believe it was. If you want me to go into detail, I can tell you why I believe it was.

Senator McCARTHY. If the chairman does not object, I would like to know that reason.

Senator BALDWIN. All right.

Senator McCARTHY. Why do you believe it was given to defense counsel?

Mr. PERL. Because—

Senator McCARTHY. May I ask Colonel Dwinell: Did you ever get this statement? Have you ever seen it?

Colonel DWINELL. May I look at it, please?

Senator McCARTHY. Yes [handing].

Colonel DWINELL. This is all in German. I do not recognize it at all.

Senator McCARTHY. I forget you cannot read German.

Mr. PERL. I tell you, sir, why I believe, and you will see, I think, I have good reason to believe it was shown to the defense.

During the trial, Christ spoke of three statements which he made, while the prosecution offered two statements only. And discussion developed after this, and I saw in the trial record last night, and then the trial record says that there was a discussion off the record between

the prosecution and the defense, and the defense said, "It is all right." They did not ask any more about the third statement, and I know I had it in the court room ready to show it.

This statement said:

I state—

he was quite happy he would get out, if he just said he did not know anything—

I state under my oath that never not even by any rumor I heard of any order to shoot American prisoners of war at Ligneville. Only once in Ebensee I heard from an American CIC man that supposedly Poetschke should have given such an order. Under what circumstances Poetschke gave this order and under what circumstances this order was executed, I never not even by—

Here it stops.

My note says, written in pencil and obviously in a hurry:

States not true. Withdrawn. Private first class Weiss Regimental Headquarters Company.

Now, when he was at this place everything went very smoothly. I mentioned to him it would be very important—"I don't want to catch you, but you are under oath now. And according to American law perjury is a very, very grave crime. And you stated that you never heard of even an order, not even by rumor, and we have placed in the room a mike where together with the Weiss man. We know exactly what you talk about when you are together. So, let's proceed with the statement."

He said, "I am sorry. I heard one thing about a killing." I said, "From whom did you hear it?" He said, "From the man who is with me in the cell." I said, "Who?" He said, "Sturmmann Weiss."

So, I said, "Then, this is not correct." He said, "Not entirely." I said, "All right, let's take it now as it is correct."

And I made this note which I mentioned—"Withdrawn. Private Weiss." That was so I should not forget the name—Private Weiss, regimental headquarters company. And I took a second statement with him. The second statement which, too, was not offered—maybe offered in evidence, but I would say which, too, was not part of the trial record.

Senator BALDWIN. Let me interrupt there. Was this at the same interview?

Mr. PERL. Immediately afterwards. As I am speaking to you now, and in exactly the same soft voice, maybe even a softer, sir, because I am a bit agitated now, more certainly than I was then—

Senator BALDWIN. In other words, both these statements were taken in this cell?

Mr. PERL. In this cell, in one long conversation. It was not actually an interrogation, because I did not ask him much.

So he stated on this piece of paper:

I hereby stated under my oath that before I came in December 1945 to this prison I never heard from any German, not even by rumor, of any order to shoot prisoners of war, and that I never heard—

Senator MCCARTHY. Is this the second statement or the first?

Mr. PERL. The second one. [Continuing:]

that I never heard whether such order has been executed. I only learned in Ebensee from an American CIC man that Poetschke gave—should have given such an order. No details of this have been mentioned. However, at that time

the man in my cell, with the name of Private Weiss of regimental headquarters, told me that he was present at the shooting.

Signed "Christ Friedrich, First Lieutenant SS, 17 December 1945." Senator BALDWIN. I think we ought to have those two documents as part of the record. Let me ask you a question about this now.

Mr. PERL. Yes, sir.

Senator BALDWIN. We will mark the first one "Christ A," and the second one "Christ B."

(Christ exhibits A and B are on file with the committee.)

Senator BALDWIN. Christ "A" is not signed by Christ?

Mr. PERL. Yes, sir; it is his handwriting, however.

Senator BALDWIN. Both of them are in his handwriting?

Mr. PERL. Both of them are in his handwriting.

Senator BALDWIN. The second one marked "Christ B" is signed by him and in his handwriting?

Mr. PERL. When I had this signed, I had one important advantage already. He had lied the first time, and I told him: "Now, you see if you lie it is not good. We know everything." And once a prisoner lies and is aware of the fact he is caught lying, he is much easier to get off balance and easier to induce to tell the truth, because he does not feel firm ground is under his feet any more.

I told him: "Listen! You told us part of this already, but we know more. Do you actually believe that a man who is so hated by his own soldiers as you are can get away with what you did? Don't you think now, the war being over, your own soldiers will talk against you freely? All of them did; we know everything you did." And now I told him one or two stories, how badly he had behaved toward his own soldiers, which was of no legal importance but impressed him with our knowledge.

Then, I said, "I know even how you were involved into the shooting."

I told him, "You didn't shoot, yourself, but you received orders, and you passed the orders." "No, I did not," he said. I said, "Listen, we know everything. The other officers who were present at this meeting in this lodge there already confessed." None of them had been interrogated in fact. "All the people told us the detail. They even drew us plans of the place. Look at it." And I show him this sketch.

"And you were sitting at this table, and this officer was sitting to your right and this officer was sitting to your left, and when you arrived there you arrived with a very small, particularly small car. And when you came down to your company CP you had with you in your car a big box in which you had a typewriter."

Those were things which we had ascertained by previous interrogations, information which was given freely, because the Germans did not think it was relevant.

Then, I said, "When you arrived there, there was a fire burning there, and you posted yourself right in front of the fire, and then you repeated the order which you had received from Poetschke."

When he heard this he broke. He told me, "I only repeated the order I got, and, after all, I was—What should I have done?" I said, "That is right, you repeated the order." Now, we know the order which you gave to your soldiers. What orders did you receive? Tell us in detail so we should know whether you did not add anything on your own which incited them to more brutality." So he said, "I re-

ceived these and these orders from my battalion commander, and exactly as I received them I passed them on. I didn't add anything to incite to brutality."

And he made this statement:

I state herewith the following: On the afternoon of the day before the attack in the Eiffel—

where the offense was started—

to my recollection it was on the 15th of December 1944. A company meeting took place in the CP of the armored group.

On this occasion Poetschke—

he was a battalion commander—

stated that the impending battle would be the decisive one. Amongst other things he said that we would have to behave towards the enemy in such a way that we would cause terror and panic, and that the rumor of the terror and of our behavior would have to precede our units.

Senator BALDWIN. Excuse me just a moment, Doctor. I think for the benefit of the record we might state here, if it is correct, that you are translating a document which is in German. Is that correct?

Mr. PERL. That is correct, sir.

Senator BALDWIN. And a document which purports to be in the handwriting of Christ?

Mr. PERL. Yes, sir.

Senator BALDWIN. Go ahead.

Mr. PERL (continuing):

Would have to precede our units so that the enemy should become frightened to meet us. He furthermore stated in this connection that no prisoners should be made.

On my own, I did not add anything to this statement, and I did not detract anything when I spoke on the same evening to my company in the Blankenheim Forest. I just repeated what Poetschke had told me.

This statement I make on my own without having been influenced by threats or promises. I wrote it down in my own handwriting. It consists of two pages. I am aware of the importance and the sanctity of an oath.

Signed "Christ Friedrich."

They officially signed their second name first.

Senator BALDWIN. Yes.

Mr. PERL. "Christ Friedrich, SS First Lieutenant, 17 December 1945."

Then the document bears the signature: "Witnessed Dwight F. Fanton, Investigator-Examiner, War Crimes Branch, USFET."

And "Subscribed and sworn to before me at Schwabisch Hall, Germany, this 17th day of December 1945.

"William R. Perl, First Lieutenant, M. I. Investigator-Examiner."

At this time I was a first lieutenant. My last rank was captain.

Senator BALDWIN. You have already described "Christ A" and "Christ B," and we have marked them. Those two, as I understand it, were taken at this interview, this single interview with Christ?

Mr. PERL. Yes.

Senator BALDWIN. Do we understand correctly that this statement was taken at the same interview?

Mr. PERL. Yes, sir; right in the same interview without any interruption at all.

Senator BALDWIN. That is, he made three statements?

Mr. PERL. He made four statements, sir.

Senator BALDWIN. Four statements?

Mr. PERL. After the two he then admitted he had received the order, when he saw the plan of the lodges—that he received the order and made this statement.

Senator McCARTHY. Do I understand they were all made the same day?

Mr. PERL. Yes.

Senator McCARTHY. Then will you explain why one was dated the 15th and the one the 17th?

Mr. PERL. Which was dated 15th?

Senator McCARTHY. The first one.

Mr. PERL. I could not say that, sir. But you know we worked day and day, Sunday and week days, and he was in jail for maybe several weeks at this time. This was an official statement, and there, probably, they looked at the date, and I suppose he set the date there without being asked what day it was.

Senator McCARTHY. One is dated the 15th and one is dated the 17th.

Mr. PERL. Yes, sir. In his trial, by the way, he was on the stand for many hours, and he stated it was all taken in one long interrogation.

Senator BALDWIN. Just a moment. That is a very interesting point, and I think it ought to be cleared up now.

Senator McCARTHY. I think so, too.

Senator BALDWIN. Is there any German in that Christ A, the first statement?

Senator McCARTHY. Any date?

Mr. PERL. Christ A?

Senator McCARTHY. You wrote this.

Mr. PERL. There is no date on this, sir.

Senator McCARTHY. One is dated the 15th and one the 17th.

Mr. PERL. I believe, sir, you are in error. It is dated the 17th, too. The 15th of December came into your mind because he said on the 15th of December the year before they met at the lodge.

Senator McCARTHY. And you just explained the discrepancy that he explained away at the trial and said they were all taken on one day. Are there two different dates, or are there not two different dates there?

Mr. PERL. No, sir. You asked me how it is possible that one statement is taken on the 15th and one on the 17th if they were all taken on the same day. Now, they were all taken on the same day, and, as you say, one mentions the 15th. I said he must have made the mistake. He did not make a mistake; it is dated the 17th. You were in error, sir.

Senator BALDWIN. The point is, Dr. Perl, you testified these were taken one after the other?

Mr. PERL. That is right.

Senator BALDWIN. And it does seem to the committee important, if they are differently dated, and something I think we ought to clear up right at this point, that is, what is the date on each one if there is one.

Mr. PERL. All the statements are dated 17 of December, 1945.

Senator McCARTHY. All of them are dated?

Mr. PERL. This has no date at all.

Senator BALDWIN. That is referring to the first one?

Mr. PERL. Christ A has no date on it at all.

Senator McCARTHY. This is the 17th.

Mr. PERL. This was taken right afterward, the 17th of December.

Senator McCARTHY. Go slow, will you?

Christ A has no date?

Mr. PERL. No.

Senator McCARTHY. Christ B has the 17th?

Mr. PERL. Christ A has neither a date or signature.

Senator McCARTHY. Will you do something for me? Just answer my questions.

Mr. PERL. Yes, sir.

Senator McCARTHY. Christ A has no date; right?

Mr. PERL. Yes, sir.

Senator McCARTHY. Christ B has the 17th?

Mr. PERL. Yes, sir.

Senator McCARTHY. And what date has "C," or the third statement, if any?

Mr. PERL. The 17th of December 1945.

Senator BALDWIN. We will put it in the record here, Christ C.

(Christ exhibit C is on file with the committee.)

Mr. PERL. No. 4, which I did not show you, has the 17th, too. The Germans crosses the 7. They make a 7 and then cross it. Most European people do.

Senator BALDWIN. The 15 is in my mind somewhere. Where did we get that?

Mr. HATCHER. He said that.

Mr. PERL. I can explain where you get the 15.

Senator BALDWIN. Go ahead.

Mr. PERL. He said in his statement here that upon the 15th of December 1944, which was 1 year and 2 days before his interrogation, they met at their battalion CP, and that is how the 15th seems to have come to your mind.

Senator McCARTHY. You are right about the date.

Senator BALDWIN. Now, go ahead. You were talking about the third one.

Mr. PERL. Yes, sir.

Senator BALDWIN. That is marked Christ C.

Mr. PERL. When he was through with this statement he felt somehow relieved.

Senator BALDWIN. What is that?

Mr. PERL. Christ, when he was through with this statement, No. 3, which I just read to you, felt somehow relieved.

Senator BALDWIN. Wait a minute. Senator McCarthy asked—Had you finished translating Christ C?

Mr. PERL. I had finished translating it, including the signature.

Senator BALDWIN. All right, go ahead.

He felt, as I said, somehow relieved, and said: "After all, I received orders, and I passed them. So nothing can happen to me. That is how I figure it."

I said, "I am not your legal adviser, but why did you not at least ask your commanding officer, your regimental commander Peiper, if orders not to take prisoners and to act in such a way that fright and terror should be impressed upon the enemy were issued to you?" So he said—

Senator McCARTHY. Mr. Chairman, could I ask something. In view of the fact I have an appointment at 1 o'clock which I have to make, I wonder if we could have this witness refrain from giving us a detailed account of one case and get into the question as to just what he did at the Hall. It will take all year if he goes through each one of these cases individually. Not that I do not think it is important, but I would like to get to the meat of the matter first, if possible.

Senator BALDWIN. As I understand it, he is describing how one, Christ, one of the officers, and, as you described, Dr. Perl, one of the most important witnesses—Am I correct in that?

Mr. PERL. Yes, sir; he was more than this. I have not the slightest intention for your and my benefit to go into every detail.

Senator BALDWIN. Then go and finish up.

Mr. PERL. Christ was the initial break-through, and from Christ it branched out, and I would like, with your permission, to give you the idea how it worked, how the statements went, with Christ as a sample and show you how one or two cases branched out of it, and how they were talking one against the other. It takes maybe more time than if you would just ask questions, but in the long run it will save you time.

Senator BALDWIN. Go ahead and finish it up without too much detail, Doctor.

Mr. PERL. Yes, sir.

Now, he said, "I want to state about this Peiper business, why I did not speak to Peiper, and so on. I want to have this written down, too." I said, "All right." He made it right afterwards in the same interrogation without any interruption. None of us left the room. He made the following last statement—

Senator BALDWIN. Just for the record, we will mark that "Christ D." (Christ exhibit D is on file with the committee.)

Mr. PERL (reading):

In addition to the statement which I made today regarding the talk given to us in the Blankenheim Forest on the evening preceding the attack in the Eiffel, I am stating the following:

In the same building in which Poetschke gave us a talk, in the neighboring room was Peiper, CP. Peiper was the regimental commander. I do not recall whether Peiper was present during the talk of Poetschke.

Anyhow, I was under the impression that the order not to take any prisoners had come straight from Peiper. I recall that right after the talk Poetschke gave I spoke to another company commander—I believe it was Kremser—about the matter. That after this talk with Kremser only, I decided to give exactly the same talk. I did not go to Peiper because I supposed that he knows about it, and because I could not expect Peiper to give any orders which would contrast Poetschke's orders. Neither did I ask Poetschke why he ordered that no prisoners of war should be taken, nor to the best of my knowledge asked anyone else this question.

The statement I make on my own and uninfluenced by threats or promises. It consists of two pages. I am fully aware of the sanctity of the oath.

Signed "Friedrich Christ, First Lieutenant SS."

Witnessed by Major Fanton and by me.

Senator BALDWIN. Now, at that point, Dr. Perl, before you go on further, I want to ask a few questions here.

Mr. PERL. Yes, sir.

Senator BALDWIN. About this particular interview?

Mr. PERL. Yes, sir.

Senator BALDWIN. How long did this interview take?

MR. PERL. I do not think—I am certain it could not have taken more than, at the most, approximately 2 hours.

SENATOR BALDWIN. And during that interview you were in this room that you described?

MR. PERL. And also Major Fanton.

SENATOR BALDWIN. And Fanton was there?

MR. PERL. Yes.

SENATOR BALDWIN. Were there any other Americans there?

MR. PERL. No, sir. To the best of my recollection we were alone. I always objected to too many people being in these rooms, they distract you.

SENATOR BALDWIN. You said there was a table and three chairs?

MR. PERL. Yes, sir.

SENATOR BALDWIN. Was there anything on the table, a black cloth or anything?

MR. PERL. I am almost certain that there was nothing of this kind on the table in Christ's interrogation?

SENATOR BALDWIN. There has been testimony here, on other interrogations that there were a table, usually with two or three chairs, and that on the table there was a crucifix and two candles.

MR. PERL. Yes, sir.

SENATOR BALDWIN. Was that so in this particular case?

MR. PERL. I am almost certain that it was not.

SENATOR BALDWIN. Now, there—

MR. PERL. That it was not in this case.

SENATOR BALDWIN. Not in that case.

MR. PERL. Yes.

SENATOR BALDWIN. Do you recall—we will get into that later. I want to confine this testimony to this particular incident if we can.

Was there an oath administered to Christ?

MR. PERL. Yes, sir.

SENATOR BALDWIN. Who administered the oath?

MR. PERL. I did, sir.

SENATOR BALDWIN. And what did you use to administer the oath? Did you use the Bible or crucifix, or anything?

MR. PERL. There might have been a crucifix in the room in accordance with European procedure.

SENATOR BALDWIN. You said before, to the best of your recollection there was not any crucifix.

MR. PERL. No, black cloth, crucifix, and candle.

SENATOR BALDWIN. But there may have been a crucifix?

MR. PERL. There might have been.

SENATOR BALDWIN. Anyway, you did administer an oath?

MR. PERL. Yes, sir.

SENATOR BALDWIN. Now, before or at any time during this interrogation, did you hold out to Christ any promises of immunity or did you say, "If you tell the truth you may be used as a witness and not an accused," or anything of that kind?

MR. PERL. No, sir. We were strictly instructed first by Major Fanton and then later on by Colonel Ellis not to promise immunity to anyone, and I never promised immunity to anyone.

I would like to add to it, that I would have been the last one to whom such an idea would have occurred, because according to European

procedure the idea just does not exist. One cannot give anyone immunity if he testifies in a certain case.

Senator BALDWIN. There has been testimony in the record up to now that there was an order, an S. O. P.—

Mr. CHAMBERS. No. 4.

Senator BALDWIN. No. 4. Have we got a copy of that here?

Mr. CHAMBERS. Yes.

Senator BALDWIN. The date of this order—let me ask you this: Here are the paragraphs that have been referred to. Do you recall whether or not anything of that kind, or whether or not that particular order had been issued at that time?

(Documents handed to Mr. Perl.)

Senator MCCARTHY. I refer you to paragraph (b) especially.

Mr. CHAMBERS. (a) and (b).

Mr. PERL. Yes, sir. As far as I can make it out, this is part of an instruction given in writing by Major Fanton to all interrogators and maybe to other personnel, too. Anyhow, I received such an instruction.

Senator BALDWIN. Turn one page back, and I notice the date on that one page back is February 7, 1946. Can you explain that situation?

Mr. PERL. Sir, obviously as to this, it seems to me it was given in writing to the interrogators, and I am certain that I received one, too, on the 7th or after the 7th of February 1946.

Senator BALDWIN. In what form were the instructions, if there were any instructions before that, because this interrogation occurred on the 17th of December? What was the situation then, that is, concerning instructions, do you recall?

Mr. PERL. Sir, I don't recall when I received this order, but I do know from the beginning on we were under orders not to use threats, not to use force, and not to promise immunity. I never even promised anyone that they would be a witness.

Senator BALDWIN. Prior to the time that you started this investigation, interviewing these witnesses, had you talked with Colonel Ellis or with Major Fanton or any other military personnel in connection with the investigation along the lines of how it would be conducted?

Mr. PERL. Yes.

Senator BALDWIN. Tell us what you can about that.

Mr. PERL. Yes, sir. As I said, I do not know when I received the written order. I did not speak about it to Colonel Ellis before the 17th of December. I am quite certain that I did not. But I am certain that I spoke to Major Fanton about it repeatedly before the actual interrogation started. We had weeks and weeks of preparation for this interrogation, for instance, about Christ, on which the first attack was centered. And we discussed everything in detail all day long, and we were under orders.

If this was issued later, they were of the same content as this written order.

Senator BALDWIN. Now, at this interrogation of Christ, you have said Christ was brought in with a hood on his head. Who brought him in?

Mr. PERL. Probably Sergeant Scalise.

Senator BALDWIN. Sergeant Scalise?

Mr. PERL. Most probably, he was there at that time, and brought the prisoners in.

Senator BALDWIN. Did you ever know of a Sergeant King?

Mr. PERL. Yes, sir; tall, good-looking fellow.

Senator BALDWIN. Was there one King or more Kings there?

Mr. PERL. I remember, I know of one only.

Senator BALDWIN. Do you recall whether he was a so-called buck sergeant or a tech sergeant?

Mr. PERL. That, I do not recall, sir.

Senator BALDWIN. Now, at this particular interrogation, was Christ standing up or was he sitting down or what was his situation?

Mr. PERL. He was sitting down. I wanted him to feel comfortable and to get easily into this lying that he had never heard of anything. I wanted to make it easy to him to write down he never heard even a rumor, then by impressing him with the sanctity of the oath, I could get more out of him.

Senator BALDWIN. Now, so far as Christ was concerned, was he kicked or slapped or pushed or anything of that kind?

Was there any physical force used?

Mr. PERL. There was no physical force whatever used. Christ took the stand during the trial. He was one of the 9 of the 73 who took the stand. He was on the stand for many hours during the interrogation and cross-interrogation and redirect. And he never claimed that he was beaten. Although, a few weeks ago, I read in the papers that his death sentence had been commuted on the possibility that he was mistreated. But while he took the stand he did not claim it.

Senator BALDWIN. Senator Hunt, do you have any questions you want to ask the witness on this point?

Senator HUNT. Did Christ have an opportunity on the stand to say that he was or was not mistreated? Was the question asked him; do you remember?

Mr. PERL. I was asked prior to Christ's interrogation whether the statement was obtained voluntarily, whether threats or force were used, and I said "No." And after this Christ took the stand and did not deny his interrogation, cross-interrogation, and so on, in the many hours—he never claimed that this statement which I made in the open courtroom was incorrect.

Senator McCARTHY. May I interrupt?

Do I understand the witness testified Christ at no time during his interrogation on the stand claimed he had been mistreated or beaten? Is that your testimony?

Mr. PERL. No, sir. He was for many hours—I could not know the exact time—on the stand—

Senator McCARTHY. The question is: Did he, while on the stand, claim to the court he had been beaten and mistreated?

Mr. PERL. No, sir.

Senator McCARTHY. You are certain of that?

Mr. PERL. Yes.

Senator McCARTHY. You are sure?

Mr. PERL. I read the trial record last night again.

Senator McCARTHY. Yes.

Senator HUNT. There have been several reviewing boards, one of which we are, or something, and one of the boards had a Colonel Ray-

mond. On another board was a Judge Van Roden. And in both of their reports, there is some reference to the fact that they believe possibly there had been mistreatment of the prisoners. Did you testify before either of those boards?

Mr. PERL. Sir, I did not testify at all before the Van Roden-Simpson Board. I did not even know that it existed until I read it in the papers that we had mistreated prisoners and broken the testicles of every single one, with the exception of two.

I was requested by the United States Army War Crimes Group or War Crimes Branch in October 1946 to comment in writing on allegations made by Mr. Everett in a written petition. And in this case I sent an affidavit, but I was never—never had the occasion to talk to any one member of any board prior to my hearing today.

Senator HUNT. This is the first time you have been interrogated with reference to what took place there?

Mr. PERL. Yes, sir.

Senator HUNT. Can you give us any reason that you might know of why you have not heretofore been interrogated with reference to these charges?

Mr. PERL. I do not know of any reason, sir. I heard that the Simpson-Van Roden Commission stated that they did not have the time to interrogate the Americans and me, that they had only the time to interrogate the Germans and bishops there, and the people who were not actually involved in the case.

Senator HUNT. It seems to me, Mr. Chairman, that is the keyman with reference to all of these charges that have been made. And this case has been reviewed, I think we summarized the other day, 12 times, and we were the thirteenth board looking it over.

I think it is an unexplainable fact that he has not heretofore been interrogated when he is the man charged with accomplishing the crimes, and I want that to be in the record.

Senator BALDWIN. I would like to ask one further question in connection with that.

Senator McCARTHY. I think out of the 10 interrogators he is one of the three accused of most of the brutalities.

Senator HUNT. He is 1 of 10.

Senator McCARTHY. There are three.

Senator BALDWIN. Ellowitz and Kirschbaum.

Senator McCARTHY. I believe Thon, Kirschbaum, and Perl, plus Steiner who was there briefly.

Senator BALDWIN. In connection with any of these reviews by the Judge Advocate General's Department, have you ever submitted any affidavit or been requested to submit any?

Mr. PERL. Yes, sir.

Senator BALDWIN. You did submit some affidavits?

Mr. PERL. One affidavit to the United States Army.

Senator BALDWIN. You never were personally interviewed by any of these reviewing boards?

Mr. PERL. No, sir.

Senator BALDWIN. Now, calling your attention—

Senator McCARTHY. I might say, Senator Hunt, I agree with you, it is unusual to have so many investigations of brutalities and no board ever called this man before to cross-examine him, apparently

willing to rely upon his affidavit, and no physical examination of any of the men who allegedly were injured. I might say I agree with your statement.

Pardon me, Mr. Chairman.

Mr. PERL. May I say something, sir?

Senator BALDWIN. Yes.

Mr. PERL. I definitely do not like to interrupt your line of questioning now, but I believe that it would be at least as important to see how the Christ interrogation worked, if I would be permitted to say how it spread out into all sides from the interrogation of Sturm-mann Weiss.

Senator BALDWIN. I know you have got this thing in your mind in a certain way, but I do want to ask a couple of further questions in connection with this thing.

Mr. PERL. Certainly, sir.

Senator BALDWIN. In an affidavit which was attached to the petition that was filed by Colonel Everett with the Supreme Court of the United States, there is an affidavit of Freidrich Christ.

Mr. PERL. Yes.

Senator BALDWIN. And I am going to read to you what he says in that affidavit in connection with this December 17 interview, and he says this:

At first Lieutenant Perl threatened me with being tried for perjury, if I were to stick to my former verbal and written statement. Then, he threatened me with hanging. The men of the Second Company, First Armored Regiment, would be hanged just as well. There would be a military court and a summary court. Lieutenant Perl told me further that he was in possession of at least 20 statements in writing of men of the Second Company who were accusing me heavily, and whether it was my intention to see these men hanged only because of myself. At that time I could no longer think clearly or reconstruct my memory. I requested time for gathering my thoughts and recollections. This was not granted to me. On the contrary three other men stormed at me and shouted at me, men whom I do not know, and never saw again later. So that I was no longer master of my own judgment and could not differentiate between composition and truth. I was also told that I was the last one of the officers, that everyone else had already made the same statements. In my psychic condition and confusion, Lieutenant Perl then dictated to me a written statement according to his own point of view regarding the issuing of orders in the Blakenheim Forest. At the end of the interrogation, I asked Lieutenant Perl whether or not I could face a court and when this could be done. He only answered that I would not appear before any court but would soon be sentenced by my file because there were not sufficient courts available for such insignificant war criminals as myself. After this interrogation, which lasted for 4 hours, I was locked up in solitary confinement until April 7, 1946, without receiving any books or other entertainment. During this time I did not get 1 hour for physical exercise, nor could I take a bath even once during the 4 months in prison.

That is his statement concerning this interview that you have described here. What do you want to say about that, Dr. Perl?

Mr. PERL. Some of the statements which he made are correct, and only those, and I will explain them now. And I explained them already.

If he said I threatened him with sequences of perjury, I did not threaten him, but I told him that perjury is a very severe crime according to American law, to induce him to tell the truth and not to commit perjury.

The interrogation lasted, he says, 4 hours. I doubt that very much. I am almost certain it could not have lasted more than 2 hours.

Senator McCARTHY. Mr. Chairman, in connection with the witness' statement that while on the stand he never claimed—

Senator BALDWIN. Would you mind letting me finish this statement here and keep this thing together?

Senator McCARTHY. I am sorry.

Senator BALDWIN. Just for the purpose of an orderly record.

Mr. PERL. It is correct when he states that I told him all the other officers had confessed. I do not know that I told him all the others, but I told him many other officers had confessed and possibly I told him all the officers had confessed. It would have been in the line of interrogation.

It is absolutely incorrect when he states there were three people shouting or trying to intimidate or confuse him. I was in the room and Major Fanton was in the room, and it just does not fit into the quiet conversation of the whole interrogation. That is absolutely incorrect. I never threatened him with hanging, nor did I threaten him with anything else. The fact that he was told that perjury is a crime, and the fact that I showed him or told him of other statements that others had confessed, is twisted around by him.

Besides this, he is not a boy. He was a seasoned officer, a first lieutenant. And he knows what he is talking about, and you saw from the contents that he tries to keep his rights. He said, "I only repeated what I was told. I did not add anything." Then, he said, "I was certain Peiper knows about this or else I would have spoken to Peiper."

Certainly, I did not dictate these things.

Senator BALDWIN. How old a man would you say Christ was?

Mr. PERL. As I see him before me, he was a man of maybe 23 or 24 years, 25. But you must know, sir, that those people mature much earlier than our boys who at 16 and 17 are still playing on the playgrounds and living a happy life. They had to fight from their early youth on.

Senator McCARTHY. Mr. Chairman, I think in fairness to the witness, in view of his statement that Christ on the stand never made any statement that he was mistreated in any way, I think I should read what Christ did actually say on the stand, on page 2130-3132.

Senator BALDWIN. Let me put in the record here, according to his direct examination from the record, he was born on the 21st day of February 1920, in Munich.

Now, go ahead, Senator McCarthy.

Senator McCARTHY. In view of your statement, Mr. Perl, that this man never claimed on the stand during the trial that he had been mistreated, I want to refresh your memory, if I may. I quote from page 2130-3132:

I was then told about the accusations against me, that I had given orders in LaGleize to shoot prisoners of war, that I had given orders in Stoumont to shoot prisoners of war, and that I had been present at the Cross-roads and had given orders. I denied that. Thereupon, I was cursed terribly, and I was told that if I did not tell the truth, I would be hanged in Bruchschal, that my mother would receive a form message about my hanging, and that she would not get any work, and that, since she would then not get any ration cards, she would then necessarily starve. I was also told that if I would not talk, I would be sent to Stoumont and be shot there while trying to escape; they told me that I would regret the hour in which I had not committed suicide, and that my mother would regret and curse the hour in which she gave birth to me.

In view of the fact he did so testify, do you want to change your testimony in which you said that on the stand he made no claim he had been mistreated, or do you not consider that mistreatment?

Mr. PERL. Sir, according to the newspaper notice which I read, which was right after the statement that the people were beaten and tortured—

Senator McCARTHY. May I get you back to the question. You said you read the record last night?

Mr. PERL. Yes, sir.

Senator McCARTHY. You said while on the stand Christ at no time made any claim he had been mistreated. I now have read to you from the record. I ask you, in view of that, do you want to change your statement that after having read the record, you find that he never made any claim of mistreatment?

Mr. PERL. I believe, sir, that I spoke of beating here today.

Senator McCARTHY. In other words, you say he never claimed he was beaten, but he did claim he was mistreated?

Mr. PERL. He certainly never claimed he was beaten; according to the newspaper notice, his sentence was commuted because he was beaten.

Senator McCARTHY. Let's get back to the question. You admit now he did claim on the stand he had been mistreated. There is no doubt about that, is there?

Mr. PERL. He certainly claimed whatever you read to me now.

Senator McCARTHY. So, in your studying of the record last night, you did find while on the stand he claimed he was mistreated?

Mr. PERL. In that sense, yes, sir.

Senator McCARTHY. You would consider that mistreatment, or would you?

Mr. PERL. Not in the sense I mentioned before, but certainly it is rather poor treatment if someone would be treated in this way.

Senator BALDWIN. Did you treat him in that way?

Mr. PERL. No, sir, I did not; and I would like to mention in the statement which the chairman read to me today many of the things which he mentioned here are not mentioned again. Nothing about ration card, nothing about being shot trying to escape. In the meanwhile here he has obviously thought out other things.

Senator BALDWIN. What was the date of the trial?

Mr. CHAMBERS. The testimony he quoted from there was on the 25th of June 1946. The trial started on the 16th of May 1946. The affidavit that you read there, I believe, is dated, sir, at the bottom.

Senator BALDWIN. Twenty-second January 1948.

Senator McCARTHY. Mr. Chairman, I think there is one way in which this investigation could be concluded very rapidly to the satisfaction of everyone. I think that we all agree that the charges and countercharges of American brutality, the perversion of justice, has done and is doing us a tremendous amount of damage.

We know that if we continue this investigation along the line we have been continuing it, that Mr. Perl will come here and deny any wrongdoing on his part; Mr. Thon likewise, and Mr. Steiner likewise. When we get through with this investigation actually we will not have laid to rest the charges; we will not either thoroughly have proven or disproven in the eyes of the people of this country or of Europe these

charges. When those men hang, there will still be a doubt whether they were properly tried or not.

There is one way in which we can, in my opinion, very, very clearly and once and for all set to rest the rumors and prove them true or untrue. It will take some cooperation on the part of Mr. Perl, and I am inclined to think he will give us that cooperation.

We have back in my State and a number of States, a practice in criminal cases—I have tried a lot of murder cases in which we used it—where we give the defendant in a murder case where the evidence was sketchy, where you did not know whether the man could be properly convicted or not, you give him the option of submitting himself to the lie detector run by Mr. Kieler of Western University. I have had a great deal of experience with those, and all of the judges in Wisconsin and Illinois and Michigan. They are used extensively in a great number of cases, and many criminals felt they could beat that lie detector.

We, who were judges in these cases, matters involving the licenses of men, were convinced that no one of those men had ever beaten the Kieler lie detector.

If Mr. Perl would submit to that lie detector and be questioned by Mr. Kieler, if he can come through that and show he is telling the truth, Mr. Thon likewise, and Mr. Kirschbaum, as far as I am concerned, then the claims are all without basis in fact. If, on the other hand, those men of the 10 interrogators who are accused of these brutalities, if they are proven to be lying, then I believe we will agree—in other words, if these claims of brutality and beatings, of ruptured testicles, of threatening to starve the families, and this sort of thing, if those are proven to be true, we will all agree, I think, the men did not get a fair trial and must be retried.

I think that is the only way we can once and for all close this matter. Otherwise, we will be having hearings here for 2 months. The cost will be tremendous and not only in money but in the time of Senators. A sizable number of Senators should be doing other work.

I wonder, Mr. Perl, if you would be willing to submit to the Kieler lie-detector test. There is no physical punishment involved, no kicking in the groin, or anything like that. I wonder if you would be willing?

Mr. PERL. Should I answer?

Senator BALDWIN. Yes.

Mr. PERL. Do you believe, sir, that the lie detector is a method, as a lawyer, purely reliable; that the life of people should depend entirely on it; that the reputation of the United States which is torn down by this allegation now in all the Communist-controlled countries, because the United States Army is our representative overseas, the men whom they see, that the honor and integrity of the United States Army should depend entirely on this matter?

If this commission believes it to be correct, I am ready to submit to a lie detector. I believe we would make ourselves ridiculous in Europe and otherwise more than so far. I have no objection against the lie detector.

If it is so reliable, we should have used it from the beginning. Why a trial at all? Get the guys, and put the lie detector on them.

“Did you kill this man?” The lie detector says “Yes.” Go to the scaffold. If it says, “No”; back to Bavaria.

Senator McCARTHY. I have the utmost confidence in them, you see. I will recall one case to give you an idea of the effectiveness.

Any number of judges have absolute confidence in those.

I think you are lying. I do not think you can fool the lie detector. You may be able to fool us. I have been told you are very, very smart. I know you are a psychologist and psychiatrist and work at it. I have been told I can get nothing from you in cross-examination, and I think that is true. I am convinced you cannot fool the lie detector.

If I may give you an idea, before you are willing to submit: We had one case in my court, a Mr. Johnson, which is a matter of record. He was a defendant where a tavern keeper and his wife were shot with a shotgun.

Their whole chests were blown out. The evidence was sketchy. He came in and appeared very truthful, and made an excellent impression. He said:

If the sheriff says I am guilty, I am guilty. They found my tracks—he says “were found outside the window,” and if there, I must be guilty, but I do not remember at all.

He made a very good impression. We subsequently sent him down to the Kieler Institute for the lie-detector test. He not only confessed the details of that crime under the lie detector, when shown he was lying, but he also went back into his past life and found he was guilty of murder in the Army which they had never cleared up.

That is one example.

As far as I am concerned, if we can get something from you, Thon and Kirschbaum under the lie detector, if you say you are willing to submit to that, I think, Mr. Chairman, that is one way to once and for all set to rest these claims.

If you think you are smart enough—I am not saying you are lying. I personally think you are. A lot of men think you are not. If you are lying, I know you are not smart enough to beat it. If you can go down and prove under the lie detector that you are not lying, I certainly will publicly apologize for many of the things I have been thinking about you and other men who have been accused of all these brutalities.

Mr. Chairman, I think this man should be, he is willing to submit.

Mr. PERL. I repeat, sir. I am willing to submit. I believe we would make a laughingstock out of the whole thing for the whole world. The importance of machines in America is known too much, maybe, and evaluated even too highly.

I say, again, if the lie detector is so valuable, we should have started with it, and if the officers who were on this trial, American officers, are going under the lie detector, I do not think it will help the case and I do not think it will help us, and primarily I do not think it will help the case. We have much better evidence than a lie detector. You have witnesses, many witnesses. Why a lie detector?

Senator McCARTHY. Mr. Chairman, I have so much confidence in the lie detector that if Kirschbaum and Thon and this man can go through that test, and if their story is the same as it has been at the trial, as far as I am concerned that ends the hearing.

Mr. PERL. I would like to mention one thing—

Senator BALDWIN. Just a moment, Dr. Perl. Let us review for just a moment what this investigation is for.

When we started in this investigation we started in with the idea of testing the procedures and the policies and the set-up of the court and the general legalistic surroundings of this thing from the standpoint of whether or not this trial had been the kind of a trial that was conducted honestly and fairly, and whether or not if we ever had to go through this thing again, we would want to recommend some changes in procedure.

It seems to me that many things have developed in that connection.

Now, we have here, in the affidavit or in the petition that is filed with the Supreme Court, the affidavits of a number of German soldiers, SS troopers, who, after sentence, some of them for long terms and some of them for death, made these statements concerning brutalities that they claimed were practiced upon them.

These are affidavits given under oath. These witnesses have never apparently testified before any commission or any court. And if the officials who conducted this trial are going to be charged with misconduct in connection with it, it would seem to me if we went into that phase of the thing and into the lie-detector phase of it, it would be quite proper to put all of these Germans who have made these affidavits to their defense counsel under the same procedures.

Senator McCARTHY. That is an excellent idea.

Senator BALDWIN. So, finally, we would wind up by having the lie detector examine everybody in connection with the case.

Now, it is very novel and very interesting suggestion. I am not prepared right now, without some reflection on it, to say as to what procedure we would follow in connection with it. So far as this hearing is concerned, and this investigation is concerned, as I recall the testimony of the Secretary of the Army at the very outset, I think he made it very clear to this committee that, after all, the matter was one in the charge of the Army, and that while he might be influenced by our findings in this particular case, nevertheless he did feel that it was a military matter, and that under the organization of the court, and so forth, the decision of the Army would have to be the final one; that this committee was not really a court of appeals but was really a court investigating the procedures.

I personally feel if we are going to get anything of value out of this investigation we have got to proceed in the normal way of finding out what did happen as much as we can from those who actually participated. And then we can decide on the basis of all of that testimony whether the procedure and policy followed was the sound one, and that is what certainly has been the hope of the committee that would result from this hearing.

This suggestion turns it into a question of whether or not these three men who have been claimed by the German troopers to have been guilty of abusing them, whether or not they are guilty of those particular charges.

It seems to me while that is a very important phase of this thing, we are dealing here with an even more important one, and that is out of our experience in connection with wartime trials, what do we develop in the way of intentional law and procedure to deal with claims of war crimes in the future.

I think this is even a more important thing.

Now, so far as the suggestion of subjecting all of these witnesses here to the lie detector, I am frank to say I do not see where that is going

to accomplish much of any value from the standpoint of the general over-all findings of this committee. We have already examined how many witnesses, Colonel?

Mr. CHAMBERS. I would imagine 18 to 20.

Senator McCARTHY. Mr. Chairman, if I may say, that is certainly an unusual statement on the part of the Chair.

The principal facts in dispute, the principal facts in dispute are to what extent these men were abused, to what extent they were starved, to what extent they were mistreated, to what extent other witnesses were offered immunity to testify against them, to what extent other witnesses were given inducements to lie. That is the whole case insofar as whether or not those men got a fair trial, and the factual situation hinges upon the statement of three men, three men that I think are lying, deliberately lied at the trial. A great mass of people think they lied, too.

Now, we have a way of settling the factual situation. We have one man here who very reluctantly says he will submit to the lie detector test, and the chairman of this committee says that it is unimportant, that this would not be of any importance. This is the whole meat of the case, and I might say this, Mr. Chairman, and I say this not just off the cuff—

Senator BALDWIN. May I interrupt you there, right at that point?

Senator McCARTHY. If I may finish, please.

Senator BALDWIN. Because you have made a statement there that is not consistent with what I have said. I know it was inadvertent.

Senator McCARTHY. I have said nothing inadvertently.

Senator BALDWIN. I did not say "unimportant." I do say this, however, very positively, and that is that these men, these American citizens who conducted these investigations, these three whom you have named, Mr. Perl, and Mr. Ellowitz—

Senator McCARTHY. Mr. Perl, Mr. Thon, Mr. Kirschbaum, and Steiner. Four of them.

Senator BALDWIN. Four of them.

Senator McCARTHY. Mr. Thon is not an American citizen.

Senator BALDWIN. Those of them that are. Leave the citizenship out of it. They are individuals, human beings.

And it is not the purpose of this committee to protect anybody. We have tried to find the facts here, and we will continue to try to find the facts. But it does seem to me that if you are going to apply the lie detector test, that you not only have got to apply it, you have got to use that justly and fairly, too. Here are all these German war prisoners, accused of these war crimes, who have made only in affidavit form the statements charging serious misconduct on the part of personnel of the American Army. Now, if the personnel of the American Army is going to be subject to the lie detector tests, it seems to me equally clear that these men who have made these affidavits ought to be submitted to the same kind of a test. Because if we are going to have a retrial of this whole business, it is only fair to give to both sides exactly the same kind of treatment.

Senator McCARTHY. We are spending all the time trying to find out whether the claims of brutality are true or untrue. All of the claims are made against three men. We have one of the men before us. He very reluctantly says he will—

Mr. PERL. Not reluctantly.

Senator McCARTHY. He says he will submit to the lie detector. The Chair seems to be afraid of the results of that test.

Senator BALDWIN. That is totally——

Senator McCARTHY. I am going to finish.

Senator BALDWIN. Go ahead.

Senator McCARTHY. It is fair to say that this committee is afraid of the facts. If this committee were not afraid of the facts, they would not refuse to allow these men who I think are deliberately lying—and a great mass of the American people think they are lying—to submit themselves to the lie-detector test and once and for all either prove or disprove these claims.

And I repeat, this confirms what I have suspected all along and that is: This committee is not concerned with getting the facts. Further, this committee is afraid of the facts, and is sitting here solely for the purpose of a whitewash of the Army and that phase of the military government in charge of those trials.

And I think it is so ridiculous, so unheard of, so inexcusable, for the chairman to say that we will not allow these three key witnesses, whom many of us think are deliberately lying——

Senator BALDWIN. Senator, just let me interrupt you right there, and let us keep this thing on an even, level tone. The chairman has not said he will not allow this to be done. I think this is a matter that ought to be considered very carefully by our subcommittee, and I think it is a decision of such considerable importance that the whole committee ought to act upon it. After all, we are only the subcommittee. And let me remind the Senator that he was invited to sit in these hearings. He has been given all the documents and everything else the committee has. He has been permitted to call and cross-examine any witness that he wanted to call and cross-examine, and we have been perfectly forthright in every way in dealing with this particular thing, and will continue to do so until the end.

The chairman, on the other occasions, has expressed his confidence in the committee. And to be faced at this stage of the thing with the charge that we are trying to whitewash anybody in connection with this thing, when we have not had an opportunity to go——

Senator McCARTHY. If the Chair is afraid of the results of a lie detector applied to these three key men in this case, there is only one conclusion I and the American people can arrive at: That is this committee does not want the facts; this committee is afraid of the facts, and this committee is sitting here to whitewash those involved.

Senator BALDWIN. Let me say to the Senator from Wisconsin that very positively the Chair is not afraid of submitting these witnesses in any way to this test. The Chair has stated simply that this is a matter that ought to be taken under consideration by the committee, and I think the whole Armed Services Committee, because it is, at least, a very marked departure from any procedure we have heretofore followed.

And the Chair further says that the same tests should be applied, if they are to be applied, not only to men against whom these charges are made but also to the men who make the charges; that out of fairness, they ought to be subjected to it, if this method is used, to exactly the same treatment.

Senator McCARTHY. Mr. Chairman, if these men under a lie detector show they are telling the truth, as far as I am concerned, I do not think we need to go any further.

If the Chair thinks we should go over and examine other men who made affidavits, well and good. But it is so obvious: Here are the 3 men out of the 10 interrogators who are accused of being brutal and sadistic. Upon that, the truth or falsity of those charges, the whole thing stands or falls.

I say, when one man comes here and says he will submit to the lie-detector test, then I submit we should subject him to it. I do not think anyone should worry about it.

If this man proves under the lie-detector test he is telling the truth, as far as I am concerned, I will publicly apologize for many of the things I have been thinking about him and other interrogators. If not, if it is proven that he is lying, and all those claims are true then those men over there are entitled to a new trial. There is no question about it.

I do not think, Mr. Chairman, this committee should be afraid of those facts. You say it is a departure. It is not a departure. Over in the House, I recall, Alger Hiss was asked whether he would submit to a lie-detector test. And he did not have the courage to. He did not have the courage this young man has. He said, "I won't."

Later, it was proven he lied to the extent he was since then indicted by the Federal grand jury.

So, this is nothing new, not a new request, to use the lie detector.

I think, Mr. Chairman, we can save an infinite amount of time, and we will have the facts, and there should be no one, either on the prosecution staff or the defense staff on this committee, who should be afraid of those facts.

Senator HUNT. Mr. Chairman, I think you are quite right in your position that this is a matter, of course, that we should discuss with the full subcommittee, and then we should follow that up with a discussion with the full committee over this rather unusual, I would say, suggestion.

Very frankly, the junior Senator from Wyoming does not want to set aside his own judgment for a mechanical machine, especially if any drug of any kind, in any way, is connected with the lie-detector test.

I think it is a matter we should take up with the subcommittee and then with the full committee.

Senator BALDWIN. I think the Senator from Wisconsin has made the suggestion, and most certainly we would do that.

I had hoped out of these hearings would come some recommendations for handling a matter of this kind in the future that would be helpful. That was our main purpose.

I might, incidentally, say that another one of our main purposes here was to demonstrate to the world that American justice is to be administered thoroughly and impartially, and if it has not been, we would like to find that out in every way that is available to us. But I do not think that it is within the province of the two members of the subcom-

mittee here now to say that we are to decide at this moment to follow the suggestion of the Senator from Wisconsin.

I think this is a matter that ought to be brought to the attention, ought to be discussed fully by the subcommittee, and then a report made to the whole committee, and let that committee determine what should be done about it.

My own personal opinion is that whether or not these tests are carried out, that in the interest of following the full procedure here to get such information as we can about the conduct of this trial and investigation and prosecution, it is only fair to give the witnesses who are concerned with it an opportunity to appear under oath and testify.

It would seem to me that whether or not the lie detector was used on these three men or any others, that in the interests of developing the right kind of procedure for the future—and God grant that we do not have to use it again—that we ought to go ahead with these hearings and examine these witnesses.

As I say, the Senator from Wisconsin has suggested the names of witnesses. They have all been called. He has had the opportunity to examine them and cross-examine them at great length. And he has made available to him the full facilities of the committee staff and every document that we have in connection with it.

He has been given the opportunity to make any suggestions concerning the conduct of this investigation that he wants to make, and this is one of them.

However, the responsibility of this subcommittee is a responsibility to the full committee, and, incidentally, to the whole Senate, because there are many questions involved here that go, I think, beyond it. There is much more to be gained here than the determination of whether or not these men got a fair trial. None of them have been, to date, executed, and the Secretary of the Army, when he was here 2 weeks ago, said that in the light of this investigation, they were going to hold up execution of sentences on the six who were still under that sentence.

Senator McCARTHY. Mr. Chairman, about 2 months ago, my Expenditures Committee, the Special Investigation Subcommittee, had brought to its attention many of these claims of brutality on the part of this man and Thon and Steiner and Kirschbaum. We felt that was doing a tremendous amount of damage to American prestige over in Europe.

We are wasting a lot of money trying to sell American democracy or the American system of justice when people as a whole are led to believe we employed tactics much worse than the Russians.

At that time we called the Armed Services Committee—I think this is important, and I want it in the record. We called the Armed Services Committee and asked the Armed Services Committee whether they were planning on making an investigation. They said “No,” they were not.

We told them in view of the fact we had conducted the investigation in the Ilse Koch case, we thought we should go ahead and conduct this investigation.

Our subcommittee was unanimous. Seven unanimous we should make this investigation.

Before doing so, we decided we would contact the Judiciary Committee and the Armed Services chairman. We did that. The Armed

Services chairman objected to our proceeding with our investigation. And certain of the men over in the Pentagon objected also to the investigation, that the Armed Services Committee had jurisdiction.

While discussing this and discussing the possibility of a resolution to have a joint investigation by the Judiciary, Armed Services, and Expenditures Committees, the chairman of the Armed Services Committee, without notifying the Expenditures Committee, appointed a subcommittee to investigate this matter.

I thought at that time, and I still think, that that was very unwise. It indicated to me and to many of us that the Armed Services Committee was afraid to have an impartial investigation conducted by our Expenditures Committee, that they wanted to whitewash the Army.

When the Armed Services Committee, contrary to precedent, instead of appointing one of the majority, a Democrat, in charge of this subcommittee, deviated, as far as I know, for the first time during this session, and appointed a Republican as a chairman of the subcommittee, I wondered why.

I have unlimited respect for the Senator from Connecticut. I was very disturbed when I found that the chairman of the subcommittee was the law partner of one of the men who was in charge of the Malmedy trials.

I felt for his own benefit a Senator who is as outstanding as the chairman from Connecticut should not sit as chairman of this subcommittee. I felt he should take no part in it.

All along I have had the feeling that the Armed Services Subcommittee was interested in protecting the men charged with wrongdoing; that they were not interested in getting the facts.

Today when I find the junior Senator from Wyoming and the Senator from Connecticut very obviously afraid of the results of a lie-detector test, I can only conclude that I have confirmed all of the things that disturbed me greatly all along, and that was that this committee is not concerned with getting the facts, Mr. Chairman.

Senator BALDWIN. Well, let me say for the benefit of the record again, that when this question was first raised by the Council for Prevention of War, by Mr. Libby, the Senator from Connecticut laid the whole matter before the Armed Services Committee and offered then and there to withdraw as the chairman.

Senator MCCARTHY. That is what he should have done.

Senator BALDWIN. And the Armed Service Committee discussed it and said that they thought the Senator from Connecticut could proceed with the thing in a perfectly honest and forthright way, and the chairman of the committee, the junior Senator from Connecticut, went on to do that, and has offered every facility to the Senator from Wisconsin in connection with the whole matter.

The Senator from Connecticut at the time Mr. Fanton was on the stand withdrew and asked one of the other members of the committee to conduct the questions. And on one afternoon in part of Mr. Fanton's testimony, when the other two members of the subcommittee were busily engaged elsewhere, I asked the Senator from Wisconsin if he had any objection if I occupied the chair for the continuance of the cross-examination, and he said he had none.

All the junior Senator from Connecticut can say is that he has tried in every possible way to make this a fair and impartial hearing and intends to continue to that end, and hopes that as a result of this

investigation we can develop some very helpful knowledge and experience to guide our conduct in the future. And this is an important matter.

Of course, if we are to depart at this juncture of the thing from what are the time-tested methods of dealing with a thing of this kind, that is a matter that I think requires some very careful study and very careful consideration at a higher level than this subcommittee, nor can they possibly make a final decision on it.

I am surprised at the Senator's charges as to the conduct of this hearing in the light of what he has said before concerning it, and in the light of the fact that he has had every opportunity himself to go into the thing very, very thoroughly, to have available all of the papers, and the assistance of the staff of the Armed Services Committee.

And I would submit the record to anyone to examine the conduct of the hearings so far to say whether or not the chairman, the junior Senator from Connecticut, or the other member of the committee, the junior Senator from Wyoming, has in any way tried to show any partiality in any way, shape, or manner.

Senator McCARTHY. I would like to ask a favor of the chairman now, if I may.

This witness, I know, will take at least more than today. I understand you have another witness here to put on this afternoon. I have a very important engagement at 1 o'clock. In view of the fact that we cannot finish with this man anyway, I would appreciate it very much if the Chair would put the other witness on and retain this witness.

I assume you are not having a hearing on Saturday, but we could have one Monday.

Senator BALDWIN. May I state for the benefit of the record: Not only on this occasion, but on many occasions I have tried and have, I think, acceded to the requests of the Senator from Wisconsin in every single way I could meet his convenience, even at great inconvenience to myself and Senator Hunt, the other member of the committee, and the staff, and the witnesses.

Under the circumstances, I suppose if the Senator from Wisconsin asks that courtesy, it is only fair to grant it. But we have got these witnesses here from a long distance, and I think this thing, myself, ought to proceed.

I had no knowledge until the Senator from Wisconsin made the statement today as to what he was going to propose in any way, shape, or manner at this juncture of the proceedings.

Senator McCARTHY. I might say, Mr. Chairman, one of the things that has made this extremely difficult for me, and extremely unpleasant, is that, as the chairman knows, I have a tremendous amount of admiration and considerable affection for the Senator from Connecticut. This is extremely difficult, but I feel I have no choice in the matter whatsoever. I think this matter is so all-important that we must get to the bottom of it.

As I say, I think it was unfair to the Senator from Connecticut to put him in this embarrassing position. That is neither here nor there.

I have appreciated tremendously the fact that the Chair has gone to some personal inconvenience to give me consideration. Last week,

when I was having my sinus infection treated, the Chair put off the hearings for several days, and I appreciate it tremendously.

As I say, one of the things that disturbs me very much is that I am in this position. It is difficult and unpleasant, but I have no choice whatsoever. No choice, I think, but to go through and attempt to get all of the facts, and I think we finally have arrived at a method whereby the people of this Nation and the world, if we use this method, will say, "Now, we know what the facts are."

Either those men have had an unfair trial and should get a new trial, or they are lying and the investigators acted properly, in which case we can forget about it.

As I say, and I did not mean to give that long dissertation, but I do appreciate the personal consideration the Chair has shown me.

Senator HUNT. Mr. Chairman, there is a matter on the floor I am in charge of, and I am going to have to be excused to take care of it.

Senator BALDWIN. All right.

Can you come here on Monday, Mr. Perl?

Mr. PERL. If I have to, sir, I will.

Senator BALDWIN. All right.

How are we set for 10 o'clock on Monday?

Mr. CHAMBERS. We can schedule a meeting for Monday morning and try to finish up with Mr. Perl. We do have another witness here from California who is a medical noncommissioned officer with the medical detachment at Schwabisch Hall.

Senator McCARTHY. May I ask the Chair whether he intends to decide between now and Monday whether or not he will have this man submit to a lie-detector test, in view of the fact he has agreed to it.

I realize we cannot force him, but he has agreed. I think it is a matter of the utmost importance, and I would like to know.

Senator BALDWIN. I intend to get the subcommittee together and discuss it with them, and then bring it up with the main committee at the very first possibility.

Senator McCARTHY. The chairman would not have any idea when that first possibility would be?

Senator BALDWIN. No; I do not know when the next meeting is.

Mr. CHAMBERS. It is Tuesday.

Senator BALDWIN. Tuesday morning is the next meeting of the committee.

Senator McCARTHY. Then we will have the decision Tuesday.

Mr. CHAMBERS. So far as other witnesses are concerned, if it is necessary to hold Mr. Perl over, of course, we can hold him as long as necessary. However, the other is earning a living on the west coast, and I am just wondering if we should schedule him along toward the middle of next week, or try to clean up on Monday, or what is the Chair's desire on that?

Senator McCARTHY. I might say, if the committee decides to use the lie-detector test, as far as I am concerned I do not want to examine him at all. I have so much confidence in the lie detector. I do not know of a single man who has ever beaten that lie-detector test. We have had a lot of experience. I am willing to rely upon that.

If the committee decides to use that, as far as I am concerned I have nothing further to ask this man.

I know if he consents to submit to it, then Thon and Kirschbaum will have no choice from their standpoint.

Senator BALDWIN. Do we have a witness for this afternoon, Mr. Chambers?

Mr. CHAMBERS. Yes; Unterseher.

Senator MCCARTHY. I think Mr. Chambers and Mr. Flanagan have been discussing that, and that is all right with me.

Senator BALDWIN. It will appear on the record then that you have no objection to that?

Senator MCCARTHY. That is right.

Senator BALDWIN. The committee will stand in recess until 2 o'clock.

(Whereupon, at 12:10 p. m., the subcommittee adjourned, to reconvene at 2 p. m., the same day.)

(The committee reconvened at 2 p. m.)

Senator BALDWIN. You are Mr. Unterseher?

Mr. UNTERSEHER. Yes, sir.

(The witness, Calvin George Unterseher, was thereupon sworn by Senator Baldwin.)

TESTIMONY OF CALVIN GEORGE UNTERSEHER, ARLINGTON, CALIF.

Senator BALDWIN. Will you give us your full name and address?

Mr. UNTERSEHER. Calvin George Unterseher, 4915 Strong Avenue, Arlington, Calif.

Mr. CHAMBERS. What is your present occupation?

Mr. UNTERSEHER. I am attending college.

Mr. CHAMBERS. During the war were you stationed in Europe or did you serve in Europe?

Mr. UNTERSEHER. Yes, sir; I did.

Mr. CHAMBERS. Did you have any connections with the so-called Malmedy investigations?

Mr. UNTERSEHER. Yes, sir.

Mr. CHAMBERS. Can you tell us what that connection was?

Mr. UNTERSEHER. I was one of the medical corps men attached to the War Crimes Branch.

Mr. CHAMBERS. At that time were you stationed at Schwabisch Hall?

Mr. UNTERSEHER. Yes, sir.

Mr. CHAMBERS. How long were you there?

Mr. UNTERSEHER. We arrived approximately the 14th of January, I believe, and we left when the prisoners were moved to Dachau, I think around the 20th of April.

Mr. CHAMBERS. During that time how many people were in your medical detachment?

Mr. UNTERSEHER. There were three of us: Sergeant Sykes, myself, and Captain Richter.

Mr. CHAMBERS. Was Captain or Major Karan there while you were there?

Mr. UNTERSEHER. I do not recall, sir.

Mr. CHAMBERS. He was either there before Captain Richter or after Captain Richter left. I was merely trying to tie it in.

Mr. UNTERSEHER. As a medical officer you mean?

Mr. CHAMBERS. Yes.

Mr. UNTERSEHER. He must have been there before.

Mr. CHAMBERS. What were your duties—what were the duties of the medical detachment as you understood them?

Mr. UNTERSEHER. When I arrived at the prison, Major Fanton was then presiding, and they had no set-up, no routine worked out as yet, for taking care of the prisoners. They had one of the detachment men, one of the medical corps men from the American unit, from the boys that were guarding, that would go over for any of the prisoners that requested medical attention, and he would go over and use their own medical supplies for the work. However, when I arrived with Major Fanton's permission we went to Stuttgart to the hospital we had taken over there and got such equipment and supplies as we thought would be necessary until the medical officer did arrive, and we set up a routine. Before we arrived the practice had been that if anyone wanted to see the medical corps man, he would leave his number with the men who gave their prisoners the records. They in turn would write the number on a slip of paper and present it to us in the morning. We usually arrived around 8 o'clock, or shortly after they finished picking up the breakfast dishes.

Then we would go to the individual cells and find out what their difficulty was, and try to alleviate it.

Mr. CHAMBERS. Let me see if I have this picture correctly. There were two enlisted and one commissioned personnel there?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. Were you available all the day round?

Mr. UNTERSEHER. Yes, sir.

Mr. CHAMBERS. So that there was somebody on watch all the day round?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. So your normal routine was each morning to take the slips or requests for medical attention after the morning chow was over, go into the cells and see if you could take care of it?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. Did you handle all types of medical cases?

Mr. UNTERSEHER. Yes, sir. Everything that came in the line of medical attention we took care of, including the dental care.

Mr. CHAMBERS. Before I get into the question of what kind of cases you handled: Did you people keep a record of what you did, so that you knew you treated a prisoner, perhaps, for a headache one time or for some other purpose?

Mr. UNTERSEHER. We did have a sort of a record that we kept. But I have forgotten what the officer's name was. One of the officers came around checking on our work there and I showed him our set-up, the way we were working the things out. I am not sure whether Captain Richter turned in these reports that we kept or not, for just such things as headaches and that sort of thing we did not make any notation.

However, when something came up that indicated possibly some greater trouble we kept records of that patient, and watched him, and if anything developed we would take him to the Army hospital at Stuttgart.

Mr. CHAMBERS. These records, when you left Schwabisch Hall to go to Dachau, or when the prisoners left there, do you know what happened to the records? Were they a permanent medical record which would still be available, or what happened to them?

Mr. UNTERSEHER. I am of the opinion that we gave the records to Captain Richter. We worked out a sheet by the week. I am of the

opinion that Captain Richter had them sent it, or whatever they do with them, I do not know, exactly.

Mr. CHAMBERS. Then we have established the fact that initially at least some record was made?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. And that we do not know as yet what the final disposition was?

Mr. UNTERSEHER. When you asked the question at first I did not remember exactly, but as I think it over, I remember that we definitely made out a list, I mean we kept a record of the ones treated, that it, for something aside from ABC's, and then at the end of the week we took this report and made out a sheet, and that was given to Captain Richter.

Mr. CHAMBERS. Then as I get the picture, you personally, probably would have a pretty good knowledge of any medical treatment that would be given to these prisoners while you were at Schwabisch Hall?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. Did you, during that time, treat people for injuries that might have been received as a result of mistreatment or harsh treatment on the part of the prosecution staff or the guards.

Mr. UNTERSEHER. There was no such treatment. No one complained to us, or told us that there were any injuries given, that they received any injury due to the handling of the interrogators.

Mr. CHAMBERS. You say no one complained to you. I do not want to appear to be pressing you too strongly, but we are very anxious to find out, if we can, whether in fact people did get pushed around, or slapped, or kneed in the groins, or had teeth knocked out, or anything of the kind.

Mr. UNTERSEHER. I did not mean by my statement to be ambiguous.

Mr. CHAMBERS. I want you to answer me definitely on this point: Were any of your people treated or taken to the dentist to have teeth replaced, or treated for having teeth knocked out?

Mr. UNTERSEHER. No, sir; no such thing.

Mr. CHAMBERS. Was anybody ever treated for bruises or aches and pains that could be tied in to mistreatment?

Mr. UNTERSEHER. Not that I know of. I would say "No."

Mr. CHAMBERS. Did the doctor, or did you ever have to treat a man for injury to his testicles?

Mr. UNTERSEHER. No.

Mr. CHAMBERS. Did some of these prisoners not require treatment which required them to be taken from Schwabisch Hall?

Mr. UNTERSEHER. That is correct.

Mr. CHAMBERS. Where did you take them?

Mr. UNTERSEHER. In such cases I remember two cases, in particular, one man had a severe abscess of the left lung, which required technical equipment in order to handle it. We took all such prisoners to Stuttgart, to our Army hospital at Stuttgart. Guards were taken along, and there was a 24-hour guard placed at their doors during such times.

Mr. CHAMBERS. Did the Malmedy prisoners have access to the dispensary which was kept in the prison for the benefit of the interns? In other words, as I understand it, there were two groups of prisoners in

Schwabisch Hall, and there was a medical dispensary which was run primarily by Germans.

Mr. UNTERSEHER. Yes.

Mr. CHAMBERS. Did they take the Malmedy prisoners to that group for treatment on occasion?

Mr. UNTERSEHER. We tried to eliminate that as much as possible. We took prisoners over there, and there were guards there, to see that no one conversed with them, aside from our own personnel.

Mr. CHAMBERS. Do you mean the Germans and you, or Sergeant Sykes?

Mr. UNTERSEHER. Sergeant Sykes, myself, Captain Richter, or the interrogation team. They were not to converse with any of the so-called political prisoners that were there.

Mr. CHAMBER. Did you have in your work, opportunity to know a German dentist by the name of Knorr?

Mr. UNTERSEHER. I just noticed his name in the records awhile ago. I have been trying to think of that name for weeks. That is right.

Mr. CHAMBERS. Did he treat the Malmedy prisoners?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS.. For normal dental caries?

Mr. UNTERSEHER. Yes.

Mr. CHAMBERS. When they were taken to Dr. Knorr, would you have known the reason why they were going to him?

Mr. UNTERSEHER. Yes, sir; I speak the language, and that is the reason why I found out what their needs were, along the dental line, and along the medical line. I think this was one reason I was sent there.

Mr. CHAMBERS. Are you aware of the fact that Dr. Knorr has placed an affidavit in the record of one of the many investigations of this case, stating that he treated a good number of these prisoners for teeth being knocked out, and in one case for a ruptured jaw?

Mr. UNTERSEHER. No, sir; I am not aware of it.

Mr. CHAMBERS. I do not believe it is necessary to read it back into the record. It is all right to make that statement?

Mr. FLANAGAN. The record shows it.

Mr. CHAMBERS. Would you have known if Dr. Knorr had treated people for those complaints?

Mr. UNTERSEHER. The only condition under which these prisoners could have had dental treatment by Dr. Knorr was under the condition that I was personally there and saw to it that there was no conversation carried on aside from what was necessary for their dental care. I was there at all times when any medical attention was given. I took the prisoners down there myself and returned them to the cell.

Mr. CHAMBERS. Again perhaps I worded my question improperly. That is not responsive to what I am trying to get. These prisoners, who went over there, irrespective of what they may or may not have said to Dr. Knorr, were any of them being treated for teeth that were knocked out?

Mr. UNTERSEHER. No, sir.

Mr. CHAMBERS. They were just normal dental complaints?

Mr. UNTERSEHER. Normal dental complaints.

Mr. CHAMBERS. How about the ruptured jaw? Do you have knowledge of that?

Mr. UNTERSEHER. The only knowledge I have is an article in Time magazine. I have never heard of it before. And I do not know how he—the dentist—would have been able to ascertain that unless he had taken an X-ray, and there was no equipment for an X-ray there.

Mr. CHAMBERS. I believe his affidavit said he rigged up a splint for it.

Mr. UNTERSEHER. That is definitely not so. Not so long as I was there, and I was there from January until the trial ended.

Mr. CHAMBERS. During your tour of duty there you had occasion, then, to see many of these prisoners?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. I wonder if you would care to tell us about their general appearance, physically, and whether they were properly clothed, and did they complain about being cold at night, and the general story of how they were treated as you saw it?

Mr. UNTERSEHER. I might mention, in the beginning, when we arrived there was a local epidemic which had broken out. I am not sure exactly what it was. But Sergeant Sykes and I immunized every one of the prisoners of the Malmedy massacre that were held for the Malmedy massacre at that time. Roughly 420 men.

At that time we saw every one of the prisoners. That was our first week there. And generally speaking, aside from those that had had injuries from their military service, I think they were properly clothed, they had sufficient clothing to keep warm, and as to the cells, the cells were clean, and the cell blocks, the buildings, were always kept very clean.

The cells, as you know, consisted, of course, of nothing aside from their bunks, the lavatory, and, of course, their mattress and blankets. They had no reading material, which you know of. As to the food, I think my general opinion is that they had sufficient to eat, in fact, I am quite sure of that, because had they not have, they would have let me know. Anybody speaking their language, they are usually plenty anxious to tell what they figure should get to headquarters.

Mr. CHAMBERS. You did converse with the prisoners rather freely and generally?

Mr. UNTERSEHER. No. I tried to keep away from it as much as possible. I tried to limit my conversation to their needs as such.

Mr. CHAMBERS. Do you feel that if they had been mistreated, or were were not being fed properly, or were not getting adequate water to drink, that they might have told you about it?

Mr. UNTERSEHER. I am sure that they would have.

Mr. CHAMBERS. There are numerous statements in the affidavits that the only drinking water they had was from the toilets in the cells.

Mr. UNTERSEHER. I do not know about that. They were given all the water they wanted to drink with their meals; I know that for certain. Between meals I am not sure.

Mr. CHAMBERS. There is one other point on which I wish you would tax your memory a little bit. You must have associated with the prosecution staff and heard them comment from time to time on the way they were conducting interrogations and getting confessions, and so on.

Did you hear any of these people, either laughing, kidding, or joking about the way they tricked this man, or had gotten a confession out of some other man?

Mr. UNTERSEHER. I might state that we did not live with the other personnel of the War Crimes Branch. We were in a separate group. In fact, when we arrived we just temporarily bunked with the first sergeant of the company, the Six Hundred and Thirty-third Tank Destroyers.

So we came in contact with them only, except for Captain Richter, only occasionally. But aside from that, I was not with the other members of the group much.

Once in a great while we might have lunch with them or something of that nature.

Mr. CHAMBERS. During those occasions did you hear—

Mr. UNTERSEHER. Not to my knowledge. I did not want to be intruding, so I did not generally enter into their conversations. I kept more or less to myself—Stanley and myself. We both followed that plan.

Mr. CHAMBERS. Did you not ever hear any of them comment on the way they tricked these boys into giving confessions?

Mr. UNTERSEHER. Not in that respect. Yes; I heard them speaking about important individuals, to the effect that they had an important man, and that things were shaping up in their favor, and so forth, things of that nature. But I would limit my remarks along that line to that.

Mr. CHAMBERS. Did you know a medical student who worked in the dispensary that handled the civilian internees by the name of Schnell?

Mr. UNTERSEHER. I noticed his name mentioned in the interrogation of Mr. Kean. Is he the individual who had one arm off, or the hand? It seems to me that that is the one. One of his hands was off, and he was awaiting some new device, some artificial hand device. I think that is the man you have reference to.

Mr. CHAMBERS. Did you ever talk to him or have any contact with him?

Mr. UNTERSEHER. Yes. He was always hanging around in the dispensary, in the prison dispensary. When I would go over to take these prisoners over for their dental care, or whenever I visited the patients that we had there, he was usually around. If I put it bluntly, he was a rather nosey individual.

Mr. CHAMBERS. Did he have an opportunity to talk to the so-called Malmedy prisoners?

Mr. UNTERSEHER. No, sir; he did not. At least not as long as I was around. Not to my knowledge. I am quite sure that that is the man.

Mr. CHAMBERS. He would have had opportunity, however, to see the Malmedy prisoners, and see the way the guards treated them, and so on. Is that correct?

Mr. UNTERSEHER. Yes; he would have had that liberty.

Senator BALDWIN. Was he a German?

Mr. UNTERSEHER. Yes. Well, he spoke the German language. I think he was an Austrian, if I am not mistaken. But it is the same equivalent.

Mr. CHAMBERS. He, in his affidavit, made reference to one of the patients who had an injury to the upper jaw. Do you have any knowledge of a man who had an injury to the upper jaw?

Mr. UNTERSEHER. No, sir; I have not.

Mr. CHAMBERS. Did Schnell ever talk to you about the way the interrogation staff was handling these prisoners?

Mr. UNTERSEHER. No. I noticed that he had a habit, however, of trying to wheedle information. Due to that fact, I tended to put up a barrier against any of his comments.

Mr. CHAMBERS. I will read you one paragraph from his affidavit, which I think is complete in itself, in which he says:

The private dentist, Dr. Edward Knorr, Schwabisch Hall, was consulted for treatment of numerous jaw injuries. I thereby had the opportunity to examine the afore-mentioned hoods more closely on various occasions. In five to six cases, I ascertained beyond any doubt that there were blood clots sticking to the inside, in two cases I found skin fragments, and in one case a part of a tooth; and a nauseating smell emerged from these hoods.

Did he work with Dr. Knorr?

Mr. UNTERSEHER. No; he did not work with him at all. He just stood around, mainly.

Mr. CHAMBERS. Did he have an opportunity to examine these hoods while Dr. Knorr was working on the prisoners?

Mr. UNTERSEHER. He could have had. However, the hoods that were on these various individuals were put on them by me, and I surely would not have used a hood of that nature.

Mr. CHAMBERS. Were there hoods of that nature there?

Mr. UNTERSEHER. Not to my knowledge, there was not.

Mr. CHAMBERS. Did you ever see blood on a hood?

Mr. UNTERSEHER. I think on one occasion there was blood on a hood from one of the patients who had acquired a nosebleed. That is what I heard, that he acquired a nosebleed en route to the prison.

Aside from that, that was the only hood that I know of that had any blood on it.

Mr. CHAMBERS. Did you ever see hoods that might have had skin fragments attached to them, or that smelled bad?

Mr. UNTERSEHER. No, sir.

Mr. CHAMBERS. Let us come back to this nosebleed case. Do you recall who that prisoner was?

Mr. UNTERSEHER. No, sir.

Mr. CHAMBERS. Who told you it was a nosebleed?

Mr. UNTERSEHER. I do not remember who it was that I had asked about it. I just made mention of it casually, and was told one of the prisoners had had a nosebleed.

Mr. CHAMBERS. I cannot find reference to whether Schnell had only one arm.

Mr. UNTERSEHER. I think he was in there. He seemed to think he was in line for the medical profession.

Mr. CHAMBERS. Was he not, in fact, a medical student?

Mr. UNTERSEHER. He alleged that he was, at least. I would not be sure.

Mr. CHAMBERS. You were there at the prison at the time they withdrew the tank destroyer outfit and substituted Polish guards?

Mr. UNTERSEHER. That is correct.

Mr. CHAMBERS. Did you have an opportunity to observe either our American guards or the Polish guards handling the prisoners?

Mr. UNTERSEHER. Yes; I had that opportunity.

Mr. CHAMBERS. Did you ever see any evidence of the American guards mistreating or mishandling prisoners?

Mr. UNTERSEHER. No, sir; I did not.

Mr. CHAMBERS. Letting them fall downstairs or shoving them downstairs, or something of that kind?

Mr. UNTERSEHER. No.

Mr. CHAMBERS. Did you ever see the Polish guards, or any evidence of the Polish guards, mistreating or kicking or shoving the prisoners?

Mr. UNTERSEHER. I believe that shortly after the Polish guards arrived they had a tendency to take quite a bit of authority in commanding the prisoners about it. But that was very short-lived.

Mr. CHAMBERS. Why was it short-lived? What steps were taken to control it?

Mr. UNTERSEHER. I do not know whether it was Colonel Ellis or who gave the orders not to do anything except just bring them to and from the cells. I did not know that, but I know that they changed their way about treating them.

Mr. CHAMBERS. I have no further questions at the present time.

Mr. FLANAGAN. So that the record will be completely clear on this point, exactly how many places in Schwabisch Hall were there where the Malmedy prisoners could receive medical attention?

Mr. UNTERSEHER. Well, at Schwabisch Hall they had a local hospital there. But we never took any of them to that hospital. Prisoners were always taken to our Army hospital at Stuttgart, in case they had to be taken outside of the prison.

Mr. FLANAGAN. How many places at Schwabisch Hall were there where prisoners could receive any kind of medical treatment, such as the type that you gave them, for one?

Mr. UNTERSEHER. I would not know that.

Mr. FLANAGAN. For one, there was that clinic, or whatever it was, the dispensary operated by yourself and another sergeant.

Mr. UNTERSEHER. Yes; aside from that, on the prison ground there was the regular prison dispensary. We used that freely, for anything we needed it for.

Mr. FLANAGAN. And the prison dispensary was operated by—

Mr. UNTERSEHER. By one of the doctors who was a prisoner.

Mr. FLANAGAN. By Germans?

Mr. UNTERSEHER. By Germans; yes, sir.

Mr. FLANAGAN. In the event that one of the Malmedy prisoners would be taken to the dispensary operated by the Germans, would he be accompanied by an American guard?

Mr. UNTERSEHER. By either an American guard or by myself.

Mr. FLANAGAN. On how many occasions did you take Malmedy prisoners to the German dispensary at Schwabisch Hall?

Mr. UNTERSEHER. The thing is this: We kept prisoners over there. They had regular ward cells in the dispensary, and if a prisoner needed treatment, such as hot-water bottles or something of that nature, we kept them over there, and we went over to the German dispensary and treated them there. It was just rarely that the German doctor had anything to do with these men.

Mr. FLANAGAN. In what cases would the German doctor take care of the treatment of these men?

Mr. UNTERSEHER. I am not sure, but I would say maybe twice that some emergency arose.

One of these occasions was when one man had hanged himself. They called him because he was the closest man to the cell block. I do not remember of any other occasions when he was called.

Mr. FLANAGAN. Some Malmedy prisoners were taken to the German dispensary by guards other than yourself?

Mr. UNTERSEHER. No; I would say no to that question.

Mr. FLANAGAN. Did you take every prisoner over or did you not?

Mr. UNTERSEHER. Any prisoner that needed medical attention I took over there, either Stanley Sykes or myself.

Mr. FLANAGAN. A little while ago you said either you took them or one of the guards took them. Now, you say either you took them or Sykes took them.

Mr. UNTERSEHER. I am sorry. I meant for dental attention.

Mr. FLANAGAN. I am not talking about dental attention. I am talking about any kind of medical attention.

Mr. UNTERSEHER. Any of the medical personnel, Sergeant Sykes, Captain Richter, or myself. I don't believe Captain Richter ever did.

Mr. FLANAGAN. Would it be fair to say that when a Malmedy prisoner was taken to the German dispensary that he was accompanied either by yourself, Sergeant Sykes, or Richter?

Mr. UNTERSEHER. That is correct.

Mr. FLANAGAN. Were there ever any occasions when Malmedy prisoners were taken to the German dispensary merely by one or two of the guards?

Mr. UNTERSEHER. Not that I recall.

Mr. FLANAGAN. Where was Dr. Knorr's office, where you treated these patients in the prison?

Mr. UNTERSEHER. In the German dispensary.

Mr. FLANAGAN. I suppose the same procedure was followed when patients were taken to Dr. Knorr?

Mr. UNTERSEHER. Yes; that is right.

Mr. FLANAGAN. That either you or Sykes or Richter would accompany the prisoner?

Mr. UNTERSEHER. Right.

Mr. FLANAGAN. Do I understand it rightly now, that the more serious cases would be taken to the American hospital at Stuttgart?

Mr. UNTERSEHER. That is right.

Mr. FLANAGAN. Who would take the prisoners from Schwabisch Hall to Stuttgart?

Mr. UNTERSEHER. Either Sergeant Sykes or myself, and Captain Richter.

Mr. FLANAGAN. Do you recall how many prisoners you took there?

Mr. UNTERSEHER. I am not sure. We took some and had to return them. There were numerous trips. However, I think there were four.

Mr. FLANAGAN. About four that you know of?

Mr. UNTERSEHER. Four, and I am quite sure.

Mr. FLANAGAN. What was the name of that hospital?

Mr. UNTERSEHER. I was trying to think of it all the way along, and I cannot remember what the name of it was.

Mr. FLANAGAN. Was Dr. Knorr at the Schwabisch Hall before you got there?

Mr. UNTERSEHER. He was treating political prisoners prior to the time that I arrived; yes.

Mr. FLANAGAN. Was he treating any Malmedy prisoners at all before you got there?

Mr. UNTERSEHER. No, sir.

Mr. FLANAGAN. How do you know that?

Mr. UNTERSEHER. Because I personally received permission from Colonel Ellis to have them receive this dental attention.

Mr. FLANAGAN. Prior to your coming to the Schwabisch Hall, where did these prisoners get their dental attention that they might need?

Mr. UNTERSEHER. That I do not know, sir.

Mr. FLANAGAN. Did you ever inquire as to whether they had been receiving any dental attention up to that time?

Mr. UNTERSEHER. No. When several of them complained about having teeth that were giving them trouble I went and asked the colonel concerning what should be done with them. And I knew, of course, of this dentist that was coming in, and I got his permission to take them down there, providing I was there.

Mr. FLANAGAN. What dentist? I did not get that. You knew about what dentist coming in where?

Mr. UNTERSEHER. About Dr. Knorr coming in to the prison.

Mr. FLANAGAN. Did you not say that Knorr was there before you got there?

Mr. UNTERSEHER. Yes, sir, he was. I believe he was treating—had been treating those prisoners right along, but political prisoners, not Malmedy prisoners.

Mr. FLANAGAN. You heard he had been?

Mr. UNTERSEHER. I knew he was treating political prisoners, and therefore asked permission to take our prisoners there, too. The only other place we had to take our prisoners would have been to the dental clinic at Backnang, and on one occasion we took a man there to have his plate repaired.

Mr. FLANAGAN. You mentioned here that apparently some of the Polish guards were possibly mistreating the prisoners or at least getting out of line with them, and for that reason some action was taken against the Polish guards to prevent them from doing that in the future. Is that correct?

Mr. UNTERSEHER. Do you want me to enlarge on that?

Mr. FLANAGAN. Yes.

Mr. UNTERSEHER. They were rather rough in giving their orders, and so forth. That any prisoners were injured by them, I do not know of anything like that.

Mr. FLANAGAN. On what occasion would a Polish guard have to give an order, or direct prisoners?

Mr. UNTERSEHER. Just taking them from one place to another, among the cells.

Mr. FLANAGAN. What do you mean, taking them from one place to another? From where to where?

Mr. UNTERSEHER. Maybe I am getting mixed up. If I remember correctly, I believe that they took some of the prisoners over to the cell block for interrogation. I am not sure about that.

Mr. FLANAGAN. In other words, you believe that Polish guards took prisoners from the regular living cells to the interrogation center?

Mr. UNTERSEHER. Yes. I believe so. I am not certain of that statement.

Mr. FLANAGAN. Did you ever see any Polish guards accompanying prisoners?

Mr. UNTERSEHER. I think that I have. It sounds peculiar that a person would not know a thing like that, but just walking around, being there, we never thought we would have to give an account of these things.

Mr. FLANAGAN. Did you ever recall seeing any Polish guards anywhere among the Malmedy prisoners, walking along with the Malmedy prisoners, alone?

Mr. UNTERSEHER. I would hate to say "Yes," absolutely "Yes" or "No," because I am not certain any more now, when a question is put "Yes" or "No," whether they did or not.

Mr. FLANAGAN. Of course, the question arises immediately, how could they mistreat the men if they were not taking them from place to place?

Mr. UNTERSEHER. In the cell block, for instance, they would go along and look into the little peepholes, and if the prisoners were not all standing or doing what they wanted them to do, they would pound on the doors; things of that nature.

Mr. FLANAGAN. You think you have seen Polish guards escorting prisoners around, but you are not too sure of it?

Mr. UNTERSEHER. I am of the opinion that they did.

Mr. FLANAGAN. You are of the opinion that they did?

Mr. UNTERSEHER. Yes, sir.

Mr. FLANAGAN. And on those occasions they would not have any American guards with them, just the Polish guards?

Mr. UNTERSEHER. That is right.

Mr. FLANAGAN. Did you ever hear of these mock trials that were being carried on over there?

Mr. UNTERSEHER. No, sir. That was news to me.

Mr. FLANAGAN. You never heard of that before?

Mr. UNTERSEHER. Never heard of it.

Mr. FLANAGAN. Did you hear of any rumors, I mean any rumors that prisoners were being mistreated, or that duress was being used upon them, in connection with this inquiry?

Mr. UNTERSEHER. No, sir. I would make this comment on that: I should say that the interrogation was being conducted in such a way that they were crossing themselves up by giving one another away. That would be the extent of my comment on that.

Mr. FLANAGAN. And that is all you heard?

Mr. UNTERSEHER. Yes. That is the extent of my knowledge.

Mr. FLANAGAN. You never heard that they were being subjected to any physical or other types of duress?

Mr. UNTERSEHER. No, sir; I did not.

Mr. FLANAGAN. I have no other questions.

Mr. CHAMBERS. I have just one or two questions that occurred to me when Mr. Flanagan started questioning.

This business of Polish guards, did they not replace the American guards?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. In other words, Polish guards and American guards were not present at the same time, with the possible exception of some of the senior noncommissioned officers and some of the officers who were retained at Schwabisch Hall after the Polish guards arrived. Is that correct?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. So it would have been impossible for Polish guards and American guards to have been there together?

Mr. UNTERSEHER. I believe we paralleled for a short time, until we got the hang of the situation as to how they were to proceed.

Mr. FLANAGAN. May I ask a question?

Mr. CHAMBERS. Surely.

Mr. FLANAGAN. If that is the case, then there must have been a time, if the prisoners were taken from the regular cells to the interrogation block, they would have to be taken by Polish guards.

Mr. UNTERSEHER. That is true. You could deduct it that way.

Mr. CHAMBERS. The question is did you see them. You were not certain in your own mind?

Mr. UNTERSEHER. I am not certain any more. I do not remember accurately, for an accurate statement.

Mr. CHAMBERS. I think it would be fair to say, however, that you probably, in the course of your duties, saw prisoners being moved after the Polish guards took over.

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. Did you see any of those guards roughly handle, or mistreat, or shout at, or otherwise mishandle the prisoners?

Mr. UNTERSEHER. Only to the extent that they hollered at the prisoners, there was no other mistreatment that I know of.

Mr. CHAMBERS. A while ago you mentioned that you got permission from Colonel Ellis to have the dental matters treated by Dr. Knorr.

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. Was that Colonel Ellis or Major Fanton?

Mr. UNTERSEHER. I believe it was Colonel Ellis. I am not certain, but we did not take them over for dental care immediately after we got there. We did not start that until some time later. I am of the opinion that Colonel Ellis was there already, at that time.

Mr. CHAMBERS. One other question, to help clear up a point that I am not straight on in my own mind, and that is: Where was Colonel Peiper quartered? From time to time there was some indication that he was kept in a hospital, or something, or a room in the hospital.

Mr. UNTERSEHER. I will be glad to give you that information. He was kept in the dispensary cell block, in these ward cells that I mentioned before, into which we took the prisoners—I mean the patients, on occasion, in the prison.

Mr. CHAMBERS. Was he receiving medical care or treatment?

Mr. UNTERSEHER. No, he was not. It was just a nicer cell than the other. I believe he had a typewriter—I think he had access to a typewriter—and a desk in there, and other liberties that the regular run did not have.

Then, after this individual hanged himself, the prisoners that were considered important to the case were put on one level, one floor, and

guards kept a closer check on those, so that a thing of that nature should not happen again.

That was when he was moved to the regular cell block.

Mr. CHAMBERS. You say that Colonel Piper was in the dispensary ward cell block?

Mr. UNTERSEHER. Yes.

Mr. CHAMBERS. That he was allowed to have a desk. Did he have reading material?

Mr. UNTERSEHER. I never had occasion to enter his cell. He usually sat with his back to the door, and though I looked in on occasion, that is all I ever did see of him, was his back.

Mr. CHAMBERS. Did you see a typewriter in there?

Mr. UNTERSEHER. I am rather sure—I am quite sure—that he had access to a typewriter. I know he had writing material.

I did not see the typewriter myself, but that is from information that I got from somebody else, that said that he had access to a typewriter.

Mr. CHAMBERS. I do not presume you are in position—you are not the proper person to be asked this question—did you ever conjecture in your own mind why Colonel Piper had a better room than the rest and there were at least two generals in the other group that apparently were kept with the ordinary run of prisoners?

Mr. UNTERSEHER. I was not aware that there were other generals there, except for General Dietrich.

Mr. CHAMBERS. I have no more questions.

Senator BALDWIN. Do you have any?

Mr. FLANAGAN. No, sir.

Mr. UNTERSEHER. Shall I go on with that statement or drop it?

Senator BALDWIN. Do you have anything further to say?

Mr. UNTERSEHER. I was going to say, the reason they gave him preference was because he was considered a high-ranking officer. I knew of only one other officer, who was a major. I do not remember his name. He was kept in the other cell block.

But as to the generals, I did not know that.

Mr. HATCHER. Where did you learn to speak German?

Mr. UNTERSEHER. My parents are of German origin.

Mr. HATCHER. You were born in this country?

Mr. UNTERSEHER. Yes, sir.

Senator BALDWIN. You say you are a student now?

Mr. UNTERSEHER. Yes, sir.

Senator BALDWIN. In what college?

Mr. UNTERSEHER. La Sierra College.

Senator BALDWIN. What are you studying—medicine?

Mr. UNTERSEHER. No, sir. I am majoring in German, and minoring in English and woodworking.

Senator BALDWIN. When did you go in the Army?

Mr. UNTERSEHER. November 13, 1943.

Senator BALDWIN. How old were you at that time?

Mr. UNTERSEHER. Nineteen—wait a minute. Eighteen.

Senator BALDWIN. Did you then go overseas?

Mr. UNTERSEHER. I spent my time in basic training, then had 3 months of technician's training at Fitzsimons General Hospital, after which I was sent overseas.

Senator BALDWIN. On what front did you serve?

Mr. UNTERSEHER. I was with the One Hundred and Eighty-ninth General Hospital. We were at first in Lison, France, and then moved later near Rheims, Mourmelon, Le Grande, and from there I was sent to Germany.

Senator BALDWIN. Was there any other medical service, other than what you described here, the American medical service, provided for the Malmedy war-prisoners?

Mr. UNTERSEHER. No, sir. That was the extent of it.

Senator BALDWIN. Was it possible for a prisoner to make complaint at any time concerning his medical condition?

Mr. UNTERSEHER. That is right.

Senator BALDWIN. And you have described the procedure for doing it here?

Mr. UNTERSEHER. Yes, sir.

Senator BALDWIN. Were there any times in the middle of the night when a prisoner asked for medical attention, that you recall?

Mr. UNTERSEHER. I believe there were just two occasions, I believe, when the guard came over and got us.

One of these occasions was when this man hanged himself. We were summoned then, and also Captain Richter.

Of course, several of these individuals had to have heat treatments, hot-water bottles, and that sort of thing. We would check on them routinely during the day, and until 9 o'clock at night.

Senator BALDWIN. What would they have to have the heat treatments for?

Mr. UNTERSEHER. For swelling, or something of that nature. A number of them had sores, old wounds, that had never healed properly, possibly due to some bone infection, and occasionally they would become inflamed and we had to give them treatment for that sort of thing.

Senator BALDWIN. During the time that you were there, did you ever render any emergency treatment to any prisoner for an injury of any kind? I mean were you ever called to treat a particular injury?

Mr. UNTERSEHER. No, sir; we were not.

Senator BALDWIN. Were you ever called to treat any case of loss of consciousness, or anything of that kind?

Mr. UNTERSEHER. No, sir; not while we were there.

Senator BALDWIN. What, mostly, was the nature of the medical care that you gave while you were there?

Mr. UNTERSEHER. It generally consisted of primarily indigestion or something of that kind, diarrhea, headaches; that was the main thing. Once in a while we would have someone with a skin irritation or something, and we would give them a salve for it—just common ailments along that line, except for a few of the cases that I have mentioned already, the one being the man with the abscessed lung, and such.

Senator BALDWIN. Do you know of any time that any prisoner, any of these Malmedy prisoners, was injured in a way that required, or in a way that asked for, medical attention, that was injured by any of the guards, whoever it might be?

Mr. UNTERSEHER. I can make a flat statement concerning the whole thing in that respect: Never, at any one time, were we summoned to treat a prisoner that had been mistreated in any way for any injury at all. Never gave any such treatment at all.

Senator BALDWIN. You mentioned this bloody nose. Do you know anything about that?

Mr. UNTERSEHER. That was the extent of my knowledge about that. Just the fact that he had received a bloody nose, that he had a bloody nose. Whether it was spontaneous or otherwise I do not know.

Senator BALDWIN. Did you treat him for it?

Mr. UNTERSEHER. No.

Senator BALDWIN. You just account for that as to how the blood was on one of the hoods?

Mr. UNTERSEHER. That is right.

Senator BALDWIN. Do you have any further questions?

Mr. FLANAGAN. No, sir.

Senator BALDWIN. Mr. Chambers?

Mr. CHAMBERS. I would like to ask a question concerning bread-and-water punishment. Generally speaking, when a man is on bread and water, on military punishment, the doctor is supposed to keep a sharp eye on him.

Did you have occasion to keep an eye on Malmedy prisoners when they were on bread and water?

Mr. UNTERSEHER. I did not know that any of them were put on bread and water.

Mr. CHAMBERS. I have no more questions.

Senator BALDWIN. Thank you very much, Mr. Unterseher, for coming and helping us with your testimony.

Mr. UNTERSEHER. I do not know that it has been of any help, but I hope it has been.

Senator BALDWIN. It has been of great help to this record.

Mr. UNTERSEHER. Thank you.

Senator BALDWIN. The committee will go into executive session. The hearings are closed for the day.

We will reconvene at 10 o'clock Monday morning.

(Whereupon at 3 p. m., the hearing was recessed, to reconvene at 10 a. m., Monday, May 16, 1949.)

MALMEDY MASSACRE INVESTIGATION

MONDAY, MAY 16, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senator Baldwin (presiding).

Also present: Senator Joseph R. McCarthy; J. M. Chambers, of the committee staff; Howell J. Hatcher and Francis Flannagen, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; Colonel Murphy, Colonel Ellis, Colonel Raymond, and Lieutenant Colonel Dwinell.

Senator BALDWIN. The committee will be in order.

Senator Hunt has been called away and will not be here today. I tried to reach Senator Kefauver, and he has been called to Tennessee.

I had hoped that over the week end we could have a meeting of the subcommittee to consider this question of the use of the lie detector, but it has been impossible to get the committee together. I had hoped that we could come to a decision on that question before a meeting of the Armed Services Committee tomorrow. I did discuss the matter of the lie detector with others, and it was felt that it was not a matter that we could recommend to the full committee because, in our judgment, any number of witnesses have been before the subcommittee and if any one witness were submitted to that test it would be only fair that they all be submitted to the test. However, we will submit the matter to the Armed Services Committee tomorrow afternoon at 2 o'clock in executive session. The matter will, of course, be submitted to the full committee for their decision, at which representatives of State and the Army will be present, and which meeting has been called at the request of Senator McCarthy, and I hope that he will be with us then.

Do you have a letter from Mr. Larry, Senator McCarthy?

Senator MCCARTHY. I don't know, Senator; I have a great mass of letters here. Is he the lieutenant from Caracas, Brazil?

Senator BALDWIN. Yes.

Senator MCCARTHY. Yes.

Senator BALDWIN. Do you have any objection to my submitting his letter for the record, a copy of which I have received and which was originally addressed to you?

Senator MCCARTHY. I have no objection. I have examined the letter and have found certain portions of it are not accurate, and for that

reason, I do not think we can place any weight upon the letter as a whole.

For example, I may not have—

Senator BALDWIN. Wouldn't it be proper to submit the letter, and then you can offer such comment as you may desire as to the accuracy of the letter?

Senator McCARTHY. I simply want to call that to the committee's attention, and then if you desire to submit it, that is all right.

Senator BALDWIN. Very well. And then you can make such references to it as you desire.

Senator McCARTHY. All right.

Senator BALDWIN. I feel that, since this is a letter that comes from a man who is one of the few survivors of the Malmedy massacre, it is important, and a letter from a witness important as that properly should be a part of the record. Then, it may be proper to make such corrections orally as may be proper, as to the content of the letter.

Senator McCARTHY. I will withhold any further statements until after the reading of the letter.

Senator BALDWIN. This letter is addressed to the Honorable Joseph R. McCarthy, care of the Armed Services Committee, Washington, D. C.

(At this point, the letter from Virgil P. Lary was read and is as follows:)

TEXAS PETROLEUM CO.,
Caracas, Venezuela, May 10, 1949.

Hon. Senator JOSEPH R. McCARTHY,
Care of Armed Services Committee,
Washington, D. C.

DEAR SENATOR McCARTHY: This will be my second letter within the last 2 weeks to a member of the committee investigating the trial of the prisoners of war responsible for the Malmedy massacre.

It has come to my attention that there are certain statements being made that are completely untrue and unjust. These statements, if not corrected, will leave the impression with the committee that they are true, and thus influence your decision. I refer to the charges by Colonel Everett, of Atlanta, Ga., and the charges of Judge Van Roden.

May I have this opportunity to say that Colonel Everett has made charges that are absolutely untrue. I feel that if you use every means to obtain the truth you will find that what I say here is correct. Colonel Everett has charged that torture was used to obtain confessions, torture of varied means. These statements are without foundation other than the hearsay from SS prisoners after they had been sentenced. I have often wondered why Colonel Everett waited until the trial was over, and the entire court had gone home, to make his charges.

With your permission I will now say that I am the only officer to survive the massacre at Malmedy in December 1944. I returned with five other men to testify in the trials in 1946, therefore what I am about to say I say with the same oath that I took when I was commissioned in the United States Army.

Upon our return to Germany I was invited by Col. Bert F. Ellis to observe the conditions at the prison where the SS prisoners were retained. I took this opportunity to see for myself the conditions at the prison and found the following: There were two prisoners to a cell, each had a bed and sufficient covers, each cell had toilet facilities, each prisoner was given a razor blade with which to shave every morning and the food was superior to any that our troops received in combat. I personally observed a number of interrogations and saw only the most proper methods used. I heard Col. Bert Ellis warn his war crime teams that he would not tolerate any type of physical violence to the prisoners. I was a guest of war crime team for 1 month and many times went to the prison to see the methods used. At no time did I observe any violence used on a prisoner, no prisoner showed signs of violence to his person before or during the trial.

I talked with German Colonel Peiper, who was responsible for the final order to his men, and he told me that he had signed a full confession of the deed and that he alone was responsible for the order. He informed me that Colonel Ellis was to be commended for his treatment of himself and his men. This German officer spoke perfect English.

During my visit to the prison Colonel Everett arrived in Wiesbaden and was invited to view the prison by Colonel Ellis. This he refused to do and for this and the reasons I have brought out here, I feel that you are not being informed of the complete truth.

As to Judge Van Roden, unless he was the lieutenant colonel in charge of the engineers at Malmedy, his statement can also be questioned. As I am the only lieutenant to survive and get to Malmedy I am the only officer that could have possibly made any statement. When I got to Malmedy I informed the lieutenant colonel there that we had been machine-gunned and had also been left for dead. Those of us who were still alive, after the murders took place, jumped up and made a break for it. From this the judge may have formed his improper impression.

I was asked to testify in the trial and was happy to do so in 1946. At that time I spent 3 months in Germany. I would be happy again to give the complete truth to the committee but would not be able to spend more than 1 week away from my position with the Texas Co. This would mean that air transportation would have to be provided from Caracas to Washington.

I have taken the liberty of forwarding a copy of this letter to Lt. Col. Bert F. Ellis and Senator Baldwin.

Most respectfully yours,

VIRGIL P. LARY, JR., O-1181338,

First Lieutenant, Field Artillery, Army of the United States (Retired).

Senator BALDWIN. I might say that I have written to Lieutenant Lary as follows:

(At this point the reply to Lt. Virgil P. Lary by Senator Baldwin was read and is as follows:)

MAY 14, 1949.

1st Lt. VIRGIL P. LARY, JR., O1181338, F. A. AUS (Ret.),
% Texas Petroleum Co., Apartado No. 267,

Caracas, Venezuela, S. A.

MY DEAR LIEUTENANT: The copy of the letter which you have written to Senator McCarthy and forwarded to me has been received.

We have been making an extensive investigation of the methods and procedures used in questioning the Malmedy SS prisoners and the procedures and policies followed in the prosecution of these German troops for the Malmedy and other shootings.

I am sure that the committee would be very glad to have you appear as a witness. I am placing the matter in the hands of Colonel Chambers, Marine Corps, retired, who is the staff member of the Armed Services Committee who has this matter in charge. You will probably hear directly from him. I am sure that transportation can be arranged for you.

Thank you for your offer of service.

Yours very sincerely,

RAYMOND E. BALDWIN,
United States Senate.

Senator BALDWIN. I might say we ought to make every possible effort to get this man here, because he makes some statements which I think should properly be before the committee and he should be properly subject to cross-examination.

However, from the statements he makes in his letter here I think he possibly might have some very important information which should be on record here, and we should make every effort to get him here before us.

Senator McCARTHY. In view of the statement which Senator Baldwin put in the record that I should point out any patent falsehoods in the letter, or mistakes which appear therein, I should say that if this

young man were present at the Malmedy massacre, as he states, he would be a very competent witness to the fact of what occurred there.

But, as I said before, I do not think anyone questions the fact that there were a number of German soldiers who committed crimes and who certainly should be punished for them.

However, we are here investigating whether or not the Americans, principally the interrogation staff, were guilty of improprieties.

Now, this young man says:

What I am about to say I say with the same oath that I took when I entered the United States Army.

He later says he wants us to have the complete truth.

I will read a complete statement, which has been contradicted by every witness who has appeared before us here, that shows that either he does not know what he is talking about or that it is a deliberate falsehood; one or the other. He says:

There were two prisoners to every cell. Each had a bed and sufficient cover.

Now, it is unquestioned that there were some 50 prisoners in solitary at all times. So, he is wrong there, and further he says that Colonel Everett didn't bring the claims of torture in getting the confessions to the attention of anyone until after the judges, long after the judges, had gone home. That is untrue, as the Army ordered that investigation and it had been started prior to the commencement of the trial. So, while this man might be competent to testify as to what occurred at the Malmedy trials—

Senator BALDWIN. May I say, Senator—

Senator McCARTHY. He is not competent to testify whether or not Mr. Perl conducted himself properly, and he knows nothing about whether or not these other three men conducted themselves properly, that were guilty of the methods of torture, as has been claimed, if they are; otherwise, I have no objection to his coming here, so we can find out whether he will make the statement, "I am making this statement under the same oath," and so forth.

Senator BALDWIN. He wrote the letter to you; he did not write it to me.

Senator McCARTHY. I want to know where he says he is writing it under oath and then makes a statement that has been contradicted by every witness here. That shows that he apparently does not know what is going on at all.

Senator BALDWIN. Well, we can call him, and we can better judge after we have heard his testimony, as to how competent he is as a witness.

I think we are ready now for Lieutenant Perl to resume his testimony.

TESTIMONY OF WILLIAM R. PERL—Resumed

Mr. CHAMBERS. Lieutenant Perl was in the process of giving us the way this case was built up. He was anxious to tell a complete story without going into other developments before his testimony along this line has been completed. He would like to give his complete story before taking up cross-examination.

Senator BALDWIN. Is that satisfactory to you?

Senator McCARTHY. Yes.

Senator BALDWIN. Go ahead, Lieutenant Perl.

Mr. PERL. Thank you, Senator.

As I explained the last time, in getting a statement from Christ, in which he confirmed that he was ordered not to take prisoners, and how we succeeded, which is more important, by using a trick, to get information that a man, who was Private Weiss, told us that he had been present at other shootings.

If the committee recalls, the trick consisted of the fact that I told him that we had a mike in his room and could therefore hear every conversation which he had with his cell mate, a fact which was not true.

The next step was that we got Private Weis, and he proved to have, really, most valuable information. He told us, after we had told him that Christ had told us about this conversation and that we had a mike in the room—he told us that he knew of not less than three shootings, none of them involved in the main massacre at the crossroads, and here, for the first time, we learned that what is now called the Malmedy massacre was not the shooting of one bunch or 80 or 100 or 120 American prisoners of war but it consisted of perpetual shootings in the whole campaign, 5 on this corner, 3 a few days later, perhaps 20 at another place, and 20 at still another, and so on.

He told us of the following occurrences:

No. 1. A man by the name of Wichmann—

Senator BALDWIN. Let me ask you there: Who told you that?

Mr. PERL. Weis, the cell mate of Christ, of whom Christ had told us, "Yes; if you had a mike, I'll tell you." And he told us in the cell, his roommate Weis, that he was present at the shootings.

Now, Weis denied from the beginning that he committed any shootings himself, and we did not succeed in involving him in any kind of shootings, but he told us of the following three individual shootings:

No. 1, that a certain man called Wichmann, who was the supply sergeant in our company, which was the Headquarters Company of the First SS Panzer Regiment, came at a place called Petit Theirs in the first days of January to where our unit was stationed, and he borrowed a pistol and said he was going to shoot a prisoner of war, and then he came back and returned the pistol.

That was one case. He told us that he had shot a prisoner of war on orders of Colonel Peiper, because this prisoner was too weak and too exhausted to give any valuable information. He gave details of the shooting as committed by this Wichmann.

The second shooting of which we knew was at the crossroads. Weis claimed, and we didn't believe him at first but it was true, that his half track had passed the spot of the shooting after the main shooting at the crossroads had been over. He told us, and we, by corroborative evidence, found it to be true, that he arrived with his men, and most of the men were already dead—

Senator McCARTHY. Are you speaking now of what Weis told you?

Mr. PERL. Yes.

Senator McCARTHY. What was his first name?

Mr. PERL. I believe Jacob.

Senator McCARTHY. Was he the man finally convicted?

Mr. PERL. No, sir; he was not a defendant. We never succeeded in involving him.

Senator McCARTHY. I thought you said that he confessed to the shootings.

Mr. PERL. No, sir; you must have misunderstood. He told us that he knew of three shootings, but he was not involved in any of them.

Mr. CHAMBERS. He didn't say in his original testimony that Weis had confessed to any shootings, but that he told of witnesses the shooting of three.

Mr. PERL. The shootings of which he knew, at the cross roads. He told that his SPW, his half-track, according to the American terminology, had come to the cross roads shortly after the shootings, and that is when they passed by.

One of the men in his unit went into the field to look around at what was going on, and he saw another man whom he did not know but whom he described in detail, going into the field with other Germans. Other Germans at that time were in the field shooting those prisoners who might still be alive, who were still moving, and he saw another man in the field kicking, another German kicking, an American who had played dead. The American moved and got to his feet, and then this German ordered this American to take off his field jacket, take off his boots, and I believe his pants, too. Then he took his field jacket, his boots, and I believe his pants, and shot him, and returned, laughed to his comrades.

This Weis described the kind of tank. It was a Mark IV tank, and we know there was only one Mark IV company, and after a short time we located and found out which tank it was and soon we had three or four witnesses who, by the way, were produced at the trial and testified in the trial, German witnesses who knew this man and who had recognized him. It was Sergeant Huber, who is still under death sentence.

Senator McCARTHY. Was this Weis one of the men who was with a unit at the Malmedy cross roads?

Mr. PERL. Yes, sir; he was there shortly after the main shooting, maybe a half an hour later when the Germans were still in the field, but not those who had committed the first atrocities. They had left.

The new vehicles passing by saw many dead Americans laying in the field and they went into the field to loot them, take their watches and valuables off of them, and the Germans when they saw that someone was living they shot him.

That was the second shooting of which he knew.

The third shooting of which he knew was one at Stoumont. There he had been present. He saw there that Colonel Peiper, who speaks English absolutely fluently, interrogated an American prisoner, and he saw there that he then called a man of his, a man in his command, by the name of Hillig, Hans Hillig, and told Hillig, after the interrogation had been finished, to shoot this man, and he saw with his own eyes how Hillig shot this man.

As I recall, he did not directly hear Peiper giving the order to Hillig, but he saw that Hillig was brought to Peiper, and he shot him in Peiper's presence, so he was not considered the best witness as to this, and I asked him who else was present at the shooting.

We did not have Hillig at that time; he was still at large. He told us men, and they were all men from his own half-track, and we located this man, a man by the name of Lansfreid, who was one of them, as far as I recall, this man testified that yes, that they had heard Peiper giving the order, that they heard Peiper interrogating this prisoner, who was a tech sergeant, by the way. This prisoner, when they ques-

tioned him, said that he did not want to betray his country, and so Colonel Peiper had him shot. This was the third shooting of which we learned through this man Weis.

Now, I mentioned that we did not have Hillig at this time, and an alarm was sent out for Hillig. He was arrested, brought in, and at that time he was confronted with all the men who had confirmed these statements, and he confessed in detail to the crime.

By the way, he confessed to the crime in open court, too.

He said, in open court, that he asked for clemency, yes, he said—I don't know the exact words, but this was definitely their meaning and the words are very, very nearby, very close. He said:

What the prosecution stated is true. I did it. I acted on the orders of my commanding officer, and I could do nothing but act on his orders.

Senator BALDWIN. Let me interrupt there. You say he said this in open court. What court? Was that a mock trial, or in open court?

Mr. PERL. It was during the trial at Dachau.

Senator McCARTHY. Is this Hillig's roommate, the man who made them, or this one man, undress?

Mr. PERL. Beg pardon?

Senator McCARTHY. Is this Hillig the man who made the prisoner undress?

Mr. PERL. No, it was Huber. Hillig, at the crossroads, went into the field and went around the prisoners with his pistol in hand, but we did not find a witness who would testify that he shot a prisoner there. Huber was another man, so there were three shootings of which we learned through Weis. First was the Hillig shooting at Stoumont, where he shot the prisoner on the exact orders of Colonel Peiper, and he refused to testify. The Huber was where he shot the prisoner who had played dead there in the field and whom he kicked, took his things away, and then shot.

Senator McCARTHY. I don't have the matter straight. Either the man confessed he shot a man on direct orders of Colonel Peiper—

Mr. PERL. Right.

Senator McCARTHY. What else did he confess?

Mr. PERL. Nothing else.

Senator McCARTHY. That was at the crossroads?

Mr. PERL. Yes.

Senator McCARTHY. Did he confess to going among the prisoners with a pistol?

Mr. PERL. Yes, sir.

Senator McCARTHY. Did he say he walked around among the prisoners looking for someone who was still living so he could kill him?

Mr. PERL. I do not know.

Senator McCARTHY. Did you get his confession?

Mr. PERL. I did not get his confession. He was interrogated by Harry Thon.

Senator McCARTHY. By Harry Thon?

Mr. PERL. Yes. I know his statement.

Mr. CHAMBERS. We are looking for it now.

Senator BALDWIN. There is one question I want to ask now. Have you a statement or a confession from Weis?

Mr. PERL. No, sir; I have a statement from Wichmann, which I believe is interesting because it shows how his interrogation proceeded.

Senator BALDWIN. What I mean is: Have you a statement from this man Weiss, or was it Wichmann—what I want to know is this: You have described here how Christ, one of the soldiers, told you all this. What was that soldier's name that was in with Christ?

Mr. PERL. Weis, and he was not involved, as far as we could ascertain, in any crime. He just was a witness to some of the crimes; he was a witness to one of the crimes and as to the other two, he knew the man who had committed the crime and had boasted of it. He was a hearsay witness to the crime of Wichmann only.

Senator BALDWIN. Why didn't you take a statement from Wichmann or Weis?

Mr. PERL. We might have taken the statement, but at this time I do not recall.

Senator BALDWIN. I wonder if Colonel Ellis knows anything about that. All right, go ahead. We will clear that point up later.

Mr. PERL. All right, sir.

The next thing which was done was to find other people from Weis—you see, sir, we had Weis and he told us about the shooting at Poetschke by Wichmann. We did not have it this time, Hillig, as I told you; and, we did not know the name of the SS man who, in the field, had robbed one of the American prisoners and shot him, so we concentrated on Wichmann, and after I had one or two more witnesses who testified to the fact that Wichmann had borrowed a gun and had gone out and then returned it and boasted that he had shot a prisoner of war and we got Wichmann in for interrogation, and Wichmann, when confronted with those witnesses, confessed, immediately, to the crime and grave details of the crime.

By the way, I feel that Wichmann was the only one who actually repented of his crime.

Senator McCARTHY. Let me ask you: During all these interrogations you did not feel at any time that you were bound in either the slightest or remotest way to tell the men whom you were interrogating the truth, did you?

Mr. PERL. I did not hear you.

Senator McCARTHY. You did not feel that you were bound to tell the truth to the men that you were interrogating, did you?

You thought it was proper to lie as much as necessary, in order to get the confessions, did you not?

Mr. PERL. I felt, sir, that I was entitled to use those ruses which were permissible according to law; yes, I felt that.

Senator McCARTHY. You answer my question. You can answer it very simply. You felt it was perfectly proper during an interrogation to lie as much as you wanted to, to those men, didn't you?

Mr. PERL. No, sir. I did not feel that I was entitled to lie as much as I wanted to. I felt that my permission to tell not the truth was limited by the limit established by the law.

Senator McCARTHY. What limits, when you were examining these men, that directed you when you could tell the truth and when you could lie in obtaining confessions? I am not saying whether that was right or wrong, I am merely trying to get the facts.

Mr. PERL. I, for instance, felt definitely that I was entitled to tell one that we had used a microphone in his room in spite of the fact that we did not use one, to find out the truth as to what he had told the man in his cell.

Senator McCARTHY. Did you feel that any lie that you told the man, as Major Fanton's order said, in a ruse or deception, did you feel it was justified in order to obtain a confession; or were there only certain types of lies which you felt that you could tell?

Mr. PERL. I do not think I can answer the question in such a general way, because everything, everything, could be under this terminology. If you will give me an example, I will tell you. I have to use my discretion as to what I can tell and what not.

For instance, I would certainly have not been able to use the lie that he would not be prosecuted if he would tell us something that would help us in an investigation, because that is something I would not be entitled to say.

Senator McCARTHY. You say that would be a lie?

Mr. PERL. That would be a lie, because I was not entitled to promise that.

Senator McCARTHY. You say that would be a lie, if you told him if he helped you in your prosecution, that then he would not be a defendant, that he would be a witness—you say would be a lie?

Mr. PERL. Yes.

Senator McCARTHY. You say that would be a lie if you told him that?

Mr. PERL. Yes, sir.

Senator McCARTHY. The other day, you told Senator Baldwin that this order was brought to your attention and that while it was not written until sometime in February that nevertheless it had been brought to your attention prior to that time?

Here is what it says:

It is permissible to tell him that he will be recommended as a witness if such statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value as a witness than as a defendant.

Were you aware of that, or not?

Answer that. Do you know the order?

Mr. PERL. I know the order. Will you repeat the question?

Senator McCARTHY. I understood you to say it would be a lie if you told any prospective witness that he would not be a defendant and would not be prosecuted but would be used as a witness if it developed that he were more valuable as a witness than a defendant?

Mr. PERL. Yes.

Senator McCARTHY. I call your attention to this statement of Lieutenant Fanton which said that it is permissible to tell him that he would be recommended as a witness if his testimony is such that it appears that he will be more valuable as a witness than as a defendant, and if it would make him tell a full or more complete story, then he would be of more value as a witness than as a defendant; so, you knew you could tell him that?

Mr. PERL. I believe I mentioned it last time, that I never told any one of the prisoners that he would be recommended as a witness. Also, as the case did not arise from me, I was not in position to decide whether it was a lie or not.

Senator McCARTHY. Let me ask you this: You did lie to the defendants in order to get confessions and get statements; is that right?

Mr. PERL. Sir, I—

Senator McCARTHY. Did you or did you not; tell me, yes or no.

Mr. PERL. Sir, I would like to protest against the use of the word "lie." If an American officer in pursuing his duties to try to find who murdered 700 of his cosoldiers and Americans and uses perfectly legal methods to discover such things, that is not a lie. Our Intelligence certainly tried to funnel wrong information to the Germans and wrong information to possible future enemies, and I do not think it is ethical under such circumstances to call an American a liar.

Senator McCARTHY. I don't know how high ranking you were, but you gave us your word here for what you did, and you told a man something that was not the truth. I am not telling you it is proper or not proper, to get confessions in that manner. I know it was done often. I only want to find out what the facts are. If you don't like the word "lie," give me some other word that I can use, when you didn't tell the truth, when you told a man that was something that was not the truth. Give me some other word to use so that I will not insult your sensibilities, will you? What word can I use?

Mr. PERL. Winston Churchill, in a speech in the House of Commons in 1906, referred to a lie as a "terminological inexactitude."

Senator McCARTHY. I won't use that, Lieutenant Perl.

Mr. PERL. That's your answer.

Senator McCARTHY. You told the defendants untruths in order to get confessions.

Mr. PERL. Yes.

Senator McCARTHY. You thought that was proper. All right.

Mr. PERL. Yes, sir.

Senator McCARTHY. If an untruth would help you to get a confession, then you felt that under Major Fanton's orders in which it was said that any ruse might be used, you felt that you were not violating any order, that that was perfectly proper?

Mr. PERL. Not generally speaking, but within the limits permitted by the orders, and, in addition to that, I had to use my own judgment.

Senator McCARTHY. I would like to know when untruths were not permitted by law when interrogating prisoners. What untruths were not permitted by law, what ruses or deceptions, and I call your attention to Major Fanton's order in which he said any ruse or deception may be used in the course of the interrogation but threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment should be scrupulously avoided.

Now, you tell me what lie or what untruth could you not use?

Mr. PERL. For instance, I could not tell him I am his defense lawyer.

Senator McCARTHY. You could not tell him that?

Mr. PERL. No.

Senator McCARTHY. You wouldn't consider that proper?

Mr. PERL. I would consider that improper.

Senator McCARTHY. Now, when you say you could not tell him that, did you think it proper to lead him to believe you were his defense lawyer?

Mr. PERL. I am not responsible for something as to what people believe, and we are speaking now about what I say, where I am permitted to tell the truth and where I am not permitted to tell the truth. I was not permitted, according to direct orders, to tell him I represented him as a defense lawyer.

Senator McCARTHY. You said it would be improper if you said that. Now, do you say it would be improper to indicate by your actions

and what you did, if you were to lead him to believe you were his defense lawyer; is that right?

In other words, you say you could not lie by words but you could by actions; is that right?

Mr. PERL. I could not lie, neither by words, nor by actions, in certain fields.

Senator McCARTHY. Did you ever lead anyone to believe that you were his defense attorney, or did you ever lead anyone to believe that you were representing him?

Mr. PERL. I know of one case where someone did not believe that I was his defense attorney. I don't know, maybe he believed it, but he asked me if I would be his defense attorney, which showed that he was not certain about it.

Senator McCARTHY. What did you tell him, "Yes"?

Mr. PERL. I told him "No, I am not your defense attorney, you are not entitled to a defense attorney."

Senator McCARTHY. Did you ever lead him to believe that you were his defense attorney?

Mr. PERL. No one ever told me "You are my defense attorney." I know of one case where someone did not know whether I am his defense attorney or not, so as he had doubt in his mind, I dispelled that doubt immediately and told him "I am not your defense attorney."

Senator McCARTHY. Did you ever lead anyone to believe you were his defense attorney?

Mr. PERL. I answered your question.

Senator McCARTHY. Answer "Yes" or "No." Did you ever lead anyone to believe that you were his defense attorney?

Mr. PERL. No one ever told me "You are my defense attorney."

Senator McCARTHY. Lieutenant Perl, did you ever lead anyone to believe you were his defense attorney?

Mr. PERL. I can't answer your question.

Senator McCARTHY. On page 10—

Senator BALDWIN. Just a minute. Why can you not answer that question, Lieutenant Perl?

Mr. PERL. Sir, because if someone believes that I am his defense attorney, then he thinks I am his defense attorney and says in his mind, "There is no doubt about it"; and I know a case where there was, in the mind of one prisoner, a doubt that I am his defense attorney or not. Now, if I say I am not—

Senator McCARTHY. Who was that man?

Mr. PERL. It was Hillig again.

Now, if I say I did not—he did not believe I was his defense attorney, I suppose that the Senator will ask me: "Well, he asked you if you were," which shows that he did know whether I am his defense attorney or not.

Senator McCARTHY. Did you tell him "I am taking care of your case"?

Mr. PERL. That is right, and I did take care of his case, as an interrogator and investigator.

Senator McCARTHY. You told him "I am taking care of your case"?

Mr. PERL. That's right.

Senator McCARTHY. You meant you were representing him?

Mr. PERL. Certainly—no, no, I am not representing him.

Senator McCARTHY. You told this man, "I am taking care of your case," and what you meant to tell him was that you were taking care of him, is that right?

Mr. PERL. That is right, and that I was taking care of the case to find out what goes on about what Hennecke did, and also, of course, about what Hennecke did not do.

Senator McCARTHY. When you told him "I am taking care of your case," at the mock trial, and go through the motions of defending him, your position is that you were not lying; you were not telling an untruth that way?

Mr. PERL. No.

Senator McCARTHY. You were telling the truth?

Mr. PERL. Yes; I took care of this case; yes.

Senator McCARTHY. Let's have this clearly in mind: Here is a man before an American mock court, and you were assigned as either a good boy or a bad boy or as what other witnesses have called or referred to as defense prosecution counsel, and you were with Hennecke during this mock trial and you said "Hennecke, I am taking care of your case." That's right, isn't it? Whereas, what you really meant was "Hennecke, I am taking care of you?"

Mr. PERL. It is not entirely right, as to my recollection.

Senator McCARTHY. All right, then—

Mr. PERL. I told him later that I am taking care of his case, but not from the beginning, I didn't tell him anything.

Senator McCARTHY. You didn't tell him during the course of the trial?

Mr. PERL. I don't think so.

Senator McCARTHY. You understand, you led him to believe when you said "I am taking care of your case," and your answer is you led him to believe you were his defense attorney, you understand that now?

Mr. PERL. I would like to say there—

Senator McCARTHY. I want you to answer my question.

Mr. PERL. I would like to give you an explanation.

Senator McCARTHY. Answer my question. Do you understand now? This is a simple question: Do you understand that by your actions and what you told Hennecke during the mock trial, that he was led to believe that you were his defense attorney?

Mr. PERL. I understand the exact content. I understand that he had a doubt in his mind whether I were his defense attorney or not. He did not think I am his defense attorney as he wouldn't have asked it. The fact that he asked showed that he did not know whether I was his defense attorney or not, and when he asked, I told him, expressed the words, "I am not your defense attorney; you do not have a defense attorney."

Senator McCARTHY. During the trial, at that time, when you were testifying, did you feel then that by your statements and your actions that you had led Hennecke to believe that during the mock trial you were his defense attorney? During the time you were testifying at Dachau. Do you understand?

Mr. PERL. Yes, I understand.

Senator McCARTHY. Were you at that time—were you convinced by your words and actions you had led Hennecke to believe you were his defense attorney?

Mr. PERL. Sir, I do not remember what I was convinced of during the trial at Dachau 2 or 3 years ago.

Senator McCARTHY. We will refresh your memory.

So, you don't know whether at the trial at Dachau when this thing was fresh in your mind, that then, I know you have this testimony in the record. Did you feel that then when things were fresh in your mind, if you then testified—

Mr. PERL. Just a second.

Senator McCARTHY. Let me finish.

Let's go back to the facts. You are at Dachau; you are testifying. Hennecke is being tried. You are on the stand, and you testified, and you were asked a question at that time: Do you know whether or not you were convinced that you had led Hennecke to believe that you were his defense attorney in this mock trial?

Mr. PERL. I do not remember what I was convinced of then.

Senator McCARTHY. If you testified at that time that by this statement "I am taking care of your case," and your actions, if at that time you were convinced that Hennecke had been led to believe that you were his defense counsel.

Mr. PERL. I have answered that four times.

Senator McCARTHY. Let me finish. You are convinced at that time that you had deceived Hennecke, there is no reason why you should change your mind since then; is there?

Mr. PERL. Sir, I did not deceive him in this way, because the moment he got a doubt, he was never convinced that I was his defense attorney as he wouldn't have asked; and, at the moment he asked, I straightened it out completely, and told him "I am not your defense attorney."

I would like to say something as to this mock trial proceeding, if I may.

Senator BALDWIN. Let's finish that point first.

Senator McCARTHY. You said at the trial:

QUESTION. So you led Hennecke to believe that you were representing him at the mock trial?

ANSWER. Yes, sir.

Now, is that correct?

Mr. PERL. Certainly, if it is in the trial record, certainly.

Senator McCARTHY. Now, is your answer still that you led Hennecke to believe that you were representing him at the trial?

You have heard your testimony here today.

Mr. PERL. I represented him at the trial?

I do not recall it, sir.

Senator McCARTHY. Are you a lawyer?

Mr. PERL. Yes, sir.

Senator McCARTHY. You say, at that time:

So you led Hennecke to believe that you represented him at the trial?

ANSWER. Yes, sir.

Mr. PERL. Will you please continue that quotation, sir?

Senator McCARTHY. Yes, I will continue; but tell me if that is your answer?

Mr. PERL. I do not recall the whole thing, but if it is in the trial record, it is correct.

Senator McCARTHY. I understand then that you did lead Hennecke to believe that you represented him at the trial.

Did you, or did you not?

Mr. PERL. I do not recall it.

Senator McCARTHY. A minute ago, you told me that you do not believe it, and you said you told him the opposite, and that you were convinced that he knew that you were not representing him. Which is true?

Mr. PERL. It is true, and at the trial, when he asked me: "Are you my defense lawyer?" I answered him, "No, you are not entitled to a defense lawyer in this procedure here, and I am not your defense lawyer."

Senator McCARTHY. "So, I am representing you?"

Mr. PERL. And he asked "What are you doing?", and I told him "I am taking care of your case," which might have been double-talk, if you want it, but I used it, and I took care of his case.

Senator McCARTHY. You told him, "I am taking care of your case," and led him to believe you were representing him?

Mr. PERL. No, I did not. I told him I was not his defense lawyer.

Senator McCARTHY. Did you lead him to believe that you were representing him?

You know if we stay here all day, we will get an answer to this question finally.

Let me ask you another question: You tell us it was perfectly proper for you to decide in your own conscience when you were to tell untruths to a man in order to get confessions, when you were to bear with the truth; and, you understand, that as of today you are to bear by the truth?

Mr. PERL. Yes, sir.

Senator McCARTHY. You have no discretion today.

Mr. PERL. Certainly.

Senator McCARTHY. Are you telling the truth today?

Mr. PERL. Certainly.

Senator McCARTHY. Did you leave the defendant to believe that you were representing him? I don't want any double-talk in answer to that question.

Mr. PERL. I answered it four or five times.

Senator McCARTHY. Answer it again.

Mr. PERL. To the best of my recollection today, there was no doubt in his mind as to what my position was because he asked me, "Are you my defense attorney?" and I dispelled that doubt by telling him "I am not your defense attorney."

At the time of the trial, I could not foresee that everything, every little word would have been the source of our long discussion, or I would have weighed my words as carefully as I am doing now; but I know now that I am under cross-examination for everything I did.

Senator McCARTHY. You were under cross-examination at that time, and you said you told this man that you were not his defense attorney but that you were taking care of his case and that you were representing him.

Now, you want us to believe at this time that what you meant was, and what you think this man understood was, that you were not taking care of his case, not in that sense, but that you were a member of

the prosecution team and interested in getting his confession; is that correct?

Mr. PERL. That is what I meant.

Senator McCARTHY. That is what you meant when you said "I am taking care of your case." You mean, "I am representing you"——

Mr. PERL. That is right. Wait a minute. I did not tell him I was representing him. When I told him, "I am taking care of your case," I meant, for myself, I would take good care of the case.

Senator McCARTHY. That is what you meant?

Mr. PERL. That is what I meant.

Senator McCARTHY. In other words, you didn't feel that you were representing him?

Mr. PERL. Definitely not.

Senator McCARTHY (reading):

So you led Hennecke to believe that you were representing him at that trial?

Answer. Yes.

Mr. PERL. I answered that five or six times. The moment a doubt arose in his mind that I am representing him or not, I told him, "I am not your defense lawyer." I told him that I was not appointed to defend him.

Senator McCARTHY. Answer this question. Do you think you led Hennecke to believe that you were representing him, not taking care of him, not trying to get something on him, but that you were looking after his rights at this mock trial?

Mr. PERL. I answered that question in a little more detail.

Senator McCARTHY. Answer "Yes" or "No."

Mr. PERL. I cannot. With the answer "Yes" or "No," you would get the wrong answer. It is usual at every interrogation, there is one good interrogator and one bad interrogator. Every interrogation in the world uses that method. The average man who is not a lawyer, of course, without knowing much about it, it might be confusing to him and he might think, "This is my man. He may be my lawyer. Here is a man who is good to me." So, the same thing obviously might have entered Hennecke's mind, and he said, "Are you my lawyer?" and I told him, "I am not your lawyer. You do not have a lawyer."

A man who is interrogated today in any police department may be interrogated by a good interrogator and a bad interrogator, and he has no lawyer either during his interrogation and he, too, might believe, "Oh, this is a good man. He is taking care of my interest." Of course, he does not. He is trying to get the truth.

Senator McCARTHY. Now, behind this table were some fake judges—right? Some men that were dressed in American soldiers' uniforms and posing as judges; is that right?

Mr. PERL. As to the question of whether they were faking or pretending to be judges, I would like to answer.

Senator McCARTHY. Now, Lieutenant Owen testified the other day that he was asked to act as president of a court. Is that correct?

Mr. PERL. I wasn't here; I don't know.

Senator McCARTHY. Is that correct, someone acted as president of this court—that someone was asked to be president of one of these mock trials?

Mr. PERL. Someone acted as chairman of the group sitting there.

Senator McCARTHY. And at this time, someone took the position of prosecuting and proving the man was guilty?

Mr. PERL. Yes; prosecuting him——

Senator McCARTHY. And proving that he was guilty?

Mr. PERL. Yes——

Senator McCARTHY. And proving that he was guilty?

Mr. PERL. Yes.

Senator McCARTHY. And someone else took the position that he was representing the defendant?

Mr. PERL. No; the other one took the position that the man, the prisoner—there were no defendants there—that the prisoner should be given a chance to tell a story in detail and truthfully.

Senator McCARTHY. Let me ask you, and I refer to page 10, in the form of question and answer:

So that you led Hennecke to believe that you were representing him at the trial?

You did not misunderstand that question at the time, did you?

You led Hennecke to believe that you were representing him at the trial?

That is very clear, is it not?

You don't pretend to misunderstand that question, do you?

Mr. PERL. I do not remember what I thought at this time, but——

Senator McCARTHY. Do you understand the question now?

Mr. PERL. Certainly.

Senator McCARTHY. You do understand the question.

Mr. PERL. I think so.

Senator McCARTHY. When you were asked that question at that time, you don't now claim that you did not understand it?

Mr. PERL. I do not now claim it.

Senator McCARTHY. You understand it, it is a simple question?

Mr. PERL. I think so.

Senator McCARTHY. When you were asked that question at that time, you do not pretend that you did not understand it?

Mr. PERL. I do not now claim it.

Senator McCARTHY. You do not claim that any man with average intelligence or below average intelligence could misunderstand this question:

So you led Hennecke to believe that you were representing him at the trial?

Any man with average or below the average intelligence would understand what that would mean?

Mr. PERL. Yes; certainly.

Senator McCARTHY. And you can understand it?

Mr. PERL. Yes.

Senator McCARTHY. What were the words you used? Double talk? Is there anything double talking about your answer "Yes, sir"?

That is your answer. That is a very clear answer, isn't it?

Mr. PERL. I didn't get that.

Senator McCARTHY. Your answer "Yes, sir," that is your own answer.

Mr. PERL. Yes.

Senator McCARTHY. That wasn't double talk.

Mr. PERL. No, sir.

Senator McCARTHY. You claim you were trying to tell the truth then?

Mr. PERL. Certainly.

Senator McCARTHY. You were under oath?

Mr. PERL. Yes.

Senator McCARTHY. After you raised your hand and said "I solemnly swear to tell the truth, the whole truth, and nothing but the truth," you then swore that you led Hennecke to believe that you were representing him at the trial. Was that the truth or was it a lie?

Was it the truth? Can you answer that? Was it the truth?

Mr. PERL. In a wider sense, under the circumstances then, it was the truth; but you are going now into hair splitting, and the way you are asking it, it is not the truth, because when this general who presided at the trial asked me, he was to believe—

Senator McCARTHY. What general asked you that?

Mr. PERL. I don't remember. He was part of the court.

Senator McCARTHY. If it was someone else, would it make a difference?

Mr. PERL. When the gentleman, a member of the court, whoever it was, asked me—

Senator McCARTHY. Say it was the defense attorney that wanted to know.

Mr. PERL. If he asked me—What is your question?

Senator McCARTHY. "So that you led Hennecke to believe that you were representing him at the trial?"

Mr. PERL. Yes?

Senator McCARTHY. "Answer. Yes, sir."

My question is: Was that answer the truth?

Mr. PERL. Yes, sir; it was the truth, but—

Senator McCARTHY. Is it the truth today?

Mr. PERL. In the way it was understood at that time, it was; and it still is the truth, but not in every way. Not in the way you ask it, because he definitely was under the impression that I am taking care of him and very well, care of his case; that I'm his friend, which I was not, and, sir, I want to say, in this case, I do not know who said it, but someone said that the truth has many phases and each single one of them is a lie; and this one, taken out of the content, might sound as a lie, but if it is connected with the subsequent statement that I said, "I am not your defense attorney; you are not entitled to a defense attorney," then, your line of questioning becomes superfluous.

Senator McCARTHY. Will the reporter mark that particular portion of the testimony. I want to get it later, and see if I can understand it.

You say that the truth at times may become a lie, or something to that effect?

Mr. PERL. The truth has many phases.

Senator McCARTHY. You say you are telling the truth today?

Mr. PERL. Certainly, sir.

Senator McCARTHY. What is your occupation?

Mr. PERL. Personnel consultant.

Senator McCARTHY. Personnel consultant?

Mr. PERL. Yes, sir.

Senator McCARTHY. Is that what you are known as—personnel consultant?

Mr. PERL. Industrial psychologist.

Senator McCARTHY. What does your letterhead contain?

Mr. PERL. Psychological consultant.

Senator McCARTHY. You have no objection to our knowing what you hold yourself out as, in your letterheads, or on your office door? It says, "Psychological consultant?"

Mr. PERL. Certainly.

Senator McCARTHY. Is that the same as personnel consultant?

Mr. PERL. Yes; it is the same, because I use psychological methods to find out the aptitude of certain applicants for certain positions.

Senator McCARTHY. And you think you are pretty good at that?

Mr. PERL. I hope I am.

Senator McCARTHY. You think you understand considerably about human behavior?

Mr. PERL. Sir—

Senator McCARTHY. You think you understand considerably about human behavior?

Mr. PERL. I think so.

Senator McCARTHY. And you think you can tell when a man is telling the truth or when he is telling a lie?

Mr. PERL. No, sir. As far as that goes, you should use a lie detector for that.

Senator McCARTHY. You had a pretty good lie detection system yourself in those trials, didn't you?

Mr. PERL. What?

Senator McCARTHY. I say, you had a pretty good lie-detection system, didn't you?

Mr. PERL. I will answer the question. I do not think it was a very good system.

Senator McCARTHY. You do not think it was so good?

Mr. PERL. No, sir.

Senator McCARTHY. If you were doing it over again, you do not think it would be proper to use a mock trial? If you were doing it over again, would you use mock trials?

Mr. PERL. I would certainly not, but not because I think they are illegal but because they give you so much pretense and so much noise.

Senator BALDWIN. What was that?

Mr. PERL. So much noise.

Senator McCARTHY. You do not like noise?

Mr. PERL. Not the noise raised, raised about this case where 700 Americans were murdered, and it is a question of 1 or 2 of the Germans getting slapped.

Senator McCARTHY. Getting—what?

Mr. PERL. Getting slapped, or not.

Senator McCARTHY. Now, Thon was the prosecution of this case you are speaking of—of Hennecke? Thon was the prosecution attorney in the Hennecke case? Call it what you may, he was the man trying to prove he was guilty before this mock trial?

Mr. PERL. I do not know whether it was; probably it was so.

Senator McCARTHY. There was one man in the mock courtroom who took the position that his job was to prove the man was guilty; is that right?

Mr. PERL. More or less; yes, sir.

Senator McCARTHY. O. K., and when the defendant—of course, the defendant was there?

Mr. PERL. Yes.

Senator McCARTHY. So that when you said to him, "Now, I am taking care of you; I am taking care of your case"—when you said, "I am taking care of your case," you meant to convey to him that you were looking after his interests; am I right?

Mr. PERL. I was looking after the fact that no injustice was done. I meant it differently, and I didn't say that I was taking care of his interests.

Senator McCARTHY. You said "taking care of your case?"

Mr. PERL. Yes.

Senator McCARTHY. And at that time, Thon, or whoever was the prosecution, was taking care of the case for the prosecution; am I right?

Mr. PERL. I believe, if I were to be given time, just a minute, to explain, you would understand it better, and the committee would understand it better—the word "procedure" and the reason for it.

Senator McCARTHY. Answer this, if you can. Actually, you and Mr. Thon, the prosecution attorney, had the same identical interest, and that was to get a confession. Right?

Mr. PERL. Right, sir.

Senator McCARTHY. And now, you led this man to believe, however, that you were taking a different position from Thon; right?

Mr. PERL. Right.

Senator McCARTHY. In other words, Thon was trying to convict him, and you were trying to prove he was innocent?

Mr. PERL. Not exactly, Thon was hostile, and I was not exactly friendly, but because the question of whether he was guilty or not could not come out during this interrogation proceeding. There was no talk that this was a court which would pass any sentence.

Senator McCARTHY. Let's stop right there.

You said he was led to believe that Thon was hostile and you were friendly.

Mr. PERL. Right.

Senator McCARTHY. And you perhaps tried to lead him to believe that?

Mr. PERL. Right.

Senator McCARTHY. You were both hostile as far as the witness was concerned?

Mr. PERL. I don't think any one was hostile; we tried to find out the truth.

Senator McCARTHY. Thon was more hostile than you?

Mr. PERL. Yes.

Senator McCARTHY. You don't claim, and I am not telling you what is right or wrong, I am trying to get the facts—you don't claim at this time that the accused actually knew what was happening?

Mr. PERL. Certainly not.

Senator McCARTHY. You know he was deceived as to the situation in that room?

Mr. PERL. Yes.

Senator McCARTHY. And he was deceived into believing that you were representing him?

Mr. PERL. We had a long discussion about this question. I do not want to leave your line of questioning now, sir, and go into that again.

Senator McCARTHY. The accused was led to believe that you were representing him?

Mr. PERL. Or behaved in such a way that doubt arose in his mind as to whether I was his defense attorney, and when he made plain those doubts he was straightened out that I was not his defense attorney.

Senator McCARTHY. Let me read something to you from this Hennecke affidavit.

Senator BALDWIN. What affidavit is that?

Senator McCARTHY. This is Hennecke's affidavit.

Senator BALDWIN. What affidavit?

Is this the affidavit attached to the petition filed with the Supreme Court?

Senator McCARTHY. I don't know, Mr. Chairman; it is the affidavit of Hennecke. [Reading:]

On March 2, 1946, a small lieutenant came into my cell and introduced himself as being William R. Perl and said that he was defense counsel in a summary trial which would soon take place against me. He talked of trials, witnesses, statements; and my hopes made a good impression on me.

Did you talk to him before the trial?

Mr. PERL. I do not recall it, sir.

Senator McCARTHY. You don't?

Mr. PERL. It is possible.

Senator McCARTHY. In some of the cases did you talk to him before the trial?

Mr. PERL. As I said before, I did not introduce myself to him. He had been Mr. Ellowitz's man before. Mr. Ellowitz had interrogated him several times before and I had seen him in Mr. Ellowitz's interrogation room several times, but this part of the statement is incorrect, that I introduced myself to him.

But I might have gone to see him before the trial.

Senator McCARTHY. You had not interrogated him before?

Mr. PERL. I do not recall.

Senator McCARTHY. You don't recall ever having interrogated him before the mock trial?

Mr. PERL. I recall I interrogated him in the very early stages of the case, and then he was reassigned; he was assigned to Mr. Ellowitz, and I, before that, interrogated him shortly.

Senator McCARTHY. Did you go to see him before the mock trial and tell him that he was to be tried at the mock trial?

Mr. PERL. I do not remember a single case.

Senator McCARTHY (reading):

On March 8, 1946, I was called for, and when I lifted my hood I found myself before a court.

That is correct; is it?

Mr. PERL. That I do not know.

Senator McCARTHY. You do not know?

Mr. PERL. That is right.

Senator McCARTHY. How about the facts? You were there, and you said you were taking care of the case.

Mr. PERL. That is right.

Senator McCARTHY (reading):

I was convinced it was a regular court. In spite of all my previous experience, I could not conceive of anything so base being done. Mr. Thon was the prosecutor.

Colonel Ellis was disguised as a colonel. The two interpreters were disguised as a major and a captain, respectively. * * * A flood of accusations were thrown at me.

Is that true, a flood of accusations were thrown at him?

Mr. PERL. False?

Senator McCARTHY. Not false, "flood."

Mr. PERL. Yes.

Senator McCARTHY. And there were some men dressed in Army uniforms behind the table?

Mr. PERL. Right.

Senator McCARTHY. And on the table was a crucifix and two candles, one on either side?

Mr. PERL. That is right.

Senator McCARTHY. And there was a black cloth over the table?

Mr. PERL. Probably. I don't remember whether there was a black cloth over that particular table, but there were those heavy tables and we had only black cloth to cover them, so probably it was a black cloth.

Senator McCARTHY. And there were those two candles and somebody was sitting behind the table?

Mr. PERL. Right.

Senator McCARTHY. Impersonating judges?

Mr. PERL. I wouldn't say—not exactly impersonating judges, but impersonating interrogators.

Senator McCARTHY. Do you feel that the defendant, the accused, thought that the men sitting behind the table were judges?

Mr. PERL. He probably thought so; yes.

Senator McCARTHY. Now, let me go on with this:

Witness after witness appeared. Through all this I could only say that it was not true, and that I knew nothing about it. Lieutenant Perl defended me skillfully, and the ruse went over completely with me. The trial adjourned—

So far, you were going through the motions of defending him and representing him?

Mr. PERL. No, sir.

Senator McCARTHY. You were not?

Mr. PERL. As to defending him, no, sir. If you are finished with it, I would like to give an explanation which I hope would make it better for you as well as for the committee.

Senator McCARTHY. I know you do. I just want to ask you a question.

At that time were you acting as his friend?

Mr. PERL. As his friend, definitely.

Senator McCARTHY. And someone would shout an accusation against him, and you would try to help him out?

Mr. PERL. I said "Don't shout at him. He is a good man," and not anything really leading.

Senator McCARTHY (reading):

Lieutenant Perl defended me skillfully, and the ruse went over with me, and trial was adjourned and I was told that my execution would take place within 48 hours, and I walked off into the death cell. Lieutenant Perl again asked me to confess in the presence of a Lieutenant Ruff, and gave his word of honor, as an officer, that he was my defense counsel and that I should trust him fully. My point of view was this—that I would rather hang than give any false confession once more.

You went down and asked him to give you a confession, didn't you?

Mr. PERL. It is absolutely untrue. It is a lie. I never told him that I am his defense counsel. I would have found it beyond my dignity to give to one of those men my word of honor as an American officer, and I would not have impressed him with it because I was just too high above him to give him my word of honor at this time. And, in addition, I would like to say that in his statement——

Senator McCARTHY. You say "too high above him."

Was that because he was accused of a crime?

Mr. PERL. No; but I was the interrogator, and I never heard of an interrogator giving his word of honor to any suspect of a war crime.

Senator McCARTHY. You are aware, however, of the fact, are you not, that in American courts the district attorney does not normally feel high above the man who is accused of a crime, and that the American concept of justice is that no man is considered guilty until he has been proven so?

Mr. PERL. Yes.

Senator McCARTHY. So, when you say you felt so high above him, was that because of his nationality, because he was accused in a case, or why did you feel so high above him?

Mr. PERL. First of all, I felt high above him, because of the fact—I should not have given him my word of honor; I do not know of a single case where a district attorney or an investigator goes to a defendant and gives him a word of honor. Giving a word of honor is something that is done between friends, and not between some two persons, one of whom is a district attorney or an interrogator, and the other is a suspected war criminal.

Senator McCARTHY. Do you think it placed any different light upon it, if you simply tell a man, "This is a fact," or if you add to it, "I give you my word of honor this is a fact"?

In other words, does that make the statement any greater or any less, by adding "I give you my word of honor"?

Mr. PERL. I believe, sir, that we have to judge this case on the attitude of the Germans, too. The Germans refer to "honor" something almost like an oath.

Senator McCARTHY. You took this man's confession?

Mr. PERL. Yes, sir.

Senator McCARTHY. You did?

Mr. PERL. Yes, sir.

Senator McCARTHY. After the mock trial——

Mr. PERL. No, sir.

Senator McCARTHY. Was it before?

Mr. PERL. There was no mock trial. There was a fast procedure.

Senator McCARTHY. We will call it the schnell procedure.

Was it after the schnell procedure, what the Army board called the mock trial?

Mr. PERL. Yes, sir.

Senator McCARTHY. It was after the schnell procedure?

Mr. PERL. Yes, sir.

Senator McCARTHY. You got the confession, and he signed it?

Mr. PERL. Yes.

Senator McCARTHY. And this was after you had, according to your testimony, led him to believe——

You got this confession after you had led Henneke to believe that you were representing him at the trial? After that, you went in his cell and you came out with a signed confession?

Mr. PERL. No, sir. I want to tell you, because you took one sentence out of a whole content. It was after I told him "I am not your defense attorney, and you have no right to a defense attorney. No defense attorney is assigned to you." And, you take that one sentence out of the whole statement and make it into a big thing.

Senator McCARTHY. So, there is no question about your statement there——

Mr. PERL. There is no doubt at this time he knew I am not his defense attorney, by my express words.

Senator McCARTHY. Here, you were not his defense attorney but you were representing him?

Mr. PERL. No, sir.

Senator McCARTHY. He did not know you were representing him?

Mr. PERL. No, sir. At this time, during the course of the interrogation, it came out quite clearly that I am not so friendly to him any more because I am out to get the hard facts.

Senator McCARTHY. Now, I want to ask you this question:

Didn't you——

Mr. PERL. After the trial Hennecke told me "Are you my defense counsel?" I will tell you the truth. I told him "I am not your defense counsel, as there is no defense counsel in these fast procedures. However, as you see, I am taking care of your case."

Senator McCARTHY. You led Hennecke to believe——

Mr. PERL. This was after.

Senator McCARTHY. After?

Mr. PERL. Yes, sir.

Senator McCARTHY. And you led Hennecke to believe that you were taking care of his case, and you say you did get a confession?

Mr. PERL. Yes, sir; but not after I had led him to believe I was representing him. It was after I had told him that I am not his defense attorney.

Senator McCARTHY. Then, do I understand that at some time during the procedure, you said you represented him, but at a later time, before you got him to sign a confession, you said "Now, I am no longer representing you?"

Mr. PERL. During the whole time of the investigation, following the procedure, he knew exactly that I am not his defendant, because I had told him exactly that I am not his defendant's attorney.

Senator McCARTHY. How many hours after the mock trial did you get the confession?

Mr. PERL. I do not recall, sir; but maybe it is in there. I don't know.

Senator McCARTHY. Do you know whether it was the same night?

Mr. PERL. I am almost certain that it took several days, because I was quite busy at this time.

Senator McCARTHY. Do you have the date of the confession, Mr. Chambers?

Mr. CHAMBERS. I will see.

Mr. PERL. And he was not the key man.

Senator McCARTHY. Do you have the confession there? [Reading:]

I returned to my cell, wrote a letter to my parents, and waited for my death, which did not come. Instead of that, by reason of newly acquired proof, as Lieutenant Perl said, a new trial took place.

Did you go in and tell him that you were getting him a new trial?

Mr. PERL. Certainly not. I never spoke of a trial.

Senator McCARTHY. A new fast procedure?

Mr. PERL. I don't think so. I do not think so.

Senator McCARTHY. But you don't know whether you did go and say "We are getting you a new fast procedure," or not?

Mr. PERL. No.

Senator McCARTHY. Well, a new trial took place with the same results on March 12, 1946? [Reading:]

On March 13, 1946, my willpower had been broken down. I wrote down a new confession. Mr. Perl dictated it.

Is that right? Did you dictate a confession?

Mr. PERL. No, sir.

Senator McCARTHY. Did you dictate a statement for him?

Mr. PERL. No. I will have to see the confession.

Senator McCARTHY. Did you dictate any introductions to any confession?

Mr. PERL. Not in the sense of dictating as you seem to believe it.

Senator McCARTHY. Did you tell him to write down thus and so?

Mr. PERL. No, sir.

Senator McCARTHY. Did you, in any case, tell a man what to write down as an introduction to his statement?

Mr. PERL. I can answer this only with several sentences.

Senator McCARTHY. Take as many as you want.

Mr. PERL. The interrogation proceedings normally, with the exception of Christ, which was a short statement, were handled in the following manner:

I interrogated the man and while interrogating, I made either short notes to myself, or did not make any notes so as to not make it too important to the prisoner, what he is saying, so as I write it down he won't be cautious not to say certain things which might be damaging to him.

When I was through with the interrogation, with what I considered we could do on this day, then I told him "Let's recapitulate. We said this and this," and he would confirm it and then I wrote it down in a few short sentences and in the beginning, there were two various phases of the procedure:

In the beginning, I had paper and pen and ink usually ready, and I told him "Now, that is what was said—right?" And I took down, repeated the content of his statement. If he said "Yes," all right; but if he said "I didn't say it exactly like that," then I made additions to the notes and then I told him "I am going to dictate," and in this connection, your word "dictate" is correct—I would say "I am going to dictate the content of your statement, but I want to tell you it is not my statement, it is your statement." These were exactly my words, I repeated them too many times, so that I know them: "It is not my statement, but it is your statement. If there is something

wrong in it, tell me, and we will change it." And then, he would say yes, perhaps.

Then, after dictating, in the sense I said it now, the content of his interrogation, it was put down.

I have some of the original writings here with me, if you would like to see them, and the corrections there.

If they were not exactly right, I would say "All right, put it down the way you want it."

Then, when I was all through, I would say, "Now, where did this happen, and where did that happen?" And I would leave it with him because I couldn't help him there with the sketches, and I would leave the cell and come back sometime the next day, perhaps, and we would finish it.

Quite often, if the prisoner were intelligent enough to be able to do it, I told him "This is the content. You write it down yourself."

I have here some of the first drafts of the prisoners in their first confessions.

Senator McCARTHY. Can I ask you about those sketches?

Mr. PERL. Should I not finish the explanation first?

Senator McCARTHY. Let me ask you about the sketches.

Most of the men from whom you took confessions did draw a sketch?

Mr. PERL. Yes.

Senator McCARTHY. And those, of course, we will say were Mr. A and Mr. B, they both wrote confessions and they were both in solitary confinement?

Mr. PERL. Yes.

Senator McCARTHY. Or, in close confinement, call it what you may.

However, they didn't have a chance to get together and compare notes on how to draft a sketch, is that right?

Mr. PERL. Certainly not.

Senator McCARTHY. Have you examined the sketches of the various defendants? Have you examined them to compare them?

Mr. PERL. Certainly.

Senator McCARTHY. Have you noticed that they practically all give the same distance in meters to certain objects, a bush, we will say, and even half-meters, to a bush that may be alongside the road?

Mr. PERL. I do not know whether they are identical, but certainly in many cases they were almost identical, which was corroborative evidence of the facts.

Senator McCARTHY. Now, did you notice that some of the sketches of the men who passed a place in the heat of combat, were identical sketches as to the height of a bush, for instance, and so many meters high, and the distance was identical as to the number of meters the bush was from the road, and other details like that? You know that, don't you?

Mr. PERL. Yes.

Senator McCARTHY. Let me ask you this: you know the sketches and saw that they were the same. Didn't you tell them how many meters it was from the road, say, to the bush we are talking about; and how high the bush was, and say "Put that in your sketch?"

Mr. PERL. Sir, I believe that you, as well as the American public, is under a misconception about "under the heat of combat."

I mentioned three cases before, and in each one there was no combat. These people came to me after their capture, and I do not know

of one case where I took which described something seen in the heat of combat.

Senator McCARTHY. I am under no misconception as to the meaning of what "in the heat of combat" is. You may be. I don't know whether you saw any combat or not. I don't know; but don't tell me I don't know what the heat of combat is.

Mr. PERL. No. I do not doubt that you know what combat is, but I believe that you believe the crimes were committed in the heat of combat, which they were not.

Senator McCARTHY. You tell me this: Whether or not, when you had three or four sketches, where they placed a bush a certain number of meters from the road, and these sketches were made by men who were in solitary, and could not compare notes, do you deny now that you told those men exactly how many meters they were to place that bush from some other object there on their sketch?

Mr. PERL. I definitely deny it. Certainly, sir. If I had done that, if I had had to instruct them or tell them in so many details how to draw a sketch, the investigation would have taken several years.

When I was through with a case, when I had a confession, if it was half-way intelligent, I gave him a paper and said, "Write; make it in your own words," and I have here many statements which were written in the cells. Then I would go to the next man.

Senator McCARTHY. Let me ask you this: Did you——

Mr. PERL. We had 73 defendants and the investigation allotted us only 4 months.

Senator McCARTHY. Let me ask you something else, which happened during the trial:

Is it not correct that during the trial, the guard caught you going into cells and stealing the private papers of the defendants, and that the guard caught you in a room going over those papers, and that he immediately made you return those papers to the prosecution, so the men could get them back?

Mr. PERL. No, sir; you are not correct, and I am glad the question came up.

Senator McCARTHY. Did you at any time during the trial sneak into any cell of any of the defendants, while the defendants were in court, and take any of their papers out of their cells?

Mr. PERL. No, sir. I never did sneak in any cells.

Senator McCARTHY. Did you ever walk in—walk in or crawl in or—in other words, did you get into cell——

Mr. PERL. I would like to explain, sir——

Senator McCARTHY. Tell me, sir; you can explain it. Tell me whether you went into any of the cells.

Mr. PERL. Yes, sir.

Senator McCARTHY. Let me ask you: While they were in court, after defense counsel had been appointed, and then did you take papers out of their cells? Yes or no.

Mr. PERL. Yes or no?

Senator McCARTHY. Did the guards find you in a room subsequently, going through those papers? Answer yes or no.

Mr. PERL. No, sir.

Senator McCARTHY. Did someone make you give those papers back to defense counsel?

Mr. PERL. Yes—yes.

Senator McCARTHY. They did?

Mr. PERL. Yes, but now I want to amplify that because it would be definitely unfair if I answered that without telling the whole story.

Senator McCARTHY. I think—

Senator BALDWIN. I think the witness should have an opportunity to complete his answer.

I am going to ask the question and I will ask Lieutenant Perl to go ahead and explain the entire matter. We want all sides of this now. You have been vigorously cross-examined here for over an hour, and I think if you want to answer that question, you are entitled to answer it.

Mr. PERL. First of all—

Senator McCARTHY. Will you be quiet for a minute, so there is no question about this?

During the cross-examination, I am going to ask you to do the same thing I have asked you to do for the last 5 minutes; that is, to answer my questions. And then, if you have any subsequent explanations, that you want to add, I am sure that you will be allowed to talk and explain, even if it takes a week.

But while I am talking—

Senator BALDWIN. May I say to the Senator—

Senator McCARTHY. May I finish my statement?

Senator BALDWIN. Go ahead and finish your statement.

Senator McCARTHY. While I am cross-examining, I am going to insist that where a question is perfectly clear, where you can answer it "yes" or "no," that you so answer; and then I think in fairness to the witness that he should be allowed to explain all he wants to. But it is impossible to intelligently cross-examine a witness, who is a master of psychology—as this man claims he is—a master of evasion, unless I do tie him down and make him answer certain questions. And I certainly want to give him a chance to explain anything he cares to.

Senator BALDWIN. May I say this: With this witness not finished with his direct statement—when the chairman permitted you to start the cross-examination—now certainly the witness ought to have the same privilege of explaining it, as you have had of cross-examining him. I don't understand that we are prosecuting anybody here. What we are trying to do is trying to find out—the chairman is interested in determining whether or not there were ruses and deceptions that were improperly used, and is as interested as anybody else is.

Now, I think, on an investigation of this kind, that a witness is entitled to answer the questions. He isn't compelled to only give such an answer as his interrogator may hope to draw from him; but I think he is entitled to answer the question, and I think if the witness wants to make an explanation at this point here, I think for the benefit of the record, and for the rest of the committee, that he ought to be permitted to make a record.

Senator McCARTHY. Mr. Chairman, I think as you said that the witness should be permitted to get all the time he wants, even if it takes a week. I think he should be given a chance to explain statements he made at Dachau under oath, if they are in conflict with the ones he makes today; but I think the Chair will agree with me that when you have a witness as evasive as this man is, that then it is not being unfair to him for me to pin him down and say, "Mr. Perl,

here is a simple question. I want a 'Yes' or 'No' answer," and then if he wants to explain why he did those certain things, he certainly should have a chance to do it. I think he should have a chance to make an explanation, and when he gets through with his explanation, I think the Chair will have some questions to ask with regard to the explanations.

Mr. PERL. I should like to say something else. You see, this case gets much publicity. I understand there will be no hearing this afternoon, and if I do not state now, in detail, that I never stole any papers, but just acted in fulfilling my duties, what my assignments were—entering the cell as it was my duty to in the presence of—well, if I do not state it and explain why I did it, then it will look in tomorrow's paper as if I had stolen something from the defendants. The more so if you spoke of sneaking into the cell, which I did not, because I was called into the cells by competent persons—

Senator BALDWIN. Lieutenant Perl, you have been asked here whether or not you entered any cells, in any way, to obtain any papers which were the private papers of witnesses.

Now, the chairman would like to know the answer to that question. Or whatever you want to say about it.

Mr. PERL. Yes, sir. I never entered any cell of defendants during the trial, after they were trial prisoners, in order to obtain any kind of papers.

Senator BALDWIN. Did you enter the cells at all?

Mr. PERL. I entered the cell with another person, for another purpose—

Senator BALDWIN. What did you enter the cell for?

Mr. PERL. Well, I was one of the few officers who were in the courtroom, still at the desk. A guard came in and told me that two of the prisoners had tried to escape, and had made a kind of channel in the cell, and I should come over immediately, which was about 50 steps away.

Senator BALDWIN. At Schwabisch Hall?

Mr. PERL. No; at Dachau. There was a certain reason why he came to me. About 3 or 4 weeks prior to this, before the trial started, at Dachau, two prisoners, Klingerherfer and Guehrer, tried to escape. They had succeeded in sawing through the iron part of a window, and I had investigated this, had been assigned to investigate this; so I believe that obviously this man, believing that I had something to do with it, called me and said come immediately, that two more prisoners had tried to escape.

So, I went with him to the cell. There was no prisoner in the cell at the time. I went to find out what they had done, whether they had made the channel and so on.

The prisoners were all in their dock in the courtroom. There I saw that there was a connection between the two cells, one to the other, but I was not so certain whether it was made purposely, or whether it had existed previously; but it looked to me like an attempted break-through where the two before had succeeded in getting out.

Then this guard, as far as I recall—he handed me a few papers which were lying there.

Senator BALDWIN. Do you remember the name of the guard?

Mr. PERL. No, sir.

Senator BALDWIN. Go ahead.

Mr. PERL. I am not certain whether he handed me the papers. I might have taken them myself. I want to tell the full truth. I believe he handed them to me. They were lying there, and no one else was in the room except the guard and I, or maybe a second guard, and I believe there was a gentleman with us, and I looked at those papers, because I thought that they might give me some clue as to who had been trying to get out.

In the case before, they had received some information from outside, from somewhere, some files to get through the windows, and I took this paper and brought it in to Colonel Ellis, and just when I was with Colonel Ellis, showing him the papers, I explained to him what had occurred, and then I think I even started reading them, some members of the administrative unit came in and told him that the defense complained about the fact that I had taken some papers which referred to the defense tactics from the prisoners. Though I handed the papers immediately over, I believe Colonel Ellis was there and told me to hand them over, or whether I did it on my own, I do not recall, to the man who was there, to the defense representative I believe it was, who was there.

Senator McCARTHY. Lieutenant Perl—

Mr. PERL. I didn't sneak in to steal; I never did steal anything.

Senator McCARTHY. You know that one of the defense attorneys saw you through the window, going into the cell block; that he notified the guard; and then a guard did make you give the papers back; is that right?

Mr. PERL. No guard would make me give the papers back. I believe it was Colonel Corwin who came into Colonel Ellis' room and asked me to return the papers back, but it was an officer. You see, the position of the defense was very weak. They did not dare to let the man take the stand, so they make a big fuss about this happening, that I have taken the papers.

Senator McCARTHY. Did you climb a fence in order to get into the cell?

Mr. PERL. No, sir. There was no sense in it, and I am not very good at fence climbing, anyhow. They could have shot me if I had.

Senator BALDWIN. Did you—Colonel Chambers, did you have a question?

Colonel CHAMBERS. You brought Colonel Ellis in here, and if Colonel Ellis is here, I would like to ask him about this.

Senator McCARTHY. I would like to clear up this question that one of the witnesses saw him—I believe it was Colonel Everett that saw him, said he had seen you climb over the fence in order to get into this enclosure; is that incorrect?

Mr. PERL. It is absolutely incorrect.

Senator McCARTHY. How many cells did you take papers from?

Mr. PERL. It was this one cell.

Senator McCARTHY. One cell?

Mr. PERL. The one cell which was open, because they had discovered there that there had been a break-through, and there was a hole in the wall.

Senator McCARTHY. You took the papers and Corwin used them?

Mr. PERL. I believe it was Colonel Corwin who, accompanied by a defense attorney, came in and said that Perl has just been in defense cells and took some papers.

Senator McCARTHY. Colonel Corwin's position was what?

Mr. PERL. Colonel Corwin's position was, I believe, in charge of the whole administrative set-up.

Senator McCARTHY. And he told you never to do it again?

Mr. PERL. I do not recall it, but he might have. I do not remember.

Senator McCARTHY. He said, "Give those papers back and don't let me catch you doing that again." Aren't those the words he used?

Mr. PERL. I don't know.

Senator McCARTHY. Will you tell us why you did not inform some of the defense counsel before you went into this defendant's cell and took the papers? Why didn't you go to the defense and say, "I am going into the cell and take some papers"?

Mr. PERL. I didn't know there were papers in the cell there.

Senator BALDWIN. Just so we can get the record straight here, because this appears on page 1377 of the record, Mr. Flanagan asked this question:

Do you recall an instance during the time of this case where Lieutenant Perl allegedly entered the cells of some of the defendants in this case and stole papers from them?

Senator McCARTHY. Who entered—who is testifying?

Senator BALDWIN. Mr. Strong. [Reading:]

I recall the following incident, which I did not see myself. I remember that one day, I think it was during the lunch recess, the colonel told myself, and, if I am not very much mistaken, Colonel Dwinell and other defense teams of the following story. He had observed, while the trial was going on, Lieutenant Perl entering the bunker. I have to explain that from the benches on which defense counsel were sitting you could look through the windows into the rear yard which joined the bunker where the accused were kept during the night. And apparently he saw Lieutenant Perl entering the bunker which was a kind of unusual thing. And he told us afterward he saw Perl coming out with papers.

Senator McCARTHY. Mr. Chairman, Mr. Flanagan informs me that the witness testified the other day that Colonel Everett said he saw the witness climb over the fence, and Mr. Flanagan says he can't find it at this time, so I would like to make it clear in the record—I would like to have the right to withdraw that from the record after Mr. Flanagan has had a chance to go over the testimony.

Senator BALDWIN. I think one thing that always happens in any investigation, whether it is in court or otherwise, is that there is oftentimes incorporated in the questions facts that are or are not in the record in a different way, and in the various exchanges, or in the vigorous exuberance of the moment, sometimes things are said that are not altogether said perfectly honestly; and the chairman understands that. But it is a little difficult to cross-examine the witness on the basis of an alleged fact that it later appears is not really in the record.

Senator McCARTHY. That was the reason and Mr. Flanagan has the right to go over the record, and I still say if it is in there I will find it.

Senator BALDWIN (reading):

Again quoting Colonel Everett. He called this to the attention of the officer of the security guard and either the officer or Everett or both went into one of the rooms of the prosecution where they found Lieutenant Perl looking at quite a lot of papers which he had collected from the cells of the accused who were in the prisoners' dock.

And I think he was trying to translate them. And I think Colonel Everett made some complaint. I don't know whether it was to the security officer or Colonel Coleman. I don't think that happened again.

Senator McCARTHY. Was he forced to give the papers back?

Mr. STRONG. I presume so.

Senator McCARTHY. Was there anyone else in the room with Perl that you know of that was studying these papers at the time?

Mr. STRONG. I don't know.

Senator McCARTHY. You know that Perl was there?

Mr. STRONG. I know from Colonel Evertee's story he found Perl in that room. I would not know.

Senator McCARTHY. Do I have this correctly in mind?

Perl was caught after he had been in the cell of different defendants that were in court being tried?

Senator McCARTHY. And took private papers into one of the prosecution rooms, and he was caught there examining those papers, by the security guard?

Mr. STRONG. That is correct.

Mr. FLANAGAN. Would it have been possible that any of these papers he took were privileged communications between these defendants and their defense attorneys?

Mr. STRONG. That is quite possible, but I would not know.

Senator BALDWIN. May I ask one question there? It has an excellent bearing on this thing. At the time this thing is alleged to have taken place by Perl, did that happen up at Dachau?

Mr. STRONG. Yes, sir.

Senator BALDWIN. Did that happen after the trial had started?

Mr. STRONG. Yes, sir.

Mr. FLANAGAN. Mr. Strong, you were present during the entire trial of this case, were you not?

Then it goes on to another subject. But certainly Mr. Flanagan should have the opportunity of examining this transcript and see if there is any other reference to it, because we want to get all of the facts.

Senator McCARTHY. I don't think it makes any difference.

Am I correct in this? You did show those papers to Colonel Ellis and you were going over them at the time the security guard or the colonel that you mentioned caught you; is that right?

Mr. PERL. I had not started reading them yet, as I remember, because it was in German, pencil written very small. I was about—I had showed the papers to Colonel Ellis, but I hadn't read them yet. I had them in my hand and wanted to show them. That is my recollection, now. When right at that time one of the defense lawyers, together with an administrative officer, entered—

Senator McCARTHY. Did the colonel tell you it was improper to enter the defendants' cells and take their papers?

Mr. PERL. To my recollection at this time I did not know that I attached much of importance to them; but he didn't have time for this because I just had told him what had happened and whether they—

Senator McCARTHY. Mr. Strong testified, according to the testimony read by Senator Baldwin, that you had collected these papers from various cells. And I understand it is your testimony that you merely got a sizable bunch of papers from one cell. Is that correct?

Mr. PERL. Sir, what Mr. Strong testified is exactly the kind of testimony which you do not want to have admitted in the German trials. It is hearsay. He did not know anything himself.

Senator McCARTHY. I am asking you now, are you sure that all of those papers came from one cell?

Mr. PERL. I am sure. I entered only one cell. I had no reason to enter another cell—wait a moment, sir; no, no. I entered the

adjoining cell, too, because there was a tunnel between two cells, and I went with the guard to the other room. I didn't look at these cells. Just looked at this hole in the other cells.

Senator McCARTHY. Will you kindly answer my question now? Did you take papers from more than one cell?

Mr. PERL. No, sir.

Senator McCARTHY. You are sure now, under oath, that you only took papers from one cell?

Mr. PERL. I am sure; yes, sir.

Senator McCARTHY. You only took papers from one cell?

Mr. PERL. Yes, sir.

Senator BALDWIN. Are you done with that?

Senator McCARTHY. Yes.

Senator BALDWIN. One reason why the Chair hasn't followed the strict rule of directing cross-examination here is because this has gone to such lengths that by the time you get around to cross-examination on a particular subject, you are way past it, and the matter is not and cannot be fresh in your mind.

So, if you are through examining with reference to that situation—

Senator McCARTHY. I wasn't through with that. I have Hennecke's statement here, that I would like to examine the witness on.

I might say I did not mean to interrupt the Chairman's direct examination, but with his permission I will finish the examination.

You say that you did dictate parts of confessions at the time, using your notes to refresh your recollection?

Mr. PERL. Right.

Senator McCARTHY. Now, Mr. Bailey testified here that those statements were dictated to him and he typed up the statements; is that right?

Mr. PERL. Dictated it to whom?

Senator McCARTHY. Dictated to Bailey.

Mr. PERL. I do not know whether this statement was dictated to him, but some statements were dictated to him.

Senator McCARTHY. In other words, they were dictated, not while you were in the cell, but while you were back in the court reporters' room—you dictated the confession to the court reporter; is that it?

Mr. PERL. There was more between. The statement was taken in German. Then it went to another part of the building, that was a part where Mr. Bailey worked, and there translated into English. Then, it was dictated to Mr. Bailey, I believe—I remember there were two or three cases in which I dictated direct my statements from German in the court reporters' room to Mr. Bailey.

It was before Colonel Ellis arrived, but then I gave it up; first, because my time was considered too important to use it for translation; and, secondly, I couldn't work with Mr. Bailey. Mr. Bailey could not understand me.

Senator McCARTHY. You say "I dictated my statement." You mean you dictated—

Mr. PERL. I mean my statement. I had 10 statements in my file, and when I say my statement, I mean one of those 10 statements which I had in my file.

Senator McCARTHY. In other words, you dictated the defendant's confession, and by your statements, you mean the defendant's confession?

Mr. PERL. By my statement, I mean one of those statements which I had in my file.

Senator McCARTHY. Let's take confession No. A. You would dictate this confession which the defendant would later sign——

Mr. PERL. Which he had signed before——

Senator McCARTHY. Let's go back—strike that.

Mr. Bailey's testimony was that you would dictate and redictate those confessions a number of times. Is that correct? The same confession? In other words, he would dictate a confession, he would type it out; you would read it over, and then you would dictate a new confession; is that right?

Mr. PERL. It is not correct, sir; but there is something in it which may make Mr. Bailey believe this.

Some of the statements were translated very poorly. We had interpreters there and a translator—I say that he believed he was an interrogator; he never interrogated. Mr. Steiner, and his translations were rather poor. He speaks both languages absolutely fluently, but his vocabulary is not very rich; and I sometimes objected to translations which he had made.

Then the thing didn't come back from the prisoners for making corrections; it went back to the translator to make a better translation of the German into English, and all this translation of the German contents were checked with the defense, and in every single case in open court the defense said no objection to the translation, and they were submitted that every one of them was correct.

Senator BALDWIN. Have you finished with Hennecke?

Senator McCARTHY. No; this is still on Hennecke.

Am I correct on this, that when you dictated the confession of Hennecke, let us say—I know it may be difficult to tie it to one individual defendant; I may have to branch into some of the others, generally—but when you dictated that confession to him, first——

Senator BALDWIN. Which confession?

Senator McCARTHY. When you dictated Hennecke's confession, you first dictated an introductory statement; is that correct?

Mr. PERL. Yes.

Senator McCARTHY. A statement that was the same in all cases, and said "Write down what I say"?

Mr. PERL. I said what I told you before—this whole story: it is hearsay—I mean, "it is your statement, and if it is not what you want to say, object to it."

Senator McCARTHY. But the introductory statement, that was the same in all cases?

Mr. PERL. I don't think so.

Senator McCARTHY. Well, tell us roughly what you meant by the introductory statement.

Mr. PERL. I mean I believe, as far as I can remember, started most of the statements, "I am Hans Hennecke; I entered this unit on this day"—and I couldn't dictate it because I did not—"and I have been in this unit this date, during this campaign, and my position was this and this; I commanded this and this company."

That is what I believe you mean by the introductory statement.

Senator McCARTHY. That is what is referred to by the prisoners when they refer to the introductory statement, is it?

Mr. PERL. I do not know. I do not know the charges.

Senator McCARTHY. I am asking you, is there any other general statement, like "John Jones, being first duly sworn, on oath, deposes and saith," something that you dictated in all cases?

Mr. PERL. No.

Senator McCARTHY. In other words, you started out by giving the man's name and unit, and so forth?

Mr. PERL. Yes; there was no strict rule, but I believe I started out in most cases by giving his name and rank.

Senator McCARTHY. Now, is it correct that you took your notes—the notes you had taken on some previous occasion—and then you went into the cell and said, "Now, you write down your confession," or words to that effect. And you had the information in the way of notes, and then you dictated to him what he was to write; is that right?

Mr. PERL. I did not dictate—yes, I dictated, but not in the sense of giving my dictation. We agreed on a certain text of the content, yes; but, as you speak of Hennecke, sir, I want an exception in the case of Hennecke, who, by the way, was not a major case; he was one of the six or seven cases where this fast procedure was applied—another procedure was used, and the procedure I told you now which I told him it was his own statement and I dictated it in his presence and there were discussions about certain points sometimes—this procedure was used in the beginning only. But Hennecke's statement was taken later, later on I want to explain it because you are speaking about Hennecke, sir, and it may ease your way of questioning—later on, we used another method. We found a German officer who knows—

Senator McCARTHY. Will you stick to Hennecke?

Mr. PERL. I want to tell you because this method was used in Hennecke's case.

Senator McCARTHY. What procedure was used in Hennecke's case?

Mr. PERL. In Hennecke's case I am almost certain that the following procedure was used, as in most other cases:

A German officer who knew shorthand very well and was a member of this very same unit, but whom we had not been able to involve into the case—we couldn't find out whether he had actually committed a crime or not—he was used for the following purpose—

Senator McCARTHY. What purpose? Who was he?

Mr. PERL. Kramm; he was a battalion adjutant.

Mr. Kramm—

Senator McCARTHY. Let me ask you this—

Mr. PERL. I would like to finish this sentence.

Senator McCARTHY. We are talking about—

Senator BALDWIN. You raised this question yourself, and I think the witness ought to have an opportunity to answer. Then you can go into who Kramm is.

Senator McCARTHY. Mr. Chairman, Kramm is a man who is the prosecution's principal witness. He testified in the cases at Dachau. Later, Mr. Rosenfeld, who is a law member of the court, in the Malmédy cases, tried to use Kramm in the Skorzini case—

Senator BALDWIN. That all may be so, but—

Senator McCARTHY. I think we should show who Kramm is.

Then Kramm refused to continue to lie any further, and said "I'll testify no further," and "everything that I have said, in effect, in the

Malmedy cases, was untrue." He made affidavits telling why he did that, what duress and force had been used upon him, so if Kramm was used, I think we should know about him.

Senator BALDWIN. Mr. Witness, finish your statement. That was on an entirely different subject, as the Chair understands it, and you can go into examination on Kramm, if you think it is necessary.

Mr. PERL. Sir, I do not not know what Kramm stated afterward. He was not our friend. He was a member of the same unit and a very reliable officer in his unit. He had occupied a high position; but he knew shorthand and there we were; we had no one who could save the time that every interrogator lost, hours and hours being in with the prisoner while he wrote it out in longhand. They lost this time because they were very slow in writing. So after we found this Kramm, then the procedure as in Hennecke's case was followed.

When the facts were established from this German officer who was called in, Kramm, and now in Kramm's presence the prisoner was told the same thing, "this is your statement," and so on and so forth.

Then the facts were taken from the notes and from the conversation going on in Kramm's presence, with the prisoner, and it was all taken down in shorthand, the statement, and dictated by me or by the other interrogator.

Senator McCARTHY. In shorthand?

Mr. PERL. By Kramm, in German; and after this I left the interrogation cell. For hours, sometimes for 4 hours, sometimes for 5 hours, and when I came back, sometimes I came back too early, but usually the statement was all written out, because Kramm from the shorthand notes in German had dictated it to this German prisoner.

Senator McCARTHY. May I ask you—

Mr. PERL. I want to answer in connection with what you said before—

Senator McCARTHY. Before you leave Kramm, just hold it there.

Mr. Chairman, I want to identify Kramm. He was a man who went in and took the statement, and took it down in shorthand, and I want to properly identify him and see if I am correct.

You said Kramm was no friend of yours. You understand that Kramm, at the trial, refused to get on the stand and testify.

He told the defense that all he would give was his name. He would refuse to testify to anything further, and you know this is the same Kramm whom the defense attorney tried to interrogate as to whether he was offered immunity, what he had been offered for this aid he was giving the prosecution; and the court would not let him answer. That is the same Kramm whom Mr. Rosenfeld, who was a prosecutor in the Skorzini case, whom Mr. Rosenfeld was going to use as a witness, based upon these statements which he gave you, and the story which he testified to at Dachau, and at that time Kramm said, "I won't continue this farce any further." That "I was lying at Dachau and I won't lie any more," and that thereupon Rosenfeld was unable—

Senator BALDWIN. Where is that?

Mr. McCARTHY. I am asking him if he knows it. It will be in the record.

Senator BALDWIN. It is not in the record yet, and I don't think the Senator should predicate his question on assertions of fact that don't appear in the record.

Senator McCARTHY. Mr. Chairman, I can't control the way the Chair is putting on the case, and this witness here—

Senator BALDWIN. The Chair is not putting on a case. The Chair is giving you every latitude and you have spent most of the time this morning examining this witness and it seems to me that I asked the Senator a moment ago if he was going to finish with the Hennecke thing, because Colonel Chambers wants to put something in the record about Hennecke, and now we are off on another phase of the thing.

Now, there has been—there has to be some order to this thing. The Senator can cross-examine the witness to any length he wants to, but the Chair thinks he ought to base his questions purely on what is in the record or what he claims will be the evidence later, and proceed in that particular way.

Senator McCARTHY. Mr. Chairman, if you want to call this witness back after the whole story has been told, I assume that can be done, and I will be glad to hold it up; but in view of the fact that we have these facts, and we know it is a matter of record in the Skorzini case and in the Malmedy cases, exactly what position Kramm took. We have got to examine on the defense statements which are here, and I am going to ask this man who took Hennecke's statement, and I might say the Chair has two or three times each day, depending on the facts, has allowed me to cross-examine. I gather that he thinks that is some unusual leniency on the part of the Chair.

Senator BALDWIN. The Chair thinks nothing of the kind.

Senator McCARTHY. I was invited to come and—

Senator BALDWIN. You can ask any proper question you want to, and I make that clear time and time again.

Senator McCARTHY. Time after time there is reference that I am allowed to examine witnesses. Obviously, if I am not allowed to examine witnesses I would not be sitting in this hearing.

Senator BALDWIN. The purpose of the Chair is to keep order in the proceeding and to keep things together so that it will make an easier task for all of us as a committee to keep things together. That is why the Chair suggested awhile ago if you were through with Hennecke, there is a point that Colonel Chambers wanted to make here.

Senator McCARTHY. I am not through with Hennecke, but I don't mind waiting.

Senator BALDWIN. Would the Senator finish with Hennecke and then let us get into the record what Colonel Chambers suggests should be here, and then go on with Kramm. Of course if Kramm is important, we will go into it.

Senator McCARTHY. Mr. Chairman, I don't have any objection to stopping my cross-examination now and continuing it at a later time. I think in view of the fact that Kramm is the man who took Hennecke's statement, according to—

Mr. PERL. I believe so.

Senator McCARTHY. You be quiet until I get through.

In view of the fact that he stated that Kramm was no friend of theirs, which is obviously untrue, Kramm would not even talk to defense counsel during the trial, I don't think we can get a clear picture of the Hennecke confession unless we find out what Kramm's interest was and who he is.

As I say, I have no objection, Mr. Chairman, to stopping my cross-examination now, and continuing it this afternoon or tomorrow, but I will have to insist that I be allowed to do it in my own fashion, and I think that Kramm is important, in view of the fact that this witness says he did take Hennecke's statement.

Now, I assume that Mr. Chambers has something to put in. Good.

Senator BALDWIN. Did you have something you wanted to put in, Colonel?

Mr. CHAMBERS. In connection with this, are you through with the Hennecke thing?

Senator McCARTHY. No. I will be glad to have you put in whatever you have. I am sure the Chair understands that these confessions are all so interwoven and intermixed that I can't just go down the line and question in regard to one particular confession, without branching out into discussing the other 30 confessions, in which there are affidavits of the defendants that were being coerced into signing confessions.

I can't possibly take each one of the 30 alone. I don't know enough yet, and I have to extract that from the witness. I am sure the Chair realizes that.

Mr. CHAMBERS. Starting with page 1011 of the record in this case, we have been quoting from one or two items taken out of the context.

The full picture of these Schnell procedures is here in rather accurate form, and very short, and I think it should go into the record at this time, and with the Chair's permission I would like to read it.

Senator BALDWIN. Very well—

Senator McCARTHY. Full picture by whom? Which witness?

Mr. CHAMBERS. We have been examining Lieutenant Perl on two points lifted out of this. I believe that this—

Senator McCARTHY. Whose testimony is this?

Colonel CHAMBERS. Lieutenant Perl's, whose testimony you have been quoting in connection with the point of whether or not he had led Hennecke to believe that he was representing him at the trial.

Now, Lieutenant Perl on the stand said—

Senator McCARTHY. I think it should go in.

Mr. CHAMBERS. I think we all agree that this should be complete. I might say that I mentioned it to Mr. Flanagan here the other day.

Senator McCARTHY. I agree with you, also.

Mr. CHAMBERS. With the chairman's permission, I will read it.

Senator BALDWIN. Go ahead.

Mr. CHAMBERS (reading):

Question. Lieutenant Perl, how many times was Hennecke interrogated prior to March 13?

I might say—

Senator McCARTHY. Would you just read it in?

Mr. CHAMBERS (continues reading):

Answer. He had been interrogated before by Mr. Ellowitz as to other incidents. As to the crossroads incident, I don't know how often.

Question. Prior to the 13th of March, how many times did you interrogate him?

Answer. I believe four or five times.

Question. On direct examination, you spoke of a ceremony used to obtain the statement. What form did that ceremony take?

Answer. The same form which was used before. That is the ceremony of fast procedure.

Question. Is that the one which has been referred to as the Schnell procedure?

Answer. Yes, sir.

Question. Was the Schnell procedure a form of mock trial?

Answer. Yes, sir.

Question. Was there a table with a cross and a crucifix and candle?

Answer. Yes, sir.

Question. How many of these ceremonies was Hennecke required to submit to?

Answer. I am almost certain there was only one.

Question. At this ceremony were there people behind a table, posing as a court?

Answer. There were three persons, three members of our unit sitting at a table without asking hardly anything, didn't ask any questions at all. Then there was Mr. Thon on one side of the table, as he is sitting here, on the same side, and I was sitting on the other side, and he played the bad boy and I played the good.

Question. How were the members of the court dressed?

Answer. They wore American uniforms.

Question. Were they wearing officers' uniforms?

Answer. Yes; they were wearing American officers' uniforms, independent of their actual rank.

Question. What part in the ceremony did Mr. Thon play?

Answer.—

Senator McCARTHY. What was that last—independent?

Mr. CHAMBERS. Independent of their actual rank.

Question. What part of the ceremony did Mr. Thon play?

Answer. Whenever Hennecke said something he shouted, "That's a lie; that's not true; that's a lie," and insisted that Hennecke should get a minus while I insisted that he should get a plus.

Question. Mr. Thon acted as a so-called prosecutor at the trial?

Answer. I don't think an actual prosecutor would act like that.

Question. Did he act at all as a prosecutor, in this manner, in the place that he took in the courtroom?

Answer. If the role is so-called at a mock trial, then Hennecke was induced to believe that Mr. Thon was that kind of prosecutor.

Question. Did you pose as Hennecke's defense counsel?

Answer. After the trial, Hennecke told me, "As you were my defense counsel, I will tell you the truth." At this occasion I told him, "I am not your defense counsel, as there is no defense counsel in this fast procedure. However, as you see, I am taking care of your case." By this, I was speaking so because I took care of this case.

Question. At the trial, did the supposed prosecutor bring in some witnesses to testify?

Answer. Mr. Thon brought Eckman in, from whom we had got the lead information on the whole Stavelot incident, which was unknown until that trial.

Question. During the procedure, didn't you continue to object to some of the evidence that was being offered?

Answer. I did not exactly object, but I called the witnesses liars.

Question. So that you led Hennecke to believe that you were representing him at the trial?

Answer. Yes, sir.

Question. Did you advise Hennecke that he was to write a statement dictated by you so that you could properly defend him at the mock trial?

Answer. No, sir.

Question. Did you tell Hennecke that if he did not cooperate with you that the supposed court would continue in his absence and would pronounce judgment against him?

Answer. I never asked him to cooperate. I just told him to tell the truth, and I never told him that the court would pass judgment in his absence.

Question. Did you tell Hennecke that the court, referring to the mock trial, would sentence him to death?

Answer. No. The minute the mock trial was over, the purpose was fulfilled, and I didn't speak about the mock trial any more.

Question. What were the purposes?

Answer. There were two purposes. The main one was for me to gain his confidence so he would tell me the truth. The second purpose was to make him see that if he wants to speak the truth there is a chance to speak the truth.

Senator McCARTHY. What page?

Mr. CHAMBERS. That is 1014.

Question. At that time was Hennecke a prisoner of war?

Answer. I don't know whether he was discharged then, already.

Question. If he wasn't discharged, then he would have been a prisoner of war; is that right?

Prosecution. I object.

Objection sustained.

Colonel Dwinell. No further questions.

Now, two other points: You asked me, Senator McCarthy, to find out, if I could, when the mock trial took place, this Schnell procedure, in relation to the confession. The confession was signed March 13. There is no record as to when the Schnell procedure took place on Hennecke.

Senator McCARTHY. I believe I have it here. I think it was—

Mr. CHAMBERS. That is from his affidavit, sir?

Senator McCARTHY. Yes.

Mr. CHAMBERS. There is nothing in the record that shows it.

The other point was—

Senator McCARTHY. Beg pardon; it says in this affidavit he was informed that there was a second trial on—let me give it to you if I may; I think it was on the 12th.

Instead of that, by reason of newly acquired evidence by Lieutenant Perl, a new trial took place, with the same result, on March 12—

That is the second mock trial. I think the first one, according to this affidavit, was on March 9, and on the 2d of March he said Lieutenant Perl came to his cell—on March 8 “I lifted the hood and found myself before a court”—in other words, his affidavit is that Perl first contacted him at the mock trial, but at the trial he had on the 18th he was notified that there had been another trial on the 12th, in his absence.

Mr. CHAMBERS. The record shows—

Senator McCARTHY. And on the 13th he signed a confession.

Mr. CHAMBERS. The record shows a confession was signed on the 13th, and Mr. Perl has testified that the mock trial took place several days before this confession was signed.

Senator BALDWIN. The quorum call has sounded, and I think we had better go over there and answer that.

Senator McCARTHY. Are we meeting this afternoon?

Senator BALDWIN. We are not meeting this afternoon.

Mr. CHAMBERS. At 2 o'clock tomorrow afternoon there will be an executive session.

Senator BALDWIN. You had one other thing you wanted to put in?

Mr. CHAMBERS. Again, for the purpose of clearing the record, sir—

Senator BALDWIN. If that is in connection with Kramm, let it go; so, again I want to say to the Senator: You want nothing more put in on the Hennecke situation?

Mr. CHAMBERS. Not at this time.

Senator BALDWIN. If you want to go into that further, in connection with Kramm, we can get some order on that.

Senator McCARTHY. I am not through with Hennecke.

(Discussion was had off the record.)

(Thereupon, at 12:07, a recess was taken until Wednesday, May 18, 1949, at 10 a. m.)

MALMEDY MASSACRE INVESTIGATION

TUESDAY, MAY 17, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2:50 p. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senators Baldwin (presiding), and Hunt.

Also present: Senator Joseph R. McCarthy; J. M. Chambers, of the committee staff; Francis Flanagan, of the staff of the subcommittee on investigations of the Committee on Expenditures in Executive Departments; and Colonel Ellis.

TESTIMONY OF WILLIAM R. PERL—Resumed

Senator BALDWIN. Mr. Parl, Lieutenant Perl, you stated that you had an explanation you wanted to make further as to how this investigation, interrogation, was conducted.

Mr. PERL. Yes, sir.

Senator BALDWIN. Would you want to go ahead and finish that as briefly as you can? Could you do it in a half hour?

Mr. PERL. Yes, sir.

Senator BALDWIN. All right; then we will all refrain from asking you questions, and make notes of the questions we want to ask you, and then ask you the questions afterwards. Is that all right with you, Senator?

Senator MCCARTHY. That is O. K. with me, Mr. Chairman.

Senator BALDWIN. All right, go ahead.

Mr. PERL. I explained last time how we achieved the original break through Christ by using the trick of telling him that we had a mike in his room which made him tell us that his cell mate had told him that he knew about shooting Weis.

The first case after which we went was the case of Wichmann which was a shooting at the time when the offensive was over already or almost over in January 1945 at a place called Petit Thiers. We went after Wichmann first because we did not have the others whom Weis accused too. It was the one whom we had in custody, but at this time we did not know his identity. Huber is the man who made the one American who played dead get up, took his clothing away and shot him, and killed who at the orders of Peiper had shot a prisoner of war who had refused to give information as not in our custody at this time.

We went after Hillig, and after we had several witnesses, I could not recall the number who had seen him coming to the chapel and

leaving this chapel, and then coming back and heard tell him the story of how he got these prisoners, there was no eye witness to the shooting actually.

After we had those witnesses we confronted Wichmann with those witnesses and when he was confronted with those witnesses he confessed right away.

At this occasion I would like to say that he really repented what he did. He told the story in detail. I do not think I should read the testimony here, but he told it in detail.

He was in a tank. That was his description. He was in a stable and saw a prisoner coming out. There was no fighting at this time.

The Germans were defeated at this time already, and he saw a man coming out of the woods and people called him, "Otto,"—that was his first name—"look here, there is an American," and he went out, advised him to take his pistol, and he said, "This man can hardly walk."

He went out, he was supply sergeant, Wichmann, and took this American who could hardly walk and brought him down to Peiper's C. P.

This C. P. with Peiper, Dr. Sickel, Major Sickel who was the regimental surgeon and a major whom he did not know—Peiper asked in English a few questions from this prisoner, and the prisoner endeavored very hard to answer, but he was hardly able to speak, as he described it, as Peiper later on described it. It was more a kind of barking than of talking because he had been hiding in the woods for several days.

He was—around his shoes he had rags and he was completely exhausted. Peiper looked through his papers and gave him his papers back.

Another one of the officers present stole something out of his pocket-book but Peiper did not take anything, and then the question was asked—yes, then the sergeant asked either Peiper or Sickel—I do not recall—"What should I do with him? Should I bring him upstairs?"

Upstairs was the infirmary, so Sickel looked at Peiper and they exchanged glances and he was very quiet, this Wichmann, because he knew what it meant, as he says, and then Sickel said, "Get the swine out and bump him off." He told us that he was under the impression that he was under the order of the regimental commander too, because he was the highest ranking in the room; brought him out into the woods and shot him there.

There were witnesses as far as I recall who saw him going out too and coming back again without the prisoners. He described the location exactly in the woods where he had shot this American. He had even described the size.

As far as I remember, he was a rather small man, and when an investigation team was sent out, I believe it was Major Byrne going to this place, they found out that actually a dead American had been exactly at the spot which this Wichmann wrote, which was not where fighting was. It was a little off the road.

This was the first interrogation. I would like to mention the second interrogation, too, because it shows the kind of atmosphere which prevailed between most of the prisoners after they had confessed, and

us. A few days—I do not know exactly when, but if it is important I can establish it afterwards—

Senator McCARTHY. Mr. Chairman, I understood that this witness was supposed to try in a half-hour to give generally the picture of how they obtained confessions and statements. Now I certainly have no objection to sitting here and listening to the details of each confession, but if he is to do that, we will have gotten nothing in that half-hour allotted to him.

I just wonder if Mr. Perl could not possibly give us the thing that we have been waiting for him to do now for the last 2 days, and that is generally how he got the confessions, how he went about obtaining them.

Senator BALDWIN. Senator, I understood that is what he is trying to do. He is describing in some detail how they got this statement from Wichmann and how the case operated.

Do not go into too great details.

Senator McCARTHY. I wonder if Mr. Perl understands me. Certainly the chairman will make the final order on it, but you have been telling us what this Wichmann said. The thing that I am concerned with, and I believe the Chair and the committee is also concerned with it, is how you got the statement, how you went about getting it, not the details of his confession. We have that all here, you see.

Mr. PERL. All right, I will go a little more into detail as to this. I thought I would do this in the case of Peiper who was involved in this shooting, too.

I confronted Wichmann with the witness to whom he had boasted that he had shot this prisoner or who had seen him coming into this chapel and tell him he is going to shoot a prisoner or saw him coming back after the shooting. I do not now remember exactly when he boasted about it, before it or after.

I believe it was after the shooting, and when he was confronted with those witnesses he said, "Yes, I did it, but I did it because I was ordered by Sickel to do it," so I asked him how did it happen that Sickel ordered you to do it. "Tell us in detail," so he told us Sickel was present in this room. So I said, "What room," because he believed that I know everything already, which I did not know yet, so slowly the whole story which I told you now developed.

If you want to know a little more about Wichmann's interrogation, it is not much to tell because it was one of the easiest. The moment he was confronted with those people of whom he knew that he had told them that he had shot these prisoners, he confessed.

Senator BALDWIN. Right at that point—we said we would not interrupt you—I would like to know this: Where did you talk with Wichmann?

Mr. PERL. In one of the regular interrogation cells.

Senator BALDWIN. And what was the situation at the time you talked with him? Who was there and what were the circumstances?

Mr. PERL. I am almost certain that I was alone when I interrogated Wichmann. There might have been someone else there. There was certainly in Wichmann's case nothing like what was referred to here as mock trial.

Senator BALDWIN. Now I want to know this, too. At any time during your interrogation of Wichmann I want to have you describe

to the committee whether or not there was any physical abuse or any threats or anything of that kind, whether you threatened to withhold his family's ration cards, or anything of that kind. Tell us fully what was done with reference to that.

Mr. PERL. No, sir, I did not threaten him and I did not have to use any other means but a pure confrontation with the others and telling him, which of course I told him, "We have many more people who know about it, so it is no sense of keeping back. We know about the crime. If you are still lying, it makes your condition much worse," and he confessed immediately and he was one of the very few.

Zwigart was the other one, and Zwigart is still under death sentence, who said from the beginning that "I did it and I am sorry for it, and whatever I did I want, if I have to be punished for it, I will stand for it."

Senator BALDWIN. You said a moment ago you did not have to use any other method than confrontation with the witnesses. What other methods did you ever use?

Mr. PERL. For instance, in addition to using witnesses I showed them sketches which had been drawn by those witnesses, which I did not have to do in this case and I could not because I did not have a sketch of the place where they had shot these prisoners of war, or in other cases I told him, "Your superior has already confessed too." In this case I just told him what the others had told me about him.

Senator BALDWIN. All right, go ahead.

Mr. PERL. So he described the story quite in detail how he had shot this prisoner of war, and he did not try to involve his superiors into it. Just the contrary, he said Peiper did not say anything, just Sickel said he should bump off the swine, but on the other hand Peiper was present so he thought that he is under his order too.

Now from this shooting later—now we did not have Sickel. We had Peiper. An alarm went out to find Sickel, and after not very long time Sickel was picked up somewhere, I believe in the British zone of occupation, and he was brought in for interrogation too.

Sickel was a much more complicated case because Sickel was a very intelligent man, not only that he is a doctor; he is, I believe, more intelligent than the average man with his background would be.

He was told, "We want to know about your participation," because first of all I want to know what he knows and what he heard from others in the British zone of occupation about the case.

I soon noticed that Sickel does not know anything, so I asked him whether he remembers this Petit Thiers. Yes, he remembered Petit Thiers. He remembered that there was a prisoner of war there and that this prisoner of war was brought in, but then he said this prisoner of war was never shot. This prisoner of war was sent out and he does not know any more what happened to him, so then after he had denied that the prisoner was ever shot, I told him that the prisoner was shot.

Then he said, "I do not know about it. I told the sergeant he should get the prisoner up to the next floor to the infirmary," so I said, "But he did not bring him up to the next floor," so he said, "I do not know about it."

Then I confronted this Sergeant Wichmann with Sickel, and Wichmann told him, "How can you say this? You told me 'Get the swine out and bump him off.'"

Sickel admitted that he had given the order to Wichmann to shoot the prisoner. He denied all the time up to the trial and until his final report, too, that he had ever called the prisoner a swine, and stated he remembers now that the prisoner was in such poor shape that he had him shot in order to save him further pains. This was the case of this prisoner.

I believe I am through with this part which I wanted to develop.

Senator BALDWIN. Lieutenant Perl, just a moment. We cannot go into the interrogation of every single one of these cases.

Mr. PERL. Yes, sir.

Senator BALDWIN. But through this discussion of Wichmann now you claim to have involved Sickel?

Mr. PERL. Sickel; yes.

Senator BALDWIN. Go ahead and tell us further about Sickel. Then you mentioned Peiper. Would it be fair to say that those two cases were typical of how investigations were conducted?

Mr. PERL. Yes, sir. There were exceptions, but this was the typical procedure, to make one talk against the other.

Now, I described now how we got the confession from Sickel. Sickel admitted that he remembers that the prisoner was brought in at this Petit Thiers, but he claimed not knowing because of the solitary confinement in which people were kept that we had Wichmann, obviously not knowing, he claimed, "But I told the sergeant, I remember there was a prisoner who was in very bad condition, but I told him get him up to the next floor to the infirmary," and he stuck to this story until to the moment that I confronted him with the sergeant, and when he was confronted with the sergeant, then he felt his ground losing beneath his feet and he said, "Oh, I remember now when the sergeant told him, 'You told me I should bump this swine off,' I would have never done it if I would not have had your orders."

He said, "Oh, I remember now that was this very poor man and he was in awful condition and that is why I had him shot, so he should not suffer too much."

Then in the final statement which he made, this Sickel, he told me, "I want to mention one thing." This was his excuse up to the trial all the time.

"I have been in the east, and in the east I saw many atrocities. I have been in Treblinka and in other extermination camps where terrible things happen for which I have not been responsible." That is what he claimed.

He was physician there, I believe, in charge of the health of the Jews in these camps, and "I saw terrible things there so that life did not count so much for me any more, and when I saw this man suffer so badly, life did not mean so much for me. I told him, 'Kill him so he should not suffer,'" and this story of what he saw in the East is at his request in the final statement, too, because he thought it would exonerate him to some degree, explain how he was.

Senator BALDWIN. I think there if you have got Wichmann's statement—have you got Wichmann's statement?

Mr. PERL. Yes, sir.

Senator BALDWIN. Have you got Sickel's statement?

Mr. PERL. I have Sickel's statement here, too, but I could not read it. It is very poor, but you have it in the trial record, sir.

Senator BALDWIN. Both of those are in the trial record?

Mr. PERL. I do not know whether the second statement of Wichmann is in the trial record. The first one I am quite certain is in the trial record.

Senator BALDWIN. Well, I think if you have got those statements, they ought to be made a part of the record here.

Mr. PERL. I will be glad to translate as I read. That was the first statement he made. [Reading:]

I, Otto Wichmann, SS sergeant, truly am stating the following and am writing it down in my own handwriting.

I was born on the 18th of March 1920, at Eschenwalde, Kreis Ortensburg. I am a butcher by profession and I entered the SS voluntarily in 1938. I admit that during the Eifel offensive in the last 2 days of 1944 or the first 4 days of 1945 I shot an American prisoner of war. This I did on the orders of Maj. Dr. Sickel and Lieutenant Colonel Peiper.

Senator McCARTHY. Mr. Chairman, may I interrupt? We are going to have a vote on Senator Green's motion to recommit. I would like to get over there in time.

Senator BALDWIN. I think we all should. Let us take a recess now and go over.

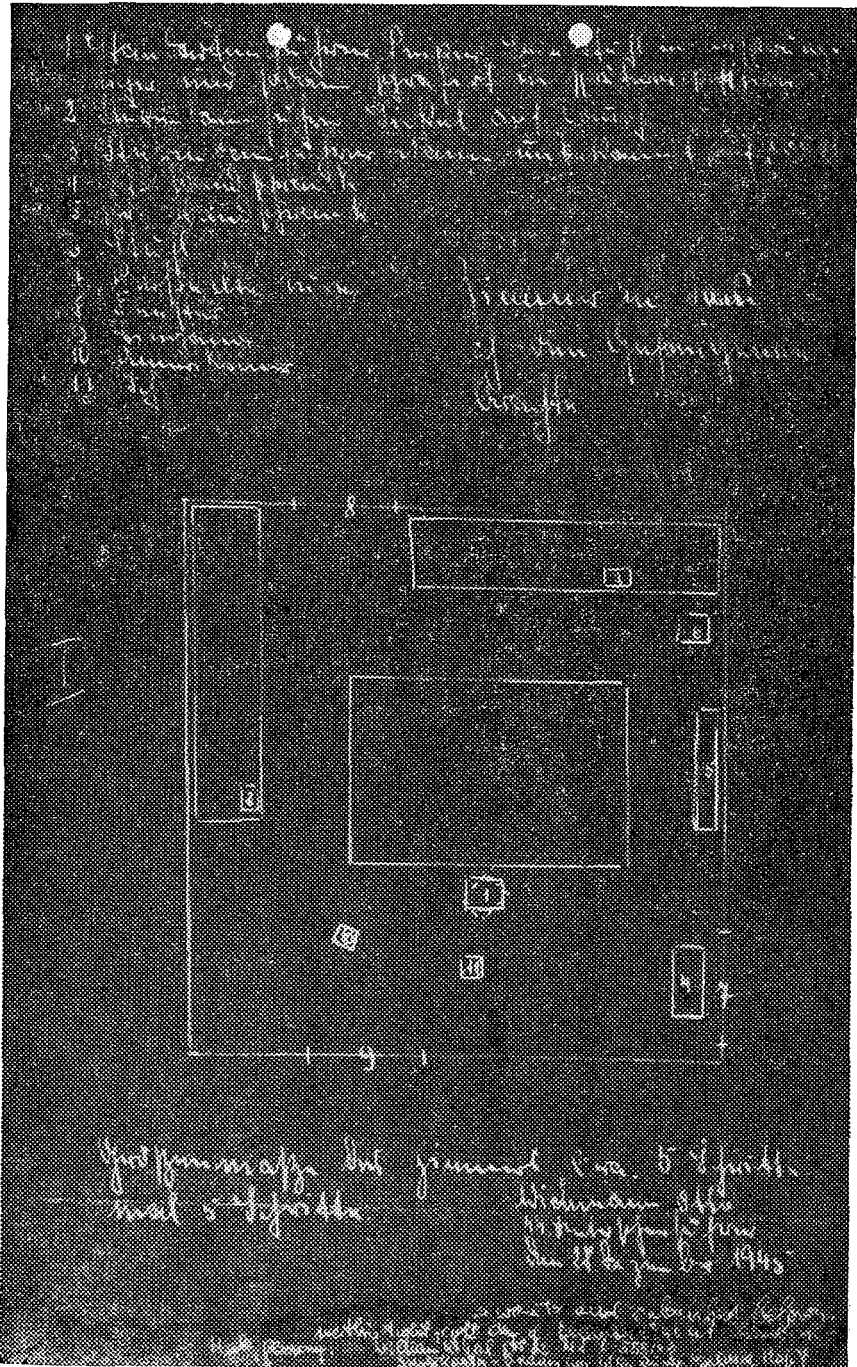
(Short recess.)

Senator BALDWIN. All right, Lieutenant, you may go ahead.

Mr. PERL. I believe, sir, I should hand you the sketches which he drew. The explanation is in German. The statement refers to it, and I will translate it. This is a sketch which was not made part of the trial record which he drew before this final sketch. It does not show his and the PW's, the American's, position. That is why I told him he should draw it too. This not the final sketch.

Senator BALDWIN. It will be put in the record at this point.

(The documents above referred to are as follows:)



Sketch of commander's room, German regimental command post, Petit Thiers

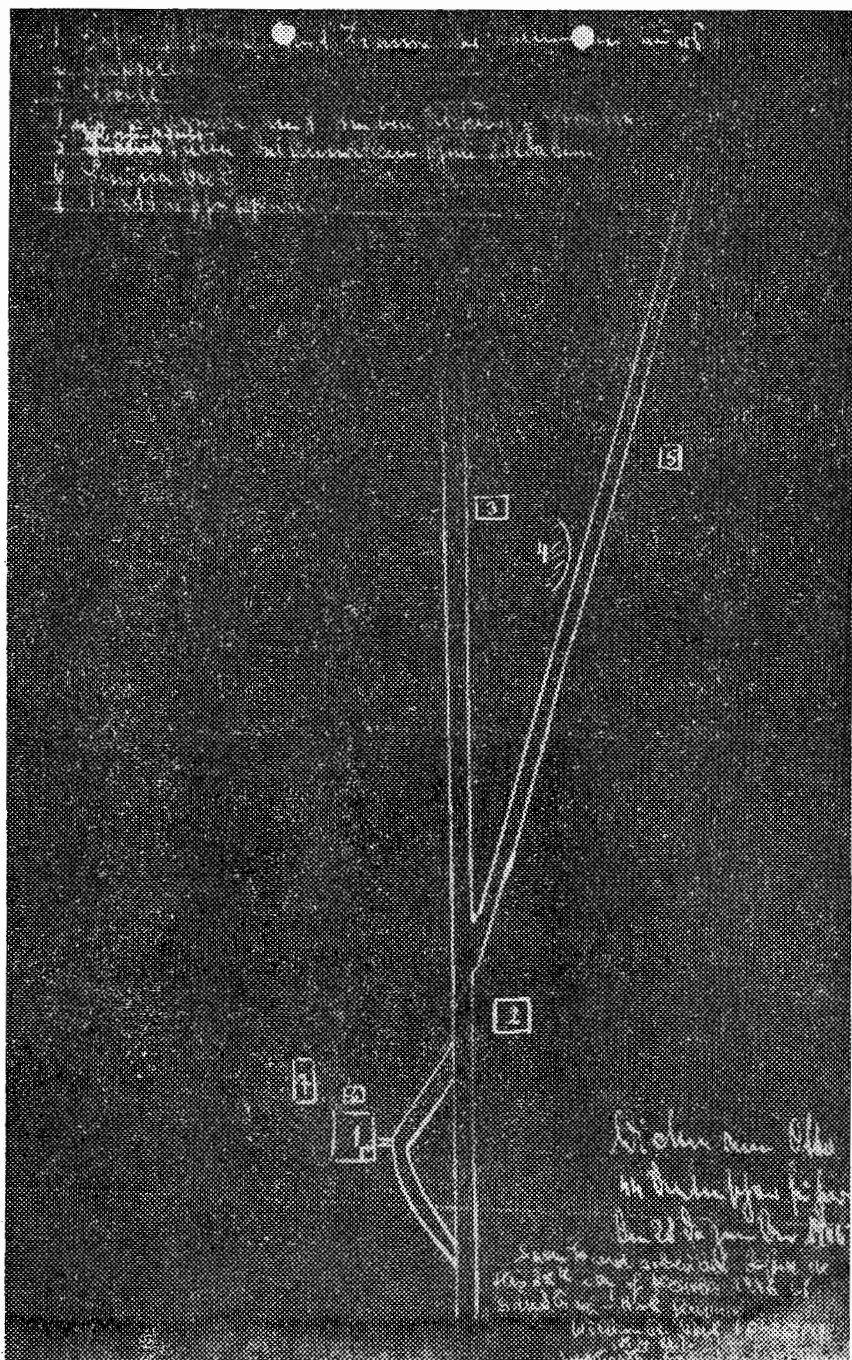
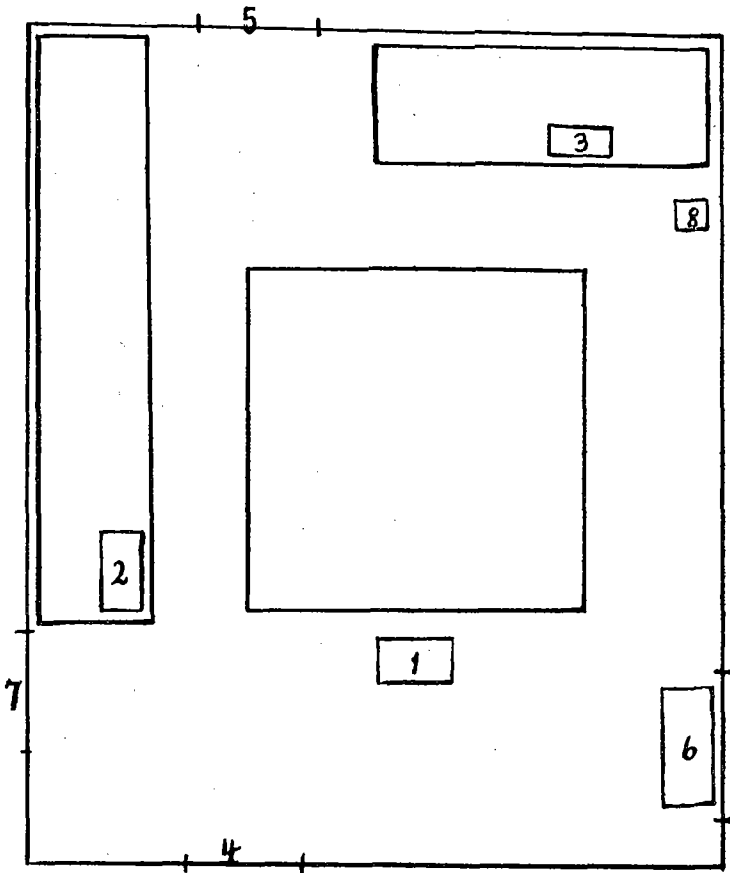


Diagram of scene of shooting American prisoner of war made by the accused Otto Wichmann



- | | |
|---|-------|
| 1 | Stuhl |
| 2 | Stuhl |
| 3 | Stuhl |
| 4 | Stuhl |
| 5 | Stuhl |
| 6 | Stuhl |
| 7 | Stuhl |
| 8 | Stuhl |

(Enlarged sketch of commander's room shown on p. 701)

Mr. PERL (reading):

I am supply sergeant and in charge of the arms of Headquarters Company of the First SS Panzer Regiment to which I have belonged ever since it was founded in 1942. Around New Year's Eve, 1944 or 1945—I cannot recall the exact date more exactly—I was in a stable near the Castle Petit Thiers busy with cleaning this stable in order to provide possibilities for living. This stable was near the

Castle Petit Thiers, approximately 300 meters away from the village of Petit Thiers. Where the village of Petit Thiers was, I cannot recall.

Near to me in the stable were standing around four of my comrades, but I cannot remember their names with the exception of one Private Einfeldt, whose first name I do not remember. Einfeldt was wounded approximately 1 to 2 weeks after the incident which I am describing here, and I never heard from him again.

It was on the morning; it must have been around 10 or 11 o'clock, when I looked through the open window of the stable and saw an American soldier coming out of the woods with his arms up. I went to him and my comrades shouted at me, "Otto, take a pistol with you." I answered "He won't hurt anyone any more."

With this I meant that the American was too exhausted to be of any danger. The American wore an American steel helmet, an American field jacket which had a zipper, and beneath his field jacket he had one of the very big American wool mufflers. He had brown trousers as the Americans are wearing them. I cannot say what kind of boots he was wearing because he had rags around his feet.

This American did not carry any arms, and obviously he had come out of the woods to surrender. He held his hands above his head. As the American was too weak to go himself, to walk on his own, Einfeldt and I supported him beneath his armpits and thus supporting him from both sides we brought him to the regimental command post.

On the way to the regimental command post we met a few members of the German Wehrmacht. When they saw the exhausted American they thought this was probably the man who a day before had shot one of their men. These Wehrmacht soldiers claimed that the day before they had captured a few American soldiers but one did not let himself be captured but had run away into the woods. From there he had not surrendered but in the country from there he had shot one of their soldiers.

These Wehrmacht soldiers named and said the man who they had not captured had a certain name. They asked the American—I do not remember his name—but some of them said that he had a very similar posture to the man whom we had with us right then, and they reminded that they should be permitted to shoot him. I said, "This man is an SS prisoner, and I will bring him to our command post," which I did.

Senator McCARTHY. What?

Mr. PERL. An SS prisoner. There were Army soldiers. [Reading:]

The regimental command post was near the castle at Petit Thiers. At least it was called by us Castle Petit Thiers. First I left Private Einfeldt with the prisoner waiting outside the door of the commander.

I knocked at the door, as the rules demanded, and opened the door only very slightly and asked for permission to enter. A voice said that I could enter, but I cannot recall whose voice it was. I entered and told the commander that I made a prisoner of war. I also told him that I had captured him near the stable, that he had come out with his hand high up, of the wood. The commander then answered, "Bring him in." If I speak of commander, I of course mean our regimental commander, Colonel Peiper. Whenever we spoke of the commander, we meant Colonel Peiper.

After that I brought the prisoner into the room of the commander. I ordered Private Einfeldt to wait outside. After I had let the American enter, I told Colonel Peiper about the remarks which the soldiers of the Army had made. I am absolutely certain of this that I did not mention the name of the man who, according to the Wehrmacht soldiers, had run away. The room was approximately 5 steps to 5 steps wide. I made a sketch of this room and I am attaching it to this statement.

Senator McCARTHY. Did you say the room was approximately 5 steps?

Mr. PERL. Five steps wide and five steps long. [Reading:]

I made myself a sketch of this room and I am attaching it to this statement. On this sketch—

now this is the latest sketch you have there—

No. 1 means the position of Colonel Peiper who was sitting on a chair in front of the table. First he was sitting with the back toward me, but then he moved

his chair slightly to the side so that he was sitting diagonally and had American in front of him, and on the other side of him was Major Sickel who was sitting on a couch opposite. This way Colonel Peiper and Major Sickel were facing each other.

The prisoner stood more or less between the two officers between Colonel Peiper and Major Sickel, but in such a way that he stood a bit outside and the officers could talk and look at each other.

The room was not big, and this way the prisoner stood within reach both of Colonel Peiper and of Major Sickel and myself. The moment in which I mentioned to Colonel Peiper the remarks which the Army soldiers had made, a major in the room whose name I did not know remarked, "if he bumped off one of our men, he should die too."

I cannot remember whether I ever saw this major before. I was under the impression that he was a guest who was present by coincidence. During this whole incident which I am describing, the officers had coffee—

Senator McCARTHY. Mr. Chairman, do we not have a translation of that in the record?

Mr. PERL. I am almost through.

Senator BALDWIN. How much more have you got?

Mr. PERL. I would say I have two-thirds of it about through.

Senator McCARTHY. How many pages more?

Mr. PERL. I have half.

Senator McCARTHY. May I ask, is that not in the record now, a translation of it?

Mr. PERL. Yes; quite possibly.

Senator BALDWIN. Why do we not do this to save time? In other words, the purpose of putting this into the record is to have a typical example of the kind of statement that was taken. Can you not give to the stenographer at this point a translation of it, and then go on to another phase of it because this is, as I understand it, Wichmann's statement, and we were talking about Sickel.

Mr. PERL. Yes.

Senator BALDWIN. I think that if you would do that, that would give us a sample of the type of statement that was taken, and then you could go on and explain the Sickel case.

Mr. PERL. If I would do what, sir?

Senator McCARTHY. If you will hand the reporter a translation, which you undoubtedly have—

Mr. PERL. I will be glad to read it.

Senator BALDWIN. Well, then, why cannot the reporter take the translation? I thought you only had a page or so.

Mr. PERL. No, no, sir. You see, why I thought it might be of interest because he mentions a few details how he suddenly, while Peiper talks to this prisoner, remembers with fright, this sergeant, that he forgot to search him for arms and brought him in, how he is searching him. It gives quite a number of details to show how the thing developed before his mind.

Senator BALDWIN. Developed in his own mind?

Mr. PERL. Yes, sir.

Senator BALDWIN. All right, now go ahead with this Sickel.

Mr. PERL. I have Sickel's handwritten statement, but I could not read it, the photostat is so poor. It is on page 1560 of the trial record.

Senator BALDWIN. Now, as I remember when you confronted Sickel with Wichmann, Sickel finally said that he had told Wichmann to take this prisoner upstairs.

Mr. PERL. No; before I have confronted with him.

Senator BALDWIN. Then, after that, he said when confronted with him, he said, "Life is cheap out in the east," where he had been, and the prisoner was in bad physical shape and he wanted to put him out of misery, or something like that.

Mr. PERL. Yes; he told Wichmann to give him a mercy shot because they had given many mercy shots in the east too and it was probably the best thing to do under those conditions.

Senator BALDWIN. Well, now, on the basis of that you have got this statement from Sickel and Wichmann which we will put into the record.

(The documents referred to are as follows:)

I, Otto Wichmann, SS Unterscharfuehrer, make the following statement truthfully and write it down in my own handwriting.

I was born on March 18th, 1920, in Eschenwalde, Kreis Ortensburg. I am a butcher by trade but I entered the SS voluntarily already in 1938.

I admit having shot and killed an American prisoner of war during the Eifel Offensive in the last two days of the year 1944 or the first four days of the year 1945. I did that under orders of Sturmbannfuehrer Dr. Sickel And Standartenfuehrer Peiper.

I am Tool-Weapons Sergeant of the HQ Company of the 1st SS Panzer Regiment of which I was a member since its inauguration in 1942.

At the turn of the years 1944-1945—I can't fix the date more exactly than I did above—I was busy cleaning a cow stable near the Chateau Petit-Thiers in order to arrange living quarters. The stable was about 300 meters away from the castle. I don't know any more where the village Petit-Thiers was situated. Near me in the stable stood four comrades, but I recall only the name of one of them. Sturmman Einfeld, whose first name I do not know. Einfeld was wounded one or two weeks after the incident described herein, and I never heard of him any more.

One morning, it must have been about ten or eleven o'clock, I saw, as I looked through the open door of the stable, an American soldier staggering rather than walking out of the wood.

I walked towards him and my comrades shouted at me, "Otto, take the pistol with you." I replied, "This one doesn't do anybody any more harm." I meant to say that the American was too exhausted to be dangerous.

The American had an American steel helmet on and an American field jacket, which was of the zipper type; below his field jacket he had one of the heavy American woolen mufflers, and he wore the brownish trousers of the regular American Army uniform. I couldn't see what kind of shoes he wore as he had rags wrapped around his feet. He was unarmed and had obviously left the wood in order to surrender. He had his hands raised above his head.

The American was too weak to walk. Einfeld and I took him under the shoulders and thus supporting him from both sides, we led him to the regimental CP.

On the way to the CP we met some members of the Wehrmacht. When they saw the exhausted American they said that this is probably the man who had shot one of their men the preceding day. These members of the Wehrmacht said that they had captured some American soldiers the day before. However, one had not been captured but had escaped in the wood; he did not surrender, but on the contrary, shot one of their comrades. These members of the Wehrmacht also mentioned the name and said the man whom they did not capture had had such a name or a similar one. They did not ask the American whom I was leading for his name but some said that his figure was similar to the one who had escaped and that I should hand over the prisoner to them, as they wanted to shoot him.

I replied, the man is a prisoner of the SS and I am bringing him to my CP. So I did.

The regimental CP was located in the castle which was called the Castle of Petit-Thiers, or at least, that's what we called it.

First I had Sturmman Einfeld waiting with the prisoner in front of the Kommandeur's door. Then I knocked at the door. As the orders demand, I opened the door only very slightly and requested to be admitted. A voice said that I could enter, but I cannot recall whose voice it was.

I stopped before the Kommandeur and reported to him that I had a prisoner of war. At the same time I said that I had captured him near the stable and that he had come out of the wood there with his hands raised. The Kommandeur told me at that: "Bring him in."

If I speak of "Kommandeur" I mean, of course, the Regimental Commander, Standartenfuehrer Peiper. Whenever we spoke of "Kommandeur," Standartenfuehrer Peiper was meant by it.

I then brought the prisoner into the room of the Kommandeur. I had Sturm-mann Einfalt wait outside.

After I led the American in I reported to Standartenfuehrer Peiper the remarks of the members of the Wehrmacht. I am absolutely certain that I did not mention the supposed name of this American who did not let himself be captured by the Wehrmacht.

The room was approximately 5 steps long and 5 steps wide. I myself have made a sketch of this room and am attaching it to this statement. On this sketch, number 1 means the position of Standartenfuehrer Peiper, who was sitting on a chair in front of the table. He sat at first with his back towards the door but he then moved his chair to the side in such a manner that he had the American diagonally to his left and he faced Sturm-bannfuehrer Sichel, who was sitting on the corner of the couch opposite him. This way Sturm-bannfuehrer Sichel and Standartenfuehrer Peiper sat facing each other. The prisoner stood more or less between the two named officers (Standartenfuehrer Peiper and Sturm-bannfuehrer Sichel) but in such a manner that he did not impair their vision of each other.

The room was not large and thus the prisoner stood within reaching distance of both Standartenfuehrer Peiper and Sturm-bannfuehrer Sichel and me.

The moment I had finished my report to Standartenfuehrer Peiper about the remarks of the members of the Wehrmacht, a Sturm-bannfuehrer whose name I did not know, remarked: "If he bumped off one of our men he too must die."

I cannot remember having seen this Sturm-bannfuehrer before. I was under the impression that he was a guest who was present just by coincidence. During the whole scene described herein, the officers had coffee before them.

After this remark of the one Sturm-bannfuehrer who was not known to me, Standartenfuehrer Peiper (who at this time was still an Obersturmbannfuehrer gave some order to the prisoner in English.

As the result of this, the prisoner tried to open his shirt pocket but he could not do so as his fingers were frozen. At that I opened the left shirt pocket of the American and handed the contents to Standartenfuehrer Peiper.

At this occasion I remembered frightfully that I had never searched the prisoner for weapons and while Standartenfuehrer Peiper was looking at the contents of the shirt pocket, I felt him, looking to see if he had any weapons. I found no weapon whatever, nor any other suspicious thing.

The contents of the American's shirt pocket consisted only of a dark brown pocketbook.

Standartenfuehrer Peiper scanned through the pocketbook. This Sturm-bannfuehrer who was not known to me, remarked "Jochen, give it to me." Jochen is the first name of the Kommandeur, but I believe that it is written Joachim.

At that Standartenfuehrer Peiper handed the pocketbook to the one Sturm-bannfuehrer who is not known to me, and he had not taken anything out of the pocketbook, not even temporarily. On the other hand, I clearly saw how the one Sturm-bannfuehrer who was unknown to me, took several items out of the pocketbook but I couldn't see exactly what they were. Then this Sturm-bannfuehrer unknown to me, handed the pocketbook to me and again I put it into the American's shirt pocket.

Now Standartenfuehrer Peiper asked the prisoner one short question which the prisoner answered. At this I saw how the American was endeavoring to go into "attention" as well as he could. It is possible that this Sturm-bannfuehrer who was not known to me also put a question to the prisoner. In any case, altogether not more than two, or at the most, three questions were asked of him and this questioning lasted at the most, 6 to 7 seconds. I am certain that Sturm-bannfuehrer Sichel did not ask any questions. The American was hardly capable of speaking as he was too exhausted but I heard him pronouncing with a weak faltering voice, three to five very faintly spoken words.

Now Sturm-bannfuehrer Sichel took the left hand of the American, who during this did not leave the spot where he stood. He then took the right hand of the American, he felt and looked at both hands of the American and then he said: "Frostbite 3rd degree."

After this, nobody said anything for one or two seconds. I can recall the silence distinctly. I interrupted the silence by asking, "Should I bring him up?" By this I meant the aid station, which was located on the next floor.

At my question there was again silence in the room for one or two seconds—it might have been three. I remember the silence distinctly. It was quiet outside too. I remember it so distinctly because I immediately saw from the glances exchanged between Sturmbannfuhrer Sickel and Standartenfuhrer Peiper what was being decided here.

Then after that, Sturmbannfuhrer Sickel motioned with his thumb to me and said in a sharp and loud voice, "Get the swine out and bump him off." At this time Standartenfuhrer Peiper and Sturmbannfuhrer Sickel were seated opposite each other. Sturmbannfuhrer Sickel said these last words in such a loud voice that they could have been heard even in a room much larger than the one in which we were at this time.

Standartenfuhrer Peiper, who without any doubt had heard this order of Sturmbannfuhrer Sickel, silently sat by and didn't comment on this order.

After that I said to the American, "Come on, comrade," and I led him out.

In front of the house I met Einfalt again, who was waiting there for me. He asked me what the commander ordered and I answered, he ordered to bump the prisoner off. I still remember that I met Oberscharfuhrer Otto Becker, who was the Panzer driver of the Kommandeur, in front of the house. Becker also asked me what the Kommandeur had ordered and I told him that the Kommandeur had ordered me to bump him off. I then went into the nearby chapel in which, as far as I can remember, the communication platoon was laying and I borrowed a pistol. It was an 08 pistol which had a caliber of 9 millimeters. I myself made a sketch of the locality and am attaching it to this, my statement. On this sketch, number 1 means the CP with the room of the Kommandeur in the left lower corner.

Number 2 is the chapel in which I borrowed the pistol.

Number 3 is the stable in which I was working when I noticed the American.

Number 4 is a sandy slope, steeply sloping towards the road.

Number 5 is the spot where the American soldier was shot.

Number 6 is a so-called Sanua Bath, which is a steam bath and which was erected temporarily by us.

Number 7 is a wooden shed.

I led the prisoner along the road accompanied by Sturmman Einfalt. At the road fork indicated on my sketch I took the right fork which leads uphill.

The American could only walk a few steps at a time; then we had to support him as he could not continue.

When we came near the spot on the road which in my sketch is marked number 5, I turned to the right into the wood.

Up to this point we had been leading the American. From there on I had him go to the wood in front of us. However, he did not reach the wood, only up to the edge of the wood approximately 15 to 20 meters away from the road.

I only went a few meters into the field and then I stopped and brought my weapon into position and then I shot the American with two or three shots. I am a good pistol shot. Normally, I had to test the repaired weapons as I was the weapons sergeant.

The American immediately fell forward. At that point I went to him to see whether he was already dead and to make certain of it. I established that he was already dead. He had two bullet holes in the left upper half of his back right below the shoulder. The two shots were only approximately 3 to 4 centimeters away from each other and both had gone through the heart. I didn't take anything away from the corpse. While we were going to the spot where the American was shot I took the pocketbook out of his shirt pocket and looked through it. At this time he had no money with him. I cannot say whether there was also money amongst those items which this Sturmbannfuhrer who is unknown to me had taken out of the pocketbook.

When I was searching the pocketbook I found in it only some photographs. I remember that one of them showed a little isolated house and another one an elderly woman. I then returned this pocketbook to the shirt pocket of the American.

The name of the American is not known to me, nor did I know it at any time.

As I have here been asked whether the name of the man was Seifert and whether I asked him whether this was his name, I state that it is not impossible that I asked him something similar before I brought him to the CP, maybe in

case the members of the Wehrmacht mentioned such or a similar name. However, I repeat that I cannot recall anything of this nature.

I do not remember to have noticed any rank insignia on this American. He was small, approximately 1.65 m. He was very slim. I cannot estimate his age as his face was completely drawn due to exhaustion.

During the entire time the American did not try to escape nor did he try any resistance nor did he do anything else that would have justified the shooting.

After the shooting I went into the chapel and returned the pistol. Then I returned to the stable, where we all had our lunch.

After lunch a messenger came with the order, "Dig the American in." I can recall this expression distinctly because where Germans are concerned, one speaks of "burying."

Sturmabfuhrer Sickel is the Regimental Doctor of the 1st SS Panzer Regiment LSSAH and at this time he was also the CO of the HQ Company of the 1st Panzer Regiment LSSAH as Obersturmfuehrer MAULE had been killed in action just previously.

This statement has been written in my own handwriting and I have not been influenced either by threats or promises.

I am fully aware of the sanctity and the importance of an oath.

This statement consists of 16 handwritten pages and it has been reread to me before I put my signature on it.

WICHMANN, OTTO,
SS Unterscharfuhrer.

28 December, 1945.

Sworn to and subscribed before me this 28th day of December 1945 at Schwabebisch Hall, Germany. William R. Perl O-555149 1st Lt. MI, Investigator-Examiner, War Crimes Branch USFET.

I, Sturmabf. Dr. Kurt Sickel, being duly sworn state the following:

I. I applied for admission to the Allg. SS in November 1932 and belonged to the Allg. SS until Sept. 39, and to the Waffen SS from the 19th Sept. 1939 on.

Immediately after my entrance into the Waffen SS, thus shortly after the outbreak of war, I was transferred to the East with the SS Totenkopf, Cav Division. My duties were the supervision of the health of the troops and of Polish Jews, who were constructing there a Lager for themselves and later were used as slave laborers in the SS works. Later, that is in the years 1942 to 1944 (30.6.42-beginning of February 1944) I was garrison surgeon for Lublin, that means that I was responsible for the health of the troops and also for that of the Jews who were brought from all parts of Europe into the below-mentioned concentration camps in the area of Lublin. Especially the following concentration camps were under my medical supervision.

- (a) Poniatowa
- (b) Daw-Lublin
- (c) Travenicki
- (d) Airport Lublin
- (e) Krasnik

I was responsible for these camps respectively for the state of health in these camps from their installation until their dissolution. In these camps no gassing took place. Executions were occasionally carried out.

Now and then against my will and on order of my superiors I had to deliver to the Vernichtungslager Maideneck (extermination camp Maideneck, TN) persons who had been working for me in the orthopedic workshops. It was known to me that gassings took place there and that these people got gassed. However, I have not conducted myself any gassings. Among those persons brought into the extermination camp Maideneck were women and men. I do not recall the exact number any more.

On the whole, I had to supervise in these camps the health of about 20,000 Jews, men, women, and children. Continuously new trains from all parts of Europe arrived, among them Cech, French, and Roumanian Jews, etc.

All these camps dissolved one morning in November 1943, by shooting all Jews without my knowing about it. For this purpose these Jews had to build enormous ditches and then were lined up in the ditches one close to another and were shot with machine guns and rifles. Then the second shift got into the ditches and the procedure was repeated. The ditches were about 2½ meters deep and the Jews were shot in about 4 to 5 layers. Men, women, and children were shot in the same trenches. On this day, according to my estimate, about

20,000 Jews were shot in this manner. The shootings for the greatest part were carried out in the KZ-camps in which the people were up to that time. Thus for instance in Traveniki, Poniatowa. At this time I was Hstuf of the Waffen SS. The shootings proper were executed by Totenkopf Infantry Units and by the S. D. (Sicherheitsdienst-Security Service, T. N.).

II. Shortly after the extermination of the Lagers in the Lublin area, which were under my medical supervision, I got transferred back to the "LSSAH," to which I belonged already since 1939.

During the Eifel offensive in December 1944 and January 1945, I was the regimental surgeon on the First SS Panzer Regiment "LSSAH," and for about the 4 weeks of the Eifel offensive, the exact date I cannot remember any more, I was also commanding officer of headquarters company. In the first days of January 1945, the exact date I do not remember any more, I was at the command post of the First SS Panzer Regiment "LSSAH" in a castle in the neighborhood of Petit Thiers. In the room, besides myself, were present the regimental commander, Joachim Peiper, Obersturmbannfuhrer at that time, also a stubaf.—and I think it was stubaf.—Werner Poetschke. As we were sitting this room during the afternoon hours, the door opened and U-scha, Otto Wichmann, the equipment sergeant of the headquarters company, First SS Panzer Regiment "LSSAH," brought an American prisoner of war into the room. This American prisoner of war looked extremely starved and frozen, as he had hidden himself for quite some time in the woods to prevent being taken prisoner.

Obstufaf. Peiper questioned the man in English, but the American prisoner of war refused to make a statement. I looked at the hands of the American prisoner of war and determined that he showed third-degree frostbites on both hands. On the whole, he was physically very much emaciated.

For these reasons I proposed to Obstufaf. Peiper to have the prisoner bumped off. I cannot recall any more if I made this proposal with words or only with gestures or with glances. However, I do know that Obstufaf. Peiper accepted this proposal of mine. If this acceptance of my proposal was made in words or by gestures or with glances I do not remember any more, but I know that I was authorized by him in one form or another to have the American prisoner of war shot.

I ordered thereupon the U-scha. Otto Wichmann of the headquarters company, first SS Panzer Regiment "LSSAH," who at that time was under my command, to lead the prisoner of war away and bump him off. If I did that with words "Take the swine outside and bump him off" or if I used other words for this order, I do not remember any more.

This prisoner of war had, in fact, been bumped off.

I do not remember any more if Wichmann reported back to me that the execution was carried out or if I had the knowledge of the executed shooting from another source. I only know that he got bumped off. I cannot recall to have ordered or carried out another shooting of prisoners of war or civilians in the Eifel offensive.

For better comprehension of this statement, I have prepared a sketch of the room in the castle in Petit Thiers. This sketch I have marked "A" and attached it to my statement. The numerals signify:

- | | |
|------------------|----------------------|
| 1. Table. | 8. Cupboard. |
| 2. Chair. | 9. Corner cupboard. |
| 3. Stove. | 10. Entrance door. |
| 4, 5, 6. Chairs. | 11. Obstructed door. |
| 7. Divan. | 12, 13. Windows. |

I have made these statements voluntarily of my own will uninfluenced by force, threats or duress, and uninfluenced by promises of any kind.

I swear before God that the statements which I have made in this deposition are true, and am prepared to repeat same before any court under oath.

DR. KURT SICKEL,
SS Sturmbannfuhrer.

April 9, 1946.

Witness:

HOMER B. CRAWFORD,
Lieutenant Colonel, Air Corps.

Sworn to and subscribed to before me this 9th day of April 1946 at Schwabisch Hall, Germany.

WILLIAM R. PERL,
First Lieutenant, M. I., O-55149,
Investigator-Examiner WCB USFPT

Senator BALDWIN. Now tell us about Peiper.

Mr. PERL. We got Sickel's statement rather late during the investigation. I believe it must have been March or near March, and the statement regarding this shooting was the last one which we took from Peiper. Peiper first claimed that he remembers that the prisoner was brought in and that he heard later on that he was shot, but he did not recall the details.

Senator McCARTHY. You are now referring to the prisoner who walked out of the woods?

Mr. PERL. Yes.

Senator BALDWIN. Described in the Wichmann statement.

Mr. PERL. Peiper remembered the prisoner; that this prisoner had been very exhausted; that he had looked like a mummy. - I am certain these were Peiper's expressions; that he had looked as if he would have been 50 years old, and that he had had much pity for these looks with this prisoner, and first claimed that he heard that the prisoner in this region was shot at Petit Thiers, which was after the main fighting was over, but did not associate the shooting of which he had heard of the prisoner with this soldier.

Then, when he was confronted with Wichmann, he said, "Yes, I remember now how it happened." He was very cautious in his statement in this way, because he did not want to involve Sickel too much, not only himself. It involved Sickel, and Peiper and Sickel were very close friends, but when he was confronted with Wichmann, and Wichmann told him, "Commander, I shot the prisoner on your orders; you cannot expect me to stand up for it," and he explained in detail, then Peiper said, "Yes, but you are lying when you say anyone said 'Bump the swine off.' No one said 'Bump the swine off,'" and in his final statement he stresses very much it would not have fit into the whole atmosphere of the room, which was an atmosphere of pity.

Everyone was very impressed with the sufferings of this prisoner. The prisoner was brought out and shot because he was in so poor condition anyhow. In this detail his statement varied up to the end from Wichmann's statement, but he admitted that Sickel had told Wichmann to get, bring the prisoner out and shoot him, and that he had been present. So, from the little trick which we used by telling Christ we know "we spoke with your roommate," we got the information about this killing at Petit Thiers which involved Wichmann, one of the shootings of Peiper and Sickel.

We furthermore had got from Weis the information without too many details that at the crossroads one sergeant in a Mark IV, whom he described in detail, had shot an American prisoner of war who had played dead and taken his clothes away, and soon we succeeded in narrowing down the circle until we knew which tank it was and until we knew which man it was.

It was rather easy to identify Huber. Huber was the man who at the crossroads had got this man undressed, this American, taken his clothes away. It was rather easy to identify him, and at the trial he was identified by several witnesses because he is quite unusual in his looks, this Huber, and he has a very unusual way of walking. He walks as if he would be very bowlegged, and everyone described him as a tech sergeant, an upper-grader who was walking very bowlegged, and we knew there was only one company with Mark IV, and

then we found out which Mark IV had been at this place, and so we got witnesses who had seen Huber; and, when Huber was confronted with those witnesses, he confessed too, and this procedure which I described now was typical because from every story we got others too; from almost every story we got other stories, too.

Senator BALDWIN. In other words, you mean, by that, that when one man made a statement he was pretty apt to involve somebody else?

Mr. PERL. Yes, sir.

Senator BALDWIN. Then, did you talk with that somebody else?

Mr. PERL. Not immediately, sir, because before this I tried or we tried to find additional witnesses so that, when we get the accused in, we have more solid evidence against him, but just one witness, we ask him who else saw him and to whom else did he talk.

Just one more thing, not in this connection any more, but which might be of interest to you. We gave papers to the prisoners in the cells and told them, "If you know of anything and you were not involved yourself, tell us." I have one of those papers here which was given to a prisoner in a cell. His name was Siegmund. He was later on a defendant, and which was written in space on top in my own handwriting is written in defendant.

Senator MCCARTHY. He was a defendant or a witness?

Mr. PERL. Defendant in the end. This time he was just in a cell and he was handed this paper.

Senator MCCARTHY. Of what was he convicted?

Mr. PERL. He was convicted, Siegmund, of having participated in target practicing on American soldiers. He, Siegmund, and Frymud on an afternoon or evening when they were not very busy lined up 9 or 10 American soldiers who had been with them for some time and did target practice on them. They lined them up in front of them one after another, shot those Americans.

This is the first statement in which, of course, he does not involve himself. He got into his cell a paper which says in my writing "Persons of whom I know that they bumped off prisoners or civilians or officers of whom I know that they gave orders to shoot prisoners or who were present when prisoners were shot."

This was an empty sheet of paper which was given into his cell, and here he starts telling. Of course, he himself had done nothing at this time, but he starts telling what he saw and what he heard, and this information we used. Here you have another case.

Senator BALDWIN. I would like to make that a part of the record.

Mr. PERL. Yes, sir.

(The document above referred to is on file with the committee.)

Senator BALDWIN. Do you mean by this, Lieutenant, that this information was volunteered to you?

Mr. PERL. Yes, sir. Sir, I am certain that you understand that if a man has been in solitary confinement for several weeks, he has the desire to tell his story, and then he gets a paper on which it does not say, "What did you do?" It says, "What did you see the others do something?"

Some, not every one, but some of them said, "This son-of-a-bitch, I will show it to him," and thus they became involved into the whole story because if they had seen it, they must have been present at the shooting.

Senator BALDWIN. That has been made a part of the record, as an exhibit.

Senator McCARTHY. I missed part of your statement. Let me ask you one question that I meant to ask you before. Did a number of the officers have dogs that they had named after various defendants?

Mr. PERL. I heard now just outside for the first time that Colonel ELLIS named or is supposed to have named a dog 1 year after the trial with the same name as one of the defendants.

Senator McCARTHY. How many of the officers had dogs?

Colonel ELLIS. I am the only person that I know of. I saw that letter. Colonel Rosenfeld is alleged to have named his dog, but I do not think that is so because his dog, as I recall, was Bruce, and none of the defendants had that name. I named my dog after Sepp Dietrich. I called my dog Sepp.

Senator BALDWIN. Why did you call him Sepp?

Colonel ELLIS. Well, this was a year after the trial, and my dog was a Boxer and he looked like Dietrich. He was kind of ugly so I just named him after him. That is the only reason I had. I had no other reason.

Senator BALDWIN. Did you bring the dog home?

Colonel ELLIS. Yes, I brought the dog home. I still have him.

Senator McCARTHY. With the chairman's permission, may I ask Colonel Ellis this: Did the interrogators at that time wear the battle decorations of the defendants?

Colonel ELLIS. Peiper alleges that, but I never saw any of them wear them, and I doubt it very, very much.

Senator McCARTHY. Did you promise Peiper that you would send his decorations to his wife?

Colonel ELLIS. No, sir; I certainly didn't.

Senator McCARTHY. Of course you were not with Mr. Thon all the time. Do you know whether Mr. Thon wore the decorations of the various defendants?

Mr. PERL. I never saw him, and I consider it impossible. It would have made him ridiculous, American with German decorations, in their eyes.

Senator McCARTHY. Thon was not an American, was he?

Mr. PERL. I believe, gentlemen, you are under quite a misapprehension. To the best of my knowledge, Mr. Thon is an American-born Gentile. That is my best knowledge. I am certain he is in Philadelphia, that he was born in Philadelphia.

Senator McCARTHY. Do you know where he is now?

Mr. PERL. Pardon?

Senator McCARTHY. Do you know where he is now?

Mr. PERL. I understand that he is overseas still.

Senator McCARTHY. Is he working for the American military?

Mr. PERL. I have not seen him since the trials.

Senator McCARTHY. Some of the witnesses here said that he was referred to as a "39er," meaning by that a non-Aryan refugee from Hitler Germany.

Mr. PERL. Definitely not.

Senator McCARTHY. Do you know, Joe?

Mr. CHAMBERS. Yes; the trial record shows—I was trying to locate it—he was born in Philadelphia, if my memory serves me correctly.

He presently is employed by the American Military Government in Germany. He is still on investigative work.

Senator McCARTHY. While we are on this, how about Kirschbaum? Is he an American or is he a German citizen?

Mr. PERL. Kirschbaum is an American citizen. I know that he comes from Vienna originally.

Senator McCARTHY. He left about the time you did. In other words, he was a refugee also?

Mr. PERL. That is right; yes.

Senator McCARTHY. How about Steiner?

Mr. PERL. Steiner was originally Viennese, or around Vienna, Austria.

Senator McCARTHY. In other words, you and Kirschbaum and Steiner were refugees, but Thon was an American citizen?

Mr. PERL. I was an American officer, sir, not a refugee. As to Steiner, Steiner was never an interrogator. He was an interpreter, and a very poor interpreter at that.

Senator McCARTHY. You were a refugee from Hitlerian Germany?

Mr. PERL. That is right, sir.

Senator McCARTHY. And then you in 1942 got your citizenship?

Mr. PERL. In 1943, I believe, sir. I know it was early 1943.

Senator McCARTHY. That was the fast procedure whereby you got your citizenship, I gather?

Mr. PERL. In the Army.

Senator McCARTHY. A different kind of a schnell procedure?

Mr. PERL. Yes.

Senator McCARTHY. In other words, you did not take the usual time to get your citizenship?

Mr. PERL. No, sir; I served in the Army. Because I was in the Army I became a citizen.

Senator McCARTHY. Just this one question. You did not see any combat, did you?

Mr. PERL. I mentioned it, sir. I was not a combat soldier, but I was with a field interrogation detachment and I saw people die around me.

Senator McCARTHY. Do you know of any of the interrogators who had been in combat units?

Mr. PERL. I am almost certain that Kirschbaum was.

Senator McCARTHY. You think he was?

Mr. PERL. I am almost certain that he was. Again, sir, as an intelligence man I believe he was in intelligence. You know these field interrogation teams interrogated the prisoners right after they are captured when they were still under the shock of battle, and they did not shoot at the enemy, but around them everyone was shooting and they were in the same dangers, in more dangers because when the Germans got any American who was of European birth, they shot him right away. We know quite a number of those cases.

Senator McCARTHY. I am trying to find out whether any of the interrogators were at any time combat soldiers.

Mr. PERL. I am not certain of Thon, but Thon was a master sergeant before he became a civilian. I could not tell you. I do not want to speak for him.

Senator McCARTHY. Do you know of anyone in the entire group of interrogators from your own knowledge or who told you they had been combat soldiers?

Mr. PERL. I do not know, sir.

Senator McCARTHY. You do not know of any?

Mr. PERL. There might be. I do not know.

Senator McCARTHY. Pardon me, Mr. Chairman.

Mr. PERL. As this question was brought up, sir, I would like first of all—I mentioned already that I have never been in concentration camps. A witness here testified under oath that I have suffered very badly, that I have been under death. I was never under any sentence at all.

If the committee believes it important, I have an affidavit with me stating, testifying to the fact—someone who has been with me all the time—I was never in a concentration camp. I will be glad to submit it if you think it is important.

Senator McCARTHY. Do you recall which witnesses said that you had been in a concentration camp? I think one of them said you had escaped from a train on the way to a concentration camp. Do you recall which witness said that?

Mr. PERL. Yes, sir, I recall that it was testified to under oath by Mr. Bailey, and this is as true as the fact that he saw me slap someone, kneeling in the groin.

Senator McCARTHY. Do you recall what Major Fanton said about your background?

Mr. PERL. I was not here, no, sir.

Senator McCARTHY. Did you check that testimony?

Mr. PERL. No, sir.

Senator McCARTHY. You checked Mr. Bailey's testimony.

Mr. PERL. Yes, I must say I did not check the testimony, but I read it in all the papers.

Colonel ELLIS. I think you asked me about Lieutenant Perl's background, and I told you that was the story I had heard. That was hearsay, but I was not testifying it to be a fact that he had escaped from a train or was about to get on a train and was taken back and later escaped, but I did not know that to be the truth, and I tried to make that clear at that time.

Mr. PERL. I want to also mention something else in this connection, sir. It is quite obvious why the Senator mentions my European birth, and I want to stress two things. I have no prejudice against Germans as such or against any Germans.

I feel that those boys, those Germans, whether they were Germans or Belgians, who shot in cold blood our soldiers, should hang independent of what their nationality is, but I have no prejudice against anyone because of his nationality, color, race, or faith.

In this connection I want to show to the court, if you want to make it a part of the record, the year of 1948 I spent about \$300 spending food parcels through CARE, a Quaker organization probably known to the committee, to Europe, all this to gentiles of Austrian or German origin, and I have the receipts here by CARE, and I already mentioned I believe that Mrs. Perl is what you call a gentile, which would speak against prejudice on my part too, because she is of the same stock as those people whom I interrogated here.

Senator McCARTHY. Let me ask you this: The other day you said you would not give your word of honor to any of the defendants because you felt that they were far beneath you. You mean they were

beneath you because they were defendants in a criminal case, or because of nationality, or why? You recall when you said that?

Mr. PERL. Yes, sir.

Senator McCARTHY. I believe the words used were "These men were so far beneath me I would not give them my word of honor." I am curious why you said that.

Mr. PERL. I will explain, sir. I believe I read in Peiper's affidavit, I am quite certain the last affidavit that he sent in again, that he gives his word of honor. Here the word of honor is not as frequently given a sover there. It is something which is given amongst people of the same grade between friends.

One officer will give his word of honor to the other officer, but an officer, according to the German views, never gives his word of honor to an enlisted man, for instance, even in private life never.

You put yourself on exactly the same level and he is, and of course not because I am an American officer or because I am a lieutenant and he is a defendant, but due to the whole circumstances that he is the accused and I am the interrogator, right or not, I have a certain advantage over him. After all, he goes to jail afterward and I go out, and I would be losing part of this advantage if I would put myself entirely on the same level.

We conversed very nicely, very friendly, but there was still a reserve, and this reserve between us would have been broken down completely if I would have given my word of honor.

Senator McCARTHY. Let me ask you this. Twelve of the defendants were convicted at Dachau, 12 of the Malmedy defendants who were convicted had their convictions set aside later. In other words, they went free. Now did you feel that you were far above those men at the time, or do you still feel you are far above them?

Mr. PERL. Maybe I do not seem to understand.

Senator McCARTHY. Twelve of the defendants whom you interrogated, the men whom you say you were so far above, 12 of them were freed when the court got through hearing the evidence. The court said, "These men are not guilty of any crime." Do you follow me?

Mr. PERL. Yes.

Senator McCARTHY. Now my question is did you or do you feel far above those defendants who are free?

Mr. PERL. No, sir; definitely not.

Senator McCARTHY. Now then, I understand that when you said you felt that you were far above them you meant in rank. They were prisoners and you were not.

Mr. PERL. Sir, I am glad about the way you are questioning today because I believe we will understand each other very easily, because we want the same thing. We want to clear it up.

I did not feel in the way that I am high above them, but the circumstances created that I was above them definitely. I was a free man and they had to answer me.

Senator McCARTHY. Then you did not feel morally above them?

Mr. PERL. I felt morally above them, but not because I was an American and an officer, but because they had killed and I had not, but I did not feel in the way above them, "Who are you?" That is what you mean. "You are just German or you are just a workman who has nothing to say."

Senator McCARTHY. You say you felt morally above them because they had killed?

Mr. PERL. Yes, sir.

Senator McCARTHY. In other words, you decided which ones had killed and which ones had not, and those that you had decided were guilty you felt that you were morally above them. Is that right?

Mr. PERL. Sir, I am reconstructing now. If a prisoner came in and I did not know anything about him, which hardly happened because before we got them in I had information on them; we had a whole 201 file which was kept by Major Fanton. If I just screened people as we did in the beginning, fishing and we did not know anything about him, then I did not feel above him.

Senator McCARTHY. All right, now after you have decided that a man is guilty, you yourself before the court has decided he is guilty, you, Lieutenant Perl, have decided that he is guilty, at that point you have decided you are morally above him.

Mr. PERL. Yes, sir.

Senator McCARTHY. At that point you felt you did not owe him the same obligation that you would owe someone who is on your same level?

Mr. PERL. I would not say this, sir, any more. I believe that certain higher positions oblige us to the moral responsibility.

Senator McCARTHY. Will you repeat that? I did not get it.

Mr. PERL. I felt that I am above him. When he came in and we had before not 100 percent proof, you might call it, but three or four witnesses had said this man, "I saw this man shoot him," he did not confess it, but we had considerable proof against him, certainly my attitude was I did not think of this but if you try to locate me on this point, I follow you.

I most probably felt morally higher than he did, but it would be wrong to draw from it that I did not feel the obligation because I am morally higher than he is, to give him all the fairness which everyone should have.

Just the contrary, because I was above him, I had to exercise this position more carefully. I was obliged to.

Senator McCARTHY. Before we leave here I would like to get your definition on another matter which I consider very important. I have before me the testimony you gave the other day. Do you recall we asked you whether you led a certain man, Hennecke, to believe you were representing him. You said no, you did not, that you told him you were taking care of his case.

By that you meant that your job was to get his confession and convict him. Then later on either under cross-examination or direct examination at Dachau in the record you were asked, "Mr. Perl, did you lead Mr. Hennecke to believe that you were representing him?"

Your answer was, "Yes, sir."

Then I called your attention to the discrepancy as I recall between your testimony there and here, and we had some discussion as to just what you would call a lie. I have before me your answer. I wonder if you want to elaborate on this. You said:

"I did not know who said it, but someone said that the truth has many phases and each single one of them is a lie."

You said, "I did not know who said it, but someone said that the truth has many phases and each single one of them is a lie."

Now do I understand that you subscribe to that definition of the truth, or were you merely giving us that for enlightenment?

Mr. PERL. Sir, not to your enlightenment, but I wanted to describe by it—I hope you do not mind—the procedure that you took out—that is how I felt—of the whole content of my statement about Hennecke, one sentence, and brought the sentence out here, so I said the truth has many faces, not phases, and each single one of them is not truth. Each single one of them is a lie. If you put them all together, this is the truth. This is what I wanted to say, because taken out of content the one sentence which you mentioned was not truthful, and in the connection with the other sentences, it was the truth.

Senator McCARTHY. Well, do you want to tell us now that you did or did not lead Hennecke to believe that you were representing him in a mock trial? We will forget about the phrase “defense attorney.”

Mr. PERL. Yes.

Senator McCARTHY. Forget about that phrase. Take the phrase “representing him,” which I think all of us understand. Now do you want to tell us that that was the truth or a lie, or that that was a lie that is partly the truth, or in what way does this particular definition of yours apply to that?

Mr. PERL. To this?

Senator McCARTHY. Let us ask them one at a time. First, is it true now and the whole truth that you led Hennecke to believe that you were representing him, that during the mock trial and before the time you got his confession, you did lead him to believe you represented him?

Mr. PERL. Hennecke?

Senator McCARTHY. Hennecke, yes.

Mr. PERL. Yes, I started to say Hennecke was under the impression, because of my behavior he was doubtlessly under the impression that I might be his defense attorney, and the moment I noticed that he might be under this impression, I corrected him and said, “I am not your defense attorney.”

Senator McCARTHY. You said, “I will take care of your case.”

Mr. PERL. Right, sir.

Senator McCARTHY. You said, “I will take care of your case.”

Mr. PERL. Yes, I said this.

Senator McCARTHY. “I will take care of your case.”

Mr. PERL. Yes.

Senator McCARTHY. In other words, that you would represent him in the case.

Mr. PERL. It was a double meaning, as I stated yesterday.

Senator McCARTHY. Well, now the meaning that you conveyed to him—

Mr. PERL. I wanted to be evasive by this.

Senator McCARTHY. You wanted to be evasive?

Mr. PERL. Yes; I did not want further questions.

Senator McCARTHY. You wanted to be evasive?

Mr. PERL. When I told him, “I am not your defense attorney; I am taking care of your case,” I did not want further discussion about it.

Senator McCARTHY. You said, “I am taking care of your case”?

Mr. PERL. Yes.

Senator McCARTHY. So you led him to believe you were taking care of his case.

Mr. PERL. I let him decide whatever he thinks after I had made clear to him, "I am not your defense attorney."

Senator McCARTHY. Let us forget about the defense attorney. Do you feel that you led Hennecke to believe that you were representing him, that you were taking care of his case?

Mr. PERL. In the sense of being his good boy, a man who means well to him, yes; in this sense, yes.

Senator McCARTHY. And looking after him; looking after his interests?

Mr. PERL. Not only looking after his interests but believing that he is not such a bad man after all.

Senator McCARTHY. And looking after his interests?

Mr. PERL. Yes, in this sense.

Senator McCARTHY. In other words, you in this mock trial, were, as you say, this good boy taking care of his case and looking after his interests. Is that correct now?

Mr. PERL. To be the good boy and——

Senator McCARTHY. Using your own language.

Mr. PERL. Looking to the fact that he should be given an opportunity to tell the truth, and I pretended that I believed him to tell the truth right from the beginning.

Senator McCARTHY. Now let us get down to this. It is a very simple matter. You and this man were in the same room together and you were talking?

Mr. PERL. Yes.

Senator McCARTHY. I want to know whether or not you led him to believe that you were representing him and looking after his case.

Mr. PERL. Yes.

Senator McCARTHY. Did you or did you not?

Mr. PERL. Sir, Hennecke claims now that I beat him. Do you ever hear of a defense attorney beating his client?

Senator McCARTHY. Let us forget about the beating now, I am asking you this question. You were there in court. This man says, "Are you my defense attorney?" You say, "I am looking after your interests." Now my question to you is this:

We will talk about the beatings later on, if you want to. I will be glad to, but for the time being this is my question: At the mock trial did you lead Hennecke to believe that in this mock trial or ceremony—call it what you like—you were taking care of his case and were representing him? Do you understand?

Mr. PERL. Yes. Not that I am representing him. He was under the impression, he should be under the impression, that I am an interrogator who believes him to be a good man, and as there was another man who always shouted at him, he should turn to me. That was the idea.

Senator McCARTHY. Did you lead him to believe in your opinion that you were representing him? Did you think that this man thought that you were representig him, looking after his case, his interest? It is a simple matter, you see.

Mr. PERL. Sir, I believe it is quite obvious from the trial record that he was under the impression that I probably or possibly am his defense

attorney, so he must have for a short moment believed that I am representing him, but the moment he uttered it, I corrected it.

Senator McCARTHY. You say you corrected it. By correcting it you said, "Now, Hennecke, I am taking care of your care."

Mr. PERL. No, sir; I said before this, "I am not your defense attorney. You do not have a defense attorney."

Senator McCARTHY. You said, "I am taking care of your case?"

Mr. PERL. That is right.

Senator McCARTHY. So you told him you were taking care of his case?

Mr. PERL. That is right.

Senator McCARTHY. Is that right?

Mr. PERL. Right.

Senator McCARTHY. So there is no doubt in your mind but what you led Hennecke to believe what you told him, and by your actions that you were taking care of his case. Is that right or not?

Mr. PERL. Sir, I believe that until I told him this, that I am not his defense attorney, he was under the impression that I probably am his defense attorney. After I told him this, as to my opinion he was under the impression, "He is not my defense lawyer. He is an interrogator, but he is some well-meaning, very well-meaning interrogator."

Senator McCARTHY. Let us get this straight. When you said, "I am looking after your case," you said, "I am not your defense lawyer, but I am looking after your case," you have already testified that you corrected the impression to this man that he was in court, that he was being tried; in other words, that he was having his trial.

Now my question is this, and it is a very simple matter. If you want to tell me the truth, you can. If not, we can keep this on forever or as long as the chairman lets us.

Senator BALDWIN. If you are going to keep it on forever, I will go and do something else.

Senator McCARTHY. I intend to keep it on until the man answers the question, Mr. Chairman.

Senator BALDWIN. Go ahead. I am not going to impede in any way. Go ahead.

Senator McCARTHY. Did you lead this man to believe that you were taking care of his case in court that day when he thought he was being tried for his life? Did you lead him to believe that you were taking care of his case; you answer that, will you?

Mr. PERL. Yes. As to my recollection, this question whether I am his defense attorney or not was not asked in this room where he was interrogated where the fast procedure took place, but as to my recollection it took place afterward, when I was with him alone in the cell, so I do not know what his belief was during the fast procedure.

Senator McCARTHY. All right. Now during the fast procedure you say you do not know. You do know there was a fake court. Let me ask you this. Those fake judges were not dressed in uniforms of their own rank. Am I right?

Mr. PERL. They might have been, they might not. I do not recall, but it is possible that there were people there who had higher ranks or they might have been civilians and had ranks on.

Senator McCARTHY. Well, now do you know that you previously testified that they were not dressed in uniforms of their own rank? Do you remember that?

Mr. PERL. I do not recall it, but it is quite possible. It was usual in Intelligence if it is preferable, then you put on bars or eagles or whatever seemed appropriate for the occasion.

For instance, one could not interrogate, let us say, a major as a second lieutenant. A German major, he would not have answered you, so you put on eagles to interrogate.

Senator McCARTHY. I am not speaking of interrogating. I am speaking of the judges in the Schnell procedure. In those cases the judges used to put on uniforms that were not their own. It that right?

Mr. PERL. Yes, sir.

Senator McCARTHY. Then we are in this room with the fake judges behind the bench and what you call the bad boy, bringing in the witness, accusing the defendant. The defendant thinks he is being tried for his life.

Now you said this man did not ask you whether you were his defense attorney until you left this courtroom. Now my question is this: During these proceedings by your activity and by what you were saying did you then lead him to believe that you were taking care of his case, in other words, that you were handling his case for him, that you were representing him, seeing that he would get fair play?

Mr. PERL. Sir, I cannot judge but by the circumstances of what happened, what occurred in this man's mind. I would have to conclude. You know the circumstances as I know them what was going on. They are not disputed, so you can draw this conclusion just as well as I can. I do not know from my own what went on in his mind except for the fact that afterward he asked me whether I am his defense attorney.

Senator McCARTHY. Well, was this whole set-up designed to convince him that he was being tried?

Mr. PERL. Now, sir, this question I would like to answer, and I believe it is important to answer it. I do not think that this committee is aware of the fact that according to Continental law—

Senator McCARTHY. I think we will have to hold it until tomorrow.

Senator BALDWIN. Do you want to go on while you are in the middle of this now?

Senator McCARTHY. I will be glad to come back, Mr. Chairman.

(Short recess.)

Senator McCARTHY. Mr. Perl, the chairman says we will continue until I have gotten an answer to this one question. We are going to adjourn for the evening, I guess. You can determine whether we get home for a hot or cold lunch.

Now I still want to find out from you the answer to this one question. Forget, if you will, for the time being about the various phases of truth and try to stick to what the average people over here consider truth. First, let me ask you this: The purpose of the mock trial was to create the right psychological atmosphere in which to get confessions, right?

Mr. PERL. It was to create the right psychological atmosphere to find out the truth.

Senator McCARTHY. And to get confessions?

Mr. PERL. If they were true; yes.

Senator McCARTHY. You did not want any confessions that were not true, did you?

Mr. PERL. Certainly not.

Senator McCARTHY. And you thought up this Schnell procedure, I gather, according to Major Fanton.

Mr. PERL. I believe after this, Major Fanton, if he said that I thought it out, then he was in error. I suggested it, but it was not my idea. The idea is based in European law procedures; if you will permit, I will explain it a little more in detail.

Senator McCARTHY. He may have said "suggested" and not have said you thought it up, but you are the man who suggested it to Major Fanton, right?

Mr. PERL. The first kind of procedure, not the noisy second type which is to my best knowledge—and I am certain that I am exact—was used in only two cases, in Kuhn and in the Hennecke case.

Senator McCARTHY. In other words, you do not like that noisy trial of people shouting back and forth. You like a more orderly trial, we will call it ceremony, if you prefer that.

Mr. PERL. Interrogation, I would call it, formal interrogation.

Senator McCARTHY. The only objection you had was when they got noisy, shouting back and forth. You wanted to keep it more formal, more quiet, more like a court, in other words.

Mr. PERL. More like a court, not like a trial, but like an investigation court.

Senator McCARTHY. And the purpose of having the mock judges, the fake judges was to convince the defendant that he was actually having his trial, right?

Mr. PERL. The purpose—

Senator McCARTHY. Was that one of the purposes, let us say, to avoid a lengthy explanation?

Mr. PERL. No, sir.

Senator McCARTHY. You say no?

Mr. PERL. No, definitely not.

Senator McCARTHY. Do I understand that you did or did not want to let the defendant believe that he was being tried?

Mr. PERL. We did not want the defendant to believe that he is being tried. I did not want him and I do not think anyone else wanted it.

Senator McCARTHY. So that the purposes of the judges behind the bench was to convince the defendant that he was not being tried?

Mr. PERL. No, sir. If I would have the possibility to explain to you about the investigating procedure, then you might understand the purpose better.

Senator McCARTHY. Let me ask you this. The chairman suggests that this bill take some time. Let me take 5 minutes. I do not think I can complete it then, Mr. Chairman. We will see if we can arrive at anything.

Senator HUNT. Go ahead.

Senator McCARTHY. Now you say it was never the intention of the court to convince the defendant that he was being tried. Is that right?

Mr. PERL. I could not answer for the court. I would not know what Mr. Owens, the prison officer, thought, but I, with some legal experience in European law, definitely had not the intention to give him the impression that he is being tried. I wanted him to believe that it is a very formal and very important interrogation.

Senator McCARTHY. You were the man who suggested this to Major Fanton?

Mr. PERL. Right, sir.

Senator McCARTHY. Did you suggest that men sit behind the table?

Mr. PERL. Yes, sir.

Senator McCARTHY. And that they would impersonate judges?

Mr. PERL. Yes, sir.

Senator McCARTHY. You did. All right, so that in this mock trial, this ceremony, there would be fake judges. That is your suggestion?

Mr. PERL. In this sense, yes, sir.

Senator McCARTHY. And it was your suggestion also that there be what you call a bad boy and a good boy, the bad boy being the man who would present the case against the defendant to the judges, and the good boy being the man who would represent the defendant, object to the questioning, and in other words protect the rights of the defendant. Is that right?

Mr. PERL. This procedure was used in two cases. I do not think this procedure was my suggestion, but I participated in one of those cases.

Senator McCARTHY. You participated?

Mr. PERL. I do not think it was my suggestion.

Senator McCARTHY. In other words, you do not think it was your suggestion to have a good boy and a bad boy?

Mr. PERL. I do not think so, no.

Senator McCARTHY. All right. In the suggestion that you made, how was the mock trial or the ceremony to be conducted?

Mr. PERL. I tell you. According to European, to Continental criminal procedure—

Senator McCARTHY. Will you forget about—

Mr. PERL. I have to, sir. You will not understand.

Senator McCARTHY. You do this. We will understand. You take us into that room, will you; the defendant is in the room.

Mr. PERL. Yes.

Senator McCARTHY. We have the fake judges behind the table. Now from there on you pick it up. You tell us what was to happen.

Mr. PERL. In the beginning—

Senator McCARTHY. We want the background why it was done and that sort of thing. We will go into that, but I want you to tell us what was done in that room. Will you do that?

Mr. PERL. Yes. There were two sharply defined kinds of procedure. I am speaking about the first now.

Senator McCARTHY. That is the quiet procedure?

Mr. PERL. Yes. There were five or six, I believe, or four or five of this kind. I do not think any of the defendants was before such a fast procedure. As far as I remember it was used on witnesses.

Now the prisoner came in and behind the table there were two and in some cases three persons sitting. On the table was a crucifix and there were two candles. The hood was taken off the prisoner either just before he entered the room or in the room itself.

Then one of the two or three persons sitting on the other side of the table invited him to sit down. Then he was advised of the sanctity—then he was told that he is suspected of having committed such and such crime. Then he was advised of the sanctity of the oath.

He was told that perjury is a severe crime and he was requested to stand up. He was requested to stand in front of the crucifix. The candles were lighted and his oath was taken. Then during the ceremony the two or three men sitting behind the table, the Americans, rose and then they sat down again, and then the formal questioning started.

Senator McCARTHY. Now stop right there. Tell me the purpose of the formality of their standing up and sitting down. Was that to create the impression it was a court?

Mr. PERL. It was the clear intention to impress him with the importance and the sanctity of the oath.

Senator McCARTHY. Now let us go back to this question.

Mr. PERL. Sir, I do not deny that this was intended to impress him that this is a court.

Senator McCARTHY. In other words, there is no doubt about it. The purpose of it was to impress him that this was a court.

Mr. PERL. An investigating court, an investigating judge.

Senator McCARTHY. And you say that this was not intended to impress him that he was to be tried?

Mr. PERL. No, sir.

Senator McCARTHY. And you are sure of that?

Mr. PERL. That was as I understood it. I do not know what some legal member of the court might have thought.

Senator McCARTHY. And did you tell any of the defendants that this was not a court, they had no right to pronounce sentence, that this was merely an interrogation?

Mr. PERL. I understand your question. I will try to recall. I do not think I ever told any defendant that he is not being tried.

Senator McCARTHY. Mr. Chairman, with one of those minutes to go yet, I would like to take that time to point out to this witness what Major Fanton had to say about this. Does anyone have the original statement of Fanton, the formal statement?

Mr. CHAMBERS. It was included in the record, and I think you are reading from it.

Senator HUNT. While you are looking for that, Colonel Chambers, you had a question you wanted to ask.

Mr. CHAMBERS. I wanted to ask a couple of questions on this mock-trial procedure. You have just mentioned, you used a term which is new here, and that is the investigating judge.

Mr. PERL. Yes, sir.

Mr. CHAMBERS. Earlier you made some mention of the continental procedure. Now am I to infer from that remark that under the continental system of investigations and court procedures there was an investigating judge that, with some sort of ceremony, would make an investigation before the trial, before the actual trial?

Mr. PERL. This is absolutely correct, sir, and this was the reason why I suggested this formal interrogation to Major Fanton. It is 3 years ago. I do not remember whether I told him this reason, but this can be established by everyone who just studies, looks into the European law.

The procedure is on the Continent, in Germany, Austria, in Czechoslovakia, in all those countries where Germans live, is as follows: There is a difference, of course, between the trial and the pretrial procedure, but the difference is not as sharply marked as it is according to Ameri-

can procedure. The pretrial investigation is conducted by a regular judge.

Mr. CHAMBERS. You mean he is a regular member of the court?

Mr. PERL. He is a regular member of the court of the territory within which this crime was committed. This judge, as far as I speak now I am certain it applies for all those countries of which I spoke now. From now on it applies certainly to Austria, Czechoslovakia, to certain parts of Poland which once belonged to Germany, and certain parts of Yugoslavia, and so on, but I am quite certain it is in Germany.

This same investigating judge who in Germany, too, is a member of the same court can be 3 days a week an investigating judge, and 3 days a week a trial judge.

In the morning he might be investigating case No. A, and in the afternoon he might be investigating as a trial judge in case No. B, of course, not the same case.

Mr. CHAMBERS. Well, Mr. Perl, through these processes where an investigating judge has a prisoner in for that purpose, do they swear in their witnesses and ask them questions and things of that type?

Mr. PERL. The procedure is quite formal. It is believed that it is very important to impress the suspect with the sanctity of the oath. He does not have to be necessarily a prisoner. He might be free and called in to testify before the investigating judge.

Senator McCARTHY. While you are questioning, would you go into this matter? I understand on the Continent they do not allow the defendant to take an oath.

Mr. CHAMBERS. That is the very question I was going to ask. Do you mean that the witness is sworn in or the accused is sworn in by the investigating judge?

Mr. PERL. The witnesses are sworn in by the investigating judge. The defendant is not sworn in, but he is in a very formal and very solemn way reminded of the fact that if he lies, this, according to the law—this is the law—is the reason to give him a stiffer sentence.

Mr. CHAMBERS. Well, do they have, for instance, a crucifix around, candles, and things of that type?

Mr. PERL. Now I speak for all the countries which I mentioned with the exception of Germany. I do not know, in Germany maybe, too, in Austria, in the Sudetenland, in many of the territories from which those people come they definitely have a crucifix, they have two candles on the table, and prior to the witness taking the oath, the judge, the investigating judge reminds him of the sanctity of the oath. Then he tells him, "Put yourself up in front of this crucifix." Then he rises. With him everyone present in the courtroom—and it is a courtroom even if it is a pretrial procedure—rises. Then he takes his oath and then only he sits down.

I have with me an affidavit of an authority on continental law, a man who practiced law there for 39 years in which he describes something of this procedure. It is Dr. Hugo Medak of Los Angeles, Calif. If I am permitted to read it or hand it to you—

Senator HUNT. Do you want to put that into the record?

Mr. PERL. Yes, sir.

Senator McCARTHY. Joe, in view of the short time—

Mr. CHAMBERS. May we, for the purpose of identifying this document, put it in the record, and then tomorrow we will pick up,

if it is agreeable, at this point, and go further with this particular discussion?

(The document referred to is as follows:)

AFFIDAVIT

Dr. Hugo Medak of 223 South Kenmore Avenue, Los Angeles, Calif., duly sworn deposes:

1. I was a member of the Bar of Vienna, and exclusively engaged there in the practice of civil, as well as criminal, from the year 1899 to the year 1938.

2. I hereby certify, that according to judicial procedure there, a crucifix was standing in every courtroom, on the courts table or desk, in front of the investigating or presiding judge. To the left and to the right of the crucifix was a candlestick, each with one candle. The following was the procedure of administering the oath to a witness: The investigating or presiding judge first reminded the witness of the sanctity of the oath. He then requested the witness to take his stand in front of the crucifix. Then the judge rose and with him rose to their feet everyone else present in the courtroom, including spectators and visitors. The judge then spoke aloud the following oath formula, which was repeated word by word by the witness: "I call God the Almighty and all-knowing as a witness to the fact, that I will speak the full and exact truth and nothing but the truth. So help me God." After the witness, his arm raised during all this ceremony, had repeated the above whole sentence word by word, not only the words "I do," the judge, and after him everyone else present in the courtroom took his seat again. The solemnity of the ceremony was stressed by the fact, that the two candles to the left and to the right of the crucifix were lit prior to the taking of the oath.

In my thirty-five years of law practice I made the experience that this solemn procedure achieved its purpose, and this purpose was not to intimidate the witness, but to impress him with the sanctity of the oath and thus to impress upon the witness the duty of speaking the truth.

DR. HUGO MEDAK.

Subscribed and sworn to before me this 10th day of May, 1949.

[SEAL]

CLIFFORD B. GRAW,
Notary Public.

My commission expires May 27, 1950.

Senator McCARTHY. Let me ask you this: You say, in the continental practice, No. 1, they never swear in the defendant.

Mr. PERL. No, sir.

Senator McCARTHY. Your procedure, the one that you recommended to Major Fanton did provide for swearing the defendant?

Mr. PERL. Yes, sir.

Senator McCARTHY. In the continental practice it is actually a judge, a legitimate judge who conducts the mock trial, the investigation trial. They do not call someone off the street.

Mr. PERL. Not the investigation trial, the pretrial investigation.

Senator McCARTHY. They do not have any fake trials in the continental procedure?

Mr. PERL. No, sir.

Senator McCARTHY. So when you say this was modeled after the continental procedure, let us make it clear that here you had fake judges, men who were not judges, men dressed up in uniforms other than their own, where in the continental procedure you had an actual judge of the court who sits down and takes the witness' statement. Am I right?

Mr. PERL. Sir, you are not right, because we are speaking about the word "judge" and the word "judge," according to you means a trial judge, whereas the judge there is an investigator. He is not a member of the court, but he is an investigator, so in this sense it was

correct. We were investigators, and we could not be later on in the trial any more, but we had approximately the same position which the investigating judge had there.

Senator McCARTHY. Am I correct that in the continental procedure you say the judge may be in court in the morning, and in the afternoon sit as an investigating judge; is that right?

Mr. PERL. That is quite possible; yes.

Senator McCARTHY. So that he is a judge, not a member of the police department?

Mr. PERL. No.

Senator McCARTHY. He is not a member of the police department?

Mr. PERL. No.

Senator McCARTHY. Not part of a detective agency?

Mr. PERL. No.

Senator McCARTHY. He is a member of the court; right?

Mr. PERL. Right, sir.

Senator McCARTHY. You do not know under continental practice of their recognizing any fake judges and having mock trials by the police department or the detective agency investigating the case? That is not recognized on the Continent?

Mr. PERL. I do not know whether the police use mock trials there. I do not know.

Senator McCARTHY. You suggested this because it follows continental procedure. Am I correct in this: That as far as you know continental procedure does not recognize mock trials conducted by the police department or any detective group or anything like that?

Mr. PERL. No.

Senator McCARTHY. So that when you say this was modeled after the continental procedure, that is untrue in that the continental procedure does not recognize any mock trials?

Mr. PERL. Right.

Senator McCARTHY. The continental procedure recognizes bringing witnesses in?

Mr. PERL. Right.

Senator McCARTHY. Not the defendant, but witnesses, swearing in witnesses?

Mr. PERL. Yes.

Senator McCARTHY. You departed from that, in that No. 1 you say, "We will swear in the defendant, we will put him under oath." Right?

Mr. PERL. Right.

Senator McCARTHY. And No. 2, you do not have any judges from the court. You call in anyone like this young Mr. Owen who was a supply officer and say: "Here, you act as president of the court," so there is no likeness at all, is there, except perhaps the size of the room or something like that?

Mr. PERL. Yes. Now, sir, we come always, you see, back to the same thing. I do not know what Mr. Owen thought about it, but when I suggested this I thought—and this was the intention: I do not claim that we acted exactly according to European procedure but the idea was to make this man feel that he is interrogated in a very formal and very important interrogation and that he has therefore to speak the truth and that if he does not speak the truth he might get into very bad trouble.

Senator McCARTHY. Now, let me ask you this one question. You were a criminal lawyer in Vienna. You tried, I believe you stated the other day, some 100 or 200 important criminal cases. You went before the Supreme Court, so apparently you had considerable practice. Let me ask you this: If a criminal case came to you, you had the job of defending a man accused of a crime, and if you found out that the police department had conducted a mock trial and convinced this man he was being tried and they had what you call a good boy and a bad boy, one representing him, taking care of his case, the other one trying to prove he is guilty, and they have men dressed up behind the bench impersonating judges who are not judges, they swear this man in and say "Now, you have got to tell the truth in this case;" here is a crucifix; here are candles, religious articles, and you found that under that procedure they extracted a confession from him, would you consider that reversible error, that you would get that case reversed? Under the laws of Austria, would that be a reversible error? Or would you think, "No, that is not a reversible error"?

Mr. PERL. Sir, I am not very familiar with the expression "reversible error."

Senator McCARTHY. Well, by that I mean a case that the reviewing court sends back for a new trial. The court says, "This trial is not properly conducted." That is what is known as reversible error, a type of error which is great enough so that the reviewing court will say, "This must be retried."

Mr. PERL. I do not think my position—I try to put myself now into the position of the defense lawyers there. I do not think my position would have been good.

The rules of evidence are by far not as stiff as they are here. Almost every evidence is admitted, not almost, practically every evidence is admitted as long as it is relevant and the court attaches importance to it, whatever he wants to attach.

Now, if the court would find there that this evidence is so important that he believes it, he could appeal for legal reasons, but against the opinion of the court that this is true or this is not true, I could not have done much. For legal reason, I could have appealed only.

Senator McCARTHY. Let us assume this case comes to you. You have got the job of handling the appeal.

It appears that you have this mock trial and that the man is told he will be hung. His defense lawyer, or, as you say, the man representing him, the good boy, goes back to his cell then and says, "Now, if you will sign this confession, then your family will get back their ration cards; then, they will not be hung, you will not be hung; I will get you off with 10 or 15 years; you sign this confession." Just assume for the time being those are the facts in the case, would you say that then you had a case which would be reversed by a court in your homeland under the laws in existence at that time?

Mr. PERL. First of all, I want to state, as you know, this was not the case in our case. It is a hypothetical case, and secondly, sir, I believe you will not believe me; as I suggest, consult someone else with legal experience there. I might be wrong, but I believe that I could not have done much even in the very hard and very extreme case which you just described, because the evidence could have been brought into court. I do not doubt this, because you could bring evidence as long as it was relevant, and if the court attached the importance to it.

Of course, I would fight it at the court, and I might be able to fight it for legal error, too, but I do not think, because only legal reasons that could be wrong procedure could be brought in.

Senator McCARTHY. Just one question. Let us say that instead of being the defense lawyer you are the reviewing judge and this case comes before you and then you find all that I allege is true including the statement to him that he is going to hang in the morning.

"I am your friend. I am the man who is taking care of your case. I have arranged that if you sign this confession you will get off with 10 years," and the man takes the choice instead of hanging.

You are the reviewing court. That case comes before you. Would you then say that man did not get a fair trial, or would you say, "No, it is fair"? "We got a confession from him."

Mr. PERL. I would say that this man who was treated as you described now got a very unfair trial, and I would look into the law, whether I can find something in the law to have the first judgment reversed, if he was treated as you said now.

Senator McCARTHY. Thank you.

Senator HUNT. We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 5:20 p. m., an adjournment was taken until 10:00 a. m., Wednesday, May 18, 1949.)

MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, MAY 18, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 12:35 p. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senators Baldwin, and McCarthy.

Also present: J. M. Chambers, of the committee staff; Howell J. Hatcher and Francis Flanagan, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments; and Colonel Ellis.

TESTIMONY OF WILLIAM R. PERL—Resumed

Senator McCARTHY. Mr. Perl, you understand without being sworn from day to day that you are still under oath?

Mr. PERL. Certainly.

Senator McCARTHY. Mr. Perl, did you know that the Army conducted some sort of an investigation, prior to the trial, of the claimed brutalities or torture methods, call it what you may?

Mr. PERL. Yes, I knew that.

Senator McCARTHY. And had any of the prisoners complained to you that they had been mistreated?

Mr. PERL. I learned of this investigation; there are two questions which are put to me now.

Senator McCARTHY. The first one first.

Mr. PERL. I learned of the investigation of the Army conducted by Colonel Carpenter, to my knowledge, only 1 or 2 days after I arrived in Dachau shortly before the whole—set up in Schwabisch Hall would up. I went to relieve and there I learned for the first time, to my best recollection.

Senator McCARTHY. Do something for me, try to answer my question—be quiet for a minute, will you try to answer my question? And if you feel that an explanation is necessary, tell us and we will let you explain.

Mr. PERL. Yes.

Senator McCARTHY. What I asked you was this: Did you know the Army conducted such an investigation, if you can possibly tell me yes or no, then if you want to explain your answer, we will give you an opportunity to do that. We will try to get you away today you want to I know and if you continue to give a lengthy explanation of every answer, it will be impossible to get you away. Do you understand?

Mr. PERL. All right.

Senator McCARTHY. The next question is: Did any of the defendants complain to you personally that he had been mistreated?

Mr. PERL. I believe that General Dietrich after the interrogation in Schwabisch Hall mentioned that on his way to the interrogation cell, he was kicked into his behind by some guard.

Senator McCARTHY. Do you know what guard kicked him?

Mr. PERL. No, sir.

Senator McCARTHY. Was that the time the Polish guards were on duty?

Mr. PERL. I believe so.

Senator McCARTHY. And he complained that he had been kicked around by the Polish guard?

Mr. PERL. Not kicked around, he didn't make much out of it, but he complained more, in a way, that it hurt his dignity, not that he was actually hurt.

Senator McCARTHY. In other words, he told you that he had been kicked around.

Mr. PERL. I believe he told that on this occasion.

Senator McCARTHY. Now, you were interviewed by Carpenter, were you not?

Mr. PERL. No, sir.

Senator McCARTHY. Were you interviewed by any of the Army staff that was conducting the investigation into these alleged beatings and kickings?

Mr. PERL. No, sir.

Senator McCARTHY. Did anyone come to you and say, "Mr. Perl, what do you know about this," or anything like that?

Mr. PERL. No, sir.

Senator McCARTHY. During any of the investigations into the alleged brutalities, were you ever contacted, either by the Army, or anyone else, on this particular question of what you knew about beatings or kickings or anything of that kind?

Mr. PERL. As far as I remember, the man who had claimed mistreatment prior to the trial claimed to have been mistreated by Captain Schumacker.

Senator McCARTHY. Listen to me, will you? I asked you a question—whether anyone contacted you and asked you any questions, asked you for any information, about any of the kickings or beatings. Do you understand me?

Mr. PERL. Yes.

Senator McCARTHY. Then you—

Mr. PERL. I was contacted by the United States Army War Crimes Branch Office approximately in October 1947.

Senator McCARTHY. October 1947?

Mr. PERL. October, 1948.

Senator McCARTHY. Were you contacted by mail?

Mr. PERL. Right.

Senator McCARTHY. You don't have that with you, the letter?

Mr. PERL. What?

Senator McCARTHY. The letter.

Mr. PERL. No.

Senator McCARTHY. Did they ask you to make out an affidavit?

Mr. PERL. Right.

Senator McCARTHY. Telling everything you know about any kickings or beatings or torture, or anything of the kind?

Mr. PERL. Yes.

Senator McCARTHY. And you made out an affidavit?

Mr. PERL. Yes.

Senator McCARTHY. In the affidavit did you say that Dietrich had complained to you that the Polish guards had mistreated him?

Mr. PERL. I do not remember whether I said it, but it was part of the trial, it was known to everyone who had anything to do with the case. Dietrich repeated his charges in open court.

Senator McCARTHY. All right. Did you, in your affidavit, if you know, and if you don't know, we will give you the affidavit, but in that affidavit did you set forth the facts about Dietrich's mistreatment by the Polish guards?

Mr. PERL. I don't think so.

Senator McCARTHY. Now, there is an order here, an order of Major Fanton in regard to the interrogation, I believe they call it.

Mr. CHAMBERS. SOP No. 4.

Senator McCARTHY. I think you told me the other day that you did not follow, you did not believe in the wisdom of paragraph B, or something to that effect. I would like to have you clear it up so that there will be no doubt, if I may read this paragraph to you.

Where a prisoner being interrogated in a crime is implicated in that crime—in other words where the prisoner is implicated in the crime so that he is one of the war criminals—

it is permissible to tell him that he will be recommended as a witness if such statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant.

Now, as I understood your statement the other day, it was that you did not agree with this order.

Mr. PERL. It was new, the whole idea was new to me, that is what I stated.

Senator McCARTHY. You think that this was a good idea, to follow this procedure? You think it was proper?

Mr. PERL. It ran somehow—yes, I think it was proper.

Senator McCARTHY. In other words, you think it was proper for you to promise a man who is a war criminal, in other words engaged in the Malmedy shootings, we will say, who shot our American boys, you think it is proper to you to tell him that if his statement was such that it would be valuable to you in convicting some of the other men who were equally guilty, that then he would not be a defendant, that then he would be used as a witness. Do you think that was proper?

Mr. PERL. I started to say before, somehow, I wanted to say, it was somehow against my European-continental legal feeling to make such a statement to any witness, but this SOP was made by an American lawyer and I thought it was proper, and according to the laws of this country.

Senator McCARTHY. I can assure you now it is not in accordance with the laws of this country. I can assure you now that a district attorney or a police department—no one except the judge can take it upon himself to offer immunity. Do you understand that?

Mr. PERL. I understand that, and according to continental law even, the judge or no one could give him this promise.

Senator McCARTHY. This would be improper under continental law?

Mr. PERL. It would be improper under continental law.

Senator McCARTHY. Knowing now that this is not in line with American law, do you now say that this was entirely improper? I don't want to deceive you on it. Let the question rest there.

You say now this would be entirely improper or this was entirely improper?

Mr. PERL. I wouldn't make this judgment, I do not think that I can judge it, and as to American law. As to European law, it would not only have been improper or would have been proper, but it would have been impossible. No one can promise him that he would not be a defendant, and I believe none of the defendants would have believed him if anyone had promised it to him, because the idea is just strange to European thinking.

Senator McCARTHY. Let me ask you this: On the question of whether you believe it or not, we have the affidavits that they did, the defense attorneys said they did, every indication was that they did, but I want to ask you this, forget whether or not the men believed it, let's confine ourselves to this order. It, in effect, says to you, Mr. Perl, where a man is implicated in a crime, in other words where he is guilty, where he is one of the war criminals, it says, Mr. Perl, where you think that by promising him immunity, you can get a statement which will be effective in convicting the other defendants, that then you may do that.

Is that, in simple language, what the order says?

Mr. PERL. I would like to have the question repeated.

Senator McCARTHY. I won't ask the reporter to read it over. I will repeat it for you.

Paragraph B, can we reduce it to this simple language, that this in effect says to you, one of the interrogators, Mr. Perl, when you are dealing with a defendant, a man implicated in the crime, in other words a war criminal, if, by promising him immunity, in other words that he will be a witness and not a defendant, if by doing that you can get a statement which will be valuable in convicting the other defendants, you may so do. Is that as you understand this order?

Mr. PERL. I do not remember the words, but I would like first to say what I remember, before reading it. I remember that we had in every case, where the possibility existed that one man could be used as a witness instead of a defendant, an idea which was new to me, that where such a possibility existed, before doing anything we had to consult with Major Fanton. That is what I remember. And, as the occasion did not arise for me, I probably did not think about permissibility of it, and what you are asking me now is what I think now about it.

Senator McCARTHY. No; I am asking what you as an interrogator understood this language to mean. To me I think it is very clear. I think there is no doubt about what it means. I think it is very clear, but I am asking whether or not you understood the English language well enough, understood the order well enough, to know what it means, and I will read it again, if you care to have me to.

Mr. PERL. I would like to have you.

Senator McCARTHY (reading): Where a prisoner being interrogated in a crime is implicated in a crime, it is permissible to tell him that he will be recommended as a witness if such statement to the prisoner will cause him to tell a full or more complete story so that he would be of more value to the case as a witness than as a defendant. However, before any such statements are made to a prisoner, the matter must be cleared with the commanding officer.

Do you follow that?

Mr. PERL. Yes.

Senator McCARTHY. My question is this: Do you understand that to mean that it is proper after first clearing with the commanding officer, not a judge, that it is proper for you to pick out one of the war criminals who is implicated in the crime, and say to him, "If your statement is such that you will be of more value as a witness than as a defendant, then we will promise you immunity"?

Is that as you understood this order?

Mr. PERL. I do not remember how I understood it, but now I wouldn't understand it as you say, because I would think that this question, whether his testimony is more valuable as a witness or as a defendant is to be decided between the interrogator and Major Fanton, and the witness certainly could never have been told, "Listen, I am going to talk with you now and if you will be more valuable as a witness than as a defendant, then you will not be a defendant." I would not have misunderstood, that way.

Senator BALDWIN. If I understand Senator McCarthy's question, Lieutenant Perl, it is this: Did you believe, when you interrogated these prisoners that if you thought, from what they had to say, that they would be more valuable as a witness than it would be trying to build up a case against them and making them a defendant, that you could tell them that they would not be a defendant but would be a witness? I think that is the sense of the whole thing.

Senator McCARTHY. That is the sense of it, very clearly stated.

Mr. PERL. I am under oath, and I do not remember what I believed at this time. All I remember is that the possibility existed theoretically, before talking about such a thing with the prisoner, if such a thing appears more opportune, to discuss it with the commanding officer, that is all I recall now. And everything else I would have to do would be reconstructing it.

Senator BALDWIN. Do I understand you to mean if you thought that was the situation, here is a man we have to say to, "Now, if you will tell us the whole story, you won't be a defendant, but you will be a witness." If there was a man like that, do I understand you to mean that you then would discuss that with your commanding officer and he would decide whether or not you were to say to this prisoner, "If you will tell us the whole story, we will make a witness of you and not a defendant"?

Mr. PERL. This is how I understood it, but as I said before, I never used it because somehow it goes against my legal background to tell something like this.

Senator McCARTHY. Did you ever tell Major Fanton that this was one part of this order that you just did not intend to abide by?

Mr. PERL. No.

Senator McCARTHY. Well then—

MR. PERL. I did not make up my mind not to abide by it, but I just did not because I felt an aversion against it.

SENATOR McCARTHY. I think that's a natural aversion, but my question is this: In view of the fact that you were working as one of the interrogators, in view of the fact that you decided that this was an improper order and went against your grain, or whatever you call it, could you tell me why you didn't go to Major Fanton and say, "Major, I can't abide by this particular order"?

MR. PERL. I did not have the intention not to abide by it, sir. The occasion did not arise and maybe the occasion did not arise for me because I just was not eager to apply it in this case.

SENATOR McCARTHY. But, the other interrogators knew they could apply that rule?

MR. PERL. I suppose so. Everyone read it.

SENATOR McCARTHY. You wouldn't be in any position to know what offers the other interrogators made?

MR. PERL. No, sir.

SENATOR McCARTHY. So what the other interrogators felt like using if it went against their grain, or what they thought was proper, and whether they used it, obviously you cannot tell at this time?

MR. PERL. No, sir.

SENATOR McCARTHY. Now, the other day in answer to Senator Baldwin's question in regard to whether you had beaten a certain witness—I think it was Weiss or Wichmann—you said that—if I don't quote you exactly, you can check the record—you say, "No; we didn't have to in this case. He very freely confessed."

Can you tell me how many other cases there were that you didn't have to indulge in any beating or anything?

MR. PERL. I am quite certain I never said "we did not have to in this case."

SENATOR McCARTHY. I may be doing you an injustice. Let me check that.

SENATOR BALDWIN. While you are checking that, Senator, we have got here in this, in our records here, the statement of everybody who filed an affidavit in connection with the Supreme Court matter who makes any complaint about being abused by this particular witness. I think that before Mr. Perl gets off the stand I would like to examine, or have someone examine him on the different claims made by these different Germans in their affidavits, so that he may have an opportunity to either admit it or deny it, or to give some explanation in connection with it, such explanation as he wants to. Don't you think that is the way we ought to proceed with this?

SENATOR McCARTHY. I heartily agree with you, Mr. Chairman; very heartily agree with you.

(Discussion was had off the record.)

SENATOR McCARTHY. Now, when you said you didn't have to in this case, and it is being traced in the record for the exact words, in answer to Senator Baldwin's questions, whether or not you were beating him—

MR. PERL. If I could read it, I could probably recall it. I certainly did not mean in this case we did not have to beat him, but probably, I do not remember the wording, but we didn't have to use any method, any additional tricks or anything; but just telling him and confronting him with those people—

Senator McCARTHY. You examined—was it Colonel Peiper, or General Peiper?

Mr. PERL. Colonel Peiper.

Senator McCARTHY. You examined Colonel Peiper and got his statement?

Mr. PERL. Yes.

Senator McCARTHY. You told him that there was, so far as he was concerned, he was one of the major criminals, there was no chance for him, but he could save his men by signing a confession; right?

Mr. PERL. No, sir.

Senator McCARTHY. Your answer is "No"?

Mr. PERL. That is right.

Senator McCARTHY. Did you ever tell him that by signing the type of confession you gave him, that he would be able to clear some of his men, or take the responsibility himself?

Mr. PERL. I never gave him any confession; he gave me a confession.

Senator McCARTHY. You gave him a confession to sign at one time.

Mr. PERL. No; I never handed anyone a confession to sign. As I told you last time it was taken down, the statements in a narrative form, which is again in accordance with the law governing the pretrial procedure there in paragraph 104 of the Austrian Criminal Procedure, of 1887, I believe, we can find now the same words in July 1945, the story or statement made by the witness before the investigating judge is to be taken in a narrative form, and not by question and answer. The investigating judge is permitted to deviate from this procedure in certain cases, if he thinks it necessary, but this is the regular procedure.

Senator BALDWIN. May I ask a question there? You mention this procedure. These are statements that were taken in these pretrial procedures, so-called, that you have described, how were they used in connection with the case? That is, in the normal process of the law? Do you understand what I mean?

Mr. PERL. In Austria?

Senator BALDWIN. Yes.

Mr. PERL. The witness was called in, and if he took the stand, it was normally not used; but if there was a discrepancy between his statement and what he had said before, then it was used.

Senator BALDWIN. In other words, it was used as a basis of cross-examination?

Mr. PERL. That is right, sir. If he were on the stand. If he was absent, for instance, had fled or something, or if he did not take the stand then the statements which had been made by him before were read to the court, and they could be read in any case. The district attorney or the defense attorney could insist that these statements should be read.

Senator McCARTHY. Now, you got the confession from Peiper; right?

Mr. PERL. I got three confessions.

Senator McCARTHY. Three different confessions?

Mr. PERL. That is right.

Senator McCARTHY. Were you the only interrogator who got a confession from Peiper?

Mr. PERL. I believe I was. At least he spoke, after he had told me about it, he spoke freely to all the others about it.

You see, he is quite an interesting person, and although they had no business to do it, sometimes after he was through with the interrogation people visited him in the cell and brought him cigarettes, and so on, and on this occasion he spoke freely about what he had done.

Senator McCARTHY. I am going to tell you something else. I am not going to interrupt you any more, I am going to let you make answers at as great length as you care to, but I want to ask you a question and find out whether any other interrogators got confessions, and I want to know, yes or no—

Mr. PERL. As far as I know no formal confessions—

Senator McCARTHY. Listen a minute. You can give as lengthy an explanation as you want to. You have my word that it will be impossible for me to finish my questions today, and I think the chairman will have me ask all the questions I think are necessary, but there is one way we can finish this today and that is if you will try and answer the questions and if you think the answer is not complete or is unfair, in that case then you can make a further explanation; but, all of these lengthy explanations will mean that we will be here for days. Do you understand?

Mr. PERL. Yes, sir.

Senator McCARTHY. I want to ask you this: In talking to Peiper, did you ever indicate to him that if he would take the responsibility of issuing the order, that that would make it easier on the men in his command?

Mr. PERL. No, sir.

Senator McCARTHY. You didn't?

Mr. PERL. No, sir.

Senator McCARTHY. Did you tell him that the men of his command would be able to use his confession as part of a defense or a mitigation if it appeared from his confession that he issued the order and said, "Kill these Americans boys?" Did you tell him that?

Mr. PERL. Definitely not.

Senator McCARTHY. Did he ever tell you that he would be glad to— strike that.

You had no difficulty in getting a confession from Peiper? You didn't have to beat him or anything, did you?

Mr. PERL. I didn't have to beat anyone, and I wouldn't have beat anyone.

Senator McCARTHY. O. K. You had no difficulty in getting a confession from Peiper.

Mr. PERL. I wouldn't say that. I had some difficulty, sir.

Senator McCARTHY. Did he ever tell you that he would sign any confession whatsoever that would help the men of his command?

Mr. PERL. No, sir. I wouldn't have accepted such a confession.

Senator McCARTHY. Let me ask you one question, just leaving Peiper for one moment and going back to this man Hennecke. Where you were the defense attorney, or friend of the court, or call it what you may, you had interrogated him, and he had refused to sign a confession and I believe your testimony is that he had been interrogated four or five times, but after this trial or ceremony, call it what you may, he then signed a confession admitting his guilt; right?

Mr. PERL. Yes, sir.

Senator McCARTHY. Can you tell us why he changed his mind and signed that confession, the confession he refused to sign before the

mock trial? Did conditions change or were you persuasive, or what happened?

Mr. PERL. I had interrogated this Hennecke in the very early stages before we had any information at all. Then, I believe he was interrogated for a length of time by Mr. Ellowitz. I had, when I interrogated him, some evidence at my disposal all ready, after the first proceeding; and with the help of this evidence which I had, I interrogated him for the first time with a weapon in my hand. The first time I had been fishing, with the help of this evidence, and due to the fact that he felt that now he must talk, because if he doesn't talk, this is a fast procedure before which he has been, and he might go to the trial, to the real trial before he had the opportunity to tell his story. These two things operated in softening him up, and slowly and slowly I penetrated into his story.

Senator BALDWIN. You made one statement there that I am particularly interested in. You said something about you didn't interview him before you had some weapon in your hand. What do you mean by that?

Mr. PERL. I mean some information on the case, not a pistol or something.

Senator BALDWIN. That is what I wanted, if you had a club or anything.

Mr. PERL. No, these were the weapons we used, material to get something out of him. When I interrogated him before, one or two or three or four times, it was very early in Schwabisch Hall, and I just was fishing for information.

Senator McCARTHY. Now, you got a confession 4 days after the first mock trial, after the mock trial or ceremony, or call it what you may, roughly 4 days after the ceremony—you then got a confession; is that right?

Mr. PERL. Probably right.

Senator McCARTHY. Mr. Hennecke in his statement says, this is on the 30th of March, or the 12th, I forget which, you went into his cell and told him that unless he signed a confession, another trial would be held and he wouldn't be there; that he would be sentenced. Did you tell him that?

Mr. PERL. Certainly not.

Senator McCARTHY. Did you tell him there would be another ceremony?

Mr. PERL. Tell him what?

Senator McCARTHY. That there would be another ceremony.

Mr. PERL. This I do not recall.

Senator McCARTHY. You went in and talked to this man before the first mock trial, and will you tell us what you told him at that time?

Mr. PERL. Before the first procedure?

Senator McCARTHY. Yes.

Mr. PERL. I do not remember.

Senator McCARTHY. You don't recall?

Mr. PERL. I believe it was something which had a distant relation to this case; if you want, I will tell you what I think it was. He had shot prisoners—he had shot, during—the time the Germans retreated from Paris, he was accused by one of the men, it was one of the early statements that we got, that he shot in the streets there with his machine gun at civilians who were promenading in the streets,

and as far as I remember I was questioning him about that, just to feel him out and try to find out how he was connected with this, in which we were interested.

Senator McCARTHY. When you would see a defendant before a mock trial, would you explain to them what was going to happen at the mock trial? That is, in a case in which you were the friend of the defendant, or representative, or call it what you may?

Mr. PERL. Only once I took part in one of these, the second time, fast procedures it was in the case of Hennecke. I do not think I was on the Kuhn case. There were two cases.

Senator McCARTHY. You only took part in two?

Mr. PERL. I believe I took part in one, I do not believe I was in the Kuhn case. By the way Kuhn was identified by a half a dozen witnesses that he shot this man—maybe less, but quite a number of witnesses.

Senator McCARTHY. Did you get the statement from this fellow Kramm?

Mr. PERL. I tried very hard to involve Kramm into the case, but I did not succeed.

Senator McCARTHY. Do you recall you got a confession from—do you recall the name of the man who was charged with murdering a Belgian woman—do you recall you got a confession from one of the defendants, to the effect that he went into the home of a Belgian family over in, was it at B-r-u-e-n-n-i-g-e-n I believe was the name, and his confession set forth that he went into the home, asked this husband and wife whether there were any American soldiers in the home and they said, "No," and he then stepped back 2 meters and shot this woman in the forehead and that she fell dead. Do you recall getting that confession?

Mr. PERL. I believe that you are referring to a soldier with the name of Max Rieder, and I got his confession.

Senator McCARTHY. You got that confession?

Mr. PERL. It is not exactly—as far as I remember, there was only one woman in the room, and he shot her, as I remember it.

Senator McCARTHY. In any event, he went into this home, and the confession is here—I wonder if we can find that confession.

Mr. PERL. He confessed to other shootings, too.

Senator McCARTHY. Let's stick to this. You recall getting this confession; do you?

Mr. PERL. Yes.

Senator McCARTHY. And he gave the details of how he deliberately, for no reason at all, murdered a Belgian woman?

Mr. PERL. Yes.

Senator McCARTHY. And you recall that toward the closing days of the trial the defense counsel was assigned one or more investigators; do you recall that?

Mr. PERL. I do not, sir.

Senator McCARTHY. Do you recall that the defense sent an investigator, or someone, over to this Belgian town?

Mr. PERL. Yes, sir.

Senator McCARTHY. And they came back—first, let me ask you this: This was a little crossroads hamlet; is that right? Bullingen is just a little crossroads hamlet?

Mr. PERL. That I don't know.

Senator McCARTHY. Well, do you recall that the defense investigator went over to this town and came back with an affidavit from the mayor, or whatever you would call the head of such a little hamlet, and from the registrar, to the effect that only one person had died in that town from other than natural causes during all the period of the time involved in this alleged shooting of this woman in her home, and that that was a Mrs. Anton Jonsten. Do you recall that so far?

Mr. PERL. I remember the facts but not the name.

Senator McCARTHY. And do you recall that Anton Jonsten signed the affidavit to the effect that his wife was not shot and that no bullet wounds were found on her, and that she was killed while running, I believe the affidavit said, from combat and that was a result of either a grenade or a shell. Do you recall that?

Mr. PERL. I will tell you what I recall. I cannot answer "yes" or "no," because I only recall part of what you have said.

Senator McCARTHY. You recall the husband did sign an affidavit saying that his wife was not shot by a German.

Mr. PERL. I don't remember whether it was her husband but I remember it was a competent person who signed such an affidavit.

Senator McCARTHY. If I tell you that the affidavit is to the effect that he was the woman's husband, his name is Anton Jonsten, I assume we can agree that it was the husband; right?

Mr. PERL. I suppose so, not the husband, but a husband of one woman who obviously perished in another way there.

Senator McCARTHY. Have you ever wondered—strike that.

Did you use any physical force, any threats, any inducements to get this German soldier to sign that part of his confession, the part in which he said he deliberately killed this Belgian woman?

Mr. PERL. No, sir; and, I would like to answer the question that you started asking, but didn't finish. Have you wondered—yes; I did wonder, sir.

Senator McCARTHY. Just a second, I will give you a chance to explain it, but until I get through with my question will you please just answer "yes" or "no"?

Mr. PERL. All right.

Senator McCARTHY. In any event you know that these affidavits are now on file, from the so-called mayor of this little hamlet, the registrar, and the husband.

Mr. PERL. Yes; they were introduced at the trial.

Senator McCARTHY. My question is this: Did you use any force, any beatings, any mock trial, or anything like that to get the confession from this man?

Mr. PERL. No, sir.

Senator McCARTHY. Are you sure that he was not subjected to a mock trial?

Mr. PERL. Certainly not in my presence. I am almost sure he was not subjected to a mock trial; no.

Senator McCARTHY. You say he was not subjected to a mock trial?

Mr. PERL. No.

Senator McCARTHY. Did Harry Thon help you get the confession?

Mr. PERL. I cannot answer this "Yes" or "No." I will have to tell you, a "yes" would be an incomplete answer, and an incorrect answer.

Senator McCARTHY. Can I read to you this part of Max Rieder's confession which concerns this one particular woman, to refresh your memory?

Mr. PERL. You don't have to. I remember her case.

Senator McCARTHY (reading):

About 1100 hours in the morning of 17 September 1944, we reached the village of Bullingen. At the exit of the village our SPW stopped. Our whole crew left the vehicle in order to look around in the nearer houses. I first walked with Sterman Regigel, or with one or two others of my comrades toward a deserted American kitchen which was located up right in our direction of travel and in which we found cocoa and drank same. In this house we did not shoot anybody, but thereupon I walked into a house which was across the street, together with Unterscharfuehrer—

Mr. PERL. You pronounce it very well.

Senator McCARTHY (continuing):

Unterscharfuehrer Haas, who suggested walking through the house. In the kitchen of this house we saw a woman about 40 years old who was apparently left behind in this house. When we entered the kitchen we saw her standing in the middle of the room, and Haas asked her whether there were American soldiers in the House. The woman mentioned with her head "no." Thereupon, Haas said to me: "Rieder, bump this woman off." I was armed with a rifle which I then aimed at this woman. Thereby, I stood approximately 2 meters away from this woman, my face opposite her face. When the woman saw that I aimed at her she screamed with fright, remained standing, though. At the same moment I already shot, aiming exactly at the center of her forehead, the end of my barrel only about 1 meter away from the woman, and I hit exactly the same spot I aimed at. I fired one shot, after which the woman immediately collapsed—dead. I then bent down to her to see whether she was dead, because if she would not have been dead I would have fired my second shot at her, but this was not necessary, because I established that the woman was dead without trouble. I also established at this examination that the bullet which penetrated the forehead came out the back of her head and that there was a big hole in the back of her head which the brain flowed out of. Thereupon, I returned to my SPW, while Haas still remained in the house, evidently to search through it. In my opinion, this woman gave no cause for which she should be shot. At the SPW I helped the driver—

I guess the rest has nothing to do with it.

Now, you got this confession, right?

Mr. PERL. Yes.

Senator McCARTHY. You say you didn't use any force or violence or anything of the kind to get this confession?

Mr. PERL. No, sir.

Senator McCARTHY. You say this man, insofar as you know, was not subjected to any mock trial?

Mr. PERL. No, sir.

Senator McCARTHY. You heard one of the witnesses testify that Steiner had bragged that he submitted the defendants to mock hangings, and by mock hangings he described the defendant would have a hood placed over his head and would be walked up three or four steps and told he was on the scaffold and the rope put up around his neck and over the rafter and given a jerk, and after that they got him to sign a confession which was previously prepared.

Now, had this man been subjected to any mock hanging, as far as you know?

Mr. PERL. I do not know of any mock hangings. I believe that was all Mr. Bailey's imagination.

Senator McCARTHY. You say he was not subjected to any physical violence at all?

Mr. PERL. No.

Senator McCARTHY. What type ruses did you use on this man Rieder to get him to confess?

Mr. PERL. No ruses. If you do not let me tell you any stories, sir, then it will never end, because you will not understand how I could get it without ruses.

Senator McCARTHY. All right; go ahead then.

Mr. PERL. You asked me whether Thon interrogated this man, too. As far as I remember, Thon had interrogated him before, and he had had from this Rieder a confession at the time of the shooting, he shot at the cross roads, but he had not taken the statement for one reason or another, and I was to take the statement which was very unusual, normally one took the statement of the prisoner whom one had interrogated, but this was very late in the procedure, it was shortly before the trial started—

Senator McCARTHY. I don't want to interrupt, but can I ask as you go along, Will you tell us in the course of your statement where you first got information about the killing of this woman at Bullingen?

Mr. PERL. During this, I believe—during the interrogation which I am going to describe to you as short as I can, Thon told it to me, as far as I remember now, or I was told by the commanding officer, I should take the statement Rieder had told about some shootings already and confessed, and that he was a cooperative man.

So I went into Rieder's—I was in the room, I do not know whether Rieder was in the room before me, but I remember that from the beginning I had Kramm, because I was to dictate this statement of this story which Thon had told me about some other shootings.

In the course of taking the statement in shorthand by Kramm, this Rieder, who is a very stupid and primitive boy, mentioned an old woman, I remember because it appeared afterward odd that he called a woman 40 old—an old woman whom he—whom this bad boy Haas had shot. Haas had been his superior noncom. It was in the course of taking this statement of another shooting about which he had told before, so I just asked him to tell me in detail how Haas had shot this woman. He described in detail the house where they came in, and so on and so on, and how Haas had shot this woman.

Then I told him, now really tell me the truth. Did you shoot the woman or did Haas shoot the woman? So he said again, "Haas shot the woman."

Senator McCARTHY. Did you have Haas at that time?

Mr. PERL. No; Haas was not in custody. We didn't have him.

Senator McCARTHY. And he just went on and volunteered the information that Haas shot this other woman?

Mr. PERL. Yes. He didn't volunteer it—yes, in a way he volunteered it. He wanted to put something on Haas' connection and show that he was not a bad man; his superior was a bad man. And he told in detail the story of the shooting by Haas.

When I questioned him a little closer, he then admitted that not Haas had shot the woman but he, on express orders of Haas, had shot the woman. When I heard this story I tried to locate where he was. Now, I have never been in this place in Belgium, I just knew it by map, and I must admit I am not so thorough, as you might notice from his statement, as, for instance, Major Fanton or Captain Schu-

macker is. They had the defendants draw sketches according to map, coordinate, and so on—

Senator McCARTHY. Did this man draw a sketch of this town, and of the house?

Mr. PERL. I do not recall this, but there is certainly a sketch attached, though he described exactly where the village was. He described where he was. So I brought a map in and showed him which village it was, and he said it must have been this village here, and this village was Bullingen, and it seemed logical to me it must have been Bullingen, and of course if they were driving through this town—at this time I did not think he made a mistake, and this time I thought it must have been Bullingen, and I wrote Bullingen into the statement; and, later on, it was obviously from this statement from this man it was or could not have been Bullingen because such a woman was not killed in Bullingen. I would like to finish this, if I may.

The evidence as far as I know, after all the same discrepancy which you mentioned now was evident to the court, too, a court consisting of 7 members, a general and 6 colonels, and the defense brought this fact in; but his statement was corroborated by evidence and obviously it is a mistake in the name of the village.

Senator McCARTHY. Statement corroborated by evidence—you say the statement of shooting this woman was corroborated by evidence?

Mr. PERL. I am quite certain of this; I don't remember the details but I am certain there was some corroborative evidence.

Senator McCARTHY. By corroborative evidence you mean evidence by another witness?

Mr. PERL. I don't remember what it was.

Mr. FLANAGAN. The record will show in this case that the only evidence against this man was his own statement.

Senator McCARTHY. Do you understand that?

Mr. PERL. Possibly. It is my recollection that there was some evidence, but that is to my best recollection, which was corroborative.

Senator McCARTHY. Mr. Flanagan has gone through the record, and now he tells you that there was no corroborative evidence. Does that refresh your recollection?

Mr. PERL. I do not remember it. If he says so, it is no doubt in the trial record.

Senator BALDWIN. Maybe we should put this in the record, because I would like to keep this together.

In the review and recommendations of the Deputy Judge Advocate for War Crimes, being *United States v. Valentin Bersin, and others*, Case No. 6-24, this is dated October 20, 1947, on page 126 there appears that this Max Rieder was sentenced by the court to death by hanging.

On this review of the Judge Advocate General's office, a petition for review was filed by American defense counsel on December 28, 1946. Recommendations that the findings and sentence be approved but that the sentence be commuted to imprisonment for 15 years commencing July 16, 1946. The reason given is youth apparently coupled with mental immaturity and narrow experience which, combined with the circumstances, should be considered in mitigation.

There is also in this record proof that there was another shooting of American soldiers, which apparently there was, as the Judge Advocate found, substantiated by the evidence.

The point I am interested in is the point of——

This point: How did the name of Bullingen get in there? In other words, this shooting was supposed to have occurred in Bullingen?

Mr. PERL. Yes.

Senator BALDWIN. How did you decide that that was the town?

Mr. PERL. He described where they had taken off this morning and where they went in the afternoon, and he described the approximate time at which this happened, so I got a map and I showed him the map, where was it? And he pointed at a place and said this must have been here. I said look——

Senator BALDWIN. In this particular case, it seems to me that either one of two things happened: Either the shooting did not occur at all, or else if it did occur, it did not occur in Bullingen. It is either one or the other.

Mr. PERL. There is no doubt in my mind that it occurred, but it occurred obviously at another place.

Colonel ELLIS. Could I say something that might help clear this matter here? As I recall, Mr. Flanagan, there was no collaborating evidence for this particular murder. In the statement, Rieder refers to this Haas. Right at the end of our operation at Schwabisch Hall we brought 5 prisoners from the United States. One was Haas. Haas was involved in several other incidents, as I recall. When we talked to Haas, that is, when someone talked to Haas, he disclaimed any knowledge of it. When he was confronted with other witnesses or other suspects who said, "This is not the Haas we are talking about," and consequently the Helmuth Haas we had was not the right Haas, and there was not any corroborative evidence in this particular case. That is my firm recollection.

Senator McCARTHY. May I ask you this, Colonel? This was allegedly heard December 17, 1944, do I understand the prisoners of war subsequently taken to that date were shipped over to this country?

Colonel ELLIS. Prisoners that were taken subsequent, that is, in this offensive, were shipped to the United States. We brought back a total of six from the United States. One was Haas and the others were named as defendants in the case, and we thought Haas really was going to be somebody and he turned out to be wrong man.

Mr. FLANAGAN. Mr. Perl, this statement from Max Rieder was taken about 7 weeks before the trial, on March 26?

Mr. PERL. Yes.

Mr. FLANAGAN. You recall it?

Mr. PERL. I remember it was very late; yes.

Senator BALDWIN. Can we interrupt now? We will adjourn until 2:15, because we have a quorum call and we are getting near the end. (Thereupon, a recess was taken until 2:15 p. m., of the same day.)

AFTERNOON SESSION

The committee reconvened at 2:45 p. m., upon the expiration of the recess.

TESTIMONY OF WILLIAM PERL—Resumed

Senator McCARTHY. Mr. Perl, this place, Bullingen, was roughly how far from Schwabisch Hall, do you know?

Mr. PERL. About a hundred miles.

Senator McCARTHY. About a hundred?

Mr. PERL. Several hundred miles.

Senator McCARTHY. You know that for a fact?

Mr. PERL. Yes.

Senator McCARTHY. How far was it from Dachau?

Mr. PERL. Farther.

Senator McCARTHY. About how much farther?

Mr. PERL. Very roughly, probably 400 or 500 miles. 400 miles at least.

Senator McCARTHY. You told us this forenoon that in the case of this confession obtained from Rieder, regarding the shooting at Bullingen, that at the time you took the statement from him that you were not convinced then that it was Bullingen, and he was not, either; is that right?

Mr. PERL. No. He showed me the place, and said—I do not remember the words—I showed him the map, as I remember, and he said it must have been here, that is Bullingen. Here it is.

Senator BALDWIN. The committee will come to order.

Senator McCARTHY. Did he describe the size of the village?

Mr. PERL. I do not remember.

Senator McCARTHY. Did he describe anything about the roads at any time?

Mr. PERL. I do not remember.

Senator McCARTHY. Did he give you any way of identifying the village?

Mr. PERL. I do not remember.

Senator McCARTHY. Do you recall that he described exactly where the mess hall was?

Mr. PERL. Yes. He described a few—one or two houses there. He described how to get into this house.

Senator McCARTHY. Did he describe where this mess hall was, and where the house, the Johnsten house, was in relation to the mess hall?

Mr. PERL. He gave a few descriptions which would apply to many places, but he pointed at the map and said it was here.

Senator McCARTHY. Answer my question, will you? He described where the Johnsten home was, the home where he killed the woman?

Mr. PERL. Yes.

Senator McCARTHY. In relation to the American mess hall; is that right?

Mr. PERL. I think so.

Senator McCARTHY. Do you know that the defense investigators went over, checked, and found the Johnsten home was in the same relation to this mess hall as he had described it?

Mr. PERL. As far as I remember, there was no mess hall, but he described the house in which the Americans had eaten. But I might be wrong.

Senator McCARTHY. Do you know that the investigators went over to the town, verified this, found the house in which the Americans had eaten, found the Johnsten home exactly where this man has described it? Do you know that?

Mr. PERL. That I do not know.

Senator McCARTHY. I gather that your statement now is that at the time you interrogated this man that you had to get him a map before he knew what town it was; is that right?

Mr. PERL. Before he knew the name of the town, yes.

Senator McCARTHY. In view of the fact that you are dealing with a matter of life and death, the death of this unarmed woman, and the possible hanging of this man who allegedly killed her, why did you not put that in the confession? In these detailed confessions, you seemed to write 16- and 18-page confessions. You write the height of the bush, the number of meters a bush was from the road. If both of you were not certain this was Bullingen, why did you not say that? Why did you leave the details out of this confession?

Mr. PERL. I did not doubt at this time that it was Bullingen, because I knew when they had taken off in the morning, and I knew where this column had arrived in the evening, and it fitted. It could have been a village 1, 2, or 3 miles away. But he told me it was Bullingen from the map. I had no doubt it was Bullingen.

Senator McCARTHY. Think very carefully before you answer this question, if you will: Had you heard, prior to interrogation of this prisoner, that some woman had been shot by a German soldier in Bullingen?

Mr. PERL. In where?

Senator McCARTHY. Had you, before you got this confession, heard from other sources, that a woman had been killed by a German soldier in Bullingen?

Mr. PERL. I do not think so.

Senator McCARTHY. To refresh your recollection, did you not tell one of the other interrogators that you thought you had the man who shot that woman and that you were going to get a confession from him, and that he was the man who confessed he shot this woman in Bullingen, and you had the knowledge of the killing in Bullingen, before you got the confession from him?

Mr. PERL. I do not think so. I remember that when Rieder came in I had no idea that he was connected with any shooting of the woman.

Senator McCARTHY. But you did know that somebody was rumored to have killed a woman in Bullingen, and you had discussed that; had you not?

Mr. PERL. I do not know, sir.

Senator McCARTHY. You do not?

Mr. PERL. I do not remember.

Senator McCARTHY. If some of the other witnesses who came here and made the statement that you had discussed it, that you had heard that a woman had been shot by Germans in Bullingen; and, if they so testified, then I understand that your memory is such that you could not question their testimony. Is that correct?

Mr. PERL. That is right.

Senator McCARTHY. When you went into that cell, you did know that a woman—maybe I am putting words into your mouth. At this time I understand your testimony is that at that time you started to interrogate Rieder you do not recall whether you had heard a rumor, and was of the opinion that a woman had been killed in Bullingen?

Mr. PERL. I do not recall it.

Senator McCARTHY. I wish you would think this over carefully and tell us whether this is not the situation: That you did have the opinion a woman had been killed in Bullingen, as to the time and every-

thing, and you had decided you were going to get this confession from this man covering that crime, because you had previously heard that a woman was killed in this identical town? Is that not the truth?

Mr. PERL. As to the best of my recollection, I did not know, when Rieder came in, that he was involved in any other crime. If it was known to me—as I do not remember—that the woman was killed at Bullingen, we had so many rumors—not rumors, where people had told; but we could not go after detail, that they had killed someone—I do not think, if it would not have come up, I would not have wasted my time on a prisoner who already has confessed to a shooting which was much more important to us, the shooting of American prisoners of war, to be particularly eager, maybe, to get something out of him about the woman. It developed during the interrogation.

Senator McCARTHY. Let us get back to the question of getting confessions of killings being rumors. You know the Frankfurt board in going over the Pletz case, Pletz was convicted of shooting down unarmed Americans in a Belgian village. Some 20 of them. Do you recall the case?

Mr. PERL. From the trial only.

Senator McCARTHY. You do recall the case?

Mr. PERL. Yes.

Senator McCARTHY. Pletz was convicted, either sentenced to death or life imprisonment for shooting down 15 or 20 unarmed Americans; do you recall that?

Mr. PERL. Yes. I do not remember the number.

Senator McCARTHY. Do you recall the statements introduced in evidence describing the unarmed American prisoners shot, lying before this grocery store?

Mr. PERL. No, sir. But I do not doubt it was introduced.

Senator McCARTHY. You do not know that the Frankfurt board found, formally, that there was no evidence whatsoever that any Americans were killed in this particular town; that the grocer, who was a Belgian, as I recall, stated they had passed in and out of the store all the time that it was alleged this pile of American prisoners lay dead in front of his store, and never saw any; that they could not find anybody in the town who saw the prisoners shot, no evidence, and that the Frankfurt board, in view of this fact, said, "There is no evidence whatsoever upon which we can base a finding of guilt and that this man should be discharged."

Mr. PERL. I remember in one case there was a confession that bodies were found, or that bodies were not found, and I remember an affidavit or two we had from American soldiers who, right after the Americans moved into the city, found large numbers of American dead, and put some on a truck and removed them immediately.

This, to my recollection, cleared up during the trial of the case. But, as I told you, the Pletz case—I never interrogated him. I saw Pletz for the first time when he came into the courtroom at Dachau.

Senator McCARTHY. I am curious about getting confessions and convictions based upon rumors of killings later proven by an Army board untrue. Let us go back to the Pletz case. We have an Army board sitting at Frankfurt. You and I can assume that they were essentially fair, I believe, in the Frankfurt report. They say, "A man is convicted of killing some 10 or 12 or 20 American boys"—I do not

recall how many—and the statements which either yourself or some of the other interrogators got and introduced in evidence gave detailed pictures of where those men lay, like all these confessions—like the shooting of the Belgian woman—and the board said there was no evidence of those American prisoners ever having been killed in this town, and therefore this conviction should be set aside.

I am curious to know just how your interrogators got these confessions, confessions which prove rumors, rather which verified rumors, and then an impartial board went out and said those rumors were nothing but rumors.

Does that not lead the man of average intelligence to assume that you got those confessions and statements in a very unusual manner?

Mr. PERL. Sir, I probably know less about the case than you know. Pletz was interrogated, I am almost certain, by Elowitz, and he was not my case, and as to the impartiality of the board, I do not doubt the board was impartial, but I believe the board which tried them, and it consisted of a general and six Regular Army colonels, probably was impartial, too.

You would look at it in various ways. As to Pletz, I do not know more than you told me and what I faintly remember from the trial.

Senator McCARTHY. Let us get back to the case of the shooting of the woman. This is a case in which you set down that he shot her at 11 in the morning, December 17, in the village of Bullingen. Half of your confessions that you have obtained were in such thorough detail, as I say, giving the height of a bush, the distance to the center of the road. If at that time this man was not sure it was the town of Bullingen, why did you not put that in the statement?

Mr. PERL. Because he was sure. He was just erroneously sure, but he was in his mind certain it was Bullingen.

Senator McCARTHY. And you were sure?

Mr. PERL. I did not doubt it. I do not remember what I thought at the time. But I am certain if I had doubted it. I am not such a complete idiot that I would have someone shoot somebody in a little village where everyone can go out and find out whether the woman was shot or not.

Senator McCARTHY. You consider yourself a thorough investigator?

Mr. PERL. I think so; yes.

Senator McCARTHY. If the defense had not gone out and found that this woman, Mrs. Jonsten, was not shot by a German, and found she was killed by a shell, from the affidavit of the husband, if you did not have the affidavits here from the mayor and the registrar that Mrs. Jonsten was not shot by a German, that there was no woman in that town shot by a German, you would not change your story and say it was not Bullingen at all; that it was some other town? Is that not right?

Mr. PERL. Sir, he never claimed he shot Mrs. Jonsten. He claimed that he shot a certain woman. He was just in error about the town.

Senator McCARTHY. He described the house; did he not?

Mr. PERL. There are many houses in Belgium.

Senator McCARTHY. Answer my question. He described the house, did he not?

Mr. PERL. Yes.

Senator McCARTHY. He told what direction it was from the place where Americans were massed; did he not?

Mr. PERL. I think so.

Senator McCARTHY. Do you think that when you later found that in this particular house Mrs. Anton Jonsten lived, that Mrs. Anton Jonsten was not shot, but that she died as a result of an American shell falling, or hand grenade, be that as it may, do you not think then that it is incumbent upon you or some other member of the prosecution to find out what happened, what is wrong with this story, why a man would sign a confession putting his head into the noose, when all the evidence is that no crime occurred there?

Let me read to you what this man Rieder said about how you got this confession. See if you do not agree with me that any man who can add two and two cannot help but conclude that you today are lying and that this man is telling the truth; that his story is so much more logical when combined with other affidavits. Let me read what he said about how you got his confession, why he confessed to shooting a woman who later was found to have died from either a grenade or artillery. Let us start at the beginning:

I was taken to the prison at Schwaebisch Hall on December 5. There I had to sleep together with four men in one cell under impossible conditions. We received only bread and water for 7 days.

I might say that Mr. Bailey testified it was about 5 days on bread and water. The man in charge of Schwaebisch Hall, an officer from Texas, said they were never on bread and water as far as he knew.

Mr. Perl and Mr. Thon interrogated me for the first time on January 12, whereby I was threatened bodily, and received nothing to eat on that day. On the end of January, I was kicked in the genitals, but I cannot say who the person was who did this, because I was wearing a hood. After 2 days I started suffering terrible pains and was admitted to a hospital. But since my condition worsened I was taken to a hospital at Stuttgart and operated on a few days later.

The hospital records will show this man was operated on, I assume; will they not? We can check the hospital records.

Mr. PERL. Certainly, if it is true. What I heard from the medical sarge, it cannot be true.

Senator McCARTHY. If the hospital records show he was operated on because of damaged testicles, will you still deny you kicked him in the genitals?

Mr. PERL. I never kicked him. Maybe somebody else did. I do not think it ever happened.

Senator McCARTHY. Do you know whether Thon did?

Mr. PERL. I am almost certain that Thon never hit anyone, at least. I never saw it. I saw him quite often interrogating.

Senator McCARTHY. You are certain that he never hit anyone?

Mr. PERL. I never saw it, sir.

Senator McCARTHY. From the rumors around that camp, do you think that Thon did, on occasion, hit prisoners?

Mr. PERL. I never saw him hit anyone. I never heard any rumor that he hit anyone.

Senator McCARTHY. You never did?

Mr. PERL. No, sir.

Senator McCARTHY. When the Army board came out to investigate the alleged brutality, then you heard that Thon hit people?

Mr. PERL. No. As far as I understand those people who were investigated by General Carpenter, I believe claimed—I am almost certain—that they were beaten by Captain Shoemaker. They were his prisoners, not Thon's. He could not even interrogate them.

Senator McCARTHY. One of the witnesses testified that Thon had the reputation—I cannot quote his exact words—the reputation of beating and torturing prisoners. Is that correct?

Mr. PERL. I never heard of this reputation. I believe all this reputation came up after the trial. Thon took many statements, and they had to claim something, after all.

Of course, statements accumulate, and they get after me, because the two of us took most of the statements.

Senator McCARTHY. You understand that we find a detailed confession to the effect that a man alleged to have shot a Belgian woman in cold blood, a confession which would hang him. Then we find statements from people, including the husband of the woman, signing affidavits to the effect that this woman was not shot by a German soldier. We then begin to wonder how your confessions were obtained. Do you understand that?

Mr. PERL. I understand. But there is one hitch in it. It was not this woman's husband; it was another woman's husband.

Senator McCARTHY (reading):

After 2 days I started suffering terrible pains and was admitted to the hospital. But since my condition worsened I was taken to Stuttgart and operated on a few days later. To the best of my memory I was taken back to Schwaebisch Hall on the 12th but was no longer treated medically at Schwaebisch Hall and taken to a cell where the medicines were taken away from me. Only after 14 days did I receive a complete set of clothes. Having been interrogated 20 times I would like to describe my main interrogation during which Mr. Perl and Mr. Thon, on March 19 threatened me for half an hour, by treatment, in the upper and lower abdomen and head.

Let me ask you: Did you and Thon interrogate this prisoner at the same time?

Mr. PERL. Certainly not at that occasion. It might have been before, when he confessed to the shooting of the woman. I do not remember. On this occasion I was alone with Kram and him.

Senator McCARTHY. On the occasion when he was beaten about the head and lower abdomen, was Thon present then?

Mr. PERL. He was never beaten.

Senator McCARTHY. Did you and Thon ever interrogate this man?

Mr. PERL. Together?

Senator McCARTHY. Yes.

Mr. PERL. I told you I do not remember. I do not think so. It is possible, but I do not remember.

Senator McCARTHY. If Thon's name was on the confession also, would that indicate that Thon was present?

Mr. PERL. At the signing?

Senator McCARTHY. I beg your pardon. It is Elowitz. Elowitz' name is on the confession as a witness. Elowitz' name is on the confession as well as yours.

Mr. PERL. It does not indicate he was present during the interrogation. When the interrogation was taken, and when the statement was finished, then another witness usually was called in, and the whole statement was read once more, aloud, to the defendant, in the

presence of another American witness. Then he was asked whether this is true, what was just read to him, and when he confirmed it, then the oath was taken and he signed it.

Senator McCARTHY (reading) :

Mr. Perl and Thon, on March 19, threatened me for a half hour by treatment on the upper abdomen and head—with hanging. I was kicked in the genitals by Mr. Perl. At that time I did not wear a hood and only woke up at night in my cell. When I wanted to report sick, this was prohibited by the guard.

During my interrogation at Schwaebisch Hall I could not take a bath from December to April. I also several times asked whether I could get some drinking water, but this was denied me, and I was forced to drink water out of the toilet.

Mr. Perl, you say this is all completely false?

Mr. PERL. Yes, sir.

Senator McCARTHY. And you want us to believe today that the confession is true, all except that part which was proven false by the subsequent investigation, that is, the name of the town. You say everything is true except that he got the wrong town. Is that right?

Mr. PERL. Yes, sir.

Senator McCARTHY. And no one in the prosecution undertook to go out and find out whether or not someone had been shot, as this man said he shot this woman, in any of the other surrounding little towns?

Mr. PERL. This case—it must have been another town; that was another town, came out during the trial. I left right after the trial at Dachau. I do not know whether someone went out. I do not think so.

Senator McCARTHY. You didn't think it was necessary to send anyone to Bullingen to check this, when you got the confession originally, to see if the woman had been killed, or if you were merely getting a confession based on rumor?

Mr. PERL. There was no rumor, sir. He had told it to us. There was no rumor.

Senator McCARTHY. Did you think it was necessary to send an interrogator over to Bullingen, and find out whether a woman had actually been shot by a German soldier?

Mr. PERL. I knew that someone would go out to Belgium to look over all those places which gained importance, and the crucial places in this case.

Senator McCARTHY. You knew someone would go out?

Mr. PERL. Yes, sir.

Senator McCARTHY. You mean representing the prosecution?

Mr. PERL. Yes, sir.

Senator McCARTHY. Do you know that no one went to that town representing the prosecution?

Mr. PERL. I do not know whether someone went to this town. I know Major Byrnes went, maybe with someone else, to Bullingen.

Senator McCARTHY. Will you tell us how you knew somebody was going to check this story at Bullingen, when we have no evidence today that no one representing the prosecution went there, but that one of the investigators for the defense went to that town? Isn't that right?

Mr. PERL. I do not know, sir, whether someone went to Bullingen. I knew that someone would go out to Belgium and look at all those places which acquired importance due to certain happenings during this case.

Senator McCARTHY. In view of the fact that it was proven at the trial, without any question of a doubt, that this woman was not shot in Bullingen, as the confession you have obtained said she was shot—in view of the fact that it was proven beyond any possible doubt, don't you think that the prosecution and the court, just in common decency, should have sent someone out to investigate and find out, then, if it wasn't Bullingen, what town it was, find out if it was some other town in the area?

Senator BALDWIN. Right there—

Senator McCARTHY. Let me finish. Find out if it was some other town in the area that answered a description that he gave of Bullingen, if some woman was shot in that manner?

Mr. PERL. I told extensively what I know. It was not my competence to send someone out to look into this matter.

Senator BALDWIN. At the trial of the case, the matter of whether or not this was Bullingen, and whether or not a woman was shot, was checked apparently by the defense. There appears to be some discrepancy about the matter, so much so that apparently the reviewing officer recommended in this particular case a commutation from hanging to—

Senator McCARTHY. The Frankfurt board said there was no evidence whatsoever to sustain it. It says:

Conclusion: The evidence is insufficient to support a finding that the accused killed anyone at Bullingen.

That is in regard to the Bullingen case.

Senator BALDWIN. There was another charge against this man, which apparently was substantiated, and they recommended that his sentence be commuted from hanging, I believe, to a term of imprisonment. I have forgotten what the years were.

Senator McCARTHY. The point that I think is ultraimportant in this case is that here is a man who was accused of all the sadistic practices in the book, either rightly or wrongly so. We find here that half of the confession, a part which would definitely hang this man, is completely and absolutely false.

In view of that, it is only logical to assume that the other half may be true, accidentally, but most likely is also false.

Senator BALDWIN. According to the report I looked at, the other half appears to have been corroborated by other witnesses.

Senator McCARTHY. Yes; corroborated by other witnesses, by other confessions gotten in the same manner. That is why I say this man should be submitted to a lie-detector test.

Senator BALDWIN. We are carefully considering that now. We are trying to give it every consideration. I know nothing about that procedure myself. Before I make any recommendations to the whole committee I would like to have the full explanation of the thing, and we are in the process of getting that now.

Senator McCARTHY. Mr. Chairman, I don't want to go into a discussion of that now. I understand we will discuss that later. The thing that I say is important is first the Von Roden-Simpson committee went over and said these men used such a method that an innocent man would sign a confession as well as a guilty man. As someone said, an innocent man screams just as loudly as a guilty man when you are torturing him.

The Army was not trying to indict the man, and they said this is practically true to some degree.

Now we find a case in which this man now before us gets a confession which is false, no question about it at all, absolutely false. I wonder what steps, if any, the prosecution took in a case like that. The prosecution was standing there, in court, trying to convict this man, asking that he be hung. They found that half of the confession is absolutely false.

I wonder if the prosecution staff felt under any duty to go out and check the matter. Do you know that?

Mr. PERL. I don't think so.

Senator McCARTHY. Mr. Ellis, may I ask this question, with the Chair's permission: When you were in court, and you found that this part of the confession was false, absolutely false, that no woman was ever killed in Bullingen; you found that from the affidavit of the leader of this little crossroads hamlet, and the registrar, and the husband; you find from the description this man gives that it is apparently the same town, the mess hall in one spot, Mrs. Jonsten's home, where he claims to have shot this woman. Did you feel then, as head of the prosecution team, that you had any duty to go out and check on that story, or did you think that your sole job was to get as many convictions as you could?

Colonel ELLIS. We sent Major Byrnes up there to check all these stories.

Senator McCARTHY. Let's take this story.

Colonel ELLIS. I am sure he checked this story.

Senator McCARTHY. Did he bring you back a report on it?

Colonel ELLIS. It is my recollection that he did, and his report—

Senator McCARTHY. Did he give you a written report?

Colonel ELLIS. No. He took statements at various places, and I don't recall that he had any statement—

Senator McCARTHY. Did he put anything in the record on the Byrnes record? Did you inform the court what his report was? Do you follow me?

Colonel ELLIS. Yes, sir.

Senator McCARTHY. In other words, you have a man whom you ask the court to hang, because of one of the most unwarranted crimes a man could be guilty of. He goes into a house and shoots a woman 40 years of age, in cold blood, a crime for which he certainly should hang for.

My question is this: When you find that that confession is untrue, and that this man did not shoot this woman at Bullingen, and that no woman died of gunshot wounds in Bullingen, a little hamlet where the mayor and the registrar of the hamlet could not conceivably be mistaken, then you say you sent Byrnes to investigate.

You say as you recollect he gave you a report. What I want to know is if you recollect whether you told the members of the court what that report was, whether you made a record of it at all, or whether you let the matter rest.

Colonel ELLIS. Your premise that the confession was untrue is not the same conclusion that I have.

Senator McCARTHY. Do you know that the Frankfurt board, a board of Army officers, arrived at the same conclusion that I have?

Colonel ELLIS. No, sir. I know in this particular instance they said that that offense was not established; they disproved that. I know that.

Senator McCARTHY. They said there was no evidence to prove it. They said there was no credible confession.

Colonel ELLIS. I disagree with them in a number of cases.

Senator McCARTHY. I want to know whether you realize that the Army board reviewing this board agrees with the conclusion that I have arrived at today.

Colonel ELLIS. That there was not sufficient evidence to establish a conviction. I do know that. But I also know that there are many prosecuting attorneys who get acquittals on murder charges, too.

Senator McCARTHY. When you found that the affidavits all proved that this woman was not shot, that there was no person who died in this little hamlet from other than natural causes during this period covered, and you say you sent Byrnes up to investigate it, did you give him specific instructions to go to this little town of Bullingen and say bring me back a report, or anything to that effect; or did you merely send him out to generally check all the stories?

Colonel ELLIS. Byrnes was given all the information that we had on all the incidents in Belgium. I presume he had this one, too.

Senator McCARTHY. You don't know that?

Colonel ELLIS. I just deduct that he did. I don't recall particularly discussing this incident. I discussed all of them with him.

Senator McCARTHY. You don't recall discussing this incident?

Colonel ELLIS. I am sure I must have, however.

Senator McCARTHY. You discussed these incidents, all of them, prior to the trial, with Byrnes?

Colonel ELLIS. Byrnes made two or three trips up there.

Senator McCARTHY. When did he make his last trip, before the trial ended?

Colonel ELLIS. He made it before the trial started. He made his last one——

Senator McCARTHY. When did he make the last trip?

Colonel ELLIS. The last trip was on the 8th or 9th of April.

Senator McCARTHY. Before the trial started?

Colonel ELLIS. Certainly.

Senator McCARTHY. His last trip was before the trial started. At that time you didn't have these affidavits showing the falsity of his confession. I ask asking you this: After you learned, Mr. Ellis, you who were in charge of the prosecution, that this confession of a most gruesome crime, one calling for the death penalty—when you learned it was not true and that no woman, or no one, was shot in this little town, then I ask you did you think it was your duty as the prosecutor to send someone up to check on this story, and if, as this witness surmises, it was another town, or if, as you surmised the other day, it was some fugitive going through town that nobody heard about, that that be either proven or disproven?

Colonel ELLIS. I never considered this a false confession.

Senator McCARTHY. You didn't?

Colonel ELLIS. No, sir.

Senator McCARTHY. Do you think that a woman was shot by a German soldier in the town of—and I may be pronouncing it wrongly, we all know the town—Bullingen? Do you still think a woman was shot in that town by a German soldier?

Colonel ELLIS. I believe so.

Senator McCARTHY. You are aware of the fact that the mayor, the head of a little hamlet, and the registrar, both signed affidavits to the effect that the only women in that little hamlet who died from other than natural causes was Mrs. Anton Jonsten, and that Anton Jonsten, the husband of this woman, signed an affidavit to the effect that his wife was not shot by any German soldier. Do you know that?

Colonel ELLIS. I am aware that the defense put in both those affidavits, or one of them at least.

Senator McCARTHY. You want to tell us that because of some psychiatric power that you have, or for some reason or other, you know that a woman was shot in that town?

Colonel ELLIS. I had reasonable cause to believe that a woman was shot in that town.

Senator McCARTHY. Did you have reasonable cause to believe that a woman was not shot?

Colonel ELLIS. I think you could go either way on it. You could take the position you are taking or take the position that I am taking.

I think reasonable men could differ on it.

Senator McCARTHY. Did you have any evidence, any cause, to believe that a woman was shot in that town, other than this confession?

Colonel ELLIS. At the time of the trial, no, sir, we didn't.

Senator McCARTHY. You had no reason to believe that a woman was shot—

Colonel ELLIS. I had no reason to doubt the confession, either.

Senator McCARTHY. You had no reason to doubt the confession?

Colonel ELLIS. No, sir.

Senator McCARTHY. You say you had no reason to doubt it, even after these affidavits, saying nobody was shot in this town?

Colonel ELLIS. I don't think I necessarily should have doubted it. The defense was putting on its case.

Senator McCARTHY. Let me ask you this, and I think it is very important: You say that when the affidavit of these, not German, but the Belgian people—the mayor of the hamlet, the registrar and the husband—after these affidavits, you say that you had no reason to doubt, even after those affidavits, no reason to doubt but what this confession was true? Is that right?

Colonel ELLIS. Yes, sir. And for this reason: The rest of the confession was established by corroborative evidence.

Senator McCARTHY. You said it was established by corroborative evidence?

Colonel ELLIS. The rest of it, yes, sir.

Senator McCARTHY. We are referring to this part about killing the woman. There is no corroboration of that.

Colonel ELLIS. We didn't produce any, I know that.

Senator McCARTHY. You didn't produce any?

Colonel ELLIS. No, sir.

Senator McCARTHY. Did you have some?

Colonel ELLIS. We thought we were going to have some, but it developed we didn't have.

Senator McCARTHY. Now, we get back to the original position, and I might say, Mr. Ellis—

Mr. CHAMBERS. Would you ask him why he did it?

Senator McCARTHY. No. I might say that if in my court a man came before me as prosecutor and he had a confession of this kind, and

then he had affidavits from the people of the town, the registrar, and the husband of the woman killed, and said, as prosecutor, "I have no reason to doubt the confession," I would do one of two things: I would ask that he be immediately disbarred, or perhaps first commit him to an institution for observation.

I want to ask you this: On this day, today, do you have any reason to believe that this confession, insofar as the shooting of the Belgian woman is concerned, is untrue; or do you still believe it is true?

Colonel ELLIS. I still believe it is true.

Senator McCARTHY. Do you still believe that a woman was shot in this little town of Bullingen, by a German soldier?

Colonel ELLIS. I certainly do.

Senator McCARTHY. And you have no reason to doubt that?

Colonel ELLIS. No, sir.

Senator McCARTHY. Do you think that the affidavit—let's take the registrar first—do you think his affidavit was false?

Colonel ELLIS. As far as it goes, I believe it was true.

Senator McCARTHY. You believe it was true?

Colonel ELLIS. Yes, sir.

Senator McCARTHY. As far as it goes; it goes this far: He says there was no one who died from other than natural causes in this little crossroads hamlet, except Mrs. Anton Jonsten. Do you believe that is true?

Colonel ELLIS. I believe so. I presume he knows what he is talking about.

Senator McCARTHY. When Anton Jonsten signed an affidavit saying his wife was not killed by a German soldier, do you believe he was lying, or telling the truth?

Colonel ELLIS. He must have been telling the truth.

Senator McCARTHY. When the mayor of the town signed an affidavit saying that Mrs. Anton Jonsten is the only woman that died within the confines of this hamlet from other than natural causes during this period of time, do you believe he was telling the truth?

Colonel ELLIS. As far as his knowledge went, I believe he was.

Senator McCARTHY. When the soldier—

Colonel ELLIS. I don't recall that he put in an affidavit.

Senator McCARTHY. You don't deny that Mr. Jonsten knew the facts?

Colonel ELLIS. I don't deny the authenticity of the affidavits put in; certainly not.

Senator McCARTHY. In view of the fact that you say the registrar was telling the truth when he said no one died except Mrs. Jonsten and that the husband was telling the truth when he said, "My wife was not shot," do you still tell us that the confession of the German soldier to the effect that he went into this home and deliberately murdered Mrs. Jonsten was true? Do you believe that confession is true and that you have no reason whatsoever to doubt it?

Colonel ELLIS. He didn't say that he killed Mrs. Jonsten.

Senator McCARTHY. He confessed he killed a woman.

Colonel ELLIS. Yes, sir.

Senator McCARTHY. Do you still believe that is true?

Colonel ELLIS. I certainly do.

Senator McCARTHY. Do you think that before a man should be hanged for a crime such as this, that perhaps you, as the head of the

prosecution staff, should have gone to the trouble of sending a man over to that town and get further facts?

Colonel ELLIS. We sent Byrnes over there.

Senator McCARTHY. You told me that you never sent Byrnes over there after the trial.

Colonel ELLIS. No, we didn't.

Senator McCARTHY. You said the last time you sent him over was the 8th of April.

Colonel ELLIS. That is right.

Senator McCARTHY. You tell me now you don't recall what his report was.

Colonel ELLIS. No; I don't recall on this instance.

Senator McCARTHY. Let me recall these facts to your mind: You say you sent Byrnes to investigate it. Am I not correct that you did not know of the affidavit of the mayor and the registrar until after the trial was commenced?

Colonel ELLIS. I didn't know about it until the defense put on their case.

Senator McCARTHY. Then you learned about it?

Colonel ELLIS. That is right.

Senator McCARTHY. Then you were arguing that this man should be found guilty of this crime. Is that right?

Colonel ELLIS. Generally, yes. I don't know that we ever argued his case particularly.

Senator McCARTHY. Before you urged the court to find this man guilty and hang him for killing this woman in cold blood—and certainly if he did hang it was a reasonable penalty—did you think you had any duty at all in view of these affidavits to send an investigator over and check the facts?

I understand it is only 100 miles away. A man's life depended on this. Did you think, as a prosecutor, you had any duty to him at all?

Colonel ELLIS. Senator, my duty was to present the evidence. If the court found this man guilty on that evidence, I don't think my duty went beyond that.

Senator McCARTHY. You didn't think that when it appeared to you that your evidence may have been false, you didn't feel that then you should check on that evidence, did you?

Colonel ELLIS. I didn't think that the evidence was false.

Senator McCARTHY. Did you think there would be any reason to question its truth, in view of these affidavits?

Colonel ELLIS. No, sir; I did not.

Mr. FLANAGAN. Colonel, what did you conceive your duty to be as head of this investigating group at Malmedy?

Colonel ELLIS. To investigate the alleged Malmedy offense and the allied offenses that were committed by the First SS Panzer Regiment in these offenses.

Mr. FLANAGAN. I assume by "investigation," you meant you had not only the duty to find where men were guilty, but you also had the duty to separate the innocent from the guilty?

Colonel ELLIS. Yes, sir.

Mr. FLANAGAN. In cases such as the Bullingen case, involving Max Rieder, in cases where you had nothing other than uncorroborated statements from accused, did you have a policy of attempting to obtain

corroborating evidence concerning that case by an independent field investigation?

Colonel ELLIS. Yes. Through Major Byrnes.

Mr. FLANAGAN. In this case, can you recall whether or not you sent Major Byrnes specifically to Bullingen to make an inquiry?

Colonel ELLIS. As I told the Senator, I recall, by deduction I must have, because we gave him all the evidence we had about these various individual crimes. I cannot sit here and tell you that I definitely talked to him about it. I presume I must have.

Senator McCARTHY. If he went to Bullingen, then we can assume that he reported back to you that there was no evidence that he could find of any woman having been killed in that town, except Mrs. Jonsten, and that she was not shot.

We can assume he reported that back to you?

Colonel ELLIS. That, or the equivalent. I presume he did.

Senator McCARTHY. Did you not think it was your duty to tell that to the court, that your investigator went over to this town, and that your investigator reported back to you that it appeared that the confession was false, and that this woman was not shot?

Colonel ELLIS. I do not think my duty went to that extent.

Senator McCARTHY. In other words, Byrnes comes back and says:

Mr. Ellis, I was over to Bullingen; I found that there is no evidence whatsoever of any woman having been shot by a German soldier or any woman in that town. I found, further, that the evidence of all those in the town was to the effect that definitely no woman was shot in the town, that the only woman who died from other than natural causes was Mrs. Anton Jonsten; and her husband said that she had no bullet wounds; her body showed no bullet wounds.

You say your duty would not then be to give that information to the court?

Colonel ELLIS. On the general conditions at that time, as I think I told you in the private conversation, I do not know whether it was in the record, there were a great many refugees in that country.

Senator McCARTHY. And my question, will you—

Senator BALDWIN. Let him answer it. He is trying to answer it. It may not be the answer you expect, but he is entitled to answer it.

Senator McCARTHY. I want to know whether he sent his investigator over. This investigator reported back to him the facts that I have enumerated, and that is that no one in that town knew of a woman having been shot, not a single person in this little hamlet, and that the mayor, the registrar, the husband—everyone—says no one was shot in this town, but that Mrs. Anton Jonsten did die as a result of either an artillery shell or something like that.

If he reported that back to you, do I understand that you felt that it was not your duty to go in and say to the court: "This part of the confession is, at least, questionable, because of what my own investigator reported to me"?

Colonel ELLIS. No; I do not think so.

Senator McCARTHY. You do not think that would be your duty?

Colonel ELLIS. No, sir.

Senator McCARTHY. That is an inconceivable attitude, is it not, Mr. Ellis?

Colonel ELLIS. No, sir: I do not believe so, under the conditions.

Mr. PERL. May I ask a question?

Senator BALDWIN. What do you want to say?

Mr. PERL. I would like to ask two questions in direct connection with this. No. 1, was it established whether this husband, who claims that his wife was not killed by a bullet wound but by a grenade splinter, is capable of establishing the difference between a grenade splinter and a bullet wound? It might still be the same village.

Secondly, Senator McCarthy referred to the relation to the mess hall. It was not the mess hall; it was the place where the Americans had eaten, the distance and so forth, to this house.

I do not remember whether this affidavit described these distances to this house. I believe this is brought out now.

Senator McCARTHY. Do you think he might have been incompetent also to testify whether she was shot in the house or running down the street when this shell or grenade fell?

Mr. PERL. Pardon?

Senator McCARTHY. You asked whether we checked to see whether the husband was competent to pass upon whether she had a bullet hole through the middle of her forehead, as the confession said, or whether she was killed with a hand grenade. You are aware of the fact that the husband's affidavit said his wife was not killed in the house, as the confession you obtained stated, but that she was outside, running down the street?

Mr. PERL. I do not know this. Then if this should be correct, it would probably not have been Bullingen.

Senator McCARTHY. You are a lawyer?

Mr. PERL. Yes, sir.

Senator McCARTHY. If you were in charge of the prosecution, as Mr. Ellis was, and if you sent an investigator over, as Mr. Ellis said he did, to Bullingen, to this little hamlet, you would do it because you had a confession of a man murdering a woman in cold blood.

He said, "I went in and pointed the gun at the middle of her forehead and shot her. The brains were streaming out the back of her head."

You told Byrnes to go there and check these facts. Byrnes came back and said:

Mr. Perl, in checking in that town, I found that there is no one who knows of any woman having been shot. Just to give you the evidence on it, I went to the most reputable people; I went to the mayor, the registrar, the man who keeps the records, and they gave me affidavits that no one was shot, that the only person who died from other than natural causes was Mrs. Anton Jonsten.

He said:

Mr. Perl, I went to Mr. Jonsten, the husband of the woman. He gave me an affidavit to the effect that his wife did not die in the house, that she was running down the street when a grenade or artillery shell fell, and that she died as a result of that.

You have that information. The only evidence you have against the soldier is this confession, which one of your interrogators got. You know that prior to that time your interrogators have been accused of torturing. You know that the Army conducted an investigation.

Listen to me, will you?

Mr. PERL. Yes, sir.

Senator McCARTHY. You know that prior to that time, the Army thought enough of those rumors to conduct an investigation.

Would you think, as a lawyer, that it was your duty to go to the court and say, "Judges, here is some information I have, here is what

my investigation has found; for that reason we may or may not want to place any weight upon this confession." Would you think that was your duty?

Mr. PERL. I would like to be able to answer you, even if the answer is not exactly what you want me to tell you. Will you please let me tell you what I want to tell, and I will tell you in not more than two or three sentences.

If I had been in Colonel Ellis' position, I would have acted exactly as he did for the following reasons, which he did not bring out:

There was not only once, but quite often, confusion at the trial between the Americans, between the defense lawyers, and the Germans, as to the names of the various villages. The villages had German names, and they had French names. It was in a Belgian region where French and German was spoken. I would not have considered the possible error in the name of the village as important to go and start a new investigation. This occurred during the trial, when the proceedings were on already, and the court had opportunity to evaluate everything.

As to these claims which you mentioned before, of torture, no one claimed torture before Von Roden and this paper brought it into the paper.

Senator McCARTHY. Will you come back to my question?

Mr. PERL. Yes, sir.

Senator BALDWIN. Let him answer.

Mr. PERL. You asked me about torture. I want to answer it.

Senator BALDWIN. Let us all stop. Do you want to state the question again?

Senator McCARTHY. I am going to ask this again, and I am going to insist that you answer it.

Senator BALDWIN. There is only one thing that the Chair feels you ought to insist on, Senator, for the purpose of getting a good record here.

Senator McCARTHY. That is the truth, I assume?

Senator BALDWIN. Yes; that is the truth. It is exactly on that point that the Chair makes this point. The Chair would ask that the Senator incorporate in his question those things here which are admitted or undisputed facts, or of which there is going to be evidence later. I think that is only fair.

Otherwise, you get confusion about the thing, that winds up in an answer that is not helpful to you or the committee or anybody else.

Senator McCARTHY. I would like to know from the Chair what facts I have stated that are not in the record?

Senator BALDWIN. You stated in your question that the man from whom the confession had been obtained had been tortured. As I understood, what the witness was attempting to explain was the fact that he did not accept that as a fact. He does not believe it, and has taken the position here consistently that these men were not tortured.

Whether they were or not is what we are trying to find out. He is under oath. He is supposed to tell the truth.

Senator McCARTHY. Mr. Perl, do you feel now, as Colonel Ellis does, that a woman was shot by a German soldier in the town of Bullingen? Do you feel that?

Mr. PERL. I would like to ask a question of the Chair?

Senator McCARTHY. Go ahead.

Mr. PERL. I was asked a question before, and I had no chance to answer it. I am shouted at one question after another and I never get the chance to answer it. So it sounds as if all this brought out now would not be answered.

Senator BALDWIN. Let me put the question in this way.

Senator McCARTHY. Here is the question. I think I am competent to ask my questions.

Senator BALDWIN. Do you think it is fair for the Chair to ask a question?

Senator McCARTHY. Certainly. I would like to have an answer to my question, if I may. Will you answer the last question?

I asked you whether or not, as of now, at this moment, feel that some woman—whether Mrs. Jonsten or not—was shot in the town of Bullingen by a German soldier?

Mr. PERL. I would like to ask a question from the Chair.

Senator McCARTHY. Can you answer that question?

Mr. PERL. May I answer first the question about the purported tortures of this man, which I was asked before?

Senator McCARTHY. We will get back to the torture.

Mr. PERL. I have one question after another.

Senator McCARTHY. I am going to ask that the Chair insist he answer this question. It is an honest, fair question.

I asked him whether or not, as of today—

Mr. PERL. I was asked another question before.

Senator McCARTHY. Whether or not, as of today, at this moment, as you sit in this chair, you feel that someone was shot by a German soldier in this little town of Bullingen.

Mr. PERL. Mr. Chairman, the question of the torture which was brought up so publicly in this Von Roden report, or whatever it was, was brought up again. I would like to answer, in connection with the Rieder case, the question which I was asked before, in view of the fact that it was known that people claimed to have been tortured—that is what Senator McCarthy asked me—would you, in such a case, start an investigation. And I want to say that there was one case prior to this only—a case of four—where people had claimed they were beaten; and it was investigated. Rieder knew of them, and it was claimed that they were beaten, and Rieder was not among them. And these four told the investigator: "We made the story up and it was not true."

As to Rieder, he was at the trial. He had a dozen defense lawyers sitting there. He never took the stand to deny one word of these accusations. So I had no reason to doubt that he had killed this woman, even in case the name of the village is not exactly as it might be. I do not know—

Senator BALDWIN. Let me ask a question. Do you recall, in your whole experience with this thing, whether or not there was any other case where a woman, a civilian woman, was alleged to have been shot or killed by any of these SS troopers?

Mr. PERL. To the best of my recollection, I did not handle any civilian shootings. I did not handle any civilian shootings at all.

Senator BALDWIN. Do you know of any other case, other than this one that we are talking about, whether or not there was any other case that involved the killing of a woman; the shooting of a woman?

Mr. PERL. No, sir.

Senator BALDWIN. Do you know of any other, Colonel?

Colonel ELLIS. There were many killed around Stavelot, and another little town below there, but not a single woman, not to my recollection of a single woman.

Mr. PERL. I believe I remember one case, when Hennecke drove through a Belgian village which they had just occupied. The civilians were standing in the doors to look at the tanks, the armored vehicles which were driving through, and as far as I know, he opened fire at the civilians and killed a woman or two.

Senator BALDWIN. I am speaking of a single case. The reason I ask this question is this: Just to illustrate the confusion that is in the Chair's mind with reference to this now, here is paragraph 13 of Colonel Everett's petition. This has been called to my attention by Colonel Chambers. It appears to be the only incident of a single woman having been shot. Is that correct?

Mr. CHAMBERS. Yes, sir; and the only one in which affidavits denying it have been tied in.

Mr. PERL. It is the only case in which a woman was shot in her house.

Senator BALDWIN. This says: "An officer was sent to Belgium, and he investigated an incident at Wanne, Belgium, where it was alleged that one of the plaintiffs herein had entered the house of a Belgian civilian"—that is the plaintiff in this petition, one of the petitioners—

Senator McCARTHY. Colonel—

Senator BALDWIN. May I read it first?

Senator McCARTHY. If you do not want to know what the situation is.

Senator BALDWIN. That is completely uncalled for. I have this witness on the stand, and Colonel Ellis is here.

Senator McCARTHY. Do you want to know why the name Wanne is substituted for Bullingen? If you want to know, I will tell you.

Senator BALDWIN. Senator, I have tried to conduct this matter in a manner not to interfere with you, and I think it is only fair that you reciprocate with the same kind of treatment.

Getting back to this thing, to try to get it straightened out:

An officer was sent to Belgium, and he investigated an incident in Wanne, Belgium, where it was alleged that one of the plaintiffs herein had entered the house of a Belgian civilian and without provocation murdered a woman while sitting in her chair.

There is a marked discrepancy.

This plaintiff, in a forced, false confession, fully admitted the commission of this crime, and four or five of his codefendants swore to the same facts in their forced, false confessions, and related every detail exactly the same.

This defense officer brought back an affidavit by the husband of the purportedly murdered woman to the effect that his wife had been killed during enemy attacks; but that his wife was standing in the street in front of his home when an American artillery shell exploded and killed her. This statement was promptly sworn to before his priest.

Do you remember any such incident as that?

Mr. PERL. No, sir.

Senator BALDWIN. Do you?

Colonel ELLIS. I think they are referring to the Bullingen incident. It is the only incident that is similar to what they are reciting here.

Senator BALDWIN. This is the only killing of a civilian woman mentioned in this petition.

Senator, you had some explanation?

Senator McCARTHY. Lieutenant Devinnell testified—it is in the record—that he drafted the affidavit. It is all under oath. By clerical error, the name Wanne was inserted instead of Bullingen. It was very clear. He was here on the stand and so testified. It is all part of the record. The Chair knows it.

Mr. FLANAGAN. It is in Colonel Devinnell's testimony. The name of the town is a clerical error. The name of the town involves Max Rieder. They got the wrong town in preparing the affidavit.

At that time, as I recall, we also examined—I do not know whether we put them in the record or not—the affidavits taken from the mayor and registrar. They were from the town of Bullingen.

Senator BALDWIN. This statement said it was promptly sworn to before the priest, that is, the statement of the husband was apparently sworn to before the priest. It says nothing about the mayor or registrar.

Mr. FLANAGAN. There was a registrar, what would be the equivalent of a coroner here.

Colonel ELLIS. It was not sworn to before a priest. It was sworn to before a civilian investigator, Myles Rulien. The priest's name, as I recall it, did not occur in any place upon the affidavit.

I would like to make another statement on this very controversial subject, if I may.

Senator BALDWIN. Go ahead, if you can clear it up. It will be helpful.

Colonel ELLIS. In considering this case of Max Rieder, the murder of this woman in Bullingen was not of the primary importance. I think he was involved at the crossroads, where there was substantial corroborative evidence. If all we had had against Max Rieder was the statement which proved to be uncorroborated when we went to trial, he certainly would not have been one of the defendants.

There were four dropped from the trial right on, I think, the opening day, because we had no corroborating evidence. Originally there were 78, and four of them were not-pressed on the opening day of the trial. We had no corroborating evidence.

If we had only had this on Max Rieder, he certainly would not have been a defendant.

Senator BALDWIN. Apparently, from the original finding of the original court, as I get it, this confession was put in evidence.

Colonel ELLIS. That is right.

Senator BALDWIN. It contained the confession—the claimed confession—about the shooting of this woman. It also contained the confession of another incident.

Colonel ELLIS. That is right.

Senator BALDWIN. Apparently the original court convicted this man and ordered him sentenced to be hanged. The reviewing board—or one of them; the Frankfurt board, I think it was—recommended a reduction in the sentence to 15 years in this Rieder case; is that correct?

Mr. CHAMBERS. That is correct.

Senator BALDWIN. The point that the Chair would like to know is this: Why was it, when the confession was offered in evidence, and

contained the claimed confession of two incidents, one of which apparently was uncorroborated either because it didn't happen or because it may have happened in some other village over which there seemed to be some confusion—I think what Senator McCarthy is getting at is why is it, under those circumstances, that the prosecution didn't bring to the attention of the court that the incident at Bullingen or Wanne, or wherever it was, which was uncorroborated, was in fact not corroborated? Was that brought to the attention of the court? That is what you want to know, is it not?

Senator McCARTHY. No. It was uncorroborated. Whether it was brought to the attention of the court or not, it was untrue. The court knew it was uncorroborated. The court found him guilty on this count.

I am sure the chairman will agree with me, and I think this is so fantastic that a man guilty of this should stand a court martial. The duty of the prosecutor, when he finds a confession is untrue—a confession under which a man can be hanged, under which he was sentenced to hang—his duty was so obvious, so clear—not just common decency—he should have said to the court, “I sent an investigator to this town and he has reported back that no woman died there.” I do not think it is even worth while. The only reason I insist on questioning these witnesses is to show what type of moral obligation they thought they were under, what ground rules were covering the thing.

I know I cannot make them admit that they did something legally wrong, but we can spread on the record the type of rules, the type of morals, of the men who were prosecuting these cases.

Senator BALDWIN. May I say one thing in connection with that, while we are on that subject, because it is a point that I think ought to be considered when we make any recommendations in connection with this whole thing, so far as trial and procedure is concerned.

You say, “when it was found to have been untrue.” Of course, on that basis, if you find the fact one way or the other, you have either got to accept or reject the testimony of one side or another.

On the one side there was the confession of the SS trooper; on the other side there was the sworn affidavit of the husband of the woman in this particular town of Bullingen, which also appears to be somehow confused with the town of Wanne, that there was no woman killed in that town, or who died in that town, under the circumstances described in the affidavit.

So there you have a question of whether (1) the thing actually did happen, or (2) whether it happened in some other town.

I think, myself, that under those circumstances there may very well have been some responsibility upon the prosecution to bring that fact out, but apparently, from an examination of this review, the defense did bring it out, and what effect it may have had in the over-all decision of the reviewing board is difficult to say, but the fact remains that a death sentence, by hanging, was commuted to 15 years.

So you have the question of whether or not, in this trial, the prosecution deliberately offered confessions which were uncorroborated, and whether or not, on the uncorroborated confession of any SS trooper there was actually a conviction in which a death sentence was imposed, or a substantial sentence of any kind.

I think that is one thing the committee ought to look at from that particular point of view very carefully.

Senator McCARTHY. May I say that I do not think the question of corroboration or lack of corroboration is important if confessions are properly obtained. As a judge, I have found men guilty of murder on uncorroborated confessions, but in those circumstances you make every conceivable effort to make sure that the confession is properly obtained.

I am not worried about an uncorroborated confession. The prosecution had a right to submit an uncorroborated confession, but the prosecution was guilty of a crime if they submitted a confession to the court which they previously knew was untrue.

There is no doubt about it. It is the same as a district attorney trying to convict a man of murdering someone in X village, when he has previously determined, by sending an investigator over, that no one died in that village.

I am going to ask Mr. Perl a question, if I may. It is the same question that I asked you some time ago. Do you now agree with the statement made by Mr. Ellis that a woman actually was shot in the town of Bullingen by a German soldier?

Mr. PERL. There was so much confusion between the villages. Even the defense mixed up Wanne and Bullingen. In my opinion she was shot in Bullingen. You say, I saw the story developing. I saw this man before me—

Senator BALDWIN. Never mind that. Your answer to the question is that, in your judgment, she was shot in Bullingen; but the fact remains that there was no corroborating testimony.

Mr. PERL. Yes, and I believe the investigator who went over there might have mixed things up. I do not know, sir. But I know he gave me the impression of being so truthful. This Rieder—this is a small detail, but it is essential—he comes from lower Bavaria. Mr. Thon speaks exactly his dialect, and as far as the conditions permitted they were almost friends; they were always joking together. I took him over from Thon, so I had no reason to shorten this very agreeable relationship.

I spoke very nicely to him, and it came out: Why should he have related something which was not true. He pointed at the village of Bullingen. There was so much confusion about the village—and still is—that the error might just as well have been somewhere else. There is no doubt that he shot someone, and I still think it should have been at Bullingen.

Senator McCARTHY. You say he shot someone, because he was a truthful young chap?

Mr. Perl. No, not because he was truthful, but because he was truthful when he told me this. Now he says he was beaten. We heard of no one being brought to the hospital, with a sergeant, with any injuries. He claims he was brought to a hospital. He was sitting there in the stand and had lawyers there.

The trial lasted for months. He never took the stand to claim that he was beaten.

Senator McCARTHY. Let's go back to this.

Mr. PERL. Excuse me. Even now he claims that he was beaten in the testicles, to the best of his knowledge by Lieutenant Perl, so he knew me very well. If I had beaten him, he would have said it was Lieutenant Perl. If Mr. Thon had beaten him, who spoke his dialect, he would have said Mr. Thon.

Senator McCARTHY. Mr. Perl, do you think he would recognize your foot if he had a black hood over his head? He claims he was kicked in the genitals.

Mr. PERL. Yes.

Senator McCARTHY. Do you claim he would have recognized you with a black hood over his head? Would he have recognized you when you kicked him?

Mr. PERL. The moment he entered the cell he did not have a hood on any more, and he would have recognized me immediately.

Senator McCARTHY. Getting back to my question again: You are going to answer it if we have to stay here all week, unless the Chair says otherwise. Do you now tell us that you feel that there was a woman killed in the town of Bullingen by this German soldier, as of now? Do you think that part of the confession is true, that he did shoot this woman in the town of Bullingen?

Mr. PERL. I do not know for certain. There are reasons not to doubt it, but I still believe it might be true that the error might be on someone else.

Senator McCARTHY. Then, do you think that you have any reason to believe that the mayor of this little Belgian town and the registrar were prejudiced?

Mr. PERL. No, sir, but this was war. When the colonel started telling it—it was my thought too—there were so many refugees from other villages, people who came from neighboring towns, who fled from the Germans, it is quite possible that the woman, who was not an inhabitant of Bullingen, was shot at this place and the body then removed or even found. It is quite possible.

Senator McCARTHY. Take the statement that you made that the body might have been removed or not found: The test of the confession is that he shot her through the middle of the forehead, that her brains were dripping out on the floor.

Is it your thought that the body lay there and has not been found up to this day, or had not been found up to the time the investigator got there several months later? You did not mean that?

Mr. PERL. No, sir. I meant something entirely different. I meant that the moment the Germans moved—as long as the Germans were there the population were in hiding. If the Americans moved in, and they saw a dead woman lying there, it is quite possible—not probable—that they removed the body immediately, and then the registrar comes and says, "No one is missing in my town; everyone is here." I do not claim it was that way, but there is a possibility. There is still a good possibility that this woman was shot in the town of Bullingen.

Senator McCARTHY. I think this is important, so that we can decide what part of your story to believe: You say that, despite the fact that the registrar, who is living in this little hamlet, says there was no woman killed there except Mrs. Anton Jonsten, whom I spoke of, and the mayor says, "I have been living in this town, in charge of it, and I know there was no one killed but Mrs. Anton Jonsten," and Mr. Anton Jonsten then signed an affidavit saying that "my wife was not shot in the house; she died as she was running down the street," you say, in spite of that, that as of today there is a good probability—a good probability—that there was a woman actually shot in the manner described in your confession, in the town of Bullingen?

Mr. PERL. I would not say "good probability," but a good possibility; yes, sir. Was the mess hall in the same relation to the house as described?

Senator BALDWIN. Do not volunteer any information; just answer the questions.

Senator McCARTHY. In relation to Mr. Ellis' statement that, to his knowledge, Major Byrnes went over to investigate this case and came back and reported to him. I am going to read Major Byrnes' testimony:

Mr. FLANAGAN. Did you conduct the investigation in Bullingen concerning the alleged shooting of a Belgian civilian woman in her home by a German soldier?

Colonel ELLIS. I do not recall that I did, Mr. Flanagan. I recall investigating the Goldschmidt shooting * * * but do not recall investigating the killing of a civilian woman in that town.

In view of that, Mr. Ellis, do you want to change your testimony now to tell us that Mr. Byrnes did not report back to you in this case?

Mr. ELLIS. No, sir; I do not want to.

Senator McCARTHY. Do you still say that Byrnes reported back to you?

Colonel ELLIS. I think that he did.

Senator McCARTHY. In other words, you say that Byrnes was either mistaken or lying?

Colonel ELLIS. I do not say that he was lying; no, sir.

Senator McCARTHY. If you are so sure that he reported back to you, will you relate what he reported and some of the conversation?

Colonel ELLIS. You misunderstood me before. I said that I thought, by induction that I surely must have given him the Bullingen situation, that by induction he surely must have reported back to me, by process of reasoning. I do not recall that he ever made a direct report to me. I know we had no reports in writing other than the statements that he brought back.

Senator McCARTHY. See if we get your testimony finally straight: Your testimony now is that you do not recall ever having talked to Byrnes about the Bullingen woman; you do not recall ever having gotten a report from him, but you think that, under ordinary circumstances, you would have told him to and he would have reported back to you.

Colonel ELLIS. That is what I mean to say.

Senator McCARTHY. But you have no knowledge whatever of this case?

Colonel ELLIS. I cannot recall that he ever made a report to me about the Bullingen matter. I believe that he must have.

Senator McCARTHY. In view of the fact that you do not recall any such report, when you were in the courtroom, and you then discovered these affidavits from these people in Bullingen, and discovered that, under all the normal rules that you and I follow, we would have to conclude that the confession was false, then did you think that you had any duty as a prosecutor to go to Bullingen and find out if some refugee was killed in somebody's kitchen, and her body not found, as Mr. Perl says, and try to get the facts, or if it was the wrong town, if you could not find out then in what other town nearby a woman had been killed?

In other words, did you not feel that you had a duty—and I wish you to stop and think before you answer this—did you not feel that you had a duty, in view of the fact that you were asking for the death of this man, where you had a confession which on its face was false, when you knew that there were claims by these defendants that they had been beaten and tortured into confessing, when you knew that the claims were such that the Army sent in investigators to check on them, in view of the unusual picture behind the confession; did you not then think that, as an officer in the Army, you had some duty to go out and check and see whether the confession was true or false, and get some facts?

Colonel ELLIS. Senator, you put many things in there that I do not think are true.

Senator McCARTHY. Then let us remove all the things that are not true. (1) You are an officer?

Colonel ELLIS. Right.

Senator McCARTHY. You were at that time?

Colonel ELLIS. Right.

Senator McCARTHY. You were in charge of the prosecution?

Colonel ELLIS. Right.

Senator McCARTHY. (2) You introduced this confession?

Colonel ELLIS. I did.

Senator McCARTHY. (3) This confession tells in detail how this man deliberately, with no provocation—no excuse whatever—in cold blood, murdered a Belgian woman?

Colonel ELLIS. Right.

Senator McCARTHY. That is in the confession?

Colonel ELLIS. Right.

Senator McCARTHY. At that time you had the affidavits?

Colonel ELLIS. No, sir. I did not.

Senator McCARTHY. I am speaking of in court. When you were in court, when the matter was being tried, when the affidavits were being submitted, then you have an affidavit that you yourself can read, and that affidavit is from the registrar and the mayor of the town, whatever the name may be—this little hamlet. Do we have the affidavits here?

Mr. CHAMBERS. They are unquestionably in the record of trial somewhere.

Senator McCARTHY. This affidavit says—and if I say anything false, tell me—the affidavit says:

There was no civilian killed in this town. The only civilian—

Let us put it this way.

The only civilian in this town who died from other than natural causes was Mrs. Anton Jonsten.

You have an affidavit on that. You have an affidavit of Anton Jonsten saying:

My wife was not shot; she did not die in the house; she died on the street when she was running. There were no bullet wounds on her when she was found dead.

You are in court; you get this. It is a Belgian town, not German. There is no reason, as far as you are concerned, why they should be prejudiced in favor of a war criminal.

At that time did you not feel——

Colonel ELLIS. Right there, let us get that.

Senator McCARTHY. We will strike that. We will say they are Belgian people, not Germans. Am I right?

Colonel ELLIS. They may have been of German ancestry, but I will not quibble about that. That used to be part of Germany.

Senator McCARTHY. They are people living in Belgium?

Colonel ELLIS. Yes.

Senator McCARTHY. You have these affidavits, one by the husband, who certainly would feel very unkindly, I assume, toward any man who would come in and shoot a woman in the forehead. You have these affidavits and you are in court.

At that time did you feel there was any duty upon your part to make a further check on this particular case, or did you think that was unnecessary?

Colonel ELLIS. There are many controversial issues.

Senator McCARTHY. Answer that. Did you think you had a duty?

Colonel ELLIS. No, sir; I did not. I answered that question, I believe, once before, for you.

Senator McCARTHY. You said that, if this confession were the only evidence you had—in other words, if you did not have confessions covering other crimes or other evidence against him—if this confession were the only evidence against him, that then you certainly would not have made him a defendant in the case?

Colonel ELLIS. That is right.

Senator McCARTHY. If you had only this confession—nothing else; you are merely trying him on this confession—if you did make him a defendant then you would have felt that the court certainly should not have found him guilty; is that right?

Colonel ELLIS. If that is all I had?

Senator McCARTHY. Yes.

Colonel ELLIS. No; they should not have found him guilty.

Senator McCARTHY. Then you would say that a court that would find him guilty of this was an incompetent court?

Colonel ELLIS. No; I would not say that.

Senator McCARTHY. You would feel it was wrong?

Colonel ELLIS. Not necessarily. You just said, I think yourself, Senator, that you have found people guilty on uncorroborated confessions.

Senator McCARTHY. You said, if this is the only thing you have, you would not have made him a defendant. In other words, you feel he should not have been found guilty?

Colonel ELLIS. I do not think they should have, under those circumstances as you outline them.

Senator McCARTHY. Then you think that a court that would have found him guilty used bad judgment?

Colonel ELLIS. I think it would be an error in judgment, from my viewpoint; yes, sir.

Senator McCARTHY. When the court found him guilty of that charge——

Colonel ELLIS. I do not know that they found him guilty.

Senator McCARTHY. I do not have the record.

Colonel ELLIS. I do not believe there is any way to determine on what charges they found him guilty, when he was charged with more than one matter.

Mr. FLANAGAN. Was he not found guilty as charged?

Colonel ELLIS. As I recall, they just found everybody guilty.

Mr. FLANAGAN. Guilty as charged?

Colonel ELLIS. Whatever the record says. I do not know. They made no exceptions, as I recall.

Senator McCARTHY. When you were convinced that the man shot, we will say, an American prisoner at Stuttgart, killed another American prisoner at the Malmedy Crossroads, and a civilian somewhere else, then would you have him under two or three specific charges so the court could find him guilty or not guilty of each individual charge?

Colonel ELLIS. No; it was a joint matter. They were all 74 joined, and the 13 different places where the atrocities were committed were recited. I have a copy of the charge sheet here if you would like to take a look at it.

You could not tell whether he was found guilty of participating in all 13 or one.

Senator BALDWIN. In the normal criminal trial in this country there are counts 1, 2, 3, 4—a number of different alleged counts. Did you have such things as counts?

Colonel ELLIS. No, sir.

Senator BALDWIN. So that the finding of the court was "guilty as charged," irrespective of what particular count it was on?

Colonel ELLIS. I presume that is the way their finding was. I do not recall how it is recorded.

Senator BALDWIN. The reason why I ask you that—are you through?

Senator McCARTHY. No, sir; but go ahead.

Senator BALDWIN. In this review of the 20th of October 1947, which is reviewed by the deputy judge advocate's office, there appears, on page 126 of this document, this Bullingen incident is mentioned, so far as this Max Rieder is concerned.

There are apparently two charges. One is shooting this woman in the house, in Bullingen. Then there is another heading called the Crossroads. There is a description of another shooting of a substantial number of American prisoners who, it was claimed, had surrendered. Evidence in both of those was apparently presented, and there were no counts. That is the difficulty here—you do not know whether you are offering evidence on the first count or the second count. But there were two different alleged crimes here, apparently both of them covered in the confession.

As to the first one Bullingen is mentioned, which apparently refers to the shooting of this woman in the house.

Senator McCARTHY. What does it say in that regard?

Senator BALDWIN. The evidence for the prosecution was:

The accused stated in his sworn statement that at about 1100 hours, December 17, 1944, he and Sergeant Haas reached the village of Bullingen and entered the kitchen of a house where they found a woman of about 40 years of age. Haas asked the woman whether there were any American soldiers in the house. When she replied in the negative Haas ordered the accused to "bump her off."

The accused then took his rifle, and while standing approximately 2 meters away from the woman, shot her through the forehead, and she collapsed dead.

Now, the evidence for the defense was that an extrajudicial sworn statement stated June 26, 1946, and signed by the mayor and registrar of the community of Bullingen certified that a Mrs. Anton Jonsten died in Bullingen on December 18, 1944, and that the list in the regis-

trar's office contained no other case of death from unknown causes during 1944.

In an extrajudicial sworn statement Anton Jonsten, husband of Mrs. Anton Jonsten, stated that his wife was killed by an American artillery fire on 16th or 17th of December 1944 in Bullingen while she was outside her house attempting to flee from combat, and that her body bore marks indicating that her death was caused by the explosion of a grenade.

Senator McCARTHY. Do they say that is sufficient for a finding of guilty?

Senator BALDWIN. The other incident is the one at the Crossroads, which is the one that has been described by several other of the defendants in their claimed confessions, where 60 to 70 American prisoners of war were shot in a field.

The answer to the Crossroads case was this:

The defense offered testimony by Buth that he was in the same company as the accused, Rieder, and that he did not see the accused shoot at the Crossroads.

However, his vehicle did not arrive until 1400 to 1430 hours, which was after the time that the accused reached the Crossroads, according to the record and the testimony.

Then the court—the reviewing officer—says this:

Sufficiency of evidence: The accused obviously realized that his acts of participating in the shooting of a civilian, and surrendered prisoners of war who were deprived of potential means of continuing as opponents in warfare, were inherently wrong and contrary to the universally accepted standards of human conduct.

He was ordered to and did participate in the killing of prisoners in the presence of a superior. His youth was apparently coupled with mental immaturity and the narrow experience, which should be considered in mitigation.

The findings of guilty were warranted by the evidence. The sentence is excessive.

A petition for review was filed by the American defense counsel December 28, 1946. No petitions for clemency were filed:

Recommendation: That the findings and sentence be approved but that the sentence be commuted to imprisonment for 15 years, commencing July 16, 1946.

So there is not anything except the deduction that you draw from reading both of the defenses here, and the final recommendation, to indicate whether the finding of guilty was on both of them or on one. The fact remains, as the Chair sees it, that there was apparently a good defense—at least one that raised a very serious doubt—as to the Bullingen statement, and a defense which the court seems seriously to have questioned on the basis of the time factor, as to the Crossroads incident, in which the accused claimed to have participated.

The only assumption is that because of his immaturity considered in mitigation, that the court ordered the sentence commuted from hanging to 15 years, but it does not say whether on the basis of finding not guilty on the Bullingen incident, or finding of guilty on the Crossroads incident.

Nevertheless, the sentence was commuted. In the trial of these cases, Colonel, as you said, there were no counts, as such, presented?

Colonel ELLIS. No, sir. I do not have a copy of the charge sheet here, but it was just one specification which covered all the defendants and all the incidents. There was no count, as we know them in municipal criminal law.

Senator McCARTHY. Incidentally, Mr. Chairman, I think the record should be clear on this: Apparently the reviewing court, despite the

recommendation of the Frankfurt board, approved the finding of guilty as to the shooting of this Belgian woman, because, they say, "the accused obviously realized that his acts of participating in the shooting of a civilian"—that is, a civilian he was accused of shooting—"and prisoners of war was inherently wrong."

In other words, they say he obviously realized that the shooting of a civilian was wrong, which makes you wonder, as I said before, just what type of reasoning those men in the court followed.

Mr. CHAMBERS. Mr. Chairman, I think Senator McCarthy should realize that the report he just read from was prior to the Frankfurt review. I think the Frankfurt review was made some months after that.

Senator McCARTHY. The point is that you have a confession of a shooting of a woman in a town. It is uncontradicted that no woman died in that town. The court said most likely he realized he was wrong. They do not go into the question of whether there was any evidence or not.

Senator BALDWIN. I come to the conclusion that it was apparent, because of what appeared to me to be a defense that raised a great deal of doubt, while it does not say so in the record, apparently that was one of the factors that entered into the commutation, because the man was sentenced to be hanged, and the board recommended and did commute his sentence to 15 years, although he was involved in this second incident where 60 to 70 men were shot.

Senator McCARTHY. That has been the trouble with so many of these cases. The reviewing body looks over the evidence and says there is no evidence here to find a man guilty. The facts are such that we cannot tell if he is guilty, so therefore we will cut his sentence down. Which certainly is not a brand of justice at all.

The same in the Pletz case. Either the man was guilty of deliberately shooting American prisoners and this woman or he is not. The most fantastic brand of justice that I have ever heard of.

May I ask you, Mr. Ellis, did you make any recommendation in the Pletz case?

Colonel ELLIS. Yes, sir; I did.

Senator McCARTHY. What recommendation did you make in that case?

Colonel ELLIS. Just a moment.

The court sentence was life. I recommended 20 years. Colonel Rosenfeld joined me in that.

Senator McCARTHY. On what theory did you recommend 20 years for Pletz? Pletz is the man who was accused of deliberately, from his tank, which was the second in line, shooting down in cold blood some 15 or 20 American prisoners of war, men who were along the side of the road, principally in front of the grocery store. That is what he is accused of. Nothing else. The court found him guilty of that.

I am wondering on what theory you recommended that the sentence be cut down?

Colonel ELLIS. On his age.

Senator McCARTHY. How old was he?

Colonel ELLIS. I think he was—at the time of the trial—21.

Senator McCARTHY. Twenty-one?

Colonel ELLIS. Yes.

Senator McCARTHY. You had men much younger, 18 and 19, also.

Colonel ELLIS. That is right.

Senator McCARTHY. Some of them you did not recommend that their sentences be commuted?

Colonel ELLIS. I think Rieder was younger than he was.

Senator McCARTHY. What did you recommend in Rieder's case?

Colonel ELLIS. I made no recommendation.

Senator McCARTHY. Was it your practice there to recommend that all those who were 21 or younger, we will say, that they have their sentence commuted to 20 years?

Colonel ELLIS. No. I made some exceptions, as I recall now.

Senator McCARTHY. Was it solely because of his age?

Colonel ELLIS. On Pletz?

Senator McCARTHY. Yes.

Colonel ELLIS. I believe. I would like to say this about this case: I discussed it considerably with Captain Shoemaker before we joined Pletz. I think the review shows only two pieces of evidence there against him. But we had—if you look at the records—it shows four different pieces of circumstantial evidence against Pletz. I think my own mind wondered whether it was sufficient for a conviction. I debated considerably about that.

Senator McCARTHY. It is a pretty gruesome crime he was charged with.

Colonel ELLIS. Yes; it was. But I did not feel personally the way this evidence was scattered through the record, that the court would ever be able to pick it up, because I think it was in four different statements, of four different people, who had testimony against him.

In that particular case I debated whether it was wise to include him as a defendant.

Senator McCARTHY. In other words, you did not know whether he was guilty or not?

Colonel ELLIS. There was circumstantial evidence there. If the court could find all of it when it was put in, he would be.

Senator BALDWIN. If you are going to continue this with Colonel Ellis for some time, I wonder if you could defer this to some other day. Lieutenant Perl has been here for 5 days, not under subpena. He came here at the invitation of the committee, voluntarily. He has been away from his business all that time.

The Chair tried to give him some assurance that we would be done with him yesterday. We both tried to give him some assurance today that we would be done with him today. I wish we could finish with him.

Senator McCARTHY. In the meantime, Colonel, I wonder if you would go through the record and find all the evidence against this man. I want to know, for example, if you charged him with any crime other than the shooting—

Colonel ELLIS. I am certain that is all.

Senator McCARTHY. What I am concerned with is this: You say you recommend that his sentence be commuted to 20 years. If he is guilty of this deliberate and wanton killing of 20 men I wonder why you commuted it to 20 years. If you did it because you felt he was not guilty, as the Frankfurt board said he was not guilty, then I wonder why you think he should get 20 years.

I am not going to ask you to answer that now. But I will definitely want an answer on that. Do you follow me, sir?

Colonel ELLIS. Yes, sir.

Senator McCARTHY. If he is guilty or not. If he was guilty it is one of the worst crimes over there. He killed more men than anyone over there. He was 21. He was the greatest criminal there. No individual ordered him to do that. Either he was guilty of that or he was not.

I want to know whether you thought he was guilty, but that he was too young and should get only 20 years, or that there was not enough evidence to convict him, as the Frankfurt board said, but should get 20 years anyway.

You still think this confession is true in all details and that there was a woman killed in Bullingen; is that right, Mr. Perl?

Mr. PERL. I do think so.

Senator McCARTHY. I assume you are using the same brand of judgment in all these matters as you are here. Did you have anything to do with investigation of the Pletz case?

Mr. PERL. Sir?

Senator McCARTHY. Pletz?

Mr. PERL. No. Nothing.

Senator McCARTHY. Did you get any of the statements from any of the witnesses?

Mr. PERL. No, sir.

Senator McCARTHY. So you know nothing about that case?

Mr. PERL. Nothing.

Senator McCARTHY. You say you were a criminal lawyer in Vienna?

Mr. PERL. Yes, sir.

Senator McCARTHY. And defended a number of criminals?

Mr. PERL. Yes, sir.

Senator McCARTHY. Did you do any prosecution work?

Mr. PERL. Very minor prosecution work. I was for several months, for maybe 4 months, a kind of second assistant district attorney you might call it, with no equivalent to it in America. But I was a member of the court and prosecuted very minor cases.

Then, as a lawyer, I prosecuted those cases where there is a civilian prosecutor for slander, and those things are prosecuted by civilians.

Senator McCARTHY. Do you think that a man 21 year of age is old enough to be held accountable, if he is guilty of murder?

Mr. PERL. Yes.

Senator McCARTHY. So that you would not think in a murder case that the mere fact that a man is 21 years of age would justify his actions?

Mr. PERL. No, sir.

Senator McCARTHY. Let us take the case of one of the defendants. Let us say it is proven that he, in cold blood, as he drove along in a tank, murdered a sizable number of American prisoners of war, men completely defenseless, along the side of the road in front of the store, just mowed them down, 15 or 20 of them. Would you say that there would be any grounds there—of course, proving he did that, and is found guilty—would you find any grounds whatsoever for asking that a death sentence be commuted to 20 years?

Mr. PERL. Not on the evidence which you just told me. I would not suggest a change of death sentence just because he is 21. I would not have done it.

Senator McCARTHY. If you think he is not guilty of the crime, of course; if you think the evidence is not sufficient to find him guilty, on the other hand there is no reason why he should serve 20 years.

Mr. PERL. He should be entirely free.

Senator McCARTHY. I have before me the Frankfurt board recommendation in the case of Pletz. I can review the testimony for you briefly, and give you the board discussion.

Mr. PERL. Senator McCarthy. I did not have anything to do with Pletz. I answered every question in detail. You know more about Pletz than I do.

Senator BALDWIN. Senator, it seems to me that we ought to confine our examination here to the things for which this officer is particularly charged. It does not seem to me that it is going to be helpful to this committee to have the officer's opinion as to whether or not he thinks a particular procedure followed is the correct one.

What we would like to have is the facts, and let the committee render its opinion as to whether it thinks the procedures that were followed or not followed is the correct one.

Mr. FLANAGAN. Dir you take any statements from Fritz Eckmann?

Mr. PERL. No, sir. Fritz Eckmann was Elowitz's man.

Senator McCARTHY. Mr. Chairman, I do not want to make any issue of this matter. I will be glad to abide by the Chair's ruling. The reason for following this line of testimony—and obviously I think it is important or I would not do it—is this: Here is a man who is an attorney. He was instrumental in getting the statements on which a great mass of the convictions were based. From the statements he made to me in regard to this Belgian woman who was killed, the unusual type of reasoning he follows, and the court apparently following the same kind of reasoning, I am just testing to see what his concept of justice conceivably can be. I have before me the Pletz case which I will not recite in detail, which had the most unusual treatment, directly contrary to what the military court recommended.

But as I say, there is so much that he took part in himself that I do not want to argue with the Chair as to whether we should go into that or not.

Senator BALDWIN. Senator, let me have you understand there is no ruling about the thing. The only thing is if we are going to have information here, that would be helpful. What I am particularly interested in here are the serious charges made against this man on the stand in these sworn affidavits of these SS troopers made after they were convicted and under sentence. I would like to know what he has to say about these charges.

Senator McCARTHY. You got confessions from some of the men whom the court dismissed; is that right?

Mr. PERL. I do not know whom the court dismissed. I saw a list at Colonel Chambers' desk, and I just glanced at it. I do not know who were dismissed.

Senator McCARTHY. There is a man named Rolf Ritzer, who was dismissed by the court.

Mr. PERL. I do not believe he was my man. I believe all those dismissed were in the eleventh company; and they were not in my company.

Senator McCARTHY. How can I tell which statements you took?

Senator BALDWIN. You will find, Senator, in each place in the book that you now have, there has been put by the staff of the committee or by somebody, a paper picking out the different affidavits of these SS troopers—

Senator McCARTHY. They were my own staff. I know it.

Senator BALDWIN. Who were the defendants, and who made some allegations against the witness.

Senator McCARTHY. I am reading from the statement of Friedel Bode. Here is what he says:

At a confrontation with my comrades, Schaefer, Hofman, Jaeckel, Neve, Sprenger, First Lieutenant Perl grabbed me by the neck and pushed me with my head against the wall. When I did not answer I was taken back to the death cell. Here I was again grabbed by my neck by Lieutenant Perl, who pushed my head against the iron rail of the window in my cell so that blood gushed out.

Is that true or not?

Mr. PERL. It is not true.

Senator McCARTHY. Now we go to the statement of Briesemeister. Do you recall interrogating him?

Mr. PERL. Yes, sir.

Senator McCARTHY (reading):

In the interrogation cell I was accused by the interrogating officer, First Lieutenant Perl, of having shot United States prisoners of war, whereupon I defended myself verbally. I was thereupon slapped in the face by Lieutenant Perl. My written testimony was dictated to me. I had to write the testimony, whatever Lieutenant Perl wanted in order to achieve my being sentenced to death.

Is that true or false?

Mr. PERL. It is not true. He had told the whole story before to someone with whom he was in the same room. We had planted someone with him. This man told us the story, and when I told him, "We know you told it to your roommate," then he confessed.

Senator McCARTHY. Did you get the confession of Richter?

Mr. PERL. No. He was not my man.

Senator McCARTHY. How about Hecht?

Mr. PERL. No, sir.

Senator McCARTHY. Motzheim?

Mr. PERL. Not my man.

Senator McCARTHY. How about Gebauer?

Mr. PERL. Gebauer was not my man.

Senator McCARTHY. How about Rau?

Mr. PERL. Theodore Fritz?

Senator McCARTHY. You handled one?

Mr. PERL. I believe so.

Senator McCARTHY. Ritzer?

Mr. PERL. No.

Senator McCARTHY. How about Godicke?

Mr. PERL. Not my man.

Senator McCARTHY. You said Richter, no?

Mr. PERL. No.

Senator McCARTHY. How about Szyperski?

Mr. PERL. No.

Senator McCARTHY. How about Fritz Rau?

Mr. PERL. No.

Senator McCARTHY. How about Reiser?

Mr. PERL. How is it spelled?

Senator McCARTHY. R-e-i-s-e-r.

Mr. PERL. Not my man.

Senator McCARTHY. How about Eckmann?

Mr. PERL. Elowitz. I believe Reiser was Elowitz's too.

Senator McCARTHY. How about the statement of Frederick Christ: "First Lieutenant Perl accused me of being?"—

Senator BALDWIN. I have no objection to going over this, but we went over this before.

Mr. PERL. In very much detail.

Senator McCARTHY. Was this read to him?

Senator BALDWIN. Yes, I read it to him.

Senator McCARTHY. In any event you deny that you did anything but speak softly to Christ; is that right?

Mr. PERL. I do not know that I spoke softly. But I did not even shout.

Senator McCARTHY. You did not threaten him?

Mr. PERL. No, sir.

Senator McCARTHY. You did not touch him?

Mr. PERL. Certainly not.

Senator McCARTHY. Did you slap or hit any of the prisoners at all?

Mr. PERL. No. I did not slap any one of the defendants—I mean touch him. But not in a hostile way.

Senator McCARTHY. Now we go to Fritz Eckmann. You say you did not interrogate him?

Mr. PERL. I never interrogated him.

Senator McCARTHY. You never did?

Mr. PERL. No, sir.

Senator McCARTHY. You are sure of that?

Mr. PERL. I might have been present once when Elowitz interrogated him, but I did not.

Senator McCARTHY. How about the other names that I read to you? Were you present when they were interrogated?

Mr. PERL. You mean did I participate in any interrogation by speaking something?

Senator McCARTHY. Yes.

Mr. PERL. No.

Senator McCARTHY. Now I read from Fritz Eckmann's affidavit:

I was born May 16, 1925. On December 6, 1945, I was taken to the state prison at Schwaebisch Hall. I had my first interrogation on December 18 and I can remember it well. Those present were Lieutenant Perl, Elowitz, and an interpreter.

Do you recall from that whether you and Elowitz and an interpreter were present?

Mr. PERL. I know that I was not present at any first interrogation of that.

Senator McCARTHY. Were you present at any second, or third interrogation or the fourth or fifth?

Mr. PERL. I believe that I once entered the room while Elowitz was interrogating him with some interpreter while I was not busy.

Senator McCARTHY (continuing):

I was told by Lieutenant Perl that I would be executed the next morning. He thereupon asked me if I wanted to talk to a priest. I was then taken into the death cell. I was fully convinced of it.

Is that true?

Mr. PERL. No, it is not. It would have been improper and wrong, to handle a man who is handled by someone else. I do not know what Elowitz told him 5 minutes before. I might contradict Elowitz.

Senator McCARTHY. The Raymond report referring to mock trials said undoubtedly in some cases the defendants were led to believe that they had been convicted; is that correct, according to your memory?

Mr. PERL. I do not know on which facts that report is based. I do not know of any such cases, and they were not induced to do it. This investigation team behind the board just dissolved, and nothing was announced.

Senator McCARTHY. Mr. Steiner, according to the testimony of one of the witnesses—Mr. Bailey—came in after interrogations and quite gleefully said: "I have another confession," and related that he had employed mock hanging to get the confession. In other words, he placed a hood over the man's head and marched him up several steps, and said: "You are on the gallows," or something to that effect, tightened the rope around his neck, and got confessions in that manner. Do you know anything about that situation?

Mr. PERL. I do not know, and every one of the prisoners, in a way, was for us what the patient is for the doctor in this way. He was important, and I do not think that anyone would have permitted Steiner, who actually was not a man of the standard, to fool around with any of the prisoners. He was an interpreter, not an interrogator.

Senator McCARTHY. Mr. Kurt Teil, who volunteered to testify, who was a refugee from Hitlerism in Germany because of his nonaryan background, and under the circumstances of course had no reason to feel especially kindly to the SS troops, came here and testified that among other things he had seen a man called by Thon. Thon said, "Come here and look in this solitary cell." He looked and saw a man lying on the floor, apparently unconscious with a black hood over his head, at 10 o'clock in the morning. He said "What happened to this man"? Thon said "He was in interrogation and got roughed up a bit."

He testified that you were one of the men who had a reputation of using physical force, or anyway, kicking the boys around to get confessions. That was testified by at least one other witness, as I recall.

Can you tell me now whether it is correct, rightly or wrongly, that you had the reputation of using physical force on the prisoners in order to get confessions?

Mr. PERL. As to my knowledge—I might be wrong—it was Mr. Bailey who testified to this reputation. Teil could not have even known anything. He just once or twice brought a prisoner in, stayed for a day or so. I do not know Teil. As far as I know I do not remember him.

Bailey testified under oath that I was for 4 years in a concentration camp. That is as to my reputation. I do not know the reputation I had among the Germans. I certainly had no reputation among our people.

Senator McCARTHY. Did Thon have a reputation of being sadistic or using force.

Mr. PERL. I never heard of it.

Senator McCARTHY. You never heard of it?

Mr. PERL. No.

Senator McCARTHY. You did hear of this alleged brutality when the Army commission came over to investigate? I should not say came over. When the Army commission apparently—

Mr. PERL. I heard after the commission had made its findings. It was not a commission. I believe it was just a one-man commission, Colonel Carpenter.

Senator McCARTHY. So that you know that the charges were investigated. I believe you answered this before, and if so, I am sorry, but I understood you to say that you were not contacted by this Colonel Carpenter.

Mr. PERL. He was a colonel. He had a kind of adjutant—he was, I believe, an adjutant. He was a full colonel.

Senator McCARTHY. Were you here when Mr. Strong testified?

Mr. PERL. I heard in the papers. I read in the papers. No; I believe I read in the record that after second questioning he mentioned Thon, that he was mentioned often by the prisoners, and then he said after he questioned the second time that my name was mentioned, which was only natural. I do not know whether most, but I got a large number of the statements.

As they testified to Colonel Carpenter, they tried to get out of it.

Senator McCARTHY. In any event you know that Mr. Strong, who also happens to be a refugee from Hitler Germany because of his non-Aryan background, and also had no reason to protect the SS troopers, volunteered to come down. He testified that you had a reputation of using physical force on these men to get confessions.

Mr. PERL. Sir, I believe that I recall the testimony, and he was asked which names he heard, and he said Thon, and then the second question, he said Perl was mentioned, too, or something like that.

I do not think he said that I had the reputation of that kind. It is quite possible that one told the other about that. I think you should know this, and you probably know it: One spoke against the other in these statements, which you all know. Then they had to use some excuse not only before the court, but before each other, too.

Senator McCARTHY. The question I want to ask you is this: In view of the fact that you were one of the men who had the reputation, maybe wrongly, of beating the men up, and using mock trials and mock hanging, in view of the fact that you were one of the men who were charged principally with being sadistic—

Mr. PERL. Not sadistic. Mr. Bailey charged me with that.

Senator McCARTHY. I mean being rough on the prisoners. Do you not think it is unusual that at the time Colonel Carpenter was appointed by the court to investigate the charges of brutality, he never came to you to talk to you?

Mr. PERL. It is not unusual, because I have no reputation of being brutal or sadistic, no reputation of that kind whatever. When Colonel Carpenter came down, the only allegations which existed were of Sprenger, Hofmann, Jaeger, and one other. They claimed they were beaten by Shumacker; they were Shumacker's men. I did not interrogate them; Shumacker did.

Senator McCARTHY. I will read you Mr. Teil's testimony, not for the purpose of impeaching what you said, because you cannot be expected to remember all the testimony.

Mr. PERL. I did not read his testimony at all.

Senator McCARTHY. I know. I am reading this to you with this in mind. In view of the fact that these disinterested witnesses say that you have the reputation of extracting confessions by brutal methods, it seems unusual that an Army lieutenant colonel, who was appointed to check into these alleged brutalities, never even contacted you. I am wondering how thorough that investigation was. Teil is the man who delivered prisoners to Schwabisch Hall. There is no evidence whatever that he got any information from the defendants.

In other words, he did not talk to the defendants who were about to be hanged or something like that, or about to be tried. The evidence is that he got his information from the personnel around the prison, the other interrogators. Do you follow me?

Mr. PERL. Yes.

Senator McCARTHY. I will read Mr. Teil's testimony :

Mr. FLANAGAN. Who were the interrogators or the investigators that— referring to some of the investigators having made statements that it would be more efficient if physical force were used—

Who were the investigators or interrogators who made such statements?

Mr. TEIL. As I remember now, going in memory over a period of 2 years, it is common knowledge—well, it was knowledge that the attitude of certain members was that way. If I name them I might name somebody whose attitude it was not. There were a certain number of investigators who felt that way, but I hate to name them by name because I would be pinning them down and saying this man had that attitude.

I cannot say that with any more certainty who they were exactly. There were certain pockets. I can exclude definitely some people.

Mr. FLANAGAN. Whom would you exclude?

Mr. TEIL. Exclude?

Mr. FLANAGAN. Whom would you include in that group that felt it would be more efficient to use physical force?

Mr. TEIL. In one particular instance I would say Mr. Thon, that I remember.

Mr. FLANAGAN. Tell us about that instance.

Mr. TEIL. I just remember it was a discussion in the cafeteria or something that he made that remark. He was, I would say, among the other investigators. Then this was brought up. He represented that one side of view. It was generally know that it was his personal opinion.

I am afraid I am starting too far back.

Mr. FLANAGAN. Did you ever have a similar conversation or overhear similar conversations on the part of Lieutenant Perl?

Mr. TEIL. No; I did not. I personally did not have any conversation that I remember.

Mr. FLANAGAN. Did Lieutenant Perl have the reputation of being one of those that was of the opinion that the use of physical force would be efficient in the investigation of war crimes trials?

Mr. TEIL. I would include him in that group; yes.

Mr. FLANAGAN. You would include Mr. Perl?

Mr. TEIL. Yes, sir; that is right.

Mr. FLANAGAN. Were there any other members of this prosecuting team in the Malmedy case that had a similar reputation?

Mr. TEIL. That group might have included a few others. I could not name them.

Mr. FLANAGAN. But you know it included Thon and you know it included Perl?

Mr. TEIL. Whenever reference was made people thought of those two.

Do you know whether this Colonel Carpenter talked to Mr. Thon when he was making this alleged investigation?

Mr. PERL. No, I do not. But I know that this is wrong, what he says. I do not know about me, because people do not talk to yourself. But if they would have talked about Thon I would have heard it.

Senator McCARTHY. In other words, you say that Teil was committing perjury at the time?

Mr. PERL. Sir?

Senator McCARTHY. You say he was lying under oath; committing perjury?

Mr. PERL. I would not say that. But he might have been mixing up things which he heard afterwards, after the defense spread these words—things which did not exist before.

Senator McCARTHY. Do you feel that normally, if a colonel or an officer is appointed to conduct an investigation as important as he was allegedly conducting, as to find out whether or not the interrogator, such as yourself, used the type of brutal method that would exact the same confession from a man whether guilty or innocent, his job was to investigate that matter and report back to the court? Do you think that conceivably it would have been a thorough investigation unless he talked to the investigators who were charged with these brutal methods?

Mr. PERL. You are asking opinions of mine. I do not know more about the case than you know. That is four—altogether four defendants who claimed they had been mistreated. Those four people were people who had been interrogated by Captain Shumacker. The moment Colonel Strait heard about it he appointed—that is what I know—this Colonel Carpenter, who was a kind of inspector general, something like that, within this unit, to go down and investigate it.

I suppose he asked Shumacker, because he probably was the only one accused, and no other accusations existed. And these rumors of mistreatment or reputation which you mentioned, this Teil, I am certain, has no bad intentions.

But it is easy to mix up what he knew in February 1946 and what he knew or believed he knew in August 1946. Once the trial started, all the defendants said, of course, "I was beaten."

Senator McCARTHY. As we go through the affidavits of the alleged brutalities, your name stands out above all the rest, with the possible exception of Thon. I have before me 30 affidavits; not 4, but 30.

Mr. PERL. Certainly. I interrogated most of the prisoners, and they do not want to be executed.

Senator McCARTHY. Thirty affidavits, all charging you with using physical force in these matters. Is that right?

Mr. PERL. I do not know the number, but it is logical.

Senator McCARTHY. Do you know of any men having been taken to the hospital after you interrogated them?

Mr. PERL. I know that no one was taken to the hospital after interrogation, by me or anybody else. Because the man would have been immediately punished, and I would have heard about it. I mean the interrogator would have been punished.

Senator McCARTHY. I wonder if the hospital records are such, Mr. Chambers, that we could get them. One of the witnesses testified that he was kicked in the genitals so badly that he was taken to the hospital at Stuttgart. I wonder if you could check, or if you have checked, to see whether or not those hospital records are available. If so, that, I believe, would be very important.

Mr. CHAMBERS. Senator McCarthy, you recall yesterday or the day before, this medical sergeant who was on the stand testified that he—

Senator McCARTHY. I wasn't here then.

Mr. CHAMBERS. He testified that he believed some records had been kept, and that they possibly were still available. On Friday we will have the two doctors who commanded the medical detachment during the entire time of this interrogation, Dr. Koran and Dr. Rickard. It is my intention to find out from them the circumstances, and the records, to see if they are capable of being checked.

Senator McCARTHY. I believe I read Eckmann's statement, and you denied its truth.

Mr. PERL. Sir, I have to leave tonight. I have been here for 5 days. I can come back after 5 or 6 days.

In no single case did I use force, and not a single one of them took the stand to claim I used force, when backed up with a battery of lawyers. After they were convicted, suddenly force was used; not before.

Senator McCARTHY. Maybe we can get through shortly. This man Eckmann was convicted solely on a statement which you obtained?

Mr. PERL. No.

Senator McCARTHY. At least he was convicted solely on his own statement, and the sentence was set aside. Here is what he said.

Mr. PERL. Sir, I didn't interrogate him.

Senator BALDWIN. If he didn't interrogate him, Senator, what use is there in questioning him?

Mr. PERL. I was never present at any interrogation. It might be that I once looked into a room.

Senator BALDWIN. Eckmann said that you did interrogate him.

Mr. PERL. Eckmann?

Senator BALDWIN. Read what he says.

Senator McCARTHY. Leaving out the preliminaries, as to birth, et cetera :

I had my first interrogation on 18 December and I can remember it well. Those present were Lieutenant Perl, Mr. Elowitz, and an interpreter.

Do you recall having been present when Eckmann was interrogated?

Mr. PERL. I am almost certain that I was not in for a moment at the first interrogation, because the first interrogation was something very touchy, and I believe I once looked into the room while he was interrogated; but I am almost certain it was not the first interrogation.

Senator McCARTHY. Regardless of when it was, were you in the room during an interrogation before he signed the confession?

Mr. PERL. I believe I was once in the room while he was interrogated, in the early stages.

Senator McCARTHY. See if this refreshes your memory :

I was told by Lieutenant Perl that I would be executed the next morning. They thereupon asked me if I wanted to talk to a priest. I was then taken to the death cell. I was fully convinced of it.

Does that refresh your recollection?

Mr. PERL. It is not true, sir.

Senator McCARTHY. (continues reading) :

About February Mr. Thon and Lieutenant Perl came to my cell.

Do you recall that you were in the cell with Thon, also?

Mr. PERL. With Thon? And Eckmann?

Senator McCARTHY. The first time allegedly was with Elowitz.

Mr. PERL. No.

Senator McCARTHY. In February he said you came to the cell with Thon.

Mr. PERL. No, sir.

Senator McCARTHY. Were you ever in the cell with Thon?

Mr. PERL. Was that interrogation? It might be that we brought him something.

Senator McCARTHY (continuing):

About February Lieutenant Perl and Thon came to my cell and wanted me to make a statement.

Mr. PERL. No, sir.

Senator McCARTHY (continuing):

Mr. Thon then beat me in the face with his fists until I fell to the ground. They then left the cell.

On about February 10 I was again beaten in the face by the interpreter, and following this I was supposed to be taken to Klein-Ursel to be executed there. When I was standing in the hallway I was beaten with a club, but I cannot say by whom because I was always wearing a hood. Whenever we wanted a drink of water we had to drink out of the toilet.

In my death cell I heard doors opening in other cells next to me and other comrades crying and shouting for help. This happened almost every day.

When we were taken out of our cells we invariably received a hood so that we could see nothing.

Do you recall any of that?

Mr. PERL. I know it is not true. If it had been true it would certainly have impressed the court.

Senator McCARTHY. It impressed the court so much that they left this man free.

Mr. PERL. Why did he not bring it out in open court? There was a trial which lasted for months, and he had a dozen lawyers there.

Senator McCARTHY. Do you know this man signed a confession, admitting crimes? You understand that, don't you? You understand this man Eckmann—I wonder if we could get that confession. You understand this man Eckmann, after this treatment, or whatever treatment he got, signed a confession which the prosecution put into the record, and the prosecution asked that they be convicted on that confession.

You understand the court thought so little of that confession obtained from this man that they dismissed the case. Do you understand that now?

Mr. PERL. I understand it. I understood it before, sir. I had nothing to do with his statement. I never interrogated Eckmann. I might have been in for a few seconds once while he was interrogated. I never spoke to him. He was not my man.

One wrong word can make very bad damage if you do not know the case.

Senator McCARTHY. In any event, you say all of these charges are untrue. You say that you do not recall having been in the cell except you possibly were in it, with Elowitz, did you say?

Mr. PERL. I believe I was once in the cell while Elowitz interrogated him for a few seconds, but without participating in the interrogation.

Senator McCARTHY. Can you give me the names of two men at whose mock trial you took part?

Mr. PERL. I did not take part in any mock trial.

Senator McCARTHY. Call it the Schnell proceeding.

Mr. PERL. I believe the difference is important. I polled 10 persons. Six of them believed—just average men from the street, six of them, simple persons—that the defendants never had a trial.

There was a table, a few mock judges. They passed the sentence, and that is why the boys are under sentences now.

I do not think we should use the words "mock trial." It is misleading. I took part in two of those proceedings.

Senator McCARTHY. You say there were mock judges?

Mr. PERL. That is right.

Senator McCARTHY. But you would not call the trial a mock trial?

Mr. PERL. That is right.

Senator McCARTHY. The prosecutor was a mock prosecutor; is that right?

Mr. PERL. We go again into a field which we exhausted. The prosecutor was an interrogator who posed as a good boy.

Senator McCARTHY. It is never exhausted until we get the truth.

Mr. PERL. I am ready to come back.

Senator McCARTHY. You say that the prosecutor—what do you call him? a mock prosecutor? a fake prosecutor?—was not actually a legitimate prosecutor? He was on the interrogation staff. Right?

Mr. PERL. There was no prosecutor there. There was an interrogator who played the good boy.

Senator McCARTHY. Who played the good boy?

Mr. PERL. Yes.

Senator McCARTHY. Was there an interrogator who played the bad boy?

Mr. PERL. Right.

Senator McCARTHY. The interrogator who played the good boy—

Mr. PERL. I took part in one, I believe, only.

Senator McCARTHY. On one?

Mr. PERL. It might have been Kuhn, too; but I do not remember whether I participated in that—Kuhn, who later on was identified by witnesses as the killer.

Senator McCARTHY. The Army report says that in some cases undoubtedly the defendants were led to believe they had been convicted. In the case in which you took part, Hennecke, I believe it was, do you know whether Hennecke was led to believe that he had been convicted?

Mr. PERL. I am certain that he did not think he had been convicted.

Senator McCARTHY. Whether defendants in the other—I would not shock your sense of responsibilities by saying mock trial; we will say the Schnell proceedings—whether the defendants in the Schnell proceedings had been convicted, that you do not know, because you were not there.

Senator BALDWIN. Are you going to finish with this man? I would like to ask him some questions. You have spent the day on it. I would like to ask a few myself.

Senator McCARTHY. Even if this witness were to confine himself to answering the questions, it would take me at least a day, or maybe days with him yet. I think by staying with him long enough we may finally get the truth. If he makes lengthy answers, as he has been and giving his information far beyond what I request, it is entirely possible I will have to spend 4 or 5 days with him.

So I certainly cannot finish tonight. I do hope that by continuing with this man we may be able to get some semblance of truth from him.

Senator BALDWIN. What time do you have to leave tonight?

Mr. PERL. Any time.

Senator BALDWIN. Do you want to continue on a while longer?

Senator McCARTHY. If this man has to leave, if there is a certain time he has to catch a train, we would not be unreasonable with him. If he has work to do, he can go home and do it. We can find out when he can come back. We can arrange that to be agreeable to everyone. As far as I am concerned, I will be glad to stay here. I think we should leave it up to the witness.

Mr. PERL. I would prefer to stay here, sir, and be as short as I can. If I won't finish, I will answer as best I can.

Senator McCARTHY. How long do you want to stay?

Mr. PERL. As long as this committee decides to stay.

Senator McCARTHY. My suggestion is that in view of the fact that I cannot finish with you tonight—no doubt about that; I want to spend several days with you—if you want to leave tonight to do some work and come back, I want to leave it to you to decide how late you want to stay here tonight.

Mr. PERL. It makes no difference.

Senator McCARTHY. Mr. Chairman, do you want to ask some questions?

Mr. PERL. Sir, if it will be, as the Senator indicates, for a length of time, then I will talk it over maybe with Mr. Chambers and arrange for the dates.

Senator McCARTHY. I might say that the Chair has this matter under consideration, going into the matter in some detail, for which I am grateful. If the Chair decides to allow you to submit to the Keeler lie detector test, as far as I am concerned, that ends it.

Senator BALDWIN. May I say to the Senator, as I said many times before, and as he knows full well, I told him I will take this matter up with the full committee. It is a matter for the committee to decide. It is a marked departure.

Senator McCARTHY. I was not criticizing the Chair.

Senator BALDWIN. Certainly, Senator, you have to admit we have given you every possible consideration and latitude in everything in connection with this.

Senator McCARTHY. I do not know why the Chair repeats almost daily about the latitude. I was invited to sit with this committee. If I were not given latitude in examining these witnesses I would not stay here; and I do not think there is any special consideration. I think this is a matter of tremendous importance.

Senator BALDWIN. I merely mentioned that, because on other occasions you indicated otherwise. I wanted to keep the record straight.

Mr. PERL. If the Senator wants to go into the details of my moral attitude toward justice, why do it with me, who had only one part of the story, and published it in the papers, or participated, in a way, in publishing it in the papers?

I did not investigate the moral attitude toward justice there.

Senator McCARTHY. I hope before we are through we will be able to interrogate all men involved in this matter.

Mr. PERL. I believe that you, in your belief, are exactly as much as I am a victim of judgment. Because you believed when you went into it that it was true, or you would not have gone into it.

Senator McCARTHY. I might say that I give you a lot of credit for saying the other day that you would be willing to submit to a lie detector. You should get a lot of credit for that.

We have had men before us; for example, Alger Hiss was asked if he would submit to a lie-detector test when it was thought he was lying. He refused at that time.

I sincerely hope that the committee decides to allow you to do that. I think if that is done——

Senator BALDWIN. Senator——

Senator McCARTHY. May I finish my statement?

Senator BALDWIN. Go ahead.

Senator McCARTHY. I think we will know once and for all whether you are telling the truth or not, whether the men who claim all these brutal methods were used were telling the truth, whether the Van Roden committee was wrong or right, whether the Army committee is wrong or right.

I think the offer on your part to submit to a lie detector is one of the greatest contributions that can be made toward finally finding out just what did happen over in that area.

As I said, I tried the Keeler lie detector any number of times. I am firmly convinced that there is not a man in this country that can beat that lie-detector test. When Professor Keeler gets through with that, then I know you will be telling the truth.

I want to say that if it develops that there are minor discrepancies in your story here, that that has to be expected. I am concerned with one thing insofar as disputed facts are concerned. And that is whether or not methods used by you and Thon and Kirschbaum—I believe those are the three charged—were such that an innocent man would sign the same confession as a guilty man would, in other words, whether your tactics were such that you got confessions which were untrue, merely because the defendants were afraid of the treatment they would get.

Senator BALDWIN. Senator, may I just say this, before we adjourn: You have commended this witness for saying that he would be willing to submit to a lie-detector test. Just a few minutes ago you made the statement that you thought this witness was lying.

Senator McCARTHY. I think he is.

Senator BALDWIN. That is a very serious charge to make against a man who once wore the Army uniform of the United States, and this committee is——

Senator McCARTHY. 18,000,000 men wore the uniform, Senator.

Senator BALDWIN. That is right. I have enough confidence in them not to charge them with lying or anything else until they have had a full and fair opportunity to present their side.

Senator McCARTHY. Wearing the Army uniform does not make a man——

Senator BALDWIN. There are many scoundrels in it, too, I know.

Senator McCARTHY. I do not want to wave the flag. I wore it, too. I do not claim it made me better or worse.

Senator BALDWIN. Wait a minute. You have done a lot of talking here. I would like to tell this witness, until all this evidence is in, and

the committee has had a chance to consider it, we are not going to prejudge this case in any way.

I know that in his exuberance Senator McCarthy makes these statements.

Senator McCARTHY. I have made no statements, Mr. Chairman—

Senator BALDWIN. It is within his right to do so.

Senator McCARTHY. I made them carefully and deliberately.

Senator BALDWIN. May I have the consideration on your part just to say what I would like to say for a moment? You have made those charges and I do not question your sincerity or your integrity about making them. I just want to say that this committee is trying to pre-empt over this thing as an impartial committee to determine what all the facts are after we have heard all of the evidence.

This witness has come here voluntarily and has expressed a willingness to come again. I think that every witness that appears before this committee is going to have a full and fair opportunity to answer questions that are put to him and to make his statement with reference to the charges that have been made against him, an opportunity which I may say in this case most of these men have not had before.

Senator McCARTHY. Before you leave, so the record will be complete, so that you will know that none of the things that I have said to you are done on the spur of the moment: they are all very carefully considered. I firmly think that any man who goes out and gets a confession, proving the most cruel, brutal crimes, shooting a woman in cold blood, then finds that no woman was shot in that town, that no one even died in that town from gunshot wounds, and does not then feel that he has any obligation whatever to that man who may hang because of it, I think there is something radically wrong with that man.

As I say, when I made that statement it was done deliberately. When the prosecutor, Mr. Ellis, learned that a confession upon which he was asking a conviction, asking that a man be hanged, when he finds that confession is untrue, and there is no basis in fact whatsoever, and he refuses to tell the court, then I think he is guilty of an offense which makes him subject to court martial; just so there is no doubt about my position on that.

Mr. PERL. But this was not the case.

Senator BALDWIN. Would you do me the favor of waiting until I finish this thing?

Senator McCARTHY. I will do you any favor you want.

Senator BALDWIN. Have you a list, Lieutenant Perl, of the men whom you interrogated?

Mr. PERL. I do not have a list.

Senator BALDWIN. I saw you had a list a moment ago.

Mr. PERL. I have a list here of those who claim they have been beaten, and I know of those whom I interrogated.

Senator BALDWIN. We want to check on this between now and the next time you come in. The first one I have is a man named Bode. Did you interrogate him?

Mr. PERL. Yes.

Senator BALDWIN. The next one I have is a man named Briesemeister. Did you interrogate him?

Mr. PERL. Yes.

Senator BALDWIN. The next man is a man named Christ. Did you interrogate him?

Mr. PERL. Yes.

Senator BALDWIN. The next man is a man named Eckmann, who make charges against you. Did you interrogate him?

Mr. PERL. No, sir.

Senator BALDWIN. The next man is a man named Fleps, who makes charges in his affidavit here. Did you interrogate him?

Mr. PERL. Yes.

Senator BALDWIN. The next one is Hammerer. Did you interrogate him?

Mr. PERL. Yes. But I do not think he makes charges against me. I think he claims to have been beaten by unknown persons.

Senator BALDWIN. We can check it later.

Mr. PERL. I interrogated——

Senator BALDWIN. The next one is a man named Hendel. Did you interrogate him?

Mr. PERL. Yes.

Senator BALDWIN. And a man named Hennecke. Did you interrogate him?

Mr. PERL. Yes.

Senator BALDWIN. The next one is a man named Hillig. Did you interrogate him?

Mr. PERL. No.

Senator BALDWIN. You did not interrogate him?

Mr. PERL. I saw him the first time——

Senator BALDWIN. Did you interrogate a man name Goldschmidt?

Mr. PERL. Yes.

Senator BALDWIN. Did you interrogated a man name H. Hofmann?

Mr. PERL. No.

Senator BALDWIN. Did you interrogate a man name Jakel?

Mr. PERL. No.

Senator BALDWIN. Did you interrogate a man named Junker?

Mr. PERL. Yes.

Senator BALDWIN. Did you interrogate a man named Kuhn?

Mr. PERL. I believe I was in at one of the interrogations of Kuhn.

Senator BALDWIN. Did you interrogate a man named Maute?

Mr. PERL. Yes.

Senator BALDWIN. And Motzheim?

Mr. PERL. No.

Senator BALDWIN. Munkemer?

Mr. PERL. Yes.

Senator BALDWIN. Neve?

Mr. PERL. Yes.

Senator BALDWIN. Ochmann?

Mr. PERL. Yes.

Senator BALDWIN. Rieder?

Mr. PERL. Yes. Wait a minute. Yes, that is Max Rieder.

Senator BALDWIN. Ritzer?

Mr. PERL. No.

Senator BALDWIN. Rumpf?

Mr. PERL. Yes.

Senator BALDWIN. Sickel?

Mr. PERL. Yes.

Senator BALDWIN. Siegmund?

Mr. PERL. Yes.

Senator BALDWIN. Sievers?

Mr. PERL. Yes.

Senator BALDWIN. Sternebeck?

Mr. PERL. No, never.

Senator BALDWIN. Tomczak?

Mr. PERL. No.

Senator BALDWIN. When I said interrogate, I meant, also, were you there at any part of the interrogation?

Mr. PERL. No, sir. I cannot exclude the possibility that I looked into the room, but I was not in during the interrogation. I did not take part in any of the interrogation, to which I have previously said "No."

There were some men interrogated, I believe, in the interrogation of Jaeger.

Senator BALDWIN. Let me finish my list, and I will ask you if there are any others.

How about Tomhardt?

Mr. PERL. Yes.

Senator BALDWIN. Zurgart?

Mr. PERL. Yes.

Senator BALDWIN. Are there any others whose names I have not read, that you interrogated?

Mr. PERL. I do not have the names of all of those here. But these are all of those who claim any mistreatment.

Senator BALDWIN. The names that I have read to you are all names——

Mr. PERL. Certainly there are many more whom I interrogated.

Senator BALDWIN. Just a second. Let us get this straightened out. These names that I have read to you are all the names of men who, in their affidavits, have claimed that they were maltreated in one way or another by you.

Mr. PERL. Yes.

Senator BALDWIN. Were there others whom you interrogated?

Mr. PERL. Many.

Senator BALDWIN. Have you their names?

Mr. PERL. If I could have the list of defendants then I would be able to tell you.

Senator BALDWIN. See if you can read from that list of the defendants those that you interrogated, whom I have not named here, so we can get this phase of it straightened out.

Mr. PERL. Roman Clotten.

Mr. CHAMBERS. Is he a defendant?

Mr. PERL. Yes.

Senator BALDWIN. Check them on the list as you call them off.

Mr. PERL. Joseph Diefenthal, Joseph Dietrich, Arndt Fischer, Hubert Huber. I am not certain about Hubert Huber any more.

Senator BALDWIN. What is the name? Huber?

Mr. PERL. Yes.

Benoni Junker; Fritz Kraemer, who mentioned in the trial how nicely he was treated by me, as far as I remember; Joachim Peiper; Georg Preuss; Rolf Rolnd Reiser; Hans Siptrott.

Senator BALDWIN. Will you make some arrangement with Colonel Chambers, or with Colonel Ellis, about some time when you can come back here?

Mr. PERL. I will, sir.

Senator BALDWIN. We realize that you have been here 5 days, and that you have your own personal matters to attend to. If you can come back we certainly would like your cooperation.

Mr. PERL. I will discuss it in detail with Colonel Chambers.

Senator BALDWIN. We will recess until 2 o'clock tomorrow afternoon.

(Thereupon, at 5:20 p. m., the committee recessed to 2 p. m., Thursday, May 19, 1949.)

MALMEDY MASSACRE INVESTIGATION

THURSDAY, MAY 19, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2:15 p. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senators Baldwin (presiding), Kefauver, and McCarthy.

Also present: J. M. Chambers, of the committee staff; Francis Flanagan, of the staff of the Subcommittee on Investigations of the Committee on Expenditures in Executive Departments, and Colonel Ellis.

Senator BALDWIN. The meeting will be in order. I think we ought to state for the benefit of the record that since our last meeting, as chairman of this subcommittee, I did—as I told Senator McCarthy that I would—take up the matter with the whole committee of the use of a lie detector on three of the witnesses, if not more. I think the witnesses were Lieutenant Perl—

Senator MCCARTHY. The three charged with extracting confessions by torture methods.

Senator BALDWIN. Also Thon and Kirschbaum. I had previously discussed the matter with Senator Hunt, and I have since discussed it with Senator Kefauver. They both expressed opposition to it. And I might say, in taking the full share of the responsibility that would come to me as a member of the committee, that I myself feel that it is such a marked departure from congressional procedures in the past that it ought not to be used in this particular investigation or in congressional investigations generally which are, after all, not trials, but efforts to ascertain from all sources possible the facts, and then give them such weight and force as they appear in an impartial study to have.

However, I did today bring the matter up with the Armed Services Committee; and the members that were there, which constituted a quorum, all expressed opposition to the idea and said, however, that if the subcommittee recommended it that they would consider it further.

The subcommittee, however, as I have already indicated, was unanimously opposed to the idea. So I think that it is only fair that I should tell Senator McCarthy now of our decision with reference to the matter.

One of the difficulties attendant upon it is the fact that it would seem unjust to submit three men—Lieutenant Perl, Kirschbaum, and

Thon—to this test, although Lieutenant Perl testified that he would be willing to if he were asked to do so. It would be unfair to subject them unless we also subjected their German accusers. That appeared to be a very impractical thing just on the physical arrangement in connection with it.

Under all the circumstances, it seems to me that on interrogation and cross-interrogation of these witnesses we will have ample opportunity to develop from their testimony the facts pro and con concerning the charges made here. So, it is the decision of the committee that we will not use the lie detector in the course of these proceedings.

Senator McCARTHY. Mr. Chairman, as a point of information, did the third member of the subcommittee discuss this matter with you?

Senator BALDWIN. Senator Hunt was out of town.

Senator McCARTHY. Not Hunt.

Senator BALDWIN. Senator Kefauver did. I spoke to him about it before the meeting this morning of the Armed Services Committee, and at the meeting itself. He expressed himself as being firmly in opposition to it.

Senator McCARTHY. Mr. Chairman, in view of this, I might say that I will have a statement to make in the morning, and some action to take. Before doing that, I want to report fully to some of the members of the Expenditures Committee, at whose request I have been sitting in on this hearing. As I say, before taking any action or making a statement, I will discuss the matter with them. But I will have something to put in the record tomorrow morning.

Senator BALDWIN. I hope if the Senator has the statement to make that he makes it here in a meeting of this committee, so that it will become a part of the record and so that the committee members themselves may make such observations and statements with reference to it as they think appropriate under the circumstances.

Senator McCARTHY. I do not think the chairman can find that I have been coy at all. Everything I have said has been on the record in his presence. I intend to continue in the same line. The chairman does not need to worry that anything I will say will not be said in his presence and on the record. I am sure he knows it.

Senator BALDWIN. The chairman did not make that statement with any thought of that kind in mind. Since this is a vitally important decision, at least to the Senator from Wisconsin, since it was his proposal, the statement with reference to it ought to be made, it seems to me, in a hearing, so that they might have the benefit and opportunity of being incorporated in the record.

Senator McCARTHY. May I ask the Chair: I understand that the Chair recommended to the full committee that they not allow these three men to submit to a lie detector?

Senator BALDWIN. I was asked by the chairman of the committee what were my recommendations, and I frankly told them that I thought it would not be conducive to justice and fairness in this case, or helpful to the committee to use a lie detector. I am willing to take the full responsibility for that. However, I did not tell the committee that I felt the matter was an important one as a matter of policy, and they could decide it as they saw fit.

And may I say that they were unanimously opposed to it because it is, as I say, such a marked departure from anything we have had heretofore.

Senator McCARTHY. Mr. Chairman, may I ask this, in view of the fact that this is of the utmost importance, I want to take it up with my Expenditures Committee, in view of the fact I am sitting here upon the invitation of the committee, to send a man over. I want to report this back to them. I have my own definite ideas as to what this action means, and, for that reason, I would appreciate it if the hearing this afternoon does not last too long.

Senator BALDWIN. I think my colleague from Wisconsin recognizes that in the past we have tried to suit his convenience, and we will continue to do so as long as he sits with the committee.

Will you hold up your right hand?

(The witness, Mr. Ralph Schumacker, was sworn by Senator Baldwin.)

TESTIMONY OF RALPH SHUMACKER, CHATTANOOGA, TENN.

Senator McCARTHY. Mr. Chairman, last night I asked Mr. Ellis to go into a subject and give us his answer on it at some time. Would the Chair have any objection if we find out what his answer is at this time? It had to do with the alleged killing of some 15 or 20 prisoners, American prisoners that were not taken by the unit that allegedly killed them.

The story was that a man in a Panzer unit came along and shot some other unit's prisoners of war with no order whatsoever from any superior officer. The colonel recommended that this man's sentence be cut from life imprisonment or death to 20 years. I want to inquire to find out what was the reason behind it. I wonder if the Chair has any objection to my doing that.

Senator BALDWIN. I do not recall the question. But I have no objection to doing it. Can you furnish the information, Colonel?

Colonel ELLIS. I made the reduction purely on the basis of age, as I recall now. I made that in April 1947.

Senator McCARTHY. See if I have the case in mind. This man was charged with deliberately—the man Pletz—charged with mowing down, from his tank, prisoners of war who were taken by some other unit, and no evidence whatsoever that he was ordered to do so by anyone. In fact, the evidence is that the commanding officer's tank preceded him, and the machine gunners in that tank did not shoot at these men, but that the gunner in the second tank, with no provocation whatsoever, opened up with his machine guns and shot some 15 or 20 unarmed American boys.

Colonel ELLIS. I believe that is substantially the fact.

Senator McCARTHY. So there is nothing in the record other than his age to recommend that this man be given leniency?

Colonel ELLIS. That is all that I recall.

Senator McCARTHY. Did you feel that, because he was 21 years of age, that justified his deliberately, wantonly, killing 18 or 20 American unarmed prisoners?

Colonel ELLIS. No; I do not think that was justification for it.

Senator McCARTHY. In some cases in which the defendants killed a lot less than one, you did not recommend that their sentences be cut down?

Colonel ELLIS. Killed a lot less than one?

Senator McCARTHY. Killed a lot less than the 16 or 18 that this man killed.

Colonel ELLIS. As I recall, you are correct; yes, sir.

Senator McCARTHY. And some younger men, also? I am trying to find out why you recommended that one man, 21 years of age—apparently you had told me yesterday that he was charged with the most unwarranted murder of American boys, the most unwarranted murder. In many of the other cases there was some indication that he was acting under the order of a superior officer. There was no evidence of that kind in this case. I am wondering why you recommended there that his sentence be cut down, and that in other cases, where you had boys who were younger than 21 years of age, and who killed even under the broadest interpretation of the testimony, killed a lot less people, why you did not recommend that their sentences be cut down?

Colonel ELLIS. I do not have in mind right now any of the other cases. I do not believe there were some that were less than 21, where I did not recommend that the sentence be cut. That is the statement from my recollection.

Senator BALDWIN. Did you recommend it in this case, Colonel?

Colonel ELLIS. Yes; I believe so. I think we went into that yesterday, and I think that that is true.

Senator McCARTHY. You told me yesterday that you recommended the sentence be cut down to 20 years.

Colonel ELLIS. I believe that is correct.

Senator McCARTHY. Is it your feeling that a man of 21, when there is no evidence of mental incompetency of any kind, should not be answerable to a charge of murder?

Colonel ELLIS. Certainly he should be answerable.

Senator McCARTHY. Do you see any reason why that particular age of 21 makes him less responsible, as though he were 22 or 23? Is there something peculiar about the age of 21?

Senator BALDWIN. Senator, did you read the review of this case?

Senator McCARTHY. I do not want the review. I want to get the answer from him, Mr. Chairman. I have the Frankfurt review before me. I am going to read it to him.

Colonel ELLIS. There is nothing particularly different about the age of 21. I felt this way: My reasoning generally on all of these cases was that these boys, when the war started, were in the Hitler Jugend and were not in the army in most cases; that the SS had been glorified to them; that they were brought up under a regime which was entirely foreign to our way of life, and I felt that if they had had the same leadership that we have in America that they would not have done the things that they did.

Why I picked out Pletz at the age of 21, I figured that he was just one that would fall in the category. There was nothing that stood out in my mind, at the time I made this up, that made his crime any more heinous than any other one.

He fired; lots of the others fired. I just felt like under the system under which they had grown up that they were not entirely responsible for their acts, and I do not feel that they were. That was my own opinion.

Senator McCARTHY. Just so there will be no doubt in your mind as to the information I am trying to get from you, and most likely will not get it from you, is this: I feel that you are not telling me the truth when you say you cut down his sentence because he was 21 years of age. I feel that you had some other reason. Therefore I want to find out why you did not recommend every one who was under 21, or 21, why you did not recommend in all those cases that their sentences be cut down if it was solely because of age. Do you follow me?

Colonel ELLIS. I do.

Senator McCARTHY. Will you tell me now why you singled out one man? If I may review the facts, see if I am correct: The evidence that you presented to the court was that there was a tank column going through this little Belgian town, that there was a column of American prisoners of war, unarmed, that had not been taken by this tank unit but taken by the other unit, prisoners of another unit; that the commanding officer's tank had passed the Americans standing along the side of the road or walking, I do not recall which, in front of a grocery store; that the gunner in the second tank, having received no orders from anyone to do it, but out of pure viciousness opened up with his machine guns and mowed down some 15 or 20—a sizable number of men—who were not doing anything at all, were not his prisoners, were the prisoners of another unit. He just mowed them down. That is the case you presented to the court, was it not?

Colonel ELLIS. Yes.

Senator McCARTHY. Did you not think that, of all the cases of murdering American prisoners, of all the cases that you can think of, that that was about the most aggravated case? It was not under the heat of combat; it was not even under combat conditions, but just going through a town.

Can you think of any of the cases over there that were more vicious, more unwarranted, than that shooting?

Colonel ELLIS. Right offhand, the case of Huber comes to me, who killed the soldier in the crossroads, went out in the field, kicked him to his feet, took his clothes from him, and shot him in the head. That comes to my mind.

Senator McCARTHY. You think that is more vicious?

Colonel ELLIS. I think it is.

Senator McCARTHY. You think it is more vicious to take one man's clothes from him and shoot him than to shoot 20 fellows with their clothes on?

Colonel ELLIS. Under the circumstances, the way the crime was committed, it appears to me to be so.

Senator McCARTHY. If this boy had gotten out of his tank and took the clothes off one of these men before he shot him, then would you have recommended that his sentence be cut down.

Colonel ELLIS. I do not know.

Senator McCARTHY. Do you think it was more vicious because he took his clothes off before he shot him?

Colonel ELLIS. It could have been.

Senator McCARTHY. Why did you not pick out other men? Why did you not recommend that all the men of that age have their sentences cut down? Why do you single out this one man, who killed so many Americans?

Colonel ELLIS. Right now I do not know the reason.

Senator McCARTHY. You cannot think of any reason why you would?

Colonel ELLIS. What I had in mind was the age of the individuals, as I recall it now, and the viciousness of their particular crime. That is the way I determined it.

Senator McCARTHY. Outside of Huber, whose sentence you did not recommend be cut down, can you think of any other of the men who were guilty of anything more vicious than the deliberate, wanton murder of 20 boys, unarmed? Can you think of any crime more vicious?

Colonel ELLIS. I think all of them were equally vicious, maybe.

Senator McCARTHY. If they are all equally vicious, why did you not take the other boys, who were 19 years old, 20 years old, and recommend that their sentences be cut down?

Colonel ELLIS. As I told you, I really cannot look back now and give you the answers. I do not know. I went through the information that I have—mind you, I did not have the record of trial when I made this; I did not have that at my disposal. I had their ages, and I had talked this matter over with, as I recall, Mr. Denson, and expressed my feelings about it.

Senator McCARTHY. I do not care what you expressed. You say you recommended?

Colonel ELLIS. I am trying to reconstitute this in my mind, what happened. I expressed my feeling, I recall, to him about the age of these fellows, and I know he said: "If you feel that way, why don't you put in a plea of mitigation?" And then I did. That is what happened.

Senator McCARTHY. Now, will you tell me why you did not take the other men, some of whom killed a far less number of Americans? Why did you not take the other men of 19 or 20, if it is solely on age?

I am sitting here, and I do not know what motivated you. You say you cut their sentence down solely on age, and you agree with me this is the most vicious crime, the wanton murder of 20 fellows, a crime that you yourself said they should have been convicted for. And that is all they are charged with.

You sit here and say you cut his sentence down because he was 21 years of age. I say, if that is true, how about the other men who were 19 to 21? Did you have some other reason for cutting his sentence down?

Colonel ELLIS. I did not have any other reason that I can recall.

Senator McCARTHY. You had no other reason?

Colonel ELLIS. No other reason, no sir, not that I can recall of.

Senator McCARTHY. Then can you conceive of any reason, any reason at all that this committee might have in mind, any reason at all, why you did not say in all cases with boys 21 or younger, they should have their sentences cut down?

You say solely on age. Was it because of his name, appearance, or what is it? You say only his age?

Colonel ELLIS. I do not know, when I went over the list. I frankly cannot tell you. If there are some that I did not recommend that their sentences be cut, today I cannot tell you why I did not do it.

Senator McCARTHY. You cannot?

Colonel ELLIS. No, sir.

Senator McCARTHY. If we find a sizeable number that were under 21 on which you made no recommendation for leniency. I understand you can give us no help at all why you made the recommendation in this case. Is that right?

Colonel ELLIS. I would not say that I could not give you no help at all. I might be. I do not know.

Senator McCARTHY. Mr. Ellis, is it not actually a fact that you were deliberately deceiving us here today, that you recommended his sentence be cut down because you felt the man was not guilty?

Colonel ELLIS. No, sir.

Senator McCARTHY. Do you know that the Frankfurt board had this to say about the case, and the Frankfurt board said: "We will set his sentence aside"? I will read it to you. This is a board of army officers.

Discussion: Practically all the witnesses say the attack was made on Stoumont between 0800 and 0900, and the village was not taken until about 1100. Werner said he entered Stoumont about 0700.

At the time you made the recommendations to have the sentences cut down, you say the trial record was not before you. Is that right?

Colonel ELLIS. No, sir; it was not before me.

Senator McCARTHY. At the time you recommended that the sentences be cut down, were you aware of the crime which these men were charged with?

Colonel ELLIS. I think so, generally. Certainly.

Senator McCARTHY. You say generally. You do not mean to tell us that you would recommend that a man's sentence be changed if you did not know exactly what you had charged him with, what you thought you could prove him guilty of?

Colonel ELLIS. I felt we could prove them all guilty. But to take right down the line, even today, and say that A was guilty of one act and B of another, I do not remember.

Senator BALDWIN. Senator, I do not like to interrupt you. But we have a man here from Tennessee, who has come all the way here voluntarily to testify. Why do we not proceed with his examination?

Colonel Ellis has been here day after day, and will continue to be here day after day. You will have ample opportunity to examine him.

It is now a quarter to three. This young man, I am sure, would like to finish his testimony and get out of here.

Senator McCARTHY. I understand this young man is not charged with any of the brutalities that the other interrogators were.

I would like to ask the Chair if he would bear with me for 10 minutes? I would like to get this answer from Mr. Ellis. I think that his activity here is that he is deliberately trying to deceive us. I think that he is proving that.

The only reason, Mr. Chairman, reading the record——

Senator BALDWIN. Senator, you were invited to sit in as a member of the committee, to try to judge this thing as impartially as the rest of us.

Senator McCARTHY. I am asking the Chair for 10 minutes to finish with this man, if I may have it.

Senator BALDWIN. Go ahead.

Senator McCARTHY. Here is a man yesterday who told us that if he found the confession was false, and he was asking the man to be hanged because of what was in that confession, he said he owed no duty to the court to tell them what was in the confession. Today he tells us that a young man, 21 years of age, whom he tried to prove guilty of wanton murder, should have his sentence cut down because he was 21, and no other reason. At the same time, he cannot tell us why he did not recommend it for other boys 19 or 20.

It is obvious that this man is not telling us the truth, and that the reason he asked that sentence be cut down was that he knew from the record, as the Frankfurt board knew, that this man was not guilty.

And it is part of the whole picture, where the courts decided a man was not guilty, instead of setting the conviction aside, they said: "Let us give him 20 or 25 years anyway."

With the Chair's permission, I will use the balance of the 10 minutes.

Senator BALDWIN. I will yield you that much more time, in view of your statement.

Senator McCARTHY. Thank you.

I am going to read to you what the Frankfurt board said about this case. First, as you sat down to make a recommendation to the court as to what sentence should be cut down and what should be left as they were, do I understand that you then tried to make a complete and thorough study of the case?

Colonel ELLIS. No, sir.

Senator McCARTHY. In other words, you made a recommendation without going into the facts in the case?

Colonel ELLIS. That is right.

Senator McCARTHY. Did you think your recommendation would be very valuable, when you made it without attempting to go into the facts of the case first?

In other words, you say you did not try to go into the facts of the case first. You made these recommendations rather blindly. Under the circumstances, what weight could a superior officer or reviewing board conceivably place upon your recommendation?

Colonel ELLIS. I do not know. The way I prepared it I do not know that they could give as much weight as if I were to analyze each case, written a paragraph or a letter about each case. I am sure they could not have. But mind, at the time I prepared this, I was thinking almost solely on age, not entirely, because there are two or three that I made recommendations on that were more than 21 years of age, as I recall it now.

Senator McCARTHY. May I see your recommendation in that?

Colonel ELLIS. Yes, sir.

Senator McCARTHY. As I understand it, you felt you had no duty before recommending to the court what punishment these boys should receive—could you find that recommendation?

Senator BALDWIN. While he is looking that up, does that record indicate who the members of the reviewing board were?

Senator McCARTHY. I think the colonel knows who they were. I do not have all the names.

Colonel ELLIS. No, I do not.

Senator McCARTHY. It is an army board. Maybe Mr. Chambers could tell us.

MR. CHAMBERS. I do not know who the board was. I do know that was the board of which Colonel Dwinell said he was an ex-officio member.

Senator McCARTHY. Is there any way of finding out?

Did you find the recommendation you made?

Colonel ELLIS. Yes. Age 21, date he joined, and the court sentence and my recommendation. And I believe these penciled notations—

Senator McCARTHY. Do you give the court any further report?

Colonel ELLIS. I sent this to the commanding officer of the 7708th War Crimes Group.

Senator McCARTHY. You did not notify the court of the basis of your recommendation?

Colonel ELLIS. No, sir.

Senator McCARTHY. You did not feel that was necessary?

Colonel ELLIS. It is based primarily on age.

Senator McCARTHY. Let us take the boy Stickel. You base it on age. He is 20 years of age. You recommend that he gets life. The boy who is 21, you recommend that he get 20. If it is solely on age, how can you make that recommendation?

Colonel ELLIS. I do not follow you on what you said.

Senator McCARTHY. He is a man called Stickel. He is 20 years of age. Your recommendation to the court is that he get life imprisonment?

Colonel ELLIS. Right.

Senator McCARTHY. You say it is solely on age. Let us go to the man who is 21, the man Pletz. Pletz, you recommend that he get 20 years.

If it is on age, solely on age, is there something peculiar about the age 21, that you say the man 21 will get 20 years, and a man only 20 will get life? Or was there something besides age that you considered?

Colonel ELLIS. If you notice here, the court sentence where they gave life, I recommended 20 years. Where they recommended death, I recommended life. I think I am consistent throughout on that recommendation. I think there is somebody here who had a term of years, 15 years, that I recommended 10 years on.

Senator McCARTHY. Then I understand that you felt that you could make this recommendation to the court without going into the facts of the case, to determine what particular crime he had been proven guilty of, how many American prisoners he shot, how deliberate, how cold-blooded the act was.

You said: "I will do this solely on age"?

Colonel ELLIS. This was not made to the court. It was made to the reviewing authority.

Senator McCARTHY. It is the same thing as the reviewing authority. Is that right?

Colonel ELLIS. That is right.

Senator McCARTHY. Answer my question. Your thought was that you should make a recommendation to cut down sentences in certain cases and confirm them in certain cases, without having in mind what the facts of the case were, the heinousness of the crime, the number of people he had shot, any excuse for the crime or anything of that kind. You felt that you had no duty to have those things in mind before you made a recommendation to the board?

Colonel ELLIS. Not particularly; no, sir.

Senator McCARTHY. O. K.

Now, I want to ask you this: Mr. Ellis, here is a discussion of the Frankfurt board:

Practically all of the witnesses said the attack was made on Stoumont between 0800 and 0900 and the village was not taken until 1100. Werner said he entered Stoumont at 0700 and it was still dark at that time. Of the 30 to 35 prisoners of war he saw fired upon, apparently none escaped to tell the story. Of the approximately 135 Americans captured at Stoumont and released on December 24, 1944, none reported the shooting of prisoners. There is no evidence that the Americans who took Stoumont on December 21 found any evidence that prisoners were killed there. There is no evidence that any of the residents of Stoumont saw any bodies in front of the grocery store, nothing from the owner of the store who presumably would have had to step over the bodies to get into his place of business.

You are aware of this?

Colonel ELLIS. Yes, sir.

Senator McCARTHY. This is what the Army board said. There is no evidence on the part of the Americans who took the town, no evidence on the part of the residents in the town, no evidence from the grocer in front of whose place these men were allegedly shot, that any American prisoners of war were shot in this town.

Therefore, there is no evidence whatever to sustain the finding of guilty. And they say the conviction should be set aside.

Colonel ELLIS. Yes, I know that.

Senator McCARTHY. And you still say this man was guilty of shooting those men?

Colonel ELLIS. I certainly do.

Senator McCARTHY. Do you not want to tell us now that the reason you recommended that we have his sentence cut down was because at that time you felt that this man was not guilty?

Colonel ELLIS. I felt he was guilty when I made that recommendation; I feel that he is guilty today.

Senator McCARTHY. And you say that you only cut his sentence down because of age. Is that right?

Colonel ELLIS. As I recollect, that is the only reason.

Senator McCARTHY. What if he were 22 years of age? Would you suggest it be cut down? If he were 22 years of age, 1 year older than 21, then would you say he should die, or cut his sentence to 20 years?

Colonel ELLIS. I did not consider that.

Senator McCARTHY. Can you tell us now, if he were 22 years of age, would you say then that he would have graduated to the point where he was responsible for his acts?

Colonel ELLIS. I would not have had a different feeling about him unless I knew him particularly as an individual.

Senator McCARTHY. Let us take the situation as it was. If the record showed that he were 22 years of age, then would you have recommended that the life sentence stand?

Colonel ELLIS. I think I would, at that time.

Senator McCARTHY. If he were 21½? In other words—

Colonel ELLIS. He may have been 21½. I did not figure it out day by day or month by month.

Senator McCARTHY. In other words, if he were one day less than 22 years of age, you say he should get 20 years. If he had his birth-

day, however—in other words, if he were 2 or 3 days older, 22—then you would say: “We will not touch the sentence”?

Colonel ELLIS. As I recall, I had in mind the age 21.

Senator McCARTHY. If he were 22, then do you think he was old enough to be responsible for his acts?

Colonel ELLIS. It is not a matter of being responsible for his acts.

Senator McCARTHY. If he were 22, then do I understand that you would have recommended that his sentence not be touched?

Colonel ELLIS. I do not think so, because I had the age 21 in mind, as I recall, with some exceptions. I think there were some 23 or 24, one or two. I do not recall, but I think there were some.

Senator McCARTHY. I think the 10 minutes are up.

Senator BALDWIN. We will have to leave for a vote. We will take a short recess.

(Thereupon, a short recess was taken.)

Senator BALDWIN. Would you like to interrogate the witness, Colonel?

Mr. CHAMBERS. Yes, sir.

Give us your full name and present address.

TESTIMONY OF RALPH SHUMACKER, CHATTANOOGA, TENN.

Mr. SHUMACKER. Ralph Shumacker, 1400 Riverview Road, Chattanooga, Tenn.

Mr. CHAMBERS. What is your present occupation?

Mr. SHUMACKER. I am a merchant.

Senator KEFAUVER. May I say that Mr. Shumacker and I come from the same city. I used to teach in the Chattanooga College of Law, and he was one of my students. Later on in the practice of law, Mr. Shumacker was in our law firm as an associate and enjoyed a very high reputation in the Chattanooga bar; also a fine reputation as a citizen of our city.

He is a friend of mine for whom I have the highest respect.

Senator BALDWIN. I thank the Senator for his statement with reference to this witness.

Mr. SHUMACKER. Thank you.

Mr. CHAMBERS. During the war, were you assigned to the interrogation staff in the Malmedy case?

Mr. SHUMACKER. Yes, sir.

I have prepared a statement; if it is permissible to read it I think that will tell almost what I know about this.

Mr. CHAMBERS. Suppose you give us the prepared statement, after which we will have some questions.

Mr. SHUMACKER. Prior to my entry into the service I was engaged in the general practice of law in Chattanooga, Tenn., for about 12 years. For about 5 of those years I was associated in practice with your colleague, Senator Estes Kefauver. I returned to practice in early 1947, but I am now a merchant in Chattanooga.

I was a member of the team which investigated the so-called Malmedy case, and was an assistant trial judge advocate when the case was tried at Dachau, Germany.

Maj. Dwight Fanton was the ranking and commanding officer during most of the investigation at Schwabisch Hall. After his re-

turn to the States in the spring of 1946 I was the ranking officer and in command of the team for 2 or 3 weeks prior to the arrival of Lt. Col. B. F. Ellis. Thereafter Lieutenant Colonel Ellis was in command of the team and was later chief trial judge advocate when the case was tried.

Shortly after the defendants, suspects, and witnesses, along with prosecution and defense personnel, arrived at Dachau, I learned that some of the defendants were claiming that their confessions had been obtained by force. This did not particularly surprise me.

I have rarely heard of a criminal case in our own courts where a confession was involved in which the defendant, through his counsel, did not attempt by similar claims to get the confession thrown out so as to avoid conviction.

An investigation was ordered by higher authority. This investigation was made by a Colonel Carpenter. I never saw his report, but I assumed the claims were not substantiated because both sides continued to prepare for trial, and the case came on to be heard some weeks later.

In November 1948, a little over 2 years after my separation from the service, I received a copy of a petition for writ of habeas corpus that had been filed in the Supreme Court of the United States by Colonel Everett on behalf of his clients. This came to me from a Col. Edward H. Young, Chief, War Crimes Branch, Civil Affairs Division, in Washington. Colonel Young requested that I furnish an affidavit with respect to the allegations in said petition, and I complied with his request.

Some few weeks later I was shocked by a story in Time magazine relative to the Malmedy case. This news story was apparently based on the petition just mentioned and the report of a committee headed by a Judge Simpson.

I have recently seen a few news items relative to the hearings before this committee. I desire, of course, to make this statement in answer to allegations that the confessions generally were obtained by the use of brutality, torture, gestapo methods, or other means destroying their value as evidence.

To present a fair and clarifying picture, I deem it proper to give some background to the investigation which our team conducted, and the trial which followed:

On December 17, 1944, a rather large group, a hundred or more, American soldiers were taken prisoner at a crossroads near Malmedy, Belgium. They were disarmed, herded into an adjacent field alongside the road and were then shot down in cold blood.

When I was assigned to the case in August or September 1945, about the only information available as to those responsible was a report of the Inspector General's Department which pointed the finger at the First SS Panzer Division. It is possible that Combat Group Peiper was also mentioned in this report. I do not recall for certain.

At that time the War Crimes Branch of the Judge Advocate General's Department, United States Forces, had none of the members of the suspect German units in custody, being held as such suspects.

After an extended trip through the American zone of occupation, we learned that the members of the suspect SS units were scattered

throughout Germany and might be found in American, British or French PW camps, internment centers, or jails.

By telegraphic order of the commanding general, United States forces, European theater, then General Eisenhower, all members of the suspect units were evacuated to one enclosure near Zuffenhausen in late November or early December 1945. By this time we had learned the units, that is, the companies we thought were responsible for the atrocity.

About a thousand men were thus gathered near Zuffenhausen. They were screened and about half of them were eliminated as belonging to units we felt were not involved.

At Zuffenhausen these prisoners were housed in one very large building. The atmosphere was that of a division reunion. Although they were not questioned as to the crime under investigation, it was quite apparent that when such questioning did begin, it could not be conducted there, for the simple reason that each man questioned would immediately return to the aforesaid building and report in detail our questions and his answers.

It should be observed here that the team realized from the beginning that the Germans would have to convict themselves. There was only a handful of American survivors, and we doubted then if any of them—they had been questioned by the IG shortly after December 17, 1944—would be of any help in identifying the German units responsible or the individual triggermen.

We therefore recommended to our superior officers that a place be found where the remaining four or five hundred suspects could be kept separate or in rooms holding two or three men. Such a place was provided at a former and modern German penitentiary in Schwaebisch Hall, Germany, and the four or five hundred suspects were sent there from Zuffenhausen by truck.

We tried to arrange it so that men from the same company did not travel in the same truck and were not confined in the same cell. We did not want any man to know what men or how many men we had from his particular company.

The first weeks at Schwaebisch Hall were spent in trying to build on paper and on cards a near-perfect company roster of each unit we felt was implicated. During this period, only rarely if ever did we question anyone as to the atrocity under investigation.

We questioned cooks, company clerks, supply sergeants, and like personnel, for we doubted if they had actually killed prisoners themselves. We accumulated a great mass of information about each company, and almost every man in each company, about the route of march and order of march on December 17, 1944.

Our information about each company became so complete that we could just about furnish the full name of each man, his rank, his age, his description, his home town, marital status, children if any, his company job—gunner, loader, radio operator, driver, et cetera—his tank number, position of his tank or vehicle in the column, and other like detail.

Then we began our interrogations of those we felt were more likely to be the real triggermen. The pattern of questioning was fairly uniform. We always began with the assertion that we knew all about the man being questioned, all about his unit and its men, and the part

that each man played in the events of December 17 and the week that followed.

We would then ask questions about inconsequentials, the answers to which we knew from the mass of information obtained from the usually noncombatant personnel. Almost invariably we received false answers.

Whereupon, we would proceed to tell the man being questioned the whole history of his unit, the names of his comrades, their jobs, their vehicle numbers, their positions in the march column—even where they had stopped along the route to urinate.

The man being questioned apparently thought, as we had hoped he would, that we knew the whole story, and he would then often proceed to tell us what we didn't know; whether he shot prisoners, who else shot them, and on whose orders and under what circumstances the shootings took place. In short, if guilty, he frequently confessed and then "ratted" on everybody else involved with him.

From the standpoint of rank, we worked from the bottom up, and the same with respect to units. After his confession had been given, we would question those he had implicated and would use him to confront the others face to face.

He would verbally repeat what he had told us as to his own implication and tell in detail what his comrade before him had also done. Armed with confessions of two or three from each company unit, the task with the others in the same company was comparatively easy.

The SS soldier was so completely indoctrinated with the Fuehrer concept that he apparently considered murdering prisoners of no consequence if a corporal, sergeant, or anyone of higher rank ordered it done.

That concept, together with his firm belief in the stupidity of his questioners and all persons except Germans—the superrace theory—were two important factors enabling us to get sufficient information to support the charges which led to the trial and convictions, corroborated by a few of the American survivors and some Belgian civilians.

As I told the court on direct examination, we did employ tricks, ruses, and stratagems to obtain evidence. Certainly we did not bring in a suspect, invite him to be seated, offer him a cigarette and say: "Did you murder any American prisoners near Malmedy on December 17th?" An investigation so conducted would have justified the label of stupidity these German suspects initially pinned upon us.

Apparently much has been made of the so-called mock trials. We knew them as "Schnell (fast) procedures." My recollection is that we used this method on four to six suspects or witnesses out of about 400 interrogated. We dared not use it on any suspect we considered anything but very, very stupid.

In most of those instances we used rooms that were about 10 feet by 10 feet in size, which were furnished with a small table covered by a black cloth, on which we had lighted candles, and either a Bible or a crucifix. Two or three men, actually officers or enlisted personnel dressed like officers, sat behind this table.

The suspect was brought into the room and his hood was removed. He was told in German that this was the "fast procedure." Then one interrogator started talking, making accusations and general argument.

Then he would bring in a witness, usually a comrade who had already confessed and had implicated the one being interrogated. The "witness" would be sworn and would tell his story.

Then the other interrogator would take the part of the suspect and would argue in his behalf. My recollection is that two or three of those we used this trick on did fall for it. No sentences were passed out by them seated behind the table that I ever heard. I sat in on one or two of these "fast procedures," and usually eavesdropped on the others for a moment or so.

The use of this trick was specifically and in detail disclosed to the court by me on direct examination. At the same time I told the court everything else I knew as to the methods we used in conducting the investigation and the questioning of suspects and witnesses, such as the use of "stool pigeons," bona fide and false witnesses, telling a suspect we had such-and-such information when we did not have it but only hoped to get it, falsely telling suspects we had a concealed microphone in his cell and had recorded his conversations with his cellmates, et cetera.

It seems there have been allegations, too, of beatings and other forms of physical violence having been used to obtain confessions. I saw and heard no evidence of beatings or other corporal punishment. No complaints were ever made to me or in my presence by any of the suspects of such except that shortly before we left Schwaebisch Hall or shortly after arriving at Dachau I heard that one suspect was claiming that one of the Polish guards used at Schwaebisch Hall had kicked him in the seat of the pants when he was being brought from his cell to one of the interrogation rooms.

There were standing orders, of course, against such conduct by this guard detachment as well as by our own small "team." After the case began to break I spent a great deal of time in the office attempting to correlate the evidence, study the evidence against each tentative suspect to see if I thought sufficient evidence had been obtained against him, et cetera. This office of ours was actually another cell, though larger, just down the hall from the cells used for questioning. The rooms used for questioning were alongside and across the hall from one another.

At no time while I was either in an interrogation room or the office did I ever hear any sound that would indicate any physical mistreatment or "rough stuff," so to speak. I doubt if such conduct can be indulged in without cries of pain from the victim, and I believe such would have been easily audible by me. Furthermore, each of us knew from the outset that evidence so obtained would be either inadmissible or utterly worthless.

We knew, of course, that the military courts established to try war-crimes cases were not bound by our own rules of evidence. We knew that the trial procedure was more akin to courts-martial procedure than that found in our State or Federal courts. The tribunals were free to admit practically any testimony of any probative value and give it such weight as it deserved.

Despite these latitudes not enjoyed by or, perhaps more correctly, which do not burden our own bench and bar, we attempted to secure evidence and to present it in such a way that there could be no doubt about its materiality or credibility.

There are those who hold with sincerity that the entire war-crimes program from the Nuremberg trials on down was wrong. And there are those who have become quite sympathetic toward the German nation and its people, perhaps in part as a result of our struggle with the U. S. S. R. to implant there a democracy rather than a dangerous police state. I believe the trials were proper.

Specifically, I believe the investigation and trial of the Malmedy massacre case were fair and proper and that justice was done—this despite the fact that perhaps these SS suspects and defendants were not accorded all the privileges that would have been theirs under our constitutional safeguards had they been citizens of the United States.

I have met, talked to, and known a handful of the survivors. I have viewed the rows of white crosses and stars of David which mark the graves of those Malmedy victims who cannot speak. They were mute testimony enough for me of the righteousness of our action in bringing to justice those who needlessly and with sheer delight took their lives.

Mr. CHAMBERS. Mr. Shumacker, you were at Schwaebisch Hall throughout the entire period of time during which the Malmedy cases were being investigated; is that correct?

Mr. SHUMACKER. Except for 1 week right after they were moved from Zuffenhausen when I had a week's leave, and was in Switzerland. Then occasional Saturdays, perhaps, when I went to Wiesbaden to report.

Mr. CHAMBERS. During this time you had intimate contacts with the entire group of prisoners, or only a portion of them that you might be handling for interrogation purposes? Which way would it work?

Mr. SHUMACKER. Only the ones that were brought up to be questioned.

Mr. CHAMBERS. Were you confined to a particular group of those prisoners, or did you have occasion to from time to time observe all the prisoners who were being interrogated?

Mr. SHUMACKER. I believe I saw every prisoner that was brought there for interrogation. I may have missed one if he were brought up and kept for 5 or 10 minutes and then taken back. But I was up and down that hall between the office and the interrogation rooms all day long, or either in one of the interrogation rooms specifically.

Mr. CHAMBERS. Did you have certain prisoners who were your responsibility from the standpoint of interrogation in securing statements and what not, or did you work in pairs, or in teams, with other interrogators?

Mr. SHUMACKER. At first I had to use an interpreter, of course. I always had to use an interpreter because I could not speak German. That was a slow process, because it took my time and it took the interpreter's time, and it became pretty unsatisfactory because the man being interrogated during the translation could anticipate the next question, and it was hard to get anywhere with that method.

So I think about after a month of trying it that way, maybe 6 weeks, anyway, after the case had actually broken and we were getting statements—as I said in my prepared statement, it became easier as the evidence snowballed—the interrogations were conducted almost solely by Mr. Thon and Lieutenant Perl.

Then I was back in the office working on the statements that had been secured. If they were very brief in detail, but still contained incriminating evidence, then I would bring that suspect into the office and use an interpreter for further details and to elicit from him a chronological and more coherent statement.

Mr. CHAMBERS. In connection with those statements, how were they secured? Did the accused write out the statement in his own handwriting, after which it was smoothed out or dictated for the purpose of translation, or how was that handled?

Mr. SHUMACKER. Generally that is correct. There may be exceptions to this; but, as I remember it, here is the way it generally worked: They would get maybe a two-page statement written in German from the suspect.

Mr. CHAMBERS. May I interrupt just a second?

Mr. SHUMACKER. Yes.

Mr. CHAMBERS. Could you tell us of a case in which you yourself got the statement, how you got it, and built it up?

Mr. SHUMACKER. The best statements that I got were from—I can remember them because I did not get very many—were from Sprenger and Hofmann and a man named Neve, who were in the same company.

Hofmann, I remember, broke first and spilled the whole beans on himself and on Sprenger and Neve.

Mr. CHAMBERS. He broke to you?

Mr. SHUMACKER. Yes. Then Sprenger also talked very easily after he had seen that Hofmann had told his story. After they talked verbally to me I took both of those men—I do not remember, I could not swear, but I do not remember their writing down anything on a piece of paper, but perhaps they did—I took both of those men, and I remember this distinctly, into this larger cell that we used for an office, where we had road maps showing the area over which this route of march took place, so that we could name towns.

If you have seen the statements, sir, you will see we had the grid numbers in parentheses. I have not had much occasion to use that term lately. That is the way I took those statements in the office, using an interpreter.

Mr. CHAMBERS. In the case of Hofmann, his name has been mentioned here in other testimony. In fact, his testimony was referred to as the "Tales of Hofmann." I think the defense counsel said they rather facetiously called them that because of the tremendous amount of detail they had done.

Did Hofmann write out all that himself or did you work with him and help grid him in the way it was prepared?

Mr. SHUMACKER. I worked with him and dictated it from the information which he gave to me.

Mr. CHAMBERS. When you say "dictated", do you mean you told him what to say?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. Or did you take the information he gave you—

Mr. SHUMACKER. Of course not. When I talked to him I would say, for instance—I do not remember this specific question—"Hofmann, at what time of day did you get your orders from your platoon leader or your company commander to shoot prisoners?" He would say, for example: "At 5 o'clock on the afternoon of the 16th."

That would be told to me by the interpreter.

Then I would turn to a stenographer and put it in narrative form: "I received orders from my platoon leader at 5 o'clock on the evening of December 16 not to take any prisoners of war," using his words, but putting it in narrative form.

Mr. CHAMBERS. In the case of the charts that Hofmann prepared, you said Sprenger and Hofmann more or less collaborated on them, used maps, coordinates, and grid marks to get it down to as accurate a scale as possible.

Mr. SHUMACKER. I did not have them in the office at the same time, sir. I had them on separate occasions.

Senator BALDWIN. We will answer this quorum call and come back. We will take a short recess.

(Thereupon, a short recess was taken.)

Mr. CHAMBERS. Mr. Shumacker, you have mentioned that Sprenger was one of these persons who you interrogated and who broke his confessions to you; is that correct?

Mr. SHUMACKER. Yes.

Mr. CHAMBERS. We have here an affidavit signed by Gustav Adolf Sprenger. Is that the Sprenger you have reference to?

Mr. SHUMACKER. Yes; I think so.

Mr. CHAMBERS. Dated January 21, 1948. In this affidavit, which is very short, he makes certain statements concerning yourself. I might say, before reading it, that they are matters concerning you in relation to mock trials. I want to get to that point:

On the 4th of December 1945 I came from Zuffenhausen to Schwaebisch Hall. I was kept there in solitary confinement until my interrogations were finished. From the 10th of January 1946 to the 5th of February 1945—

the first date must have been January 10, 1945.

Mr. SHUMACKER. No; 1946.

Mr. CHAMBERS (continuing):

I was interrogated by American officers. Nearly every day I was taken by a guard for interrogation with a black hood over my head so I could not see where I was going to or where I had to run. At the beginning of January 1946 I made in Schwaebisch Hall a statement upon oath about the offensive, as far as I could remember at that time. This, my statement was not believed. As they did not believe me they made promises to me at later interrogations. They told me that they did not want anything from me and I could go home in 6 months time and more, which I do not remember any more today.

When this did not help I was taken before speedy court. There I was told to be ready any time for hanging. These and other menaces were made to me often. I also was beaten by an American guard before and after interrogations, sometimes. Fellows of mine—

Senator McCARTHY. May I ask you there? I did not hear the first part of that. Does he identify Shumacker with that, so far?

Mr. CHAMBERS. Not so far. He does later. [Continuing:]

Fellows of mine who were in the same company were confronted with me, which accused me falsely. One interrogator, Thon, said I had to confess everything, I was told, because Captain Shumacker was my defense counsel, and he otherwise could not defend me. When I was made weak by the above-mentioned interrogations and did not know myself any more what I really did or did not do, I said yes to everything. I was reproached with and was told to do about the others. All this was made to a statement by Captain Shumacker and dictated to me by an American soldier. I wrote 4 days. I also made some sketches.

Senator McCARTHY. All this was made what?

Mr. CHAMBERS (continuing) :

All this was made to a statement—

I am quoting from this—

by Captain Shumacker and dictated to me by an American soldier.

Senator McCARTHY. I did not understand he was charging Shumacker with taking part in beatings at all. I think that is a statement for Shumacker obviously, because he said Thon is getting the statement.

Mr. CHAMBERS. May I finish it?

Senator McCARTHY. I am sorry.

Mr. CHAMBERS (continuing) :

All this was made to me to a statement by Shumacker and dictated to me by an American soldier. I wrote 4 days and also made some sketches. It was never shown to me when I was ready. Before signing it I was not allowed to read it.

At this time I was a prisoner of war and became only 20 years old on the 10th of February 1946. We could not write, not to our relations, and not to anyone else in Schwaebisch Hall. The knowledge and signature of the sworn statement—

and so on. Signed "Gustav Sprenger."

Senator McCARTHY. He made no charge that Shumacker touched him, or that Shumacker was present.

Mr. CHAMBERS. Senator McCarthy, what I was trying to do was to ask questions concerning the mock trial, of which Captain Shumacker was supposed to be the defense counsel.

Senator McCARTHY. I think he testified he was a judge, not the defense counsel.

Mr. CHAMBERS. Sir, the affidavit from which I read is that Captain Shumacker was his defense counsel.

There are three questions I would like to ask you about this. One is: You testified that Sprenger broke his case to you. Now, was that after a Schnell procedure?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. Did Sprenger go through this Schnell procedure?

Mr. SHUMACKER. No, sir. Sprenger and Hofmann—I am not sure about Neve—perhaps the Schnell procedure was used on Neve, I would not be sure one way or the other about that. I think Neve was the last one of those three who told us his story—I know Sprenger and Hofmann both told us their stories before this idea of a Schnell procedure was ever conceived of.

Mr. CHAMBERS. He states here that before and after interrogations which I understand you conducted—

Mr. SHUMACKER. I conducted them, and certainly through an interpreter—I do not remember who. I may have used Thon; I may have used Perl; or somebody else. I do not know.

Senator McCARTHY. How long will it take you?

Mr. CHAMBERS. About 2 or 3 minutes.

Senator McCARTHY. With the Chair's permission I have about two or three questions to ask the witness and I do want to get away early to take care of a job which I think of the utmost importance. I have to talk to members of my own expenditures committee. I wonder if it would interfere with your investigation if I would ask these questions?

Mr. CHAMBERS. Not at all. But I would like to finish this particular point which will take a minute or two and then stop.

Senator McCARTHY. Very well.

MR. CHAMBERS. This statement said "I also was beaten by American guards before and after interrogation, sometimes." If they were beaten before interrogation, they would have had to come in to you and you could have seen them?

MR. SHUMACKER. Yes, sir.

MR. CHAMBERS. Was this man Sprenger ever beaten, to your knowledge?

MR. SCHUMACHER. Absolutely not.

MR. CHAMBERS. There was never any evidence of being struck in the face or pushed around?

MR. SHUMACKER. Absolutely not.

MR. CHAMBERS. Did he ever make any claims to you to that effect?

MR. SHUMACKER. Absolutely not.

MR. CHAMBERS. I have no further questions at this time.

SENATOR BALDWIN. Go ahead.

SENATOR McCARTHY. You do not claim if somebody kicked a prisoner in the "seat" that you could see the marks when he came in to be interrogated by you.

MR. SHUMACKER. No, sir. I am just testifying to what I know. I do not know where Springer's cell was. It might have been in another wing of the building, or what person was brought into the interrogation.

SENATOR McCARTHY. I have not gone over the entire record; it is too lengthy, but I have gone over most of the affidavits, and I received correspondence from a great number of people on this matter. I have found nothing upon which I believe anyone could claim that you have not treated those men properly.

As far as I am concerned, I do not know of anything that gives any valid case of your mistreating the prisoners. I want to make that clear. There are some affidavits that may bring you in.

I think this might indicate that you have a slightly different concept of your duty over there than some of the interrogators. You are a lawyer; are you not?

MR. SHUMACKER. By profession; yes, sir.

SENATOR McCARTHY. You took part in the trial, I gather.

MR. SHUMACKER. Yes, sir.

SENATOR McCARTHY. Colonel Ellis yesterday told us that if he were presenting a confession to the court, and before presenting it to court if he had learned that the confession was false, that he felt he had no duty to the court to so inform the court. Would you have the same conception of your duty as defense attorney? In other words—

MR. SHUMACKER. As prosecuting attorney?

SENATOR McCARTHY. As prosecuting attorney.

MR. SHUMACKER. If I thought—

SENATOR McCARTHY. In other words, if you got a confession from one of the interrogators for you, and you learned later that the confession was not true, you sent your own investigator over, in other words, and learned that—would you feel then that you had a duty to the court to inform the court that you had subsequently discovered the confession was not true? Do you think you were doing right in going ahead in trying to convict a man upon a false confession?

MR. SHUMACKER. Of course not.

SENATOR McCARTHY. I want to read to you what Colonel Ellis said. I think it is the only answer that any honest, decent attorney or anyone

else could make. I want to read to you what Colonel Ellis had to say on this subject, and see if you think that this is the proper concept of the job the man in charge of the case had. [Reading:]

Mr. FLANAGAN. In this case can you recall whether or not you sent Major Byrne specifically to Bullingen to make inquiry?

Colonel ELLIS. As I told the Senator, I recall by deduction I must have because we gave them all the evidence that we had about these various individuals. I cannot sit here and tell you that I definitely talked to him about it. I presume that I must have.

Senator McCARTHY. If he went to Bullingen, then we can assume that he would report back to you there was no evidence that he could find of any woman having been killed in that town except Mrs. Jonsten and that she was not shot. We can assume that he reported that back to you.

Colonel ELLIS. That or the equivalent. I presume he did.

Senator McCARTHY. Did you not think it was your duty to tell that to the court, that your investigator went over to this town and that your investigator reported back to you that it appeared a confession was false and this woman was not shot?

Colonel ELLIS. I do not think my duty went to that extent.

Does that not seem to you to be an unusual concept of the duty of a prosecutor in any criminal case?

Mr. SHUMACKER. No, sir, I do not interpret it that way. The way I interpret that, from what you read to me, that this investigator brought back no corroborative evidence. I do not believe, sir, that it is the duty of an attorney on either side of his case to point out the weaknesses of his case.

If Colonel Ellis thought, or if I had thought, that the fact that no corroborative evidence was found, conclusively established the falsity of the confession, then I think perhaps, unquestionably, there would be a duty, if you absolutely felt the confession was false, to so tell the court.

Senator McCARTHY. You said you did not think any attorney should present any weak link in his case. Am I correct in this—and I have been in court-martial proceedings myself, not as a defendant but as a prosecutor or defense attorney—I have always understood that a prosecutor in a court-martial case had the duty not to present what you or I would consider a strong case, but to present the facts, and if there are any facts which would held the court, not to find a man guilty, but to determine whether he should be found guilty or not, that then it is the duty of the prosecuting attorney, the defense attorney, to present all those facts to the court? Is that not the clear duty you have?

Mr. SHUMACKER. I think I tried one court-martial case in my experience.

Senator McCARTHY. You are a lawyer?

Mr. SHUMACKER. Yes, sir. But in my State, sir, it is not the duty of the prosecuting attorney to point out the weaknesses in the State's case. The defense attorney usually takes care of that pretty well, sir.

Senator McCARTHY. Let us take the Malmedy cases. You took part in them?

Mr. SCHUMACKER. Right.

Senator McCARTHY. If you found some facts which you felt would weaken the case against the defendant, you knew of some facts which would weaken the case against the defendant, then you felt that you did not have any duty to let the court know those facts?

Mr. SCHUMACKER. Not if it weakened the case. If I thought that it would throw some light on the falsity or the veracity of some evidence introduced, I would think that it should be disclosed to the court.

Senator McCARTHY. Let me read further from Colonel Ellis' testimony:

Senator McCARTHY. In other words, Byrne came back to you and said "Mr. Ellis, I was over to Bullingen. I found that there is no evidence whatsoever of any woman having been shot by a German soldier or any woman in that town. I found further that the evidence of all those in the town was to the effect that definitely no woman was shot in the town, that the only woman who died from other than natural causes was Mrs. Anton Jonsten and her husband said she had no bullet wounds, her body showed no bullet wounds." You say then your duty would not be to give that information to the court?

What would your answer to that be, if you were prosecuting? In other words, if you sent a man over and he came back to you and said "Shumacker, the confession shows this man shot a woman in the house across from where the Army had messed. I checked with the members of this little hamlet, the people who live there. They all say that no woman was shot, the only woman who died from other than natural causes was Mrs. Anton Jonsten. Her husband said he saw her killed in the street from an exploding shell."

Just to make sure the facts are submitted to you properly, affidavits are brought back, either from the burgomaster, registrar—call him what you may—or the husband. He said "These are the facts."

Now, you are submitting this confession to the court, the confession of a brutal murder, and you know the penalty would be hanging. Would you then think that your duty as an attorney was to give the court those facts?

Mr. SHUMACKER. I do not think so, unless I was convinced by them that absolutely the crime had not been committed. I think that is what the court is for, sir, to weigh the testimony and the extent of the corroboration, if any.

Senator McCARTHY. Then if you are in charge I understand you to say that if you send an investigator over and he comes back and says he made an investigation and his information is that the confession is untrue, then you would not have a duty to send him back to conduct further investigation, you would not have any duty to do that, and you would not have a duty to either let the court know what those facts are or to go into the matter further?

Mr. SHUMACKER. If he comes back, sir, and reports to me that he thinks the confession is untrue, I would either disclose that to the court or have a further investigation made, because I would rely on him to make an investigation for me and if he said "I think the evidence we have is untrue" for such and such a reason, I think I would hesitate not to disclose that to the court or order some further investigation.

Senator McCARTHY. It is just common decency, when you ask a man to be hanged, that you say to the court "Here are the facts." There is no doubt about that, is there? In other words, you are trying a man for his life, you send an investigator over; and he reports back to you that the confession is not true, is it not as clear as night follows day that it is your clear duty, not only as an attorney but as common decency, to say to the members of the court "This confession appears to be untrue. Here is the information that I have got." Is there any doubt about that in your mind?

Mr. SHUMACKER. I told you how I feel about it.

Senator McCARTHY. Is there any doubt in your mind about that?

Mr. SHUMACKER. I said that I would either order a further investigation or disclose that fact to the court.

Senator McCARTHY. Do you think that any lawyer who refused to do that, failed to do that, was competent to continue on trying men for important criminal cases?

Mr. SHUMACKER. I do not know about that. I cannot judge the competency of other lawyers.

Senator McCARTHY. I think it is important to know what your attitude is toward other lawyers. You are a lawyer, you practiced law, you went through the Dachau case. I ask you whether any lawyer who failed to do that, in your opinion, should have been left in charge of important criminal cases over there?

Mr. SHUMACKER. Who failed to disclose to the court that he felt the confession was false?

Senator McCARTHY. Who failed to do either one of the two things that you said you would have done, either disclose it to the court or to have further investigations.

Mr. SHUMACKER. I would not say arbitrarily that he was incompetent, sir.

Senator McCARTHY. Let me read to you :

Senator McCARTHY. I want to know whether he sent his investigator over, this investigator reported back to him the facts that I have enumerated, and that is that no one in that town knew of a woman having been shot, not a single person in this little hamlet, and that the mayor, the registrar, the husband, everybody said no one was shot in this town, but that Mrs. Anton Jonsten did die either as a result of an artillery shell or something of that order. If he reported that back to you, do I understand that you feel it was not your duty to go in and say to the court in effect "This part of the confession is at least questionable because of what my investigator reported to me"?

Colonel ELLIS. No, I do not think so.

Senator McCARTHY. You do not think that would be your duty?

Colonel ELLIS. No, sir.

Would you have the same attitude as the colonel in a case like that?

Mr. SHUMACKER. I just cannot answer that question dogmatically, sir. I told you how I felt about it. It depends upon how thorough an investigation the man had made, that it depended on whether or not his report to me convinced me the confession was false.

If I thought it was false I would disclose it to the court. If I thought my case was merely weakened by lack of corroboration, I would think that that would be for the court to decide, whether or not the evidence was sufficient.

Senator McCARTHY. Could you tell me what your opinion of the competence or incompetence of an attorney would be if he took upon himself the task of making recommendations in cases involving sentence to death, sentences to life imprisonment, and in making his recommendations he were not to consider the facts in the case at all, but the only thing entering into his recommendation was the age of the men involved, that he submitted his recommendations, the recommendations saying this man should have life imprisonment, to a higher court, without telling them that he did not take into consideration one iota of the facts in the case; would you think that man was completely and criminally incompetent or not?

Mr. SHUMACKER. No, sir, I would not think he was criminally incompetent.

Senator McCARTHY. Would you think he was competent to continue making further recommendations in cases involving death sentences, life imprisonment?

Mr. SHUMACKER. Yes. I do not see that it affects his competency. I know what you are talking about, Senator, the line of examination just preceding mine. Here is my view on it, sir: I do not believe that that soon after the trial occurred could Colonel Ellis or I, or anyone else, in a similar position.

Senator McCARTHY. How soon after?

Mr. SHUMACKER. I think he said it was January 1947. That was about 6 months, I believe—5 months—after the trial was over. I do not believe you could look upon the case of an individual without remembering more details certainly than I remember now, and I do not believe Colonel Ellis could have.

I heard his testimony, and he talks about age. But if he thought it was age at that time, and solely age, I believe, that he could not have failed to have been influenced by the evidence and the facts involving the particular defendants. I do not believe you can divorce it, sir. Maybe you can.

Senator McCARTHY. Let us not talk about what you and I could do. Colonel Ellis told us he made recommendations to higher authorities. He told us here today that the only thing he took into consideration was age. He told us that he did not inform the higher authorities that that was the only thing he took into consideration.

I think this is important. I would like to get the ideas that you gentlemen over there had when you were trying these men.

Do you think that those were the actions of a competent attorney or officer?

Mr. SHUMACKER. I think age is only one consideration. That is my view.

Senator McCARTHY. If you, as an officer, yourself, were examining cases allegedly, making recommendations to higher reviewing bodies, as to whether men should die or live, or how much time they should spend in jail, and you made the recommendations, do you not think that just ordinary common sense would dictate that you would put a note on that recommendation saying to the higher court "My recommendations are based solely upon the age of the individual, and not taking any other factors into consideration," otherwise you would be deceiving the reviewing body? Is there any doubt about that?

Mr. SHUMACKER. I do not think it is a matter of exception, sir. I do not believe that a recommendation without stating the reasons for it would not be of much value. If I were making recommendations I would give the reasons in each individual case, I would give the basis for the recommendation.

Senator McCARTHY. And if you were a reviewing body and he recommended a certain man lives, and certain others die, you would assume that he was basing his recommendations upon all the facts in the case, would you not?

Mr. SHUMACKER. Certainly.

Senator McCARTHY. And then if you discovered later that he was not doing that, that he was basing it only on age, nothing else, and he said this man must live, and this man must die, he was basing

it only on age, would you not consider that man incompetent to do that kind of work any more? Completely incompetent?

Mr. SHUMACKER. If he were basing it solely on age, to the exclusion of something else, no, I would not think he was totally incompetent; I would say that in that particular instance his recommendation was worth very little.

Senator McCARTHY. Completely worthless, because the reviewing board would know what the age was?

Mr. SHUMACKER. Sure, the reviewing board knew the age.

Senator McCARTHY. So the recommendation was completely worthless? In other words, if you were the——

Mr. SHUMACKER. Let me get your question again, sir. You say that if the recommendation stated that it was based solely on age——

Senator McCARTHY. No, let us have the recommendation. You are a reviewing court. I make a recommendation to you involving 73 men. I recommend that a certain man hang. I recommend that certain others not hang. I recommend that certain sentences be cut down.

You have before you the ages of all those men. My recommendation is based solely upon the ages of the men and not on the facts of the case, not how bad their crimes were, not how fairly the crime was conducted. My recommendation is based solely on age. That recommendation is about worthless, is it not?

Mr. SHUMACKER. I think so.

Senator McCARTHY. In view of the fact that I do not tell you it is based solely upon age, in view of the fact that I have access to all the records, all interrogation, all the men that were interrogated, you would assume that my recommendation was based upon the facts in the case, would you not?

Mr. SHUMACKER. No, sir; I would make no assumption. If I got a recommendation from a reviewing authority, and he gave no reason for his recommendation, I doubt if I would consider it at all.

Senator McCARTHY. If an officer who has all this information available at his fingertips makes a recommendation such as this, and does not state in the recommendation that he is taking no facts into consideration whatsoever except the ages, and makes that very serious recommendation to a reviewing board, does not tell them that, understand, is that not akin to a fraud upon that body?

Mr. SHUMACKER. No, sir; not in my opinion.

Senator McCARTHY. You do not think so?

Mr. SHUMACKER. I do not think it is a good job, but I do not see anything fraudulent about that.

Senator McCARTHY. Can you not see it is about the silliest thing you have ever heard? Actually, is not that a fact?

Mr. SHUMACKER. I do not think it is the silliest thing I ever heard. But I do not think a recommendation to change any decision of any individual or group or body without giving a reason for it is a worthwhile recommendation or deserves any consideration.

Senator McCARTHY. Did Colonel Carpenter talk to you when he was conducting the investigation of the alleged brutalities?

Mr. SHUMACKER. I think he did, sir. But I would not swear to it. I remember him being down there at Dachau. I learned what he was there for, and I assumed that he did talk to me.

Senator McCARTHY. There is one case we have before us here, a case involving Pletz. The Frankfurt board recommended that the conviction of Pletz be set aside. The evidence in the Pletz case, if I may review it, was roughly this: Pletz was a gunner. The commanding officer, I believe it was, at least somebody in the tank ahead of him—he was the second tank—the testimony is that there were a number of American soldiers along the side of this street in this little town.

The testimony of the boy in the front tank was to the effect that he saw a double stream of tracer fire coming past his tank and hitting these war prisoners, and that he saw about half of the column drop.

Senator BALDWIN. Pletz said that?

Senator McCARTHY. No; the boy in the front tank said that. This is evidence against Pletz.

You do not recall that you got the statement from the boy in the front tank, do you?

Mr. SHUMACKER. No; I do not. Was that a Stoumont incident?

Senator McCARTHY. Yes. You do not recall getting such a statement?

Mr. SCHUMACKER. No, sir; I do not.

Senator McCARTHY. Then the testimony of the driver of the second tank was to the effect that he heard several rounds of machine-gun fire from his tank, that he did not see any of the prisoners fall or die.

Mr. SHUMACHER. I believe that was the testimony of a driver or radio operator in the tank.

Senator McCARTHY. In the second tank, that he heard somebody fire several rounds from his tank, but did not know the direction of the fire. The testimony of the man in the back column is that they did not see any American prisoners killed, and did not see any machine-gun fire from the machine guns toward the prisoners.

The Army reviewing board at Frankfurt said that they found no evidence that any American prisoners of war had been killed in that area, by interviewing the residents of the little hamlet; that the grocer, before whose door the men were allegedly piled, knew nothing about any killings; and the Frankfurt board recommended that in view of the fact there was no evidence that this boy shot any American prisoners, no evidence that any were dead in that town, and the people were living there all the time, that the convictions should be set aside.

Would you agree with that recommendation?

Mr. SHUMACKER. I think I would. No bodies were found in Stoumont, maybe not in front of this grocery store.

Senator McCARTHY. No evidence of any prisoners having been shot? I will read it to you if you like.

Mr. SHUMACKER. I do not care what the reviewing officer said about it, sir. What I am talking about is that there was evidence at the trial—maybe not in front of the grocery store, I do not remember that, specifically, but there was evidence, and I talked, I think there was testimony from two Belgian civilians about some bodies that were found down a little pathway beside some building.

I am sure that is Stoumont. Maybe I am getting on a tangent that is not material.

Senator McCARTHY. Did you say you testified in this case?

Mr. SHUMACKER. Yes, sir; I testified.

Senator McCARTHY. You testified in the Pletz case?

Mr. SHUMACKER. No, sir. I thought you meant in the old trial.

Senator McCARTHY. I thought you said you testified, that you interviewed some Belgians.

Mr. SHUMACKER. No, sir; I did not.

Senator McCARTHY. If the Army board is right in this, and we can check it from the record, if they are right—I will read it to you:

Of the 30 or 35 prisoners of war fired on apparently none escaped to tell the story. Of the approximately 135 Americans captured at Stoumont and released December 1944, none reported a shooting of prisoners.

In other words, 135 prisoners were captured at Stoumont.

There is no evidence that the Americans who took Stoumont December 21, 1944, found any evidence that prisoners were killed there. There is no evidence that any of the residents of Stoumont saw any bodies in front of the grocery store. Nothing from the owner of the store who presumably had to step over the bodies to get into his place of business.

This board recommended that the conviction be set aside. Would you agree with the board in that?

Mr. SHUMACKER. Yes, sir.

Senator McCARTHY. Then if you agree with the board you think that the court that confirmed the sentence for 20 years, or whatever it was, was in error? You spent some time in combat, did you not?

Mr. SHUMACKER. No, sir.

Senator McCARTHY. If a man comes down in a tank, behind a machine gun, as this man allegedly did, and deliberately, with no orders whatsoever to do so, shot someone else's prisoners of war, not even his own unit's prisoners, just deliberately shot down 15 or 20 men; if he did that, 21 years of age, no evidence of incompetency, then he certainly should pay the full penalty for those murders.

If he did not do it, then he should not serve any time. In other words, he was either guilty of the most atrocious crime that you and I could conceive of, not under battle conditions at all, or he was guilty of nothing.

Am I right? We cannot compromise a case like that and say, "There is no evidence that he is guilty but he might have been guilty of something else. We will give him 15 or 20 years."

Mr. SHUMACKER. I personally think that if that is what he did, that he should be hanged for it.

Senator McCARTHY. Right. I think you and I are in agreement.

Mr. SHUMACKER. But I will not say, sir, that anybody else who feels that because of age, or youth, training, and so forth, that it should be commuted, is absolutely wrong. I just cannot say that.

I personally feel the other way. But there are a lot of other people who do not feel that capital punishment is proper for any kind of crime. I cannot say arbitrarily and dogmatically that they are wrong.

Senator McCARTHY. All through these cases we get the impression—and I know this is not part of your work; your work is to present the evidence—we get the inescapable impression that the reviewing boards and the subreviewing boards took the position that there was some half-way mark between guilty and innocent, and a crime which would call for the death penalty—let us put it this way: In a case where the death penalty would be called for if a man were guilty, that then if the evidence were insufficient to find him guilty of that crime,

he should not be let off, that he should get a halfway mark in the theory that he was guilty of something else.

That is a pretty bad brand of justice; is it not?

Mr. SHUMACKER. You mean reducing sentences because of insufficiency of evidence?

Senator McCARTHY. Yes.

Mr. SHUMACKER. I do not think that is proper, sir.

Senator McCARTHY. In fact, entirely improper?

Mr. SHUMACKER. Yes.

Senator McCARTHY. I have nothing further, Mr. Chairman.

Senator BALDWIN. Go ahead, Colonel. Could you stay a little while until we finish with this man? Colonel Chambers told me that he wants to question this man with reference to Perl and Thon, and who else?

Mr. CHAMBERS. Several others. If Mr. Flanagan could stay here it might serve the purpose.

Senator McCARTHY. O. K. Mr. Chambers, I will have a statement for you which I hope you will insert in the record in the morning, in regard to this whole matter.

Mr. CHAMBERS. Mr. Shumacker, you have been asked to evaluate the findings of a board of review in connection with this Pletz case?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. I feel that the record should show one thing else, as long as you are passing your opinion on various matters of this kind. This board of review, which is referred to as the Frankfurt Board of Review, did recommend, as was stated to you in the Pletz case?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. Would it make any difference to you, in your evaluation of the way this board was operating, or their findings, if an ex officio member of that board of review, who was consulting daily with the man writing that report, had been one of the defense counsel in this case?

Mr. SHUMACKER. I would not like the idea, of course, that counsel from either side should sit in on the board of review in any capacity. I do not like to pass any judgment on the competency of any review board or appellate court, or whatever it might be, but I felt I was compelled to say so because the Senator asked me.

He just read facts, as I understood it, from that report, which the board apparently had established to its satisfaction. What those facts consisted of I do not know, and how much subsequent investigation they made I have no way of knowing.

But if those facts, as read to me by Senator McCarthy, are absolute truth, I would say that I would agree with that report.

Mr. CHAMBERS. And if the facts as stated were absolutely true, it would make no difference to you, I presume, if the man helping to advise in writing that report had been a defense counsel at the trial?

Mr. SHUMACKER. If the facts are absolutely true it would make no difference. But I think a different light could be thrown on it by counsel, who might be very interested.

Mr. CHAMBERS. I think at this time it would be proper, with the Chair's permission, to put in the record a very brief statement concerning Colonel Dwinell, concerning this board of review. He was a defense counsel at this trial.

In response to a direct question here under oath he stated that he was "working with this board of review." The interrogation is as follows:

Mr. CHAMBERS. At the time the board of review sat did you have any contact with or relation with the board of review?

Colonel DWINELL. I certainly did.

Mr. CHAMBERS. Did you know that while you were working with the board of review that you were working on these cases?

Colonel DWINELL. I did.

Mr. CHAMBERS. Did you have anything to do with the preparation of this report?

Colonel DWINELL. I did not, not to this extent. The report that I have before me—which is the report which was read to you—was written in the main by Colonel Scarborough, of the review board, and every day he and I discussed the language therein. And wherever I could speak to the defense I did. Now I will frankly state so.

Mr. CHAMBERS. Then you would state that the points of view of the defense had adequate representation before the court?

Colonel DWINELL. They did.

During your tour of duty at Schwaebisch Hall were you not at one time in command pending the arrival of Colonel Ellis, after Major Fanton had left Schwabisch Hall?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. During that time were any complaints made to you by any of the prisoners, or was there any report of any kind which led you to believe that either the guards or interrogators or anyone else was abusing these Malmedy prisoners?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. Do you have enough of an opportunity by your personal observation to form an opinion as to whether or not they were being improperly treated?

Mr. SHUMACKER. I feel sure they did, sir.

Mr. CHAMBERS. What was that opinion?

Mr. SHUMACKER. My opinion was that they were properly treated.

Mr. CHAMBERS. You do not believe that their food was reduced, that they were required to take drinking water from the toilets in their cells in order to get water to drink, that they were being deprived of blankets, that they were being beaten and abused, that they were being kept in solitary confinement for long periods of time?

There is a whole series of questions. I am trying to hurry this along. Can you answer categorically?

Mr. SHUMACKER. I think I can. I think that those—I have forgotten how you phrased your question—they were not abused, they did have drinking water, they had sufficient food. I remember Hofmann, for instance, told me that since he had been in the German Army he had never been fed so well, and he got so fat we had to get some larger clothes for him.

That is Hofmann, one of those three men we were talking about a few minutes ago.

Mr. CHAMBERS. Did you have occasion during your stay at Schwaebisch Hall to work directly with Harry Thon and William Perl?

Mr. SHUMACKER. I did.

Mr. CHAMBERS. Did you join them in the interrogation of any prisoners?

Mr. SHUMACKER. I am sure Harry or Bill: (1) Helped me with one of those three men that I have mentioned. When they were in-

terrogating a prisoner alone I would frequently drop in on the interrogation, not that I was any help, but I wanted to see how things were progressing.

I could not tell too much about what was going on, because it was all in German, but I would interrupt and ask Bill or Harry what evidence he had obtained, if any, and I would stay in the room maybe 2 or 3 minutes and then go to maybe where the other one was questioning, or someone else was working, to see what was going on.

Mr. CHAMBERS. Did you ever see either Thon or Perl strike a prisoner?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. Or kick him or abuse him?

Mr. SHUMACKER. No, sir. Not only did I not see it, none of the suspects or prisoners ever complained to me about it. There was no evidence on their bodies, their faces, or their arms or hands, that showed any physical mistreatment whatsoever.

Mr. CHAMBERS. Mr. Shumacker, it has been testified here that Thon in particular, and Perl, had a general reputation for believing that prisoners should be handled roughly and that they in fact were known to be inclined to treat them roughly.

Do you know of that reputation?

Mr. SHUMACKER. I have heard of it only since the trials, sir.

Mr. CHAMBERS. Only since the trial?

Mr. SHUMACKER. Yes, sir; just what the Germans have said since the trial. Of those who took the stand, I think there was very little complaint on the part of defendants at the trial itself of any physical mistreatment.

Mr. CHAMBERS. Do you believe that if they had had a reputation for being brutal to prisoners at the time the interrogation was going on, you would have known of it?

Mr. SHUMACKER. I do not see how I could have helped it, sir. Our office—let me explain this physical set-up. It might help the committee, sir. It was a long corridor—I mean a hallway, in this corridor. Our office was at one end, say over there where the hat rack is.

It was an office about 20 by 20. I think there was one small cell next to it, and then a cross corridor, and then these small 10-foot-square, approximately so, interrogation rooms on either side down the hall, some, I would say, 35 to 75 or 80 feet away from the office.

Even while in the office, and our door was always ajar, I do not see how there could have been any physical mistreatment such as I have read about, of men, and striking them in the face and kicking them, and that sort of thing, without just the physical reflection of screams and cries from such men, the subjects of such brutality.

As I have said before, I was not in the office all the time; I was in the rooms and up and down that hall and crossing the hall over to where the stenographers and translators were working, all day long, and that could not, in my opinion, have been the practice without my knowledge.

Mr. CHAMBERS. You had occasion, I presume, to observe the guards taking the prisoners to and from the interrogation centers, and moving them around the prison?

Mr. SHUMACKER. Only in that portion, sir. This prison had, I think, about three wings to it, and one separate building, actually, in

the enclosure. I would not often see them when they were away from this corridor where the rooms for questioning and the office were.

But I did, on occasion, see them. In other words, I did not follow the guard, take a man up on the next floor into another wing.

MR. CHAMBERS. A moment ago you made a point that only a few of the accused took the stand in their own behalf at the trial. Do you know why others did not take the stand?

MR. SHUMACKER. I, of course, was not informed by their defense counsel what their decision, their reasoning behind it, was. I did feel that those who took the stand did themselves more harm than good. I was told—you were told by defense counsel, when the case started, when the defendants started putting on their proof—that it was going to take weeks and weeks to try that case. I assumed that every man was going to take the stand in his own defense.

But they did pretty poorly, I thought, on cross-examination, and that might have been a factor. I do not know.

MR. CHAMBERS. When you say "did pretty poorly," did they incriminate themselves or others?

MR. SHUMACKER. Yes, sir. That is what I mean.

MR. CHAMBERS. Do you believe that they were telling the truth at the time they were incriminating themselves and others, or did the prosecution staff form an opinion of that?

MR. SHUMACKER. Yes, I thought they were telling the truth when they incriminated others.

MR. CHAMBERS. Did you have occasion to work with a man named Bailey, who was a typist or reporter, with you?

MR. SHUMACKER. Yes, sir.

MR. CHAMBERS. During the time that Bailey was there, I believe it was the custom to dictate these statements or confessions to him. Is that correct?

MR. SHUMACKER. I do not remember specifically dictating one to Bailey. But that was the practice, yes, sir, to one of the stenographers.

MR. CHAMBERS. Did Bailey work around the point where you could observe his work or have any direct knowledge of it?

MR. SHUMACKER. Yes, I have knowledge of his work.

MR. CHAMBERS. In his testimony before us, Bailey has indicated that the confessions would be dictated and then frequently changed, that the confessions finally signed by the prisoners were not those that had originally been made by them.

There have been several efforts made to explain it one way or another. Do you have any knowledge of that matter?

MR. SHUMACKER. I think I know exactly how they were taken, sir. They would either write out a very brief statement containing incriminating evidence, or would make a verbal statement to either me or Thon or Perl, and then relay it to me, so that I knew the substance of it. When they write the statement I thought that it should be enlarged upon to see if we could get more information, and to give body and detail.

So either with the verbal statement or the preliminary brief statement, I would take the man, as I have said, into the office and get further detailed information by question-and-answer form, through an interpreter, which was not then dictated or put down on paper at all.

Then I would turn to a stenographer, or court reporter—I think we called them all court reporters—and dictate in narrative form the

answer to the question that I had asked. That, of course, was then typed in English.

Then one of the translators would take that English statement and translate it into German. Then, if I took the statement, and the others did the same thing, that German statement, that statement written in German by one of our own translators was then handed to the man who had made the statement. He was told to read it, and, if there were any changes, to make the corrections on that statement that he had not written himself.

So that when he went to copy it, so to speak, in his own handwriting, it would not have to be changed or corrected again. And I told every man, whenever I took his oath, or whenever such a statement was taken, that if there were any errors, no matter how inconsequential he thought they might be, that we wanted nothing but the truth in detail, and to tell me about it or to tell the interpreter so he could tell me.

Mr. CHAMBERS. I have one further question to develop with you. We have had considerable discussion of a matter which I believe you should have some direct knowledge of. Operating under SOP No. 4, which I believe was reduced to writing but at a rather late date, you were supposed to have been operating under those orders prior to the actual written issuance of the orders.

There is a question of whether or not the accused were promised immunity if they would tell such a story that they could be used as witnesses for the prosecution.

Do you have any knowledge of the way that situation developed and how such promises of immunity might or might not have been used?

Mr. SHUMACKER. I do not even remember anything in the SOP about immunity. My recollection was that we could make no promises whatsoever to any man being questioned.

Mr. CHAMBERS. Did you, in carrying out your duties as an interrogator, ever promise anybody immunity if he would elaborate upon his story?

Mr. SHUMACKER. Absolutely not.

Mr. CHAMBERS. Do you have any knowledge of anyone else doing that?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. I have here a copy of SOP No. 4, and it has been read into the record so many times I see no reason to do it again. But section 4 (a) says that—

No promises shall be made.

But section 4 (b) seems to be a qualification of it. I wonder if those were the instructions under which you worked.

(Witness read document.)

Mr. SHUMACKER. I think what Fanton meant, at least the way I construed that, is that if we had some information that slightly implicated a man, but was not sufficient to have any chance at conviction, that after clearing with the commanding officer that man might be told that he would be used as a witness. By "commanding officer" I assume he meant Colonel Micklewaite, or some higher authority.

Mr. CHAMBERS. Do you know of any case where this procedure was followed?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. During the period of time that you were commanding officer, was it followed?

Mr. SHUMACKER. As far as I know; yes, sir.

Mr. CHAMBERS. Pardon me. While you were commanding officer—

Mr. SHUMACKER. I did not change that SOP.

Mr. CHAMBERS. So that as far as you know, section 4 (b) in there, which indicates that they could be promised immunity if the testimony was more valuable from the standpoint of the prosecution witness, was never used?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. Before I finish my line of questions I am going to take the liberty to ask you—and remember that you are under oath—some very definite questions. I want your frankest opinion.

You have worked with men like Perl and Thon, Elowitz, and a chap named Steiner, for a while there?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. I would like you to tell me what your personal opinion is of Mr. Perl, from the standpoint of not only efficiency as an interrogator, but whether or not he would mistreat people, and what you think of him.

Mr. SHUMACKER. I do not think that Perl would mistreat prisoners.

Mr. CHAMBERS. Can you tell us more about him, in your evaluation of him? Was he a good interrogator?

Mr. SHUMACKER. Here is the reason I think so. In my opinion he was an excellent interrogator. He was full of this thing all the time. I guess he did more talking than all the rest of us put together there in the quarters.

Bill was always thinking of some trick or some new angle. I can't remember specifically, now. But it was always a matter of cleverness, the use of some psychological trick.

It just does not make sense to me that a man who thinks that way would go to the trouble of trying to dream up all these methods and ruses, if he were the kind of man who just resorted to brute force to obtain a confession. I can't see any reason to do it.

Mr. CHAMBERS. You all lived in the same quarters, or associated together closely?

Mr. SHUMACKER. We ate together in the same house. Most of us lived there. But Lieutenant Perl and his wife slept in a room across the street.

Mr. CHAMBERS. But you did associate with him very closely?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. In your discussions with him, did these matters of "I could slap this out of him" or anything like that—

Mr. SHUMACKER. Never mentioned in my presence.

Mr. CHAMBERS. Did Perl ever comment on manhandling the prisoners?

Mr. SHUMACKER. Never in my presence.

Mr. CHAMBERS. How about Thon?

Mr. SHUMACKER. Never.

Mr. CHAMBERS. Could you give us your evaluation of Thon, somewhat the same as you have of Perl? Was he as good an interrogator? Did he handle himself as well?

Mr. SHUMACKER. I don't believe that he was quite as clever in himself conceiving of new things as Bill. Bill told me that he had received training at CICDIC, I believe is the name of the operation, or whatever you call it, in England. And their British intelligence was—I mean they were taught how to get information.

I understood from Bill that that is the best training that American personnel received, at this center. He passed on a lot of tricks to us and told us about various things.

Senator BALDWIN. When you say tricks, what do you mean by tricks?

Mr. SHUMACKER. He told us—of course, we had not heard about it—about the minute microphone that they had. He said that it did not make any difference how firmly convinced a prisoner was that a microphone was hidden somewhere in a room, that if you put a comrade in that room with him that they would eventually begin to talk, that they just could not stop.

He told me that they would talk for days and weeks to some of the prisoners they had there, gaining their confidence. They would sometimes take them out of the prison and take them to downtown London and let them see, for instance, that the German propaganda that had been fed to them about London having been completely wiped out was not true, that they would take them to night clubs. I mean actually more psychological tricks, sir, convincing them by their handling of the man that it was more to their advantage and to the advantage ultimately of Germany to give them the information that they were trying to get, and that was the tenor, generally speaking, of his efforts there at Schwabisch Hall.

Mr. CHAMBERS. As far as Thon was concerned, would you comment on the same matters of mishandling of prisoners or beating of any kind? Did he talk about it?

Mr. SHUMACKER. He never talked about mishandling any. I frequently would go in the rooms when Harry was talking to his prisoners, and he mocked, I felt, pretty much, Bill's tricks, when the day was over and we would have supper together. Bill would tell what he had done, what he had said, or how he had elicited some information. And then I would find that Harry was using the same thing.

I was amazed at Harry's ability and watched him frequently because his education had not been as good as Bill's, and I thought that he did a fine job. That was my opinion.

Mr. FLANAGAN. May I ask a question?

What was Thon's background? You lived with him there.

Mr. SHUMACKER. Thon told me that he was born in Pennsylvania, I believe he said, and that—I forgot how old he was, but sometime when he was just a boy he went back to Germany to live. And then later, perhaps early in the thirties, I believe it was 1932 or 1933, he came back to the States and worked as a waiter in a New York restaurant. I think he told me it was a German restaurant.

In the Army, I think, he was used as a member of a prisoner-of-war interrogation team.

Mr. FLANAGAN. Mr. Schiffler, he had been a waiter prior to his entrance in the Army?

Mr. SHUMACKER. I do not know if that was his whole career, but I remember that specifically.

Senator BALDWIN. He spoke German fluently?

Mr. SHUMACKER. Yes, sir.

Senator BALDWIN. Returning to that mention you made of tricks again. You described them as psychological tricks. What we are particularly interested to know, is, in any of these methods that were used, whether torture or physical abuse, lack of food, or threatening to withhold ration cards of the family of the men who were in prison, or solitary confinement, or torture of any kind, was used.

Mr. SHUMACKER. Not to my knowledge, sir; and I never received any complaints. There was one occasion where food was withheld, but not for that reason.

Senator BALDWIN. Tell us about that.

Mr. SHUMACKER. That was pretty soon after we got to Schwabisch Hall. We had told all the prisoners not to attempt to communicate with each other through any means, and that if they did so they would be punished. We found that they were writing their names and various messages, or scratching them, on these aluminum ware, or similar ware, eating utensils which were brought to them at every meal-time. When we found that going on, that being the only thing we had to feed them with, and thinking that would not only hurt our case but was a general threat to security, we had those names and messages removed from those utensils by the German cooks—not Malmédy suspects—who were on duty there in the prison, and my recollection is that took a couple of days. During that time they had bread and water; and after that time, after they were cleaned up, the rations were resumed.

Senator BALDWIN. Do you have any further questions?

Mr. FLANAGAN. On these questions of tricks, I think one of the things the committee would like to know is the extent of these tricks. We knew, for example, from the testimony here, that prisoners were told that you knew more facts than you actually knew. You pretended to know more than you actually knew.

Mr. SHUMACKER. That is right.

Mr. FLANAGAN. We know from the testimony that the prisoners were advised that a microphone was in the cell and that you knew the conversation when, in fact, there was no microphone. We know that you used stool pigeons, planted them in the cells with the various prisoners, or however you used them. We know that those tricks took place.

In addition to that, did you ever know of anybody telling any of these men that this was a very serious crime at the Crossroads, for example, that they would surely be dealt with very severely because at the Crossroads the son of a prominent businessman, and the son of a Senator, was involved? Did you ever know of them using that type of deception?

Mr. SHUMACKER. I believe I do.

Mr. FLANAGAN. They did use that?

Mr. SHUMACKER. I believe I do.

Mr. FLANAGAN. Did you ever know that they used such deception as telling the prisoner: "If you do not cooperate with us fully here, we will turn you over to the Russians"?

Mr. SHUMACKER. No, sir.

Mr. FLANAGAN. Did you ever know of such a trick where they would say: "If you do not cooperate completely and fully with us, we will cut off ration cards from your family"?

Mr. SHUMACKER. No, sir.

Mr. FLANAGAN. I am not meaning that they would do it, but would they tell the prisoners that they would do it?

Mr. SHUMACKER. No, sir.

Mr. FLANAGAN. Are there any of these other tricks that you can tell us about, specific tricks, as you recall them?

Mr. SHUMACKER. I do not know whether you would call it a trick.

Mr. FLANAGAN. Well, a technique?

Mr. SHUMACKER. I remember, for instance, that we would never—when we thought a man was about ready to spill the beans, so to speak, we would say: "We do not want you to tell us anything at all about the prisoners you shot; all we want you to tell us is why you did it and on whose orders you did it."

I called that a trick of questioning, because I felt that the SS especially, as I said in my prepared statement, they might have thought that just because somebody else told them to do it, somebody of higher authority, that it was all right, and if we evidenced a disinterest by phrasing our question in that manner, that he might tell us who ordered him to shoot; and, after he told us who had ordered him, his platoon leader or company commander, then it would be easier for him; the German mind would make it easier for him to tell us whether or not he shot prisoners himself.

Mr. FLANAGAN. In other words, you tried to implant in the accused's mind the idea that superior orders might be a defense to what he did?

Mr. SHUMACKER. No. Well, I would say we played on that conception that might be in his mind, by telling him that "we do not want you to talk about the prisoners that you shot at the Crossroads; we know all about that. All we want to know now is why you did it."

Mr. FLANAGAN. Did you ever have any of the stool pigeons attempt to plant that information in the mind of some of these less-educated Germans, that "we are not going to do anything to you if you will blame it on your superior?"

Mr. SHUMACKER. I do not remember doing that.

Mr. FLANAGAN. Is it possible that that was done to build up this conception?

Mr. SHUMACKER. I would say it is possible; yes.

Mr. FLANAGAN. Was it possible that any of your interrogators ever intimidated or indicated or planted the impression in the minds of some of these less wily prisoners that, if they would implicate a superior, they, themselves, might not be dealt with so severely?

Mr. SHUMACKER. I do not believe anyone would go nearly that far, because that would be akin to a promise of immunity.

Mr. FLANAGAN. Nevertheless, you were trying to make an impression on their minds that it would be better to blame it on a superior rather than to say that they did it without orders?

Mr. SHUMACKER. We wanted to make it easier for them to confess, and we felt it would be easier if they blamed it on somebody else.

Mr. FLANAGAN. Would you now say that that is fringing on the borders of offering immunity?

Mr. SHUMACKER. No; I would not.

Mr. FLANAGAN. At least, that is what you are planting in the man's mind.

Mr. SHUMACKER. I am not planting anything in his mind, sir. I am just capitalizing on what is already in his mind.

Mr. FLANAGAN. You are capitalizing on his ignorance.

Mr. SHUMACKER. Well, I do not call it ignorance. I call it thinking.

Mr. FLANAGAN. Obviously, a trick like that would not work unless the man himself thought that superior orders were a defense. If for example—

Mr. SHUMACKER. I do not know whether he thought it was a defense. He thought perhaps it was some help.

Mr. FLANAGAN. At least a partial mitigation?

Mr. SHUMACKER. Maybe some partial mitigation.

Mr. FLANAGAN. If, for example, I was being interrogated, and having read the Articles of War or the rules of American warfare, and I knew definitely that superior orders was no defense, I surely would not fall for ruses like that if I were going to lie about it.

Mr. SHUMACKER. They testified, those who took the stand, that they had been thoroughly indoctrinated in the rules of warfare.

Mr. FLANAGAN. Some of them must not have remembered them.

Mr. SHUMACKER. Maybe they did not. I do not know.

Mr. CHAMBERS. I wonder if you would give us a fast statement on Kirschbaum, on the same general subjects?

Mr. SHUMACKER. My recollection of Kirschbaum is that we used him, not as an interrogator, but as an interpreter.

Senator BALDWIN. We will recess for a few minutes while I go to vote.

(Whereupon a short recess was taken.)

Mr. CHAMBERS. Mr. Shumacker, I believe you had just made the statement that it was Kirschbaum who was largely used as an interpreter?

Mr. SHUMACKER. Yes. I think he and Ellowitz, if I remember correctly, worked together most of the time; perhaps during the tail end of the investigation Kirschbaum was used on occasions as an interrogator.

Mr. CHAMBERS. Do you have any knowledge, or could you comment, on Kirschbaum's attitude on these things? Did he ever discuss how prisoners should be handled or have any ideas or express any opinions on it?

Mr. SHUMACKER. Kirschbaum was jovial, a phlegmatic individual, and was quick to do pretty much just as he was asked to do, very cooperative, no great display of feeling or emotion about the problem.

Mr. CHAMBERS. How about Ellowitz? Could you discuss him from the same angle?

Mr. SHUMACKER. Ellowitz, I thought, was a very conscientious and capable interrogator and lawyer. I believe that Ellowitz and Fanton and I, because of our legal background, probably saw things the same way all the time. Perhaps more so than, say, Kirschbaum or somebody like that without legal training.

Mr. CHAMBERS. Did Ellowitz ever discuss this matter of manhandling prisoners with you?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. Do you know a man by the name of Steiner who worked there?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. It has been testified here by Mr. Bailey that Steiner worked with Perl, that they would come back and Steiner was much

more talkative than Perl. And he told us, generally, mostly when Perl was not present, of the things that they did. One of the things that Steiner said that they did—I presume he means Perl and himself—was to march a man up some steps and make him believe he was on a scaffold, tie a rope around his neck and jerk him, for the purpose of getting a confession.

Would it have been reasonable to assume that Steiner was assigned to work with Perl?

MR. SHUMACKER. Not any reason in the world, because Perl spoke much better German than Steiner. Steiner was conscientious, but the fact is that he was brought there as a translator. But he wanted to do a bigger job, to work as an interrogator or interpreter. But his translations actually were unsatisfactory, because his command of both German and English was inadequate, we felt. And he was sent back to Wiesbaden.

MR. CHAMBERS. Did Steiner carry out any interrogations by himself?

MR. SHUMACKER. Not that I know of.

MR. CHAMBERS. Do you feel that he had occasion to observe closely the work of Perl or any of the other interrogators?

MR. SHUMACKER. I do not see why he would have ever worked with Perl or Thon. Perhaps if Kirschbaum might have been trying to do an interrogation he might have served as an interpreter, a substitute interpreter, for Ellowitz.

MR. CHAMBERS. Did he ever work for you?

MR. SHUMACKER. I think I tried to use him as an interpreter on one or two occasions, and he tried, but he just could not translate literally, the question as I phrased it, in the exact words.

After a few months of hearing pretty much the same questions all the time, although I still did not know German, I could tell that it was not a literal translation, and I could tell from the answers it was not a literal translation.

So he did work with me enough for me to make that observation.

MR. CHAMBERS. Did you hear Steiner express himself on the subject of Germans generally, and whether or not he disliked them or hated them, and would like to push some of these prisoners around?

MR. SHUMACKER. He never made that statement to me.

MR. CHAMBERS. Did you know that his mother had been killed by the Germans?

MR. SHUMACKER. I may have known it at that time, but the mention of it does not bring back any recollection of it.

MR. CHAMBERS. Do you recall the circumstances under which Steiner left Schwabisch Hall, why he actually was sent away?

MR. SHUMACKER. I think because of unsatisfactory translations.

MR. CHAMBERS. You never heard of any incident where he abused or shouted at or had any trouble with the prisoners?

MR. SHUMACKER. No, sir.

MR. CHAMBERS. Just one other question: I notice that your name has been mentioned in the affidavits as having taken part in some of the mock trials?

MR. SHUMACKER. Yes, sir.

MR. CHAMBERS. I would be interested, not in going into the lurid details or description of the mock trials again, unless Mr. Flanagan

wants to bring it out, because I think we know pretty well the set-up of the thing.

But there are two points on which I am still a little confused—maybe many more, but two in particular. One is in this business of the bad boy and the good boy, as Perl called them, or the defense counsel and the prosecution, or the prosecuting attorney as we might call him. What was the role that they played and how far did the defense counsel go in convincing the accused that he was, in fact, his defense counsel and was there to take care of his case?

Mr. SHUMACKER. I cannot repeat actually what was said, because I do not know what was being said myself, those that I sat in on, because it was all German, and all Greek to me. But I do know that the one who posed as the good boy, or as you say, the defense counsel, did not talk to the man before he was brought into the room, that I ever saw. He was brought up to the hall; the stage was set with two or three or maybe one, or whatever we could get, men sitting behind the table. The man was brought in, the hood was removed, and one of the men sitting behind the table would have him take an oath, and immediately the bad boy, or the prosecutor, if you want to call him that, would start making a big harangue, I assume telling him that he was accused of shooting prisoners of war at Malmedy, or Stoumont, or whatever the situation was. And then the defense counsel, or the good boy, would say nothing.

Then we would bring in a witness who had implicated this man, who was in the room, and he would tell his story. Then if we had another story, we would bring him in. If we had no other witness, we might bring in a fake witness. Then the good boy, who was befriending him, would start talking German, not to the man that was going to be questioned, but arguing with the bad boy, the prosecutor, and arguing to the men sitting behind the table, and taking up, taking the part of the man who had been brought in.

What he said, I do not know. Maybe I could have gotten just the gist of it. But the point I am making is that I never heard any remarks directed by the good boy to the man that he was supposedly befriending.

Mr. CHAMBERS. On the other hand, there is no question but that they were trying to build the good boy up in the estimate of the accused?

Mr. SHUMACKER. That is right.

Mr. CHAMBERS. So that later on he could probably get some confessions from him?

Mr. SHUMACKER. That is right.

Mr. CHAMBERS. How many mock trials did you take part in?

Mr. SHUMACKER. I would guess maybe two.

Mr. FLANAGAN. May I ask a question?

Mr. CHAMBERS. I would appreciate it if you would while I am looking for something here.

Mr. FLANAGAN. In view of the circumstances that the judges were sitting back of the table, and you had a crucifix there, and you had brought witnesses in, and you had one man who was maybe the prosecutor and the other the defense lawyer, do you think that in any of these cases it is possible that this whole procedure might have left the im-

pression with any of these particularly young and uneducated soldiers that they were being brought before a judicial tribunal?

Mr. SHUMACKER. It might be. Not so much because of the set-up, because it was actually very pitiful. You just didn't have the facilities to work with. But because—I am informed, and I believe—people in Nazi Germany were accustomed to summary hearings if any hearings at all.

Because of that mental idea, because of that conception that they might have, they could have so concluded that this was a bona fide hearing.

Mr. CHAMBERS. Mr. Bailey testified that he attended one mock trial, at which I believe he said that you took part. That was the mock trial in connection with the case of the man by the name of Neve.

Do you recall that mock trial, by any chance?

Mr. SHUMACKER. I think that I do. I think that I testified before that Neve was the last of those three men to give us the story, and I think we did use it on Neve.

Mr. CHAMBERS. In his description of that mock trial there are a couple of matters I would like to ask you about. One is that he said, and I will quote from his statement:

Mr. BAILEY. On this particular occasion, we walked in the cell, and when I saw that I said to Captain Shumacker, I said, "What the hell is this?" I thought it was something out of the ordinary coming off, and he said, "That's O. K.; wait a minute." So, in a matter of a couple of minutes, one of the MP's brings the prisoner in with his regular dress, black hood, cloak, and a rope.

Senator BALDWIN. But what I meant was: You said he had a black hood on and a black wrapper you called it.

Mr. BAILEY. It was not black. This wrapper was mostly all colors. It was white and red and green and everything else. If you have seen a camouflaged battleship in the First World War, that is what this wrapper was like.

Senator BALDWIN. And you say it was sleeveless?

Mr. BAILEY. Yes, sleeveless.

Senator BALDWIN. Then, you spoke of the hood the prisoner had on, a black hood.

Mr. BAILEY. A black hood with no eyeholes in it at all. That was the regular garb that they brought every prisoner in the cell with.

Senator BALDWIN. Then, you mentioned a rope around the neck. Tell us about the rope. What kind of a rope was it?

Mr. BAILEY. I would say a rope twice as thick as the ordinary clothesline, probably three-quarters of an inch in diameter. It was not tied tight. It was not put around to choke him, or anything like that.

Senator BALDWIN. Well, would you say that it was like a hangman's rope or would you say—

Mr. BAILEY. Exactly.

Senator BALDWIN (continuing): Or would you say it was a rope to tie the hood down so that it could not be pulled off the head?

Senator BALDWIN (continuing). Or would you say it was a rope to tie the prisoner; and outside of mental brutality, there was no physical brutality attached to it.

Mr. BAILEY. I think the whole garb was to have a psychological effect on the prisoner; and outside of mental brutality, there was no physical brutality attached to it.

Senator BALDWIN. How long would the rope be? Would it hang down—

Mr. BAILEY. Oh, the M. P. who would bring him in would have hold of the other end, probably 3 feet in back of him. That would be around his neck. The M. P. would have to steer him in, he could not see where he was going.

How about this rope proposition?

Mr. SHUMACKER. There wasn't any.

Mr. CHAMBERS. Then you are saying that Mr. Bailey is drawing on his imagination?

Mr. SHUMACKER. He is certainly drawing on his imagination. There was no rope, there was no varicolored cloak; there was a hood on Neve, as on everyone else when brought up here.

Mr. CHAMBERS. Your memory is pretty clear on this particular instance?

Mr. SHUMACKER. I am not talking just about Neve; I am talking—I don't remember the detail of the Neve Schnell procedure, no; but he said that I was there, and I know that I never saw a rope on Neve or anybody else. I never saw a varicolored cloak on Neve or anybody else.

Mr. CHAMBERS. The only other question that I would like to ask about is where Neve fell down and got himself a bloody nose there.

Mr. SHUMACKER. No. But Neve was afraid, and he told me, I think on that occasion, that he was sick—no, he told me that he had heart trouble. Neve told me that he had had heart trouble, and I don't remember—I believe Captain Karan was the medical officer on duty at that time, I believe that was before Dr. Richter came.

I had told the doctor—a captain or maybe major—to look at him, to check him.

Mr. CHAMBERS. I have no further questions.

Mr. FLANAGAN. I have no further questions.

Senator BALDWIN. In these various reviews, Lieutenant, have you ever appeared and testified in any of this investigation of this case before this time?

Mr. SHUMACKER. No, sir. Only I furnished that affidavit that I made.

Senator BALDWIN. You furnished the affidavit, but you have never appeared and testified?

Mr. SHUMACKER. No, sir.

Mr. CHAMBERS. I did want to ask you: You had a chance to see a lot of these prisoners and you helped work them all up for trial. I believe you testified that you screened approximately 500, to where there were only 73 accused for trial.

Some 2 or 3 years later, now, you have had a chance to hear a lot of stories. Do you still believe these people are guilty of the crimes of which they were charged?

Mr. SHUMACKER. Absolutely, I do. I might have some reservation about this, as I say, if those facts are true that were read to me from that—

Senator BALDWIN. You mean about Pletz?

Mr. SHUMACKER. Yes. I think any man, if he is given such evidence that seems conclusive, might change his mind about any question.

Senator BALDWIN. His sentence was reduced to 15 years, as I recall it. You were there all the time that these Malmedy prisoners, these SS troopers, were there, from the time they were first brought there to the time they were taken to Dachau?

Mr. SHUMACKER. Except for the 1 week, sir, that I spoke of, and occasional Saturdays.

Senator BALDWIN. During part of that time you were in command of the investigation?

Mr. SHUMACKER. Yes, sir.

Senator BALDWIN. What period did that cover?

Mr. SHUMACKER. I think it was a period of—well, to be safe, I would say 2 to 4 weeks, sir, that I was in command, you mean? Or the entire period?

Senator BALDWIN. That you were in command.

Mr. SHUMACKER. Two to four weeks.

Senator BALDWIN. And that was at the end of it?

Mr. SHUMACKER. I think Colonel Ellis was down there for perhaps a month before we moved to Dachau, is my recollection.

Senator BALDWIN. The period you were in command was after Fanton left?

Mr. SHUMACKER. Yes, sir.

Senator BALDWIN. And before Colonel Ellis came?

Mr. SHUMACKER. Yes, sir.

Mr. CHAMBERS. You had occasion to see these men after they went to Dachau, and during the trial, and you have already testified that you are convinced they were guilty. Did any of these men seem to have any remorse or feel that possible they had done wrong, or still feel they were fighting for the fatherland?

Mr. SHUMACKER. I remember one, I believe I may be wrong, but I believe his name was Gebauer, after we had his confession, and that might have been a day or two after he had actually verbally made it, but after he had actually signed his confession, he started crying in my presence, and told me that he realized what a horrible thing he had done, and he did not want to live with himself, and he did not understand why we just did not take him out in the courtyard and shoot him and get it over with.

Mr. CHAMBERS. How about the rest of them?

Mr. SHUMACKER. That is the only one that I remember, specifically making any comment about it.

Senator BALDWIN. What was his name?

Mr. SHUMACKER. I believe it was Gebauer.

Mr. CHAMBERS. Do you recall his sentence?

Senator BALDWIN. He got life, commuted to 10 years, and it was disapproved. He was apparently released.

Mr. SHUMACKER. He did all right.

Senator BALDWIN. Lieutenant, thank you very much for coming.

Colonel ELLIS. May I make a brief statement for the record?

Senator BALDWIN. Yes.

Colonel ELLIS. In connection with the making of recommendations for commutation of sentences, I would like to have the record show that at the time that was made, Mr. Denson was working on the review of this case, he was a former lieutenant whom I had known for well over a year. One evening, I believe it was, when our headquarters was in Augsburg, I spoke to him about what he was doing with the youngsters in the case.

That participated into some discussion. I expressed to him my opinion as to how these youngsters could do that, similar to what I had said here this afternoon. He said to me "If you feel that way, why do you not put in a recommendation?" I said "O.K., I will." And this was prepared, very informally, on a check-slip, or an inter-office communication.

I knew it was going to him, it was not going to go to anybody else, over to the commanding officer, who was Colonel Straight, and then

to Denson. If I had been of the opinion that it was going to Frankfurt or something like that, I would certainly have prepared it in a different way, but I just want the record to show how it was prepared and why.

Mr. CHAMBERS. Did Colonel Rosenfeld oin you in that?

Colonel ELLIS. He certainly did. I went back, after talking with Denson, and told Colonel Rosenfeld, who was chief of the trial branch at that time, that I had talked to Denson, and what my sentiments were. He said "Whatever you prepare I want to join with you," and we both signed the recommendation.

Senator BALDWIN. The meeting is adjourned until 10 o'clock tomorrow morning.

(Thereupon, at 5:45 p. m., the committee adjourned, to reconvene Friday, May 20, 1949, at 10 a. m.)

MALMEDY MASSACRE INVESTIGATION

FRIDAY, MAY 20, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senator Baldwin and McCarthy.

Also present: J. M. Chambers, of the committee staff.

Senator BALDWIN. The hearing will come to order.

Senator McCarthy has a statement to read and I will give him the opportunity to read it first, if he would like.

Senator McCARTHY. I have before me both a statement to the Chair and a press release, which I am issuing simultaneously. I would like to read both of them into the record. They have been submitted to the Chair only about 15 or 20 minutes ago, so I assume he has knowledge of the general content of these statements.

First is a statement to the chairman.

Mr. Chairman, some time ago our Special Investigation Committee became interested in the charges of the Van Roden-Simpson Committee and the Army investigating group to the effect that American Army officers in charge of war crimes trials were, in effect, tearing a page from the books of Hitler and Stalin in order to get confessions in the greatest possible number of cases, regardless of the guilt or innocence of the defendants.

These charges, made by two competent judges whom the Secretary of the Army sent to Europe to make an investigation and confirmed by an Army board, lead us to believe that the matter should be investigated thoroughly and completely by a fair and impartial committee.

The decision of our Special Investigating Committee was unanimous that we should conduct this investigation. Upon contacting the Armed Services Committee we learned that no thought to such an investigation had been given up to that time.

Our subcommittee, headed by Senator Hoey, felt however, that this was a matter of such vast importance that the Judiciary Committee and the Armed Services Committee should be formally consulted before the investigation commenced. The chairman of the Armed Services Committee strenuously objected to our committee's investigation and almost immediately appointed Senator Baldwin of the Armed Services Committee to head a subcommittee to make this investigation. Our committee was invited to send one of its members down to participate in the Armed Services Committee's hearing. I under-

stand the Judiciary Committee was invited. In accordance with that invitation, I have been taking part in the Armed Services Committee's investigation.

During the hearing to date some unusual things have developed. For example, the chief prosecutor, in explaining his conception of his duties at the time of the trial, stated that after obtaining a confession, if his own investigators found evidence that a confession was untrue and that the crime actually was never committed, they, nevertheless, had no duty to so inform the court and that he could proceed to attempt to convict a man upon a confession which he had reason to believe untrue.

I understand, incidentally, that the chief prosecutor has received the Legion of Merit for his prostitution and perversion of justice before the world.

When this attitude is coupled with the orders issued by Major Fanton, who was in charge of the interrogation team, a situation creating the possibility of tremendous injustice is present. The order to which I refer is paragraph B of Major Fanton's SOP No. 4, in which he instructs interrogators that they could promise war criminals immunity if they would sign statements sufficiently helpful in convicting their fellow criminals. This, of course, was a direct bid to those who wished to lie sufficiently so as to obtain their own freedom and indications are that the worst of the lot obtained their freedom in this manner.

The important fact to be decided by this committee was whether or not the methods used by the interrogators were such as to force an innocent man to sign a confession the same as a guilty man in order to escape torture. It is, of course, an unquestioned fact that an innocent man will scream just as loudly as a guilty man when being tortured, and, likewise, an innocent man will sign a confession just as quickly as a guilty man when being tortured.

It developed during the hearing that the Army hired refugees from Hitlerian-Germany to obtain confessions from the accused. That these refugees had every reason to thoroughly dislike members of the German troops is obvious. Three of these refugees, plus a Mr. Thon, were charged with brutalities greater than any we have ever accused either the Russians or Hitler Germany of employing. It is of tremendous importance that the truth or falsity of these charges be established.

When the first of these interrogators, Mr. Perl, was on the stand and was caught in contradictory statements, he excused himself by stating that, "Truth has many faces. Each one of which is a lie, but when taken together, these lies constitute the truth." In my opinion, it was obviously impossible to get the truth from this man except by the use of a Keeler lie detector. I asked him whether he would submit to such a lie detector test. He objected to the idea, but reluctantly agreed. Thereupon the chairman of the subcommittee, Mr. Baldwin, immediately objected to this one certain way of getting the truth. His actions at that time and the subsequent actions of the subcommittee in refusing to allow this witness, or the other two witnesses, to submit to a lie-detector test indicates only one thing to me; namely, that this subcommittee not only has no desire to obtain the truth but is conducting a deliberate attempt to avoid the facts and effect a whitewash of the Army officers involved.

I feel that the investigation has degenerated to such a shameful farce that I can no longer take part therein and I am today requesting the expenditures subcommittee chairman to relieve me of the duty to continue. I feel that if the Senate and the people of America condone this refusal on the part of a Senate committee to get the facts of a case as all-important as this, then we can never honestly condemn Russia or any other nation of employing the tactics which the Von Roden-Simpson committee and the Colonel Raymond committee and disinterested witnesses indicate that Army officers and employees used in attempting to improve their score of convictions in our occupied areas.

In my opinion there is a single and effective way in which this committee can obtain the truth and redeem itself; namely, have the three men accused of the principal brutalities submit to a lie-detector test. I believe that if the committee fails to follow this course of action, the people of America will have no choice but to believe that the committee is afraid of the facts.

Mr. Chairman, I have before me a press release, which contains substantially the same information, but I would like to read it into the record also. This is a press release from the office of Senator Joe McCarthy (Republican, Wisconsin). Release date, Friday, May 20, 1949, 10 a. m.:

I wish to announce that I will no longer take part in the hearing of the Armed Services Committee investigating the War Crimes Trials. I arrive at this decision with great reluctance, but I can no longer conscientiously participate.

I was designated by the Senate Investigations Subcommittee to participate with the subcommittee of the Armed Services Committee in this inquiry. Since April 18, 1949, I have sat with this committee, listened to, and cross-examined witnesses. I am convinced of several things. The subcommittee is not sincere in its investigation; it is not conscientious in pursuing the facts.

As a practicing lawyer and a judge on the circuit bench in Wisconsin, I know and respect the American system of justice. I believe the world expected a demonstration of American justice to be applied to even our defeated enemies. Instead, Gestapo and OGPU tactics were used.

I have listened to testimony and seen documentary evidence to the effect that accused persons were subject to beatings and physical violence in such forms as only could be devised by warped minds. They were subjected to sham trials, to mock hangings; and families were deprived of rations—all of which the prosecution justified as being necessary to create the right psychological atmosphere in which to obtain confessions. I am firmly convinced that innocent as well as guilty persons thus put in the right psychological atmosphere will confess to or make statements supporting anything.

I want no murdering Nazis freed.

I do want the innocent protected from the abuse of Hitlerian tactics, Fascist interrogation, and the communistic brand of justice.

Consistently the evidence pointed to four interrogators. One in the course of his appearance before the subcommittee agreed to take a lie detector test as to whether or not brutalities were used in securing of confessions or statements. The chairman of the subcommittee objected to the use of the lie detector test. The subcommittee chairman submitted the question to the Armed Services Committee; but they also objected to the securing of the facts as would be developed by the lie detector test.

I accuse the subcommittee of being afraid of the facts. I accuse it of attempting to whitewash a shameful episode in the history of our glorious armed forces. I accuse it of compounding a wrong, perpetrated by a few members, and impugning the fair name of the millions of men and women who served with valor and distinction in the armed services. I accuse it of sabotaging our efforts under the European Recovery Act, setting at naught that which we spent and are spending billions to prove.

If this is allowed to stand, if the whitewash succeeds, the United States can never protest the use of these methods by totalitarian countries. If the United

States condones those actions by a few men, all the world can criticize and forever after question our motives.

I want to thank the Chair for the opportunity I have had to sit with this committee this morning, and I thank him for the invitation extended to our committee, and I want to thank him for the personal consideration he has shown me during the hearings.

Senator BALDWIN. The chairman regrets that the junior Senator from Wisconsin, Mr. McCarthy, has lost his temper and with it, the sound impartial judgment which should be exercised in this matter. Before Lieutenant Perl was halfway through his interrogation, the junior Senator from Wisconsin charged him with lying and suggested that a lie detector be employed. At that time the Chair stated that the suggestion, which came as a complete surprise, was a marked departure from any procedure that had heretofore been used in congressional committee hearings and investigations. I discussed it with the members of the subcommittee, and likewise with the members of the Committee on Armed Services. The subcommittee, and the Armed Service Committee, were opposed to any such procedure for reasons I shall list. The junior Senator from Wisconsin refused to abide by the decision of the subcommittee and the Armed Services Committee as well. The chairman does not propose to have any exaggerations on the part of the junior Senator from Wisconsin affect his judgment in this matter.

More than 100 unarmed surrendered American soldiers were brutally shot down in cold blood by German SS troopers. To this day, not one has been executed for this crime. They have been tried and convicted. There have already been several reviews by the Army.

We are at the present time engaged in a full and comprehensive investigation of the methods used in (a) developing the Malmedy cases for trial; (b) the manner in which the trial itself was conducted; (c) the manner in which the various reviews and investigations of this subject have been conducted by the Army.

The subcommittee is nowhere near ending its search for the truth in this matter. Pending the completion of the taking of evidence and the studies in this matter, the Chair and the subcommittee have scrupulously avoided forming opinions concerning the ultimate conclusions to be drawn from the investigation, and certainly have avoided judging the merits of the various charges that have been made.

The junior Senator from Wisconsin has apparently proceeded from the assumption that the charges made concerning the items under study by this subcommittee have all been proven, and that the Department of the Army and the members of the American prosecution staff are guilty of the conduct charged to them. Those so charged have had until this time no opportunity to refute the charges or describe their actions. Oddly enough, the junior Senator from Wisconsin has been quick to accept and espouse the affidavits made by convicted German war criminals some 2 years after the completion of their trials. While he has repeatedly argued various aspects of procedure in American courts, he has apparently overlooked the fact that affidavits of this type have little or no value in an American court. He has in the meantime on numerous occasions stated that he believed American officers testifying under oath were not telling the truth. As late as yesterday he made such a statement concerning Colonel Ellis though no proof was offered.

One of the most provocative sets of charges made against the members of the prosecution staff were contained in an article appearing in the magazine *The Progressive* under the byline of Judge Edward L. Van Roden. And I might say here that Judge Van Roden is the same Judge Van Roden who is mentioned in the statement of Senator McCarthy.

This article with its charges was inserted in the *Congressional Record*. The junior Senator from Wisconsin has accepted these exaggerated statements of brutalities and mistreatment and has quoted from them at frequent intervals. The last instance of such reference was in a letter addressed to various members of the Senate Armed Services Committee dated May 16, 1949, in which he states as follows:

"The Van Roden-Simpson Committee, especially Judge Van Roden, brought back a story, which has received wide publicity, to the effect that the American interrogation teams did torture the defendants by means of mock trials, depriving families of the accused of ration cards, solitary confinements, beatings, et cetera, in order that confessions dictated by certain members of the interrogation team would be signed."

And may I insert here in this statement that, as I recall the testimony—and I do not pretend to judge it now—there was a marked difference in the testimony of Judge Simpson and Judge Van Roden with reference to these matters. In other words, as I recall it, Judge Simpson did not subscribe to the things, all of the things that Judge Van Roden had said in his statement.

Judge Van Roden appeared before this subcommittee some 10 days ago at which time he categorically denied having written the article which has been the basis of so much discussion. He denied in detail certain of the more brutal parts of it. Judge Van Roden on the stand stated that a representative of the National Council for the Prevention of War had written this article and, through a misunderstanding on Judge Van Roden's part, a byline attributed the article to him. So here we have a representative of the National Council for the Prevention of War writing an article and then in a press release from that organization, pointing up this article as a voluntary one by Judge Van Roden and publicizing it throughout its circulation.

In spite of the repeated charges made by the junior Senator from Wisconsin, the Chair has tried assiduously to avoid either partiality or lack of desire to obtain the full facts in this case. Such an action would not be consistent with the instructions of the full committee, or the avowed and oft-repeated desire of this committee to find all of the facts in this case.

At this point the Chair would like to read from a letter addressed to the chairman from the junior Senator from Wisconsin concerning the conduct of the hearings, letter dated April 21, 1949.

Senator McCARTHY. That was 3 days after the hearings commenced.

Senator BALDWIN. Three days after the hearing was commenced and after charges similar to those made here were made. The letter reads:

HON. RAYMOND E. BALDWIN,
United States Senate, Washington, D. C.

APRIL 21, 1949.

DEAR SENATOR BALDWIN: After yesterday's hearing on the Malmedy cases, I read some accounts of statements I made which would appear to do you a great injustice. None of the accounts I read misquoted me, but I fear that statements

I made with regard to the attitude of the Armed Services Committee in this case may have very easily been misinterpreted to mean that I was critical of your personal handling of this matter.

As you know, our Expenditures Investigating Committee became concerned with reports of the Van Roden-Simpson Committee and the Army Committee, regarding the methods used by the American Army Staff in obtaining confessions, convictions, et cetera, in the war crimes cases. When the Armed Services Committee suddenly appointed your subcommittee to investigate this matter after our special investigating committee of the Expenditures Committee had announced its intention of conducting this investigation, I frankly was very much disturbed by what I thought was an attempt to head off a complete investigation by our committee and provide a whitewash of the Army's prosecution staff.

However, I am convinced that at least since you have taken over, this situation does not exist and the efforts of the committee will be directed toward assembling and clearly presenting all of the facts. I want you to know that I have no criticism whatsoever of your handling of this investigation. I think you have been eminently fair and certainly have accorded every opportunity to the Expenditures Committee and the Judiciary Committee to participate in this investigation.

I might add that I think this is one of the most important investigations which the Senate has conducted for some years. I think it is doubly important in view of the billions of dollars we are spending in Europe to create good will toward this Nation and the amount of money and effort we are expending to sell to the peoples of the world democracy and American concepts of justice.

Sincerely yours,

JOE MCCARTHY.

It is the understanding of the chairman of this subcommittee that the junior Senator from Wisconsin wished to conduct hearings on this matter himself in a subcommittee of the Committee on Expenditures in the Executive Departments. Since the junior Senator from Wisconsin has on many occasions in the record stated that he believed certain American officers were lying and that the Malmedy trials were unfair, the chairman of this subcommittee wonders how impartial would have been the conduct of these hearings had they been conducted under the chairmanship of the junior Senator from Wisconsin.

The apparent vehicle, the junior Senator from Wisconsin has found, to occasion his withdrawal from these hearings, is the question of whether or not these witnesses should be subjected to a lie detector test. The chairman of this subcommittee would like to state that the first witness, Lieutenant Perl, who was asked to submit to such a test, indicated his willingness. He would further like to state that this is a most unusual procedure in the Congress of the United States and has not yet been followed to the knowledge of the chairman on any occasion. While the chairman of this subcommittee is not aware of the reliability with which this method is regarded, he is of the opinion that the American officers and personnel, particularly Lt. William R. Perl, Harry Thon, and Joseph Kirschbaum are to be subjected to it, certainly it would only be proper to also subject the 74 German accused who signed affidavits at variance with their original testimony after they had been sentenced.

I think I should say for the benefit of the record the fact which I almost overlooked, although it already appears in testimony here, that only a very few of these German accused took the stand in the Dachau trials in their own defense, and that one of their defense counsel has stated in the record here in his testimony that the reason the defense counsel did not put the rest of them on was that the moment they got on the stand they began telling stories which would incriminate one another, and that the defense counsel, at least some of them, expressed

the doubt that they were then telling the truth and decided that the best thing to do was not to continue putting them on the stand.

That fact was borne out by the testimony of Lieutenant Shumacker yesterday, as I recall it. But still we will have to pass upon that, and I can make no final determination with reference to it as chairman of this subcommittee, nor am I prepared now to make any recommendation about it.

To submit one side without the other would work a great injustice. To subject every witness to take tests would be, as a physical matter, an impossibility. Because of that, the chairman feels that the junior Senator from Wisconsin can either withdraw or not from these particular hearings as he sees fit.

The junior Senator from Wisconsin proposes to use this lie detector upon three witnesses—Lieutenant Perl, Thon, and Kirschbaum. The use of this device by a congressional committee might have the effect of putting a Federal stamp of approval upon a method and device which, at best, is only in its infancy and which is not used generally in judicial or quasijudicial procedure throughout the United States. Such a precedent might well make a travesty out of congressional investigations which are, after all, not trials in which a person or persons are charged with a crime but are a search for information and facts upon which recommendations or legislation is based. The committee is capable of weighing the testimony and ascertaining the facts without the help of any such devices. The committee does not intend to be swayed by any emotional threats or charges.

Nowwithstanding the decision of the junior Senator from Wisconsin to withdraw from these hearings to which he was invited by this subcommittee, I will ask the chairman of the Committee on Expenditures if that committee would care to designate another representative to sit in on these hearings.

I want to say here, in addition to the prepared statement, that the chairman feels—and I am sure the other two members of the subcommittee feel—that we would be very glad to have a representative of the Committee on Expenditures in the Executive Departments, or the Judiciary Committee, if it so desires to send a representative.

I can assure the junior Senator from Wisconsin, and the public, that the hearings will be continued in a thorough and complete manner and with a maximum effort to determine the truth. Based on the findings of this subcommittee appropriate recommendations will be made for such action as the facts warrant.

The chairman and, I think, the other two members of the subcommittee and the Armed Services Committee as well consider this investigation of great importance because it seems to me that we are dealing here with a new, and completely new, phase of international law and procedure, and it is the hope of the chairman of this committee that out of these hearings may come some recommendations for future conduct of such matters that will be helpful in this whole field of international law.

While the junior Senator from Wisconsin has apparently accepted the unsupported affidavits of German SS troopers, some of whom unquestionably were guilty of the cold-blooded murder of numerous American prisoners of war and helpless civilians, as against the sworn testimony of American officers and military personnel, we will en-

deavor through every reasonable means possible to determine the truth and then judge the case on the facts as presented.

Senator McCARTHY. I thank the chairman. I might say I think the chairman is inherently so fair and honest that the day is going to come when he is going to bitterly regret this deliberate and very clever attempt to whitewash. I think it is a shameful farce, Mr. Chairman, and inexcusable. Good-by, sir.

(Senator McCarthy leaves room.)

Senator BALDWIN. Who is the first witness?

Mr. CHAMBERS. Dr. Karan.

Senator BALDWIN. Dr. Karan, raise your right hand. Do you solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. KARAN. I do.

TESTIMONY OF DR. MAX KARAN, BROOKLYN, N. Y.

Senator BALDWIN. Give us your full name and address, Doctor.

Dr. KARAN. Max Karan, 1873 Ocean Parkway, Brooklyn, N. Y.

Mr. CHAMBERS. Dr. Karan, will you please tell us your present profession and where you are practicing.

Dr. KARAN. I am a licensed physician in the State of New York and have been in practice since 1928.

Mr. CHAMBERS. Will you please give us some of your qualifications as a physician, including your educational background.

Dr. KARAN. I graduated from Indiana University in 1927, and I interned at St. Mary's Hospital in Orange, N. J. I have been a licensed physician in New York since the end of 1927. I am now connected with several hospitals in New York and Brooklyn.

Mr. CHAMBERS. During the war were you attached or assigned for duty to Schwabisch Hall?

Dr. KARAN. Yes.

Mr. CHAMBERS. During that time were you in charge of the medical detachment at that point?

Dr. KARAN. Yes, sir.

Mr. CHAMBERS. Can you tell me the dates when you were at Schwabisch Hall?

Dr. KARAN. I was assigned December 20, 1945, and I was relieved from that assignment on January 20, 1946.

Mr. CHAMBERS. During that time were you responsible for the medical care and dental care of the Malmedy prisoners who were imprisoned at Schwabisch Hall?

Dr. KARAN. Yes.

Mr. CHAMBERS. Can you tell us very briefly of your organizational set-up and how those particular prisoners were handled?

Dr. KARAN. Well, we had a dispensary set up with some medical aide men, of whom I was in charge, and the set-up was that the names of those who were sick would come down through the commander of the prison and they would be handed down either to me or to one of the aide men, medical aide men, in the hospital, and then I would go through with him and visit the prisoners, the internees, in their cells and whatever medical attention they would need I would prescribe

for them. If it was hospitalization that was necessary, I would send them to the hospital.

Mr. CHAMBERS. Now, Doctor, during this time were the Malmedy prisoners as distinct from the political internees at Schwabisch Hall given any other medical treatment than that given by yourself?

Dr. KARAN. No. When I was there, I was responsible for the treatment of the Malmedy internees.

Mr. CHAMBERS. Was there any other medical care that was brought in or did the German doctors and medical staff who were interned, in fact, at Schwabisch Hall treat the Malmedy prisoners?

Dr. KARAN. Not the Malmedy prisoners; only the others.

Mr. CHAMBERS. So it would be fair to state that during the period of time you were there all matters requiring medical attention were your responsibility up until the time you were relieved?

Dr. KARAN. That is right.

Mr. CHAMBERS. Then during this time, Doctor, did you have cases of Malmedy prisoners requiring medical care for injuries that might be attributed to beatings or brutalities of any kind?

Dr. KARAN. No.

Mr. CHAMBERS. Did you ever have any case of Malmedy prisoners who received injuries to the jaw either in the form of broken jaws or ruptured jaws?

Dr. KARAN. No.

Mr. CHAMBERS. Did you ever have occasion to send people to the hospital for injuries?

Dr. KARAN. Yes; for injuries they sustained in the German Army. In other words, old war wounds, but not recent injuries.

Mr. CHAMBERS. Did you know of any cases where the genitals of Malmedy prisoners were damaged in any manner whatsoever and required medical treatment?

Dr. KARAN. None.

Mr. CHAMBERS. Now Doctor, do you speak German?

Dr. KARAN. Yes.

Mr. CHAMBERS. In visiting and treating these patients in their various cells, did anybody ever complain to you of mistreatment or mishandling by the guards or by the interrogators or by anyone?

Dr. KARAN. No.

Mr. CHAMBERS. No complaint was ever made to you?

Dr. KARAN. No.

Mr. CHAMBERS. Do you believe, Doctor, that because of your contact with the prisoners that you would have observed any cases that might not have been reported to you?

Dr. KARAN. The way the set-up was I think all the cases that required medical treatment were reported, because it came through the prison commander and the guards were watching. They brought the names down to me, and most of the time the team didn't even know which cases, which names came down to me.

In other words, when I had to send a patient to a hospital, and although I was with the team, we ate together in the same place, to tell them and ask them if it was all right to transfer them to the hospital. It just wasn't really a request because Major Fanton never refused me medical attention, but I just told him that patients required hospitalization and I will have to transfer them.

Mr. CHAMBERS. From your experience there do you believe it would have been possible for prisoners to have been beaten or perhaps have suffered injury and placed in solitary confinement or in cells and the matter not reported to you?

Dr. KARAN. They could have placed them in solitary confinement; a lot of them were; but not to be beaten because I would find out. I found out most of the things.

Mr. CHAMBERS. I wonder if you would care—you say you found out most of the things that were going on—would you care to comment, Doctor, on the way that the prisoners were treated?

Now, before you answer the question, I might say that we have had many charges, some of them by persons who were attached as typists or court reporters to the interrogation staff, that would indicate that prisoners in some cases were deprived of rations—in other words, put on bread and water—for rather extended periods; we have many affidavits for the prisoners themselves that indicate they were deprived of rations; that they did not get adequate drinking water; that they suffered greatly from the cold because they did not have adequate blankets, and that in many ways their physical being was drastically affected by their treatment.

I wonder if out of your long months of experience there you could tell us pretty generally how you evaluated the treatment given the prisoners.

Dr. KARAN. In a general way the sanitary condition was good. The medical treatment was definitely adequate, and the rations were always adequate and ample, except there was only one time during the stay that I was there when they were put on bread and water for, I think, only about two meals, and that was because, I believe, they were passing signals or passing messages, secret codes through the mess gear; and I sort of took a hand in it and said I was going to report it and that was discontinued. It was only for about two meals during that month. The rest of the time rations were definitely adequate.

I did not treat anyone for malnutrition or for any deficiency. The only treatment I had there was for old wounds and for things, minor ailments, and whenever a patient had to be hospitalized, there was no question. If I thought, in my judgment, he had to be hospitalized, we sent him down; I took him down myself under guard to the Stuttgart General Hospital, and there he got the same treatment as other patients in the general hospital.

Mr. CHAMBERS. You say you did not treat anybody for malnutrition. From your observation of prisoners, were they getting sufficient food?

Dr. KARAN. Yes; they were. Their rations were adequate. They were getting sufficient food.

Mr. CHAMBERS. Were they approximately the same rations that the internees and other prisoners at Schwabisch Hall were getting?

Dr. KARAN. Yes.

Mr. CHAMBERS. You said a minute ago in connection with this bread-and-water incident that you decided to interfere a little bit after a few meals, I believe you said one or two. As the surgeon or medical officer at that station, it would be your responsibility on bread-and-water cases to keep an eye on those prisoners; is not that correct?

Dr. KARAN. Yes. That is why I did it, because it came within my duties.

Mr. CHAMBERS. Did they place all the Malmedy prisoners on bread and water, or just certain individuals?

Dr. KARAN. I believe at that time all of them were placed for just about two rations, and it was supposed to be continued, but it was discontinued after I spoke to the commander of the prison.

Mr. CHAMBERS. Do you know on whose orders they were placed on bread and water?

Dr. KARAN. They were placed, I think, on the order of the team. Whether it was Major Fanton, who was in charge, or Lieutenant Perl or someone else, but it was the team that did that.

Mr. CHAMBERS. When you say two rations, you mean 2 days; is that correct?

Dr. KARAN. No; two meals.

Mr. CHAMBERS. Just two meals?

Dr. KARAN. Two meals.

Mr. CHAMBERS. Why did you feel bread-and-water punishment for only two meals would be harmful, Doctor?

Dr. KARAN. I felt that it should be reported properly. It wasn't a case of really—if that was proper punishment, then it should be reported to the proper authorities.

Mr. CHAMBERS. How did you find out about the bread-and-water incident?

Dr. KARAN. Being around the prison all day long and being with the men, I knew what was going on.

Mr. CHAMBERS. Did the men complain to you of being on bread and water or not being fed?

Dr. KARAN. No; they didn't complain to me.

Mr. CHAMBERS. But it just came to your knowledge through going around that they were on bread and water and then you talked to Captain Evans or Major Fanton about the matter?

Dr. KARAN. Yes; I spoke to Captain Evans. I think Major Fanton and the team left Schwabisch Hall for a day or so and were not around that particular day.

Mr. CHAMBERS. As far as you know, that was the only instance of bread and water for any individual prisoner or the whole group of prisoners while you were at Schwabisch Hall?

Dr. KARAN. That is right.

Mr. CHAMBERS. Now, Dr. Karan, we have an affidavit here from a Dr. Knorr, who was a German dentist, I believe, who came in periodically to treat the teeth of the Malmedy prisoners. Did you know Dr. Knorr?

Dr. KARAN. I did not know Dr. Knorr, but I knew that for the teeth we sent one or two prisoners to be taken care of by a German dentist.

Mr. CHAMBERS. Only one or two?

Dr. KARAN. While I was there only one or two, and that was just for teeth. In other words, cavities or toothaches or the like of that.

Mr. CHAMBERS. When these prisoners were sent to Dr. Knorr for treatment, were they under guard and were the guards with them or did they have a free opportunity to talk to Dr. Knorr and make complaints to him about any brutalities that might have taken place?

Dr. KARAN. I was never with the prisoners when they went to the dentist, so I wouldn't know how they behaved themselves down there. I was never present and I don't know exactly the set-up.

Mr. CHAMBERS. Do you know whether or not they were sent down under guard ?

Dr. KARAN. They were sent under guard wherever they went.

Mr. CHAMBERS. I think it would be proper to ask your opinion as to a couple of charges made by Dr. Knorr. I have a sworn statement here by Dr. Knorr in which he states :

In my capacity as official doctor of the former prison at Schwabisch Hall, I came there twice a week (generally on Tuesday and Thursday) to attend also to the dental needs of the internal people. These duties several times involved the treatment of members of the Waffen-SS (all of them very young men) who were to be heard in the Malmédy trial. Unfortunately, I cannot give any names, as it was forbidden to ask for names or other particulars. There may have been about 15 or 20 patients who had to be treated for injuries of the mouth and jaw. Maltreatments by blows could be clearly traced with nearly all of them. Once when I asked a young man how he was, he replied : "What can you expect if you are beaten so much almost daily, at any rate on the occasion of every hearing ; look at my head." And indeed, he was beaten blue all over the head, which was bloodshot. Moreover, I can definitely remember two cases in the one of which one tooth, and in the other one, four teeth were knocked out of the upper jaw quite recently. Besides, there was once presented to me a man with a rupture of the lower jaw which I was allowed to put in a provisional splint only because he was transferred to an American hospital at once.

All the men gave a very intimidated impression and answered the questions either not at all or very vaguely for fear their statements might be the cause of further maltreatments.

It is known to me that the people residing in the vicinity of the prison could definitely hear the cries of pain of the tortured men. That is why there was much agitation and indignation among the population.

That is signed by Dr. Knorr, dated June 1, 1948.

Dr. Knorr, of course, was treating the prisoners there even after you left, and some of these incidents might well have taken place after you were transferred from Schwabisch Hall ; but up until the time you left, what would your comment be as to Dr. Knorr's statements ?

Dr. KARAN. Of course, this is over 3 years ago, but the way I remember it he did not visit these prisoners regularly at the prison, and I remember, not too clearly but pretty well, that we used to send to him and we only had about one or two.

In that prison there was a dispensary that was being conducted by a German doctor and for the other prisoners, not the Malmédy internees, and he was treating those prisoners twice a week, and in a sort of general statement he might have seen one or two prisoners here and mixed the whole lot up and made one lot. I was supposed to inspect that dispensary once a week or so, but I had no charge of treatment. I was supposed to see they had adequate medical supplies and that the prisoners were getting proper treatment, but I had nothing to do with the treatment. It was a German civilian doctor that was treating the other prisoners.

Mr. CHAMBERS. I would infer from Dr. Knorr's comments about the teeth freshly knocked out and the black and blue head, and what-not, that they were Malmédy prisoners from the way his affidavit was drawn. What would be your comment as to that ?

Dr. KARAN. When I was there, to my knowledge, there was nothing of the sort. Nobody suffered from any injuries, either to the mouth or to the rest of the body.

Mr. CHAMBERS. Where were you quartered while you were at Schwabisch Hall ?

Dr. KARAN. It was in town with the Judge Advocate's office team.

Mr. CHAMBERS. Was there agitation and unrest in the town as to the way the Malmedy prisoners or, for that matter, any prisoners were being treated in Schwabisch Hall?

Dr. KARAN. No; I don't think there was any more agitation than in any other German town.

Mr. CHAMBERS. Did you ever hear any comments about maltreatment of prisoners at Schwabisch Hall from the Germans or from anybody else?

Dr. KARAN. The Germans didn't comment on anything. They kept to themselves mostly.

Mr. CHAMBERS. Were you in a position to hear cries of pain indicating people were being mistreated?

Dr. KARAN. When I was there, there was nothing of that sort. I didn't hear anything.

Mr. CHAMBERS. You had opportunity and your duties required you to go through the prison either visiting individual prisoners in the cells when they needed medical treatment or making sanitary inspections and other types of inspections throughout the prison; is that correct?

Dr. KARAN. That is correct.

Mr. CHAMBERS. During that time did you ever hear any people being mistreated?

Dr. KARAN. No, sir.

Mr. CHAMBERS. No screams, no cries?

Dr. KARAN. No.

Mr. CHAMBERS. Do you know anything about a man who had a ruptured jaw?

Dr. KARAN. Not when I was there. Nobody had a ruptured jaw that I saw in the hospital.

Mr. CHAMBERS. Going beyond the medical questions for a moment, did you know members of the interrogation team: Perl, Thon, Kirschbaum, and those people?

Dr. KARAN. I don't remember Kirschbaum. I remember Perl and Shumacker and Fanton. I remember them very well.

Mr. CHAMBERS. Did you associate with them and eat with them and things of that type?

Dr. KARAN. Yes.

Mr. CHAMBERS. Did you ever hear Perl or, for that matter, anyone else talking about the way they had handled prisoners, either from the standpoint of tricks, psychological tricks, things of that kind, or mistreatment?

Dr. KARAN. Psychological tricks, probably, but not mistreatment.

Mr. CHAMBERS. Did you ever hear that discussed as to whether or not it would be a proper thing to do in a particular case in order to force a confession?

Dr. KARAN. They never spoke about mistreating or physical violence on the patients, that that would be proper. They inferred you might get some place with it, but they never considered it as an immediate or satisfactory thing to resort to or to use; whereas, psychological tricks—well, they discussed that very often, and they thought that was proper.

Mr. CHAMBERS. It has been testified here by one witness that it was just pretty generally known or accepted by various people that certain of the interrogators believed that force might be the best way to get

evidence and confessions from these prisoners and that in particular Thon and Perl were known to have that belief.

I do not believe that witness said they actually did it, but he said they were known to have that belief and had that reputation. Do you have any knowledge of that particular point, Doctor?

Dr. KARAN. He expressed opinions at different times that the Russians would get confessions from them by using their methods, which would mean force or torture or something, and he sort of sometimes expressed the opinion that any way of getting the truth out of them or confessions out of them was the proper way. Perl used to make those statements every once in a while at the meal table.

Mr. CHAMBERS. Perl used to make such statements?

Dr. KARAN. Yes, he was about the only one that I remember.

Mr. CHAMBERS. How about Thon? Did he seem to concur in that point of view?

Dr. KARAN. Was Thon an officer then?

Mr. CHAMBERS. Thon was one of the interrogation staff, Doctor.

Dr. KARAN. I think I remember him. They used to sort of something, some of the other men would chime in and sort of agree, but I don't think it was ever discussed from the point of view of doing things like that. It was just an expression of opinion.

Mr. CHAMBERS. As to how the Russians would go at it?

Dr. KARAN. That is right.

Mr. CHAMBERS. You say there was no indication that they thought it should be done?

Dr. KARAN. I don't know—sometimes in arguments—I shared the other view, I didn't believe that was right, and sometimes we would get in an argument and sometimes they might take the other view in extreme statements, but I didn't really think they really felt like doing it or wanted to do it. It was just talk.

Mr. CHAMBERS. Do you believe if they had done it, that you would have known about it?

Dr. KARAN. While I was there I am fairly sure they didn't. Not only that, they—

Mr. CHAMBERS. I think I know why you have answered the question that way, but may I pick you up on it for a second?

You said that while you were there you are pretty sure that it didn't happen. Does that mean that you, by any chance, have reason to believe it happened after you left there?

Dr. KARAN. I don't know. I couldn't answer that, because that is guessing. Your guess is as good as mine.

Mr. CHAMBERS. I am trying to ask you directly: Has anything happened which would lead you to believe that it did happen after you left?

Dr. KARAN. Well, when I read those reports, I will tell you, I didn't believe them. So that is all I can tell you. Knowing the men and knowing what was what, certainly there might have been a grain of truth, but certainly not much more than a grain of truth in the whole report about the atrocities. I don't believe it, that is all.

Mr. CHAMBERS. Doctor, what is the "grain of truth" that you are talking about?

Dr. KARAN. They might have gone off a little and done something, but they didn't do it in a systematic sort of way.

Mr. CHAMBERS. But up until the time you left there you are sure it wasn't being done?

Dr. KARAN. That is right.

Mr. CHAMBERS. I have no further questions, sir.

Senator BALDWIN. When did you first go there, Doctor?

Dr. KARAN. December 20, 1945.

Senator BALDWIN. When did you leave?

Dr. KARAN. January 20, 1946.

Senator BALDWIN. You were there one month?

Dr. KARAN. That is right.

Senator BALDWIN. Now, at that time these Malmedy suspects, so-called, were they confined in this Schwabish Hall prison?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Had the interrogations yet started? Were they then questioning them, do you remember?

Dr. KARAN. This was in the midst of it.

Senator BALDWIN. I want to say this to you, Doctor: No one has inferred, nor do any of these affidavits, insofar as I have seen them—and I think I have seen them pretty thoroughly—no one has inferred that you are guilty or have you been charged with any torture or abuse, physical or otherwise, of any particular prisoner.

What we are anxious to get at here, what we desire to get at here is the full and complete truth.

I do not mean to infer by that that you are trying to protect anybody or anything of the kind, but what we want is the full and complete facts, and if you know of any occasion where any of the investigating team or any of the guards, to your knowledge, abused these prisoners in any way, we would like to know about it.

Dr. KARAN. I think I stated the truth here, Senator, as well as I could. To my knowledge, the prisoners were not abused physically. I was never around the investigations to watch out how it was conducted, I don't know enough about it to know which is the right and wrong way of doing it, and as far as the psychological or psychic, I can't pass any judgment, and I wasn't there to watch them.

I used to see them from the medical standpoint. They were not abused that way. There was one attempt to punish them with bread and water, and that was for one or two meals, and that was cut short. That is the only incident while I was there.

I did not treat them for any injuries, whether accidental or inflicted by anyone, except injuries that they had sustained during the war, old wounds that they had to be transported to the hospital, and some skin conditions or minor ailments.

Senator BALDWIN. How would a report of an injury or illness come to you? What system did you have for determining what men needed medical attention?

Dr. KARAN. The system that was followed in that prison was when the guards would serve breakfast to the internees, they would give them the name, the one that required the medical attention would give the name, and that would come down to the commander of the prison, and when I would come in in the morning about 9/9:30, they would give me the names, and I would go to see each internee in his cell.

Senator BALDWIN. In his cell?

Dr. KARAN. Yes.

Senator BALDWIN. Were you available for emergency cases of any kind?

Dr. KARAN. Yes, sir, at all times.

Senator BALDWIN. Do you recall an incident when one of the prisoners committed suicide? Was that while you were there?

Dr. KARAN. No, it was not while I was there.

Senator BALDWIN. But supposing one of the prisoners had been seriously injured, either by a guard or by one of the investigating team or through some accident. What would have been the way you would have been notified and how would you have handled the case?

Dr. KARAN. I was around during the hours that I was on duty between about 9 and 5 or 5:30. I was usually around the prison in the office and the names would be given to the guard.

The guard knew what was going on most of the time, and he kept in touch with these internees, and they would give him the name, and the name would come down the same way.

If it was an emergency, it would come down to me, and I would go see him, and if it was during the night, they would call me at my quarters.

Senator BALDWIN. You did not live at the prison?

Dr. KARAN. No, sir.

Senator BALDWIN. How far from the prison did you live?

Dr. KARAN. Oh, about a mile or a mile and a half. It would take about 5 minutes in a jeep or car.

Senator BALDWIN. During the time you were there, the month you were there, did you spend the daytime hours at the prison?

Dr. KARAN. Most of the time I was at the prison.

Senator BALDWIN. Were you ever called for any emergency case that you recall?

Dr. KARAN. I must have been. I don't recall any single case. An emergency didn't impress me as much unless it was something exceptional, and there was nothing exceptional that I remember.

Senator BALDWIN. Did you have an office there at the prison?

Dr. KARAN. I had a desk and office space in the prison.

Senator BALDWIN. Who did you share an office with?

Dr. KARAN. Captain Evans was in the office.

Senator BALDWIN. Captain Evans?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Whereabouts was your office?

Dr. KARAN. It was right near, I think, one of the desks, Captain Evans had one, I had one, and some of the girls were typing at the other desks.

Senator BALDWIN. It has been stated here that in the prison itself some of the cells were used for offices. Is that your recollection?

Dr. KARAN. I have never used one for an office. It was used by the investigating team probably.

Senator BALDWIN. Do you remember where the office of the commander of the prison was?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Where was that with reference to the office space you had?

Dr. KARAN. That was in the same room.

Senator BALDWIN. In the same room?

Dr. KARAN. Yes, sir.

Senator BALDWIN. And did you know where the rooms were where they conducted these investigations?

Dr. KARAN. Yes, sir.

Senator BALDWIN. How far were they or where were they from where you had your office?

Dr. KARAN. Well, that would be going through—it was one flight up and then you would have to go through several doors, and it would probably be about a hundred feet from there, from the office.

Senator BALDWIN. Would you say it was within earshot? I mean by that was it within hearing distance? I mean by that if there were any shouts or screams or anything of that kind, from where you were in your office could you have heard it?

Dr. KARAN. I might not have heard it from the office, but I would know about it because somebody would come down and tell me. Either, I was around there, I wasn't sitting at the desk, most of the time I was walking around through the prison seeing what was going on.

Senator BALDWIN. Did you make regular rounds of the prison?

Dr. KARAN. Yes, sir.

Senator BALDWIN. During that time did you talk with any of the prisoners?

Dr. KARAN. Well, I tried to limit my conversation to what was their complaint.

Senator BALDWIN. Do you speak German?

Dr. KARAN. Yes, sir.

Senator BALDWIN. And you were born in the United States?

Dr. KARAN. No, sir.

Senator BALDWIN. Where were you born?

Dr. KARAN. I was born in Russia.

Senator BALDWIN. And when did you come to the United States?

Dr. KARAN. When I was 12 years old.

Senator BALDWIN. So you had most of your schooling and all of your education here in the United States?

Dr. KARAN. Yes, sir.

Senator BALDWIN. But you do speak German?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Were there any records kept of the treatments you gave these men there?

Dr. KARAN. The records that were kept, the first aid men or the medical aid men—he had a book and put down the names and he would jot down diagnoses and treatment.

Senator BALDWIN. Under your direction?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Have you any idea where those records may be?

Dr. KARAN. Those records are not permanent records. The only permanent records in the Army are the ones in hospitals, even among the enlisted men. If we treated them in the dispensary, it was just temporary and they were lost some place.

Senator BALDWIN. In the Medical Corps of the Army, as I understand you, the only records that are preserved are the hospitalized cases.

Dr. KARAN. That is right.

Senator BALDWIN. So if there were any hospitalized cases at the prison in connection with the Malmedy prisoners, would those records be available, do you suppose, in the Medical Corps of the Army?

DR. KARAN. They should be. The cases that were hospitalized, the records should be there in the hospital. They are permanent records in the hospital.

Senator BALDWIN. You said that you overheard conversations of Lieutenant Perl and some of the others in which they inferred that you might get somewhere with these prisoners in getting confessions with physical violence. Can you tell us more about that? What did they say about it? What was their attitude toward it?

DR. KARAN. These were across-the-table discussions and just talking, they mentioned—there was no discussion about the guilt, about the crime having been committed. The question was as to how to find out the guilty ones. This was agreed, everyone that was there felt the same way, and Perl used to say the only way, the best way to get it would be the Russian way—they get results, send someone in for an hour or so and he comes out with a confession, because they use violence or they use something, and he thought that might get results.

Then we also had Mrs. Perl who had dinner with us on several occasions as a guest, and she claimed that she was in a concentration camp and she thought those methods would be appropriate.

Those were just expressions of opinion, but she expressed that many times, saying that the Nazis would get it, they had us, they would get confessions. That was the general line of discussion.

I used to take the other side. They probably got into some extreme statements because they argued the other side.

Senator BALDWIN. How often was that discussed, would you say? I mean by that: Was it a frequent subject of conversation?

DR. KARAN. When I first was assigned to this, the first week or so, I think this discussion went on almost every dinner hour or every other dinner hour. In other words, a few times a week that discussion would come up.

Senator BALDWIN. Was there discussion on the other side as well? You mentioned the fact that you were opposed to it.

DR. KARAN. I think I was the only one that took up this discussion because the other men would usually chime in and say there was no question about the crime, no question that some of them were guilty and should get the punishment, it seems, the others—probably would be all right to use any means.

Senator BALDWIN. In the light of that discussion, were any of these means, to your knowledge, used? And if there were we would like to know about it.

DR. KARAN. To my knowledge, they were definitely not used. I know of no case, and as far as I know, I can state that they weren't.

Senator BALDWIN. How do you know they were not?

DR. KARAN. Actually, although as I said, I was not going around watching the investigation, but I had my eyes open, and the medical end of it, after all, is connected up with a lot of the phases of it.

I was also in the investigating room, and if somebody complained about some illness, they might also complain about the way they are treated. The patients never did complain to me. They never complained to me about those things.

I didn't see any violence. My men, the medical men, the men in the prison, the guards never told me of anything that was done. The Germans, the civilians that were in the prison—I spoke to them, most of them could speak English very well, a few of them—they were

around all over the prison and they never complained or said anything about means that were used that were cruel or brutal.

I have reason to believe that if any of these means were used, they probably would tell me or I would hear some rumor to that effect.

Senator BALDWIN. Did you ever hear any at all?

Dr. KARAN. No; I did not.

Senator BALDWIN. You are sure of that?

Dr. KARAN. That is right.

Senator BALDWIN. Do you think, Doctor, that you were in a position to know of your own direct knowledge whether or not any physical abuse or violence was used on these prisoners?

Dr. KARAN. The possible way that I could know is the fact that I did not treat any of the cases. Also the way the system was, if there were any cases like that to be treated, I would have to be informed about it. So I have reason to believe that there were no cases of violence.

Senator BALDWIN. At least, no cases that required medical treatment of any kind.

Dr. KARAN. That is right.

Senator BALDWIN. You mean if a prisoner was pushed against a wall or if any of those other things that did not require medical attention occurred, would you know anything about those?

Dr. KARAN. If it was very minor and the internee would not complain about it, I wouldn't know about it.

Senator BALDWIN. During the course of your trips around the prison you say you talked with these prisoners?

Dr. KARAN. The prisoners, the Malmedy internees, I only talked to them when I was called to treat them; and I tried to limit it to their complaints and anything related to it.

Senator BALDWIN. Was there an opportunity offered for them in their talks with you to make any complaints if they had any complaints?

Dr. KARAN. They knew I was a doctor and they knew that to a doctor they have to complain, whether it is anything that has to do with their health, whether it is an injury, or whether they had pain or if they didn't get proper food.

Senator BALDWIN. There had been a charge made in one of the affidavits that many of these men were kicked and injured in their genitals. Was there any complaint made about that?

Dr. KARAN. There was no one who complained to me or was treated for any of these conditions during the time I was there.

Senator BALDWIN. You are quite sure of that?

Dr. KARAN. I am absolutely certain of it. I would remember that.

Senator BALDWIN. I think that is all the questions I have.

Mr. CHAMBERS. I have one or two questions.

In this matter of kicking in the genitals, and what not, Doctor, that would have been, if it had been done, that would have been of such a serious nature that they would have required medical treatment or hospitalization; is not that correct?

Dr. KARAN. I think they would, unless it was very mild and very transient.

Mr. CHAMBERS. If they had been injured to the point where they were ruined for life, would that have required, in your opinion, hospitalization or medical care?

Dr. KARAN. Yes; it would.

Mr. CHAMBERS. Coming back to these conversations, which apparently took place across the dinner table, and what not, were those somewhat general in character? Did it appear to be that the whole staff would sit down and discuss this thing from the standpoint of arguing whether they should or should not, perhaps, slap the boys around for the purpose of getting some fast answers?

Dr. KARAN. It was general, but it was more general than that, and it was general enough not to insinuate that this was the method that was going to be used.

It was a question of whether this should be used and/or whether this might bring results. It was not a thing that was considered, that this particular team was going to be using it.

Mr. CHAMBERS. You formed the opinion that they discussing it rather abstractly and not trying in their own minds to justify their doing it or talking themselves into doing it?

Dr. KARAN. That is the impression I had, just an up-and-back talk, and I expressed the opinion that I didn't think it was proper, and they said, "Well, under the conditions it might be proper," but that is about all.

Mr. CHAMBERS. Speaking specifically of Perl, do you feel that his expression of those opinions would indicate that possibly he would adopt such tactics if he felt it necessary to get a confession?

Dr. KARAN. I had the impression that if he was in charge, he might, but I didn't think he was, and I didn't think he would. That is the impression I had.

Mr. CHAMBERS. You are rather confident that he did not?

Dr. KARAN. He didn't while I was there.

Mr. CHAMBERS. I have no further questions.

Senator BALDWIN. Did you ever hear any of the investigating team, any of the men connected with the investigating team, boast of the way they secured confessions from any of those prisoners?

Dr. KARAN. Yes, sir; I did.

Senator BALDWIN. What did you hear about that?

Dr. KARAN. Oh, the tricks that they would say something of catch them unawares, mostly tricks that lawyers use. They would boast about that. They didn't boast about any—

Senator BALDWIN. What kind of tricks do you mean?

Dr. KARAN. Some promises that they would make them or something they would tell them. I don't remember the details.

Senator BALDWIN. What promises would they make them?

Dr. KARAN. They promised them, they told them they weren't after them but after their superior, who was responsible, so they would give them the evidence that would get to the one who was guilty, and then they would get off easier. This is the general promise, the general way the promises were made.

Senator BALDWIN. Did you ever hear any of them say they were going to promise immunity to any of these fellows if they would give a story?

Dr. KARAN. No, I don't think I heard them say that.

Senator BALDWIN. Did you ever hear any discussion about withholding ration cards or anything of that kind?

Dr. KARAN. I don't remember, and I don't think I heard it. I don't remember anything about that.

Senator BALDWIN. Did any of these men ever boast about having told these prisoners that they were going to be tried and they had better tell the truth and if they did not, they would be taken out and executed right away?

Dr. KARAN. I got the impression that this was the kind of talk they would use to them, that sort of a promise I think they would make.

Senator BALDWIN. What is that?

Dr. KARAN. I think they did make those promises. At least, that is the impression I got.

Senator BALDWIN. Would make what promises?

Dr. KARAN. That if they tell the truth, they would get away with it, and if not, they might be executed just like this, because they thought this was perfectly proper to do, and that is from the discussion, the conversation, I gathered.

Senator BALDWIN. Do you remember any particular members of the team who said anything of that kind?

Dr. KARAN. Well, the most vociferous of the team was Perl, and he did most of the talking, and most of his opinions were that it was perfectly proper to do those things.

Senator BALDWIN. It was perfectly proper to make promises that they would get off if they told the truth and that they were trying to get their superior officers; is that what you mean?

Dr. KARAN. That is right.

Senator BALDWIN. Were there any other promises of any kind that you heard them discuss there?

Dr. KARAN. There was this routine sort of a thing that if anybody made out an affidavit or made a statement, he would be put in a large room with the others, about 20 or 30, and the other way he was kept in solitary. That was routine investigation.

Senator BALDWIN. In other words, if the man made the statement, he would be put in a big room, and the other fellow that had not, would be put in solitary?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Do you know why that was done?

Dr. KARAN. The reason was they shouldn't communicate with one another and concoct up a story. They were anxious that the internees should not communicate with each other.

Senator BALDWIN. These men that were kept in solitary, did they get any different food from the other men, to your knowledge?

Dr. KARAN. To my knowledge, they got the same food.

Senator BALDWIN. There have been some complaints here about the lack of blankets and clothing. Do you know anything about that?

Dr. KARAN. No. The prison was well heated at the time I was there, and that was in the middle of the winter, and I can't see where the shortage of blankets would come in. The building was a very substantial building, a brick building, and they had a central heating system.

Senator BALDWIN. What was the condition of the bedding that these men had?

Dr. KARAN. I don't remember exactly, but for a prison I think it was adequate.

Senator BALDWIN. Were any complaints ever made to you about lack of clothing or heat or bedding or blankets or anything of that kind?

Dr. KARAN. No, sir. I would have observed those things because in the inspection, this was my duty, my job, to observe things, whether they had sufficient blankets or they had enough clothes or whether the bedding was proper, and I think it was.

Senator BALDWIN. What were the facilities for giving these men water when they needed it or wanted it?

Dr. KARAN. The water, I think, had to be supplied by the guards. There were guards all along the prison, and if a prisoner wanted something, he asked the guard for it.

Senator BALDWIN. What were the conditions of these cells as to cleanliness?

Dr. KARAN. I think the sanitary condition was very good.

Senator BALDWIN. What was the condition of the prisoners as to their cleanliness, their personal cleanliness?

Dr. KARAN. I think that was good, too. The cleanliness was good. It was one of the finest prisons, I understand, in Germany that they were housed in; it was a model prison, and the conditions, I think, were very satisfactory there.

Senator BALDWIN. Any further questions?

Mr. CHAMBERS. No, sir; I have no further questions.

Senator BALDWIN. Let me ask you this question: Do you know this dentist, Dr. KNORR—K-n-o-r-r?

Dr. KARAN. No, sir.

Senator BALDWIN. Did you ever see him there?

Dr. KARAN. No, sir.

Senator BALDWIN. Who handled the dental care of these prisoners?

Dr. KARAN. I think the dental care there was so set up whereby a prisoner was sent to the dentist's office at the time he needed it under guard and there were very few occasions they were sent. During my being there I don't think there were more than two or three prisoners sent out.

Senator BALDWIN. For dental matters?

Dr. KARAN. That is right. I am sure if there was any fractured jaw or any injury to the jaw or any disease of the jaw, I would have been consulted first because it was a medical problem more than a dental problem.

Senator BALDWIN. Did some of these men have old battle wounds?

Dr. KARAN. Yes, sir. Some of them had osteomyelitis from shrapnel wounds, and I believe one or two I had to send to the general hospital for treatment.

Senator BALDWIN. Did you have an adequate supply of drugs and medical supplies there?

Dr. KARAN. Yes, sir.

Senator BALDWIN. Did you have adequate medical equipment in the way of instruments and that sort of thing?

Dr. KARAN. Yes, sir; we had the same equipment that I used for our enlisted men.

Senator BALDWIN. Did you have charge of the medical care of the enlisted men that were connected with the post?

Dr. KARAN. Yes, sir; the detachment that was in charge of the prison.

Senator BALDWIN. Is there anything further?

MR. CHAMBERS. Dr. Karan, have you ever been asked to testify or to give a medical report on this Schwabisch matter before?

DR. KARAN. No, sir.

MR. CHAMBERS. Have you submitted any affidavits or made any representations to any investigating board or any body?

DR. KARAN. No, sir; I never wrote any letters to newspapers, never spoke to any radio commentators, never complained to the Army. This is the first time I have reported on this, except to my wife. This is the only time I have spoken about it.

MR. CHAMBERS. That is perfectly understandable. I would like to ask again for the record. At no time has any board of investigation or board of inquiry consulted you about the condition of these people at Schwabisch Hall?

DR. KARAN. None. I was never consulted.

MR. CHAMBERS. Thank you, sir.

SENATOR BALDWIN. Were you the only medical officer there at that time?

DR. KARAN. Yes, sir.

SENATOR BALDWIN. For that month you were in charge of the medical care of these prisoners and the military personnel as well?

DR. KARAN. That is right, sir.

SENATOR BALDWIN. Did you have any Army medical assistants with you?

DR. KARAN. Yes, the medical detachment, the enlisted men who were taking care of the dispensary, and they took care of dispensing the drugs, they went with me when I went to see the patients. I always had an enlisted man with me.

SENATOR BALDWIN. Do you know the names of any of those men?

DR. KARAN. No, sir; but they changed personnel, and if I would see them, I would recognize them.

MR. CHAMBERS. Was Sergeant Unterseher, or some such name—

DR. KARAN. Probably. If I would see him, I would recognize him. It was over 3 years ago, and I am very bad on names.

SENATOR BALDWIN. Are the names of the members of the medical detachment available to us?

MR. CHAMBERS. Yes, sir; the names are available to us, and one of the medical sergeants already testified.

SENATOR BALDWIN. Have you any further questions?

MR. CHAMBERS. No, sir, I have not.

SENATOR BALDWIN. Thank you, Doctor, very much.

MR. CHAMBERS. I would like to put one letter in the record.

SENATOR BALDWIN. All right.

MR. CHAMBERS. Several days ago Senator McCarthy placed in the record a letter from the Bishop of Fargo, the Apostolic Visitor in Germany, concerning some alleged abuse of prisoners at Landsberg prison.

I have a letter dated May 19, 1949, from the Department of the Army, commenting on this letter, which I would like to place in the record at this time.

SENATOR BALDWIN. Very well. The letter of May 6 from the Bishop of Fargo, the accompanying clipping, and the letter of May 19 from the Department of the Army will be made a part of the record.

(The documents referred to, are as follows:)

[From New York Herald Tribune, May 3, 1949]

GERMAN CLERGY ACCUSE UNITED STATES OF BRUTALITY IN LANDSBERG JAIL

LANDSBERG, May 2.—American Army personnel in charge of Landsberg prison, where war-crimes prisoners are held, have been accused by high German Protestant and Catholic churchmen of using brutality, interfering in religious matters at the prison and intimidating chaplains who protested it, it was learned here.

Bishop Hans Meiser, Catholic Bishop of Munich, said that at least some of the abuses were called to the attention of General Lucius D. Clay, American Military Governor, in a letter from the bishop, December 6. He said promises to investigate had brought no results and that he had been unable to get a reply to later letters.

He said specific charges made by Protestant and Catholic Church heads say:

1. That a prisoner was beaten in at least one known instance.
 2. That the prisoner named Muhlbauer was chained upright to his cell door until he fell unconscious, was revived with cold water and then forced to sign a statement that he had not been abused. This allegedly occurred after Captain Gerald Wilson, Army commandant of the prison, learned he had reported the previous incident to his German chaplain.
 3. That Captain Wilson ordered Evangelical Chaplain Ekardt out of the prison with abusive language and under threat of physical violence when Mr. Ekardt complained of prison conditions, and that no regular Protestant chaplain now is available at the prison.
 4. That Captain Wilson subsequently ordered a raid, allegedly without a search warrant, on Chaplain Ekardt's apartment, in which all his private papers, including confessionals of prison inmates, were seized, and that the papers have never been returned.
 5. That Captain Wilson ripped down a religious wreath and candles placed in the prison mess hall prior to Christmas, stamped on it, kicked it across the mess hall and used abusive language against the chaplains while the prisoners looked on.
 6. That Captain Wilson tore down crosses, erected on the graves of executed prisoners by relatives and chaplains and had not replaced them, although it was understood he had been ordered to do so by his Army superiors.
- Brig. Gen. Clinton A. Pierce, Augsburg post commander, under whose immediate authority Landsberg falls, said that an inquiry had been made into some of the complaints, but that nothing had been found to support the charges.

MOST REV. A. J. MUENCH,
VATICAN MISSION, APO 757.
C/O POSTMASTER, NEW YORK, N. Y.,
May 6, 1949.

The Honorable JOSEPH R. MCCARTHY,
United States Senate,
Washington, D. C., United States of America.

DEAR SENATOR MCCARTHY: In view of the investigations that the Senate Armed Services Subcommittee is making the enclosure may be of interest.

I had complaints from Bishop John Heuhaesler, auxiliary to Cardinal Faulhaber, with respect to some of these charges. There seems to be more foundation for them than the investigation made by the post commander cares to reveal.

Needless to say that such incidents hurt our interests in Germany very much. Our over-all policy has been excellent, top-level administration has been good, but malfeasance on lower levels of administration has produced incalculable, and maybe irreparable, harm.

In writing you I assure you that I am motivated only by the thought of keeping unsmirched our good American name in dealing with other people.

With sentiments of regard, I am,

Yours very truly,

A. J. MUENCH,
Bishop of Fargo, Apostolic Visitator in Germany.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 19, 1949.

Col. J. M. CHAMBERS,
Senate Armed Services Committee, Washington, D. C.

DEAR COLONEL CHAMBERS: With reference to the letter of May 6, 1949, from Most Rev. A. J. Muench addressed to Senator McCarthy, the following information has been received from headquarters, EUCOM:

"Extensive investigation was made between March 29 and April 2, 1949, by Inspector General of the incident connected with the dispatches printed in the Paris Herald Tribune, after previous investigation in January 1949. Prisoner Muehlbauer, 33 years old German national, had been a common criminal confined in German penitentiaries in 1939. He was placed in Dachau, where he was used as an agent provocator during 1944 and 1945. He was found guilty of repeatedly beating his fellow inmates with rubber hoses and clubs. For this he was sentenced by a war crimes court to 6 years imprisonment commencing July 30, 1946.

"On December 10, 1948, SFC Arthur A. Reilly searched Muehlbauer who was reputedly carrying contraband and feigning toothache and eye trouble. Upon removal of a patch from the eye a swelling of his face was more evident. His mouth was opened and a roll of contraband money was discovered in his mouth as the cause of the enlargement. Sergeant Reilly endeavored to remove the money and Muehlbauer severely bit Reilly's finger, whereupon Reilly slapped Muehlbauer as a reflex and in self-defense. He was later handcuffed to a cell door by Corp. Marion D. Howard for approximately 1 hour. Muehlbauer has the reputation at Landsberg for being a provocator among his fellow prisoners, also undisciplined and difficult.

"Details in regard to the removal of grave markers and mess-hall decorations are contained in letter 2 of April 20, 1949, to the Judge Advocate General. Briefly the decorations containing candles were removed as a fire hazard from the wooden building where they had been placed by prisoners contrary to prison regulations. Cross grave markers have been replaced over the graves of the war criminals who have been hanged. It is to be noted that these December incidents were enlarged upon and not published until May after investigation and corrective action such as replacement of crosses and further instruction on prison disciplinary practices were initiated. The similarity of these misrepresentations from various sources indicate these to be part of an organized operation to use both Catholic and Protestant Churches facilities for discrediting the war crimes program.

"Investigation of allegations concerning treatment of Pastor August Eckhardt disclosed that the prison director was informed that Eckhardt was engaging in encouraging the breach of prison good order and in discrediting the war crimes program in general. These were contrary to the scope of his religious duties. Upon presentation of information to military governor of Landsberg, this official issued a warrant authorizing search of Eckhardt's quarters. Search was conducted on March 31, 1949, by German police in presence of prison director and in presence of German civil-service employee acting as disinterested witness—15 documents were seized and Eckhardt was given a written receipt for same. Analysis of documents was made by CIC. Documents contain deparaging remarks and statements detrimental to occupation and reveal efforts toward establishment of a movement based on inflammation of public opinion against war-crimes trials in general and the creation of a state of dissatisfaction among war criminals themselves based upon alleged unjustness of their sentences.

"On April 28, 1949, the Evangelical district dean, Oscar Daumiller, was informed by the commanding general, Augsburg Military Post, personally of the reasons which prompted the dismissal of Pastor Eckhardt. Dean Daumiller also advised that request of Army for replacement for Eckhardt should be honored as soon as possible. In meantime Protestant religious services for prison have been provided by the local Evangelical minister of Landsberg."

The letter of April 20, 1949, referred to above, reads as follows in regard to the removal of grave markers and mess hall decorations:

"Bishop Neuhausler complains in his letter that on December 2, 1948, the director of Landsberg prison tore down with 'great indignation and unfair words' a Christmas wreath with candles from the ceiling of the prison mess. Investigation by an inspector general reveals that the wreath was taken down as it was a fire hazard and that it had been put in place by the prisoners contrary to prison regulations.

"Bishop Neuhausler also makes the complaint that recently the crosses and name plates have been removed from the graves of executed men who are buried in the Spoetting Cemetery and that the crosses were replaced by small slabs bearing only the former number of the prisoners. The complaint is mainly addressed to the removal of the crosses. The inspector found that this complaint is true. A current directive prescribes that if the remains of prisoners who were convicted of war crimes are not claimed by relatives, they will be buried inconspicuously in a prison cemetery in graves unmarked except for an identification number. The purpose is to prevent the graves of the war criminals from becoming shrines for the population. Amending instructions have been issued to permit the use of crosses."

The letter to Senator McCarthy is returned herewith.

Very truly yours,

C. C. FENN,

Colonel, GSC, Special Assistant to the Acting Secretary.

Senator BALDWIN. Senator McCarthy said the other day he had a great many letters in his office from different people concerning this case. I think we ought to ask Senator McCarthy if he would be willing to turn those letters over to us to see if out of those letters we can develop any witnesses or find any helpful information bearing on the whole issue involved here.

We will recess now until 2 o'clock.

(Whereupon, at 12:12 p. m., the committee recessed, to reconvene at 2 p. m., on the same day.)

AFTERNOON SESSION

Present: Senator Baldwin (presiding).

Also present: J. M. Chambers, of the committee staff; Colonel Ellis, and Dr. Karan.

Senator BALDWIN. Will you go ahead with this witness, sir?

Will you hold up your right hand?

Do you solemnly swear that the testimony you are about to give in the matter in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RICKER. I do.

TESTIMONY OF JOHN RICKER, M. D., PHOENIX, ARIZ.

Mr. CHAMBERS. Will you give us your name and present address?

Dr. RICKER. John Ricker, 926 East McDowell Road, Phoenix, Ariz.

Mr. Chambers. I believe you are a doctor?

Dr. RICKER. That is right.

Mr. CHAMBERS. I wonder if you would give us some of your medical background, schools, and medical experience?

Dr. RICKER. I graduated from McGill Medical school in 1940 and went to Phoenix, Ariz., where I took an internship, surgical residency. After a short time of practice, I went into the Army in January of 1944.

Mr. CHAMBERS. Dr. Ricker, were you attached to the Schwabisch Hall detachments?

Dr. RICKER. Yes.

Mr. CHAMBERS. Will you give us the dates that you were there?

Dr. RICKER. I think it was from January 19 to March 9, 1946.

Mr. CHAMBERS. And during that time you were in charge of the medical detachment that was responsible for the medical care and dental care of the so-called Malmedy prisoners?

Dr. RICKER. Well, yes; that is right.

Mr. CHAMBERS. Did those duties require you to keep these people under close medical and sanitary supervision?

Dr. RICKER. Yes, sir.

Mr. CHAMBERS. I believe that you sat through the hearings this morning, Doctor. I wonder, if you would, based pretty generally on the type of questions we asked, care to make a general statement about the situation?

Dr. RICKER. Well, yes. When I got there I believe it was Captain Karan, at the time, who had pretty well organized the set-up. There were two sergeants of the Medical Corps. Do you want their names?

Mr. CHAMBERS. Do you know their names?

Dr. RICKER. I know their names, yes; Calvin Untersehr and Stanley Sykes; and they were there—before I came, I think they had been there a matter of several weeks, and they had it very well organized. They had a small office in one of the prison blocks where most of the important prisoners were kept, and that was set up for minor first aid, with some aspirin, dressings, and anything like that, that we would need to take care of the minor ailments of the prisoners.

During the night and during the day the guards would bring names down to the commander of the detachment of men who needed care or had complaints, who would turn these over to the two sergeants, and they in turn would tell me about them; and usually in the morning when we first went on duty we would make rounds of the various cells, and along with the two sergeants, one of whom spoke excellent German, we talked to the prisoners and did what we could for them.

Most of the treatment was right in their cells, and if I felt they needed some type of medication I would tell one of the sergeants what to do, to give it to them.

Mr. CHAMBERS. Well, insofar as the treatment that you gave the prisoners is concerned, did you treat them for any injuries or any damage to their bodies which might have resulted from blows or the use of force, mistreatment, or anything of the kind?

Dr. RICKER. No.

Mr. CHAMBERS. Did you see any evidence of prisoners being man-handled or mistreated?

Dr. RICKER. No.

Mr. CHAMBERS. Did any of them ever tell you through the sergeant or directly—

Dr. RICKER. No; none of them ever complained of that.

Mr. CHAMBERS. Well, now, Doctor, do you feel that you were in a position at the time you were in command to know if, in fact, all men who required medical attention were actually being treated by you and that you were being notified that they needed treatment?

Dr. RICKER. Yes.

Mr. CHAMBERS. Well, did you inspect other than those who asked for medical treatment?

In other words, I believe you stated that you would get requests that would build up during the night and in the morning when you came on, through the sergeants, you would know who needed medical care, and then you would go and visit them; but were there others who you did not visit so that it might have been possible for someone requiring attention not to have been called to your attention?

Dr. RICKER. It would have been possible. I did not open the doors of every cell and look in to see, but as we walked by I usually looked in through the little glass window that was there.

Mr. CHAMBERS. Do you believe that if a man did require medical attention, that it would have been called to your attention?

Dr. RICKER. Oh, yes.

Mr. CHAMBERS. Did you ever have any reason to believe that perhaps some of the boys were being mistreated or beaten up in such a way that they needed medical help and were not getting it?

Dr. RICKER. No, I know they were not.

Mr. CHAMBERS. All the medical treatment and dental treatment that was given to these Malmedy prisoners was either handled by your organization or through your organization; is that correct?

Dr. RICKER. Yes.

Mr. CHAMBERS. So, in fact, it is a fair statement to say that no one else was treating them and therefore you were giving them all the medical treatment that was necessary?

Dr. RICKER. That is right.

Mr. CHAMBERS. And you are convinced that everybody who should have had medical care was getting it?

Dr. RICKER. Yes.

Mr. CHAMBERS. You heard us this morning discussing a Dr. Knorr who was, I believe, a German dentist who visited Schwabisch Hall periodically for the purpose of taking care of the dental needs not only of the Malmedy prisoners but the internees of Schwabisch Hall. Is that correct?

Dr. RICKER. That is right.

Mr. CHAMBERS. What can you tell us about the way Dr. Knorr handled the prisoners? How many did he handle and what types of cases did he handle, and so on?

Dr. RICKER. Well, there were very, very few that he saw. He came, I believe, twice a week; and they were mostly extractions and very minor dental or oral hygiene that were carried out. I do not know if he made any fillings or not. I doubt it; probably just pulled them out.

When any of the Malmedy prisoners were over there, one or both of the sergeants was with them, so there was no chance for the dentist to converse with them.

Mr. CHAMBERS. Was it a part of the regulations that he should not be permitted to converse with them?

Dr. RICKER. That is right.

Mr. CHAMBERS. Other than to find out what was wrong with them, I presume?

Dr. RICKER. He could ask questions pertaining to their ailments, yes, but not any other conversation.

Mr. CHAMBERS. Did any of the sergeants ever report to you or any of the guards ever report to you that any of the prisoners did try to talk to him or complained that they were being mistreated or anything of the kind?

Dr. RICKER. No, I never got that report.

Mr. CHAMBERS. Did you hear this affidavit read this morning that Dr. Knorr submitted?

Dr. RICKER. Yes, sir.

Mr. CHAMBERS. Did you notice that he made a reference in there to one boy who had a bloody head and another who had had a ruptured jaw that he had treated; things of that type?

Do you know anything of the circumstances surrounding those cases?

Dr. RICKER. No, I do not know anything like that at all.

Mr. CHAMBERS. Well, now, Doctor, as a medical man how did you feel these prisoners were being treated?

Dr. RICKER. I thought they were being treated quite well.

Mr. CHAMBERS. Did you think they were getting enough food?

Dr. RICKER. They certainly were getting enough food and adequate food. It was the same food that the political internees were getting from the same kitchen.

Mr. CHAMBERS. Well, now, as I understand, from time to time, people were placed in what they call solitary confinement, that they did have a few cells that were different from the individual cells in which they normally were placed. During that time, did they get the same food?

Dr. RICKER. Yes.

Mr. CHAMBERS. There was no change in rations when they went into solitary confinement?

Dr. RICKER. No.

Mr. CHAMBERS. How about this business of blankets?

It has been charged by many of the prisoners that they did not have enough blankets, it was very cold, and so on, all the time.

Dr. RICKER. Well, as far as I know they had enough blankets.

Mr. CHAMBERS. Did anybody ever complain to you or request additional blankets or anything of the kind?

Dr. RICKER. Well, if they did, we saw to it that they got extra blankets if they were available, but I do not remember any specific instances where they complained of that.

Mr. CHAMBERS. There have been a large number of these affidavits filed by the individual prisoners that allege they did not get enough drinking water; that the only way they could get enough drinking water was to take it from the toilets in the cells. What would be your comment on that?

Dr. RICKER. I thought they got enough drinking water. I do not remember just how it was dispensed. I am sure in some of the cells there was running water other than the toilets. I do not remember for sure, but I am pretty sure there was.

Mr. CHAMBERS. Well, also being responsible for the sanitation and the medical care of these prisoners, do you feel that possibly the water regulations were so stringent that they were not getting enough water to drink?

Dr. RICKER. I do not think so. May I make a comment here about the food?

Mr. CHAMBERS. Surely.

Dr. RICKER. Everybody was very cooperative about the food they got. In fact, I remember one prisoner in particular who complained repeatedly about stomach ailments, and we requested a special diet for him, and he got it; so that if any of them had complaints about their food or indigestion or anything else, they would have certainly gotten it down to myself or one of the enlisted men.

Mr. CHAMBERS. Now, Doctor, is it fair to say that throughout a period of a week or something like that, that you would probably have observed all the prisoners?

Dr. RICKER. Oh, I would think so, yes, at least from outside the cell.

Mr. CHAMBERS. From their appearance, did you ever see men with

black eyes or beaten heads, or anything of that kind, which would lead you to believe that they had either been shoved around or fell down the stairs, or something of the kind?

Dr. RICKER. No; I did not see any evidence of that.

Mr. CHAMBERS. Well, in your travels around the prison, did you have occasion to enter the interrogation cells?

Dr. RICKER. Yes.

Mr. CHAMBERS. While interrogations were going on?

Dr. RICKER. Occasionally.

Mr. CHAMBERS. Did you have occasion to see the guards moving the prisoners from spot to spot?

Dr. RICKER. Oh, yes.

Mr. CHAMBERS. Did you ever see any evidence of shoving or pushing or beating or anything of the kind?

Dr. RICKER. No; other than just a guiding—for instance, since they had their hoods on, they could not see. They might shove them gently to clear a doorway or something like that, but there certainly was not any rough stuff.

Mr. CHAMBERS. Did some of them have to go up or down stairs, moving from their cells to interrogation centers?

Dr. RICKER. Yes, they did.

Mr. CHAMBERS. Did you ever see or hear any man falling down the stairs?

Dr. RICKER. No, never did.

Mr. CHAMBERS. Were you there when they changed the American guards and replaced them with Polish guards?

Dr. RICKER. I believe so. I think it was just about the time I left.

Mr. CHAMBERS. Was there any difference in the way the Polish guards handled the prisoners than the Americans?

Dr. RICKER. I do not remember seeing the Polish guards handle them enough to tell you that.

Mr. CHAMBERS. Now, Doctor, you sent, I believe, your cases requiring hospitalization or more serious medical attention to Stuttgart?

Dr. RICKER. That is right.

Mr. CHAMBERS. Could you tell us some of the cases that you sent there?

Dr. RICKER. Well, one case in particular I remember had an old wound of his chest with a lung abscess, and he was quite sick. We sent him down there. Well, I am sure he was there when I left. He had been down there for several weeks. And pneumonias. I think we had one case, at least it was a respiratory infection of some sort, that was serious enough to need treatment in a hospital. The others, I am not sure. I think there might have been some old wounds that flared up and started to drain and needed more attention.

Mr. CHAMBERS. How many prisoners did you send down to the hospital, approximately, do you recall?

Dr. RICKER. Oh, I would say probably four or five. We made, I think, three trips while I was there to take prisoners down.

Mr. CHAMBERS. And none of those were for fresh or new injuries?

Dr. RICKER. Oh, no, none of them.

Mr. CHAMBERS. Well, now, Doctor, you have heard a good deal of comment around here about kicking in the groins and beating the testicles and things of that kind. In your opinion, would such cases require either hospital attention or medical care?

Dr. RICKER. If the blows had been hard enough; yes.

Mr. CHAMBERS. Was there ever any complaint made to you or did you have any reason to believe that possibly some people had suffered that way?

Dr. RICKER. No.

Mr. CHAMBERS. Did you associate with, live with, and eat with the members of the interrogation staff?

Dr. RICKER. That is right.

Mr. CHAMBERS. Did you ever hear them discuss this matter of how they handled prisoners?

Dr. RICKER. Yes.

Mr. CHAMBERS. And how they got confessions from them, and things of that kind?

Dr. RICKER. Yes.

Mr. CHAMBERS. Did you ever hear them tell of or talk about extorting or getting the confession through mistreatment, manhandling, or torturing a prisoner?

Dr. RICKER. No; I never heard them say that.

Mr. CHAMBERS. Not to the slightest degree?

Dr. RICKER. Not in the slightest degree.

Mr. CHAMBERS. Well, now, what did you hear them say?

Dr. RICKER. Well, they mentioned the use of various psychological tricks. That is the word they are using here, such as—let me see if I can remember some of the instances.

Oh, telling them they already had facts, they knew facts about it and they knew what this man had done, and trying to worm a confession out of him that way.

Mr. CHAMBERS. Did you ever hear them talking about perhaps placing a rope around the man's neck and making him believe he was going to be hanged?

Dr. RICKER. No.

Mr. CHAMBERS. Did you ever hear them talking about telling a man that they had a concealed microphone in his room when in fact they did not have a microphone in his cell?

Dr. RICKER. No, I do not remember ever hearing them talking about microphones there.

Mr. CHAMBERS. Now, did you ever hear them talking about possibly making promises to them such as "If you will give us the dope, and so on, why, we will let you off easy," and things of that kind?

Dr. RICKER. I did not hear them make that sort of promises. The only thing I do remember was that some of the minor, the ones that they thought would be better witnesses and gave good stories, they gave them slightly better living conditions than the others, reading and writing material, and possibly a larger cell, something like that, but I do not know that they promised them that.

I do not remember hearing them promise them that, but I know that that was a fact. That happened.

Mr. CHAMBERS. Do you know whether or not those same people who gave good stories were going to be used as witnesses and not charged and made defendants in the case?

Dr. RICKER. No. I think they planned to use them as witnesses. I think most of those people were involved in a very minor degree in the situation.

Mr. CHAMBERS. Well, now, in your association with members of the staff there, did you hear them conjecture as to whether or not they could get their confessions a little quicker or a little easier if they applied some of the methods that the Russians used or the Germans used on Americans under similar circumstances?

Dr. RICKER. No. The only thing I ever heard mentioned was they said if the Germans or Russians were doing it, they would not treat them as nicely as we do.

Mr. CHAMBERS. Now, did you ever hear Perl, Ellis, or Shumacker, or any of the group arguing as to whether or not that was the best way to do it?

Dr. RICKER. No, I never heard them argue about it. I never heard them even intimate that they thought it was a good idea. They merely stated, as a fact, that that is what other people would do?

Mr. CHAMBERS. Where were you stationed before you went to Schwabisch Hall?

Dr. RICKER. I was in Karlsruhe and Bad Wildungen.

Mr. CHAMBERS. Had any word gotten around as to what was going on at Schwabisch Hall where you were stationed at that time?

Dr. RICKER. No; I had no idea, anything about it, until I went over there.

Mr. CHAMBERS. Then, when you got down there, did you hear any general reputation or common belief that some of the investigators might have felt that the best way to handle this matter would have been to be a little rougher on the prisoners?

Dr. RICKER. No; I did not hear anything like that at all.

Mr. CHAMBERS. Did you know Perl pretty well?

Dr. RICKER. Oh, fairly well. Not as well as I knew some of the others.

Mr. CHAMBERS. Do you believe that Perl felt that it would have been proper to apply rough treatment to the prisoners to get a confession?

Dr. RICKER. No; I do not really think he did feel that way about it.

Mr. CHAMBERS. Did he ever talk to you along that line?

Dr. RICKER. No. He mentioned, as I told you before, that others would use rough methods.

Mr. CHAMBERS. Did you ever see Perl interrogating a prisoner?

Dr. RICKER. Yes.

Mr. CHAMBERS. Did he at that time appear to be threatening them of using force of any kind?

Dr. RICKER. No; I do not understand German—just a few words—and it was all carried on in German. He talked very much like a Los Angeles lawyer or anybody else. I do not know if he was threatening or promising or what he was doing, but it was all psychological.

Mr. CHAMBERS. Did the prisoners seem to be intimidated or in any fear, or anything of the kind?

Dr. RICKER. I only remember one case. He became quite emotional, and I think he cried a little.

Mr. CHAMBERS. Do you remember the name of that particular individual?

Dr. RICKER. No; I do not even remember who it was.

Mr. CHAMBERS. Did you ever see Harry Thon interrogate a prisoner?

Dr. RICKER. Only for a very brief moment when I would look into the interrogation room and go out again.

Mr. CHAMBERS. Well, now, did you ever see Thon strike or give any evidence of mistreating them?

Dr. RICKER. No.

Mr. CHAMBERS. Was he inclined to be a little rougher than Perl on some of these boys; or could you tell?

Dr. RICKER. Well, you mean rough, physically?

Mr. CHAMBERS. I am not trying to give you a tricky question, Doctor. I was just wondering if there was a difference in the way they handled them, either in the way they approached the matter or possibly physically?

Dr. RICKER. No, they approached them very much the same way, I think.

Mr. CHAMBERS. Was he any rougher physically than Perl?

Dr. RICKER. No, I do not think either of them was rough physically at all.

Mr. CHAMBERS. And I presume that same answer would go for Shumacker and any of these other interrogators?

Dr. RICKER. That is right.

Mr. CHAMBERS. While you were there were the prisoners either individually or collectively placed on short rations or on bread and water?

Dr. RICKER. No, they were not.

Mr. CHAMBERS. Did you know of or have any knowledge of this one incident?

Dr. RICKER. Not until I heard about it today.

Mr. CHAMBERS. Were any complaints ever made to you by any of the prisoners that they had been deprived of rations?

Dr. RICKER. No.

Mr. CHAMBERS. I do not believe I have any more questions at the present time, sir.

Senator BALDWIN. What records did you keep there, medical records?

Dr. RICKER. The enlisted men kept a daily record of the name of the patient, approximate diagnosis and what was done for him, and the cell number so that we would have a general idea if the next day the man called again or 2 or 3 days later we would have to see him again, we would be able to tell what was done for him the first time.

Senator BALDWIN. Do you know whether or not those records were preserved?

Dr. RICKER. I doubt if they were. They were just written in pencil on a piece of paper.

Senator BALDWIN. What is the custom and practice of the Army with reference to medical records?

Dr. RICKER. Well, I was never connected with a dispensary before or after that time, and I do not really know what they do in the dispensary and battalion aid stations, and so forth, but I know in the hospitals they kept very excellent records, and those are permanent.

Senator BALDWIN. You do not know whether these dispensary records are permanent or not?

Dr. RICKER. No, I do not. I doubt very much if they are, however.

Senator BALDWIN. Did you have there adequate medical equipment, drugs, and so forth?

Dr. RICKER. Oh, yes. We had everything we wanted. We had quite a large supply from one of the units that had recently left Schwabisch Hall. I think it was the Twentieth Field Hospital.

It was a small unit and they turned over all of their surplus supplies to us, and then anything else we needed we went to Stuttgart and requisitioned it from the general hospital there.

Senator BALDWIN. Did you also treat the enlisted personnel and the officer personnel there, our own personnel?

Dr. RICKER. No, not except as a favor to them. My only duty was to take care of the Malmedy prisoners.

Senator BALDWIN. Were there other medical men for our own troops?

Dr. RICKER. Yes, and on occasion there was another medical officer there that had a small dispensary and I helped him out on two or three occasions when he had to go out of town, and he would stand by for me occasionally.

Senator BALDWIN. Where was your office?

Dr. RICKER. I did not have any definite office, just this small cubicle I mentioned where the enlisted men stayed.

Senator BALDWIN. Did you have a desk in anybody's office?

Dr. RICKER. No.

Senator BALDWIN. You used this cubicle. Was that a cell?

Dr. RICKER. No; it was just the entrance, going into this one prison block. This was not the main prison. It was a two- or three-story block, off to the side. There were two sets of doors, first of all going into a small anteroom and off on either side were these small rooms, sort of, I suppose, warden's offices, or something like that, and one of those was what we used for our first-aid office, and then, going on through, there was another set of doors into the main prison itself.

Senator BALDWIN. Dr. Karan said he had a desk in the commandant's office. Did you have any such desk?

Dr. RICKER. No. I am not sure now, but I think he was probably assigned to treat the American enlisted personnel as well as the others.

Senator BALDWIN. You were not?

Dr. RICKER. I was not.

Senator BALDWIN. During the time that you were there, was there a medical man on duty at all times?

Dr. RICKER. Yes. The two sergeants lived in the same building as the prisoners. It was not the main building, but it was within the enclosure.

Senator BALDWIN. Supposing an emergency had arisen with reference to any of these prisoners, either from an injury or otherwise, in the middle of the night, what would have been the method for handling it?

Dr. RICKER. Well, one of the enlisted men would have been called, and they would have called me by phone, and I could have gotten down there in a very few minutes.

Senator BALDWIN. Were you ever called on any such emergency?

Dr. RICKER. No, except one morning, early, I was called on a hanging that you mentioned before.

Senator BALDWIN. What happened at that time?

Dr. RICKER. You mean, how did—

Senator BALDWIN. Yes, just describe that to us.

Dr. RICKER. Well, one of the guards discovered this prisoner. I do not how long after he hung himself, but it was quite a length of time, and he cut him down and then called the enlisted man who called me. It was about breakfast time or a little before. It was not in

the middle of the night. The man was obviously dead even when the guard saw him. By the time I got there, there was not any question about it.

Senator BALDWIN. Did you make rounds of the prison?

Dr. RICKER. Yes.

Senator BALDWIN. And what for?

Dr. RICKER. For inspections and on these daily tours to see the ailing prisoners.

Senator BALDWIN. You say you treated them in the cells?

Dr. RICKER. In the cells as much as possible. If they needed minor surgery such as opening of an abscess or a dressing that we could not handle in a cell, we took them over to the prison dispensary and took care of things there, and there were also a few hospital beds in the prison dispensary that we could use for treatment of minor conditions that did not require real hospitalization but meant that they should be out of their cells.

Senator BALDWIN. During the time that you were there, did you have any emergency cases other than this hanging?

Dr. RICKER. No.

Senator BALDWIN. Were there any injuries, emergency injuries, that you were called to treat?

Dr. RICKER. No, there were none at all.

Senator BALDWIN. What kind of complaints did you get mostly?

Dr. RICKER. Oh, sore throats, colds, and occasionally digestive complaints, a few diarrheas. We had quite a few skin—well, rashes and skin conditions that they complained about.

Senator BALDWIN. What was the condition of this place as to cleanliness?

Dr. RICKER. I think it was quite good.

Senator BALDWIN. Was that under your charge?

Dr. RICKER. Well, indirectly. Any recommendations I had were promptly carried out by the commanding officer of the detachment there.

Senator BALDWIN. How about the cleanliness of the prisoners themselves, personal cleanliness?

Dr. RICKER. Well, as I remember, it was satisfactory.

I think they had—they certainly had facilities for washing if they wanted to, and I know on one or more occasions the bedding and mattresses were taken out and aired during the time that I was there.

Senator BALDWIN. What were the conditions of the beds?

Dr. RICKER. They were clean for a prison.

Senator BALDWIN. You say "clean for a prison." What do you mean by that?

Dr. RICKER. The mattresses—I mean it is pretty hard to keep them spotless like a hospital, or something like that, but the mattresses were clean. As far as I could tell, there were no parasites or bugs of any sort. They all had mattresses either on the floor or on bunks.

Senator BALDWIN. Now, Doctor, nobody has made any complaint about your treatment in this case, and I would like to have you tell me very, very frankly on your oath what you ever observed that you might have considered an abuse of these prisoners in any way—pushing, slapping, threatening, striking, kneeling in the groin, or anything that you may know about.

Dr. RICKER. I did not see any evidence of abuse of them at all. I thought they were quite well treated for the type of prisoners they were.

The fact that they had to be kept without communication with others and in what you call solitary confinement, although it was not actually what I would call solitary confinement—they were just alone in the cell, with light, air, adequate facilities—but I saw no evidence at all of any abuse.

Senator BALDWIN. Were you present at any of these interrogations?

Dr. RICKER. Just the one that I mentioned here to Mr. Chambers.

Senator BALDWIN. Do you recall how that was conducted?

Dr. RICKER. Well, it was, I suppose, what they would call the "schnell" procedure. They had the cell set up with a table and two or three chairs, and I sat in there behind the table. There were two or three others besides Lieutenant Perl. I do not remember which ones they were, but there were two or three other Americans in the room, and they brought this prisoner in and Lieutenant Perl proceeded to interrogate him.

Senator BALDWIN. Describe Lieutenant Perl's conduct. How did he interrogate him?

Dr. RICKER. Well, he used all the mannerisms and voice inflections, and so forth, of a lawyer in the courtroom in front of a jury or any other place that I have ever heard. He never struck him, and he did not, as far as I could tell, bully him.

Senator BALDWIN. This was in German?

Dr. RICKER. That was all in German, so I could not understand very much of what was going on.

Senator BALDWIN. Did he lay his hand on him at all?

Dr. RICKER. I do not think so; I would not remember. I do not think he did.

Senator BALDWIN. You would not know German?

Dr. RICKER. Not much; just a few words.

Senator BALDWIN. Could you tell whether his language and manner was threatening? What would you say about him?

Dr. RICKER. No; I do not think it was exactly threatening.

Senator BALDWIN. Well, what was it?

Dr. RICKER. Any more than you are trying to get somebody to tell something, and you kind of get excited about it and raise your voice, and so forth, but I do not, I would not say that he was exactly threatening.

Senator BALDWIN. You do not recall the name of this particular prisoner?

Dr. RICKER. No; I am sorry, but I just do not.

Senator BALDWIN. In this particular case was there somebody who seemed to take the prisoner's part?

Dr. RICKER. I really do not remember about that. I tried to when they talked about it yesterday, but I do not remember if they had a so-called defense counsel or not at that time.

Senator BALDWIN. Did they use regularly a set of rooms, or one room, for these interrogations?

Dr. RICKER. They had four or five cells that had previously been cells that were set aside for that.

Senator BALDWIN. Where were they with reference to your headquarters?

Dr. RICKER. Well, they were in another cell block.

Senator BALDWIN. Another cell block?

Dr. RICKER. But I spent practically all my spare time with the team. There was not very much medical work to do. I did a few odd jobs for them, like composing a file of the case. I remember indexing it. That took several weeks. I was up there a good many hours a day with the men.

Senator BALDWIN. What was their attitude generally toward these prisoners? I mean, was it one of bullying, or was it one of tolerance, one of threats, anger, hatred, or what was it? How would you describe it?

Dr. RICKER. Well, it was one—they felt that certainly some of them were guilty and they should be punished for it, and they would do their best to find out which ones were. There certainly was not any attitude that I noticed that they were bound to get somebody for it at all costs.

Senator BALDWIN. Did you mess at the prison with this team?

Dr. RICKER. I lived in the same house with them.

Senator BALDWIN. Did you ever hear them talking about using any violence or anything of that kind?

What, if anything, was ever said about that that you might have heard?

Dr. RICKER. None, except what I mentioned to Mr. Chambers a few minutes ago. They did mention that if the Germans or Russians or some of the other nations had been doing this the prisoners would not be treated as well.

Senator BALDWIN. At the time you came there, which was the 19th of January, that was the day before Dr. Karan left, was it not?

Dr. RICKER. Yes, sir.

Senator BALDWIN. Had the case been broken by then? Do you know what I mean by that? Had they yet gotten any leads?

Dr. RICKER. Oh, they had gotten a lot of leads. As I remember nothing had shaped up very well. They had not gotten any confessions at all by that time, at least I do not think they had. Even when I left they still had not the whole case worked out.

Senator BALDWIN. What was the attitude of these prisoners toward the guards, toward you, and toward the interrogators as you might have observed it?

Dr. RICKER. Well, they were very sullen. They were fairly cooperative. They just did not exhibit anything much of an attitude at all. They did what they were told and they behaved quite well when we took them to the hospital or on a couple of occasions we went down to the dental laboratory about 30 miles away. They behaved quite well.

Senator BALDWIN. Could any of these Germans talk English?

Dr. RICKER. Yes, a few of them could, a few words they would mention, but as far as any conversation was concerned, there was not any except about their complaints, but occasionally I would have to see a prisoner without an interpreter for one reason or another, and I would try with my meager German and his English and we might get a little understanding out of him.

Senator BALDWIN. Did you ever hear any screaming or crying for help or shouting, or anything like that, in the prison?

Dr. RICKER. No.

Senator BALDWIN. While you were there, did you ever see any weapons of any kind that might be used for beating a person, or anything of that kind?

Dr. RICKER. No; never saw anything like that.

Senator BALDWIN. Did you ever hear any of this investigating team brag about the manner in which they might have secured a confession?

Dr. RICKER. Yes; I heard them——

Senator BALDWIN. What was said?

Dr. RICKER. They merely made mention of the way they had tricked the prisoner into giving some evidence.

Senator BALDWIN. What do you mean by "tricked"?

Dr. RICKER. Well, by either telling them, letting them think that they knew all about it and were only trying to fill in the details, or by saying that so-and-so has already confessed. "You might as well do it yourself," or by some trick questions, I suppose. They mentioned that, too.

Senator BALDWIN. Was there any other trick employed that they mentioned?

Dr. RICKER. Not that I remember.

Senator BALDWIN. There is testimony in the record to the effect that a man by the name of Thon took a prisoner one time, led him up a few steps, put a rope around his neck and said that he was about to be executed, about to be hanged. Did you ever hear Thon saying anything about that?

Dr. RICKER. No; I did not.

Senator BALDWIN. Do you know anything about that incident at all?

Dr. RICKER. I do not. I heard nothing about it. I do not remember hearing about it.

Senator BALDWIN. In one of the affidavits here there is the statement that many of these prisoners had been seriously injured by being kicked in the genitals. Do you know anything about that?

Dr. RICKER. There was not any evidence as far as I could see.

Senator BALDWIN. Did any of these men ever make any complaint to you?

Dr. RICKER. No; they never complained about that at all.

Senator BALDWIN. This time that you attended this investigation—how did you happen to be there at that time?

Dr. RICKER. Well, I believe they needed somebody in there for effect.

Senator BALDWIN. What did you do?

Dr. RICKER. I just sat at the table and did nothing.

Senator BALDWIN. Do you recall how long that interrogation lasted?

Dr. RICKER. Oh, I doubt if it was over 10 or 15 minutes.

Senator BALDWIN. How did they bring the prisoner in?

Dr. RICKER. Just one of the guards opened the door of the cell and marched him in.

Senator BALDWIN. Did he have anything over his head?

Dr. RICKER. I think he had the hood on when he got in there. I believe he did. They took that off.

Senator BALDWIN. You had an opportunity to see Lieutenant Perl there a good deal of the time?

Dr. RICKER. Yes.

Senator BALDWIN. What is your estimate of him and his methods? That is a kind of a difficult question to ask you. Did you gather anything from his talk or from his manner that he exhibited any hate or venom?

Dr. RICKER. Oh, I think he did hate the Germans.

Senator BALDWIN. What made you think that?

Dr. RICKER. From some of the things that he said. I do not remember the specific comments he made, but he talked repeatedly about his wife being in the concentration camp for 4 years and about friends of his and the way he had been treated, and getting out of the country.

Senator BALDWIN. He did talk about that?

Dr. RICKER. He mentioned it.

Senator BALDWIN. When he was in the presence of any prisoner and you may have observed him, did he exhibit that venom in any way?

Dr. RICKER. No; I never observed him taking it out on the prisoners, so to speak.

Senator BALDWIN. What did you yourself think of the methods that you observed being used and that you heard talked about being used on these prisoners? I mean, what was your personal reaction to it?

Dr. RICKER. Well, my personal reaction was that it was all right. The methods they were using were perfectly O. K. and fair.

Senator BALDWIN. Do you know of any occasion where they threatened any of these prisoners?

Dr. RICKER. No; I do not.

Senator BALDWIN. Did you know Peiper? Did you ever talk with Peiper?

Dr. RICKER. I never talked to him. I do not believe I ever saw anything but the back of his head and shoulders. He sat in the cell in the hospital, in the dispensary, and practically all of the time had his back to the door working at a desk.

Senator BALDWIN. When you were with these investigators, what was their general talk and, if you could judge anything, their general attitude toward these prisoners?

Dr. RICKER. Well, the general attitude was that some, if not all, of them were guilty of a crime that they should pay for, and that it was up to the investigators to find out which ones were guilty and how guilty and see that they were punished.

Senator BALDWIN. Well, did you ever hear anybody say that so-and-so is a liar, "We will get him the next time; we ought to bat him around," or anything of that kind?

Dr. RICKER. No. I certainly heard them say, "Well, so-and-so is lying; we will have to see if we cannot get the truth out of him," or something like that, but I never heard them mention having to beat anybody around.

Senator BALDWIN. What was the attitude of the guards toward these prisoners as you saw them; that is, the American guards?

Dr. RICKER. Well, more or less indifferent. That was their job, to go over, get them out of their cells, and bring them to the interrogation section.

Senator BALDWIN. Were you there when the Polish soldiers were there acting as guards?

Dr. RICKER. I just cannot remember. I think they came there just about the time I left, and I did not have very much opportunity to observe them in action.

Senator BALDWIN. Did you ever know of any of the guards or anybody kicking these prisoners, tripping them, shoving them against the wall, pushing them around, slapping their faces, or anything of that kind; I mean the type of physical violence that probably would not

result in the requirement of medical attention but nevertheless might be torturous or abusive?

Dr. RICKER. No; I never saw any of that happen. I never heard of any.

Mr. CHAMBERS. Dr. Ricker, I have several affidavits here. You may not identify these prisoners by name. I would not expect you to remember them all. These are more or less typical of some of the statements that have been made, and I would like to ask your comment on them.

You say you got around through the prison quite a bit and that you spent considerable time in the interrogation center. Now here is an affidavit signed by a prisoner by the name of Fleps, who states, among other things:

From January 3, 1946, to approximately March 7 I was then located in cell No. 84 near the interrogation cells, and I often heard the doors of the cells opening and my comrades crying and shouting for help.

Now you must have been around that area considerably.

Dr. RICKER. Yes.

Mr. CHAMBERS. Have you ever heard of any matters of that kind?

Dr. RICKER. No; I never heard any of them screaming or crying for help.

Mr. CHAMBERS. Did you by any chance recall a prisoner by the name of Hendel?

Dr. RICKER. No; I never heard of him.

Mr. CHAMBERS. He was an SS trooper who said he was badly wounded in the head four times during the war, and he makes a statement here on April 5. That is while you were there, I believe.

Dr. RICKER. No; I left in early March.

Mr. CHAMBERS. Well, then you could not be expected to testify on this point. For the purpose of the record we will complete what he did say:

On April 5, when I reported sick, a United States sergeant medic appeared and told me that I would be taken to the hospital. After a short while he told me that putting me in the hospital had been prohibited. This sergeant spoke German very well.

Now, were there any cases called to your attention while you were there of people who reported sick and who the sergeant at least thought should be put in the hospital, but who were turned down?

Dr. RICKER. No; they were very cooperative about it. If we felt they should be hospitalized, it was done.

Mr. CHAMBERS. A decision of this kind, whether or not they could go to the hospital, would that be up to the prosecution staff or would it be up to you?

Dr. RICKER. Well, it should be up to the medical officer, but it is just possible that, in talking it over with the team, one of the men could have been so important and the medical complaints so trivial it really did not need hospitalization, that it was postponed for a while.

I am just supposing that. I always went to Major Fanton. He was in charge most of the time I was there, and I said, "So-and-so is sick and he really should be hospitalized," and he would say, "All right; go ahead and take him down," but I always cleared with him first to be sure that there was not a good reason for not sending him down.

Mr. CHAMBERS. Was there ever a time when you thought a man

should go to the hospital and Major Fanton overruled you and said he should not go?

Dr. RICKER. No; there never was.

Mr. CHAMBERS. Colonel Ellis, you were there April 5. Do you recall any request being made to you or any statement made to you that a man was sick and should go to the hospital?

Colonel ELLIS. I recall no such instance.

Mr. CHAMBERS. Do you recall this man Hendel?

Colonel ELLIS. Yes; by name.

Mr. CHAMBERS. Doctor, here is a part of the statement by a man by the name of Henneke, and this episode took place during the night of the 24th to 25th of March 1946:

A man was beaten down with a whip in front of my cell. He shouted and moaned "I did not fire." Those were his words, and his torturer's words were, "You swine, you did fire; admit it and you will be left alone."

Senator Baldwin asked you a question. Did you ever see any weapons around the place? Did you ever see any whips or anything that could be used for a whip around the prison?

Dr. RICKER. I never saw any; no.

Mr. CHAMBERS. Did you ever hear of any being there or anything about a whip?

Dr. RICKER. No.

Mr. CHAMBERS. Here is another statement by a man by the name of Goldschmidt:

On March 9 I was told by Mr. Perl that I had been sentenced to death, that I would be executed within 2 days. In this cell I often heard desperate crying and shouts of help coming from various other cells.

Well, now, if you were around the prison, would it have been reasonable to assume that you would have heard such cries?

Dr. RICKER. I think so; yes.

Mr. CHAMBERS. But you have testified that—

Dr. RICKER. I did not hear any at all.

Mr. CHAMBERS. We have a statement here from a man by the name of Max Rieder. I think there are two points here that I would like to ask you about. This is before you came there, perhaps.

At the end of January I was kicked in the genitals, but I cannot say who the person was who did this, for I was wearing a hood. After 2 days I started suffering terrible pains and was admitted to the hospital, but since my condition worsened I was taken to the hospital at Stuttgart and operated on a few days later. To the best of my memory I was taken back to Schwabisch Hall on the 12th—

I assume that is the 12th of January—

but I was no longer treated medically at Schwabisch Hall, but taken into a cell where the medicine was taken away from me. Only after 14 days did I receive a complete set of clothing. Having been interrogated 20 times, I would like to describe my main interrogation during which Mr. Perl and Mr. Thon on March 19 threatened me for half an hour, by treatment in the upper and lower abdomen and head, with hanging, and to the best of my knowledge I was kicked in the genitals by Mr. Perl. At that time I did not wear a hood, and only woke up at one time in my cell. When I then wanted to report sick, this was prohibited by the guard.

Now I will stop there. There is another matter I would like to discuss with you. Now you were at Schwabisch Hall, I believe?

Dr. RICKER. Yes.

Senator BALDWIN. What is the name of that prisoner?

Mr. CHAMBERS. Rieder, sir. From the 19th of January on?

Dr. RICKER. Yes.

Mr. CHAMBERS. So at the end of January you would have been in charge of the medical detachment?

Dr. RICKER. That is right.

Mr. CHAMBERS. Here is a man who says he was admitted to the hospital where he was operated on as a result of having been kicked in the genitals. Now you testified that there was never any kicking in the genitals that you knew of around there, and nobody got medical care for it. Now what have you to say on this?

Dr. RICKER. I remember the name and I remember that we took him to the hospital, but I do not remember what the reason was.

Mr. CHAMBERS. Well, Doctor, if he had been kicked in the genitals, do you suppose you would remember that?

Dr. RICKER. I think I would have.

Mr. CHAMBERS. But you cannot state from memory whether his statement here is correct or not?

Dr. RICKER. No; I cannot.

Senator BALDWIN. What was the date of that? He did not come there until January 19.

Mr. CHAMBERS. He said at the end of January.

Dr. RICKER. I remember the name of the man. That is one I do. I remember some of these when you mention them to me. I recall their names.

Also I cannot conceive of any operation that would have to be performed on a person that was kicked in the genitals. I just cannot think of any.

Senator BALDWIN. Well, if he was ruptured, he would have to be operated on; would he not?

Dr. RICKER. That is not going to rupture a person.

Mr. CHAMBERS. Well, now, if he had been operated on shortly after the end of January—bear in mind he said at the end of January he was kicked and “after 2 days I started suffering terrible pains and was admitted to the hospital and operated on, and a few days later,” well, he says, “the 12th of February I was returned to Schwabisch Hall, but was no longer treated medically.”

Dr. RICKER. Well, if he was operated on and was returned in such a short time, I doubt very much if that is true because I knew about all of the men that were brought back, the patients that were brought back from the main hospital, and frequently they were put back in one of the dispensary cells where they would have a little more supervision than in their own cells.

Mr. CHAMBERS. Well, now, I presume that the hospital records at Stuttgart, I believe you testified, were good records and they were permanent, so we should be able to verify this statement one way or the other from their records, is that not correct?

Dr. RICKER. I am sure they kept the same records as they did with the Americans. I know we did when we took care of German personnel in our hospital.

Mr. CHAMBERS. But insofar as a man coming back from the hospital and having his medicine taken away from him and no longer being treated medically is concerned, do you think that would be possible?

Dr. RICKER. No; I do not see how it could have been, because I would have either been in the ambulance bringing him back, or would know about it when he returned. I went down there three times with the prisoners.

Mr. CHAMBERS. Doctor, is it a fair statement, then, to say that you remember something about a man by the name of Rieder?

Dr. RICKER. That is right.

Mr. CHAMBERS. And do you remember whether or not he was sent to the hospital?

Dr. RICKER. I think so; yes.

Mr. CHAMBERS. You do not recall, however, the diagnosis that took him to the hospital?

Dr. RICKER. No; I do not.

Mr. CHAMBERS. You do not recall whether or not he was in fact operated on?

Dr. RICKER. No; I do not recall that.

Mr. CHAMBERS. And you do not recall but categorically state that if he did come back from the hospital, you cannot conceive of him being deprived of further medical treatment?

Dr. RICKER. If he needed it.

Mr. CHAMBERS. If he needed it?

Dr. RICKER. That is right.

Mr. CHAMBERS. Here is one other point which ties into this question of health and sanitation also contained in Max Rieder's statement. He says:

During my interrogations at Schwabisch Hall, I could not take a bath from December until April.

Now that statement is somewhat unique in Rieder's affidavit. It does not appear generally throughout these affidavits. Now under what circumstances or why was not a man permitted to take a bath?

Dr. RICKER. I did not realize they were not.

Mr. CHAMBERS. Well, do you know what facilities they had for taking a bath? Was it a bucket of water that they got for bathing purposes? Were there showers available, or how did that work?

Dr. RICKER. No; I just do not remember. As I said before, some of the cells had other running water than the toilets, and some of the cells had nothing but the toilets in them, but in those I am sure that they were given a basin or a bucket of water.

Mr. CHAMBERS. Well, from the standpoint of medical care, the ability to take a bath or wash up occasionally would appear to be a very important and necessary part. Here is a man who says he was not permitted to take a bath from December to April.

Dr. RICKER. I doubt if that is true.

Mr. CHAMBERS. Now I had one other question. I think you have already answered this so many times, but for the purpose of the record I want to put it in.

This is the affidavit of a man by the name of Ralph Ritzer and he was in cell No. 145 of block C. I do not know whether you recall where that is or not. In his affidavit he says:

Every day the prison inmates of the death cells were beaten terribly. It did not suffice to beat them by fists, but shoes and clubs were used as well. Since the floor and the walls of this building were very thin, I had to listen to everything whether I wanted to or not, and whenever everything else was completely quiet, I could understand every word that was spoken. The men were mostly beaten so

strongly and so long that they bellowed with pain terribly for 20 to 30 minutes until they had shouted themselves hoarse. Sometimes as I mentioned before, I could understand almost everything. It was really not difficult to hear who it was that was carrying out the beating.

Now there again you have an affidavit to the effect that there were a lot of people bellowing out with pain for periods of 20 to 30 minutes, and apparently over a period of a great many days. Now you have testified that you got around that prison regularly and you spent a lot of time in it. What would you say to this statement?

Dr. RICKER. I do not know how it could have been possible without either myself or one of the medical sergeants hearing about it, or hearing it.

Mr. CHAMBERS. Did you ever hear anybody talking about anybody crying out or screaming or hollering?

Dr. RICKER. No; I never did.

Mr. CHAMBERS. I have no more questions, sir.

Senator BALDWIN. You are quite sure about that?

Dr. RICKER. I am quite sure.

Senator BALDWIN. How thick were these walls? Can you tell us anything about that?

Dr. RICKER. The outside walls were quite thick.

Senator BALDWIN. I mean the walls between the cells.

Dr. RICKER. I think they were masonry of some sort. I do not think they were just stucco or plaster. I think they was masonry between them. I am not sure but I know that there were some hooks in the cells that they tried to get out, and finally had to saw them off because they were imbedded so deeply. The doors were thick.

Senator BALDWIN. What were the doors made of? Wood or steel?

Dr. RICKER. Some of them were steel and some were wood. Most of them were steel.

Senator BALDWIN. Most of them were steel. What was the little window you described? Was that always open or was it a glass window?

Dr. RICKER. It was a glass window.

Senator BALDWIN. Could you open it?

Dr. RICKER. I do not think so, on that one. I think they had another aperture somewhere that they could put the food in. I am not sure though. I really do not remember, but I think they did. That window was just for observation.

Mr. CHAMBERS. Well, would it have been possible for a man in a cell to have heard and understood conversations being conducted in other cells in the vicinity?

Dr. RICKER. Well, I suppose if they were conducted loud enough, I guess they could.

Mr. CHAMBER. Could a man stand inside of the cell and talk to you on the outside and you understand what he was saying?

Dr. RICKER. No. You could hear he was talking or shouting, but that was about it.

Senator BALDWIN. You say you could hear if he was talking or shouting. Did you ever hear any of them shout?

Dr. RICKER. No; but I meant when I stood in front of the cell and looked in, maybe the man inside would holler something, which I do not know what he said. You could tell he was doing it, but as far as the exact words are concerned, you could not.

Senator BALDWIN. When you were there at the prison, where did you spend most of your time?

Dr. RICKER. I spent most of my time in and around the investigators' office.

Senator BALDWIN. Did you ever hear any shouting or screaming or calling for help?

Dr. RICKER. No.

Senator BALDWIN. You are quite sure about that?

Dr. RICKER. Quite sure.

Senator BALDWIN. I wanted to ask Dr. Karan if he knows anything about the Rieder case. Did you hear the questions that were asked concerning the Rieder case, the man who was kicked in the genitals so badly that he had to go to the hospital?

Dr. KARAN. While I was there there was no case that was taken to the hospital because of trouble with the genitals. I definitely remember that.

Senator BALDWIN. I think we should try to get those hospital records if we possibly can.

Mr. CHAMBERS. Sir, we have already requested the Army to first of all make a check to find if the dispensary records are still available. Secondly, we have also asked them to locate these hospital records which are supposed to be permanent, and we will make a check of them.

Senator BALDWIN. Have you any further questions?

Mr. CHAMBERS. I have no further questions, sir.

Senator BALDWIN. I think that is all the questions I have. Thank you very much.

Mr. CHAMBERS. Thank you, Doctor.

Senator BALDWIN. Any further witnesses?

Mr. CHAMBERS. No further witnesses today, sir.

(Whereupon, at 3:10 p. m., the subcommittee adjourned, subject to the call of the Chair.)

MALMEDY MASSACRE INVESTIGATION

MONDAY, MAY 23, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m. in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senators Baldwin and Hunt.

Also present: J. M. Chambers of the committee staff.

Senator BALDWIN. The committee will come to order.

Will you stand up, Colonel, and hold up your right hand? Do you solemnly swear the evidence you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Colonel CARPENTER. I do.

TESTIMONY OF LT. COL. EDWIN J. CARPENTER, HEADQUARTERS, FIRST CAVALRY DIVISION, TOKYO, JAPAN

Mr. CHAMBERS. Colonel Carpenter, will you give your full name and your present station?

Colonel CARPENTER. Edwin J. Carpenter, lieutenant colonel, headquarters, First Cavalry Division, located at Tokyo, Japan.

Mr. CHAMBERS. Colonel Carpenter, during the war were you at any time assigned to any duty in connection with the so-called Malmedy case?

Colonel CARPENTER. Yes. I was assigned at that time in the War Crimes Branch, Judge Advocate's Office, the European theater, and I had, incidentally, some association with the Malmedy trial before the trial was had in that I was directed to go down to Dachau from our headquarters at Weisbaden and inquire into some allegations that had been made by the defense prior to the trial of the case.

Mr. CHAMBERS. May I interrupt, Colonel? Who assigned you to this task?

Colonel CARPENTER. The deputy theater judge advocate for war crimes at that particular time, Col. Claude Mickelwaite.

Mr. CHAMBERS. And he was theater deputy judge advocate, is that correct?

Colonel CARPENTER. Later. At that time, I am sure, he was the deputy theater judge advocate for war crimes.

Mr. CHAMBERS. All right, sir. Do you recall what had called this matter to Colonel Mickelwaite's attention?

Colonel CARPENTER. Yes. He informed me, prior to my trip down to Dachau, that he had been informed by Colonel Corbin who was—well you might call him the chief of the Dachau branch. I don't think that was his exact title but Colonel Corbin had informed Colonel Mickelwaite that Colonel Everett and the defense attorneys were making a number of accusations against the prosecution in the manner that the case had been investigated.

Mr. CHAMBERS. Were the Dachau courts run by one of the armies, or were they run by the theater?

Colonel CARPENTER. There were different changes, different times. Whether the Seventh Army was running that court at that time, I would have to look at the records. They were run by the armies.

Mr. CHAMBERS. They were run by the armies?

Colonel CARPENTER. And when the armies were deactivated they came under the theater.

Mr. CHAMBERS. So in effect what you had was an Army judge advocate getting in touch with the theater and saying that allegations had been made concerning this treatment of prisoners and asking that outside investigation be made; is that correct?

Colonel CARPENTER. Substantially. I think at the time—as I say, I would have to refresh my recollection on that—but I think you are absolutely right. I think at that time these courts were Army courts and Colonel Corbin was the judge advocate of the Army in charge of war crimes.

Mr. CHAMBERS. Pardon me for interrupting you. Can you tell us the instructions you received from Colonel Mickelwaite?

Colonel CARPENTER. My instructions were verbal. My instructions were to go down there and ascertain the claims being made by the defense, the claims of misconduct, if there were any, and what the facts were, and report the facts to him.

Mr. CHAMBERS. Colonel Carpenter, in carrying out those instructions, I wish you would tell us in just as much detail as your memory will permit at this time, what you did. It will be helpful to us, I am sure, if you could divide the charges into those of brutality and physical mistreatment, and those involving the mock trials, the so-called Schnell proceedings.

Colonel CARPENTER. When I arrived—I have briefly outlined my instructions which were very brief and entirely verbal, to try to ascertain the facts. When I arrived at Dachau I contacted Colonel Everett, who was the chief defense counsel. And I talked to Colonel Everett and his staff in an effort to ascertain factually what claims they were making of misconduct.

They informed me they had obtained statements from each of the accused in their own handwriting, signed by the accused, and from these statements they stated that they had learned about these mock trials. That was the whole gist of their complaint, Everett's and his staff.

Mr. CHAMBERS. You say that they had complained of the mock trials?

Colonel CARPENTER. That was the main burden of their story. They had these number of statements, and they had winnowed out from these total number of statements some, in the twenties—I can't give the exact figure, but they had between—twenty-some statements, and most of these statements referred to these so-called mock trials.

Now you ask me to differentiate and segregate the alleged brutalities and mock trials. That is very difficult to do, but I will do the best I can.

Mr. CHAMBERS. All right, sir.

Colonel CARPENTER. For this reason: None of these accused in their statements claimed that they had been brutally treated or beaten up in an effort to obtain statements from them or confessions from them.

Senator BALDWIN. May I interrupt right there, Colonel. You refer to the statements. Were these statements copies of the claimed confessions that the prosecution had secured, or were they statements that the defense had secured in the preparation of the case for the defense; do you know?

Colonel CARPENTER. Statements that the defense had obtained from all of these accused in the preparation of their defense.

Senator BALDWIN. Do you know how they were obtained by the defense? Did they tell you anything about the routine they went through in connection with them?

Colonel CARPENTER. They told me they had requested each one of their clients, so-called, every one of the accused, to make a statement of any mistreatment or any alleged mistreatment that they had suffered at the hands of the investigators. I was so informed by—I cannot tell you the exact name. It may have been Colonel Everett or one of his assistants. He had a staff of six or seven. And those were the statements I have reference to, that he turned over to me and discussed with me, he or his staff.

Senator BALDWIN. Colonel Chambers shows me a questionnaire here which reads as follows:

PERSONAL DATA OF ACCUSED FOR INFORMATION OF DEFENSE COUNSEL

To accused: This information is necessary to enable your counsel to initiate his preparation of your defense. It is to your interest to be accurate with respect to charges. You will be personally interrogated at a later date. If there is insufficient space to answer any questions, continue on the reverse side of the sheet, listing the number of the question.

Then it calls for name, rank, serial number, date of capture, apprehension, name of organizations from December 31, 1944, to date, and so forth—age, rank, permanent residence, married or single, place of birth, list of all dependents, education.

What was your occupation in civilian life? Military education and training? What instructions, if any, have you received during your military career relating to the Geneva Convention and the treatment of prisoners of war?

And then is a long series of questions that go into their military experience.

Then they go on, further down, question 21—no; it is No. 20:

When and in what places were you in prison? Give dates and locations.

21: State any circumstance relating to your treatment, denial of food, or loss of privileges in any of above places.

22: Have you been in solitary confinement during your imprisonment?

23: If so, how long and where?

24: What part did you play in the Eiffel offensive during the months of December 1944 and January 1945? List organizations and duties.

The Eiffel offense was the so-called drive in the Battle of the Bulge which has been described here.

Is that the type of questionnaire you say you discussed with them?

Colonel CARPENTER. They had excerpted the parts from the answers as a result of that questionnaire, referring to mistreatments, and had these statements for me that they wanted me to see; statements that were the result of that questionnaire. The part where they asked them if they had been mistreated in any way.

Mr. CHAMBERS. When you first talked to Colonel Everett about this, and he said as a result of this questionnaire they had developed charges of alleged mistreatment, and so on, do you recall whether or not he made it clear to you that these charges were first brought to their attention by this questionnaire, or was it something that they had found out by other methods?

Colonel CARPENTER. From the fact he had all these statements he said that these people had made, it was my impression, and I was fully convinced it was the result of this questionnaire that these alleged so-called mistreatment facts were developed.

Senator BALDWIN. Do you recall about what date that was, Colonel?

Colonel CARPENTER. Without referring to the records, I know it was, I know it was before May.

Mr. CHAMBERS. Was it before the trial started?

Colonel CARPENTER. Oh, yes, sometime before the trial started. It was just after they had gone down to Dachau, both prosecution and the defense. They were then just getting under way in the preparation for the trial.

Mr. CHAMBERS. Now, did Colonel Everett turn the statements over to you or extracts from them?

Colonel CARPENTER. Yes, the whole bunch of these statements.

Mr. CHAMBERS. I wonder if you could tell us, and I realize we are drawing on your memory here. I might say for the record, Mr. Chairman, that the colonel has just gotten in today from Tokyo.

Colonel CARPENTER. Late yesterday evening.

Mr. CHAMBERS. And has had very little opportunity to refresh his memory on any aspect of this matter, and several years have passed by. However, I wonder if you would draw on your memory now and tell us as accurately as you can the type of charges, and what some of these claims were.

Colonel CARPENTER. Well, the claims that the defense were stressing were these so-called mock trials. Any alleged brutality was wholly incidental.

I went into that in detail when I examined all of these people. I took the whole bunch of them that made any claim of any alleged misconduct, which included mock trials, and examined them. I had a lieutenant who was a fluent linguist, and I talked to them all individually and separately.

Mr. CHAMBERS. May I interrupt to ask who was this lieutenant, do you recall?

Colonel CARPENTER. That—I would have to look at the records to tell that.

Mr. CHAMBERS. Was he connected with the prosecution staff?

Colonel CARPENTER. He was not. He was one of Colonel Corbin's men. If it was under the Army, which I think it was, he was not even connected with our office.

Mr. CHAMBERS. Now, you have said there were certain types of mistreatment which included mock trials. What were some of the other types of mistreatment?

Colonel CARPENTER. The whole burden of their complaint at that time was these mock trials. However, when I interrogated them—and I think it perhaps was in the statement—four of these twenty-some, which I would have to find records to get the exact number of, between 20 and 30—4 of that group claimed that they had been hit incidentally. There was no claim by anyone that they had been brutally treated in an effort to get a confession or to get a statement.

They claimed on their way from the cell to the place of interrogation somebody took a punch at them, or on their way back somebody took a punch at them. I went into that quite carefully. I could not get any description of the facts. They did not know the names. They were very vague as to time, or as to place.

They always said on the way to or from. And that was the extent of the physical brutality that I was able to develop.

Mr. CHAMBERS. Colonel Carpenter, let me go back and see if I have this clear. You say you went down to see Colonel Everett, and he turned over to you roughly twenty-odd different cases in which mistreatment had taken place.

Colonel CARPENTER. He turned over the whole bunch of these statements. We then, through the staff, went through them and found the ones that alleged any kind of mistreatment including—the main mistreatment was these mock trials.

Mr. CHAMBERS. Those were the original questionnaires that had been filled out and were in the handwriting of the German prisoners?

Colonel CARPENTER. So he stated. Of course, I do not know.

Mr. CHAMBERS. And only 20 of those alleged mistreatment, is that correct?

Colonel CARPENTER. Between 20 and 30. The exact number I cannot give you.

Mr. CHAMBERS. Out of that number only four alleged any type of physical brutality?

Colonel CARPENTER. That is correct.

Mr. CHAMBERS. Was there any claim in there of being on short rations or on bread and water?

Colonel CARPENTER. No, sir.

Mr. CHAMBERS. Was there any claim in there that they had suffered?

Colonel CARPENTER. Let me qualify that. There may have been some claims as to that before they had been transferred. There were some claims. I want to be sure that I am right about this. There were some claims that while they were in the hands of other troops other than war crimes investigators—I think there were some claims of not having enough to eat. But I am very sure there were no claims of not having enough to eat while they were in Schwabisch Hall.

Mr. CHAMBERS. While at Schwabisch Hall?

Colonel CARPENTER. Yes.

Senator BALDWIN. Excuse me for interrupting you, Colonel. But when you got those documents, did you talk with the defendants themselves, the accused, about them?

Colonel CARPENTER. Yes, sir. I brought them in individually, one at a time.

Senator BALDWIN. That is the Germans themselves?

Colonel CARPENTER. Oh, yes.

Senator BALDWIN. Did you talk with all 20 of them?

Colonel CARPENTER. I talked with all of them, the whole—I think somewhere between 25 and 30. I would have to look up the records.

Senator BALDWIN. May I say, Senator Hunt, that this is Colonel Carpenter from Tokyo. And we have been discussing and questioning the colonel on the information that he obtained. His statement is that Colonel Everett of the defense staff, after they got at Dachau, made a complaint through channels, and that Colonel Carpenter was sent down to Dachau to look into this complaint made by the defense in behalf of the accused, and he was just telling us that he examined a number of questionnaires, and that there were between 20 and 30 of them. Is that correct, Colonel?

Colonel CARPENTER. Yes, sir.

Senator BALDWIN. That had in the questionnaire some reference to either mock trials or physical abuse, or both, and as a result of that he, with the assistance of an interpreter—I understood the lieutenant with you was an interpreter.

Colonel CARPENTER. This lieutenant, I could find his name, but he was a lieutenant under Colonel Corbin. He was not assigned to our office, or he was not part of the prosecution. He was not in the prosecution.

Senator BALDWIN. He was a linguist?

Colonel CARPENTER. He was a linguist from Colonel Corbin's office.

Senator BALDWIN. Colonel Carpenter states that he sat down with these 20 or 30 German defendants, SS troopers, and questioned them.

Now go ahead from there, Colonel Chambers.

Senator HUNT. I want to apologize, Mr. Chairman, for the way I have neglected this committee, but I have been out of town until today.

Senator BALDWIN. You have two other subcommittees of your own, I understand.

Senator HUNT. Both of them are meeting today.

Senator BALDWIN. And you cannot be in more than one place at once.

Mr. CHAMBERS. Now, to repeat, perhaps. Out of this 20 to 30 cases which alleged mistreatment you found only 4 of them, approximately, had claimed any mistreatment of a physical nature?

Colonel CARPENTER. That is correct, only four claimed they had ever been hit.

Mr. CHAMBERS. And none of them had claimed they had been on bread and water after they had come to Schwabisch Hall?

Colonel CARPENTER. No, sir.

Mr. CHAMBERS. Did any of them complain to you that they had not been given adequate blankets or had been uncomfortable from the standpoint of cold, or what not?

Colonel CARPENTER. Not at Schwabisch Hall. There were some claims prior. But there were no claims made at that time.

Mr. CHAMBERS. This may appear to be a foolish question in the light of the other testimony, but so the record will be perfectly clear: Did any of these people claim they had teeth knocked out or jaws broken or that they had been kicked in the genitals, and mistreatment of that kind?

Colonel CARPENTER. No, sir.

Mr. CHAMBERS. Did they get into this question of solitary confinement at Schwabisch Hall?

Colonel CARPENTER. I think they were all in solitary confinement at various times.

Mr. CHAMBERS. What did you find out that solitary confinement at Schwabisch Hall amounted to?

Colonel CARPENTER. Merely an individual cell. There was no solitary confinement for the matter of punishment. I think most of them were in individual cells of their own. There were no other people in with them.

Mr. CHAMBERS. In talking to these people—and these are the German prisoners, the accused, part of the 73?

Colonel CARPENTER. Yes.

Mr. CHAMBERS. None of them made claims that their confessions had been extorted through force or through physical mistreatment?

Colonel CARPENTER. No, sir.

Mr. CHAMBERS. They did, however, indicate that the "schnell" procedure, or the mock trials, had been used for the purpose of getting their confessions?

Colonel CARPENTER. Yes; that was their claim. That was the bulk of the claim. In other words, that was practically all of their claim.

Mr. CHAMBERS. I wonder if you could tell us their reaction to it. What are some of the things they said about that?

Colonel CARPENTER. Well, of course, as I say, it is quite a while. Without my notes that I made at that time I doubt if I would be able to give you any individual claim of any individual. It was generally the same pattern: That they were called in and confronted by someone who made these accusations, one of their own—maybe a comrade who would come in and state the facts before them. And in general they described the fact they had been taken from one place to another with a hood on their head and taken into this room where there were candles lighted, and informed that these witnesses would appear against them.

Mr. CHAMBERS. Now, did they tell you they had people appointed to represent them or serve as their defense counsel, or anything of the type?

Colonel CARPENTER. Well, as I say, I cannot recall. They talked about the prosecutor. They may have told me that, and they may not. I cannot recall that. That was nothing of any particular—I do not think they talked about any defense counsel. I do not recall it.

Mr. CHAMBERS. Did they give any indication that they believed that was their trial, or that they had been judged, or would be sentenced, or punished, or anything of the kind?

Colonel CARPENTER. I think one or two of them tried to say that they thought they were their trials at the time, and that they later learned it was not. There was no particular claim. They merely cited these facts.

I did not go into those in any great detail because I knew the picture after talking to two or three of them. It was the same thing over and over again.

I asked several of them if they believed that was their trial, and they said they did not know, or they did not think it was. Several said to me that they were not fooled. That was a comment.

Mr. CHAMBERS. If they were not fooled, what were they kicking about on it?

Colonel CARPENTER. They were merely making all of this statement in reply to inquiries put to them by the defense counsel.

Mr. CHAMBERS. You say they did not claim physical mistreatment to themselves. But did any of them make any statements concerning mistreatment to others within Schwabisch Hall, and that they had heard cries or any indication of physical violence being used?

Colonel CARPENTER. I think one of them said that just before he went in he heard a noise of somebody crying, and he thought they were trying to fool him. I have a recollection of one of them thinking they were trying to fool him—these yells.

Mr. CHAMBERS. Now, did they mention the fact that they had made confessions, that they had given confessions against their own interests as well as accusing some of their own comrades of the various Malmedy crimes?

Colonel CARPENTER. I did not conceive it was my purpose to go into the truth of their confessions. In other words, I was inquiring into the circumstances in which they were claiming misconduct.

Mr. CHAMBERS. I wonder if that carried with it the responsibility of trying to see whether or not those confessions had been secured through improper methods.

Colonel CARPENTER. The only claim—is your question—I want to be clear myself. Is your question: Did these people say that these confessions were obtained by these means?

Mr. CHAMBERS. That is what I would like to have answered, yes.

Colonel CARPENTER. A very small percentage of them even made that claim. There were, I think, perhaps some that made that claim. I asked them, and they said they were not fooled.

Senator HUNT. Colonel, did you write a report at the time?

Colonel CARPENTER. No, sir. I will explain that. I took very voluminous notes, and I came back to Weisbaden intending to write a report. I arrived at Weisbaden late Saturday evening, and I was called in at 10 o'clock the next Sunday to give a verbal report, which I did. And the matter was then decided, and there was nothing further. I had no further connection.

Senator HUNT. May I ask the chairman, has the colonel given you his verbal report he made?

Senator BALDWIN. No; we have not gotten to that part yet.

Mr. CHAMBERS. We had not gotten around to the point of asking his conclusions, sir. We were trying to find out what he did while down there, and the scope of his investigation. And I was going to ask him then what his conclusions were.

During this period of time when you were talking to these people did they make any charges against any particular individuals, or refer to any particular individuals?

Colonel CARPENTER. That is why I tried to pin him down, especially in regard to any physical brutality. They were so vague as to time, as to who did it, when, and so on, that I could not pin them down at all as to any physical brutality. They mentioned the names of Lieutenant Perl—and all of them seemed to know him in connection with the mock trials. But outside of that—taking these up separately, alleged brutality and the mock trials, as to the alleged brutality, I could not get anything out of them to indicate I could go further in my investigation.

MR. CHAMBERS. Let's see if I have that exactly correct. There were no charges made where Perl was concerned—and I am going to mention several other names—or Thon or Kirschbaum, or Schumacker, concerning brutalities.

Colonel CARPENTER. They claimed they were punched, as I say. Four of them claimed they had been punched but they would not tell me who. They said they didn't know. I would say, "Was he an officer or an enlisted man, or was he a civilian?"

They didn't know.

"Can you describe them?"

Well, one of them tried to describe the man, or did describe one. The other three could not even describe anybody.

MR. CHAMBERS. Is that man that tried to describe one, do you recall whether or not he knew Lieutenant Perl by sight? Did he bring Perl into it in any other manner?

Colonel CARPENTER. I cannot recall without referring to my notes on that particular individual.

MR. CHAMBERS. All right.

Well, after interrogating these prisoners—and again for the record, there were between 20 and 30 of the 73 accused whom you yourself had screened out from all of the 73 after going through their complete statements.

Colonel CARPENTER. With the assistance of the defense.

MR. CHAMBERS. With the assistance of the defense. After talking to those people, what were your conclusions concerning these charges?

Here, I think you should tell us what your report was to Colonel Mickelwaite and Colonel Straight.

Colonel CARPENTER. My report was factual. I merely recited the facts as I found them, substantially as I have here.

My conclusions were that these—taking up the brutality, physical brutalities first—were so vague that they could not be corroborated by any further investigation. You could not put your finger on anyone to try to find out if that was the fellow alleged to have punched him, because it was over a long period of time, and for the reasons I have outlined, and there was no way you could corroborate that or could even further investigate those alleged punches.

So I came to the conclusion that those four people either did not know them, or if they did—I mean they did not know who hit them. Where these supposed punches were of no substantial importance and had no connection with the obtaining of the original statements because they did not even claim that. Or that this brutality was an effort on their part to get out of their confession.

As to the other, the so-called mock trials, my conclusion was that they did not affect the validity of the confessions.

MR. CHAMBERS. Do you recall as a result of your report what decision was made concerning the mock trials, and for that matter, the other charges of brutality? What disposition was made of your verbal report?

Colonel CARPENTER. Well, the question was as to what to do, and at this discussion it was decided to go ahead and try the cases.

MR. CHAMBERS. In other words, you had found no evidence which would support a belief that these confessions and other corroborating evidence obtained from prisoners or witnesses at Schwabisch Hall had

been secured through such media as to require you to throw them out and start over again?

Colonel CARPENTER. That is correct.

Mr. CHAMBERS. Now I would like to go back to your investigation just for a moment. Did you talk to any members of the prosecution team?

Colonel CARPENTER. No; I kept away from them entirely. My whole dealings down at Dachau were with the defense, Colonel Everett and his staff.

Mr. CHAMBERS. And they offered no evidence to you other than the evidence that would be given by the prisoners?

Colonel CARPENTER. And their own statements.

Mr. CHAMBERS. I mean the prisoners' statements, or their own evidence, given to you directly.

Colonel CARPENTER. Yes, sir.

Mr. CHAMBERS. What was the attitude of the prisoners when you talked to them? Did you feel like they were telling you the truth, that they had some confidence that you were making an investigation on their behalf? How did that work out, Colonel?

Colonel CARPENTER. They seemed to. They gave me the impression they were backing up their statements, that is all. In other words, it had been a very short time before that they had given these statements to the defense. And they seemed to take the position that those statements, anything I asked them outside of those statements, I just could not get anything out of them. In other words, when I went into the fact of who hit them, these four claimed they were struck occasional blows, and I could not get anywhere with them.

Mr. CHAMBERS. Did any of them volunteer any information to you beyond that, did they seem to want to open up and tell you more.

Colonel CARPENTER. No.

Mr. CHAMBERS. Was anybody from the defense staff present at the time you interrogated these people?

Colonel CARPENTER. I think they were in and-out of the room, but I cannot be sure about that.

Senator HUNT. Colonel, do you think the defense staff themselves were sold on the truth of these charges?

Colonel CARPENTER. I think they were sold on the truth of these mock trials.

Senator HUNT. I mean the brutalities.

Colonel CARPENTER. They did not stress that brutality. That brutality came in incidentally. Mostly I tried to develop that. They did not seem to be concerned about brutality but about mock trials.

Senator HUNT. Do you think their primary interest as defense attorneys was simply to try to exhaust every avenue they could to save their clients?

Colonel CARPENTER. Right.

Mr. CHAMBERS. I have no more questions, sir.

Senator BALDWIN. You made some reference, Colonel, to some notes. Have you got those?

Colonel CARPENTER. I would like to see, for my information and the information of the committee, if they are amongst my personal papers. I may have saved the notes I made. I made these notes before I came back to Weisbaden intending to make a written report. The time

element was such that I was not given time to such a written report, and these notes may be in my personal papers, and would like to make a search for them to see if I could find them.

Senator BALDWIN. Where are they?

Colonel CARPENTER. Here in Washington. This is my home.

Senator BALDWIN. Would you be willing to try to find them?

Colonel CARPENTER. I would be glad to. I may not have saved them, I do not know, but I would like to try to find out.

Senator BALDWIN. When you talked with these prisoners in the course of your investigation, were you alone with them, or was there a representative of defense counsel there?

Colonel CARPENTER. That is the thing that I cannot be sure about. I don't think the defense counsel was there as a defense counsel, no. He may have been in and out of the room. I was in the room by myself. I had my interpreter. And I sat on one side of the desk. The accused came in and sat on the other side of the desk. I had the interpreter, and I made notes as we went along.

I had their statement of so-called brutality, and then I made my own notes along with that.

Senator BALDWIN. What they said?

Colonel CARPENTER. Yes.

Senator BALDWIN. Did you tell them who you were and why you were there?

Colonel CARPENTER. Oh, yes; through the interpreter.

Senator BALDWIN. And have you reason to believe they had confidence in you?

Colonel CARPENTER. Well, they gave me no indication otherwise. They talked freely. As long as they were talking on their statement, as long as I limited my questions to the matters they had—

Senator BALDWIN. To the matters they had put in their statement?

Colonel CARPENTER. Put in their statement in answer to this questionnaire.

Senator BALDWIN. Do you remember now what their claims were with reference to physical abuse You mentioned punching. Was there any other?

Colonel CARPENTER. That was the limit. There were about four of them who said that at various times somebody had taken a punch at them. As I say, I am talking now about these four. There were no claims to me that they had been brutally beaten in an effort to obtain a confession, or anything of that kind. If there had been, I would have so reported it.

These four punches—the four people who claim to have been punched—were incidental. Like a guard would take a prisoner from his cell to the interrogation room.

Senator BALDWIN. Did not they say anything about being kicked in the groin, or anything of that kind?

Colonel CARPENTER. I cannot recall of any claim of anybody being kicked in the groin.

Senator BALDWIN. There is a Dr. Knorr, a German dentist, who used to attend some of these prisoners at Schwaebisch Hall. And we have an affidavit from him in which he mentions a number of men whom he saw who had fractured jaws which he claimed were the result of having been hit or beaten by somebody in the prison.

Have you any recollection of anything of that kind?

Colonel CARPENTER. No.

Senator BALDWIN. Did not any of these fellows make any kind of complaint like that?

Colonel CARPENTER. If there had been any complaint of that kind, I am sure I would recall it.

Senator BALDWIN. How long were you down there, Colonel?

Colonel CARPENTER. I was down there parts of 2 days.

Senator BALDWIN. How many German prisoners did you talk with in that time?

Colonel CARPENTER. About 25 or 30, between 20 and 30. I talked with all of them who claimed any misconduct.

Senator BALDWIN. Did they mention the names of any of the interrogators; do you recall?

Colonel CARPENTER. When I questioned them in trying to get the names of these people who had punched them—they claimed they had punched them or perhaps kicked them, but I think it was punching. Then they would not give me any names. So I asked them, "Was it Lieutenant Perl?" Or "Was it Harry Thon?" "I don't know."

When it comes to name, I was the one who used the names. They didn't. I couldn't get them to identify anyone.

Senator BALDWIN. You asked them, mentioning the names of the prosecution staff?

Colonel CARPENTER. Yes, sir.

Senator BALDWIN. Did you mention the name of Kirschbaum?

Colonel CARPENTER. I don't think I did.

Senator BALDWIN. Was there anything said in your talking with these prisoners—did any of them make any complaint of a mock hanging to which he had been subjected?

Colonel CARPENTER. No, sir.

Senator BALDWIN. Did you hear anything of that kind?

Colonel CARPENTER. No, sir.

Senator BALDWIN. Did you personally know any of the men on the prosecution staff?

Colonel CARPENTER. Oh, I know some of them, yes.

Senator BALDWIN. How intimately?

Colonel CARPENTER. Well I knew—well, they were all working at various times in the same office. That is all.

Senator BALDWIN. Were you on intimate or friendly terms with any of them?

Colonel CARPENTER. I was on friendly terms. I was not the enemy of any of them. I was on friendly terms with all of them that I came in contact with, of course.

Senator BALDWIN. I mean by that, was your relationship with them one of cordiality or just one of working together? What I trying to get at, is any interest why you should try to protect them?

Colonel CARPENTER. I had no interest in this. I knew them the same as I knew the defense. They were all of the same office. Colonel Everett went down, sent down from Weisbaden. Colonel Ellis was sent from Weisbaden. Colonel Ellis's staff was sent down from the same office as the defense staff.

Senator BALDWIN. Then you knew both sides equally well?

Colonel CARPENTER. I did.

Senator BALDWIN. Did you know Lieutenant Colonel Dwinell?

Colonel CARPENTER. Yes, sir.

Senator BALDWIN. And, of course, you knew Colonel Everett?

Colonel CARPENTER. Yes.

Senator BALDWIN. Did you talk with him down at Daehau?

Colonel CARPENTER. Oh, yes. My relations down there were with the defense. I was going down there for the purpose of trying to find out what they were claiming. My conference was with Colonel Everett and his whole staff. And I conferred with him frequently during the time I was there.

Senator BALDWIN. What claims did the staff make?

Colonel CARPENTER. It was all the same. It was their claim substantially of these mock trials. That was the main burden of their complaint. In their opinion they thought the confessions were illegally obtained by reason of mock trials. That was the claim of the defense.

Senator BALDWIN. Did they attempt to explain to you how the mock trials were conducted from their point of view?

Colonel CARPENTER. No; they merely went on and related the facts they claimed they had gathered from the accused.

Senator BALDWIN. What, if anything, was ever done about it after you got back and made your report?

Colonel CARPENTER. To my knowledge there was nothing further done.

Senator BALDWIN. Whom did you report to?

Colonel CARPENTER. I reported to Colonel Mickelwaite and Colonel Straight.

Senator BALDWIN. Colonel Straight and Colonel Mickelwaite?

Colonel CARPENTER. Yes; and we had a conference, at which conference Colonel Ellis was present.

Senator BALDWIN. I do not think of any further questions, but if you could spend enough time here with us to see if you could look up those notes, it would be most helpful.

Colonel CARPENTER. I will be glad to do that.

Senator HUNT. I want to ask one more question. Can you tell us in a very few words the essence of your report to Colonel Straight?

Colonel CARPENTER. Well, I gave them these facts. Then I recommended that these four who made these claims, unsupported, unsubstantiated claims, of being punished, be eliminated from the trial. That was the substance of my report, and we would go on with the rest of them. Not because I thought they had obtained any illegal confessions, or anything of the kind, but solely because they had so many defendants I thought it was better to eliminate that factor entirely from the case.

Senator HUNT. Do you remember the names of those four?

Colonel CARPENTER. I cannot remember the names of them now. They were not principal defendants. They were mostly, I think—they were not even officers. I think they were either privates or noncoms.

Senator HUNT. They were of the Malmedy group, though; were they?

Colonel CARPENTER. They were of the group of 72 or 73.

Mr. CHAMBERS. I have a couple of questions I would like to ask you, which sort of gets into the realm of opinion.

But we have some 49 affidavits that were filed by various accused some 2 years after the trial was over. A great majority of these affidavits allege physical mistreatment. They range—a great many of them allege they were kicked, broken teeth, pushed around; a majority of them at some time or another in their affidavits allege they were beaten. Some few allege they were slapped, a few alleged they were beaten with clubs, and a substantial number allege they were kicked or beaten in the genitals.

Now these are the same people, at least 20 of whom you interviewed.

Colonel CARPENTER. Yes.

Mr. CHAMBERS. I wonder if you care to comment on the fact that they have now made affidavits as to why they did not tell you at the time you made your investigation.

Colonel CARPENTER. I think it is typical. Most of these people have been convicted, and it is my opinion those statements were made so as to delay the execution of the sentence of the court, and possibly avoid the execution of the sentence of the court. I think it would probably be quite pertinent in that connection for me to make the observation that the statements that were obtained by the defense counsel back within a week or so after they took over, it would be quite of interest to compare those statements made at that time with the affidavits which you have referred to in your question.

Mr. CHAMBERS. Colonel, you have no way of knowing what happened to those original statements; do you?

Colonel CARPENTER. They were, at the last I knew, in the possession of the defense.

Mr. CHAMBERS. I have no further questions at this time. But I would like to ask this: Colonel, how long do you think it would take you to search out these notes and locate them?

Colonel CARPENTER. Not too long. I either have them or I have not. I have a number of boxes and I am going through them as fast as I can. As I say, I do not know whether I have them or whether I have not, but I will ascertain it in a very short time and let you know.

Mr. CHAMBERS. That will be fine.

Senator HUNT. Did you interrogate these prisoners after the trials were completed?

Colonel CARPENTER. No, this was sometime before the trials commenced. This was, I think, within a week or 2 weeks of the time that the defense was appointed to prepare for their defense. In other words, the defense group of attorneys at Wiesbaden went down to Dachau and began their work in preparation for the trial. It was shortly after that that I went down to Dachau.

Senator BALDWIN. That is all, but if you could dig out those things, we would appreciate it.

Colonel CARPENTER. I will be glad to try to.

Senator BALDWIN. And if you do, come back with them. Come back anyway. We would like to go over that with you anyway.

Thank you very much, sir.

Colonel CARPENTER. Yes, sir.

(Witness excused.)

Senator BALDWIN. Will you stand up and hold up your right hand?

Do you solemnly swear that the testimony you shall give us in the matter now in question shall be the truth, the whole truth, nothing but the truth, so help you God?

Mr. SLOANE. I do.

TESTIMONY OF HERBERT K. SLOANE, WASHINGTON, D. C.

Mr. CHAMBERS. Mr. Sloane, would you give us your full name and present occupation?

Mr. SLOANE. Herbert K. Sloane, and I am presently in the Civil Aeronautics Administration here in Washington.

Mr. CHAMBERS. During the war, Mr. Sloane, you were in ETO in Europe?

Mr. SLOANE. That is right.

Mr. CHAMBERS. Were you at any time connected with the war crimes group, or have any connection with the Malmedy trials?

Mr. SLOANE. Yes, I was with war crimes group, I would say approximately from the early part of March 1946, until the end of March 1947.

Mr. CHAMBERS. And during that time did you have occasion to deal with any of the Malmedy prisoners or the investigation?

Mr. SLOAN. Yes, on two separate occasions, one before the trial and one considerably after the trial when the prisoners were already at Landsberg. I had occasion to contact one prisoner at Landsberg.

Mr. CHAMBERS. Suppose, Mr. Sloan, you tell us about the case before the trial first, and tell us in your own words what you know about the particular case and what happened at that time.

Mr. SLOANE. It was soon after I was transferred from the Air Corps into war crimes that I received an order, and I believe it emanated from Colonel Smoak. I am not sure exactly. It was relayed to me through a Lieutenant Hatcher. The order was that I was to proceed to Eschborn Airport in Frankfurt from Wiesbaden and there pick up, I believe it was, five or four prisoners, accused in the Malmedy case, who had been prisoners of war in an American POW camp and had been returned to Germany as part of the 73 who eventually stood trial.

I believe they were flown to Paris and then transferred to another aircraft in Paris and sent on into Frankfurt. Then I picked them up there with instructions to bring them to Wiesbaden.

I went over, and I believe it was five prisoners I picked up. If I remember correctly, they were all enlisted men. I picked up all five of them and put them in the back of a weapons carrier, and I had an MP escort, and I took them back to Wiesbaden and lined them up outside of the war crimes building. And by the time we got there the orders had been changed, and I was to bring them all the way through to Schwabisch Hall.

So we loaded them into this weapons carrier again and took off for Schwabisch Hall by way of Heidelberg, if I remember correctly.

We got to Schwabisch Hall—it was a long route because several of the bridges were down, and we got a little messed up on our route. We got there pretty late in the evening. And they were all taken right into the prison. I accompanied them right into the prison at Schwabisch and got a receipt for them.

If I remember correctly, it was signed by a woman who was connected with the interrogation staff, I believe, in the capacity of investigator or something like that. And the prisoners were then marched down into a cell block.

If I remember correctly, there were four or five cells on the left side of the block, and each one was told to stand outside the doors, and the doors were opened, and each one of them were, well, ushered into the individual cells.

Then I returned to the prison office and made arrangements with my crew to stay overnight with the investigation staff in their house in Schwabisch Hall and return next day to Wiesbaden. And I talked with one or two of the members that were in the office at the time about what these fellows had done, and so forth, and so on, and then one of them, one of the members of the investigation-team group, asked me if I would be interested in seeing an interrogation—something to that effect.

And I said, "Yes, I would like very much to see it."

So we went into the cell of one of them. I cannot give you his name. I remember what he looks like, and if I saw pictures of the various defendants I could identify him.

Senator BALDWIN. Have we got a picture of the defendants here?

Mr. CHAMBERS. We have, sir, but a very small scale.

Mr. SLOANE. It would have to be fairly good.

Senator BALDWIN. Why do we not show it to him? They all have numbers on, and maybe we can identify this fellow.

(Mr. Chambers hands pictures to the witness.)

Mr. SLOANE. I am afraid I could not make a positive identification from this. The faces are not very clear. I remember that the fellow made an impression on me on the trip down.

Senator BALDWIN. It was one of the men you brought down?

Mr. SLOANE. Yes, sir; one I brought down, and I remembered him particularly because of the features of his face. That is why if I saw him on this picture I know I could identify him.

Senator BALDWIN. If you cannot, never mind. I thought that possibly you might.

Mr. SLOANE. I remembered him specifically because he was—well, he was what you might call one of these tough guys. He did not like a lot of things on the trip down and—

Senator BALDWIN. Did he speak English?

Mr. SLOANE. No, sir; he did not. I spoke German.

Senator BALDWIN. You say you speak German?

Mr. SLOANE. Yes, sir.

Senator BALDWIN. When you say that he was a tough guy, what do you mean by that?

Mr. SLOANE. Well, sir, he had a strange attitude from the moment that we got him off the airplane. I think I might have to qualify that.

When we picked these fellows off the airplane we were a little bit impressed by their appearance in that they were all beautifully clothed in these blue uniforms. They had nice American uniforms dyed blue, and nice shiny GI boots, and barracks bags loaded with some of the things we had not been able to get for some time. And it didn't make a very good impression on us. I guess you could understand the reaction.

Senator BALDWIN. You did not look that good; did you?

Mr. SLOANE. No; we did not, sir. We did not look quite that good. We hadn't had the advantage of being in an American prisoner-of-war camp.

Senator BALDWIN. Go ahead.

Mr. SLOANE. I know we walked into the cell, this member of the investigation group and I—we walked into the cell and the prisoner was standing—if I remember the cell, it was a long rectangular cell, with a window toward the end, and the prisoner was about three-quarters of the way down when we walked into the cell, and the investigator walked directly up to the prisoner and said something or other to the effect, "Take off your shirt and raise your"—either "your left" or "your right arm." I am not certain of that any more.

And I wouldn't, I can't say definitely whether it was because the prisoner didn't move quite fast enough, or whether the prisoner had whispered, said something under his breath, or what it was. Anyway, he got socked.

Senator BALDWIN. What do you mean, "he got socked"?

Mr. SLOANE. He got hit.

Senator BALDWIN. In what way?

Mr. SLOANE. With his fist [demonstrating].

Senator BALDWIN. He was punched?

Mr. SLOANE. Yes, sir; he was punched.

Senator BALDWIN. In the face or body?

Mr. SLOANE. Right about here, I would say [indicating].

Senator BALDWIN. Did he have a blindfold on at the time?

Mr. SLOANE. No, sir; he did not. He was just brought into the cell. It wasn't 5 minutes after he was ushered into the cell for the first time.

Senator BALDWIN. Did he have any handcuffs or anything like that on?

Mr. SLOANE. No, sir; we took off the handcuffs when I got him out of the truck.

Senator BALDWIN. You say you do not know why he was hit. You think maybe because he did not get his shirt off fast enough. Did you hear him say anything?

Mr. SLOANE. No, sir; I didn't hear him say anything. I think probably it was because he was a little bit slow taking his shirt off.

Senator BALDWIN. What was he asked to take his shirt off for; do you know?

Mr. SLOANE. At the time I didn't know, but as it went on I realized it was to see if he had some identification under his armpit. I believe it was an SS number of some sort which was tattooed under their arm.

Mr. CHAMBERS. What happened after he was hit in the face or in the chest?

Mr. SLOANE. He was hit approximately here—I will have to demonstrate.

Senator BALDWIN. Go ahead.

Mr. SLOANE. He was punched like that [throwing right fist] and words then something to the effect, "Bursche gehorsa hmkeet." Bursche, is, a rough translation, "tough guy." It means "obedience" or "obedience i smeant here." Something like that. "Bursche" and "gehorsa hmkeet" are two words I do specifically remember. And with that the other arm was thrown up like that [indicating]. In other words, the man used his arm again, used his hand simply to get that arm up in a hurry.

Senator BALDWIN. Who was this man that did this?

Mr. SLOANE. Mr. Thon.

Senator BALDWIN. Mr. Thon?

Mr. SLOANE. Yes, sir.

Senator BALDWIN. How hard did he hit him? Did it knock the man down?

Mr. SLOANE. Oh, no, sir.

Senator BALDWIN. Did it bring any blood?

Mr. SLOANE. No, sir.

Senator BALDWIN. Did the prisoner cry out at all?

Mr. SLOANE. No, sir.

Mr. CHAMBERS. When he raised his arm, Mr. Sloane, did he have an SS mark under his arm?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Then what happened, or what was said?

Mr. SLOANE. The only thing "hast du geschossen" or "did you shoot?"

The prisoner said "Yes," and that is all. We walked out, and Thon said to me, "See; there is your confession."

Mr. CHAMBERS. Mr. Sloane, when you were called in to talk to us about this case, there was a little more detail which you may or may not want to repeat.

Mr. SLOANE. I have no hesitancy about repeating anything, sir.

Mr. CHAMBERS. You told me that Thon asked if you would like to see how he could get a confession.

Mr. SLOANE. That is right.

Mr. CHAMBERS. As I recall our conversation, there was some levity about how fast he could get a confession, and he said, "Come on in. I bet I can get a confession before you take off your raincoat."

Mr. SLOANE. I am sorry. I didn't mean to omit that purposely in any way. As I said, when we were standing out in the office, and the prisoners had been ushered into their cells, and Thon asked me, as I told you, "Did I want to see a confession," and I believe he did say something at the time, "Do you want to see how fast I can get a confession," or something like that. And to qualify it even more—I am sorry I did not think of it—he did say, "I bet I can get a confession before you can get your raincoat off."

All of this transpired so rapidly that I was still in the process of taking my raincoat off when the thing was already over and the question had been asked of the prisoner, "Did you shoot?" and the answer was "Yes," and that is all.

Mr. CHAMBERS. You say he asked the question, "Did you shoot?" Did this prisoner know what he was there for? Did he know whether or not he was being charged with shooting American prisoners at Malmedy, or was he just asked the question, "Did you shoot?"

Mr. SLOANE. He was just asked the question; that was all.

Mr. CHAMBERS. Almost any soldier would have to answer that question "Yes."

Mr. SLOANE. This is just personal opinion, but I don't think there was any question but the prisoner knew what it was. I am certain he knew why he was there.

Mr. CHAMBERS. During your work in Europe in this connection, I believe you told me you had occasion to take prisoners around from spot to spot and do certain investigative work of your own.

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Do you feel that this prisoner was handled brutally or mistreated?

Mr. SLOANE. Certainly not.

Mr. CHAMBERS. Will you explain your answer a little further?

Mr. SLOANE. Yes, sir. As I say, at that time I was a neophyte with the war crimes group. I was merely an investigator on one of the teams. Subsequently I became commanding officer of one of the teams and afterward became supervisor for half of the investigating teams, under Colonel Smoak first, and later on Colonel Ellis. And as I progressed in my contacts with some of these Germans, it became apparent to me in case after case why occasionally an investigator or anybody connected with war crimes and with prisoners might once in a while probably be terribly tempted to take a swing at them.

Senator BALDWIN. Why do you say that?

Mr. SLOANE. Well, sir, I guess the best way I could describe that is: When you have just gotten through digging up a body, and that body is an American soldier, or three of them, and you stand there and you see the German pathologist go through what is left of him and dig into the head, and they pull out a bullet, and you see another body having just gone through a pathological examination, and you see the guy has been stabbed to death with a blunt instrument—the bones are in such a way that the pathologist can readily ascertain the cause of the death—when you have seen a few of those things, and then you come up against a man who 20 or 30 or 40 people positively identify as not only having been there when the men were murdered, but every one of the stories is exactly the same, that that man committed the murder, and you talk to this fellow and you get a little sass from him; well, sir, then you take a swing at him.

Senator BALDWIN. Did you ever hit any of the prisoners?

Mr. SLOANE. Yes, sir; I hit a prisoner.

Senator BALDWIN. What prisoners were those?

Mr. SLOANE. I went to the English zone to capture a man, to find and capture a man by the name of Trummler, who was an assistant to Heinrich Himmler for quite some time and later on was one of the big shots in the Gestapo, in the Wehrkreis XII, which is around Wiesbaden and Frankfurt, part of France and Belgium, and so forth and so on.

And after finding him in the English zone, in Hannover, I went to the place where I had been told he was living. I was with a corporal at the time.

Senator BALDWIN. Were you a commissioned officer?

Mr. SLOANE. Yes, sir; I was a captain.

And we made preparations to get him. He wasn't at home, and there was an old lady and her daughter in the house. The old lady was approximately 75 or 80, and the woman was maybe 40.

He had a room there, this fellow Trummler, and when we saw him coming, to make it appear natural on his approach to the apartment, I told the woman of the house to open the door, which was the usual procedure, and let him in. And we were waiting, my corporal in one room and I was waiting in another room. And when this fellow finally did come into the hall he was carrying a loaf of bread in his hand. When I told him to get his hands up and drop the bread and he did not drop it, so I socked him.

I might add, incidentally, that before the thing ever occurred I had taken the bullets out of the machine gun which the corporal was holding so as to prevent any possibility of his getting trigger happy and shooting up the place with these two civilians there. Frankly, it was something new to me too, so I socked him first to make sure he did not have anything on him.

Senator BALDWIN. At that time was he in uniform?

Mr. SLOANE. No, sir; he was working as a janitor in an English military hospital.

Senator BALDWIN. Was he connected with the Malmedy cases at all?

Mr. SLOANE. No, sir; he was not.

Senator BALDWIN. You told about these men that you saw the pathological examinations being made. They were not in the Malmedy cases, either?

Mr. SLOANE. No, sir; they were not.

Senator BALDWIN. They were other cases?

Mr. SLOANE. They were American pilots.

Senator BALDWIN. American airmen?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Is it fair to say, Mr. Sloane, that was a general custom, slapping prisoners, or a rare and unusual thing, or what was the story on that?

Mr. SLOANE. To the best of my knowledge, it was a very rare and unusual thing. I know that one man was severely censored for having dealt out a little rough treatment to one prisoner. And, if I remember correctly, he was even relieved of his job.

Mr. CHAMBERS. Was that in the Malmedy case?

Mr. SLOANE. No, sir; in a subsequent case, but a man who was with War Crimes at the time of the Malmedy case. He kicked a German, and he was immediately let go. I speak of a man by the name of Harrison, who was an attorney, who kicked General Strobe, who deserved it, and he was immediately let go.

Mr. CHAMBERS. Now, before coming to Schwabisch Hall, had you had any knowledge of what was going on at Schwabisch Hall?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Did you hear any stories concerning the way they were treating the prisoners there?

Mr. SLOANE. Well, I mean again this is merely things that I heard and couldn't even say where I heard them from. I don't know. But we did hear that things were a little rough.

Mr. CHAMBERS. What do you mean by "a little rough"?

Mr. SLOANE. Well, in view of the fact, Colonel, this is merely a repeat of a hearsay, I couldn't possibly embroider on it specifically what I mean by "a little rough."

My impression when I heard the general talk about it was that it wasn't exactly a lark for the prisoners, that the prisoners were down there on business, and nobody was going to take any back talk. And I imagine also that, well, the investigative body was down there and out to get the facts.

Mr. CHAMBERS. At that time did you have, by any chance, a lad by the name of Teil working for you?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Kurt Teil?

Mr. SLOANE. At that time Kurt Teil was an investigator on the same team I was connected with, 6839, commanded by Lieutenant Hatcher.

Mr. CHAMBERS. Had he been down at Schwabisch Hall at that time?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Had he reported anything that happened at Schwabisch Hall to you or told you about it?

Mr. SLOANE. I couldn't say for sure that I discussed it with Teil. I know the Malmedy case was under discussion quite a lot up in the office. You see, I was connected immediately with the headquarters of War Crimes in the Evidence Branch. My team that I was connected with worked directly out of the Evidence Branch of the war crimes group headquarters. So there was a good deal of discussion about the Malmedy case.

As I say, the general tenor of the discussion was that it was not a lark. But on the other hand, I cannot conscientiously say at any time I heard any discussion about brutality.

Mr. CHAMBERS. What was your evaluation of Teil?

Mr. SLOANE. I would say that Teil was a very good investigator on certain types of cases.

Mr. CHAMBERS. Did you form any opinion as to emotional stability and so on?

Mr. SLOANE. Yes. I thought he was emotionally not mature. He was a very young boy. And I thought he was emotionally rather unstable in certain ways, and that is why I qualified that statement and said that he was a good investigator, an excellent investigator, in certain types of cases.

Mr. CHAMBERS. Now, did you ever hear Teil or anyone else talking about any particular members of the investigative staff at Schwabisch Hall?

Mr. SLOANE. No, sir.

Mr. CHAMBERS. Specifically, did you hear any rumors about Perl and Thon and Kirschbaum and the others, that they might feel that mistreating prisoners was the proper way to handle them in getting confessions from them?

Mr. SLOANE. I can't say that any individual name was ever mentioned at any time.

Mr. CHAMBERS. But there was just a general understanding it was pretty rough at Schwabisch Hall?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. And the prosecution staff was out to get the facts?

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. You were working in the Investigative Branch. Was there a chap by the name of Byrne working out of that same branch at that time?

Mr. SLOANE. I recall the name, sir, but I can't say definitely.

Mr. CHAMBERS. Let me ask this question: Was there anyone out of your staff that ever had anything to do with corroborating evidence as secured by the prosecution staff at Schwabisch Hall?

Mr. SLOANE. No, sir.

Mr. CHAMBERS. So you have no way of forming any opinion as to whether or not they were corroborating the evidence that they secured through statements from the prisoners?

Mr. SLOANE. No, sir; because, as I say, when I went in there, all this time while this was going on down in Schwabisch Hall, we were tied up on another major case.

Mr. CHAMBERS. Well, now, when you first started your testimony, you made mention that there were two times that you had contact with the Malmedy case. You described the one before the trial. There was one after the trial?

Mr. SLOANE. Yes, sir; do you want me to talk about that one?

Mr. CHAMBERS. Yes; tell me about that.

Mr. SLOANE. The second contact I had with the Malmedy case was strictly a contact with Colonel Peiper, Joachim Peiper, who, after he had been tried and sentenced to death and was in Landsberg at that time, I believe, awaiting execution—the case at the time was under review; that is, the first review—and I do not know how or why, but Mrs. Peiper contacted me and asked if it would be possible for her to get down to Landsberg to see her husband.

I referred the case at that time, if I remember correctly, to Colonel Smoak, although it may have been Colonel Ellis—he would have to help me out on that—whether it would be all right. The thing was referred to higher channels in view of the fact that Peiper was no longer under the jurisdiction of War Crimes.

Anyway, as I understand it, permission was gotten from General McNarney for Mrs. Peiper to visit her husband, and I was ordered to pick her up in Wiesbaden and drive her to Landsberg, be present during the entire time she was there with Peiper, and then bring her to Munich afterward.

I did that. During that time I spoke to Peiper for, I would say, at least an hour, both in the presence of his wife and out of the presence of his wife. I had been given the side job during this contact to see if I could get any information out of Peiper relative to the Skorzeny case. I got no information from him and did not pursue the subject further.

But at that time Peiper did make a statement which I relayed immediately after my return to Colonel Ellis, and that is that Peiper bore no animosity whatsoever or hard feelings against Colonel Ellis. In fact, he sent his regards. I gave that message to Colonel Ellis in his office.

Senator BALDWIN. How did that happen to come up? How did you happen to discuss that?

Mr. SLOANE. What, sir?

Senator BALDWIN. That Colonel Peiper had no hard feelings toward Colonel Ellis. What brought on that conversation?

Mr. SLOANE. Frankly, I do not remember, sir. I discussed just generalities with him. In fact, I purposely tried to stay away from his trial and tried to get the conversation going to Skorzeny and his activities and did not get anywhere, and toward the end he expressed his appreciation for my having obtained permission for his wife to come down and having brought her down, and he said something to the effect that—I do not know how Colonel Ellis got into it. I think he said, "Colonel Ellis must think I am a terrible person," or something like that. I am really not certain any more how it came in.

Senator BALDWIN. I was wondering if it came up in connection with any complaints Peiper made or anybody made concerning the manner in which Colonel Ellis or any of the prosecution team had treated them.

Mr. SLOANE. No, sir; I remember how it came up. Mrs. Peiper mentioned originally something about Colonel Ellis wouldn't look at

her during the latter part of the trial or something, and she wondered whether he had some resentment against her. I believe something like that started it, and then it turned as to Peiper's personal reactions and he expressed that opinion of Colonel Ellis, and I immediately relayed that to Colonel Ellis at the time.

Senator BALDWIN. In your talk with Peiper, did he make any complaints about any physical abuse of him or any physical abuse of his men?

Mr. SLOANE. No, sir; the only complaint he spoke about was a complaint at Landsberg, itself. He mentioned nothing whatsoever about the pretrial treatment or events at the trial at Dachau, and he had only one complaint which was at Landsberg.

Senator BALDWIN. Was that where he was confined awaiting execution?

Mr. SLOANE. Yes.

Senator BALDWIN. What was the complaint about?

Mr. SLOANE. It was about electric lights shining in his eyes all the time, and he could not sleep, so I told him he would get used to it.

Senator BALDWIN. This thing that you described as having happened at Schwabisch Hall, was that the only time you were at Schwabisch Hall?

Mr. SLOANE. It was the only time I was at Schwabisch Hall. I went down to Dachau several times to the trials.

If I may be permitted, I would say, during the time I sat there which was four or five times during the trial, twice during the early stages and twice at the very end, I certainly saw no evidence of anybody having a broken jaw. A broken jaw usually shows up, and there was none there.

Senator BALDWIN. At Dachau, did you have any contact, frequent contact, or any at all, with the Malmedy prisoners awaiting trial?

Mr. SLOANE. No, sir.

Senator BALDWIN. You did not?

Mr. SLOANE. No, sir.

Senator BALDWIN. How did you happen to be a witness in this case?

Mr. SLOANE. I had heard about the investigation—am I allowed to speak frankly, sir?

Senator BALDWIN. Yes, sir.

Mr. SLOANE. I had read about the investigation and read insofar as the newspapers gave, the versions of the testimony of certain people as well as some of the questions that had been asked the witnesses and certain remarks and statements that had been issued by certain members who were doing the questioning, and I felt very strongly—I discussed it with my wife at great length as to what I should do, and I felt very strongly that an injustice was being done to a group of people who had done a tough job very well, and I felt that by describing an incident which had been in the minds of some people seemingly completely distorted, I could bring out the truth of the fact, and that is that any body might occasionally slap somebody, especially when it is immediately after a war and when we are faced with the realities of a pretty gruesome tragedy and when we are all under pressure to do a job, which in many instances may be personally distasteful, and that was an entirely different thing to sit 2 or 3 years later in judgment of those events when the war hysteria and the hysteria that immediately follows a war is over and done with and

long since forgotten, and that many events, when you look at them today, may seem different than they did then.

Also, I might add that the war crimes trials—I am sure I have seen a dozen letters go over my desk from Congressmen demanding aggressive and imperative action regarding the case of so-and-so and so-and-so, who was shot down or who has been missing and rumor has it that he had been mistreated or killed by the Germans. When you get those letters, and you are told to go out and do something about it, you do something about it, and it is a difficult thing to sit 3 years later in judgment.

Today, I think I would probably act different in many instances, too, in my relations with the prisoners, but at that time—well, pressure was on.

Senator BALDWIN. You only had this one opportunity to be at Schwabisch Hall, and you saw that one incident?

Mr. SLOANE. Yes, sir.

Senator BALDWIN. Did you talk to any of the prosecutors that were at Schwabisch Hall?

Mr. SLOANE. I talked to a member of the prosecution staff at the time in one of my visits to Dachau. I talked to Harry Thon.

Senator BALDWIN. Harry Thon?

Mr. SLOANE. Yes, sir.

Senator BALDWIN. Did he say anything to you about how these confessions had been obtained or anything of that kind?

Mr. SLOANE. Well, he felt, and still feels, very strongly that no undue pressure was used at any time.

Senator BALDWIN. I mean by that: Did you get the impression that these people were being batted around?

Mr. SLOANE. No, sir; I did not get any such impression. I do not think they were batted around. I think occasionally if somebody did not move fast enough or somebody got out of line, they may have gotten punched, but I would say, in light of what they did to us, that was not very bad.

Mr. CHAMBERS. You know, one of the interesting points about this is that you are one of the few eyewitnesses that ever saw anybody slapped or abused. Everything else has been pretty much hearsay.

I would like to pose this question to you: Thon was interested in getting a confession and showing you how fast he could get a confession. Suppose, after that one punch or one slap that he had not gotten the confession. Do you feel Thon might have gone ahead and been more rough in his treatment of the prisoners?

Mr. SLOANE. I could not answer that.

Mr. CHAMBERS. You were there and knew the feeling of the place.

Mr. SLOAN. Yes, sir.

Mr. CHAMBERS. You say you cannot answer the question, but what would you have done or what do you think Thon would have done?

Mr. SLOANE. I do not know what Thon would have done. I can say what I would have done.

Mr. CHAMBERS. I suppose I have got to ask you: What would you have done?

Mr. SLOANE. I would have slapped him until I got a confession out of him if he got smart with me. I am not interested in the confession—I would like to show him who is boss. That is what I would have done 3 years ago. Today, I would not.

Mr. CHAMBERS. Do you suppose that Thon might not have done the same thing?

Mr. SLOANE. I do not know, sir. I cannot speak for Thon.

Mr. CHAMBERS. Did you ever hear Thon, whom I believe you said you saw later on, comment on any of the confessions that he secured, or did you ever talk to Thon about any of his cases at all?

Mr. SLOANE. Yes, sir, I talked to Thon as recently as 6 weeks ago when I was on active duty in the military, again on the airlift.

Mr. CHAMBERS. You must have remembered this one incident.

Mr. SLOANE. Yes, sir.

Mr. CHAMBERS. Did you ever talk this one instance over with him?

Mr. SLOANE. No, sir; I did not think, in view of the investigation and the charges and countercharges, that it would be a good idea to discuss it.

Mr. CHAMBERS. Did Thon have any comment to make about this investigation or any charges being made against the prosecution staff?

Mr. SLOANE. Yes, sir; we did discuss that.

Mr. CHAMBERS. What did he have to say?

Mr. SLOANE. He made the statement that Colonel Everett was—well, going off the deep end, so to speak; to put it politely.

Mr. CHAMBERS. Did he have other comments to make?

Mr. SLOANE. He simply said that it was not the truth, that all this business about broken jaws, and, particularly I know he mentioned the broken jaws and the kicking in the genital organs, that it was ridiculous because it was such an open-and-shut case that those things were not necessary, and also: How is it that they all came out 2 years after the trial instead of at the trial?

He was pretty incensed about it, I know that, and he felt, I know from the way he spoke, that a cloud was being drawn around this event, this investigation and trial of the Malmedy case, which was absolutely unfair.

Mr. CHAMBERS. I have no further questions.

Senator BALDWIN. Any questions, Senator Hunt?

Senator HUNT. I have nothing.

Senator BALDWIN. Thank you very, very much.

We will take a recess until 2 o'clock tomorrow afternoon.

(Whereupon, at 3:45 p. m., a recess was taken until 2 p. m. Tuesday, May 24, 1949.)

MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, JUNE 1, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to call, at 10:30 a. m., in room 212 Senate Office Building, Senator Raymond E. Baldwin, presiding.

Present: Senators Baldwin (presiding), and Hunt.

Also present: J. M. Chambers, of the committee staff, Colonel Murphy, Colonel Fenn, Col. C. B. Mickelwaite, Lt. Col. Charles Perry, Jr., Col. C. E. Straight, and Virgil P. Lary, Jr.

Senator BALDWIN. The meeting will come to order.

Is Colonel Mickelwaite here?

Colonel MICKELWAITE. Yes, sir.

Senator BALDWIN. Hold up your right hand. Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Colonel MICKELWAITE. I do.

Senator BALDWIN. Sit down, sir.

TESTIMONY OF COL. CLAUDE B. MICKELWAITE, OFFICE OF THE JUDGE ADVOCATE GENERAL, DEPARTMENT OF THE ARMY

Mr. CHAMBERS. Give us your name, rank, and present station, please Colonel.

Colonel MICKELWAITE. Col. Claude B. Mickelwaite, Assistant Judge Advocate General, Office of the Judge Advocate General, War Department, rather Department of the Army.

Mr. CHAMBERS. Colonel Mickelwaite, during the war I believe, for a time, you were connected with the war crimes activities of the European Theater.

I want to ask, in your own words, if you could tell us how you fit into the picture, the job you had there and some of the lines of organization that ran below you, particularly at it affected the Malmedy trial, in order to sketch in your relationship to the picture, as a whole. I wish you would tell us the whole story.

Colonel MICKELWAITE. In 1942, I went to Africa as judge advocate to General Patton, and I was first judge advocate of the Fifth Army. I went into Italy with General Clark on D-day, and in the spring of 1944, I went on temporary duty to England, at the request of General Eisenhower. While I was in England, I was requested by General Bradley, to be judge advocate of the Twelfth Army Group, and later the transfer was effected.

So, I went into France as judge advocate of the Twelfth Army Group, and remained as judge advocate at headquarters until August 1945.

During the fall of 1944, instructions, or a directive came from Washington in regard to an investigation of war crimes, and the theater headquarters imposed certain duties upon subordinate organizations, including the Twelfth Army Group. In the Twelfth Army Group, most of the investigating duties were assumed by the various Judge advocate connections, as the directive had come from the Office of the Judge Advocate General in Washington, and it was in that capacity, as judge advocate of the Twelfth Army Group, that I first had anything to do with the Malmedy case.

The report of the investigation in that case came through my office and on to the theater office. This report of the investigation came from the First Army, which was one of the armies of the Twelfth Army Group.

In the spring of 1945, I was assigned as deputy theater judge advocate, in addition to my other duties, which meant that I occupied two positions from the latter part of May 1945 until the 1st of August, when the Twelfth Army Group was disbanded. My office at that time was in Wiesbaden, which was the headquarters of the Twelfth Army Group, and during that period while I held two positions, the War Crimes Branch of the theater moved to Wiesbaden. From the 1st of August 1945 until early in May 1946 I was deputy theater judge advocate in charge of the War Crimes Branch, as it was called, at that time.

Upon the death of General Betts, early in 1946, I became the theater judge advocate and remained in that capacity until I returned to the United States in April of 1947.

Mr. CHAMBERS. Now, this War Crimes Branch, was that divided down into sections so that you had your investigative end, perhaps, and your trial groups, and so on? How was that organized?

Colonel MICKELWAITE. Yes, it was organized substantially along the lines you have mentioned. There was the Evidence Branch, which included the investigation; there was the Prosecution Branch; and, there was a Post-Trial Branch; and, Administrative Branch, and others.

Mr. CHAMBERS. Now, at the time you were in charge of the War Crimes Branch as deputy theater judge advocate, who was in charge of the Evidence and Investigation Branch?

Colonel MICKELWAITE. I couldn't be sure as to who was in charge over the entire period. There were certain changes from time to time.

Mr. CHAMBERS. I should ask it this way: Was Colonel Ellis a part of that branch while you were in charge?

Colonel MICKELWAITE. Yes, he was. His exact position during the entire period, I could not tell you; but, I believe he was in charge of the Investigation Section, at least during a period of the winter during 1945 and 1946.

Mr. CHAMBERS. Now, one of the duties of that Branch, Evidence and Investigation Branch, would be to develop the facts and prepare the cases for trial in the Malmedy matter, is that right?

Colonel MICKELWAITE. Yes, to develop the evidence. The Prosecution Branch would then determine whether there was a basis for trial.

Mr. CHAMBERS. Now, Colonel, I am sort of groping here trying to use you to fill in some of the many threats of testimony that we have received, so if you will bear with us on this just a little bit.

During this period, in the Malmedy matters, were you responsible for the assignment of personnel to that particular staff?

Colonel MICKELWAITE. In large measure, yes. I suppose we ought to review the organization further down to a certain extent. There were, during this period, two armies in occupied Germany, the Seventh Army and the Third Army. The investigation teams had been assigned by the theater to the armies, originally, even before the war ended. A few teams were assigned, I believe, or about the time the war ended. Those teams continued to be assigned to the armies, so long as the armies existed; and, it was primarily the function of these investigation teams which were established for the purpose of investigating cases, it was primarily their function to secure the evidence in a case where a war crime was alleged.

Mr. CHAMBERS. May I interrupt you? When you say these teams were assigned to the armies, do you mean that they were assigned on temporary duty from your outfit, or were they transferred to it and became organically a part of the army?

Colonel MICKELWAITE. They were organically a part of the army, subject, however, to technical direction from my office.

Now, in regard to the Malmedy case, I cannot, at this time, tell you whether it was an army team which initially investigated that or not, but at a later time, a special team was sent out of my office, as was done in certain unusual or important cases. We called those informal investigation teams because they did not fit into the table of organization which the formal investigating team occupied. In other words, the formal investigating team was the table of organization unit, and was treated like a company and administered in the same fashion.

Mr. CHAMBERS. Was the Malmedy case one in which an informal team was created at a later date?

Colonel MICKELWAITE. That is correct.

Mr. CHAMBERS. I am trying to get at the personnel situation a little bit because there has been some criticism about the type of personnel that was assigned to the Malmedy case.

What type of personnel did you try to get for assignment to this informal team, and then if you didn't get the type of personnel you were asking for, why didn't you get it?

Can you answer that question? It's a general story, but I think it should go in the record.

Colonel MICKELWAITE. If you bring up the subject of personnel, it is a long story and we need to go back long before the incidents in the Malmedy case.

There have been, on numerous occasions, centers set up for the personnel which we desired, and the members which we wanted: Lawyers, investigators, interpreters, stenographers, all qualified.

With the demobilization, the inadequate organization which we had disappeared, in part—in fact, I may say disappeared in large measure. They just went home, as they were entitled to do.

However, on numerous occasions in our conferences with Washington, in our written requests upon the theater judge advocate, in G-1 of the theater, we stated requirements and we stated the qualifications

of the personnel which we desired, and, to a degree, we were given some assistance. That is, personnel from the United States was recruited in Washington, and was sent over. Some of these were officers, still on active duty, and some were civilians.

Likewise, the theater headquarters, especially G-1, searched the rolls of the personnel in the theater, for the same purpose. We were never able to fill our table of organization. We were never able to procure the personnel qualifications which we desired in any great numbers. It got to the point where we would take anyone who had the slightest indication of capabilities along the lines of these qualifications that we had set up.

To show you the situation in the winter of 1945 and 1946: General Betts, the theater judge advocate, came to Washington on a special mission from theater headquarters. General Eisenhower had approved his mission, and it was for this purpose: On JCS 1023-10, the requirement was imposed of the trial of hundreds of thousands of war criminals. Now, I say hundreds of thousands, because having attended the trial of those found guilty of belonging to an organization condemned at Nuremberg, that was included in requirement JCS 1023-10.

Senator BALDWIN. What organization was that, if I may interrupt?

Colonel MICKELWAITE. There were 10 organizations which were charged at Nuremberg, I believe it was 10; and, as I remember, some 6 were found guilty. That included the SS—frankly I can't remember the others; but, at the time General Betts came back, as I say, some 10 were charged, the organizations were charged, that was the manner of indictment at Nuremberg.

Now, in addition to the responsibility for the trial of those people, we were charged with the responsibility for the trials of concentration camp cases, for offenses against American troops and for the higher Nazis, other than those on trial at Nuremberg at that time, which were the additional four-power trial.

General Betts came back with the proposal transferring the trial of the higher Nazis to an organization which would succeed the International Tribunal and also there was shifted from his responsibility, the trial of the members of the organization; and later, as you know, that was turned over to the Germans under the de-Nazification program.

Now, while he was back here, the situation as to lawyers and as to judges advocate was particularly critical, and when I went into the office I had a study made and on about the 1st of January in 1946, General McNary who had succeeded to General Eisenhower, sent a personal message to General Eisenhower, or at least the Chief of Staff, and I think General Eisenhower had become Chief of Staff at that time, saying in effect, "I cannot be responsible for the proper administration of military justice in this theater, or the completion of the war crimes program, unless you send me personnel of appropriate qualifications in sufficient numbers, which is not indicated at this time."

Nothing much happened. We got a few people, but no judges advocate or lawyers in the numbers which General McNary regarded as appropriate, for those two programs, that included military justice as well as war crimes.

I merely say that to show you the situation in which we found ourselves. As the result of that, we were obliged to use the people we had, according to the best of their ability.

MR. CHAMBERS. There has been some criticism of, well, several aspects of it: One was lawyers with inadequate experience, that is one of the things that was criticized; and then, the use of other than native-born Americans, in particular native-born Austrians and Germans, for the purpose of investigators.

Now, how did those people come to you, Colonel? Did you select them yourself or were they sent down to you for further assignment, or how did you get them?

Colonel MICKELWAITE. We did very little selecting. They came to us from Washington, and came to us upon assignment from G-1 in the theater. My recollection is they would appear and hand us their orders, and they were with us for duty.

We had little or no opportunity, I might say no opportunity for preselection at the time of assignment. We took the people as they sent them to us.

MR. CHAMBERS. Colonel, did you have any feeling as to the propriety, for instance, of assigning a man who might have been a native-born Austrian, who might have had some reason to have personal animosity toward the Germans, perhaps even an excess of that which we as Americans would have had, to the job of developing these cases and handling the investigations?

Colonel MICKELWAITE. To the best of my recollection, that matter was not even considered.

MR. CHAMBERS. You assumed when they came to you that they were competent, and you tried to evaluate their experience and training and assign them accordingly, is that correct?

Colonel MICKELWAITE. That is correct.

Senator BALDWIN. Do you mean by that that personnel was so short that you had to use, to the best means available, those that were sent to you?

Colonel MICKELWAITE. That is correct, Senator. We were given a job, and we took the people they sent us. We were at all times desirous of procuring personnel of a qualification that we had established, for instance 10 years law practice, but we did not get them. Likewise, with investigators. The G-1 sent us investigators from what were available to them, as well as some that came over from Washington.

MR. CHAMBERS. I believe you said in your testimony that at one time it became so critical that the theater commander felt it necessary to say that he could not assume the responsibility for the administration of war crimes unless he did get—

Colonel MICKELWAITE. That included military justice and war crimes. In other words, the legal job in the theater.

Senator HUNT. Colonel, now after having given us this information with reference to how they were selected, would you care to make a statement for the benefit of the committee, whether you feel the staff that did conduct the Malmedy cases was—not properly qualified?

Now, let me say one more word before you answer that: Most of them have appeared before us here. I have been very much impressed with some of them, they appeared to be very smart, capable men. I am assuming, from what you have said to us heretofore, that you feel you did not have capable personnel. Did you mean to infer that?

Colonel MICKELWAITE. Let me put it this way: We did not have qualified, capable personnel in sufficient numbers to carry on all of the

necessary duties, which were imposed on us. However, in the assignment or selection of personnel for a particular task, depending upon its importance, or the character of the job, we sought to use our personnel which we had, to the best advantage.

Now, I do not want to leave the impression that we did not have competent personnel. We did have, but we did not have them in sufficient numbers, and some of our personnel we had to use in such a fashion that we hoped that they would carry on properly, even though we couldn't put them on the more important tasks.

We tried, however, in the important cases, to select personnel which was best qualified for that particular task.

Senator BALDWIN. Excuse me, Senator.

Senator HUNT. That's all right.

Senator BALDWIN. Were you through?

Senator HUNT. Yes, sir.

Senator BALDWIN. What process did you use for determining what the qualifications were, of the men who were sent to you?

Colonel MICKELWAITE. About all we had was the 66-1, which was the combined qualification and efficiency record for officers; and, for civilians, as far as I can remember, we just asked them what their experience had been.

Senator BALDWIN. Talked with them before they went on the job?

Colonel MICKELWAITE. Well, I didn't talk to them. I have no doubt that the officers in charge did talk to them in order to determine their qualifications. There were some of them, of course, with whom I did consult.

Senator BALDWIN. Do you remember whether or not any were rejected?

Colonel MICKELWAITE. No, sir, I have no recollection either way on that.

Senator BALDWIN. Now, these people that you assigned to do this, these different tasks, before they undertook their jobs, were they briefed at all, were they given any instructions as to how they were to proceed?

Colonel MICKELWAITE. I could not say that they were, individually. There were written instructions for the principal tasks which we had. We called them SOP's—we had them for the investigations, for example—an extensive instruction.

Senator BALDWIN. Are copies of those available now? We would like to have for the record such SOP's, as they are called, that may be available.

Colonel MICKELWAITE. I have no records myself, but if I am not mistaken, Colonel Straight has a copy of the revised instructions issued in October; is that correct?

Colonel STRAIGHT. The field directive on investigation?

Colonel MICKELWAITE. Yes.

Colonel STRAIGHT. Yes; I have some of those. I do not have all of those that were in effect at that time. What I have are those that comprise a draft of the history of the war crimes that I have here on my lap. I can help you with some of them.

Senator BALDWIN. May I say to you gentlemen that one of the things that the committee would like to do would be to make some helpful recommendations, based upon the experience that we have

had with this thing, for the future conduct of such an affair. The committee is well aware of the fact that the Army was dealing with something that was entirely new in warfare, and that it was, for that reason, a difficult task to formulate policies and issue instructions concerning a matter with which our Army had had very little, if any, experience whatever. So, one of the things we hope to develop out of this hearing is a recommendation or recommendations for the guidance of such a thing in the future.

Colonel, may I ask you this: When was it first contemplated, to your knowledge, or when was it first decided that there would be such a thing as war-crimes trials?

Colonel MICKELWAITE. Well, officially, the first knowledge I had of it was in June 1945, when a message reached SHEAF—I believe it was SHEAF, or it may have been the theater, I am not sure, from the Joint Chiefs of Staff—stating that war-crimes trials would be initiated before military-government courts. I saw that message in General Betts' office in the presence of Mr. Justice Jackson, and the reason for the conference was that the trials were authorized before military-government courts.

Senator BALDWIN. In other words, these courts were to be set up under the military government of Germany?

Colonel MICKELWAITE. That is correct.

Senator BALDWIN. American military government.

Colonel MICKELWAITE. That is correct. I want to add that in July the original directive was amended; and, as I remember, the word "Government" was omitted, and it said "military courts."

However, in the meantime, we had begun our study of the use of military-government courts, and it was later determined that, as soon as we could adapt them to this program, the military-government courts would be used as distinguished from the pure military commission.

Now, it is only hearsay with me, but I understand that military-government officials desired that the courts be—that the trials be—held before military-government courts, and that was why that decision was made, and why most of the trials were held before military-government courts.

Senator BALDWIN. You say that was in July 1945?

Colonel MICKELWAITE. In June the first authorization for the trial of war criminals reached the European theater.

Senator BALDWIN. Then you don't know where they came from?

Colonel MICKELWAITE. Joint Chiefs of Staff.

Senator BALDWIN. Was that the American Joint Chiefs of Staff?

Colonel MICKELWAITE. Yes.

Senator BALDWIN. What were the connections of the other occupying armies with the thing, in the very beginning? Do you remember?

Colonel MICKELWAITE. In regard to war crimes, there was no other connection except that SHAEF had issued instructions, I think in the latter part of 1944, in regard to the investigation of war crimes. Now, SHAEF was a combined headquarters.

Senator BALDWIN. In other words, as early as 1944 the combined headquarters had issued instructions or were talking about the trial of war criminals?

Colonel MICKELWAITE. I have no doubt that they had in mind the trials, but there was always the bar against the trial of a war criminal while the war was in progress.

Senator BALDWIN. Yes, yes.

Colonel MICKELWAITE. And SHAEF specifically directed that courts of inquiry be set up. Now, that was the British approach, because they used a court of inquiry as an investigative body, as distinguished from our court of inquiry.

Senator BALDWIN. But, it was not until June of 1945—that is, after VE-day—that the Judge Advocate General's Department actually got instructions to set up these military courts.

Colonel MICKELWAITE. That is correct.

Senator BALDWIN. And it was at that time that you knew that one of your jobs was going to be the trial of war criminals?

Colonel MICKELWAITE. Yes.

Senator BALDWIN. And, after that, you already testified that you began an organization of how the thing was to be handled.

Colonel MICKELWAITE. Let me say this: Even prior to my connection, the organization had been set up in the theater judge advocate's office, and again Colonel Straight, who was there prior to my contact with it, can give you details as to the time when that organization was established.

Senator BALDWIN. Do you know—excuse me.

Colonel MICKELWAITE. If you are speaking of the organization and the arrangement for trials, from June on, I can tell you of how it was organized in the theater.

Senator BALDWIN. We would like to know that very much, Colonel, if you would tell us.

Colonel MICKELWAITE. Colonel Straight, if you will bring me my brief case, I could give you the exact dates on certain directives.

Senator BALDWIN. All right.

Colonel STRAIGHT. Is this it?

Colonel MICKELWAITE. Yes; that is it.

On July 9, 1945, SHAEF sent a directive to USFET, which I believe directed the institution of the war-crimes trials before especially appointed military-government courts.

Now, notice that that was from SHAEF, General Eisenhower, to USFET, General Eisenhower. USFET was the United States Forces, European Theater; that is, USFET was the American headquarters of the theater.

So, General Eisenhower was authorizing himself as theater commander to proceed with these trials before especially appointed military-government courts.

Now, on the 16th of July 1945, a directive was sent from USFET (the United States Forces, European Theater) to the Third and Seventh United States Armies, outlining the procedure and directing the trial cases referred to the armies, before courts appointed by the armies. That is, the Third and the Seventh Armies.

Now, on the 25th of August 1945, a similar directive related to trials before military commissions was sent to the Third and Seventh Armies. It was actually directed to the Eastern and Western Military Districts, but those names were synonymous with the Third and Seventh Armies, so that by the 25th of August the armies were authorized to try war criminals before military-government courts, and before military commissions; but there was always the tag on the military-government courts that they should be especially appointed.

For instance, we increased the number of members on the court from three to five. I say "we." The theater judge advocate really did it, but I was on some of the conferences. We provided for a law member. We provided for a finding of guilty and a sentence only upon two-thirds of the courts rather than a majority as provided in the military-government manual.

We provided for a review by the judge advocate, in a manner similar to review of court-martial cases. - All those things are in addition to the ordinary processes of military-government courts, and intended to safeguard, so far as we were able, the appropriate administration of justice in this field.

In other words, we went out of our way to assure, we hoped, fair trials. Those requirements were imposed on the armies by this theater, and that is why we call them especially appointed military-government courts.

Senator BALDWIN. What is the distinction between a military-government court and a military commission?

Colonel MICKELWAITE. Senator, if you ask me as a lawyer to tell you the distinction, I am afraid I am unable to; but, practically, there has always been this distinction, because military-government courts were set up specifically for the occupation and military commissions have been used for the trial of spies under martial law, and were used in the Ex Parte Quirin case here, although I think the jurisdiction for the two courts stems from the same forces. That is my impression.

Senator BALDWIN. No military commissions tried any war criminals?

Colonel MICKELWAITE. Yes, sir; they did. The reason for that was that we had a few cases ready for trial before the special regulations for the military-government courts—that is, adapting the military-government courts to the war-crimes trials—were issued; so that I cannot say how many, but there were a few trials by military commissions in the summer and early fall of 1945.

Senator BALDWIN. Could these military-government courts try our own military personnel?

Colonel MICKELWAITE. I can't answer that, Senator. It had never been tested to my knowledge.

Senator BALDWIN. You know of no such case?

Colonel MICKELWAITE. You are speaking of military personnel?

Senator BALDWIN. Yes; our own military personnel is what I mean.

Colonel MICKELWAITE. It may be that, later on in the occupation, certain traffic courts under military government did try our personnel. That was under consideration, as I remember it, at the time I was in the theater; but I believe that the regulations specifically prohibited the trial of Allied military personnel by military-government courts; but if you are asking me whether they had authority, that is more difficult as a question.

Mr. CHAMBERS. How about a trial of our own military personnel for violation of the Articles of War? Could that have gone before a military-government court, or did they have to be tried by our own military courts?

Colonel MICKELWAITE. They were universally tried before courts martial.

Senator BALDWIN. Now, to get at this thing from another angle, because I think there is a great deal of misunderstanding about it, certainly among the people generally, and I think probably in the

Congress as well, the so-called Nuremberg trials, at which the top Nazis were tried, so to speak, the one in which Justice Jackson participated, that was a court that was established under all of the United Nations, so to speak, was it not?

Colonel MICKELWAITE. It was established under a charter which was the result of a four-power agreement—Russia, France, England, and the United States. I suppose you would call it an executive agreement, because, as far as I know, it was not ratified by the Senate. That was the result of Mr. Justice Jackson's representations, on the American side, in London in June and July of 1945, and the agreement was signed in August, I believe, of 1945; and the charter outlined the jurisdiction, the rules of procedure, and so forth, and the court was bound by those—by the charter.

Senator BALDWIN. That was separate and distinct from the military-government courts such as heard the Malmedy cases?

Colonel MICKELWAITE. That is correct.

Senator BALDWIN. But did those two different courts, established in two different ways, deal with war crimes generally? I mean, was there any distinction made?

Colonel MICKELWAITE. The only distinction as to who would be tried came from the limitation in the charter, which was, as I remember it, for the trial of the higher Nazis. I may be mistaken in that. In any event, there was some discussion as to whether they would continue the International Tribunal after the original trial was over, and it was finally concluded that no further international trials would be held by the four powers.

Senator BALDWIN. So the military government—the American military government—went forward with the military-government courts to try the so-called lesser war criminals?

Colonel MICKELWAITE. That is right.

Senator BALDWIN. Excuse me, sir, go ahead.

Colonel MICKELWAITE. As a result of General Betts' visit here in the winter of 1945-46, our responsibility became limited to the trial of accused in concentration-camp cases, within the American zone. That was the original limitation, an offensive against American citizens, particularly American soldiers. In other words, those were the two types of cases which we tried, and both of them were tried under the laws of war, not under the Nuremberg Charter or any other agreement.

Senator BALDWIN. That was the very next question I was going to ask you, Colonel. That was, how did you determine what constituted a trial—constituted a war crime over which these courts would have jurisdiction?

Colonel MICKELWAITE. We determined that by reference to the conventions, such as the Geneva Convention, the Hague Convention, the sources of customary jurisdiction under the laws of war, as stated by the writers; for instance, our past experience in the Revolutionary War, the Mexican War, when General Scott established military commissions. In other words, we went to the basic law as interpreted and practiced with reference to violations of the laws and customs of wars.

Senator BALDWIN. Well, violations of the laws and customs of wars which were supposedly based upon a rule of conduct that was consistent with warfare, and a violation of it would be conduct so in-

humane and unwarranted under the circumstances as to constitute a crime?

Colonel MICKELWAITE. I think it is very well stated, Senator; yes, sir.

Senator BALDWIN. So that you did have sort of a backlog of so-called statute law and, you might term it, common law of warfare, upon which you—

Colonel MICKELWAITE. That is correct. You will find no American statutes dealing with such trials, except as they may possibly be brought under the trial of spies and those who give information under the Articles of War 81 and 82. But, military commissions, as I say, since the Revolutionary War, whether by that name or others have tried offenders of the Articles of War, that is, persons who had violated the laws of war have been tried and sentenced and, in some cases, hanged. For instance, Captain Werz was tried after the Civil War.

Senator BALDWIN. I was going to ask you about that. That is the only one I recall, from my knowledge of history; he was the commander of Edisonville Prison at Georgia, and he was tried by a military court or a commission.

Colonel MICKELWAITE. After the Civil War.

Senator BALDWIN. Yes; for inhuman treatment of prisoners. I do not recall whether he was ever executed or not.

Colonel MICKELWAITE. I am not certain of that. I believe he was. There were other trials of a similar nature.

Senator BALDWIN. In other words, that was your background, your background of rules of conduct of warfare?

Colonel MICKELWAITE. Yes, sir.

Senator BALDWIN. That was so reprehensible or inhumane as to warrant the special consideration of the military court, and the imposition of a sentence of some kind for their violation.

Colonel MICKELWAITE. Yes, sir.

Senator BALDWIN. Do you have any questions, Senator Hunt?

Senator HUNT. Colonel, did you know Colonel Ellis?

Colonel MICKELWAITE. Yes.

Senator BALDWIN. Did you know Major Fanton?

Colonel MICKELWAITE. Yes; I didn't know Major Fanton very well.

Senator HUNT. Do you know Colonel Ellis well enough to give us, in your opinion, an appraisal of his capacity?

Colonel MICKELWAITE. In what respect?

Senator HUNT. To conduct the trials; he was the prosecuting attorney, the prosecutor in the Malmédy cases.

Colonel MICKELWAITE. Well, my association with Colonel Ellis, that is, I dealt with him from time to time on various matters, and it impressed me sufficiently that I thought he was competent as a prosecutor.

Senator HUNT. Did you or did you not know Major Fanton well enough to make a statement on his capacity and his ability?

Colonel MICKELWAITE. No; I did not know Major Fanton well enough to—but I should appropriately express an opinion as to his ability as a prosecutor. I was under the impression, and still am, that he was a competent lawyer and investigator. He was not a member of the prosecution staff, as I remember it, at the trial.

Senator HUNT. Now, Colonel, in assigning personnel to the prosecution and to the defense, did you have any rules or regulations set up with reference to the ability of a man, whether he should be assigned to the defense or the prosecution? How did you decide when you were given a list of men, to conduct these trials—how did you decide who should be prosecution attorneys and who should be defense attorneys?

Colonel MICKELWAITE. Well, let me say at the outset that there never was any plan or intention to pack the prosecution with our most competent personnel. We always sought to balance the prosecution and the defense personnel to the best of our ability.

Now, as to the particular qualifications, I cannot say that we had any rules other than our judgment, from knowing or hearing these people tell us their qualifications, and sometimes I may admit that we were disappointed. I am not speaking of the Malmedy cases particularly, but in some other cases we were. We had to take them, more or less, at their face value, until we found out otherwise.

Senator Hunt. Well, you have stated very clearly the point I wanted to develop, that you favored neither the prosecution nor the defense in your selection.

Colonel MICKELWAITE. I can say most positively that in all our discussions there was never a thought of packing the prosecution, so to speak.

Senator HUNT. Before you left the European theater, Colonel, was it ever called to your attention, or were you ever told or advised, or did you learn of any force or violence being practiced upon the defendants by any member of the prosecution teams, or by the interrogators?

Colonel MICKELWAITE. If you are asking me, Senator, whether I had credible knowledge of such practice, my answer is no. However—

Senator HUNT. Would you tell us what hearsay knowledge you had, if any?

Colonel MICKELWAITE. I was first apprised of allegations on the part of the defense counsel, in the latter part of April 1946; and it came to me by telephone from Colonel Corbin, who was the Third Army Judge Advocate in charge of war-crimes activities. He did not tell me what the allegations were, but he was seeking assistance in regard to his course of conduct and, I may say, that on war-crimes matters my office dealt directly with war-crimes officers of the Army on routine and technical matters.

As a result of that telephone call, Colonel Carpenter was sent to Dachau from Wiesbaden to find out first-hand what the allegations were and to give us a basis for advising the Third Army as to the trials and the details thereof.

Colonel Carpenter returned after his visit to Dachau and about the same time Colonel Ellis was called in. Upon the basis of the information given us by Colonel Carpenter and Colonel Ellis, I reached the determination that allegations as to force and violence were not substantiated; that ruses, stratagems had been used, that was admitted, and that a procedure which has later come to be termed as a mock trial, was used in certain instances—that was also revealed.

Upon the basis of that information, I advised Colonel Corbin that it appeared to me that the best method of determining the truth of

the statements, whether they were confessions or otherwise, and for determining whether they were voluntary or not, was to present the entire picture to the court who, under our customary procedure, determined whether confessions and statements are admissible, whether they are voluntary, and whether they should be received as the truth.

Senator BALDWIN. May I interrupt you there? Were there not some, or any specific instructions issued against abuse and physical violence?

Colonel MICKELWAITE. Yes. In those instructions which were issued to all investigators, the matter of the use of physical violence was treated, that method I can't tell you, but when Colonel Straight produces that, you will find it.

Senator BALDWIN. You have got a copy of those instructions?

Senator HUNT. Colonel Fanton introduced a copy in his testimony.

Mr. CHAMBERS. I think Colonel Fanton has the SOP he put out at Schwabisch Hall, but we will get from Colonel Straight copies of instructions on a theater level.

Senator BALDWIN. All right, Colonel, pardon me for the interruption.

Colonel MICKELWAITE. As I remember, Colonel Corbin agreed with our views as to the method of handling these allegations on the part of the defense, and accordingly the trial opened as had been planned.

Now, subsequent to that time, I have not seen, I have not read the record of trial, the petition for review, or the military government regulations or the petition to the Supreme Court so that I am not further acquainted with those details.

Mr. CHAMBERS. Colonel, may I ask one question about this admissibility of confessions?

The inference I got from your remark was that they would be judged by the court as to their admissibility, somewhat under the same rules that we would have in our normal American courts, and is it not a fact that under the rules under which you were operating that such confessions could be admitted for such value as the court would care to put on them? In other words, the degree that they had been influenced by strategems, ruses, and things of that type would be weighed against what was said in a confession; but weren't you all operating under this Ex parte Quirin document where practically anything was admitted for such probative value as a reasonable man would put on it?

Colonel MICKELWAITE. Generally speaking, your statement is correct. So far as military commissions were concerned, both in Italy, in France, and in Germany, the instructions were all copied from Ex Parte Quirin, to the effect that any evidence having probative value, and so forth, in the minds of the Commission, shall be admissible.

Now, it is true that the military government military regulations do not speak in exactly the same terms; but, if you analyze them, you will find that any evidence is admissible, but its weight is to be determined by the court. That is a brief statement of what the military government regulations provide, so that it is substantially the same as the Ex parte Quirin, as used in Ex parte Quirin, or in re Yamashita.

Mr. CHAMBERS. In the military government regulations which I believe were put out by SHEAF, were they influenced by the rules of procedure that had been developed at Nuremberg? In other

words, did they have international complexion as distinguished by the rules that would be normally developed under ordinary American practice?

Colonel MICKELWAITE. Colonel, I can't tell you what influenced the drafting of the original military government regulations. Those were drafted in SHEAF; and SHEAF was separate from the theater in these matters. To the best of my knowledge, even General Betts, the theater judge advocate, did not participate in the drafting of the rules and regulations pertaining to military government courts.

Mr. CHAMBERS. SHEAF was an international organization; is that not correct?

Colonel MICKELWAITE. That is correct; it was allied headquarters.

Mr. CHAMBERS. And there is no question but what the regulations they issued are different from our normal practice?

Colonel MICKELWAITE. That is correct.

Mr. CHAMBERS. The inference is that they had been affected by some international agreement on the matter. I am not trying to pin you down, if that is not the fact, but repeated comment in our testimony here has been that we were operating under a sort of an international arrangement whereby we had lowered our own arrangements downward, perhaps, toward a continental code for the admissibility of evidence and thereby deviated from our criminal evidence in the latter which we are now judging this case.

Colonel MICKELWAITE. I have heard it said that the drafters of those regulations were influenced by the fact that the principal accused would be citizens of continental countries, where, as I have been told, I have not made a study of it, where the evidence is admissible for such value as the court may wish to give it. That is pure hearsay. I have discussed the matter to a degree with Col. Charles Fairman, who participated in the drafting of the regulations, military government regulations, for the occupation of Sicily. Professor Sutherland, of Cornell University, assisted him.

Those regulations were, I am told, the basis for these military government regulations which were prepared for use in occupied Germany, primarily.

That again is largely hearsay and my recollection of discussions with Colonel Fairman who is a professor of international law on the staff at Stanford University, and the author of articles and books on martial law and war crimes and other subjects.

Senator HUNT. When Colonel Corbin, the judge advocate called you, did he call or did he write?

Colonel MICKELWAITE. He called.

Senator HUNT. When he called and asked advice and suggestions on a directive, and you sent Colonel Carpenter up to make the investigation for you, do you happen to remember—did Colonel Corbin give you the source of his information?

Colonel MICKELWAITE. He merely said that defense counsel had made certain allegations, as I remember it, which he thought ought to be looked into.

Senator HUNT. He didn't, of course, I presume, say that he had witnessed any mistreatment of defendants himself?

Colonel MICKELWAITE. Colonel Corbin?

Senator HUNT. Colonel Corbin.

Colonel MICKELWAITE. Oh, no.

Mr. CHAMBERS. Colonel, if I may interrupt to ask one question there, why was there never a written report made of this matter, or some record of it? It has been discussed several times and apparently there was no written report filed.

Colonel MICKELWAITE. Frankly, at this time I cannot tell you why there was not a written report made. To the best of my recollection, we had anticipated a record being made by Colonel Carpenter, but I cannot be too sure of that in detail, because within, over the week end that he returned and perhaps the same day, General Betts went to the hospital with a heart attack. He was involved at that time in the Litchfield trials, of which you have heard, perhaps. I was called to the theater judge advocate's office and remained there, actually from that time on.

Now, it is only recently that I have learned that the files contain no record of Colonel Carpenter's findings from his visit, but it may well be that Colonel Carpenter was busy and went about some other work and failed to make a report. I cannot say that I directed him to do it.

(There was discussion off the record.)

Colonel MICKELWAITE. I might say, in addition to the statement I have made, that the situation at that time is vastly different from that which exists today, and that if one had the foresight, which they have hindsight, there would certainly have been a record of Colonel Carpenter's findings; but, frankly, it was all in the day's work with us. We were very busy and perhaps mistakenly did not appreciate the fact that at a later time, that would be important.

Mr. CHAMBERS. Colonel, is this a fair statement then, that Colonel Carpenter's report to you was of such a nature that in your considerate judgment you did not feel it necessary to either direct that a record be made, or take any more positive action in it, it seemed that the matter had been pretty well cleared up and you felt that you could leave it up to the court to decide, insofar as the validity of the confessions was concerned, but insofar as the charges of brutality were concerned, they had not been substantiated?

Colonel MICKELWAITE. That is a very, very fair statement.

Senator HUNT. I have nothing further.

Senator BALDWIN. Would you tell us again, Colonel, how the rules of procedure for the trial were developed? Where they came from? I know you have already touched on it, but I would like to have it again here in this place, if I might.

Colonel MICKELWAITE. The specific rules for the especially appointed military government courts, and the Malmedy court was one of those, were developed in the office of the theater judge advocate. I had very little to do with the preparation of those. I may have been called in on one occasion, but at that time, or at least during a portion of the time, I was also judge advocate of the Twelfth Army group in Wiesbaden, and the theater office was in Paris, and then it was moved to Frankfort, which was some 30 miles from Wiesbaden.

So far, then, as the deviations I may say, from the military government manual were concerned, those were prepared in the theater judge advocate's office. It is true that my office prepared a guide, but it was, in effect, an interpretation of the manual and the theater directives, and were designed primarily to guide the courts and the counsel in this somewhat unusual procedure for Americans, that is, unusual in the sense that it differed from our customary court-martial pro-

cedure in certain respects, as, for example, the accused may be called at the outset of the trial, under these regulations; and, you may get the inference that he might be questioned as to whether he was guilty or not. That certainly is unusual in our procedure, and so we limited that to merely identifying the accused, and so on through the trials, so that they would have a guide in the same fashion that our courts have a guide which is in the back of the court-martial manual.

Senator BALDWIN. And were the rules of evidence developed in just the same way?

Colonel MICKELWAITE. That is, our interpretation of them was developed in that fashion, yes.

I may say, in regards to the rules of evidence, and certain other important matters, the trial guide was considered in detail by General Betts, in my office, before it was given the approval of the war-crimes branch.

Senator BALDWIN. Have you any further questions?

Senator HUNT. No further questions.

Mr. CHAMBERS. No questions.

Senator BALDWIN. Colonel, I notice you have some further notes there. Is there anything further that you have that you would like to testify to, or state?

Colonel MICKELWAITE. Well, these notes are largely authorities which I thought I might have available if the questions dealt with the subjects. I might say, and probably you are already aware of these facts, that the rules of evidence used in this trial, the Malmedy trial, military government courts, military commissions in the European theater, are substantially the same, and in some cases identical with those used in the Pacific theater, those used by the British in their war crimes trials, and are supported by the rules which were used even in the Civil War. Furthermore, the directive of the Joint Chiefs of Staff speaks on that subject, requiring that the theater establish for the trial of war criminals appropriate military courts which should, to the greatest practicable extent, adopt fair, simple and expeditious procedures designed to accomplish substantial justice without technicalities.

That was the basic directive under which we operated.

I don't think I have anything further for the committee.

Senator BALDWIN. Colonel, you have been very helpful to us, and I think this, your testimony, has turned out to be very important.

How long have you been in the Army, Colonel?

Colonel MICKELWAITE. I entered the military service on the 12th of May 1917 and except for a short period in 1919 and 1920, I have been in the Army continuously since that time.

Senator BALDWIN. In the Judge Advocate General's Department?

Colonel MICKELWAITE. No, sir. I served in the infantry for 14 years and then transferred to the Judge Advocate General's Department. My law degree is from the University of California. I have a bachelor of science degree from the University of Idaho.

Senator BALDWIN. Your service then in World War I was as a combatant officer, an infantry soldier?

Colonel MICKELWAITE. That is right.

Senator BALDWIN. I think that is all.

Thank you very much.

Mr. CHAMBERS. Colonel Straight, please.

Senator BALDWIN. Will you hold up your right hand?

Do you solemnly swear that the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Colonel STRAIGHT. I do.

Senator BALDWIN. Be seated, please, Colonel.

**TESTIMONY OF LT. COL. CLIO E. STRAIGHT, JUDGE ADVOCATE
GENERAL'S DEPARTMENT, DEPARTMENT OF THE ARMY**

Senator BALDWIN. Will you give us your full name, Colonel?

Colonel STRAIGHT. Clio E. Straight.

Senator BALDWIN. You are presently a lieutenant colonel in the United States Army?

Colonel STRAIGHT. That is correct.

Senator BALDWIN. Judge Advocate General's Department?

Colonel STRAIGHT. Yes, sir.

Senator BALDWIN. How long have you been in the Army?

Colonel STRAIGHT. I have been on active duty since September 10, 1940.

Senator BALDWIN. Were you in the Army before that?

Colonel STRAIGHT. I held a Reserve commission, and have since August 1933.

Senator BALDWIN. Are you a veteran of World War I?

Colonel STRAIGHT. No, sir.

Senator BALDWIN. Did you attend college?

Colonel STRAIGHT. Yes, sir; the University of Iowa, with a B. A. in 1928; doctor of jurisprudence in 1930.

Senator BALDWIN. All right, go ahead, Mr. Chambers.

Mr. CHAMBERS. Colonel Straight, I believe it has been testified to here that you were a part of the war crimes branch, in the ETO during the war. Will you tell us, if you please, of your assignment to that organization, and of the part you played in the war crimes branch, as well as, and of course in particular, of your relationship with the Malmedy trials?

Colonel STRAIGHT. Briefly, I was called in to Paris March 13, 1945, by General Betts; assigned to the war crimes branch at a time when it scarcely existed, if you measured it from the standpoint of personnel, and a few days thereafter I was assigned as deputy, second in charge of the branch. I remained in that capacity until, I think, May 13, 1946, at which time Colonel Mickelwaite had been assigned as theater judge advocate, and following which I was assigned as deputy judge advocate for war crimes, in immediate charge of the operation.

I remained in that capacity to the end of the operation, namely, July and August 1948. From about September 1946 until June 1948, I also had the dual capacity of commanding officer, 7708, war crimes group, an organization created by the theater for administrative purposes, to facilitate the handling of the assignment of personnel and equipment and so forth.

I think your question covered my connection with the Malmedy case?

Mr. CHAMBERS. You have given us your general background, there; but didn't you also have something to do with the review of the Malmedy cases?

Colonel STRAIGHT. Yes, sir.

Colonel Mickelwaite, before me, and while I was deputy judge advocate for war crimes, the deputy judge advocate for war crimes had the responsibility, by theater directive, to prepare a review and recommendation, as to each record of trial, for the consideration of the theater commander. The same directive required that the theater judge advocate prepare for the theater commander his views and comments upon the review and recommendation prepared by the deputy, and, yes, I did review the Malmedy massacre case.

Mr. CHAMBERS. Did you prepare the printed review on that case?

Colonel STRAIGHT. I did not prepare the rough drafts. I had a post-trial section, composed of lawyers, with stenographers helping them; in other words, I had a staff that always prepared the rough drafts of reviews. However, in connection with this review and recommendation, I spent, I cannot tell you exactly, my best memory is, between 2 and 3 weeks on going over the draft of the review and recommendation with Dick Reynolds, the man who did the latest spade work.

I want to emphasize, in that connection, that I arranged myself a hide-out in the billets at the caserne, so that during that time I was completely free from administrative responsibility and we worked days, and we worked nights, as was customary.

Mr. CHAMBERS. Colonel, we have had a great deal of testimony here about different reviews, and I do not intend to go into a complete enumeration of all the reviews and investigations that studied the Malmedy trials, but I think we got up to around 11 or 12 of them.

Could you tell us the review steps, up until the time General Clay first passed on the sentences of these accused?

Colonel STRAIGHT. I was the first one to review the record. I say that in the sense that I was the first one who had the responsibility for the review. I had a staff with me, in my post-trials branch, of course. I have read the record, incidentally, of course, and have seen the stories about the number of reviews. There was a draft review and recommendation made, submitted to me in January, or early February 1947, and my best memory is that Maxmillian Kessler, a civilian; Mr. Childs, a civilian; and Lieutenant Dedamio, worked on that draft.

I sampled that draft, and at the same time I was sampling a review on the Mathausen concentration-camp case, and in view of the fact that I had no trained personnel in my post-trial branch, many, many times reviews were sent back to be rewritten and built up anew from the record, because it was thought that an accurate, workmanlike job had not been done.

I knew that Colonel Mickelwaite was uneasy about the time expiring in connection with those two cases particularly, and with reviews in general, because of my lack of personnel.

It happened that he was in Augsburg and Dachau almost simultaneously with my examining those two drafts, and I insisted, on the morning that he planned to leave, that he come to the office and the two of us examine the review, the draft of the review and recommendations in the Malmedy case and in the Mathausen concentration-camp case, because I was of the opinion that they must be built up anew from the record, irrespective of the question of time.

We did, jointly, sample, examine, spot-check, and go over those two reviews and recommendations, and he agreed with me that they must be done over from the record, which was done.

We were in grave doubt as to who should be assigned to it. I had Dick Reynolds with me, who had done some writing, I found, he recently had come with me, for corpus juris. I called Dick in and assigned him to rewrite the review and recommendation in the Mathausen concentration-camp case, and told him he could select someone to work with him. He selected Captain Mueller.

I think Colonel Mickelwaite remained there while that was done.

Then we discussed the problem of who should prepare, or build up the draft anew, of the Malmédy case. We could not identify anybody in the organization that had ever had any review experience before, any work writing reviews in courts-martial cases, or similar work, with the exception of Bill Dennison. He was just finishing the Flossenburg concentration-camp trial, as chief prosecutor, and we planned to assign him the Buchenwald concentration-camp trial, but it wasn't scheduled to start until sometime in April.

I thought he was the man for the job, and that while he would have some work in connection with the Buchenwald case, there had been a tremendous amount of work done on it and he would have a substantial staff to assist him on the job.

Senator BALDWIN. I think that we will have to suspend here, and we will go forward at 2 o'clock.

(Thereupon, at 12:03 p. m., the subcommittee stood in recess until 2 p. m., that same day.)

AFTER RECESS

The committee reconvened at 2:50 p. m., upon the expiration of the recess.

Senator BALDWIN. Colonel Perry?

Will you raise your right hand and be sworn?

(Thereupon, Lt. Col. Charles J. Perry was sworn by Senator Baldwin.)

TESTIMONY OF LT. COL. CHARLES J. PERRY, ADJUTANT GENERAL'S DEPARTMENT, ARMY SERVICE UNIT 4202, WESTERN RECRUITING DISTRICT, EL PASO, TEX.

Mr. CHAMBERS. Colonel Perry, will you give us your full name and present station?

Colonel PERRY. Charles J. Perry, lieutenant colonel, Adjutant General's Department, presently stationed with Army Service Unit 4202, El Paso, western recruiting district, El Paso, Tex.

Mr. CHAMBERS. How long have you been in the Army?

Colonel PERRY. Thirty years, sir. I entered the Army in December 1917.

Mr. CHAMBERS. And you are a lawyer, I take it?

Colonel PERRY. I hold a master's degree at Northeastern University, of Boston, Mass.

Mr. CHAMBERS. During the war, Colonel Perry, I believe you were engaged in the investigation of some of the war-crimes trials; is that correct?

Colonel PERRY. During the war, sir, I was adjutant general of the Eighty-sixth Blackhawk Division. After VJ-day, in January 1946, I returned to the United States, and subsequently returned to Germany, then assigned to the war crimes group.

Mr. CHAMBERS. Colonel Perry, it has been reported to us and I believe we have an affidavit which was submitted in part by Colonel Ellis, in the record, that in connection with your investigation of another case which had to do with the Malmedy matter, that you interviewed some of the accused, some of the Malmedy accused, during which time I believe certain statements were made to you concerning their affidavits alleging mistreatment or brutalities.

I may have misstated my memory of that affidavit, but will you please tell me, or tell the committee, what you remember of that particular instance?

Colonel PERRY. In February 1947 I got a clearance to enter Landsberg Prison to interrogate some of the condemned in the Malmedy case in connection with the investigation of the One Hundred Fiftieth Panzer Brigade.

Mr. CHAMBERS. Is that the One Hundred Fiftieth Panzer Brigade commonly known as the Scorzeny?

Colonel PERRY. That was commonly called the Scorzeny case. While there I did interview Peiper and Junker in connection with their treatment prior to, during, and subsequent to the trial in the Malmedy case.

Mr. CHAMBERS. In the Malmedy case?

Colonel PERRY. Yes.

Mr. CHAMBERS. May I ask, Colonel, were you assigned the mission of looking into Malmedy case mistreatments?

Colonel PERRY. No, sir. My mission was to identify jeep teams in American uniform with American equipment behind American lines during the Battle of the Bulge.

Mr. CHAMBERS. Why did you feel it necessary to talk to Peiper and Junker concerning alleged mistreatment in connection with the Malmedy trials?

Colonel PERRY. Since I was going to Landsberg, Ellis asked that if possible I talk to Peiper and Junker about their treatment to save a trip down there, presumably, since I was there. He stated at the time that the chief defense counsel in the Malmedy case, Colonel Everett, had returned to the United States and there were charges of mistreatment.

There was a charge of bullet holes in the wall at Schwaebisch Hall, there was a charge of pieces of flesh in the wall at Schwaebisch Hall. He asked that I look into that. My mission was investigation.

Mr. CHAMBERS. Could you tell us what you found out from these two individuals concerning their treatment at Schwaebisch Hall?

Colonel PERRY. I talked first to Junker. I asked about bullet holes in the wall, pieces of flesh in the wall, and it was amusing to Junker. The basis for the rumor or charge was a jingle that Junker had written. If I remember it correctly:

Remember you well dear ole Schwaebisch Hall,
With its pieces of flesh and bullet holes in the wall.

He did that to rag Ellis. It was a jingle.

Mr. CHAMBERS. Did Junker say he had been mistreated or that in any way he felt that he or any of the rest of the people at Schwaebisch Hall had been physically mistreated?

Colonel PERRY. He not only said that he had not been mistreated, but he was amazed at the treatment he had received.

Mr. CHAMBERS. What do you mean by that?

Colonel PERRY. He did say that had circumstances been different, had he been an American in the hands of German captors, the treatment would have been much worse than the treatment he had received as a German.

Mr. CHAMBERS. What was the date that you talked to Junker, approximately?

Colonel PERRY. The 7th of February 1947—the 8th of February I think it was, 1947.

Mr. CHAMBERS. And this is—

Colonel PERRY. The exact date I am not sure of.

Mr. CHAMBERS. The first name of this man Junker is spelled B-e-n-o-n-i?

Colonel PERRY. Yes.

Mr. CHAMBERS. I have here an affidavit which was executed on the 19th of January 1948, signed by Benoni Junker, which I am going to read to you. It is very brief. It is a sworn statement and it goes as follows:

Aware of the significance of a sworn statement as well as of the fact that false sworn statements are punishable both by United States military government and German authorities, I hereby declare the following:

During the pretrial investigation for the Malmedy trial I was once subjected to a mistreatment. This took place on 28 February 1946 as prophylactic measure for the interrogation which was to follow. I was standing against the wall of a hallway with a hood over my head and suddenly received a series of blows by fist into the abdomen, the side of my body and my back after I had been pulled back from the wall. Thereupon I was pushed into an interrogation cell where after a few moments the hood was torn off from behind.

The interrogation officer who was sitting before me at the table who during the main trial was revealed to have been Lieutenant Perl, breathed heavily, had a reddened face and bushy hair. He said "Now, now, quiet down—I am not that way." From which I concluded at that time that he had been the one to beat me. The truth of this statement is strengthened by the fact that the "special treatment" was very mean, but was not carried out in an expert fashion.

I was used to greater firmness and technique in this field from the United States prisoner camps. I would like to emphasize especially that my statement was based less upon the daring fists of Lieutenant Perl but rather upon the confrontations of false witnesses, a few well-placed lies excerpts from strange statements and the intimate appeals to my duties as an officer.

I would like to add yet that during my 3-month stay at Schwaebisch Hall I repeatedly heard in the hallways and in cells located next to mine the resounding of beatings, cries for help, moaning, crying and shouts of agony.

(Signed) BENONI JUNKER.

That is signed at Landsberg on January 19, 1948. Some few months before this was executed you talked to him and at that time the statements made to you apparently are not consistent with what had been put in this affidavit. Do you have any comments to offer on that?

Colonel PERRY. Subsequent to my talking with Junker I think petition was made for clemency in his case. I may be wrong on that. I have no personal knowledge of it. It may be that he made the statement in hopes of clemency, but that is only a guess. I have no personal knowledge.

Mr. CHAMBERS. I noticed in your affidavit which was submitted to Colonel Ellis, and at this time with the Chair's permission I would like to insert this in the record—

Colonel PERRY. I have a copy of my affidavit.

Mr. CHAMBERS. I notice you say that Junker volunteered the statement that the origin of these stories—that concerns the holes in the cell walls and the bits of flesh and what not—was based on a desire to wiggle out of damaging testimony voluntarily given by some of the defendants.

Colonel PERRY. That is right. That is what Junker told me.

Mr. CHAMBERS. How would you evaluate this affidavit that he placed in here?

Colonel PERRY. I would give it very little probative weight, the subsequent affidavit.

Mr. CHAMBERS. You talked to Junker. What was his attitude when you talked to him? You say he apparently felt he had been well treated at Schwaebisch Hall. Did you feel that he was telling you the truth when he said that he had not been struck or threatened with bodily harm and so on?

Colonel PERRY. His attitude was friendly toward me. It was cooperative. I believed him at the time.

Mr. CHAMBERS. You believed him at the time?

Colonel PERRY. The statements that he gave me; yes, sir.

Mr. CHAMBERS. Do you still believe that he was telling the truth when he talked to you?

Colonel PERRY. I still believe that he was telling the truth when he spoke to me.

Mr. CHAMBERS. Either he was telling the truth when he talked to you or he was telling the truth in this affidavit.

Colonel PERRY. I have no knowledge of the circumstances surrounding the second affidavit. My affidavit I took. I had opportunity to see the man, to note his reactions, note the response to my questions. Since I talked to the man face to face, talked to him personally, he was friendly, he was cooperative, I believed that he was telling me the truth.

Mr. CHAMBERS. Perhaps for the record you should tell us directly, after reference to your statement if you care to, what he had to say concerning his treatment at Schwaebisch Hall.

Senator BALDWIN. Let me interrupt there. As I understand you, Colonel, you went down there in connection with the investigation of another case entirely; is that correct?

Colonel PERRY. That is correct, sir.

Senator BALDWIN. But the man you wanted to see was this fellow Junker?

Colonel PERRY. I saw others.

Senator BALDWIN. But you did want to see him?

Colonel PERRY. I did want to see Junker. I was attempting, sir, to identify jeep teams, to identify the personnel in jeep teams, since the personnel at the time in point, point of my investigation, were in American uniform, passing through the German lines.

Junker was a member of the First SS Panzer Division. The jeep teams passed through the First SS Panzer Division. Interrogation, investigation, showed a very crowded road, very poor traffic circulation. A jeep, an American quarter-ton jeep, which is as American as some of our idioms, could not possibly be construed as German equipment. If they had seen a jeep, did they recognize any of the personnel in American uniforms in that jeep? That was my point, sir.

Senator BALDWIN. And that was entirely unrelated to the Malmedy case.

Colonel PERRY. Entirely unrelated to the Malmedy case.

Senator BALDWIN. Before going down there you had talked to Colonel Ellis?

Colonel PERRY. Yes, sir.

Senator BALDWIN. What did Colonel Ellis say?

Colonel PERRY. He said that Colonel Everett had returned Stateside—returned to the United States. There were charges of beatings, maltreatment, torture, during the pretrial investigation at Schwaebisch Hall. He asked me if I had time to talk to Junker and to Peiper, and find out, as an impartial investigator. I had not been in the theater during the pretrial investigation. I went there impartially.

Senator BALDWIN. So it was under those circumstances that you talked with Junker?

Colonel PERRY. It was under those circumstances that I talked with Junker; yes, sir.

Senator BALDWIN. And that I think you said was on the 7th or 8th of February 1946?

Colonel PERRY. On or about the 8th of February 1947, sir.

Senator BALDWIN. What is the date of the affidavit?

Mr. CHAMBERS. January 19, 1948.

Senator BALDWIN. Did you make out a written statement?

Colonel PERRY. I made out a written statement; yes, sir.

Senator BALDWIN. For yourself?

Colonel PERRY. For myself.

Senator BALDWIN. Did you get any statement from Junker?

Colonel PERRY. No, sir; I did not take a written statement from him.

Senator BALDWIN. Read to us what you said in your affidavit that Junker said.

Colonel PERRY (reading):

Junker, who spoke excellent English, informed me that during the development of the Malmedy case at Schwabisch Hall, Germany, he, at no time, was struck by anyone connected with the investigation of the case. He stated that the treatment he received during his confinement at Schwaebisch Hall was better than the treatment he received at Dachau and the physical conditions at Schwaebisch Hall were much better than these at Lansberg. I again asked specifically whether he had at any time before or during his trial been struck or threatened with bodily harm by any interrogator. He answered specifically that he had never at any time been struck or threatened with bodily harm by any American captor, interrogator, or jailer.

I asked whether he had been treated in any manner which might tend to humiliate him or degrade him in the eyes of his former subordinates or superiors. He stated that he was intensely interrogated at Schwabisch Hall and that frequently his answers to direct questions were distorted and colored to suit the ideas of his interrogators in an effort to elicit further information, but that such methods were not unusual and were probably a great deal milder than the methods which would have been used by German interrogators had the circumstances been reversed.

He further stated that the interrogation was not believed by him to be an effort to degrade him before his German comrades and actually did not so degrade him. I asked whether he had at any time seen or had been placed in cells which contained bullet holes or pieces of flesh, human or other. He answered that the story about pieces of flesh was the figment of someone's imagination and without basis of fact: also that since the prison at Schwabisch Hall was an old prison there may have been holes in the cell walls, but he was certain that if there were such holes he had not seen them.

He stated further that the story reference to pieces of flesh and bullet holes in the walls was so fantastic to him that he wrote a humorous limerick about that subject and addressed the limerick to the chief of the prosecution staff during the trial at Dachau. Junker volunteered the information that he held no malice toward any individual connected with the prosecution of his case and that he particularly esteemed and respected the chief of the prosecution staff, Lieutenant Colonel Ellis, Judge Advocate General's Department.

I asked whether he had heard stories of mistreatment of prisoners at Schwabisch Hall during the development of the Malmedy case. Junker replied that he had heard such stories from many of the defendants in that case but that he believed none of them to be true.

He further volunteered the statement that the origin of these stories was based on a desire to wiggle out of damaging testimony voluntarily given by some of the defendants; that when they realized that such testimony was to their disadvantage they attempted to negative such testimony with the false claim that it was beaten out of them. He regretted that such realization was too late to help them and was fully aware that the claim of mistreatment was a weak and futile defense.

I asked whether this weak and futile defense was known to or fostered by the defense staff of these individuals. Junker was emphatic in his assertion that this attempt to discredit the prosecution was not only sponsored by the defense staff but was of the opinion that it originated with them. I asked whether the defense staff or any person on that staff had advised him not to answer questions for American interrogators after the trial. Junker stated that after trial and sentence and subsequent to his initial confinement in Landsberg he had been advised by Lieutenant Colonel Sutton and by Colonel Everett, of the defense staff, to answer no more questions for any American and to submit to no further interrogations by American investigators or interrogators.

When asked by me whether he desired me to convey any word from him to any member of the prosecution, he stated that he particularly wanted his thanks conveyed to Colonel Ellis and his kindly feelings conveyed to the other members of the investigation team who developed the Malmedy case. He particularly wanted all members of the prosecution to know that he held no malice or unkind feelings toward them, fully realizing that as members of an armed force they were performing an assigned mission to the best of their ability.

At the time he made this statement to me, sir, he was in condemned row. He was awaiting the execution of the death sentence. I believed it to be true.

Senator BALDWIN. Do you know when that execution had been set?

Colonel PERRY. No, sir; I do not.

Senator BALDWIN. Did he mention the fact to you that he was under sentence of death?

Colonel PERRY. He had a red jacket on, which was the mark of a man condemned to death.

Senator BALDWIN. Did he give you any information about the part that you wanted to know?

Colonel PERRY. He told me that at the time of the Malmedy massacre he was not present with his unit but was on leave, I think at Frydendal, somewhere in the vicinity of Berlin.

Senator BALDWIN. Did you believe that?

Colonel PERRY. The man said he was not present with his unit. I had heard that before from other sources.

Senator BALDWIN. Have we a record of what happened to Junker?

Mr. CHAMBERS. I think the record should show that he was convicted and sentenced to death, and that was changed to life on review, and was finally approved for 15 years' confinement.

Senator BALDWIN. In your affidavit, have you got anything there about the information concerning the jeep teams?

Colonel PERRY. No, sir.

Senator BALDWIN. This just pertains to the Malmedy matter?

Colonel PERRY. Yes, sir.

Senator BALDWIN. When you referred to this affidavit, is that the one you filed in connection with some of the Malmedy investigations?

Colonel PERRY. This is a copy of the affidavit I filed. This has been in my possession since I made it.

Senator BALDWIN. I mean your purpose in making this affidavit was in connection with the Malmedy investigation?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Do you know Colonel Ellis?

Colonel PERRY. Yes, sir.

Senator BALDWIN. How long have you known him?

Colonel PERRY. I met Colonel Ellis on his return to the United States, sometime in the fall or early winter of 1946.

Senator BALDWIN. Did you know him in Germany?

Colonel PERRY. That was in Germany, sir.

Senator BALDWIN. Are you an intimate friend of his?

Colonel PERRY. No, sir.

Senator BALDWIN. How often have you seen him?

Colonel PERRY. Only on official business.

Senator BALDWIN. Have you ever been out with him socially in any way?

Colonel PERRY. I went hunting with him in the Tanes Hills once. I had dinner at his home, once. That is the only personal association I have had with Ellis.

Senator BALDWIN. When you went hunting with him and had dinner with him, were there other people present?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Have you seen him since?

Colonel PERRY. I have not seen Ellis since I left Germany in June of 1947.

Senator BALDWIN. How did you happen to file this affidavit, Colonel?

Colonel PERRY. I made notes on all information I received. I was preparing a summation of another case. Ellis asked me to condense my notes into the form of an affidavit.

Senator BALDWIN. So you did it at the request of Ellis?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Where was it that you talked with this Junker?

Colonel PERRY. In the prison officer's office in the prison at Landsberg, Germany.

Senator BALDWIN. Did you talk with Peiper there?

Colonel PERRY. Yes, sir.

Senator BALDWIN. What was the occasion of your seeing Peiper?

Colonel PERRY. The same day, the same occasion, sir.

Senator BALDWIN. Why did you see Peiper?

Colonel PERRY. Peiper commanded the First SS Panzer Regiment. Any unit passing through him should be with his knowledge. Again I was attempting to identify jeep teams.

Senator BALDWIN. Let me identify you. It was your belief, or at least the belief of the American forces, that in connection with this drive and the Battle of the Bulge, the Eiffel offensive, so called—is that what it was called?

Colonel PERRY. It had several cover names—Eiffel, Grief, Veirnachtenbaum. There were several.

Senator BALDWIN. It was your belief that German military personnel, dressed in American uniforms and using American equipment, came through the German lines into the territory. Is that correct? Spearheading this drive?

Colonel PERRY. Not only my belief, but I established that as a fact.

Senator BALDWIN. You established that as a fact?

Colonel PERRY. Yes, sir.

Senator BALDWIN. That was a fact?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Did you want to talk with Peiper about that?

Colonel PERRY. I wanted to talk to Peiper about that; yes, sir.

Senator BALDWIN. Because Peiper commanded the First SS Division?

Colonel PERRY. The First SS Regiment, under the First SS Division.

Senator BALDWIN. What did Peiper say about that?

Colonel PERRY. I got no information. There was a jeep team that came up, was to have spearheaded him, but could not get through.

Senator BALDWIN. That was his story?

Colonel PERRY. Yes, sir. I asked for the identification of personnel. He said they were in American uniforms; the personnel were gathered from all branches of the German armed forces to include the merchant marine. They were not known to him.

There were German nationals in the armed forces who spoke the English language. They were masquerading as Americans.

Senator BALDWIN. Of course, that was an element of surprise in the thing, in connection with the offensive.

Colonel ELLIS. Are you asking for an opinion, sir?

Senator BALDWIN. Obviously that was the purpose of it, to get them through as far as they could.

Colonel PERRY. I think it went further than the element of surprise. It was a combat mission.

Senator BALDWIN. It was part of the plan of the offensive?

Colonel PERRY. It was part of the plan to get through the line, get to the bridgehead at Antwerp and hold the bridgehead until Peiper's unit got up there.

Senator BALDWIN. I judge, from what you say, Peiper did not know anything about that.

Colonel PERRY. There was a jeep team, but it did not get through him, and he did not know the personnel in the jeep team.

Senator BALDWIN. Did you believe that?

Colonel PERRY. Yes, sir; I did. I had information as to the chaotic condition. Roads were muddy. The Germans are not the world's best vehicle drivers. Traffic circulation was bad. They were receiving a heavy artillery barrage. They did not get very far.

Senator BALDWIN. Did you talk with Peiper about the Malmedy matter?

Colonel PERRY. I did; yes, sir.

Senator BALDWIN. And the work of the SS troopers under his command?

Colonel PERRY. I do not quite understand your question, sir.

Senator BALDWIN. As I understand you, you went down there primarily to find out if Peiper could identify any of these jeep teams in American uniforms.

Colonel PERRY. Yes, sir.

Senator BALDWIN. That was your prime mission.

Colonel PERRY. Yes, sir.

Senator BALDWIN. In connection with another investigation.

Colonel PERRY. Yes, sir.

Senator BALDWIN. Did you talk to Peiper about the Malmedy thing?

Colonel PERRY. I did; yes, sir.

Senator BALDWIN. I mean the Malmedy massacre and those other killings.

Colonel PERRY. Not about the massacre itself.

Senator BALDWIN. What did you talk to him about?

Colonel PERRY. I tried to have Peiper do as much talking as he could, in the hopes that I might get a thread that would lead me to a clue. He was typical Nazi, English educated, well educated. He was a regimental commander. He was hostile toward the Americans. He said "The war is over, you have won. You interpret the Hague and Geneva Conventions since you are the conquerors. So far as the conditions at Crossroads, below Malmedy are concerned, I had been in my regiment, I was regimental commander, I was their father. They came to me with their troubles. One of my boys told me that your Air Force had destroyed not only his town but 17 of his close relatives were in 1 house and they were all killed by 1 of your American bombs. Now, when these boys came face to face with the Americans who destroyed their families, I could not say it was wrong that they shoot. The war is over, you have won, you say it is wrong, we will pay the penalty."

I said "Peiper, how about Coventry?"

Peiper said "The destruction of Coventry is an infamous lie. It is a British lie. Nothing like that ever happened."

I dropped the subject.

Senator BALDWIN. Did you talk with Peiper about Schwaebisch Hall or the treatment that he got there?

Colonel PERRY. Yes, sir. I talked about his treatment at Schwaebisch Hall.

Senator BALDWIN. What did he say? Did you put down in the statement what he said?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Did you make any notes at the time?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Do you still have those notes?

Colonel PERRY. No, sir. I destroyed the notes. This statement was based on those notes.

Senator BALDWIN. When did you destroy the notes?

Colonel PERRY. I think I destroyed them on my return to the United States. I am not sure of that.

Senator BALDWIN. Where did you make this affidavit?

Colonel PERRY. At Augsburg, Germany.

Senator BALDWIN. Read from it.

Colonel Perry (reading):

I then interviewed Joachim Peiper, who spoke excellent English. Peiper was asked by me whether he was at any time struck or threatened with bodily harm during his confinement at Schwaebisch Hall. He exhibited surprise at the question and was emphatic in expressing a negative answer. He was then asked whether he had heard of any case of beatings or physical force against the per-

son of any defendant in the Malmedy case. Peiper's answer was at first hesitant and then he stated clearly that he had heard of beatings and physical force from the majority of the defendants who were former members of his command.

When asked where and at what time this information came to his attention he stated that it was given to him by the defendants concerned at Dachau just prior to and at the time of the trial. He was then asked whether he had personal knowledge of or had himself seen any such beatings or mistreatment. His answer was in the negative.

I asked Peiper whether these reports of mistreatment came to him sporadically over a long period of time or were closely related in point of time. His answer was that the reports came to him closely in point of time; that during a conference with his chief defense counsel, Colonel Everett, he was told that as a regimental commander he must keep the best interests of his men ever present in his mind and should encourage his men to confide in him; that the defense staff had been informed of mistreatment of these men during their confinement at Schwaebisch Hall and that he—Peiper—should encourage his men to talk to him and among themselves of such occurrences.

I asked whether it was possible that this might be a plan of defense to which Peiper immediately retorted that such a suggestion was impossible and that no American officer would resort to such unsportsmanlike tactics even in the defense of individuals being charged with murder.

He further stated that he had, at Schwaebisch Hall and at Dachau, expressed his disgust toward his men for their lack of soldierly attributes in divulging vital information to American interrogators, and, that it was possible that the stories of beatings and mistreatment were an effort to regain his friendly feeling toward them.

Peiper was then asked whether he had been advised by any member of the defense staff to refuse to answer questions for or submit to interrogation by Americans not connected with the defense of his case. He stated that he had been advised by his chief defense counsel, Colonel Everett, to answer questions for no one who was not connected with the defense staff. He was then asked when he had been advised and answered that the advice had been given to him at Dachau before, during, and after trial.

I asked whether this advice had been repeated at any time subsequent to trial and announcement of sentence to which Peiper answered that Colonel Everett had visited him at Landsberg prison subsequent to his initial confinement there and had said that he—Everett—was dissatisfied with the outcome of the trial and that Peiper should refrain from discussing the trial, or the testimony brought out therein, with any person not actively connected with the defense and should refuse to submit to further interrogations by any American except in the presence of Everett.

He volunteered that since that time he had opportunity to reflect on the matters upon which his trial was based, that Colonel Everett had now returned to the United States and that Peiper saw no cogent reason for maintaining continued silence. I again asked Peiper whether he had personal knowledge of mistreatment at Schwaebisch Hall and he again answered in the negative.

I asked whether he had at any time in Schwaebisch Hall been submitted to actions which might tend to humiliate him or degrade him in the opinion of his superiors or subordinates. He again answered in the negative.

I asked for his opinion as to the nature of his treatment in Schwaebisch Hall as compared to treatment received while at Dachau or at Landsberg prison to which he replied that his treatment at Schwabisch Hall was far superior to that of either Dachau or Landsberg. When asked whether he had been mistreated, humiliated, or degraded at either Dachau or Landsberg he replied emphatically in the negative and amplified his immediately prior answer with the statement that his treatment at the hands of his American captors was not inconsistent with the treatment he would expect of soldiers and gentlemen toward a prisoner of war.

I then asked whether he desired me to transmit for him any remark or statement to any member of the prosecution staff which prosecuted the Malmedy case. Peiper asked that I convey to Lieutenant Colonel Ellis, chief prosecution counsel, his—Peiper's—best wishes and kindest regards, that he entertained neither resentment nor malice toward any member of the prosecution staff and considered the trial of the Malmedy case fair and considerate toward the defendants and to have been conducted by soldiers and gentlemen as a military mission and without personal animosity or prejudices.

Senator BALDWIN. How much time did you spend with Peiper?

Colonel PERRY. About an hour.

Senator BALDWIN. You say he spoke perfect English?

Colonel PERRY. Yes, sir.

Senator BALDWIN. At that time was he under sentence of death?

Colonel PERRY. He was under sentence of death; yes, sir.

Senator BALDWIN. You do not know when that sentence was to have been executed?

Colonel PERRY. I do not think review had been completed, sir. I do not know.

Senator BALDWIN. How did they look from the standpoint of health?

Colonel PERRY. Very good physical condition, clean, neat. He needed a haircut, but his hair was well combed, he was shaven, he seemed to be in good physical health.

Senator BALDWIN. Could you identify a picture of Peiper?

Colonel PERRY. I think I could, sir.

Senator BALDWIN. Here is a group of pictures. See if you can pick Peiper out of that [handing pictures to the witness].

Colonel PERRY. I think this prisoner, marked 42, is Peiper.

Senator BALDWIN. Is that correct? Is that a picture of Peiper?

Mr. CHAMBERS. That is a picture of Colonel Peiper, sir. According to the trial record he was assigned No. 42.

Colonel PERRY. The profile picture is a better picture of him, the facial expression.

Mr. CHAMBERS. Colonel, you said that Peiper was a typical Nazi. What do you mean by that?

Colonel PERRY. He was arrogant; he was hostile; he had not committed a crime against the laws of war or the laws of God or the laws of man.

Mr. CHAMBERS. How about Junker?

Colonel PERRY. Junker was young, more of a college type boy. He was reasonably buoyant for a man condemned to death.

Mr. CHAMBERS. Did you feel that he might have been sorry for any of the things—he claimed he had not done anything?

Colonel PERRY. He claimed he had not done anything, that he was on leave, on a holiday, at home, during the Christmas season.

Mr. CHAMBERS. In that connection, with your investigation of this other matter, which as I understand was tied in very intimately with the operations of the First SS Panzer Division and more directly the First SS Panzer Regiment, did you have any occasion to form any opinion as to whether or not the First SS Panzer Regiment did carry out these atrocities of which certain members were accused?

Colonel PERRY. From Peiper's attitude; yes, sir.

Mr. CHAMBERS. From Peiper's attitude?

Colonel PERRY. Yes, sir.

Mr. CHAMBERS. In other words—

Colonel PERRY. When Peiper said, "When my boys who have lost their families are confronted with your American killers, if it is in violation of international law that they shoot them down, then you can say we violated international law. But had circumstances been otherwise, there would have been no violation."

In other words, he had not, in his own mind, committed a crime.

Senator BALDWIN. Had you ever seen those pictures before?

Colonel PERRY. No, sir.

Senator BALDWIN. Do you know any other members of the prosecuting team? Did you know Shumacker?

Colonel PERRY. Not that I can recall.

Senator BALDWIN. Did you know Perl?

Colonel PERRY. By reputation. I would not know the man if I saw him.

Senator BALDWIN. You say by reputation. What do you mean by reputation?

Colonel PERRY. I heard him referred to as a member of the prosecution staff.

Senator BALDWIN. What was the reputation?

Colonel PERRY. One more member of the prosecution staff.

Mr. CHAMBERS. Did you ever hear any remarks concerning Perl, his attitude toward prisoners, the way he handled prisoners?

Colonel PERRY. There was a feeling that he was too exuberant, he was overbearing. Of course, that is merely opinion; that is hearsay. I do not know the man personally.

Senator BALDWIN. Did you ever hear any comment to the effect that he had beaten any prisoners, kicked them, kneed them, or something of that kind?

Colonel PERRY. No, sir.

Senator BALDWIN. What do you mean when you say he was exuberant?

Colonel PERRY. Getting his face down close to the prisoner, the individual, the suspect being interrogated, the suspect making a statement, with his face close to his: "You lie, that is not the truth," what is popularly referred to as police third-degree methods.

Senator BALDWIN. Was there any comment that he had used any physical violence?

Colonel PERRY. Not that I know of, sir.

Mr. CHAMBERS. Did you know Harry Thon?

Colonel PERRY. I knew Thon very well. Thon was assigned to me as an investigator-interrogator.

Mr. CHAMBERS. What was Thon's reputation for handling of prisoners?

Colonel PERRY. Thon was an effective, efficient, competent interrogator.

Mr. CHAMBERS. Did that competency and efficiency carry with it that he possibly pushed them around a little bit to get confessions?

Colonel PERRY. No, sir.

Mr. CHAMBERS. You say "no, sir" positively. And he was working for you at the time. Have there ever been any reports made to you in connection with your own investigations or rumors concerning Malmédy that Thon might have pushed prisoners around, mistreated them, or manhandled them?

Colonel PERRY. No, sir. Had they come to me, Thon would have answered to me. When I first reported to War Crimes Group, I was informed that I was dealing with prisoners of war, and if we were to enforce the Hague and Geneva conventions we had best not be guilty of violating them ourselves.

Senator BALDWIN. When was that said?

Colonel PERRY. The day following Labor Day, 1946.

Senator BALDWIN. Did you know Strong who was one of the defense staff?

Colonel PERRY. I knew a Strong who was the supply officer, War Crimes Group. Whether it is the same individual I have no knowledge.

Senator BALDWIN. Did you know Dwinell?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Where did you see him?

Colonel PERRY. At Dachau.

Senator BALDWIN. Was he there during some of the time that you were there?

Colonel PERRY. At Dachau, yes, sir.

Senator BALDWIN. Did you know Benjamin Reichman?

Colonel PERRY. That name does not mean anything to me, sir.

Senator BALDWIN. Did you know Colonel Straight?

Colonel PERRY. Yes, sir.

Senator BALDWIN. Were you under his command at one time?

Colonel PERRY. Yes, sir.

Senator BALDWIN. At any time while you were at Dachau, or any other place, was there ever a meeting of the defense counsel, the members of the court, and the prosecuting staff for a joint meeting for discussion of the trials and the conduct of the trials?

Colonel PERRY. None that I know of, sir. Dachau is a very small town. A concentration camp is reasonably closely organized in distances. They ate at the same mess. There was but one club. Isolation was not possible. It was not possible. There was no discussion, normally, about a case before or after trial. There was always that worry among men young in the military service that if they talked about a thing it might be interpreted as an attempt to influence opinion. They did not do much talking about it. That is what made Dachau tough.

Senator Baldwin. Were there several courts in session at Dachau?

Colonel PERRY. Yes, sir.

Senator BALDWIN. And were the Malmedy trials going forward about the same time that your work was going forward there?

Colonel PERRY. I arrived in the theater—I was assigned to War Crimes Group—after the conclusion of the Malmedy case. I have no knowledge of pretrial investigation, conduct of the trial. That I have no knowledge of.

Senator BALDWIN. You did not get to the War Crimes Group until after the Malmedy trials had been completed?

Colonel PERRY. That is correct, sir.

Senator BALDWIN. I think that is all. Thank you very much. Colonel.

Colonel PERRY. Thank you, sir.

Mr. CHAMBERS. Mr. Guth?

(Thereupon, Paul C. Guth was sworn by Senator Baldwin.)

TESTIMONY OF PAUL C. GUTH, ATTORNEY, NEW YORK CITY

Mr. CHAMBERS. Mr. Guth, will you give us your full name and address, and present occupation, please?

Mr. GUTH. My name is Paul C. Guth. I live at 61 East Eighty-second Street, New York City, and I am an attorney.

Mr. CHAMBERS. Mr. Guth, would you mind telling us a little bit about your background, where you were born?

Mr. GUTH. I was born in Vienna, Austria, and I went to high school in Austria and England. I had parts of my college education in England. Then I had the rest of my college education, my legal education, in the United States.

Mr. CHAMBERS. When did you come to this country?

Mr. GUTH. In 1940.

Mr. CHAMBERS. When were you naturalized?

Mr. GUTH. 1944.

Mr. CHAMBERS. Were you in the American armed services during the war?

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. As an enlisted man or officer?

Mr. GUTH. Both.

Senator BALDWIN. We will have to take a short recess while I answer this roll call.

(Thereupon, a short recess was taken.)

Mr. CHAMBERS. Were you assigned at one time to Dachau?

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. In what capacity?

Mr. GUTH. I think I was assigned down there as an interrogator, and then a month later I was made assistant to Colonel Denson, as prosecutor of the Dachau case. Then after the end of the Dachau case I was more or less put in charge of the interrogation in Dachau, and about 3 weeks later Colonel Denson was assigned to the Mulhausen case and at that time I was assigned to Colonel Denson again.

Mr. CHAMBERS. Do you recall sometime in 1946 Colonel Carpenter coming down to Dachau?

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. Were you assigned to assist him in any way?

Mr. GUTH. Yes, sir; I was.

Mr. CHAMBERS. In what connection?

Mr. GUTH. I was told to go and work with him evenings. I was told that there seemed to have been some unpleasantness in the investigation of the Malmedy case; there were charges, and that I should assist Colonel Carpenter in finding out how much of the charges were true.

Mr. CHAMBERS. Can you, in your own words, tell us the way you all worked on that investigation, and what you found out?

Mr. GUTH. Yes, sir. I reconstructed it since getting your letter yesterday. Immediately after dinner I was busy on the Mulhausen case during the day, and then would have dinner.

Immediately after dinner Colonel Carpenter, Colonel Everett, and myself, went over to the War Crimes compound. Colonel Everett gave Colonel Carpenter a list of prisoners who claimed they had been mistreated. He also gave him some sort of questionnaire—a mimeographed questionnaire, as I recall it—and I think the first evening he left us, after giving us some questionnaires.

Then Colonel Carpenter just picked off a name from the list. I do not know whether he had been informed that this man had the strongest complaint or whether he just happened to pick his name.

He called him in. As I recall it, on the first prisoner Colonel Carpenter had me translate for him, and then after that he just indicated generally what I should find out. Then, after I had talked to the man—while I was talking to him, after a few minutes—I would turn

to Colonel Carpenter and I would tell him what the man had been telling me, but I was more or less conducting the questioning on my own.

MR. CHAMBERS. Mr. Guth, going back to when you first went to work on these cases, were you the only interpreter or translation staff? I realize that you were an interrogator, but were you the only interpreter assigned to work with Colonel Carpenter?

MR. GUTH. No, sir. Coming down yesterday, when I tried to reconstruct it, I thought I was. Coming down on the train today I remembered that, I think, there were one or two German girls who were just kind of sitting around and waiting to see whether Colonel Carpenter would use them.

Toward the end I believe Colonel Carpenter gave me one or two names, and I questioned those names. He would take, with the help of one of the girls, and he would interrogate—talk to—some of the other prisoners.

So, actually, I was not the only interpreter in the room when the interrogation was going on. There were other people who knew German and English in the room.

MR. CHAMBERS. Were these questionnaires that you were talking about filled out in German?

MR. GUTH. That is correct.

MR. CHAMBERS. Do you know whether or not Colonel Carpenter had had them translated before you went to work with him?

MR. GUTH. I read them in the original, in German, but I believe they had been translated. As a matter of fact I am pretty sure, because both girls who were there the first evening had both been permanently assigned to the defense staff, and one of the girls had told me, before Colonel Carpenter came down, that there would be an investigation, and that the defense staff had been working on these complaints.

MR. CHAMBERS. Did you read all of the statements?

MR. GUTH. I could not say that, sir. I read a substantial number.

MR. CHAMBERS. Do you recall what statements were made by the prisoners concerning mistreatment?

MR. GUTH. Well, sir, when we started questioning them, the first thing we tried to find out was the charge of actual beatings.

MR. CHAMBERS. Let me go back to my original question. Do you recall what these questionnaires said?

MR. GUTH. Yes, sir. It is over 3 years since I saw them, and I did not pay much attention to them at the time. I believe they asked for the man's name, rank, for his outfit; then they asked how long he had been imprisoned in various American prison camps.

Then I do not know whether they asked several questions about the way he had been treated or whether he was asked just to give us his story. There was a space where he could give his story and put down his complaints.

MR. CHAMBERS. What was the general tenor of the answers to that question concerning mistreatment, or the way he was treated?

MR. GUTH. In the written answers?

MR. CHAMBERS. Yes.

MR. GUTH. I do not know whether there were any complaints of physical violence. I know there were complaints of mock trials; there were complaints about having a black scarf thrown over the

individual's head, and he was kept that way for some time. There were certain complaints about insults.

I think there may have been complaints about various acts which were designed to humiliate prisoners, physical exercise and so on.

Mr. CHAMBERS. I believe you said there were no complaints that you recall about physical mistreatment in the questionnaire?

Mr. GUTH. No, sir. I would not say that. What I am saying is: Having read something about it in the papers since, and not having been particularly interested in the case when it came up, I do not recall whether there were any complaints of physical mistreatment. If there were any complaints, they were not very strong, because after reading them I just shook my head and told myself they had not made much of a case.

Mr. CHAMBERS. You then, based on what you had read, would call in prisoners and interrogate them; is that correct?

Mr. GUTH. That is correct, sir.

Mr. CHAMBERS. What did you do; screen out a certain number of them that had made complaints?

Mr. GUTH. I had nothing to do with the screening. Colonel Carpenter would give me a name and tell me to have that name brought in.

During one of the breaks he indicated that the names he had called were the names of the people whose questionnaires had been most unfavorable to the investigation methods used by the prosecution.

I also talked to Colonel Everett. I talked to him pretty constantly during that time, because, as Colonel Perry mentioned, Dachau is a pretty small place, and he was a very sociable gentleman.

He mentioned to me that Colonel Carpenter had picked the man whose complaint had been strongest.

Mr. CHAMBERS. So Colonel Carpenter had apparently got the worst complaints?

Mr. GUTH. That is right.

Mr. CHAMBERS. But you yourself—and those that you read from the group Colonel Carpenter had picked out—did not feel they had made too great a case?

Mr. GUTH. I did not read the complaints of the group Colonel Carpenter had picked out, particularly. I just leafed through the general sheets, and as one man came in Colonel Carpenter would give me his sheet, but I could not distinguish, after that time, between the complaints of the men who were called in and the complaints of the men who were not.

Mr. CHAMBERS. Do you recall how many people you and Colonel Carpenter interviewed?

Mr. GUTH. I should say about 15.

Mr. CHAMBERS. I presume, in those that you questioned yourself, you were trying to corroborate the statements that they had made on their questionnaire, plus such other information as you could get from them?

Mr. GUTH. That is correct.

Mr. CHAMBERS. What was the nature of the testimony that you got from them as a result of your interrogation?

Mr. GUTH. Well, sir, I have been trying to recall it. I can only recall one incident of a man who complained that he was slapped. He did not claim that he was slapped during interrogation.

As he told me the story, or as I recall the story, when he was told to leave—I do not know whether he had made a confession at that time or had not—he started to get up, and was a bit slow going through the door, and then someone slapped him.

I do not even know whether it was a member of the prosecution staff or one of the enlisted men who were assigned to bringing in and taking out prisoners, who did the slapping.

He did not claim that he was beaten. The Germans used the expression for a slap in the face. There were one or two people who claimed that when they were taken from the interrogation room to their cells, and from their cells to the interrogation room, a black cloth was placed over their heads and they were brought in that way.

It is possible that they told me that—I am just trying to think of one incident—they told me that it was removed before they were questioned, because when they first said they were brought in with the black cloth over their heads, I said, "You could not have talked very well," and at that point he said, "Oh, no; that black cloth had been taken off my head."

Mr. CHAMBERS. You said that you had been reading the newspapers about some of the stories that came out about Malmédy. I am certain that you have read some of the statements concerning real physical mistreatment.

Mr. GUTH. That is correct.

Mr. CHAMBERS. Based on the investigation that you and Colonel Carpenter made, would you feel that those claims that are now being made are accurate?

Mr. GUTH. Certainly none of the people who talked to us claimed they had been subjected to physical mistreatment, other than one slap that I recall. They all complained about inadequate food, and they all complained about solitary confinement.

Mr. CHAMBERS. Did they talk about any particular individuals who might have humiliated them or mistreated them?

Mr. GUTH. I was interested. I have been in the same branch of the service for a long time, and I knew quite a few of the interrogators. So I was interested to know who had done the interrogation.

I tried to find out who it was. The only name that I recall—because I knew the name before hearing about him—was Lieutenant Perl. All the other names are completely new to me.

Now, they may have been mentioned. If they were, I have forgotten them, because I never had any contact with these individuals.

Mr. CHAMBERS. What did they say about Perl?

Mr. GUTH. They all said he had talked in a rather loud voice. They all described him as a relentless interrogator. There was no complaint of physical violence in his case.

Mr. CHAMBERS. Did you have occasion, through your duty there at Dachau, to become acquainted with other members of the Malmédy staff—Harry Thon, for instance; Joseph Kirschbaum?

Mr. GUTH. No, sir.

Mr. CHAMBERS. Ellowitz?

Mr. GUTH. No, sir.

Mr. CHAMBERS. Was there any general reputation among the staff at Dachau concerning the way these people had been handled at Schwabisch Hall?

Mr. GUTH. Sir, none at all, except that, as I mentioned before, 1 or 2 days before Colonel Carpenter came down, the German girl who had first applied for the job to me, came to me and said, "Something is going to happen about the Malmedy case. Colonel Everett is working up a big record on mistreatment, and as a matter of fact it has become so big that a colonel will come down from Frankfurt."

Mr. CHAMBERS. She said that Colonel Everett was working up a big record on mistreatments?

Mr. GUTH. That is right. She was not suggesting that he was at all influencing people in what they were saying about mistreatment.

Mr. CHAMBERS. But she did indicate that he was taking a particular interest in this question of mistreatment; is that right?

Mr. GUTH. Yes.

Mr. CHAMBERS. To the point that he was, even before the trial, building up quite a record about it?

Mr. GUTH. Well, maybe the expression "building up" is not fair.

He was taking down the facts, and as I note, as I recall it from what I have heard from Colonel Corbin, he then went to Colonel Corbin and mentioned the fact that he had found out about these things to Colonel Corbin, and probably asked him, for them, what he, Colonel Corbin, thought Colonel Everett should do.

Mr. CHAMBERS. You say you knew Colonel Everett and talked to him on quite a few occasions?

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. Did he ever mention these matters to you?

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. What did he have to say about them?

Mr. GUTH. I had been on most of the early war crimes trials, and he talked to me quite a bit. As long as I was there he expressed bewilderment. Let us put it this way: He did not believe—he could not believe—that physical violence had been used, and that Colonel Ellery, I believe his name was, the chief prosecutor, and at the same time he felt it was his duty to the individuals he had been assigned to defend to go to the bottom of that matter. On the other hand he did not feel that he would like to raise a big cloud of dust if those stories would turn out wrong in the end.

At the time I talked to him he was rather puzzled as to where his duty lay.

Mr. CHAMBERS. At that time, you say he was convinced that they could not have occurred under Colonel Ellis?

Mr. GUTH. Well, he was not convinced that any stories which people were telling him, his defendants were telling him, were wrong. That would not be a fair way of putting it. He could not just imagine that Colonel Ellis would allow that sort of thing to happen.

Mr. CHAMBERS. When was the last time you talked to Colonel Everett in relation to this investigation?

Mr. GUTH. The day I left for the States. That must have been around May 10, 1946.

Mr. CHAMBERS. In other words, it was during the trial?

Mr. GUTH. No. Before the trial.

Mr. CHAMBERS. In May 1946?

Mr. GUTH. Yes.

MR. CHAMBERS. And at that time Everett was still undecided in his own mind as to whether or not there was any truth to these charges that had been made?

MR. GUTH. Sir, I do not know whether that is a fair way of putting it.

MR. CHAMBERS. You tell me what you think is a fair way. Do not let me put words in your mouth.

MR. GUTH. I think that he realized that certain people, at least, had complained about the treatment they had been subjected to. He also realized that those people had made statements which, if unchallenged, would mean that they and others would be hanged.

He realized that he was dealing with people with whom he had had very little experience. He realized that, by taking their statements at face value, he was likely to do a good deal of damage to other people's reputations—people who just thought they were doing their own jobs—so that, on the other hand, he felt that he was defense counsel, that he had to put the case of those people before the court to their best advantage.

So he did not quite know where his duty lay in bringing these matters out during the trial, out into the open. I think at one point I mentioned to him that possibly he could talk to the prosecution, and that possibly they might not introduce some of the statements where there was a feeling that these statements had been obtained by improper means.

MR. CHAMBERS. I believe you said that at one time Colonel Everett had felt that Colonel Carpenter had picked out the 15 or 20 worst cases.

MR. GUTH. That is right.

MR. CHAMBERS. Did he still feel that way at the time you left there?

MR. GUTH. Yes, sir. He felt it so strongly that, on one occasion, he asked me to address the defendants and ask them to be truthful in their statements to him, because actually the result of the interrogation Colonel Carpenter conducted was disappointing, from the point of view of the defense.

I mean, all those statements, mock trials, mistreatments, and so on, melted to nothing when they were probed.

MR. CHAMBERS. If Everett still believed that Colonel Carpenter had picked out the 15 or 20 worst cases, did he have confidence that Colonel Carpenter and yourself had gotten the facts from these 15 or 20 people?

MR. GUTH. I did not ask him that, sir.

MR. CHAMBERS. Let us put it another way. Do you believe that he was convinced, after your investigation, that there was no physical mistreatment of these people?

MR. GUTH. I do not know that, sir. I very carefully kept from—

MR. CHAMBERS. In your own mind, were you convinced so far as these 15 or 20 were concerned?

MR. GUTH. I was convinced there was no physical mistreatment. I might add something at this point, which ties in with what Colonel Perry testified to. Colonel Everett asked me to talk to the prisoners in one large group in the guardhouse in Dachau one evening, 2 days before I left. On that occasion the officers were called in first. I had interrogated Colonel Peiper for about 6 weeks in June and

July 1945, on other matters than the Malmedy case, so Colonel Peiper knew me fairly well.

He came over to me and congratulated me on my promotion. We got to talking. At the time I had interrogated him I had carried several letters to his wife, and after he had left, he wanted to know how she had been, and so on, we got into a conversation, then the enlisted men started coming in.

They were a pretty sorry sight at that time, not because they were not well fed, but they were not in uniform and they were not too well made up, well-dressed, and they obviously did not take much care about their personal appearance.

He told me: "I never thought that German soldiers would give such a poor show. First they think that by betraying their comrades and betraying their officers they can save their own necks." I am just paraphrasing what he said during a fairly long conversation. "Now they come and they come crying and raising all sorts of complaints. You know how much those are worth."

I am not giving his exact words; I am just paraphrasing what went on as he saw the people coming in. He would recognize a man and he would say that he had always reposed great confidence in him, and that that man had been particularly good at apple-polishing, or something like that, and had been one of the noisiest Nazis in his outfit. "Now look at the statement he made. Now he claims that he was beaten," and he would just laugh or smile at something like that.

Mr. CHAMBERS. Did you gather from that that Peiper himself did not believe many of these statements that they were making?

Mr. GUTH. I believe he felt that a substantial number of the people who were not claiming mistreatment—and I do not think there were many at that time who were claiming physical mistreatment—that they were just telling him and the other officers that they had been mistreated, or at least they were making the treatment they had received worse, so that they would look less bad.

Peiper, for instance, used the expression that he had gotten a certain man who was just filing in leave, when all leaves in the German Army had been canceled. "Now look at the statement he made," and so on.

He had the feeling that the whole investigation had really been against him, and that the investigation—the way it had been carried on—was rather a dirty trick on him, because the day I left—2 days later—Colonel Durst, who was his personal defense counsel, came to me and told me that Peiper had told him that when I first interrogated Peiper in Freising I told him (Peiper) we were out to frame him, and he asked me to make an affidavit to that effect.

So I think Peiper felt that his men had let him down pretty badly, and whatever the facts of the actual treatment were, they were making them much worse in order to appear better in his eyes, now that they were all in the same boat.

Mr. CHAMBERS. I have been asking you specific questions about this. You have volunteered a great deal of information.

I wonder: Are there any other comments that you would care to make concerning this situation? Here we have on one hand a rather imposing group of affidavits that were given some 2 years after sentences, and alleging very serious physical mistreatment—brutal and

inhumane, I think, would be a very easy way to describe it. On the other hand you sat here and testified that while these things were still current, that within a very short time Colonel Carpenter picked out the worst cases and none of those stood up from the standpoint of physical mistreatment, with the exception of one slap.

Mr. GUTH. That is correct.

Mr. CHAMBERS. I am frankly puzzled. Do you have any general comments to make on this situation?

Mr. GUTH. I do not feel that I am qualified to do that. I may say that most of these Germans, when they were first interrogated, just thought of saving their own skins.

They thought that, by currying favor with the interrogator they were very likely to get off lighter than the people they were incriminating.

They did not mind incriminating themselves in the process, since apparently they had become accustomed to the traditional system under which punishment was meted out not according to a man's deeds but according to the light in which he stood with his superiors.

So I imagine most interrogators found that sort of thing very helpful. I know I did. Then they all found themselves in one big room; they were all charged together; they were all in the same boat.

They started thinking (1) "if he is going to treat me better than the rest he certainly is not starting to do it right, the way he is doing it." (2) "These fellows know a lot of things about me which they have not put down, because I do not think any interrogator ever flattered himself that he got out everything. I am sure I did not, and I am sure no one else ever did. If he is really mad about the statement I made about him, that other fellow is likely to come out in court and he is going to make a statement that is going to incriminate me even worse. Then even if they had the intention in the first place to treat me better they are very likely to treat me worse because he gave them more."

They would have every interest in the world to claim they were treated badly. They all followed the early war crimes trials with a good deal of interest. I know, for instance, that German newspapers reporting those trials were at a premium on the black markets in the camps, so I assumed that they started with what their predecessors had done, they studied how their predecessors had failed to break the confessions they had made, how they had all been sentenced, and probably came to realize that only claims of physical mistreatment would be strong enough to take away from the force of their confessions, because in the first war crimes trials there was no claim of physical violence, just claims that they had been misled into believing they would get off easier, and things like that, and the court apparently took the confessions at their face value, and they knew—there were plenty of German lawyers in the camp who were prisoners, and who instructed them on it.

As a matter of fact, the Malmédy prisoners were taken to the courtroom while the Mulhausen trial was going on, to listen in and see how the trial was being conducted. They went in during the time the defense was on, so I have no doubt that they heard a lot of their former comrades in arms repudiating their confessions and making themselves appear ridiculous in the colonel's cross-examinations, because their claims were that they had not bothered to read their confessions,

and so on, and that they had not understood the import of the confessions.

Colonel Denson, who was chief prosecutor in these cases, and is a pretty strong cross-examiner, made most of these people look very silly when he got through. Imagine the Malmedy prisoners listening to that, and the thing got built up in their own minds, they had plenty of time to think about it, and their lives depended on it, and consciously or unconsciously—possibly they were not meaning to commit perjury at all—what had been a rude gesture at first became a threatening move, became physical contact, and finally became mistreatment.

Senator BALDWIN. When you talked with these prisoners you had in your hands, as I understand it, questionnaires which had been given to you by Colonel Carpenter?

Mr. GUTH. Either Colonel Carpenter had them or I had them.

Senator BALDWIN. And those were questionnaires that were prepared by defense counsel for completion by these prisoners?

Mr. GUTH. That is correct, sir.

Senator BALDWIN. And those questionnaires contained charges of mistreatment, as described by the prisoner in the questionnaire?

Mr. GUTH. Yes, sir. Not necessarily physical mistreatment, but anyway mistreatment.

Senator BALDWIN. You then asked the particular prisoner about the information that he had in his affidavit?

Mr. GUTH. That is correct, sir. I do not know whether those statements were in the form of affidavits. I rather believe they were not.

Senator BALDWIN. Just questionnaires?

Mr. GUTH. That is right.

Senator BALDWIN. What did they say?

Mr. GUTH. At that distance it is hard to remember. As I recall it the main emphasis was on the so-called mock trials. The main emphasis was not on physical mistreatment.

I recall Colonel Carpenter, in several instances, asking me, with some impatience, to get to the mock trials while I was already working on it, and then I would come out with an answer that would not satisfy him, and he would feel somehow that I had not put the question right, because once the prisoners was being questioned about the mock trials it was absolutely impossible to get out that any mock trial had actually taken place.

He might claim that he had been told, "You are being charged with the killing of American prisoners; you face your Maker tomorrow morning," but as I recall it there was certainly not one man who described one of the mock trials I have been reading about in the papers.

Colonel Carpenter was quite impatient and quite upset, because no story about those mock trials materialized.

Senator BALDWIN. Did any of these prisoners describe to you any physical abuse that was used on them other than this one slapping?

Mr. GUTH. No, sir; and it was the first question I asked. I pointed out to them that it was for their own interests to tell the story now, that they had given pretty incriminating evidence, and there was, as I recall it, sir, no other case.

Mr. CHAMBERS. I would like to ask you one more question, Mr. Guth: In listening to your discussion of the conference in which you and Colo-

nel Peiper had the conversation as his boys were coming into the room, you were there for the purpose of talking to the whole group; is that correct?

Mr. GUTH. That is correct.

Mr. CHAMBERS. Did you talk to that group?

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. Did you have an opportunity to speak to or have any contact with anybody else besides Peiper that night?

Mr. GUTH. He, as I recall it, introduced me to his officers.

Mr. CHAMBERS. Did anyone else make any comments at all about these matters?

Mr. GUTH. No, sir. I talked to their commanding officers, and they were hanging around, but as I recall it he was the one to carry on the conversation.

Mr. CHAMBERS. Thank you.

Senator BALDWIN. What was the purpose of this meeting? Why did they call you in?

Mr. GUTH. Colonel Everett felt that possibly his inexperience in war crimes cases might handicap those people, and he wanted them to have the benefit of advice based on the actual conduct of war crimes trials, so he asked me to tell them how dangerous it was to lie on the stand, but that they should not accuse each other, that it had happened in both of the war crimes trials that Colonel Denson had conducted that the accused would go on the stand and try to clear himself, but he would incriminate five or six other accused, so I pointed out that that was not the right policy to follow, and so on.

I just gave general advice. Frankly, I think the only good my talk did was to provide them with an evening's entertainment.

Senator BALDWIN. What law school did you go to?

Mr. GUTH. Columbia.

Senator BALDWIN. Did you graduate there?

Mr. GUTH. Yes, sir.

Senator BALDWIN. Do you have a bachelor's degree of any kind?

Mr. GUTH. Yes, sir. Columbia College too.

Senator BALDWIN. Thank you very much.

Mr. GUTH. Thank you, sir.

Senator BALDWIN. Mr. Finucane.

(Thereupon, James Finucane was sworn by Senator Baldwin.)

TESTIMONY OF JAMES FINUCANE, ASSOCIATE SECRETARY, NATIONAL COUNCIL FOR THE PREVENTION OF WAR, WASHINGTON, D. C.

Mr. CHAMBERS. Mr. Finucane, will you give us your full name and present occupation?

Mr. FINUCANE. My name is James Finucane. I am associate secretary of the National Council for the Prevention of War, 1013-18th Street NW., Washington, D. C.

Mr. CHAMBERS. Are you testifying today as an individual or as a representative of the council?

Mr. FINUCANE. As a representative of the council.

Mr. CHAMBERS. Do you have a prepared statement, Mr. Finucane, that you care to make?

Mr. FINUCANE. Yes, I do.

Mr. CHAMBERS. I would like to ask you: can you estimate the time it will take to read it?

Mr. FINUCANE. I would say about 20 minutes, or less.

Senator BALDWIN. What is this statement about? Is it about your connection with Judge Van Roden?

Mr. FINUCANE. It includes that, yes, sir.

Senator BALDWIN. Is it a statement of your opinion concerning these trials or anything of that kind?

Mr. FINUCANE. Yes, and some recommendations for the committee based on our study of the proceedings as they have taken place, and based on the information.

Mr. CHAMBERS. In other words, you are testifying today as a follow-up on the request of the council to appear before the committee when we held these hearings?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. In addition to that, you are responding to some of the questions that were raised in connection with Judge Van Roden's testimony?

Mr. FINUCANE. That is correct.

Senator BALDWIN. Have you conducted any independent investigation of your own of these trials?

Mr. FINUCANE. We have been taking an interest in this since—

Senator BALDWIN. Will you answer my question? Have you conducted any independent investigation of your own concerning these trials?

Mr. FINUCANE. Yes, Senator.

Senator BALDWIN. What investigation have you conducted?

Mr. FINUCANE. We have corresponded with the bishops in Germany, Bishop Neuhaeusler and Bishop Wurm. We have corresponded with General Clay; we have corresponded with the German attorneys; we have corresponded with the German prisoners who are under death sentences. We have also talked with Judge Van Roden and shared the authorship of that report with him, which was in dispute here at the hearing.

Senator BALDWIN. All right, go ahead.

Mr. FINUCANE. This applies to your question as to first-hand knowledge, Senator.

I wasn't at Schwaebisch Hall where the men were beaten. I was not at Landsberg where the men were kept in jail. Everything I have to say about the United States atrocities that took place against unarmed Germans is hearsay. But these men were convicted by hearsay, by perjured statements of their coaccused in the first place, and it is only fitting perhaps that a certain degree of hearsay should be permitted in examining their cases and the procedures under which they were sentenced.

What do we care about the Germans? Why are we interested in the fate of these few?

One, because we do not wish to see men hanged by our Government and in our name who have not been found guilty by American standards of justice.

Second, because we are interested that the reputation of our country for handing out a clean brand of justice be upheld.

Third, because in promoting reconciliation between the nations, we do not want to see men of good will in all countries turned against each other and frustrated by the abuses and excesses of the few.

We can read and we can hear, and when certain things are brought to our attention, we become obligated by them.

Senator BALDWIN. Let me say this to you, Mr. Finucane: You are the associate secretary of the Society for the Prevention of War. You are a paid secretary?

Mr. FINUCANE. That is right.

Senator BALDWIN. I do not believe that you ought to use this committee to advance the propaganda of your own organization. Such facts and letters and documents and evidence as you have to offer we are perfectly glad to hear. But your opinions as to the procedures and so forth, we are glad to hear those, too. I do not think that you ought to use this committee as a sounding board for the propaganda of your organization.

I say that in all fairness and in all justice to you. And I wish, in making your statement, that you would have that in mind.

Mr. FINUCANE. All right; I will, Senator.

Senator BALDWIN. Go ahead.

Mr. FINUCANE. For many months we have been hearing rumors about United States atrocities in Germany. We read about them in the newspapers, reported guardedly, but nevertheless recurrently and disturbingly.

We received letters from Bishop Neuhaeusler, of Munich, Bishop Wurm, of Stuttgart, and from respected German lawyers who were handling the cases of the condemned Germans.

It struck us that just as we were concluding the Nuremberg trials with charges of crimes against peace, crimes against humanity, and war crimes, we were beginning to commit the same crimes ourselves, through our agents in Germany. Certainly it is a crime against peace to destroy confidence between peoples. Certainly it is a crime against humanity for the Americans to run a concentration camp like Schwabebisch-Hall or Landsberg. It struck us that to treat captured prisoners of war as ordinary felons, depriving them of the protection of the Geneva Convention, was a war crime.

To make matters worse, this gruesome performance was manufacturing convictions, issuing death sentences, and lynching its victims at the rate of 10 a week. The detailed statistics are available in the 1948 Annual Report of the Secretary of the Army.

Could we stand by and watch this go on? Could we say that these men—that is, the Americans—had been properly appointed, and wore the uniforms of the greatest country on earth and therefore could do no wrong? Could we blind ourselves to the moral issues because, to our simple, nonlegal minds, all the technicalities seemed to be in order?

Or could we, and should we, recognize a lynching bee when we saw one?

Senator BALDWIN. Let us make that perfectly clear. That is an expression of your opinion.

Mr. FINUCANE. That is right.

Senator BALDWIN. Evidently, you have judged this case already, while this committee is still in the process of taking testimony. That is the point I want to make.

Mr. FINUCANE. If I may say, Senator, I had an opinion before the committee went into action. My opinion has been modified by some of the testimony that has been brought out here.

During the second week of December last year, Judge Edward L. Van Roden spoke at a meeting of a society of Federal bar attorneys in Philadelphia. He had just come back from Germany a few weeks earlier and had the facts. We heard about his talk and interviewed him. We put his story on paper and circulated it to the newspapers, to magazines, to Congress, to bar associations, and to individual members of the public at large.

It is important to remember at this point that the Supreme Court had refused to hear the Germans' pleas for habeas corpus. The Army was hanging them. All regular channels seemed closed.

However, when our article began to circulate, it worked as a catalyst and things began to happen.

Senator BALDWIN. What do you mean "when our article began to circulate?" Do you mean the Van Roden article?

Mr. FINUCANE. I mean the first statement we put out, which was the basis of that Van Roden article of substantially the same thing.

Mr. CHAMBERS. That was your press release based on the Van Roden article. Is that correct?

Mr. FINUCANE. That is correct.

Mr. CHAMBERS. In other words, that is the statement which you released, saying that Judge Van Roden, a popular American judge, now in the United States, after an investigation of the situation in Germany, which describes tortures used to extract confessions—is that the article you mean?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBER. And your press release was based on the Van Roden article, which you wrote?

Mr. FINUCANE. That is right. That is the Van Roden statement.

The Federal Council of Churches and the American Civil Liberties Union got interested. Many private individuals wrote to Congress and to the Pentagon. Religious magazines, such as the Christian Century, began to support our demand for an investigation.

This committee is making that investigation or the first part of that investigation now. If there had been no public appeal such as we made, there would probably have been no such investigation as this. The Van Roden-Simpson report would still be buried, where it was when we started, in the "confidential" files of the Pentagon.

Our report came out December 18, 1948. The Department of the Army shook loose with the Van Roden-Simpson report January 6, 1949, apparently because they were getting some heat built up under them. It had been in their hands since September.

If we had only used legal means, no one would have been convicted.

That is what Secretary of the Army Royall told this committee on the first day of the hearings.

I saw Lt. William Perl—an American investigator—slap 'em and knee 'em double in the groin * * *. Some of them were kept on bread and water.

That is what James J. Bailey of Pittsburgh, a court reporter in Germany, said when he appeared before this committee.

Perl told you:

I spoke to the prisoner in a soft voice, just as I am speaking now; I had him sit down; I wanted him to be comfortable.

Those three statements were the high lights of this hearing, from my point of view, and I have sat through most if not all of the sessions.

It is not necessarily to comment on the play on words about "solitary confinement" and "close confinement" or on the skillful definition of "truth" which "has many faces, all of them lies," as one witness put it.

Mock trials with figurehead judges, as admitted to you, might support charges of false wearing of the uniform, degrading the uniforms, and conduct unbecoming an officer. But that would be too small to bother with, when the whole procedure by which these men were hung—and over 100 of them have been hung by the Dachau court—might be called a mock trial.

Is it just a quaint coincidence, a mathematical curiosity, that the number of men convicted for the Malmedy massacre corresponded roughly to the numbered massacred? Why this symbolic 74—later reduced to 72? Why—unless it were in intention a cold-blooded American reprisal?

Mr. CHAMBERS. You have been attending most of these meetings?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. I believe you recall that the testimony before the committee has indicated that there were some 700 fatalities involved in the so-called Malmedy atrocities, as distinct from the Malmedy crossroads incident.

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. Thank you.

Mr. FINUCANE. You are welcome.

Why this symbolic 74? Why—unless it were in intention a cold-blooded American reprisal?

We think this committee has been motivated by good faith, but handicapped by an implicit premise, even if subconscious, that the Germans are guilty, the same premise that handicapped the Dachau court and investigators.

As for the evidence before the committee, the Americans have had the same motives for telling the truth or "making a case" that the Germans had when they filled out their affidavits. It had been said that the Germans swore to affidavits about how a handful of undisciplined Americans maltreated them in order to save their own lives. The former GI's and the officers have been trying to save the balance of their lives, where the stories of these atrocities have put their reputations at stake. In fact, some of the Americans protest too much.

In addition, innocent Americans in the war crimes program, have testified in defense of their not-so-innocent comrades—unknowingly I believe for the most part; knowingly perhaps in other cases—out of a sense of unit loyalty. All felt that an admission regarding one would reflect on all. Every witness here has been testifying in self-defense.

Senator BALDWIN. Just a moment. Let us examine that statement briefly.

You heard Colonel Perry this afternoon?

Mr. FINUCANE. I did.

Senator BALDWIN. Is he under any charges in connection with this thing?

Mr. FINUCANE. No; he is not. However, he has a sense of unit loyalty, which we are all familiar with: people that you work with, people that you were in the Army with. You do not like to see anything happen that reflects on their reputation.

Senator BALDWIN. You heard Lieutenant Colonel Perry under examination?

Mr. FINUCANE. That is right.

Senator BALDWIN. Is it your inference that he did not tell the truth?

Mr. FINUCANE. No; it is not my inference that he did not tell the truth. I was very favorably impressed by his statement. However, I noticed the same statement, in reference to his statement, that I noticed in reference to others. While he did not know about most of the charges, or denied that to his knowledge the charged events had taken place, at the same time he did, just on the side, admit other charges which have been denied by other witnesses.

Mr. CHAMBERS. Specifically?

Mr. FINUCANE. For example, he said that prisoners he interviewed did not complain about physical abuse but that they did talk about deprivation of food.

Mr. CHAMBERS. Pardon me. Who said that today?

Mr. FINUCANE. Was that not Colonel Perry?

Mr. CHAMBERS. Today?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. I do not recall.

Mr. FINUCANE. It was one of the witnesses here this afternoon.

Mr. CHAMBERS. Colonel Perry is still here. I would like to ask you: In your statement today, and you are still under oath—Colonel PERRY. Yes, sir.

Mr. CHAMBERS. Did you make any statements concerning any of the people testifying to you that they had been deprived of food or mistreated?

Colonel PERRY. I made no such statement. I do not think I used the word "food" in my testimony. I made no inference.

Mr. CHAMBERS. Thank you.

Mr. FINUCANE. Would you ask the other witness?

Mr. CHAMBERS. This is a rather unusual procedure, but I would like very much to bring it out, with the chairman's permission.

Mr. GUTH, remember that you are still under oath.

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. You testified that Mr. Everett, who is the chief defense counsel, said that Colonel Carpenter had picked out the 15 to 20 worst cases.

Mr. GUTH. That is correct, sir.

Mr. CHAMBERS. And that in this testimony the main onus of complaint involved the mock trials and the ruses and what not and the use of the black hoods and so on.

Mr. GUTH. That is correct.

Mr. CHAMBERS. You also testified that as far as physical mistreatment was concerned that there was only one man who had alleged physical mistreatment and he mentioned a slap.

Mr. GUTH. Yes, sir.

Mr. CHAMBERS. Perhaps my memory of your testimony is unclear. I would think being deprived of food would come under the heading

of physical mistreatment. I would like to ask you about that; did you so testify?

MR. GUTH. No man testified, or no man told us that he was deprived of food. Some complained that the general rations at Schwabisch Hall, or for that matter, in the other prison camps they had been in, were inadequate or were poorly prepared. But they did not claim that withholding of food was used as an interrogation method.

And Colonel Peiper, who I mentioned that fact to, said that the food was actually, by German army standards, good, and that those people who did complain would have complained just as much about German rations.

MR. CHAMBERS. Thank you, Mr. Guth.

MR. FINUCANE, it would be quite simple for you to make statements as to what other witnesses have testified to, and the only way in the world, of course, that we can resolve one of these arguments is either by going through this process or of checking the record.

MR. FINUCANE. Senator Baldwin asked what I meant by saying that every witness was testifying here in self-defense, and then followed that line of questioning; I was attempting to explain it.

MR. CHAMBERS. Pardon me, if I interrupted there. But I think the record should show that over a period of long weeks your contacts and mine have been very friendly and on a free-and-easy basis. We have had many arguments, not under oath, or across the table, about matters of this kind.

MR. FINUCANE. That is right.

MR. CHAMBERS. It would appear to me that if you are going to put words into the mouths of the people—in other words, in this particular case, where we were asking you to say specifically—and I deliberately picked you up on the first thing—

MR. FINUCANE. I am sorry. I interpreted what Mr. Guth just said to confirm my statement.

MR. CHAMBERS. Then if it is an honest difference of opinion, that is acceptable, and the record is clear on that point. There are statements that had been made so far here, however, which have been taken out of context in the record, and we will have to go back and pull those out for the purpose of correcting them. These, of course, we can do.

But I imagine there are many things that you want to say. I am just as anxious as you are that all the facts come out, but that the record be clear and concise on this thing.

MR. FINUCANE. Yes. Could I complete my answer?

Senator BALDWIN. Go ahead.

MR. FINUCANE. Colonel Perry—I am fairly definite he said this, because he is the man who interviewed Peiper and Junker. He said that he knew that Junker, or Peiper, I am not sure which, was under a death sentence because he was wearing a red shirt. The committee has had witnesses in here who had denied that they ever talked to prisoners who were dressed in an unusual fashion.

MR. CHAMBERS. May I again point out to you that Colonel Perry said that he visited Colonel Peiper at Landsberg Prison. So far there has been no testimony at all in the record concerning people after trial; and if there is, it is incidental.

Senator BALDWIN. Are we not in this position: The committee has to judge this case after all the testimony is in. I have got no

preconceived notions about it whatsoever. I am not prepared now to render any final judgment or express any opinion on the whole thing, and I don't intend to, until after we have heard all the testimony and examined it very carefully, and completed the taking of all the testimony.

The mere fact I want to point out is that your position is a little different than that.

Mr. FINUCANE. Yes, sir.

Senator BALDWIN. Apparently, from your statement here, before you have heard all of the testimony in the thing, you are prepared with some conclusions. That is all right; that is your opinion.

Mr. FINUCANE. I had a hypothesis, Senator.

Senator BALDWIN. All right. It is a hypothesis.

Mr. FINUCANE. It is possible that men like Major Fanton did not know what their subordinates were doing. Colonel Everett told me that Major Fanton "did not know about the rough stuff." Sadism is, after all, a private affair. Between the four walls of a cell, no one can know what you do. No one will ever know, unless you confess. The skilled sadist needs no whips or bludgeons to torment. He often prides himself on leaving no marks. He has no inhibitions and no eye witnesses.

This is not taking sides. This is not accusing Lieutenant Perl or Mr. Thon or Mr. Kirschbaum or anyone else of brutality.

This is to say that if brutality was used—there was the familiar hood over the head. There are the sensitive parts of the body which can take skillfully applied torture and display no surface damage. There was the power of the guards and interrogators, they being as absolute gods to the prisoners. If by mistake a prisoner were marked up, let us say, they had it in their power to keep him from the eyes of medical attention until he got better or the sign had disappeared.

This points to the inconclusiveness which is bound to result from the medical examination which this committee is planning to make in Germany.

No wonder they "confessed." No wonder they let themselves be forced into swearing oaths to perjured accusations against each other. As Lieutenant Colonel Dwinell told this committee: "The accused did not get a proper defense; that will always be my position."

We recognize that there has been some pressure on this committee, overt and legal, and some below the threshold of consciousness even. For example, Lieutenant Owens reversed his testimony in favor of Major Fanton's version with regard to the mock trials. Sergeant King denied seeing anyone about the hearing in advance, yet admitted he had lunch with Colonel Ellis before coming into the hearing room and then could not remember anything he was questioned about.

General Green sent over a list of reviews to this committee, which the visiting Senator from the Expenditures Committee pointed out was incomplete. The same General Green summoned Judge Van Roden down from Pennsylvania, as he told you in his testimony—Van Roden told you—and put him on the carpet about his speeches and magazine article in the Progressive. Judge Van Roden testified before you, when he was asked a ticklish question, involving his opinion of an action of the Department of the Army, "I am an Army officer now; I do not know about later."

When the Senator from Wisconsin proposed that the lie detector be used on a witness, he mentioned that Pentagon pressure was used to get this hearing away from the Expenditures Committee to the Armed Services Committee. Senator Baldwin, in justifying his decision at that time to limit these hearings to the Malmedy cases and the Dachau court, quoted the testimony of Secretary Royall in support of his decision at the time.

This is the not unfamiliar hand of the Army at the old lobbying game. We do not object too strenuously. But we think it should be noted. We do not think the Army has been pulling the strings audaciously enough to warrant an allegation of contempt of Congress. We merely note the facts, to underscore them, as it were, where they appear in the record.

We believe that in spite of those biases, which have been unsuccessfully resisted by the committee, this investigation can be pushed through exhaustively and honestly and that justice can be done.

We believe that to date this hearing has more than justified its sessions. It would seem to us that the material has been put into the record to support the following recommendations, listed not according to the order of their importance:

No. 39'ers—refugees or persecutees—should have a hand in such trials.

Prosecution, defense, court, appeal, and other branches should not be a single-command operation.

Prisoner-of-war status should be retained by defendants. A "protecting state" should represent them.

The actual courts should be composed of better qualified personnel. Picturesque Kipling career men, even though decorated in three wars, ought to have legal training to qualify them for the court.

Even better, judges should be citizens of a neutral country.

Appeal procedures to the Supreme Court in Washington should be made available.

Where there is grave reason for believing that things have gone wrong, provision should be made for a retrial. That applies to this case, now.

The Judge Advocate General's department should be separated from the chain of command.

Such suggestions as these which this committee may care to make should be codified as part of a revision of the Geneva Convention.

That is for the future. For the present case, we venture to make the following recommendations.

The committee might see if any new forum is now open to the defense in which to plead their case in the light of recent judicial decisions, and refer them to it.

Three witnesses, unheard at this writing, have been suggested by Colonel Everett. They are Colonel William Denson, chief counsel for the Atomic Energy Commission; Benjamin J. Narvid, assistant to Everett in Dachau, and now in California; and Wilbur J. Waller, now in Chicago, who made a field investigation in Belgium in the Malmedy case. They might have something of value to contribute.

The committee might examine Colonel Everett's correspondence with the Army at the Pentagon. That is Colonel Everett's suggestion.

The committee might send a commission to Atlanta to take a deposition from Everett, who is suffering from a heart attack.

While in Germany, in the next few weeks, the committee might drop in for a visit to the Landsberg prison, where the Dachau defendants are kept, and to the notorious Spandau prison, where the Nuremberg defendants are kept. Both have become places of ill-fame.

The committee might inquire what has been done about the clemency program for over 1,000 German prisoners which was recommended by Van Roden and Simpson in their reports. We received letters from these prisoners and cannot help feeling that many are unjustly in jail.

Finally, this committee should go on to a sweeping investigation of the Nuremberg defendants.

I have a photostatic copy of an excellent summary of the Nuremberg cases in case you are interested, which I would like to present.

These men have been denied a hearing in United States courts and are now in jeopardy again. As a starter in this field, the committee might ask the Department of the Army for information in the Inspector General's report, reputedly made with respect to the conduct of the Von Weizsaecker case at Nuremberg.

I was in the Ardennes toward the end of the Ardennes campaign and recall something of the psychological state in which our troops were at that time. I think the best key to that psychological state is given by the late Gen. George S. Patton, Jr., writing in 1947 in his autobiography, *War As I Knew It*. He said—page 351:

Prisoner-of-war guard companies, or an equivalent organization, should be as far forward as possible in action to take over prisoners of war, because troops heated with battle are not safe custodians.

Patton knew our troops were not safe—to handle Germans. Neither were the Germans to handle our men. That is the explanation of Malmedy. To make anything more than a battle incident out of it should make millions of us, who supported or endorsed or tolerated or shut our eyes to the fire-bombings of populated cities, forever sleepless. War is hell. It is idle to talk of degrees of hell, or to show horror or surprise on examining any one atrocity. Malmedy was not the greatest crime of the war. The war itself was that crime.

As Shakespeare said, in *Hamlet*:

Treat them not according to their deserts, for if we were all to be treated according to our deserts we would all be whipped. Treat them, rather, according to your own honor and dignity.

Listening to these hearings has been a humbling experience for us. We have learned something about human nature here and about its depths and heights. We are sure that it is not the purpose of the committee now to punish Lieutenant Perl or to punish the Germans, but to support justice which in its finest sense is not revenge, it is not vindictive, is not an eye for an eye, is not extortionate, and is not overbearing.

Perhaps the committee fears that freeing these Germans will constitute an indictment of Perl and the others we have seen in this hearing room. That is not so. Perl, had he done all that was charged to him, was the agent of the worst part of us at our worst. We cannot condemn him, our agent, for carrying to their logical conclusion our country's wartime passions.

Freeing these Germans will not constitute an indictment of Perl. Hanging them or keeping them in prison when the ardor of war has cooled will constitute an indictment of this committee. The times re-

quire an act of conciliation. Let us, in being human to the Germans, be kind to ourselves. Let us sleep at night. Let the dead rest and the living hope. Add no more to the tragic toll of this war.

The days have been vivid with terror and wretched with loneliness for these soldiers now in jail for the fourth year. Let them go home. Let them return to their families and friends. Enough tears and enough heartaches have been weighed in the balance. Why add more?

A new roof is being built on the Capitol and we expect this shining Republic to live on as long as it has a helpful function to perform in the world. Can it be what it hopes to be to all the tired and oppressed peoples of the world unless it break the cycle of hate with an act of far-visioned statesmanship?

This committee has shown a certain amount of interest in the authorship of an article in the February 1949 issue of the Progressive magazine. I would like to find one Senator or Congressman who has never had a speech or a magazine article written for him. The Congressional Record is half filled with ghostwriting. Members of this Congress could not carry on their jobs without ghostwriters. Across the Potomac, the Army has its speech writing and public appearances section to take care of the brass.

I ghostwrote the article "United States Atrocities in Germany" for the Progressive on the basis of information supplied me by Judge Van Roden, and with his agreement to have the article appear under his byline.

Webster's dictionary lists the following entry:

Byline, n. Journalism. The line at the head of an article telling by whom it was written.

Judge Van Roden said that he misunderstood the meaning of "byline," before the committee. It is our opinion that Judge Van Roden, the editor of the Progressive, which published our article, and the National Council for Prevention of War were—all three—acting in good faith. Misunderstandings will happen.

A 2½-line addition was made to Judge Van Roden's article by me without the use of identifying editorial brackets. This was a statement to the effect that the Army had just hanged five men, for whom Van Roden and Simpson had asked mercy; no one has ever denied these men were hanged.

That is the end of my prepared statement.

MR. CHAMBERS. Taking last things first, Mr. Finucane, when Judge Van Roden was on the stand he took your article and went through it, as I am sure you recall, and repudiated certain parts of it.

MR. FINUCANE. Yes.

MR. CHAMBERS. He said that he had not made those statements in the speech from which you picked up this information, and categorically denied some of the things which were said here.

He said, furthermore, that he did not know, in detail, what was in this article when it was published. I would like to ask you: Did Judge Van Roden know what was in this article in detail?

MR. FINUCANE. Yes. Here is the story on that: I went up to see him. I heard him make a speech and talked to him in his chambers. I came back here and wrote up a statement, attributing to him, in quotation marks, substantially what was in his speech, and summarizing it in an opening paragraph or two, without quotation marks, and

concluding, beyond the end of the quotation marks, with three recommendations which our council made, which are: There should be a stay of executions, hearings and something else, and Perl and Thon should be tried.

There was no question about the sponsorship for that statement which was circulated around. Judge Van Roden did make certain amendments to that first article, which he forwarded to us, and we had just sent out a few copies the first day. We made those amendments, and the hundreds of copies we sent out later contained the amendments.

Mr. CHAMBERS. That is hundreds of copies to the press release?

Mr. FINUCANE. That is right; and it was also in the form of a statement to the Judiciary Committee which was sent to them by special delivery, each member, with the hope that they would read it. It was over one of the holidays, just before Christmas.

Mr. CHAMBERS. May I interrupt you to ask: You say you heard Judge Van Roden make a speech on this subject?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Can you tell me some of the circumstances about that? How did you happen to be there and hear that particular speech?

Mr. FINUCANE. Mr. Libby, our executive secretary, had been in Philadelphia a week or so earlier and had been talking to a friend of his, Burton Parshall, who told him Judge Van Roden had made some shocking statements to a meeting of the Federal Bar Attorneys' Association, Federal Bar Association, something like that. Mr. Libby asked Mr. Parshall to send us a memorandum on the contents of Van Roden's speech. The memorandum was from memory, and we wanted to check up on it, so I went up to see Van Roden. He said: "It happens that you came at a time when I am making a speech at the Rotary Club; you can come up with me."

Mr. CHAMBERS. Did you go to see him or did you call him up?

Mr. FINUCANE. I called him up and made an appointment.

Mr. CHAMBERS. Then you went to the meeting that night, which was before the Rotary Club?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Based on that then, this press release came out?

Mr. FINUCANE. That first statement was made; yes, sir.

Mr. CHAMBERS. Now, would you mind telling me how the story which appeared under his byline in the Progressive magazine came to be written?

Mr. FINUCANE. Yes. One of the persons whom we reached in our circulation with that statement was the editor of the Progressive. He wrote us a letter saying: "Could you get Judge Van Roden to let us run that article in the Progressive as his story?" It was 90 percent in quotation marks, the original expression. "And could you also get him to accept as his own, for our purposes, for our publication, some of the matter not in quotation marks" which was the statement of the council preceding and closing the original statement.

I called Judge Van Roden on the phone and told him what the story was. I don't think he had ever heard of the Progressive magazine at that time. I explained to him and I said "We want to incorporate in your statement additional material." He was familiar with what we

had been distributing, and, as I say, had made amendments to it. So we figured those amendments had made it correct or he would have made additional amendments.

He said, "What do you want to add?" Words to that effect. I read to him over the telephone the additional material, which was the opening and closing, and said, "The editors of that magazine want to run this as your article under your byline."

I read it to him. Certain things in the original article which I read to him he deleted. Certain parts of our statement he struck out, verbally, over the telephone. He said, "No; I do not want to take that as my statement." We did work out verbal telephonic additions to this report which he agreed to.

I said, "They want to run it under your byline. Will you send them, along with your byline, one of your campaign biographies and a photograph?" He said, "Yes, I will do that," and he did do that. His secretary sent a couple of biographies—I suppose they ran more than once—and sent his picture, too.

Mr. CHAMBERS. You mentioned in your prepared statement that misunderstandings will happen. It would appear rather clearly from what you said that Judge Van Roden realized that he was being connected directly with this article.

Mr. FINUCANE. That was my understanding. I understood it that way. It was my intention to make it clear to him, and it was my impression there was a meeting of minds. I presumably was mistaken as to the meeting of minds.

Mr. CHAMBERS. You say you were presumably mistaken. Did any matter concerning pay for this article come up at this or any later time?

Mr. FINUCANE. Some time after the article was published Judge Van Roden wrote a letter and said:

As a matter of curiosity could you tell me how much money the Progressive magazine pays for articles which they publish?

Mr. CHAMBERS. And at that time that is the only comment that you had received from Judge Van Roden about this article?

Mr. FINUCANE. There was just routine comment. I think that was the first comment, yes.

Mr. CHAMBERS. This was before or after he visited you at your offices here in Washington?

Mr. FINUCANE. That was before he visited us.

Mr. CHAMBERS. So that Judge Van Roden, I presume, got a copy of the article. There is no way to know about that.

Mr. FINUCANE. Yes; I am sure he did.

Mr. CHAMBERS. Did you send him one?

Mr. FINUCANE. I suppose so. It was a courtesy.

Mr. CHAMBERS. So he did not write you and deny or repudiate any of the statements at that time which he later repudiated on the stand already?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. He wrote you a letter and asked as a matter of curiosity "What does the Progressive magazine pay for articles of this kind?" Is that correct?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. There was no mention of that at the time you had your phone call?

Mr. FINUCANE. No.

Mr. CHAMBERS. What did you tell him in response to that?

Mr. FINUCANE. I did not know what they paid. Morris Rubin, the editor, came into our office a few days later and said "I am going to send you a check for that article." I said, "Do not send it to me, it is Van Roden's article." He said "Of course, you did most of the work on it." I said, "I know, but it is still Van Roden's article, it is all his idea, he O. K.'d it." So Morris Rubin, the editor, compromised and sent \$10 to Judge Van Roden and \$10 to us.

Mr. CHAMBERS. As I get the story, the Progressive magazine paid \$20 for this article, \$10 of which went to Van Roden and \$10 to yourself.

Mr. FINUCANE. That is right. I understand from later correspondence with Mr. Rubin, the editor, that Judge Van Roden, when he received the check, refused to accept it.

Mr. CHAMBERS. Did he refuse to accept it or did he send it back to you?

Mr. FINUCANE. No, sir; he did not.

Mr. CHAMBERS. Did he send it back to the Progressive?

Mr. FINUCANE. I presume so.

Mr. CHAMBERS. What did you do with you \$10 fee?

Mr. FINUCANE. It was credited as a fee to the council.

Mr. CHAMBERS. Along that line there are quite a few statements here which Judge Van Roden has repudiated on the stand. You have written the article, and I presume that these items in here which he has repudiated, and he said he did not say, are items of which you have some basis for your information that went in here?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. I am going to ask you a few questions about these. I would like to get from you, specifically, where you got this particular information. Again, before we go into it, you have sat through all these hearings?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. I am digressing just for a moment here.

Mr. FINUCANE. Except Benjamin Reichman. I missed him.

Mr. CHAMBERS. I am digressing for a moment. You started out your statement by saying that these men, the Germans, were convicted by perjured statements?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Then you went in various places in your testimony, you commented on what certain witnesses had said. You drew the conclusion that practically everybody that was testifying before us had some reason for testifying as they did; is that correct?

Mr. FINUCANE. Oh, naturally.

Mr. CHAMBERS. Now, I would like to ask you: who gave you the testimony, or the evidence, which permitted you to make statements such as this, because frankly some of these things I have not even seen in the affidavits. This posturing as priests, where did you get that?

Mr. FINUCANE. I am sure I can save you a lot of questions.

Mr. CHAMBERS. I would like to ask you the questions. I would like to ask you quite a few questions for the record.

Mr. FINUCANE. I understood Van Roden said that.

Mr. CHAMBERS. You understood him to say that?

Mr. FINUCANE. Yes. The reason I say I understood him to say that is because he denied it.

Mr. CHAMBERS. This matter of promises of acquittal by—

Mr. FINUCANE. I understood him to say that. Could I say something that might amplify this?

Mr. CHAMBERS. I would like to ask you specific things that we have on Van Roden in the record, because I would like to know where they came from. You said, "After this investigation, and after talking to all sides, I do not believe the German people knew what the German Government was doing," and so on. Van Roden marked that out on the stand here, and made it very clear that they never talked to anybody on the prosecution side of this thing.

Where did you get the information that he had talked to people on the prosecution side?

Mr. FINUCANE. I understood him to say it.

Mr. CHAMBERS. Going on with some of the specifics here, this is one which aroused a terrific amount of comment. I believe it is the most inflammatory thing.

You make this statement:

All but 2 of the Germans in the 139 cases we investigated had been kicked in the testicles beyond repair. This was standard operating procedure with American investigators.

Mr. FINUCANE. I understood Judge Van Roden to say that. I think you probably recognize the Army language, which a person like he would use.

Mr. CHAMBERS. I think you also were in the Army, so the standard operating procedure would not be too unfamiliar to you.

Mr. FINUCANE. I recognized the term that he used.

Mr. CHAMBERS. You understood Van Roden to say that? You read this particular thing back to him? It was in your press release?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Van Roden did not repudiate that to you?

Mr. FINUCANE. In the original press release he made several minor repudiations, which we promptly amended. We sent corrections out to people to whom we had sent first copies, and continued our circulation with this amended edition.

Mr. CHAMBERS. So your statement is that this matter of 139 sets of damaged testicles was known to Van Roden?

Mr. FINUCANE. That is right. That was not denied by him until it was denied here.

Mr. CHAMBERS. That is the point I am getting at. He said he did not say it, under oath. And you say that he did say it, or you understood him to say it.

Mr. FINUCANE. I understood him to say it, that is right.

Mr. CHAMBERS. He also marked out the statement here about the boy who committed suicide, who was heard muttering in German that "I will not utter another lie."

Mr. FINUCANE. That is right.

Mr. CHAMBERS. You charge that to Van Roden and Van Roden denies having said it. I notice that in one or more of the affidavits, discussing this particular matter, that that particular language was used. I wonder if perhaps in writing this article you took some of the things that were said in the affidavits, and in your memory charged them to Van Roden. Is that possible?

Mr. FINUCANE. That would be possible if I were not aware of the danger of doing that. I will tell you how I happen to be aware of the danger.

After hearing Judge Van Roden speak that night I went back to his office and he showed me the Everett affidavit, which was the first time I had seen it. He had alluded to that Everett affidavit in his speech before the Rotary Club.

In going through Everett's affidavit after his speech, I recognized the similarity at points between his speech and Everett's affidavit just as you have noticed. I will show you the circumstantial evidence to indicate how careful I was to indicate what Van Roden told me and what I later read in the affidavit, but before compiling the statement.

For example, Lieutenant Perl's first name and correct spelling was given in the affidavit. I did not use his first name.

In other words, I just took—I would not even correct Van Roden's original statement to the extent of adding a first name for completeness and accuracy, but just took it the way Van Roden had said it, as closely as I could get it.

Mr. CHAMBERS. You were meticulous on that particular point?

Mr. FINUCANE. I tried to be as meticulous as possible, yes, sir.

Mr. CHAMBERS. Apparently on some of these other points you misunderstood, on very controversial matters, what Van Roden said and included them in the article.

Mr. FINUCANE. No. I am sorry. Everything that is in that article I understood him to say, with the exception of the opening and closing paragraphs, which were our idea but which he later accepted in a telephone conversation. All the things you asked me about so far I understood him to say at the Rotary Club.

Mr. CHAMBERS. I take it that this section 4 in here was outside of the quotes on your original press release where you draw conclusions from what happened there.

Let me ask you a specific question. In section 4 of your article you draw the conclusion as follows, which Van Roden has denied saying, I might add:

The American investigators who committed the atrocities in the name of American justice and under the American flag are going scot free.

Mr. FINUCANE. Let me look at that.

Mr. CHAMBERS. That is on page 22 of the Progressive, if you have it there.

Mr. FINUCANE. Yes. I could tell it better from the article which I have here. If it wasn't in the article, I said it. If it was in the quotes, Van Roden said it. That is not in quotes. I said it.

Mr. CHAMBERS. You said it?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. That is a conclusion that American investigators had, in fact, committed these atrocities; is that correct?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. And you, at that time, based on what you heard Van Roden say—and I am speaking to you now as a careful journalist as I know you are—made no effort to try to find out if perhaps there was some other side to this story?

Mr. FINUCANE. That is correct.

Mr. CHAMBERS. Again, as a fair-minded individual who is interested in cutting out this cycle of hate that you are talking about here, why didn't you at least make the effort to find out if perhaps there were arguments on the other side of the picture for the purpose of giving an objective report on this thing?

Mr. FINUCANE. I will tell you why: First of all, these men were being hanged every week, on Friday usually.

Senator BALDWIN. Just a moment. You are not referring to the Malmedy people. You are referring to the general Nuremberg trial?

Mr. FINUCANE. That is right.

On the Dachau cases, while I recognized the desirability of doing what you say, I realized that it had to be done in part because Van Roden had a statement in his report from Colonel Mickelwait, I believe it was, in the introduction to his work, which makes a very clear statement.

The defense said we used the utmost care in selecting personnel, and we think they did a good job.

It occurred to me—it struck me—that while that wasn't a complete opportunity for the Americans to testify, there had to be some minor investigation or pretty good investigation made in that direction, and in the meantime these people were being hanged. We thought we had better just do something. I will admit it wasn't a thorough job as far as examining the American side of the case was concerned. We should have done it.

Mr. CHAMBERS. Do you feel that your organization, which is an American organization and which has a very excellent reputation so far as its membership is concerned—

Mr. FINUCANE. Thank you.

Mr. CHAMBERS. Doesn't owe some little bit of effort to make sure that in the eyes of the world generally at least American people are not condemned until they themselves have a chance to be tried or have had a chance to have their side come in? You are here asking, in your prepared statement, that we judge these things in the light of American standards of justice.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. One of the basic things there apparently is that both sides of an argument are heard.

Mr. FINUCANE. Yes.

Mr. CHAMBERS. On this particular case, if I can complete the cycle of it, you heard Judge Van Roden and apparently had already made other investigations. You, in collaboration with Van Roden, prepared this article. You based it on a press release which you had already put out, attributing these things to Van Roden. Then, having done that, in your prepared statement you used this as a vehicle to drum up this interest in this particular case. It has been introduced, as you know, in the Congressional Record; it has become the subject of considerable discussion before this committee; and I am sure the Committee on Expenditures also, and others.

It has been quoted in the newspapers. Yet that particular article, which has become somewhat the basis of this whole thing—and I congratulate you on your results—you wrote without making any effort at all to verify the statements insofar as these charges about Americans are concerned. You presumed that they were guilty; is that correct?

Mr. FINUCANE. We took—

Mr. CHAMBERS. Can you answer that question, sir? I don't want to take the tactics now of other investigators here. But will you answer that question? Did you not presume that these people were guilty, and your conclusions are predicated on that?

Mr. FINUCANE. I had a hypothesis at that time that we had exceeded our right methods in the conduct of the interrogations.

Mr. CHAMBERS. Your hypothesis was that you had exceeded the correct methods?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. But your hypothesis also justified the conclusion that they had committed atrocities in the name of American justice; is that correct?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. I will stop on that point.

Mr. FINUCANE. I would like to say that both the accusation and the defense we took from Judge Van Roden.

Mr. CHAMBERS. Yet Van Roden comes down here and denies that particular statement. This is not Van Roden: this is outside your quotes.

Mr. FINUCANE. I agree. That is my conclusion. But the defense, the Mickelwait statement at the opening of the Van Roden report, and the allegations in the Van Roden report, we thought, inasmuch as it was compiled by two competent American jurors—

Mr. CHAMBERS. Maybe I am not making myself clear. Here is an article under Judge Van Roden's byline which you wrote. And you say that these things are predicated on what Van Roden said?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Then you interpolate a conclusion, based on what you say he has said. I will not go over the fact—

Mr. FINUCANE. Is this statement in the Progressive article, the one we are discussing?

Mr. CHAMBERS. That is right.

Mr. FINUCANE. Van Roden accepted it. I read it to him on the telephone.

Mr. CHAMBERS. Mr. Van Roden, under oath here, denied having said it.

Now, certainly you are saying one thing under oath and he is saying another.

However, on that particular point I would like to come back to the conclusion that you just agreed to; that your hypothesis did include the fact, without any verification other than Van Roden's statement, that these American investigators had committed these atrocities in the name of American justice; is that correct?

Mr. FINUCANE. That is correct. I thought it was a reasonable conclusion to draw from all the—

Mr. CHAMBERS. You have been sitting through these hearings now for some many weeks. I do not know whether this is a fair question to ask you or not. You heard witness after witness testify here?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. Some of them were not on the team. Some of them are not charged with anything. Some of them had never had any connection with the services. Some of them were in the services but had no connection with the prosecution staff. Do you still believe that

American investigators—and that is an all-inclusive term—committed these atrocities in the name of American justice?

Mr. FINUCANE. I believe that there have been witnesses here, including Thon, Teil, Dwinell, and Bailey, and this captain with the crew haircut, who adduced evidence which would point to the commission of atrocities; yes.

Mr. CHAMBERS. May we repeat those names?

Mr. FINUCANE. Surely. Lieutenant Colonel Dwinell, Teil, Bailey, Thon, and the captain with the crew haircut who was here last week.

Mr. CHAMBERS. Sloane?

Mr. FINUCANE. Sloane; just to mention a few. I have not made a detailed analysis.

Mr. CHAMBERS. As you probably know—and I believe that your knowledge of this case is probably more complete than mine—Colonel Dwinell testified, I am sure you will recall, that he had believed that some of these things had occurred?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. There was a long line of questions on this?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. But that it was all hearsay with him?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. And he had come to believe it because of association with these people. It had been repeated so often that he believed it to be true.

Now, today and at our last meeting yesterday we have had witnesses testify directly on this same subject before trial, at a time when these people certainly should have been telling their story freely and completely, and they apparently denied that. Does that change your opinion at all of Dwinell's testimony?

Mr. FINUCANE. No.

Mr. CHAMBERS. Dwinell was associate defense counsel?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. His superior, Colonel Everett, asked that an investigation be made?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. That investigation was made?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. That investigation very definitely, from the standpoint of the testimony of these two witnesses, indicated that they found no mistreatment from the standpoint of physical being?

Mr. FINUCANE. If I were captured by the Russians and the Russians—

Mr. CHAMBERS. That is not the question. I am talking about what these people testified to today; is that correct? That they hadn't swayed your feelings on this one way or other?

Mr. FINUCANE. I think from the evidence such as was given today that a case could be made for each side.

I do not think anybody but God is going to know what actually happened in those cells.

Mr. CHAMBERS. What did Mr. Teil say that led you to believe that atrocities were committed in the name of American justice?

Mr. FINUCANE. Teil said he delivered a prisoner, walked down the hall and looked in a peephole and said, "Here is a man lying here with a black hood over his head. What is the matter with him?"

I believe he said that Thon made the statement, or somebody made the statement "We gave him a working over."

Mr. CHAMBERS. I think the direct quote is "he probably just finished interrogation."

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Is it not a fact that a week ago, talking about Mr. Teil on precisely the same point, you said, "I saw a bloody figure lying unconscious there" when I showed you in the record that that had been a statement made by Senator McCarthy, and we both recalled that Teil had not said that, and he had in fact testified as you just said here?

Mr. FINUCANE. That is right. He testified as I just said now.

Mr. CHAMBERS. And Teil testified that this figure was lying in there; and I am not attacking his credibility; and it had a black hood on its head. There is a question as to why that should have happened. He said he watched that figure for some 30 seconds?

Mr. FINUCANE. That is right; he didn't move.

Mr. CHAMBERS. Based on that, you think that that is sufficient circumstantial evidence to bolster up your case here?

Mr. FINUCANE. That plus the statement of Thon, I guess it was, that he had just finished interrogation of that prisoner.

Mr. CHAMBERS. Let's go on to Mr. Bailey.

Mr. Bailey, as I recall, tried very hard to separate his testimony from that which was hearsay to him and that which he had seen.

At one place in his testimony—and check me if I am wrong—did Mr. Bailey not say that "the only one that I saw abuse prisoners was Mr. Perl, and I saw him knee somebody in the groin?"

Mr. FINUCANE. And slap him.

Mr. CHAMBERS. I don't recall the slapping. I remember the kneeling in the groin. And slightly later in the testimony, in direct response to questions by Senator Baldwin, he was asked again, "Bailey, did you see with your own eyes any evidence of physical mistreatment?"

Bailey said, "No, not at all, with the possible exception of Mr. Perl." Isn't that correct?

Mr. FINUCANE. I think he might have misunderstood the Senator's question.

Mr. CHAMBERS. You are quoting from the record and I am trying to do the same. I will be glad to pull it out accurately. Isn't that the substance?

Mr. FINUCANE. I agree.

Mr. CHAMBERS. And you don't accept that as a qualification of Bailey's testimony? Based on Bailey's testimony, you are willing to say that there American people that you have seen sitting here, or most of them, did commit atrocities in the name of American justice?

Mr. FINUCANE. Not just Bailey's testimony; the others'.

Mr. CHAMBERS. Let us go ahead. This whole thing is piecemeal circumstantial evidence, a little bit added here and a little bit added there.

Mr. FINUCANE. That is correct.

Mr. CHAMBERS. What did Mr. Strong testify to? He was a defense counsel.

Incidentally, I notice that you say that no refugees or thirty-niners, as you call them, should be permitted to have anything to do with the case?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Does that apply to Mr. Strong? He was a thirty-niner.

Mr. FINUCANE. That is right. I don't believe he should have been on the job.

Mr. CHAMBERS. Do you impeach the testimony that he gave here?

Mr. FINUCANE. No. I think for a broad qualification a person conducting such an investigation should be segregated from such a procedure.

Mr. CHAMBERS. I am inclined to agree with you. I think that was an error. There may be good reasons for it. But you think Strong was capable of doing a good job?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. But you think the other thirty-niners on the prosecution staff were not?

Mr. FINUCANE. I don't know how many there were.

Mr. CHAMBERS. Answer my question. Do you feel it is all right for them to work on the defense side? In Strong's case he could and did do a good job?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. But you don't think they should have been permitted on the prosecution side?

Mr. FINUCANE. I don't believe Strong should have been there.

Mr. CHAMBERS. But you do believe he did a good job?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. You heard the hearing and you heard Dwinell particularly. What did Dwinell say about this business?

Mr. FINUCANE. What Dwinell said that sticks in my memory is that he said, "I believe at least 50 percent of Everett's affidavit is true."

Mr. CHAMBERS. And you believe that Dwinell's statement, which he classified as hearsay, is true; is that correct?

Mr. FINUCANE. The Everett statement.

Mr. CHAMBERS. No, Dwinell's statement on the stand concerning mistreatments he said specifically and definitely were hearsay.

Mr. FINUCANE. Yes. He didn't see any of them himself.

Mr. CHAMBERS. And they were based on the statement of the accused to him?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. And you further recall that when Dwinell said that they put nine people on the stand in their own behalf, those nine, in his opinion, first of all, did not allege brutality, but he was afraid to put the rest of the people on because they were lying so much about other matters that they would incriminate them?

Mr. FINUCANE. He said they would incriminate themselves.

Mr. CHAMBERS. I believe in response to a question he said that is why they didn't put them on the stand?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Then all these prisoners, the people on the stand, were there in court. Admittedly, Dwinell, defense counsel, as any defense lawyer properly could do, could allege that he wasn't getting a square break out of the court and his evidence is replete with that.

But shouldn't these people, if they had been brutally treated, have told that story to the court because these cases had to be reviewed some time? The regulations call for it.

Mr. FINUCANE. They should have done that.

Mr. CHAMBERS. Why do you think that they didn't do that if there was anything of these allegations. That is a good defense against any type of confession.

Mr. FINUCANE. I think they did it because they had an intimate face-to-face acquaintance with terror.

Mr. CHAMBERS. Who?

Mr. FINUCANE. The prisoners.

Mr. CHAMBERS. I am not talking about the prisoners. I am talking about Dwinell who got up here and said he was the man who recommended it, and had to argue with them to make them do it. We have a picture of it here.

Mr. FINUCANE. He recommended that they take the stand in their own defense.

Mr. CHAMBERS. Yes. You say "Why did he do it?" Shouldn't they have been put on the stand if they were treated that brutally?

Mr. FINUCANE. There were all fighting for their lives and were willing to incriminate others as they incriminated themselves.

Mr. CHAMBERS. Mr. Finucane, if they had been brutally treated, which would be a good defense against any confession of that type, shouldn't they have told that to the court?

Mr. FINUCANE. They should have.

Mr. CHAMBERS. Why didn't they. Why do they wait 2 years after their conviction? In your opinion, why didn't they tell the story before they were tried, rather than wait until later to put it in?

Mr. FINUCANE. I wish Colonel Everett were here.

Mr. CHAMBERS. You draw one type of conclusion that we commit atrocities in the name of American justice.

Mr. FINUCANE. I think it ought to be proven by completing this investigation.

Mr. CHAMBERS. I notice you have drawn a conclusion that medical evidence won't help any?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. That is a conclusion based on medical opinion to you?

Mr. FINUCANE. Pardon?

Mr. CHAMBERS. Is that medical opinion to you from some competent source that medical evidence at this time would not be helpful?

Mr. FINUCANE. No, that is an amateur judgment.

Mr. CHAMBERS. In view of these beatings, brutal kickings, knocking out teeth, breaking jaws and 139 testicles damaged beyond repair, you think medical evidence would not be helpful; that X-rays would not show fractures? Of course, X-rays would show fractures, they would not necessarily show when the fracture was incurred.

Mr. FINUCANE. You put your finger on it when you said it would not tell when they got it.

Beatings and kickings could be administered so they would not show marks even a few minutes afterward.

Mr. CHAMBERS. I am not an expert, but in one particular case we have an affidavit where a man claims he was beaten so badly in the genitals that he had to be taken to the hospital and operated on. Do you recall that affidavit read into the record?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. For your information, I have the best medical advice I could get—and not the Army medical detachment—and I have been told that there would be positive evidence on those matters; so that certainly negative evidence would indicate that that one particular affidavit would be false. Positive evidence would corroborate the affidavit; is that correct?

Mr. FINUCANE. No, neither way, and I will tell you why. There would or could be damage. It could have resulted from some other source. There could be no damage, and it could have at the same time been the opinion of the patient, the prisoner. It could have been his opinion at the time he made out that affidavit that he was permanently damaged.

Mr. CHAMBERS. You said a moment ago that we should get the evidence in. We have discussed everything except Sloane. I think very definitely Sloane should be brought into it because Sloane definitely is the only man who has taken the stand and testified that he, himself, ever used physical force, or that he ever saw physical force used.

I think the record should show clearly that Sloane was not mixed up in the Malmedy matters.

Mr. FINUCANE. Bailey.

Mr. CHAMBERS. No, he didn't. I will argue with you on that, because you have admitted it in your testimony. But Sloane alleged and stated that he himself slapped a prisoner and he saw Harry Thon slap a prisoner.

I agree with you that Sloane's testimony throws some very definite doubt on this thing.

Mr. FINUCANE. Sure.

Mr. CHAMBERS. However, I would like to ask you: We have heard such people as Gordon Simpson, who has testified, and he was a co-member of that commission of which Van Roden was a member. In his opinion, these brutalities did not take place; is that correct?

Mr. FINUCANE. Simpson? I believe that was the man; that is right. He made some criticism of the legal aspects.

Mr. CHAMBERS. They were members of the same commission?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Do you have any reason to believe that Simpson was not testifying his true convictions, and based on the same knowledge that Van Roden had?

Mr. FINUCANE. I believe he was testifying according to his true convictions.

Mr. CHAMBERS. Does that throw the slightest doubt in your mind that perhaps American people have not committed these atrocities? Let's go on further.

Mr. FINUCANE. There is an interesting thing there. Simpson signed that report with Van Roden. There are statements in the Van Roden-Simpson report. This is not all taken from the evidence. There are statements in the Van Roden-Simpson report.

Mr. CHAMBERS. I am not quarreling with that. I am referring to the statements made under oath before this committee. We have had a lot of witnesses. I am not going to ask you to comment on each of them.

For the purpose of the record, I think we should mention Colonel Raymond, whom you possibly accuse of having been on the team.

We have Ahrens, Scalise, Ellowitz, Major Byrne, Fitzgerald, Fanton, Unterseher, two doctors, one of whom testified he was very active around the prison when these things were supposed to have gone on, and stated it was impossible for him not to have known about it. We have all of those witnesses and many others who testified directly that there was no brutality of the type you are talking about here.

Having listened to those things—and again still in a position of keeping an open mind on it—and I may not sound like it but definitely I am—I would like to ask you: Has your position on this matter changed at all—

Mr. FINUCANE. Yes.

Mr. CHAMBERS. From the time that you wrote that article?

Mr. FINUCANE. Yes, my position has changed.

Mr. CHAMBERS. Then today you have put in a statement in which you apparently again have arrived at the same conclusions?

Mr. FINUCANE. My conclusion is changed to this extent: I think it will forever remain in doubt just what went on in those cells. My conclusion has differed to the extent that I don't think Thon and Perl or anybody else should be prosecuted. I think that was a war-time excess and it should be written off.

Mr. CHAMBERS. Do you still think Thon has committed atrocities in the name of American justice?

Mr. FINUCANE. I don't know. Every witness adds to my confusion. All I know is that every witness says something which can be construed to make a case against the American prosecutors.

Mr. CHAMBERS. That, of course, is the purpose of investigations. So far, I believe, you will admit that you have impeached their motives?

Mr. FINUCANE. I am sorry, but I haven't impeached their motives.

Mr. CHAMBERS. You say it will be difficult for them to come in because they are all trying to protect the team.

Mr. FINUCANE. They are all acting in self-defense and in the spirit of unit loyalty. I don't think they are lying.

Mr. CHAMBERS. They have to be lying if they are sitting up here and saying brutalities did not happen when they, in fact, did.

Do you believe it would have been possible, for instance, for Ellowitz not to have known what Thon and Perl were doing? Do you believe it is possible for Fanton, Ellis, the guards, the doctors, the medical people not to have had some knowledge of these things?

Mr. FINUCANE. I ought to tell you about my experience.

Mr. CHAMBERS. Will you answer that question "Yes" or "No," if you can, or qualify it as you see fit?

Mr. FINUCANE. Will you give it to me again?

Mr. CHAMBERS. Do you believe it would have been possible for all of these things to have happened without this group of people knowing—without any of the large group knowing?

Mr. FINUCANE. No, I don't believe so. Some of them knew about it.

Mr. CHAMBERS. Then these people are lying; is that what you are telling us?

Mr. FINUCANE. No, sir.

Mr. CHAMBERS. Then they are telling the truth?

Mr. FINUCANE. Everybody who—

Mr. CHAMBERS. Are they telling the truth?

Mr. FINUCANE. Certainly they are telling the truth. I am not going to impeach another witness.

Mr. CHAMBERS. I might say that you have made a pretty strong stab at one of them, but we won't discuss that at the moment.

Let me ask you about your statement today. You say, "These men were convicted by hearsay, by perjured statements of their co-accused in the first place"? You are talking about the German prisoners?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. They, for the moment, are under trial here. On what do you base that perjured statement business?

Mr. FINUCANE. Three very obvious statements.

One is the Stoumont grocery store, two is the churchyard, and three the Bullingen woman who was killed.

According to all the evidence that was brought in here, those events never took place. Statements were made that they took place, and confessions obtained to those alleged crimes. It must have been hearsay because it never happened. Somebody must have said it, so it must have been hearsay.

Senator BALDWIN. See if my recollection is correct on this Stoumont case. There is considerable confusion about it.

As I remember it, in Colonel Everett's affidavit, a like circumstance is described as having occurred at another town. That was Warne. Bullingen and Warne were confused in Everett's petition. That is not the case that he is referring to.

You are talking about the Stoumont case where there were supposed to have been some prisoners executed in front of a grocery store?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. May I follow up on that Stoumont case for a second?

With regard to the Stoumont case, you say that these statements were perjured?

Mr. FINUCANE. They must have been.

Mr. CHAMBERS. That is what I am after here because that is what we are trying to find out; were they or weren't they?

Mr. FINUCANE. You are certainly as well qualified as I am to form an opinion about that. There is no evidence that the events actually happened, so the statement must have been perjured.

Mr. CHAMBERS. There is considerable evidence that the events could have happened. I sat here and listened to Senator McCarthy question Perl who did not handle those cases, incidentally, and Ellis on that matter.

Frankly, I am still confused, but apparently you are still convinced. Maybe that indicates that I have a closed mind, I don't know, but you have said that that one case was a perjury.

The Bullingen-Warne was another one that you were going to mention?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. That is another case where apparently a petitioner before the Supreme Court, Colonel Everett, confused the location of this thing. I submit to you: Is it proper to say that the confession was a perjured confession when the man who was implicated himself and the defense counsel himself are not sure in which town it took place?

Mr. FINUCANE. Certainly you can perjure yourself in a confession. You can confess falsely.

Mr. CHAMBERS. There is no argument about that. But is it proper to draw a conclusion based on what you heard here, when very obviously the defense people themselves are confused as to what town it happened in?

Mr. FINUCANE. In that particular case there seems to be confusion as to the particular town, but as a minimum I think they should have located the town in which the crime was supposed to have taken place.

Mr. CHAMBERS. I understand. This is hearsay with me. Colonel Ellis told me this man was charged with two counts; that he was convicted; that there was a man named Kahn brought from the United States with corroborative evidence on that business of one woman being killed; and when he got there it was the wrong town and there was no corroborative evidence. There was possibly a proper objection in Ellis not telling the court that on that part of the statement they had no corroboration for it. But they apparently did corroborate the balance of the man's confession, and now you are saying that the whole thing was a perjury?

Mr. FINUCANE. That part of it was perjury, certainly.

Mr. CHAMBERS. What is your third case?

Mr. FINUCANE. The churchyard case, the Bullingen case, and the grocery case.

Mr. CHAMBERS. The churchyard at La Gleize?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. If you recall, in that case there has been the most conflicting evidence in here.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Frankly, I cannot judge it. I would hate to judge it now. But I do know this, that when you say "perjury," you say a man is telling a deliberate lie.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. We have had evidence concerning the testimony from this priest. So many people say the priest was not even close to the place and did not have a chance to see it. Admittedly, the priest did not look out there for a year, so far as the bullet marks are concerned.

But you are willing to say, based on that—you are not talking about these three cases—you are making a statement that these 73 men were convicted by hearsay, by perjured statements of their coaccused in the first place. Is that correct?

Mr. FINUCANE. That is correct, although both parts of the charge apply to all 73; but in general that statement is correct.

Mr. CHAMBERS. Are you taking the three statements in which you allege perjury?

Mr. FINUCANE. I am using that as samples.

Mr. CHAMBERS. Based on that, you are drawing the conclusion that all 73 were convicted on perjured evidence?

Mr. FINUCANE. They all signed confessions under duress.

Mr. CHAMBERS. This is just a passing point. You make a claim here that your committee is making an investigation as a result of the pressures that you brought about through your article in the Progressive magazine.

I think the record should show that on January 7, 1942, this resolution, Senate Resolution 42, was introduced. I do not know whether you know how Senate committees operate, but I do not think there

as any question that that would have eventually become the pending business of our committee.

Mr. FINUCANE. You do not think it would have become——

Mr. CHAMBERS. I think it would have become the pending business of our committee. At least, the initial steps had been taken without any pressure by the Council for the Prevention of War or anyone else.

Mr. FINUCANE. I was not referring to Senator Baldwin's position.

Mr. CHAMBERS. I realize that. I want the record to show there was action being taken.

Mr. FINUCANE. There were two or three other bills introduced and two or three other committees interested in this.

Mr. CHAMBERS. We have already discussed Bailey. There is apparently some difference of opinion as to what Bailey actually said here. I recall a discussion in which there was a bet of a dinner between two of our Senators on that particular point.

There is certainly a doubt in their mind, and there is certainly a doubt in mine.

Mr. FINUCANE. There is no doubt in mine. I thought you looked it up and straightened it up.

Mr. CHAMBERS. We did. You say, "These three statements were the high lights of this hearing." You picked out three things.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Royall's statement, which has been taken out of context; if you recall the whole tenor of Royall's testimony, it was that he wanted to get all the facts in on this case. And, while he was convinced they did a pretty good job over there, nevertheless the Everett petition had so stirred him up that he had sent first the Simpson-Van Roden Commission over. Then Clay started his hearings; and then, of course, all this interest in the Congress started.

Mr. FINUCANE. He deserves a lot of interest for that.

Mr. CHAMBERS. That is right. You quoted: "If we had used only legal means, no one would have been convicted."

Mr. FINUCANE. That is what he said.

Mr. CHAMBERS. You would not care to elaborate on that particular statement further?

Mr. FINUCANE. He was talking about the American methods of conducting trials, and went on to say, if we had used these methods and treated these prisoners according to the way that they should have been treated, that they would not have been convicted.

Mr. CHAMBERS. He was referring to legal means, I presume, of not getting confessions and evidence under duress?

Mr. FINUCANE. Yes; I believe he was talking about that.

Mr. CHAMBERS. And you believe that Secretary of the Army Royall's statement there, then, indicated that he believed these things did happen?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. That American investigators had committed atrocities?

Mr. FINUCANE. Yes. That was a very interesting thing to me. He indicated that he believed, as I believe now, that these things happened, but that the people who did them should not have been judged too harshly. He referred to the difference in the climate of opinion

at the end of the war and the opinion now. I am sorry I did not get the precise citation.

Mr. CHAMBERS. Is it not the fact that Secretary Royall had started through the Gordon Simpson thing, his own investigation, long before these other matters got into it?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. And, based on the Van Roden report, that Secretary Royall had felt that he should delay these further executions?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. But that, generally speaking, it was a matter of making sure all the evidence and facts were in, but that he said, "I am going to wait before proceeding with these things, before removing the bar on executions, until this committee has finished its findings."

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Did he further indicate that he felt there was a doubt as to whether or not these cases had been improperly conducted?

Mr. FINUCANE. The tenor of his testimony, as I got it, was that we had used unusual methods in the whole set-up, such as were described by Colonel Mickelwait here this morning. It was not American law. It was not American civil law or criminal law. And his implication was that, if we had used that type of law and treated the prisoners that way, there would have been no convictions.

Mr. CHAMBERS. Secretary Royall, on page 66 of the record of that day, in commenting on mock trials, which are certainly a lesser degree of duress than any physical brutality, in response to a question from Senator McCarthy, said this:

For example, in that report, frankly I do not believe from a partial reading of the record in this case we are going to find any such mock trial as that report describes. I don't believe they occurred and I don't believe there is evidence that they did occur. At least I have tried to get some evidence and I have not completed my investigation, but I have found no evidence that they did

Did you find any such evidence?

Mr. FINUCANE. I did not find any such evidence of anybody being sentenced. That was on the subject of mock trials.

Mr. CHAMBERS. I am sure at one point in here he made a comment on the way the staff had handled testimony. As I recall, he felt that they had done a pretty good job, but he wanted to make sure of the facts before they were completed.

Mr. FINUCANE. I think his statement is self-evident to any reasonable person. I ask you, do you think those men would have been convicted if they had been tried by our methods?

Mr. CHAMBERS. Wait a minute. We are not talking about trying by our methods, are we? The thing that we are trying to pin down here is a very specific and definite thing, having no relation to the way these people were later tried, except as the way the evidence was admitted.

We are trying to find out as to whether or not, as a result of these atrocities that you allege, that these prisoners gave these confessions. Is that not correct?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. I would agree with you wholeheartedly, that if such atrocities had been committed, certainly any American court of any kind, no matter what the rules of procedure they operated under, would have freed them.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. What I am saying to you is that the American court which tried these certainly had nothing presented to them by the defense people or the accused that alleged brutalities.

Mr. FINUCANE. I do not know what was in their minds. They may have thought that that was not the place. Dwinell said, "I thought I was licked before I started out."

Mr. CHAMBERS. I will not comment on anything of that kind. I am sorry I cannot find the Secretary's statement. I will try to find it later.

Mr. FINUCANE. It is my fault. I should have produced the citation. I am sorry.

Mr. CHAMBERS. You say, "Colonel Everett told me that Major Fanton did not know about the rough stuff."

Mr. FINUCANE. That is right.

Mr. CHAMBERS. In the light of the testimony that we have heard today from Mr. Guth concerning Everett's apparent belief that there had not been much rough stuff down there, what are you talking about there?

Mr. FINUCANE. I am quoting what Colonel Everett told me. He said Fanton did not know about the rough stuff.

Mr. CHAMBERS. Did you probe with him further about the rough stuff?

Mr. FINUCANE. He was referring to these allegations which were made about mistreatment.

Mr. CHAMBERS. Did you ever try to find out from Everett—and it is most unfortunate that he is unable to come here—what he himself began to base these extravagant charges of brutality on?

Mr. FINUCANE. No, I do not know what that was. I would like to make a statement about Perl's remarks, as we are going over them one by one.

Perl said:

I spoke to the prisoner in a soft voice; I wanted him to be comfortable.

Mr. CHAMBERS. There is plenty of evidence that Perl shouted at prisoners and things of that kind.

Mr. FINUCANE. That statement to me is well nigh incredible, because I saw—and I think everybody who ever saw prisoners of war handled just knows that they are not handled that way. I know they are not handled that way.

Mr. CHAMBERS. Of course these people, as I understand it, were not at that time in a prisoner-of-war status. Perl testified that they were trying to get statements from them through psychological tricks and things of that kind. The weight that this committee will give to Perl's testimony is something for final decision.

But there has been testimony from time to time that people were shouted at and thinks of that kind. I wonder why, however, you would pick that out as one of the highlights of this thing?

Mr. FINUCANE. It just struck me.

Mr. CHAMBERS. It just struck you?

Mr. FINUCANE. I think it must have struck you, too.

Mr. CHAMBERS. Yes, I think that it did. There are many, many things that struck me during this trial. But one thing that struck me is that practically everybody who has come in here, practically everybody, has apparently made an honest effort to tell the truth.

Mr. FINUCANE. I think so.

Mr. CHAMBERS. And that being true, the testimony so far, direct testimony on this thing, is conspicuous by its absence.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Mr. Finucane, you saw service during the war, did you not?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. I believe you mentioned you were in the Ardennes. What other service did you see?

Mr. FINUCANE. That is all. I went in the Army in 1944, in June, and went over to Germany, to Belgium, in January 1945, and the Battle of the Bulge was almost over.

Mr. CHAMBERS. Did you go on through Germany with them?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. I believe you told me you were with the combat engineer outfit?

Mr. FINUCANE. Eleven Hundred and Twenty-first.

Mr. CHAMBERS. What were your duties with that outfit?

Mr. FINUCANE. I was called the I and E noncom. I think it is called information and education noncom. My principal duty, in addition to doing KP—I was an enlisted man—was putting out a unit newspaper, a mimeographed weekly newspaper.

Mr. CHAMBERS. During that campaign did you have an opportunity to hear the boys talking or anyone talking about these Malmedy matters?

Mr. FINUCANE. We read about them in the Stars and Stripes, and there was talk about it.

Mr. CHAMBERS. Subsequent to your duties with the combatant engineers, what was your service in the Army?

Mr. FINUCANE. None other. I came back here to Washington, where I was redeployed.

Mr. CHAMBERS. Did you not say you had some public-relations duty some place?

Mr. FINUCANE. Yes, at Fort Belvoir.

Mr. CHAMBERS. I mean over there. Did you not come back to a port company?

Mr. FINUCANE. Yes. I held a base company at Marseilles.

Mr. CHAMBERS. That was a temporary assignment?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. How much opportunity did you have of your own knowledge to pick up the feeling of what was going on over there at that time?

Mr. FINUCANE. In connection with the unit paper that we put out, I interviewed people immediately after being released by the Germans, or who were escaping from the Germans, during the latter days of the Battle of the Bulge.

I talked to them about their experiences while they were prisoners of the Germans. That is one point which has a bearing on this case.

Mr. CHAMBERS. Did you at that time feel that the Germans had so conducted themselves toward the Americans that these atrocities that you allege here might have been a logical result of the—

Mr. FINUCANE. The reports that I got from returning prisoners were pretty good about the German treatment of them. I was surprised at the Malmedy massacre story; and remembering the atrocity

stories of the First World War, I was, to tell you the truth, inclined to disbelieve it. I saw pictures in the papers of the heaps of bodies in the snow.

Mr. CHAMBERS. What changed your mind? When did you become convinced that our investigators carried out such atrocities in the name of American justice? What convinced you of it?

You say that you have been in contact with the prisoners in Germany, with German defense counsel; you testified that you were attached with Colonel Everett and I presume that others who are interested in this case, from the standpoint of establishing the fact that these atrocities took place.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Why in the name of just straight American justice were you not also interested, since you just indicated that you were a little surprised at it, in trying to find out if there was anything to it?

Mr. FINUCANE. Yes, I think that this committee is serving that purpose.

Mr. CHAMBERS. Why did you not do it? That is what I am after. Is not your organization one which feels that it can afford to take a one-sided approach to a matter of this kind?

Mr. FINUCANE. Have you estimated that amount of money it costs to conduct this hearing?

Mr. CHAMBERS. I have.

Mr. FINUCANE. We have to pay everybody more than the \$3 a day to get them here and keep them here.

Mr. CHAMBERS. So what your organization has done then is to take one side of this argument, and has used this congressional committee to bring out all the facts in the case, and at this date you are still judging the matter. Is that correct?

Mr. FINUCANE. That is correct. We are still forming opinions.

Mr. CHAMBERS. In other words, we have not carried our investigation far enough to satisfy the National Council for the Prevention of War?

Mr. FINUCANE. You have done an excellent job, but you have to go on. I think there is more to be done, as I indicated in my testimony. The American prosecutors have the same access to the press that we have, and the same access to this committee to defend themselves.

As I say, a preliminary, very scanty investigation, the Van Roden report, showed there had been some investigation paid to the side of the American prosecution. We thought it was adequately taken care of.

Mr. CHAMBERS. What did you say about the Simpson-Van Roden report?

Mr. FINUCANE. The Simpson-Van Roden report—

Mr. CHAMBERS. Indicated that the prosecution side had been adequately taken care of.

Mr. FINUCANE. There was indication.

Mr. CHAMBERS. What indication?

Mr. FINUCANE. I think the first or second document after the travel order introduced by Colonel Mickelwaite indicated how the war crimes personnel were picked.

Mr. CHAMBERS. You think that because Colonel Mickelwaite said the personnel had been properly selected that that is a clear indication that in a study of this kind they have had a chance to express their opinion in this matter?

Did you read the Simpson report in its entirety?

Mr. FINUCANE. I did.

Mr. CHAMBERS. Did you read the list of witnesses in there?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Who in there represents the prosecution staff who are accused of atrocities?

Mr. FINUCANE. I understand that list is not complete.

Mr. CHAMBERS. I am sorry, but that is the signed document that is in the Simpson report.

Mr. FINUCANE. I realize that. But you will find, I think, that Van Roden talked to some of the other people who were witnesses here who talked to him and still are not on there.

Mr. CHAMBERS. As long as we are commenting on Van Roden's and Simpson's committee's activities in this matter, why did they not call the prosecution staff to probe into it a little bit?

Mr. FINUCANE. I do not know.

Mr. CHAMBERS. You are aware of the fact that when they came back, they did call defense counsel before them in Washington?

Mr. FINUCANE. I believe they had some contact with Everett.

Mr. CHAMBERS. And also Dwinell.

Mr. FINUCANE. Yes.

Mr. CHAMBERS. To give you a hypothetical case, maybe we are trying to defend the actions of these American people before a German court. Do you not feel that they should have been given an opportunity to appear before the Simpson-Van Roden Commission, for instance, to present their side of the case?

Mr. FINUCANE. Yes. As a hypothetical case, if I were continuing the Van Roden-Simpson Commission, which is an unlikely possibility, and had no political duties at home or business or family to return to in a hurry, and if I thought it merited it, I would certainly have called additional witnesses from the other side.

Mr. CHAMBERS. As a newspaper reporter, or as a reporter, a man writing an article for a reputable magazine, did you not feel it incumbent upon you perhaps to take a look at the other side of this matter? Do you feel that the average newspaper reporter, for instance, will take only one side of the picture and publish it?

Mr. FINUCANE. No; he should not do it.

Mr. CHAMBERS. Why did you do it? You are writing a magazine article and had some little time on the matter.

Mr. FINUCANE. As I say, this is based on the Van Roden-Simpson report.

Mr. CHAMBERS. Not these conclusions. They might have been based on there, but you testified those conclusions are your own.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Those conclusions obviously, you testified, only came from the Van Roden side of it, not the Simpson side of it; but the Van Roden side.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. You as a reputable writer did not feel it necessary to perhaps check around and verify some of these facts?

Mr. FINUCANE. The American defense counsel had an opportunity to reach us, to reach the press.

Mr. CHAMBERS. Did the American counsel approach you on this?

Mr. FINUCANE. I do not mean the American defense counsel. I keep referring to the American prosecution staff at Malmedy and Dachau as the prosecution staff.

Mr. CHAMBERS. You say you have been in contact with the defense people over a period of time. You have been writing letters to Germany over a period of time.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. I believe that you have been getting material from defense counsel and others in Germany?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Part of which I believe you turned over to Senator McCarthy?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. You went to all that trouble. But did you make any effort to get in touch with any of these prosecution people throughout this entire case?

Mr. FINUCANE. The American prosecution staff. Do you mean Major Fanton, Major Dwinell—

Mr. CHAMBERS. I mean anybody who had any connection with the preparing of the cases for trial or handling the cases before the court.

Mr. FINUCANE. No. We felt that it would have been improper for us to do that.

Mr. CHAMBERS. Why?

Mr. FINUCANE. Because we might have been in the position of influencing the witness before—

Mr. CHAMBERS. You did not hesitate to contact the defense people, I believe you told me, on several occasions?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Why did you feel that you could contact the defense people and prejudice them before they came before this committee, and were afraid to do it where the prosecution people were concerned?

Mr. FINUCANE. Let me say that—

Mr. CHAMBERS. This is an unfair question, but I am going to ask it anyway. It is possible perhaps that you are only interested in proving the case?

Mr. FINUCANE. No.

Mr. CHAMBERS. Then why, before we ever took one action on this case, did the National Council for the Prevention of War issue a press release prejudging the actions of this committee?

Mr. FINUCANE. We reported what Judge Van Roden had said, and drew the conclusions that he should have drawn, that anybody would have drawn who was not blindfolded by a legal background. Judge Van Roden thought that because the procedure in Malmedy, in the Malmedy case, followed the rule set down by military government, or by the authorities that Colonel Mickelwait told us about, he thought that because it followed the letter of the law, it was acceptable.

It was not acceptable to anybody who had a sense of decency.

Mr. CHAMBERS. Wait a minute. Are you saying that Judge Van Roden does not have a sense of decency?

Mr. FINUCANE. No, sir.

Mr. CHAMBERS. Are you saying that others who try to judge the case and get both sides of it do not have a sense of decency?

Mr. FINUCANE. These people are experts——

Mr. CHAMBERS. Let me get this straight. Are you saying that these people interested in getting both sides of the facts of this case, and who might possibly, based on those facts, come out to a decision contrary to your own—and that decision I submit to you was arrived at before these hearings started——

Mr. FINUCANE. Are you talking about the Van Roden——

Mr. CHAMBERS. Apparently there is no change in your decisions in these cases?

Mr. FINUCANE. I am sorry. I missed the drift of that introductory statement.

Mr. CHAMBERS. Perhaps I am running down here, and I will wind up in a few minutes. Before this case was ever started, before this subcommittee had arrived at certain conclusions——

Mr. FINUCANE. Hypothetically.

Mr. CHAMBERS. Pardon me. Any time a thing gets into print, it goes a little beyond the hypothetical thing. You make the direct statement that American prosecutors committed atrocities in the name of American justice.

Mr. FINUCANE. We had a moral certainty to that effect at that time.

Mr. CHAMBER. Do you still have that?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. In spite of all the testimony that has gone on before this committee?

Mr. FINUCANE. That is right; because of some of it.

Mr. CHAMBERS. And I presume that if we continue right on through, ad infinitum, because of your beliefs in this matter, nothing would ever change you. In other words, I come back to my opening statement. Are you not interested in proving a case?

Mr. FINUCANE. No; not particularly.

Mr. CHAMBERS. Why then have you not gone to the prosecution people and tried to build up a case as strong as you have with the defense people? These are American officers and American people, American judges involved in this. Most of them were civilians like you and me. Most of them were civilians before the war.

Why are you not interested in proving that they are wrong about this thing?

Mr. FINUCANE. It is no joking matter to have a noose around your neck and to wait in a cell while somebody in a foreign country goes through the etiquette of seeing that both sides are adequately represented while you are in jeopardy.

Mr. CHAMBERS. Let me recap. We had an American investigation of this thing. The point in issue is whether or not that American investigation was properly handled or not.

Mr. FINUCANE. Which investigation?

Mr. CHAMBERS. The investigation at Schwabisch Hall.

Mr. FINUCANE. Yes.

Mr. CHAMBERS. The second thing is that you had a trial before American Army officers and admitted that the defense counsel claimed that they could not get anywhere with that court, but at least they went through the motions of a trial. Is that correct?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. You sat here and heard review after review, after review, all by competent people.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. In fact, Colonel Dwinell, in whom you seem to have a tremendous amount of confidence, who was defense counsel, sat on the board of review that passed on these things.

Mr. FINUCANE. I was inspired by some of his statements.

Mr. CHAMBERS. You do not question the properness of this at all. As defense counsel, you will admit that he did serve as adviser to the board of review. Furthermore, I believe that you placed your interpretation on that—and I would like an answer on that—that that was a sign of bad conscience on the Army because they put him up there. Is that correct? That is your interpretation of it? Can you answer that?

Mr. FINUCANE. Yes, I can answer that. First of all—

Mr. CHAMBERS. Will you answer it?

Mr. FINUCANE. I believe I made that statement, yes, that the command may have felt that there was an excess, and that therefore they insisted, there was every indication that they insisted, in spite of his constant refusal that he serve in that capacity.

Do not take me to understand that I approve of his serving in that capacity. Just as with Strong in that other case, he should not have had the review, I do not think.

Mr. CHAMBERS. In view of all the review procedures up to the time that Clay finally approved those sentences, and in view of the effort that was made by Simpson and Van Roden and Raymond and the other people, and their recommendations, you still feel that the evidence is such that there should be new trials on these people?

Mr. FINUCANE. That is right. General Clay's statements are masterpieces of illumination. He said, "A review of this case shows this, that, and the other thing. It is not a very good case. However, we must not forget that these Germans killed our boys in cold blood."

Mr. CHAMBERS. I wonder if you are aware of the fact that in the 12 death cases, General Clay reviewed—have you read his complete reviews on them?

Mr. FINUCANE. I do not know. There are about five paragraphs.

Mr. CHAMBERS. Have you read them?

Mr. FINUCANE. I do not believe I read them all.

Mr. CHAMBERS. Are you aware of the fact that Clay did set aside six of the death sentences because there was no corroborative evidence to support the confessions of the individuals?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. And that in the other six cases he did approve them, because there was corroborative evidence, and he said it was with great reluctance in several of these cases "that I set aside the death sentences because I am convinced these people are guilty, but because that corroborative evidence is lacking, I am setting it aside."

Mr. FINUCANE. No; I did not get that impression. As I said, I read four, I believe it was, of these.

Mr. CHAMBERS. Four of the twelve?

Mr. FINUCANE. Four of the twelve; yes.

Mr. CHAMBERS. In spite of the fact that these things have been reviewed and checked all the way along the line, the National Council for the Prevention of War's position is this: That you are still con-

vinced that these Germans—and I want to ask if you will admit that these are SS Troopers?

Mr. FINUCANE. I believe so.

Mr. CHAMBERS. That these atrocities did take place?

Mr. FINUCANE. I believe so.

Mr. CHAMBERS. And that the organization to which these people belong was in that area?

Mr. FINUCANE. Among others.

Mr. CHAMBERS. You will admit those things?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. And I think the evidence shows many things concerning, for instance, Colonel Peiper and others of that organization. So there is a presumption at least that you are dealing with people who might not necessarily be the type of person that you would find in America unless it would be in a gangster or in a criminal element.

You still believe in spite of all these reviews and all the court procedures they have gone through, by people qualified as you and I are qualified, that we should go back and try them over again?

Mr. FINUCANE. Yes. General Clay, in the review I read, a very small sampling, in some cases where he confirmed the sentence, there was no mention of additional corroborative evidence beyond the sworn statements of the coaccused, which were distorted.

Mr. CHAMBERS. Just a couple of more questions, and I am through here for the time being. You mentioned awhile ago that you had a letter from Mr. Rubin requesting you to get in touch with Judge Van Roden and see if he would permit an article to be used and incorporate your interpolations.

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Could you bring a copy of that letter in and put it in the record?

Mr. FINUCANE. I have it here.

Mr. CHAMBERS. Would you put it in the record?

Mr. FINUCANE. Yes.

(The letter of January 5, 1949, from Mr. Rubin will appear in the record at this point as follows:)

THE PROGRESSIVE,
Madison 3, Wis., January 5 1949.

Mr. JAMES FINUCANE,
Associate Secretary, National Council for the Prevention of War,
Washington, D. C.

DEAR MR. FINUCANE: I think the release you prepared on the experience and statements of Judge E. LeRoy Van Roden is a walloping fine job. I am greatly tempted to use at least a fragment of it in the February issue of *The Progressive*, which we are now readying for the press.

I wonder if it would be at all possible for us to use as much as we can manage of the material under the judge's byline? Do you have any idea whether he would object? If you have any doubt about it, I wish you would telephone him, and bill us for the call, because I must know at the earliest possible moment. Assuming his approval, there remain one or two technical difficulties. Your release winds up with the council's observations rather than the judge's. Would it be possible for us to compress some of the effective concluding material into the article under his name?

Also, would you be good enough to send us a paragraph or so on Judge Van Roden, his background, and so forth? If by any chance a photograph is available, I might be able to use it if it were sent me immediately.

Time is the essence just now, and I would, therefore, greatly appreciate a collect wire from you just as soon as you have the answer for me.

With best wishes and many thanks,

Sincerely,

MORRIS H. RUBIN, Editor.

Mr. CHAMBERS. We asked most of the witnesses who appeared before us to give us some idea of their background. Would you give us your educational background, and so on?

Mr. FINUCANE. Yes. I am one of the few witnesses who appeared before you who does not have a B. A. or any degree of any type.

Mr. CHAMBERS. You are not a lawyer?

Mr. FINUCANE. That is right. I am not a lawyer. I was in newspaper work before the war. I ran a weekly newspaper in Chester, Pa. For a while I worked for the Philadelphia Record. I also worked for the Chester Times. Since the war—

Mr. CHAMBERS. That is Chester, Pa.?

Mr. FINUCANE. Yes. Since the war I worked for a radio station in Wilmington, Del., and I worked for the National Council for the Prevention of War.

Mr. CHAMBERS. You went in the Army in 1944?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. That was getting along late in the game. Were you working for the newspaper prior to that time?

Mr. FINUCANE. In 1940 I was registered, and I registered as a conscientious objector. I spent the first 2½ years after I was drafted in a work camp for conscientious objectors.

Mr. CHAMBERS. You were in a conscientious objectors' camp up to 1944?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Then what did you do? Volunteer to go in the Army?

Mr. FINUCANE. I think that is how you would put it. I did not like the idea of going.

Mr. CHAMBERS. Why did you go?

Mr. FINUCANE. I could not take being a c. o., the psychological, physical, and financial pressure.

Mr. CHAMBERS. You took it for 33 months, did you not?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Was it the psychological or the financial?

Mr. FINUCANE. A combination.

Mr. CHAMBERS. Then you volunteered, and you went into the Army when?

Mr. FINUCANE. June 8, 1944, I think.

Mr. CHAMBERS. If you were in the Battle of the Ardennes, that means you got into action pretty darn quick. When did you get overseas? About January?

Mr. FINUCANE. That was not quick. I took basic training twice and still was shipped out on the *Queen Mary* on January 1.

Mr. CHAMBERS. Then you were assigned to this combat engineers outfit where you were probably in battalion headquarters?

Mr. FINUCANE. I was in the group headquarters.

Mr. CHAMBERS. Then you came back to the port company? This conscientious objector proposition, that meant that you had a profound dislike and did not believe in war. Is that correct.

What was your classification? There were two or three classifications of conscientious objectors.

Mr. FINUCANE. My classification was 4-E.

Mr. CHAMBERS. If my memory is correct, that is the one where you do even want to go into the medical service.

Mr. FINUCANE. That is correct.

Mr. CHAMBERS. So that you shifted from an original concept of not wanting to go to war under certain pressures, financial and psychological, and you then went into the Army?

Mr. FINUCANE. That is correct.

Mr. CHAMBERS. You served during that Ardennes campaign?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Then you went back to the port company?

Mr. FINUCANE. I stayed with the company all the way through Germany into Czechoslovakia, then came back.

Mr. CHAMBERS. Then you came back and transferred to the port company?

Mr. FINUCANE. No, the company came back to Marseilles on its way to the Pacific, as the story was at the time. While we were there, I was transferred to the Delta base section headquarters.

Mr. CHAMBERS. That was in Marseilles?

Mr. FINUCANE. Yes. That is the base area.

Senator BALDWIN. Are you willing to stay out? It is after 6 o'clock.

Mr. FINUCANE. I enjoy going over my memoirs.

Senator BALDWIN. We do not want to inconvenience you.

Mr. FINUCANE. Not at all.

Mr. CHAMBERS. You were in public relations work here?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Then I believe you said you got out of the Army when?

Mr. FINUCANE. May 26, 1946.

Mr. CHAMBERS. How did you get out? On points?

Mr. FINUCANE. Yes. I had 38 points. If I had had two more, I would have been out something like 6 months earlier.

Mr. CHAMBERS. You were anxious to get out?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Did you by any chance make any effort to get out in advance of your regular time?

Mr. FINUCANE. Yes, I did.

Mr. CHAMBERS. What grounds did you use for that?

Mr. FINUCANE. I came to see Senator Guffey. He was the Senator at that time. I told him that I had been drafted in 1941.

Mr. CHAMBERS. You had been drafted?

Mr. FINUCANE. Yes. I got an induction notice from my draft board. They said, "Take that train on such a date and go to such and such a camp." I said, "I was drafted in 1941. Here it is 1945, sometime—1946, early 1946, almost 5 years, and all I had was 38 points. Do you think that is fair?"

Mr. CHAMBERS. Did you not tell him that you had been in a conscientious objectors' camp?

Mr. FINUCANE. Yes. I advanced that as an additional reason.

Mr. CHAMBERS. In other words, you wanted to get time for the time in the conscientious objectors' camp?

Mr. FINUCANE. That is right.

Senator BALDWIN. Just one other question. You have a statement here in which you quote Secretary Royall as saying, "If we had only used legal means, no one would have been convicted."

Is that your recollection of what he said, or did you actually get that out of the record?

Mr. FINUCANE. That is my recollection, based on my notes at the time.

Senator BALDWIN. While this examination has been going on I have been going through this transcript. I have been through it twice, and I am on the third time through it now.

The only thing that I can find that sounds like it is this:

I don't believe that it is intended to condone the items enumerated before, but certainly it is subject to that construction, and it is not clear at all.

I agree with you entirely that we must insist that our methods of obtaining confessions are entirely in accord with the American concept of justice. There is no doubt about that. And if there is anyone in that work who does not appreciate that, they ought to be removed.

Could that have been the thing that you had in mind?

Mr. FINUCANE. That was not what I was referring to, Senator. I should have looked up that citation.

Senator BALDWIN. In all seriousness, it is a pretty difficult thing to attribute, in direct quotes, to a man who was Secretary of the Army, a statement that he allegedly made, as serious as that one is, as important as that one is, unless you can absolutely prove it.

Mr. FINUCANE. Yes, I should have looked that up.

Senator BALDWIN. We will look this over. You will be here tomorrow?

Mr. FINUCANE. I hope to be; yes, sir.

Colonel MICKELWAITE. May I make a statement?

Senator BALDWIN. Yes.

Colonel MICKELWAITE. On several occasions the witness has referred to a report or statement which I made to the Simpson-Van Roden committee.

I would like to correct that. I made no report to them. There is a report in here from Colonel Bresee, which may be the one to which he refers.

Senator BALDWIN. You made no report, Colonel?

Colonel MICKELWAITE. That is right, to the Simpson-Van Roden committee.

Mr. FINUCANE. That is the one—Colonel Bresee. I think I indicated at the time that I was not positive it was you. But it was someone representing the American prosecution.

Senator BALDWIN. We will recess until tomorrow at 2 o'clock, and you will be here because we want to interrogate you further.

Mr. FINUCANE. Yes, sir.

(Thereupon, at 6:10 p. m., the committee recessed until Thursday afternoon, June 2, 1949, at 2 p. m.)

MALMEDY MASSACRE INVESTIGATION

THURSDAY, JUNE 2, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2:15 p. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senator Baldwin.

Also present: J. M. Chambers, of the committee staff.

Senator BALDWIN. The meeting will be in order.

Mr. Finucane, please.

TESTIMONY OF JAMES FINUCANE—Resumed

Senator BALDWIN. I think when we adjourned last night we were discussing a statement attributed to Secretary of the Army Royall by the witness, Mr. Finucane, which he had contained in his statement submitted to the committee, which reads as follows:

"If we had only used legal means no one would have been convicted." That is what Secretary of the Army Royall told this committee on the first day of the hearings.

Colonel Chambers has searched the record of the testimony of Secretary Royall and has found this statement which contains some of the language attributed to him in the statement, but which, even when lifted from its context, has a different connotation, to wit:

If all legal means had not been used to induce these prisoners to talk about these occurrences, there would have been no chance at all to apprehend or convict any of those guilty of the massacre.

I think you have conferred with Colonel Chambers, Mr. Finucane, and you are of the opinion—you have told Colonel Chambers—that that must have been the statement that you had in mind.

Mr. FINUCANE. That is the statement that I had in mind; yes.

Senator BALDWIN. I thought that we ought to put that in the record, because you said last night that you had not taken this quotation directly from—

Mr. FINUCANE. I had taken it from my notes. And where the Secretary had said, "If all legal means," I understood him to say, "If illegal means." It seemed to me that that was not an unreasonable thing for him to say in view of what he had said previously. It seemed to me that he had led up to that, so that when he said that, I thought he said "illegal" instead of "all legal."

Senator BALDWIN. I think it should appear in the record that the statement made by Secretary Royall, immediately preceding the one under discussion, is this:

Here the evidence clearly shows that all of the defendants were members of the SS, and were under strict orders not to talk at all.

And then went on to say:

If all legal means had not been used to induce these prisoners to talk.

Do you want to proceed with the examination, Mr. Chambers?

Mr. CHAMBERS. Mr. Finucane, I believe you would like to point out why you believe this is a mistake in the record.

Senator BALDWIN. Do we need an explanation on that? As I understand it, Mr. Finucane's claim is that this is a mistake in the transcript.

Mr. FINUCANE. Yes. I understood him to say "illegal" and the record says "all legal." I have noted a couple of points earlier in the record which seemed to support my drawing what at the time seemed to me to be a natural conclusion, and which I still maintain was a natural conclusion.

Mr. CHAMBERS. Then you are not maintaining so much that this is a mistake in the record as you are that you could easily have misunderstood what he said?

Mr. FINUCANE. I could have.

Mr. CHAMBERS. And because of your interpretation of his remarks you thought he probably said "illegal" instead of "all legal."

Mr. FINUCANE. That is right.

Mr. CHAMBERS. I would like to ask you a question in connection with your statement. We have in the record here, I believe, cleared up what Royall said. Has this statement of yours been mailed to your normal mailing list?

Mr. FINUCANE. Part of it; yes.

Mr. CHAMBERS. I believe it is a perfectly proper request to ask if you are going to correct it with them.

Mr. FINUCANE. Yes; we will.

Mr. CHAMBERS. I have no further questions.

Senator BALDWIN. To get a matter straightened out in my own mind, this article attributed to Judge Edward L. Van Roden appeared in the Progressive magazine. Is there any connection between the Progressive magazine and your organization?

Mr. FINUCANE. None whatever.

Senator BALDWIN. You merely got in touch with this magazine to have this article publicized?

Mr. FINUCANE. That is right. We sent them a copy. I presume he got it somehow in our routine circulation. Then they got in touch with us. That letter was put in the record; a photostat copy was put in the record last night.

Mr. CHAMBERS. They apparently got a copy of this press release dated December 18, which quoted Van Roden's speech. Is this correct, Mr. Finucane?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Based on that, according to his testimony of yesterday, they wrote him a letter, a copy of which was placed in the record, asking that he contact Van Roden.

Senator BALDWIN. At the time you wrote this article, which you published under the byline of Judge Van Roden, the only information you had was Judge Van Roden's statement?

Mr. FINUCANE. That is right.

Senator BALDWIN. Did you have any other information on that on which you based this article?

Mr. FINUCANE. Judge Van Roden's statement plus Everett's petition, which I saw but did not use.

Senator BALDWIN. In other words, on the basis of Judge Van Roden's article, and the affidavits of these SS troops attached to the petition filed in the Supreme Court of the United States; this petition that was addressed to the Supreme Court after these men were convicted and were awaiting the execution of their sentences, some of them to be hanged and some for terms of imprisonment, on the basis of those statements made by those SS troopers and Judge Van Roden's speech, you drew the conclusion that—

The American investigators who committed the atrocities in the name of American justice and under the American flag are going scot free.

Is that correct?

Mr. FINUCANE. That is substantially correct. There is just one modification. I did not see the affidavits. I saw the summary of them, which was in Everett's petition.

Senator BALDWIN. You did not even see these affidavits?

Mr. FINUCANE. No. I saw the summary of them which was in Everett's petition. He attached the affidavits as supporting documents to his petition.

Senator BALDWIN. In other words, you based this statement that you inserted in this article, upon the affidavits attached to the petition in Judge Van Roden's speech?

Mr. FINUCANE. Yes. His report, and of course, the review board reports which the judge had.

Senator BALDWIN. Did you ever read those?

Mr. FINUCANE. I looked at the—

Senator BALDWIN. Wait a minute. Did you ever read them?

Mr. FINUCANE. No, sir. I read part of them.

Senator BALDWIN. You did not read them all?

Mr. FINUCANE. No, sir.

Senator BALDWIN. You were here, of course, when Judge Van Roden went over this article piece by piece, and repudiated some of it as not being what he said or not being what he believed?

Mr. FINUCANE. That is right.

Senator BALDWIN. That is all.

Mr. CHAMBERS. I would like to ask a further question if I may. Yesterday you testified, in the early part of your testimony, that you had been in touch with numerous people on this matter. You mentioned several churchmen.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. And defense counsel in Germany and what not?

Mr. FINUCANE. Right.

Mr. CHAMBERS. May I ask at what stage of the game—was it before or after Van Roden's speech that you began to get in contact with people in Germany?

Mr. FINUCANE. I think that we, as I recall the precise date, this began to take shape, say, around December. I think we had gotten our first direct contact from anybody directly concerned with this, say, last November. That was very indirect, as a matter of fact.

A friend of ours in Chicago sent us an affidavit of Willi Schaefer which we gave to one of the Senators, and the Senator to the War Department. A few weeks later we got the letter from Bishop Wurm. Then the Van Roden incident. I think that is the approximate timing.

Then the circulation of that, which reached Germany, gave our address to a lot of people in Germany who knew we were interested in it and thereupon began communicating with us.

Mr. CHAMBERS. Bishop Wurm contacted you on his own initiative?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Do you know how he became aware of the existence of your organization or how he knew you were interested in this particular matter?

Mr. FINUCANE. No. I could only surmise.

Mr. CHAMBERS. What do you surmise on this?

Mr. FINUCANE. Frederick J. Libby was our executive secretary. He has been a figure on the national scene here for many years and is well known as a defender of the downtrodden, to use it much more in cliché.

Significantly the two things Bishop Wurm sent us were a copy of the cable which he had sent to President Truman and a copy of the letter which he had sent to John Foster Dulles. Mr. Dulles and Mr. Libby are friends. I do not know whether he knew that or not, but I think the names are sort of in the same pool, in some sense in the same hat.

Senator BALDWIN. Did not Mr. Libby at one time represent some organization during the twenties that had to do with prohibition?

Mr. FINUCANE. I do not know. He is here. I know he is interested in that, but I do not know whether he actually represented them.

Senator BALDWIN. His work has been in connection with various organizations promoting or opposing different things in the Congress for 25 years or more, has it not?

Mr. FINUCANE. For 28 years he has been executive secretary of this organization.

Mr. CHAMBERS. At what stage of the game did these defense counsel, these German attorneys, begin to get in contact with you?

Mr. FINUCANE. I would say—this may modify a previous statement I made a little bit, but since thinking about it my memory has improved—the affidavit concerning Willi Schaefer which we gave to one of the Senators, which we gave to the War Department, bore the stamp of a German lawyer named von Schlabrendorf. As I recall it, I wrote him a letter and said:

This looks like a pretty serious thing. If you have anything to substantiate this, send it to us.

Mr. CHAMBERS. When did von Schlabrendorf write you?

Mr. FINUCANE. I do not know. Probably a month or so later. Mails weren't too good.

Mr. CHAMBERS. You testified before that your interest began to firm up in this thing in December.

Mr. FINUCANE. That is right. Our interest has been in it for a long time, but we have not had anything to go on.

Mr. CHAMBERS. When did von Schlabendorf write you? Was it December, November, or when?

Mr. FINUCANE. I really do not know. I would say it was in January sometime.

Mr. CHAMBERS. After the Van Roden incident?

Mr. FINUCANE. Yes. I would say by the time we got his reply it was in, say, January, after the Van Roden incident.

Mr. CHAMBERS. When did von Schlabrendorf first write you?

Mr. FINUCANE. I believe around January. That would be about the time of the first reply.

Senator BALDWIN. Do you have the letter?

Mr. FINUCANE. I have gone through our files today and yesterday and have not come across such a letter from him.

Senator BALDWIN. Do you think you could produce it?

Mr. FINUCANE. I do not know whether I could or not. I will look for it.

Senator BALDWIN. That would be a pretty important letter. You do not mean to say you misplaced it?

Mr. FINUCANE. Come to think of it, I did see it today. I think it said—

Senator BALDWIN. Never mind what it said. If you can, produce it.

Mr. FINUCANE. I can produce it.

(The letter from von Schlabrendorf referred to above is as follows:

LETTER FROM GERMAN ATTORNEY VON SCHLABRENDORFF

DR. FRHR. VON PREUSCHEN

VON SCHLABRENDORFF

DR. WEINHELMER

Rechtsanwälte

WIESBADEN

JANUARY 14TH, 1949.

Via Airmail.

NATIONAL COUNCIL FOR PREVENTION OF WAR,

1013 18th Street Northwest, Washington 6, D. C., U. S. A.

DEAR MR. FINUCANE: As per your request, we hereby submit one copy of Willi Schaefer's case records.

Sincerely yours,

VON SCHLABRENDORFF.

1 Incl. a/s.

24TH AUGUST 1948.

Now: Adelheidstrasse 70 I.

To: Post Trial Section, War Crimes Group.

München: Tegernseerlandstrasse.

Subject: Malmedy case. Willi Schäfer, born at Wiesbaden on 20-2-1921. Now in jail at Landsberg/Lech W. C. P.

Please find enclosed power of attorney according to which I am acting as the convicted Willi Schäfer's counsel.

Willi Schäfer partook as an underofficer, 3rd SS armored engineers company, engineers battl. I, group Peiper, in the Ardennes offensive of December 1944. Being a member of the police division transferred into the Armored SS (Waffen SS).

Before U. S. Military Court, Dachau (Malmedy case) Willi Schäfer was charged:

1. To have watched and not to have taken action against shootings of U. S. P. O. W.'s at crossroad Engelsdorf south of Malmedy, on 17-12-1944, in presence of his company leader, Obersturmführer Franz Sievers;

2. To have forwarded, at Stoumont on 19-12-1944 in the presence of his company leader Franz Sievers, an order of Sievers running to have 5 U. S. P. O. W.'s shot by members of the company;

3. To have joined, at La Gleize on 21 and 22-12-1944, in his company leader's presence, in shootings of U. S. P. O. W.'s.

Willi Schäfer was sentenced to death by hanging on 16-7-1946. In Spring of 1948 that sentence was converted into lifelong imprisonment.

Considering the evidence enclosed to this I am asking you for a review of the sentence now sounding in lifelong imprisonment.

The following is to explain this evidence:

The U. S. chief counsel of the defense in the Malmedy Case, Lt. Col. Everett, asked in his petition for review of Willi Schäfer's case that the accused Willi Schäfer be acquitted. Please find this petition for review enclosed as annex 1.

In his petition for review Lt. Col. Everett noted Willi Schäfer's own written statement yet not made voluntarily as argued by the defense to be the only proof against him besides charges raised against him by the statements of the accused Gustav Adolf Sprenger (files, p. 691), Joachim Hofmann (files, p. 645) and Siegfried Jaeckel (files, p. 681).

Neither are there unprejudiced witnesses nor other valuable evidence.

As regards the way of taking those statements by the investigations officers at Schwäbisch Hall with confessions made by accused of the Malmedy case or their mutually charging themselves, there has been alleged by many parts with evidence being submitted for that these statements were made under hard duress and following heavy bodily ill-treatment on the part of the investigations officers, so they were said to be not of any value at all.

As published by the press the War Department, Washington, D. C., has ordered an investigation of those investigations methods to take place.

Willi Schäfer in a nonvoluntarily made statement drawn at Schwäbisch Hall on 8-4-1946 admitted:

1. To have watched members of his company shooting on U. S. P. O. W.'s, at crossroad Engelsdorf, south of Malmedy, on 17-12-1944;

2. To have forwarded, at Stoumont at a street corner, the order of his company leader, Franz Sievers, to shoot 2 U. S. P. O. W.'s to Sturmman Gustav Adolf Sprenger.

Willi Schäfer revoked this confession in his final words stated in trial. On 28-1-1948 stated an affidavit showing the way this confession was obtained. Please find Willi Schäfer's affidavit enclosed at annex 2.

A confession obtained that way cannot be of the least value.

Nor are the statements made by Joachim Hoffmann (files, p. 645) and Siegfried Jaeckel (files, p. 681) against Willi Schäfer and proof against him.

In an affidavit dated on 20-1-1948 Joachim Hofmann and in one dated 21-1-1948 Siegfried Jaeckel stated the way their charges were obtained. Please find enclosed these affidavits as annexes 3 and 4.

A particularly bad part in the Malmedy Case was played by the accused Gustav Adolf Sprenger who became a just willing instrument in the hand of the investigating authorities, affirming just everything they wanted him to do. This is revealed by the affidavits by Oskar Tratt dated 2-12-1947 and by Gustav Adolf Sprenger himself dated 21-1-1948, enclosed as annexes 5 and 6.

Gustav Adolf Sprenger, a young and unsteady person himself, is a personal enemy to Willi Schäfer; he is resenting Willi Schäfer having him had transferred for negligence to another company in March 1945. Gustav Adolf Sprenger's readiness to charge other men is enough explanation for his unrestrainedly accusing a man he hasn't been on good terms with before.

In reviewing the death sentence against Willi Schäfer there was sure laid special stress on examining the question whether Willi Schäfer indeed forwarded, at Stoumont on 19-12-1944, to Sprenger, as he has alleged, an order from his company leader Franz Sievers to shoot 2 U. S. P. O. W.'s. At mid-April Gustav Adolf Sprenger at Landsberg prison acknowledged to Willi Schäfer that he again, had made a statement to Mr. Harry Thon regarding Willi Schäfer, maintaining the charges against Willi Schäfer as regards Stoumont for fear of his own person. Willi Schäfer made a statement himself on everything Gustav Adolf Sprenger had told him with regard to his hearing by Mr. Thon, dated of 15-7-1948 enclosed as annex 7.

Enclosed to this statement by Willi Schäfer is an affidavit by Gustav Adolf Sprenger dated 9-4-1948, sufficiently proving what to judge of Gustav Adolf Sprenger's charges. Sprenger's statement lacks any value. A man cannot be sentenced on the base of his statement.

Enclosed as annexes 8-15 are further affidavits:

(a) affidavit Richard Scheeler dated.....	20- 6-1947
(b) affidavit Gerhard Taut dated.....	19-10-1947
(c) affidavit Paul Beer dated.....	18- 8-1947
(d) affidavit Oskar Tratt dated.....	1-11-1947
(e) affidavit Rudolf Kämpfe dated.....	21- 7-1947
(f) affidavit Josef Pichler dated.....	22- 1-1948
(g) affidavit Karl Heinz Rose dated.....	8-11-1947
(h) affidavit Hans Günther Eberding dated.....	27-11-1947

The following is proved by these affidavits:

(1) Willi Schäfer arrived together with Obersturmführer Sievers' SPW (armored car), which had stayed at Losheim for a panne, at crossroads Engelsdorf south of Malmédy, on 17-12-1944, *after darkness had set in*. At that time his company had already left the region. Willi Schäfer with his companions found his company but short of Stavelot on 17-12-1944 by 24 hours.

It is therefore impossible Willi Schäfer had watched U. S. P. O. W.'s being shot by members of his company in the course of the 17-12-1944 at crossroads Engelsdorf. The conforming statements by Richard Scheeler, Gerhard Taut, Paul Beer, Oskar Tratt, Rudolf Kämpfe, Josef Pichler, Karl Heinz Rose, and Hans Günther Eberding fundamentally correspond to those made before by Gerhard Taut (pp. 2601 and 2602), Siegfried Jaeckel (p. 49), Ernst Goldschmidt (p. 2398), Marcel Boltz (p. 2464), and Joachim Hofmann (p. 46). Facing these nonobjectionable, that one made under duress and revoked by Willi Schäfer as well as those made by Gustav Adolf Sprenger are bare of any value of proof.

(2) Gustav Adolf Sprenger's allegation that Willi Schäfer had forwarded to him, at Stoumont on 19-12-1944, an order of the then present commanding officer Franz Sievers to shoot U. S. P. O. W.'s is clearly refuted by these enclosed affidavits. Of a special importance as regards that issue is Josef Pichler's affidavit dated 22-1-48. Josef Pichler has stated as regards Stoumont:

"Having returned to our point of departure we went on passing Stavelot late in the evening and reaching Stoumont early in the morning of the 19-12. By ten o'clock the company was ordered to make a search of the town for P. O. W.'s.

Schäfer by order of Sievers ordered all P. O. W.'s to be marched to the first-aid station, castle of Stoumont, order forwarded to the group leaders.

During that search and even later the town was under heavy fire from the enemy. I myself got in connection with six Americans that day. I was jointly with Schäfer staying in a grocer's door we had found a shelter against the enemy's fire when 2 American soldiers brought a wounded German. The wounded got a bandage by SDG Rose and was mounted on a jeep. Schäfer ordered a man passing by to march the P. O. W.'s away. Immediately upon this a U. S. lieutenant appeared who was jointly with the German wounded taken by the jeep to the first-aid station.

A short time later there appeared 2 other Americans carrying a third wounded American on a stretcher. Schäfer asked Sievers whether to wait for the return of that jeep regarding those 3 P. O. W.'s. Sievers ordered those 3 P. O. W.'s to be brought back to the first-aid station after its return. Schäfer asked the leader of the 2nd echelon: Unterscharführer (sgt.) Beutner to execute this order, being near us.

Schäfer and I went for finding a c. p.; here I observed Sievers going in the direction of the church together with an officer. The c. p. was established at a butcher's, later on removed to a children home. On 19-12-1944, in the afternoon, a meeting took place at the children's home with Peiper and Pötschke being present. That meeting lasted for about half an hour, then Peiper and Pötschke went away. In the afternoon Sievers did not leave the children home. There was hard fighting for that children home unto our retiring on 21-12-1944 in the evening hours, we having been forced out of the house, yet again taking it and capturing about 40 P. O. W.'s, among 2 officers, who were marched back, on 20-12-1944."

Josef Pichler's statement represents in itself a big issue considering he was together with Willi Schäfer in the chief car all over 19 and 20-12-1944. Josef Pichler has confirmed Willi Schäfer by order of the company leader Franz Sievers forwarded an order to all group leaders to march all P. O. W.'s back to the first-aid station, castle of Stoumont. He has also confirmed that *no* order to shoot P. O. W.'s was issued by the company leader Franz Sievers, so could *not* have been forwarded by Willi Schäfer and wasn't so indeed. So confirm Gerhard Taut, Oskar Tratt, Paul Beer, Karl Heinz Rose, and Hans Günther Eberding in their affidavits in the main Josef Pichler's affidavit as well.

These affidavits prove Gustav Adolf Sprenger's allegation regarding the Stoumont issue is likewise false.

(3) As to the La Gleize issue no witnesses have appeared who had made observations of their own. What has been said to this is more hearsay. Gustav Adolf Sprenger has falsely charged Willi Schäfer as to this point too. He has said he got information by one Lasinski that he, Lasinski, had seen Franz Sievers, Willi Schäfer, Max Beutner, Max Hammerer, and men of the 1st platoon shoot 9 U. S. P. O. W.'s at the courthouse. Yet the unrefuted evidence of trial as regards this issue has shown Max Beutner was already dead, being killed in action at Stoumont one day before.

The statements by Oskar Tratt (p. 2763), Ernst Goldschmidt (p. 2429), Lt. Col. McGown (p. 1820) (p. 1824), obviously refuted that charge by Gustav Adolf Sprenger made upon more hearsay during the Dachau trial already.

Basing a sentence against an irreproachable man such as Willi Schäfer of life-long imprisonment on the charges raised by an unreliable man such as Gustav Adolf Sprenger whose statements—as admitted by him—were made under duress as well would not be just.

Willi Schäfer is not guilty. The petition for review and acquittal is therefore justified.

(Gez.) VON SCHLABRENDORFF,
Attorney.

16 annexes.

ANNEX 1

Pages 134/135.

No. 55: Willi Schäfer, a staff sergeant.

The bill of particulars made the following allegations:

- (1) On or about 17 December 1944 at the crossroads south of Malmedy, Belgium, fired on P. O. W.'s.
- (2) On or about 19 December 1944 at Stoumont, Belgium, ordered P. O. W.'s to be shot.
- (3) On or about 20 December 1944 at Stoumont, Belgium, fired on P. O. W.'s.
- (4) On or about 21 December 1944 at La Gleize, Belgium, fired on P. O. W.'s.
- (5) On or about 22 December 1944 at La Gleize, Belgium, fired on P. O. W.'s.

The accused made a written statement (record, p. 1399) obtained under duress (record, p. 1406).

The failure of the prosecution to prove the incidents of Malmedy, Stoumont, and La Gleize has been previously discussed herein under the separate analysis of other accused (*supra*).

The only evidence against Schäfer, a sergeant, is his own written statement, which the defense contends was not voluntarily given, and accusations against him in the written statements of Sprenger (record, p. 618), Joachim Hofmann (record, p. 645), and Jaekel (record, p. 681), all concerning the alleged killing of three American P. O. W.'s, two of whom were carrying the third on a litter. Schäfer claims that he transmitted the order of his commanding officer who was then immediately present when the order was given and transmitted.

We call the attention of the court to the following inconsistencies in the statements of Schäfer's fellow accused:

(a) Sprenger claims that Biloschetzky and Graeber marched these three Americans into an alley where Biloschetzky shot the two Americans who were carrying the litter, that the litter was then dropped to the ground and Sprenger then shot the wounded one on the litter.

(b) Hofmann made an incredibly long statement (record, pp. 645-657). He stated that Biloschetzky alone marched the three Americans into the alley, that the litter was lowered to the ground in the alley and Biloschetzky then marched the two Americans "behind the house to a point" and there shot them. Then Sprenger suddenly appeared on the scene and shot the wounded one lying on the litter.

(c) The accused Neve however, who claims to have been an eyewitness to the incident says (record, p. 667) that Sprenger alone was walking behind the three Americans as they were marched into the alley; that Sprenger shot the American carrying the rear end of the litter and this American dropped his end, stepped forward to the right of the litter and fell to the ground. Neve claims the incident happened in the afternoon and that about a half hour later Neve, accompanied by Gielehofer, Hofmann, and Schulte went into the alley, saw the two Americans lying dead, but the man on the stretcher was still alive. I could see him breathing.

(d) Boltz, in his written statement (record, p. 711) says the incident happened between nine and ten o'clock in the morning, that Altkruger and Boltz marched the three Americans into the alley and Altkruger shot all three of them. There are four completely divergent and entirely antagonistic versions of the same incident.

The accused Sprenger, in his written statement (record, p. 632), to show the court another inconsistency in that statement of Sprenger, says that he arrived in La Gleize on the 21st and says that between 1600 and 1600 hours, Lasinski

told him that he, Lasinski, had seen Sievers, Shafer, Beutner, Hammerer, and men of the 1st platoon shoot nine Americans P. O. W. at the courthouse. Yet the uncontroverted evidence in this case conclusively shows that Beutner was dead, and that he was killed in action the day before, at Stoumont.

These inconsistencies were submitted to the court with the conviction on the part of the defense counsel that there could be very little weight, if any, given to the accusations contained in the statements of Schafer's fellow accused. As to the statements of Sprenger and Hofmann, we submit that no human being, let alone an immature youngster, could possibly report all of the details of this offensive with such exact accuracy of the activities of his fellow accused, more than a half year later than the events happened. It is physically and humanly an impossible thing to do. Those statements were dictated by the prosecution and they erroneously made the inconsistencies in the picture about the litter case. Further the evidence offered by the prosecution against the accused Schafer is either hearsay evidence or accusations contained in the statements of his fellow accused, which is not sufficient to warrant his conviction. The defense produced direct testimony of the witness Taut (record, p. 2603) that during the battle of Stoumont, Schafer ordered all captured P. O. W.'s to be taken to the first-aid station, and Oskar Tratt testified that during the short period of time that Schafer was in La Gleize he was with him and no prisoners of war were seen nor mistreated during that period.

The finding of guilty and the sentence of death should be set aside and the accused acquitted.

ANNEX 2

WILLI SCHÄFER,
Landsberg/Lech W. C. P.

AFFIDAVIT

Being aware of the meaning of an affidavit and of that false statements in an affidavit are subject to punishment by German authorities as well as by U. S. Military Government I am stating as follows, regarding the investigations made during the preliminary inquiry in the Malmédy case:

On 5-4-1946 I, a P. O. W. at Sennelager near Paderborn, was surrendered by British authorities to the U. S. War Crimes Group. During 5th to 7th April 1946 I was transported from Sennelager to Schwäbisch Hall. The travel was interrupted for passing the night at Butzbach jail and court prison, Wiesbaden. During my transportation we 8 men were handcuffed with each other, besides this cuffed to the car. In beginning the travel, at Sennelager on 5-4-1946 we were warned by a U. S. lieutenant that the least suspicious movement by any single person all of us would be shot. On 6-4-1946, being photographed at Wiesbaden, a U. S. sergeant made signs of hanging not to be misunderstood (level keeping of the hand at the throat). During the travel from Wiesbaden to Schwäbisch Hall—7-4-1946—the SS man, Zimmer, accompanied us on our car as a spy.

On 7-4-46 Mr. Harry W. Thon asked me at Schwäbisch Hall for making an affidavit charging me. He remonstrated me the accusations raised against me, granting me insight into an affidavit, Sepp Dietrich's, wherein he had admitted the total murder order, telling me the real issue was but the heads of the generals and nothing was to be feared by us little men. I declared in principle willing to state a report of my experience in the Eiffel offensive yet told Mr. Thon I had not been aware of any offences under the laws of war. Thereupon Mr. Thon gave me paper and pencil, set a last respite of one night, closed me into a death cell telling me that, should I not make a statement charging me, my family would be taken their food and ration cards. In that night I wrote a report of my experiences which yet did not include any charges.

On 8-4-46, in the morning, Mr. Thon appeared in my cell, read the above-said report, tore it, insulting me roughly and even attacked me. In leaving the cell he menaced me with my soon death in case of further refusal. Some minutes later my cell was opened, a black cap the inside of which was incrustated with blood was put on my head and I was taken to another room. Considering the precedent menaces the psychological effect of that cap on me was crushing. Following the cap was taken off I faced Mr. Thon and 4 men of my company—Sprenger, Jaeckel, Neve, and J. Hofmann. These men accused be conformably with regard to cross-roads and at Stoumont, thus they were false witnesses, for in trial itself, re-

garding the crossroads, Sprenger's statement, as to 19-12, regarding Stoumont, Sprenger's and Hofmann's statement and regarding 20-12 at Stoumont Jaeckel's statement was charging me. Nevertheless I Refused making a statement charging myself. Upon which Mr. Thon told me in case of further refusing I would but demonstrate my nazi opinion, so he would provide for my being charged together with the generals on the same bench, my fate subsequently being sealed. Considering I would never stand against 4 witnesses in a trial he gave me the good advice to make that statement, for this would be followed by my release within a short delay. He had me informed by those 4 witnesses that similar cases had ended with an acquittal or with sentences of short imprisonment. Notwithstanding I continued refusing. Thereupon Mr. Thon had me see a falsified statement by my company leader—Sievers, adding that this was the 5th proof against me. I told Mr. Thon that I, despite disposing of a good memory, I was not able to recall any of these remonstrances and that they were completely false. Upon this Mr. Thon left, returning a short time later with 1st Lt. Poerl, who beastly insulted and outraged me, ordering Mr. Thon, should I not write within half an hour he was to stop the hearing and leave me to my fate. 1st Lt. Poerl in a concealed yet obvious way confronted me with the alternative of either writing and living in freedom or not writing and dying. I decided for life, declaring willing to sign any statement desired. Now Mr. Thon dictated the shorthand called SS Ustuf. Kramm—my statement according to Sprenger's which was subsequently dictated to me by Kramm. Any objections raised by me were ruled down by Mr. Thon with the short remark that Sprenger was better informed than I. The sketches enclosed to the statement were drafted by Kramm.

I am hereby stating that I never took part in any shootings of P. O. W.'s, that I never issued any such orders nor watched any shooting. I stated this already before Military Court Dachau.

On 8 or 9-4-46, following a confrontation with Hammerer at Schwäbisch Hall where I did not seem to have behaved according to the investigators' intentions, I suffered heaviest ill-treatment by kicks in the hollow of the knee and the back-side as well as by strokes with a stick in shoulders and the rear part of the head. That ill-treatment caused me for some time to suffer from heavy headache, a bloodshot swelling in the rear head gave me pains for one week. I cannot give exact details regarding the executing persons and the place, for during the ill-treatment I had a black cap on my head. Subsequently I was forcibly pulled into cell 100. A partial witness is Rudolf Schwambach, now Landsberg/Lech, W. C. P., who can himself state on the implications of those ill-treatments.

As to the facts I am stating as follows:

I passed the crossroads south of Malmédy on 17-12-1944, in the evening with complete darkness reigning (about 1900 hours). A burning house at the crossroads as well as an abandoned group of U. S. cars were conclusive for previous fighting. On account of the darkness I did not see any dead Americans. We drove a single car as a damage in the motor and change of car near Scheidt had caused a stay of some times. Together with me in that car were SS Ustuf. Sievers, Uscha (sgt.) Beer, Rttf. (pfc.) Meyer, Rttf. Karl Schwarz, Rttf. Pichler, Rttf. Kohlenberger, Rttf. Eberding, Strm. (pvt.) Steets. From 19th to 21-12-44 I was at Stoumont. Prior the entering Stoumont I transmitted the group leaders the company leader's order to march all P. O. W.'s back to the first-aid station. From 19-12-44, in the afternoon, unto 21-12-44 in the evening hours I was at a girls' school (children home) at the west exit of Stoumont. Fighting was very hard here and for an explanation the fact may be sufficient that the 3rd armored engineers company lost 84 soldiers by fighting with the enemy during these 2½ days.

At La Gleize I stayed but in the night of 21-12-44, about 2330 hours unto 22-12-44 by 0900 hours. We got then new positions in the direction of Bourgemont which I left but later on when we retired from the encirclement. In the night of 21/22-12-44 I had felt a big want for sleeping because of the preceding hard fighting at Stoumont, so I satisfied that in a house. In and about La Gleize I never saw any P. O. W.'s at all nor did I shoot any.

I was released as a P. O. W. by the beginning of May 1946 at Dachau, so I was protected by the Geneva convention during the preliminary inquiry in the Malmédy case.

This statement stretches over 6 handwritten pages. Writing by pencil was the implication of that; there are no other means of writing available for me in this prison.

The following alternations are contained in the statement and were signed by my sign "WS":

Page 1, line 12: "mir" into "wir."

Page 5, lines 9 and 16: "22-12-44" into "21-12-44."

I am declaring in lieu of oath that the statements included by this affidavit are the pure truth.

This affidavit is for submission to courts and authorities.

(S) WILLI SCHÄFER.

LANDSBERG/LECH, 28 January 1948.

This is to certify that the above is the true signature of Willi Schäfer.

(S) LLOYD A. WILSON,
Capt., CMP, Prison Director.

Certified true copy made after the original submitted to me.

[SEAL]

_____, Notary.

WIESBADEN, 24 August 1948.

ANNEX 3

CERTIFIED TRUE COPY

Joachim Hofmann, WCP Landsberg.

AFFIDAVIT

For submission to courts or authorities.

Understanding the meaning of an affidavit and that false statements made in an affidavit are subject to punishment by the German authorities as well as by U. S. Military Government I am making this present statement:

I, Joachim Hofmann, was vom 3-12-1945 unto 8-4-1946 kept in presumptive arrest at the prison, Schwäbisch Hall (Malmedy case). During that time I was a P. O. W. At Schwäbisch Hall I was heard about 20 to 25 times. During my presumptive arrest I was severely ill-treated. For 3½ months I was kept in solitary confinement without neither writing nor bathing allowed. Even when taken for a hearing I got a black cap on the head. The guards who took us for hearing often struck or kicked me. I was twice thrown down the stairs so that I was hurt so much as that blood run out of my mouth and nose. I gave the hearing officers information of that ill treatment I suffered yet they only laughed about it. Mostly I was not able to answer at all at the hearing; even when not giving those answers the investigating officers deemed good or none at all that cap was pulled over my ears and I was again and more struck than before.

In March 1946 I was taken before a summary court. Prior to this I was struck and several times kicked in the privates. On that trial I was sentenced to death and was closed up in a death cell. That cell contained but a wood chest as a bed and I had but one blanket. I was kept in that cell for 3 weeks. In that cell I was currently heard. The investigating officers made me promises as to being released within 2 months provided but I wrote what would be dictated. I was not able at all to resist the force exercised on me. I often watched comrades being ill-treated. That treatment caused me finally to write a false statement dictated to me. I believed the promises made to me, yet all of this was mere illusion.

LANDSBERG—20-1-1948.

(S) JOACHIM HOFMANN.

I herewith certify that the above is the true signature of Joachim Hofmann.

(S) LLOYD A. WILSON,
Capt. CMP, Prison Director.

Certified true copy from the original.

STUTTGART, 10 February 1948.

(S) SOMMER, Notary. [SEAL]

Certified true copy made after the original.

[SEAL]

_____, Notary.

WIESBADEN, 24 August 1948.

ANNEX 4

CERTIFIED TRUE COPY

Siegfried Jaeckel, Landsberg/Lech WCP.

AFFIDAVIT

Understanding the meaning of an affidavit and that false statements made in an affidavit are subject to punishment by the German authorities as well as by U. S. Military Government I am making this present statement:

On 4 December 1945 I arrived at Schwäbisch-Hall. There I was closed up in solitary confinement, no walk, no bath being allowed nor going to church, nor was there any mental caring for me, correspondence with my family being forbidden. It must be understood that I was a P. O. W. all over that time passed at Schwäbisch-Hall. Furthermore I was urged to make a statement, under pretense of false facts, duress, promises, and force; this statement was besides this dictated to me. Yet today it is impossible for me to depict the exact details of the hearings as nearly 2 years have passed since. Yet some of them have remained in my memory, so I will try writing them down according to the best of my memory and conscience. I was, e. g., subjected to a summary trial taking its course as follows:

Taken to one of the hearing cells and passed there sometime a guard entered, pushing that black over my head and, after a while, I was taken by my jacket collar and pulled out of the cell, flung in a corridor to and fro, left and right. I was often walking on my nose instead on my legs. Having that cap pushed over my head I was not able to see something. Then I was taken to a dark room, pushed to the wall with my hand, having to put my legs broadly to the walls and my arms high up to the wall. That cap over me. Then stand a certain time that way. In that room I heard some noise like drum beating. Then came somebody, besprinkling me lightly with water. Subsequently I was taken by my jacket and marched to a cell. That cell looked about as follows: There was a table, a black cloth on it and on the table a crucifix with right and left to it a burning candle. Behind that table sat a major, a captain, and a 1st lt. As I heard later on this was Major Ellowitz, Capt. Schuhmacher, and 1st lt. Perl. Lt. Perl set forth the issue, etc., that I had shot P. O. W.'s there and there, now being subject to sentence. Thereupon witnesses were produced who all of them stated I had shot P. O. W.'s. When the 3rd witness left Lt. Perl talked to the major and told me: "The major desists of further witnesses—20—considering these 3 witnesses are by themselves sufficient for the death sentence." Things went on that way. By the way the 1st prosecutor appeared whom I learnt to be called Mr. Harry Thon during the Malmedy trial. This summary trial lasted from 9-12 hours and 14-16 hours. Among other things was I warned with: "People like you we will deal shortly with, we take them into a jeep, take them out, you will have a look to nature and will be hanged. You are not worth a bullet, we have rough strings only we will bind you at that tree, you take once more fresh air and then you will go up." Mr. Thon spoke out this menace during a trial. That summary trial ended with 1st lt. Perl pronouncing the death sentence and I was to be hanged the next 24 hours. I never doubted of everything said to me and believed everything. Two days later I was taken for a hearing to that summary court and Lt. Perl told me: "We have given consideration to your youth, were induced and acted upon order. You are pardoned. We will make again a trial with you and you tell us the truth, we have helped you as you were not able to remember." Thus they commenced again. In this 1st lt. Pearl spoke the following: "Well, you don't want, well we will get you there. You have no money for paying so you must hang. Look at your comrades, they are well, they said the truth and will soon be released. You see, nothing will happen to you. You had an order and had to execute it, came from your superiors, nothing can be done to you if you tell us everything, you will soon be released, yet in case you keep silent and do not say anything, you will be hanged." I do not longer exactly know how many times I was heard, sure 10-15 times. I was also struck, I listened crying in other cells, too. Whenever taking for hearing and being in that hearing cell, I was trembling with fear. I was then at Schwäbisch Hall 19 years old only, never having anything to deal with courts. In that atmosphere and given that duress I was exposed to I gave in, believing everything I was told and menaced as well as promised, I had that long statement dictated, designing those big sketches I alone would never be able to draft, for my education is not sufficient nor have I such a memory. The state-

ment was dictated to me, so were the sketches drafted by a comrade and I had to copy them, Capt. Schuhmacher saying: "The streets etc. shall be the same, yet the other specifications shall be made and composed distinctly, else it would too much appear like a copy." I am underlining that my statement and the statements, that at Schwäbisch Hall, are not true. My charges against comrades by my statement dictated at Schwäbisch Hall, are likewise not true.

(S) SIEGFRIED JAECKEL.

LANDSBERG/LECH, 21 January 1948.

I herewith certify that the above is the true signature of Siegfried Jaeckel.

(S) LLOYD A. WILSON,
Capt., CMP, Prison Director.

Certified true copy from the original.

[SEAL]

STUTTGART, 10 February 1948.

(S) SOMMER, Notary.

Certified true copy made after the original.

[SEAL]

WIESBADEN, 24 August 1948.

_____, Notary Public.

ANNEX 5

CERTIFIED TRUE COPY

Oskar Tratt, born on 23-12-26.

Würzburg-Heidingsfeld, 2-12-47.
Frau Holle Weg 59.

AFFIDAVIT

From 6-12-1945 unto 17-4-1946 I was in presumptive arrest for the Malmédy case at the Schwäbisch Hall prison. There I was several times heard and upon physical ill-treatment and mental influencing I was slowly made an instrument of the prosecution, forced to charge other comrades when confronted with them such as inculcated in us before by the prosecution. In that same intantion my fellows of my company: Sprenger, Jaeckel, Joachim Hoffmann, and Neve were used. Upon good conduct as meant by the prosecution during confrontations cigarette and tobacco premiums were granted to us. Not behaving according to the prosecution's intents exposed us to new ill-treatments and menaces, connected to promises of a soon release in case of our conforming. The victims of our confrontations became by numerous false witnesses, insultations, related to the promise nothing would happen at all for they said to only want to punish the officers, as well as by physical ill-treatments demoralized such a way as to make finally any statement desired.

Late in February/early in March 1946 I was confronted with my then company leader Franz Sievers, remonstrating him with what the prosecution had drubbed into me which were invented of course. Sievers shook but his hands toward these accusations as he was forbidden to make any counterstatements. Joachim Hoffmann, Neve, Sprenger and I were once again confronted with Sievers, having got to again setting forth our drubbed in matter. The investigating officer, 1st Lt. Pearl, told Sievers: "Here the men of your company tell the truth, give in, yet you are lying, you say you were an officer and company leader, you should be ashamed. That is the way of these officers, do not know of anything, but the man can remember everything." Sievers who couldn't stand all these lies said: "Such as these 4 men are standing there they are lying." Upon which the investigating officer, 1st Lt. Pearl, gave Sievers a push telling him he shall keep silent. Sievers was roughly insulted by the investigating officer i. e. by the words: he should be ashamed, he was a swine and says he was an officer. Continuing Sievers should be spitted at he spit before Sievers' feet. Sievers got quite a lot of such rough words. We had to go back to our cells, here I heard Sievers being insulted furthermore, all the house resounded from it.

I myself wrote under these same conditions at Schwäbisch Hall a statement against my comrades which is bare of any truth. During my stay at Schwäbisch Hall I was several times ill-treated being kept under a cap pushed over my head, I was furthermore menaced with that my parents would be deprived of their food tickets and that I would be taken to Belgium. In a mock trial as revealed later on sentenced to death. I was promised, too, that in case of good behavior I would in a very short time be released. These utterances were chiefly made by Lt. Perl and Mr. Thon. Cpt. Schuhmacher participated in these promises and menaces as well. The mental disposition at Schwäbisch Hall was so depressive that we complied with everything the prosecution wanted us to

do, for we found us ever in such a psychosis of fear excluding any will of our own.

I am declaring upon oath that these present statements represent nothing but the truth and that they were made bare of any urging or duress.

Fully understanding the meaning of an affidavit intended for submission to the authorities I am making this affidavit.

(S) OSKAR TRATT.

(Certified Oskar Tratt's signature.)

Deeds register No. 646/47.

This is to authenticate the above signature made before me by Mr. Oskar Tratt, a resident of Würzburg-Heidingsfeld, Frau Holle Weg No. 59, identity established by his identity card No. 322/4760 regarding his registration with the labor office, Würzburg.

(S) MÜLLER, *Notary Public.*

WÜRZBURG, 3 December 1947.

[Seal of notary public Müller.]

Certified true copy made after the original.

[SEAL]

WIESBADEN, 24 August 1948.

_____, *Notary Public.*

ANNEX 6

CERTIFIED TRUE COPY

Gustav Adolf Sprenger, WCP Landsberg/Lech. For submission to courts or other authorities.

AFFIDAVIT

I, Gustav Adolf Sprenger, am making this present affidavit:

On 4-12-1945 I was sent from Zuffenhausen to Schwäbisch Hall. I was kept there in solitary confinement until my hearings were finished. During 10-1-1946 unto about 15-2-46 I was heard by U. S. officers. Nearly every day I was taken with a black cap pushed over my head by a guard to a hearing. So I was not able to see where to and where I had to go. Early in January 1946 I made at Schwäbisch Hall a statement upon oath regarding the offensive such as I could remember it then. They did not believe this statement. Because they did not believe me they made promises at later hearings. I was told they wanted nothing from me and I might go home in 6 months and other things too, which I cannot all of them remember now. When that did not help I was put before a summary court and told to keep ready for being hanged any hour. I suffered these and similar menaces frequently. I was likewise struck some times by U. S. guards short before and following the hearings. Comrades of my company were confronted with me and raised false charges against me. One of the investigators told me I was to admit everything I was told, as cpt. Schuhmacher was my defense counsel and might not be in a position to defend me should I not. When these hearings had made me weak and I did no longer know myself what I had committed or not I said yes and amen to everything I was remonstrated with, also of others. All this was subsequently drawn into a statement by Capt. Schuhmacher and dictated to me by a U. S. soldier. I wrote 4 days on it. I made as well some sketches. Ready made ones were shown to me. I was not allowed to read the statement prior to signing it. At that time I was a P. O. W., having become 20 years old on 10-2-46. We could not write, neither to our family nor elsewhere during that time, as Schwäbisch Hall.

Understanding the meaning of an affidavit and that false statements made in affidavits are subject to punishment by the German authorities as well as by U. S. Military Government, I am hereby representing and warranting the above-made statement in the mere truth.

LANDSBERG/LECH, 21-1-48.

(S) GUSTAV ADOLF SPRENGER.

I herewith certify that the above is the true signature of Gustav Adolf Sprenger.

(S) LLOYD A. WILSON,

Captain, CMP, Prison Director.

Certified true copy made after the original.

[SEAL]

(S) SOMMER, *Notary Public.*

STUTTGART, 10 February 1948.

Certified true copy made after the original.

[SEAL]

_____, *Notary Public.*

WIESBADEN, 24 August 1948.

ANNEX 7

Willi Schäfer, Landsberg/Lech, W. C. P.

CERTIFIED TRUE COPY

AFFIDAVIT

Understanding the meaning of an affidavit and that false statements made in an affidavit are subject to punishment by the German and American authorities, I am making this present affidavit:

At mid-April of this year I called the fellow accused in the Malmedy case, Gustav Adolf Sprenger, to account because of his false statements raised against me, asking him why he had kept up these charges and did not revoke them.

Upon this Sprenger declared that the investigator (Mr. Thon) had made him clear that he could not revoke this single charge raised against himself and Sievers as well as against me, because subsequently nobody would believe him at all. In this case there might be a possibility that Sievers and I might get rid of the string round our necks, yet he himself would then be lost without any means of saving him. Yet provided he would uphold formally this charge (19-12-44 at Stoumont) his life would be saved because in the review instance the rank-and-file men (enlisted men) would be granted a full protection for obeying orders. Sievers and I would not be saved at all, so he might keep up this false statement out of a good conscience. Following this he had kept up the issue Stoumant against himself, Sievers, and me formally in order to save his life.

This statement is for submission to courts and authorities.

(S) WILLI SCHÄFER.

LANDSBERG/LECH, 15 July 1948.

I herewith certify that the above is the true signature of Willi Schäfer.

(S) LLOYD A. WILSON,
Capt., CMP, Prison Director.

Certified true copy made after the original.

[SEAL]

_____, Notary Public.

WIESBADEN, 24 August 1948.

ANNEX 7A

Gustav Adolf Sprenger, Landsberg/Lech WCP.

AFFIDAVIT

Understanding the meaning of an affidavit and that false statement made in an affidavit are subject to punishment by the German authorities as well as by U. S. Military Government I am stating upon oath as follows:

In the course of my hearings at Schwäbisch Hall in 1946 I was heard about crossroads Malmedy. Having told what I had sawn there they took me for a big liar. I was frequently asked whether I wouldn't tell the truth, else I would be hanged. As I ever stuck to my statements I was confronted with comrades of my company and with statements made by comrades of my company representing the contrary of my statement. Some time later I was struck on an hearing by U. S. soldiers, so under duress by Harry Thon and 1st Lt. Pearl I finally did not know myself what I said. In that state I was asked about people whose names I even do not know. Even accusing those people I was not familiar with they terminated my hearing.

Among those fully unknown people I accused an officer I pretended to have seen on 17-12-44 at crossroads. When Harry Thon and 1st Lt. Pearl asked me how he was called I was not able to give them a name because I did not know whether there was an officer with a fair jacket at all. Harry Thon and Capt. Schuhmacher told me they would show me that man wearing such a jacket. Some days later I was taken to another building, the hospital, and shown a man lying in bed and covered unto the chin. I was asked who this man was and said this was him who wore the jacket. I was so fed up with all those hearings executed with me. Therefore I said yes as I did not want to suffer it all again, though

I exactly knew I had never seen that man prior to this. Some days later pictures were shown to me. I was to recognize that man with the jacket which was just impossible for me because I did not think in the least of keeping that man I was shown in my memory. Capt. Schuhmacher subsequently showed me a man who had lost his left leg unto about 10 cm. below the knee. He asked me whether I knew that man and I denied. He told me he was the man wearing the fair jacket and he would show me that man again. When I was again taken to that building I had to stop there with a black cap being pushed over my head. Harry Thon who accompanied me left me for a short while. When he came back I was lead to a cell door and had to look through a small hole closed with glass, in the door. I saw two beds one above the other, on the upper bed a man was sitting who had lost his left leg unto his knee nearly. Then I knew the issue, answering this was the man wearing the fair jacket in order to get rid of it all, for I was fed up with it. Later on I was once more shown that man when he in the presence of Capt. Schuhmacher gave his rank and name as a major Josef Diefenthal. All what the investigators Harry Thon, 1st Lt. Pearl and Capt. Schuhmacher had got out of me was drafted into a statement by Capt. Schuhmacher and translated to me by a U. S. soldier (Müller). I never again saw my old statement made in the beginning. All I wanted to have changed in that statement made by Capt. Schuhmacher considering nearly nothing of it was true was mostly changed wholly, vaguely, or not at all. When I had completed by my own hand copying that statement drafted by Capt. Schuhmacher I was not allowed to read it any more. It took me 4 days to complete it.

Today I want to state as already done in France and here to Mr. Thon as well, that that statement is almost completely false. Defending me at Dachau trial I revoked it. The accusation raised therein against Major Diefenthal is not at all true. I passed that crossroads in the afternoon between 15 and 16 hours.

(S) GUSTAV ADOLF SPRENGER.

This affidavit is for submission to courts and other authorities.

LANDSBERG/LECH, 9-4-48.

(S) GUSTAV ADOLF SPRENGER.

ANNEX 8

[Translation]

AFFIDAVIT

I, the undersigned building engineer, Richard Scheler, born on 14-3-1910 at Gross-Lichterfelde, residing at Wehrda 118, near Marburg, am hereby stating additionally to my affidavit of 6-5-47 as follows:

In the morning of the second day of the Ardennes offensive, i. e. on 17-12-44 by 9 o'clock a. m., I was amazed on meeting the commanding officer of the 3rd tank-engineer company, the SS Sturmführer Sievers and his company master sgt. SS Oberscherführer Willi Schäfer, by the railroad bridge at Loosheim. Considering the tank group Peiper the 3rd tank-pioneer company was detached to was to be far in the enemy's hinterland, according to my knowledge and the tactical order, I called Sievers to account for what he had to do there without his company. Sievers reported me that his tank car he used together with his company master sgt., Schäfer, had suffered a break-down. I subsequently draw Sievers' attention to that a company leader in such a case had to move into another tank and to remain with his company. Time had grown later until Sievers and Schäfer finally continued their drive. Viewing that the advance roads were then highly choked already, both, as to what I esteem, could have reached their company but with an extremely high retardation.

DARMSTADT, 20th June 1947.

(S) R. SCHELER.

This is to authenticate the above-made signature of Richard Scheler, residing at Wehrda near Marburg/Lehn, was done in my presence.

The president of the Main-camp-court.

By proxy: Signature.

DARMSTADT, 20th June 1947.

Stamp: German interment camp Darmstadt, camp self-administration, main camp court.

ANNEX 9

AFFIRMATION INSTEAD OF AN OATH

I, the undersigned Gerhard Taut, born on 3 November 1921 at Klein-Heinsdorf, residing at (14a) Asperg/Württemberg, Königstrasse 50, SS unit in December 1944: 3rd Armored Pioneer Company I LSSAH, answer the following questions instead of an oath:

Q. (1) Did you take part in the Eifel offensive?—A. Yes.

Q. (2) What do you know about an order the shooting prisoners?—A. Such order to shooting prisoners did not exist nor has it been given.

Q. (3) When did you reach the crossroad south of Malmédy—by what platoon, and which irregularities did strike you?—A. The crossroad was reached by the 1st platoon at the midday hours of the 17 December 1944 about 1 to 2 o'clock. On the right-hand side at the nearby camp there were American dead soldiers lying.

Q. (4) What did you know about the following: When did the 2nd platoon of your company and when Obersturmführer Sievers with Oberscharführer Schäfer reach the crossroad?—A. The 2nd platoon may, according to the order of marching, after one hour behind us have passed the crossroad. Since Obersturmführer Sievers and Oberscharführer Schäfer sallied out with their vehicle earlier, same can have passed the crossroad at the evening hours.

Q. (5) When did you reach Stoumont?—A. In the morning of the 19 December 1944 about 8 to 9 o'clock early.

Q. (6) Which order given prior to the attack on Stoumont by Oberscharführer Schäfer in respect to prisoners of war?—A. Prisoners of war are to be brought to the Main First Aid Post (Hauptverbandsplatz), since there was the first place of assembly.

Q. (7) What do you know about the treatment of prisoners who were brought in by our company at Stoumont?—A. The prisoners brought in by the company were treated decently and correctly.

Q. (8) From when to when were you at La Gleize?—A. At the night from 21 to 22 December 1944 La Gleize was reached from Stoumont. La Gleize was left on 22 December 1944 early about 9 to 10 o'clock in direction to Bourgemont.

Q. (9) Did you learn anything at La Gleize concerning shooting of prisoners?—A. At La Gleize I did not learn of any shooting of prisoners.

Q. (10) From when to when were you entrenched in front of Bourgemont?—A. From 22-12-44 forenoon about 9 to 10 o'clock up to the night of the 23-12-1944 to 24-12-44 when the company retired with the fighting troops from the enemy.

Q. (11) Were you at Stoumont, La Gleize, and Bourgemont (one kilometer north of La Gleize) together with Sievers and Schäfer, temporarily or all the time?—In the affirmative case—at what time and where?—A. At Stoumont from 19-12-44 till retiring to La Gleize during the night of 21-12 to 22-12-1944. When defending the school. At La Gleize during the repose of 21-12 to 22-12-44 spent the night together at the village house. In front of Bourgemont from 22-12 up to the breaking out of the encirclement.

Q. (12) During your staying together with Sievers and Schäfer, did you make any perceptions concerning shooting of prisoners, or corresponding orders?—A. I never could make any perceptions concerning shooting of prisoners or corresponding orders during my staying together with Sievers and Schäfer.

(13) Observations: Our talks as pioneer company with the armoured group was far too serious and difficult to us then as to allow us to devote ourselves to such actions.

I affirm instead of an oath to have answered all questions to the best of my knowledge and conscience.

The significance of an affirmation instead of an oath is known to me as well as the consequence of a false affirmation instead of an oath.

Asperg, the 19th of October 1947.

(Signed) GERHARD TAUT.

ANNEX 10

CERTIFIED TRUE COPY

AFFIDAVIT

I, Paul Beer, born on 1-4-1921 at Rheinhausen, a resident thereof, Mühlenweg 20, am hereby representing upon oath:

During the Eifel offensive from 16 December unto being wounded on 21-12-44 I was a member to the 3rd SS armored engineers batl. I LSSAH. My company

leader was SS Obersturmführer Sievers. I was during that action in that company platoon. My rank was of a Unterscharführer (sgt.). As a member of the company platoon I was in the SPW (armored car) of my company leader Franz Sievers. During that offensive we were assigned as an engineers company to the tank rgt. 1 which shows the platoons were divided into armored groups. Thus every platoon leader was to carry out the duties assigned to him personally. The company leader, Sievers, considering the platoons were separated for some km. in the armored group, had no survey of the company, the more as our SPW fell west of Schleiden as early as 16-12-44. Alternating our wireless set we could continue our ride but on 17-12-44. The road was so choked up that we went on but rather slowly, furthermore we had to interrupt it some times for dive bombers. By 18 hours we reached crossroads Malmédy. Fighting was supposed to have taken place there, for short of the crossroads a house was still burning. We did not see any dead persons for darkness had already set in about that time. Short of Engelsdorf and Stavelot we met some tanks of the 2nd company, reaching Stavelot, i. e., 2 km. before it the whole of the armored group. It was but since then that connection was reestablished with the divided company.

In the night of 19-19/12/44 we continued going on in the direction of Stoumont, reaching Stoumont on 19-12-44 in the morning, when it was already taken by other units of our group. The first duty was to make a search for enemies at Stoumont and to guard it, against north with one platoon. The results were 50-60 P. O. W.'s currently sent back in the direction of La Gleize. This action finished P. O. W.'s were captured but in the night of 20/21-12-44, immediately marched back by order of company leader Sievers, for Stoumont was from 19-12-44 under mortar and artillery fire, which caused my wounding on 21-12-44. I am furthermore declaring I never got an order by company leader Sievers nor learnt of that P. O. W.'s were to be shot. Nor do I know anything about such events in the company. I have known my then company leader for a calm and conscientious man never learning of any tort done by him.

All these statements have been made by me after 34 months following the events to the best of my knowledge and conscience. I am understanding the meaning of an affidavit.

RHEINHAUSEN, 15-8-47.

(S) PAUL BEER.

This is to certify the above signature made by his own hand.

[SEAL]

For the Stadtdirektor (mayor): signature.

RHEINHAUSEN, 16-8-47.

Certified true copy made after the original.

[SEAL]

_____, Notary Public.

WIESBADEN, 24 August 1948.

DACHAU, 1 November 1947.

Tratt, Oskar, born on 23-12-26. 31 g 2 728 413.

AFFIDAVIT

Concerning the incidents in the 3rd comp./I tank eng. battl. within the cadre of the fighting group of the 1 SS tank division, during the courses of the Ardennes offensive.

Fully understanding the meaning of an affidavit intended for submission to authorities and that false statements in such are subject to punishment I am stating upon oath:

Region where to prepare for the attack in the wood at the Roman road.— Arriving from the old station at Satzvey we reached with our company the wood at the Roman road in the night of 14/15-12-44 camping there. In the night of 15/16-12-44 our company received the order for attack. Following this order our company became divided up. The 1st platoon with the 1st group where I was a machine gunner and the 2nd platoon were assigned to combat group Peiper whereas both the other platoons received special orders within the cadre of the division unknown to me. We were ourselves going on within the cadre of the 1st mixed battl. at the beginning of the Ardennes offensive. Prior to being filed into the marching column our platoon which hitherto had stayed at rest in the preparatory region in the Roman wood near Blankenheim received order to get

on the SPW. Our group leader after coming back from a short conference with the platoon commander after his return from a conference held with the company leader, SS. Obersturmführer Sievers, forwarded only that order to us and watched it. The orders concerning the tactical tasks of our company received on the conference with the company or platoon leader were not made known to us. SS. Obersturmführer Sievers neither in the Roman wood nor at a later date during the Ardennes offensive carried through a company meeting, nor harangued the company at any other occasion in that time. SS Obersturmführer Sievers never gave any order to shoot P. O. W.'s nor to treat them contrary to the convention of Geneva, nor did he make any illusion to preceding to such a treatment.

Filling into the marching column of the combat group.—At the beginning of the march Obersturmführer Sievers met himself at the head of both platoons, filing thus into the combat group. Following a short stay behind Blankenheim to be referred as I heard to a bridge blast before the Losheim trench, the SPW of SS Obersturmführer Sievers shortly after the march was continued fell out. SS Obersturmführer Sievers remained back with his team for repairing the car. SS Untersturmführer Seitz, August, leader of the 1st platoon, took from that date command of the company as its senior officer.

Incidents in the course of the Ardennes offensive.—On 16-12-44 in the evening the 1st platoon received orders to take up mines between Losheim and Lanzerath to assure the steadiness of the march, whereas the 2nd platoon stayed in the file. Our order executed and the combat group continuing its march we closed up and filed into the column behind Büllingen and before the second platoon. There were 2 or 3 tank companies between the first and second platoon. Passing crossroads south of Malmédy on 17-12-44 between 13-14 hours there were dead U. S. soldiers lying on a meadow on the right in the direction of our march. Our platoon passed the crossroads without any stay, continuing its march in the direction of Stavelot by Engelsdorf. On 18-12-44 in the morning SS Obersturmführer Sievers joined the company with his team.

Short of Stavelot, we filed out in the direction of Wanne within the cadre of the 7th tank company for a special order. These orders were out off on our march to Wanne and we returned. Off Stavelot we were stopped by a dive bomber attack of the enemy's, taking cover for some hours. Late in the evening of 18-12-44 our company passed Stavelot without any stay for the march road of the combat group reaching the entry of Stoumont by dawn. On 19-12-44 by 9 hours. Stoumont was attacked by the 2nd tank company and parts of the 3rd SPW battl. and taken. By 10 o'clock a. m. our company was ordered for searching Stoumont of P. O. W.'s and, that order executed, to guard against north. Fighting about Stoumont finished the captured U. S. soldiers by order of the SS Obersturmführer were marched back to the castle between Stoumont and La Gleize. I was myself capturing 16 U. S. soldiers at Stoumont, among them an officer. At rades who took the P. O. W.'s back to the collecting point. Passing there that same day I could see the P. O. W.'s at the collecting point. At Stoumont I was on 20-12-44 assigned to the company group. In the night of 21/22-12-44 we received order to retire back to La Gleize. After a short rest at La Gleize the 1st and 2nd platoon went to Bourgemont for protecting La Gleize, commanded by SS Obersturmführer Sievers. The leaders of both the 1st and 2nd platoon were killed in the night of 20/21-12-44. As I constantly kept close to SS Obersturmführer on his c. p. for my being a messenger of the company group, even during fighting, I can well depose that Obersturmführer Sievers by no means made himself guilty of any act against international law. Besides a short hour on 23-12-44 in the afternoon when SS Obersturmführer Sievers together with SS Rttf. Schwarz was ordered to the commanding officer of the combat group: SS Obersturmbannführer Peiper, Sievers ever kept the c. p. at Bourgemont. Nor did I ever learn or see any man of the company shooting P. O. W.'s.

I am making this statement understanding the importance of my testimony concerning the incidents in the 3rd tank eng. comp. in the course of the Ardennes offensive; it is borne by my will to help the truth going ahead.

(S) OSKAR TRATT.

Address: Würzburg-Heidingsfeld, Frau Hollo Weg No. 59.

Certified true copy made after the original.

[SEAL]

Notary Public.

Wiesbaden, 24 August 1948.

ANNEX 12

CERTIFIED TRUE COPY

Rudolf Kämpfe 31 g 5 307 009, CIE 29/Hospital, Camp Dachau

STATEMENT

As a former platoon chief in the 3rd tank eng. company, of the 1st SS tank division I am making this affidavit:

In the night of 15/16-12-44 I was ordered to the SPW of my company leader SS Obersturmführer Sievers for receiving of orders, to the Blankenheimer forest. This conference united all platoon leaders of the company: SS Untersturmführer Seitz, SS Oberscharführer Trommler, SS Unterscharführer Beutner and myself.

In the beginning of the conference the order of attack regarding the offensive was read to us covering about these items:

- I. Situation of the enemy: Strength, ammunition, and units.
- II. Our own situation: Divisions to carry on the attack.
- III. Description of the ground and the roads where the attack was to be carried ahead.
- IV. Beginning of the attack.
- V. Intended course of the attack: Offensive launched by the Volksgrenadier division, followed by the tank units. Breakthrough. Persecution of the beaten enemy, no regard of contact with the infantry units. Piercing through to the Meuse. Cleaning the villages and woods, capturing P. O. W.'s and things was to be left to the following infantry.
- VI. Orders to the single units.
- VII. Subordination: 3rd tank eng. company was put under the orders of tank regt. 1 during the action.
- VIII. Organisation of the march.
- IX. Ways to march: Red, tanks; Blue, cars.
- X. Objects of attack.

Following this general instruction every platoon leader was instructed regarding his own duties, i. e., every platoon leader was informed about to which tank bttn. or tank company resp. he was subordinated regarding engineer duties and about the place where he had to file in with his own platoon into the marching column.

An order to shoot P. O. W.'s and civilians was never issued, nor by any illusions and ambiguous utterances. There was no haranguing the company neither by SS Obersturmführer Sievers nor by one of his platoon leaders. On 17-12-44 I saw SS Obersturmführer Sievers pass the town of Losheim by 10 o'clock a. m., in his SPW.

I am voluntarily making these statements, declaring upon oath that they are true.

(S) RUDOLF KÄMPFE.

I herewith certify the above signature of Rudolf Kämpfe.

(S) Signature, deputy camp commander.

HEILBRONN, 21 July 1947.

Certified true copy made after the original.

WIESBADEN, 24 August 1948.

Deputy Notary Public.

ANNEX 13

CERTIFIED TRUE COPY

ST. GEORGEN I. ATTERGAU, 22-1-48.

The undersigned Josef Pichler, born on 31-10-21 at St. Georgen, glassmaker, is deposing on oath as follows:

During the Eiffel offensive in December 1944, I was a motor-bicycle messenger of the company group, 3rd SS tank eng. comp. LAH. In the beginning of the offensive on 16-12-44, I was a messenger kept behind the chief car. Near Schleiden the Chief SPW fell out for a damage in the steering and I got orders to get back another SPW from the before going 1st and 2nd platoons fled into the combat group for eng. tasks, furthermore to stay with the leader of the 1st platoon. At the same time I forwarded Ustuf. Seitz, the leader of the 1st platoon,

order to command the company unto return of the substitute chief car. I ordered a SPW of the group Bode—driver Meyer—back remaining then with the head. On 17-12-44 between Büllingen and Thirmonth because of the bad way conditions I was unable to go on, staying there together with the damaged SPW of Geilhofer which came up with me. In the afternoon by 17 hrs. the chief car reached us, I loaded the bicycle on the SPW of Geilhofer, continuing my march in the chief car. Geilhofer followed the chief SPW unto the solid road between Weimes and crossroads Weimes-Malmedy-Engelsdorf. At that time the chief SPW's team consisted of the following persons: Obersturmführer Sievers, commanding officer of the company, Oscha Schäfer, company staff sgt., Uscha. Beer, sgt. for special design, Rottf. Schwarz messenger of the company leader, Rottf. Pichler, messenger of the staff sgt., Sturmm, Steets, technical designer, Rottf. Kohlenberger, signal group leader, Sturmm. Eberding, signal man and driver Meyer. We passed the crossroads quickly and noticed, while turning to the left out of the direction of Weimes, on the right side a still burning house ruin. I could not notice any P. O. W.'s. Darkness has already set in and about 19 hours. Same 100 m. south of the crossroad I saw, when passing by, some abandoned U. S. cars. We passed Engelsdorf in the direction of Stavelot, reaching the company by midnight of 17-18/12, short of Stavelot. The 18/12 was passed with trying a turning of the enemy's flank the direction of which I cannot remember today.

Having returned to the point of our departure we went on, passed Stavelot late in the evening, reaching Stoutmont on 19-12-44 early in the morning. By 10 o'clock the company was ordered to make a search of the location, taken in the meantime, for P. O. W.'s. By order of Sievers Schäfer ordered the group leaders to march all P. O. W.'s back to the first-aid station, castle of Stoutmont. During the search of the village, Stoutmont was under constant heavy fire by the enemy. I myself got in connection with 6 P. O. W.'s that day. Together with Schäfer I was jointly with him staying in a grocer's door we had found a shelter against the enemy's fire, when 2 American soldiers brought a wounded German. The wounded got a bandage by SDG Rose and was mounted on a jeep. Schäfer ordered a man passing by to march the P. O. W.'s away. Immediately a U. S. lieutenant appeared who was jointly with the wounded German taken by the jeep to the first-aid station. A short time later there appeared 2 other Americans carrying a third wounded American on a stretcher. Schäfer asked Sievers whether to wait for the return of that jeep regarding those 3 P. O. W.'s. Sievers ordered those 3 P. O. W.'s to be marched back to the first-aid station after its return. Schäfer asked the leader of the 2nd platoon: Uscha. (sgt.) Beutner, who was near, to execute this. Schäfer and I went for finding a c.p. There I observed Sievers going on in the direction of the church together with an officer. The c. p. was established at a butcher's, later on removed to a children's home. On 19-12-44 in the afternoon, a meeting took place at the children's home with Peiper and Pötschke being present. That meeting lasted for about half an hour, then Peiper and Pötschke went away. In the afternoon Sievers did not leave the children's home. There was hard fighting for that children's home unto our retiring on 21-12-44 in the evening hours, we having been forced out of the house yet again taking it and capturing about 40 P. O. W.'s among them 3 officers who were marched back, on 20-12-44. On 21-12 in the evening we retired from Stoutmont, the company group keeping at the end of the company. We reached La Gleize by midnight, billeting in a peasant's house. On 22-12-44 in the morning by 8 a. m. the rest of the company took up a position before a group of houses in the road to Bourgement about 1-2 km. west of La Gleize. The c. p. was erected in the northern one of these houses. Sievers left that position only on 23/12 for a short while together with his messenger, Schwarz, in order to get at Peiper's c. p. the orders concerning the retiring moves. Schäfer and I did not leave that position before that retiring move. On 23-12-44 we retired from that position, left the encirclement of La Gleize, returning behind the German lines. In and about La Gleize I did not see any P. O. W.'s. In my capacity of Schäfer's personal messenger I accompanied him constantly day and night from the afternoon of 17-12-44 unto reaching the German lines. The same applies, with the above-mentioned exceptions to company chief Sievers. During that time I did not observe anything concerning shooting or ill-treatment of P. O. W.'s or respective orders, open or made in the form of allisions, by Sievers, Schäfer, nor any other person. Concluding this my statement I want to have you know one thing, i. e., every soldier was inculcated not to underestimate the enemy and to treat him as a soldier as well.

I am deposing upon oath that these statements are the mere truth, made without any urging or promises.

(S) JOSEF PICHLER.

Town office of the community of St. Georgen i. Attergau., District of Vöcklabruck, O. H.

This is to certify that above signature of Josef Pichler.

[SEAL]

The borgomaster (S) Signature.

Certified true copy made after the original.

[SEAL]

_____, Notary Public.

WIESBADEN, 24 August 1948.

ANNEX 14.

CERTIFIED TRUE COPY

Karl Heinz Rose.

AFFIDAVIT

I, Karl Heinz Rose, born on 17-1-1920, at Bremen, make this affidavit:

I partook in the Eiffel offensive of December 1944 as a Unterscharführer (sgt.) and first-aid man in the 3rd tank eng. comp. I SS tank division. My company leader was Obersturmführer Franz Sievers.

In the night of 13/14-12-44 the company removed from Satzvey to the Blankenheim Wood. I did not know of an imminent offensive that time. I learnt this but in the evening hours of 15-12-1944. The company became subdued to the tank rgt. I for eng. tasks during the action. In the morning of 16-12-44 I was ordered by my company leader to drive with the 2nd platoon, 3rd tank eng. company. I went with the SPW of Sturmmann Sprenger.

Regarding the action my company leader gave me so far information that the 3rd tank eng. company would accompany the combat group for eng. tasks, divides up in its platoons. There was a German combat group in U. S. uniforms and cars going ahead to throw disorder to the enemys' ranks.

Late in the afternoon we passed Schleiden. After Schleiden I saw the SPW of the company leader standing with its team on the right side of the road. The SPW was damaged. It was only in the morning of 18-12-44 that I saw the company leader and his team and SPW 2 km. short of Stavelot.

We marched then by Losheim, Lanzerath, Buchholz, and in the morning dawn through Honsfeld, on 17-12-44. After Honsfeld the second platoon 3rd tank eng. comp. stayed for some time. I heard fire from the direction of Honsfeld. When daylight set in, the SPW's went to cover against airplanes. I never watched in or out Honsfeld P. O. W.'s being shot or even captured.

The 1st platoon who was likewise in cover against the bombers, preceded the 2nd platoon in starting about 1 hour before. By noon the 2nd platoon reached Buellingen. We stopped at the entry. The 2nd group, 2nd platoon, captured 20-25 P. O. W.'s sent back to Honsfeld.

At the west exit of Buellingen the SPW's of the 2nd platoon filled up gasoline at a gasoline station, had artillery fire and went on in direction of Thirimont. By 16 hours on 17-12-44 the 2nd platoon passed by the crossroads Engelsdorf-Malmedy. Having turned off in the direction of Engelsdorf I saw right of the road about 50 U. S. soldiers dead on the ground, closed up. The SPW went on without staying or shooting unto short of Engelsdorf.

When darkness set in the 2nd platoon passed Engelsdorf and reached at 2 km. short of Stavelot in the night of 17-12-44. On 18-12-44 I saw there the company leader with his SPW team following the panne near Schleiden.

Short before darkness set in the company, commanded by its company leader, passed Stavelot on 18-12-44, passing La Gleize in the night and staying the other morning, on 19-12-44, on the road of Stoumont. Stoumont was taken by the tanks and parts of the 3rd SPW-btli.

By 10 o'clock the 1st and 2nd platoon, 3rd tank eng. com., entered Stoumont with the order to make a search of the town for P. O. W.'s and to guard against north. I kept close to the company leader who talked to the tank ordnanceman, Mertens. Shortly afterward I saw the company leader leave together with Hauptsturmführer Diefenthal in the direction of the church. The SPW took cover. The company messenger established a c. p. in a butcher's.

The about 50 P. O. W.'s captured during the search of the town were by order of the company leader marched back in the direction of La Gleize, immediately. I cannot remember details of the order and the marching back of the P. O. W.'s.

On 19-12-44 in the afternoon no P. O. W.'s were made at Stoumont. Stoumont already since 19-12-44 in the morning lay under heavy mortar fire. The company leader soon arrived at the new established c. p. Every platoon was ordered to send a messenger to the c. p. This was Rttf. Hammerer of the 2nd platoon, who apart from bringing messengers to the 2nd platoon, always stayed with the c. p. On 19-12-44 in the afternoon the c. p. was removed to the castle (children's home), in the direction of the station. There Col. Peiper with Sturmabführer Poerschke came for a meeting on 19-12-44 in the afternoon. After the conference Col. Peiper left while the company leader stayed at the c. p.

During the time the company was in action the SPW of the 3rd tank eng. company were in cover between Stoumont and La Gleize. The drivers were ordered to keep to their cars. The 2nd platoon took position in the direction of the station on 19-12-44 in the afternoon.

On 20-12-44 the Americans attacked the position of the 3rd tank eng. company before the castle (children's home). The 2nd platoon, after his leader had fallen out, retired into the castle in the afternoon of 20-12-44. By the evening the castle was given up yet retaken in the night of 20/21-12-44.

On 21-12-44 was the hardest fighting day. The company defended the castle where there was fighting about every room, temporarily keeping but the kitchen as the only room. In retaking the castle in the night of 20/21-12-44 40 U. S. soldiers, among them 3 officers were captured. The P. O. W.'s were by order of the company leader at once marched back to La Gleize. Unterscharführer (sgt.) Beutner was killed on 20-12-44 in the afternoon as the leader of the 2nd platoon, the commanding officer of the 1st platoon: Untersturmführer August Seitz, was killed in the night of 20/21-12-44. On 21-12-44 in the evening the company retired from Stoumont to La Gleize. There the company and the company group slept the rest of the night in a house. From the afternoon unto the retiring from Stoumont to La Gleize Obersturmführer Sievers, Staff Sgt. Schäfer, as well as Rttf. Hammerer were taking part in the fighting in the castle. In retiring the company group was the last part of the company.

Neither on the way from Stoumont to La Gleize nor at La Gleize itself did I see any P. O. W.'s or shot U. S. soldiers. On 22-12-44 in the morning the company took over a guarding position in the direction of Bourgemont, staying there unto breaking through the encirclement in the night of 23/24-12-44.

At noon of 22-12-44 the messenger, Rttf. Hammerer, was wounded. On 23-12-44 in the afternoon the company leader left for a short time together with Rttf. Schwarz for the receiving orders with the commander in La Gleize.

With the 2nd platoon and on Strm. Sprenger's car I passed the towns of Honsfeld, Buellingen, Thirimont, Crossroads Malmédy, Engelsdorf, Stavelot, La Gleize, and Stoumont, yet never watched any man of the 2nd platoon shooting P. O. W.'s. I was myself from 19-12-44 unto breaking out of the encirclement in the night of 23-12-44 to 24-12-44 together with the company leader, staff sgt., the messengers and other men of the company. I never learnt or heard of any order by my company leader, both the platoon leaders nor of any non-commissioner officer to shoot P. O. W.'s. Nor were there any ambiguous orders or instructions issued in my presence which might infringe with the convention of Geneva. I learnt the company leader, Obersturmführer Sievers, for a honest straight soldier who was always working for the sake of his company and never suffered any wrong.

I am making this affidavit voluntarily and assure this upon my oath.

(S) KARL HEINZ ROSE.

BREMEN, 3 November 1947.

Deeds Register No. 414/1947.

This is to certify the above signature of the painter, Karl Heinz Rose, a resident of Bremen-Oberneuland. Im Holze No. 74, identity established by his identity card No. AG 168 342, issued by the Free Hansestand of Bremen, office at Oberneuland-Rockwinkel.

[SEAL]

(S) DR. D'ORLEIRE-OLTMANN,
Notary Public.

BREMEN-VEGSESACK, 8 November 1947.

Certified true copy made after the original shown to me.

[SEAL]

(S) DR. D'ORLEIRE-OLTMANN,
Notary Public.

[SEAL]

BREMEN-VEGSESACK, 8 November 1947.

Certified true copy made after the original.

—————, Notary Public.

WIESBADEN, 24 August 1948.

ANNEX 15

CERTIFIED TRUE COPY

AFFIDAVIT

I, the undersigned Hans Günther Eberding, mining assistant, born on 26-6-1924 at Brühl near Cologne, a resident of Brühl, Wilhelmstrasse 10, am hereby making this affidavit:

For the time of the Ardennes offensive our radio operator group, Rttf. Kohlenberger as a group leader and I as a radio operator, together with a radio SPW were commanded from the staff company of the SS tank eng. battl. I "LSSAH" to the 3rd company. SS Obersturmführer Sievers was the commanding officer of the 3rd company. Because of lack of cars the radio car contained, beyond radio operators and commanding officer, the whole company group, incl. commanding officer Obersturmführer Sievers; 2 radio operators, Rttf. Kohlenberger and Strm. Eberding, Staff Sgt. Oscha Schäfer; messengers Uscha. Beer, Rttf. Schwarz, Strm. Steets, and driver. Some weeks prior to the offensive we stayed in the region of Satzvey to wait. Only when going for a preparatory position into a wood near Engelsgau in the night of 15/16-12-44 did we learn of the imminent offensive and that special eng. tasks were assigned to our company within the cadre of the tank rgt. I. Our platoons were divided up to several units, so our company did no longer exist as a whole. The platoon leaders were to carry out any orders by their own. There was but loose connection with the commanding officer, totally interrupted when our SPW fell out for motor damage in the course of the 16-12-44. Before another car was at hand and our radio set reinstalled had the night passed away, when we stayed in a lonely house left of the road Stadtkyll-Losheim. On 17/12 in the morning we went on to take up connection with our unit. Because of choked roads and air raids we went on but very slowly. On 17-12-44 in the evening hours we passed by a crossroad near Malmedy where we saw still traces of fighting. No details were recognizable for the darkness. In the night of 17/18-12-44 we closed up to our combat group, reaching Stavelot in the evening hours. The next day, on 19/12, we entered Stoumont, already taken. There several P. O. W.'s were captured and sent back at once. Because of the following hard fighting all SPW, but the radio SPW, were taken back to La Gleize. The combat group followed in the night of 21/22-12-44, taking up a position back at La Gleize. When it became obvious that our undertaking was of no value we retired from the encirclement at La Gleize in the night 23/24-12-44 at 2 a. m. Our own wounded as well as those of the enemy remained back at La Gleize church.

During all over the combat I never learnt of any case of P. O. W.'s shot by any man of the company. Nor do I know of any order by the company leader, Sievers, to shoot P. O. W.'s, nor were there indeed any such orders which might have remained unknown to me as a radioman.

Sievers was always known for a good superior and straight man. He was a soldier, and shooting P. O. W.'s would have been rejected by him as an act which was not a soldier's.

I am representing these statements upon oath. I know false statements made in an affidavit are subject to severe punishment. Brühl, 27 November 1947.

(S) HANS GÜNTHER EBERDING.

This is to certify the above signature.

[Seal and fee stamp]

For the registrar's: signature.

BRÜHL, DISTRICT OF COLOGNE, 28 November 1947.

Certified true copy made after the original.

WIESBADEN, 24 August 1948.

Mr. CHAMBERS. Who were some of these other German attorneys?

Mr. FINUCANE. The two most prominent ones are von Schlabrendorf and Rudolf Aschenauer. Von Schlabrendorf, incidentally, is an anti-Nazi. Aschenauer represents a number of defendants. Another one is Dr. Froeschman, who has prepared an analysis of this case which I believe the committee probably has. He seems to be working with

Leer. I think we have had a letter from Leer.

Here is a communication from a group of eight German lawyers, statement of German counsel for the defense of the war crimes trials at Dachau. This was sent to us by Bishop Wurm, not directly from them.

Senator BALDWIN. Have you a letter from Bishop Wurm?

Mr. FINUCANE. I have a letter from Bishop Wurm and a letter from Bishop Neuhausler.

Senator BALDWIN. May we see them?

Mr. FINUCANE. Yes, sir. I could save your time by introducing it. He is the Roman Catholic Bishop of Munich.

Senator BALDWIN. Do you want to offer this for the record?

Mr. FINUCANE. Yes, I would like to. There is a closing paragraph there. I think I indicated that I would like to read it, in which he says: "We make the urgent request to give the defendants the right of appeal."

Senator BALDWIN. All right. I do not think you need to read it. It will go in the record.

(Letters from Bishop Wurm and Bishop Neuhausler were made a part of the record at this point.)

STUTTGART-O., March 2, 1949.

To the National Council for Prevention of War, Washington 6, D. C.

DEAR MR. FINUCANE: Many thanks for your letter of February 24. The clipping from the New York Herald Tribune concerning the Gieseking affair has greatly interested me. I was very pleased to see how firmly and frankly citizens of the United States uttered their opinion on that matter.

Your information that the executions of another 14 Germans in Landsberg are still in question has surprised me because, as far as I know, the number of those who are possibly still to be executed, is larger. May I for your information refer to the enclosed memorandum of my referee which bases on intelligence transmitted to us.

As I am writing to you I should like to add my heartfelt thanks for all your efforts for right and justice. I feel your intervention in the discussion of the problem of the war crimes trials was a remarkable event.

With best wishes,

I am yours sincerely,

D. WURM, *Landesbischof*.

LETTER FROM BISHOP NEUHAEUSLER

[Translation]

JOHANN NEUHAEUSLER
WEIHBISCHOF

Muenchen 2, dem 14.1.1949.
Erzbischoeft. Ordinariat.
Promenadeplatz 2
Telefon 2653

NATIONAL COUNCIL FOR PREVENTION OF WAR.
1013 18th Street, NW., Washington 6, D. C.

DEAR SIR: Please accept my thanks for your kindness in sending me your press release about your application to the Justice Committee of the Senate. I am enclosing a copy of the "Muenchener Allgemeinen" in which your announcement was published. I think this is well fitted to show our people how Americans frankly and sincerely expose mistakes in their own ranks and even advocate their punishment. Unconditional truth and justice are really a means for prevention of war and for that I am really grateful to you.

Perhaps it is of interest to you to receive five documents more (enclosed):

- (1) A description of the Malmedy trial.
- (2) A copy of the petition made by the Catholic Bishops of Germany as a unit to General Clay.
- (3) Copy of a statement about the happenings in Oberursel sent to me which should be considered seriously.

(4) Copy of my correspondence with Gen. Clay about the removal of the tombstones from the graves of those executed at Landsberg.

(5) My opinion.

With the assurance of my highest esteem and sincere wishes for your valuable work in the service of better understanding of the nations of the world.

Respectfully,

(S) J. NEUHAEUSLER.

WASHINGTON, D. C., July 13, 1949.

I, Oskar W. Egger, notary public, in and for the District of Columbia, hereby certify that this is a true and correct transaction of the original letter.

[SEAL]

OSKAR W. EGGER,
Notary Public.

My commission expires September 14, 1953.

THE MALMEDY TRIAL

During the offensive in the Ardennes in December 1944 a special operation of the Panzer fighting group of the S. S. took place at the crossroads in the area of Malmedy-Stavelot-La Gleize where American soldiers of a scouting battery were killed or taken prisoners.

This purely military event gave rise to certain statements broadcast by radio, the truth of which could never be ascertained in detail. One of the prisoners taken by this Panzer group was Major McCown, IA, who later escaped.

In a later official report of the Third American Army under General Patton about the fight in the Ardennes a description of the event at the crossroads south of Malmedy is mentioned. The events in this report are neither judged as offenses against the laws of war nor is even the suspicion of such an offense intimated. But on December 20, 1944, the radio station in Calais managed, by the propaganda forces of the United States Army, announced that near Malmedy American prisoners were shot by the Germans. Details about localities were not mentioned in the announcement.

The colonel of the Armed S. S., Sepp Dietrich of the First Division LAH, ordered an investigation, which showed that no prisoners were shot to death. Until the capitulation of the German Army no international intervention had taken place conforming to the announcement of the radio station Calais, either by military or political action, or by military commanding authorities or by the American Government or through the Red Cross.

After the capitulation, in the prison camp of the allied forces, the members of military groups were selected who had passed the crossroads during the offensive in the Ardennes South of Malmedy. These men were transferred to the War Crimes Commission in Schwaebisch Hall. The Commission consisted of Lt. Col. Ellis as chairman, his coworkers, Capt. Shoemaker, First Lt. Perl, Official Thon (German Emigrant), Official Ellowitz, and Interpreter Kirschbaum (Emigrant from Vienna). Until the end of 1945 about 1100 members of the unit LAH were presented to this War Crimes Commission; particularly the youngest people were selected for a special investigation.

In the middle of April 1946 about 300 prisoners from Schwaebisch Hall went to the fifth trial at Dachau, 74 of them as defendants. Among the accused and later condemned were 32 soldiers who were on the official day of the offense in the Ardennes. Twenty-three of them were under twenty years of age, one of these was 16 and another 17.

[The methods of the investigation of the War Crimes Commission Ehllis are here explained in detail. The whole investigation lasted ten months. The aim of the commission was, according to this report, to show proof that during the offensive in the Ardennes about 900 prisoners and 150 civilians were killed.—
TRANSLATOR'S NOTE.]

The official defense attorney took an appeal, after conviction, to the Supreme Court of the United States. Through the initiative of a member of the Supreme Court, Robert Jackson, this was denied by a 4-4 vote.

General Clay ordered on March 24, 1948 the reduction of four death sentences to acquittal (with release); eight death sentences to life imprisonment; two death sentences to imprisonment for 25 years.

Eight convictions for life imprisonment were changed to acquittal (with release), two convictions for life imprisonment to 20 years of imprisonment. Twelve death sentences were sustained.

The change of death sentences to acquittals can only mean that the review has found convincing proof in the objections of the defense against the judgment.

To the petition of the conference of the bishops at Fulda for the establishing of an appeal authority for the defendants in the Nuremberg and Dachau trials and for the reestablishment of the integrity of American justice, General Clay has answered that he is not able to do so, since the United States Supreme Court has not any authority in such cases. He also does not believe that a procedure which has found international approval could be subjected to a judicial review. Clay stated that the war crime tribunals were established in the interest of Supreme Justice and in the hope of contributing to international peace and of serving as a deterrent to future aggressors.

WASHINGTON, D. C., *July 13, 1949.*

I, Oskar W. Egger, notary public in and for the District of Columbia, hereby certify that this is a true and correct translation of the original.

[SEAL]

OSKAR W. EGGER, *Notary Public.*

(Documents 2, 3, 4, and 5 omitted from the record as having no connection with the Malmedy cases.)

MEMORANDUM CONCERNING THE WAR CRIMES TRIALS BY OBERKIRCHENRAT
DR. WEEBER, STUTTGART*1. The continuation of the war in the courtrooms*

Since Germany's surrender Germans are being tried for war crimes in almost all the allied countries. During the past years thousands, perhaps even ten thousands of Germans have been held in prisons and camps or extradited by military governments to the surrounding countries. War crimes trials are pending in Germany, France, Belgium, Luxemburg, Holland, Yugoslavia, Greece, Poland, Russia, and Czechoslovakia. It is especially distressing for us that the British, for instance, are still extraditing Germans to Poland and that a law was passed in France in September 1948 which, in contradiction to generally recognized legal principles, reverses the burden of proof and forces the prisoners to prove that they are not war criminals. In all these countries the German prisoners have no diplomatic protection whatever; although military government in Germany exercises the German sovereign rights on trust it makes no use of these rights when it is a question of protecting Germans in a foreign country. And so these German prisoners in foreign countries, who are almost entirely defenseless, are exposed not only to an unusually severe administration of justice, but also to the hatred resulting from the war, to passionate nationalism, and unfortunately also often to falsehood. Many court proceedings in foreign countries have been delayed for years. There is no end in sight to this protracted state of war which has been transferred from the battlefield to the courtroom. Peace will never result from these methods. On the contrary it is to be feared that hatred, passion, strife, and misery will arise anew from such grievous conditions.

2. War crimes trials in the American zone in Germany

In Nürnberg the sentence against the members of the Foreign Office in the Wilhelmstrasse is still pending. It is to be pronounced in the near future. This is to be the last trial for war crimes before American military courts in Germany. This fact, however, in no way solves the problem which these war crimes trials have raised in international law and in politics.

In the war criminal prison No. 1 in Landsberg there are at present about 770 prisoners whose sentences have for the most part been confirmed by General Clay. Only a small number is still waiting for the confirmation of their sentences. Amongst the latter prisoners are 14 men who were sentenced to death in the Einsatz gruppen (task group) trial and 3 death sentences from the Pohl trial both of which took place in Nürnberg. None of these sentences has been confirmed. Furthermore, about 22 men are in Landsberg who were sentenced to death in trials before the military court in Dachau; 12 of these death sentences were pronounced in the Malmédy trial. This trial and the preliminary examinations conducted for it have, more than others, given rise to the strongest protests: the American counsel for the defense, Mr. Willis N. Everett, Jr., 402 Conally Building, Atlanta, Ga., has protested particularly against this trial. All the other prisoners in Landsberg have been sentenced to imprisonment for life or to other terms. Even though we share with many others the opinion that the offenses committed during the national socialist regime against members of the German and of foreign nations on German or on foreign soil must not remain unexpiated, many people consider all the military court sentences as very severe. We also call attention to the fact that the punishments inflicted by the military courts are, at least in some cases, not normally proportioned to the crimes and misdemeanors committed. We are convinced, furthermore, that if a careful and objective examination of the evidence should take place, not a few of the sentences could not be maintained in their present form. This is especially true of death sentences which have in the meantime been executed. There is reason to suspect that judicial murders have been committed in these cases.

3. Criminal methods of preliminary investigations

Every man, even the greatest criminal, has the right to a fair trial in which the facts are incontestably ascertained, the reliability of the evidence is examined and the extent of the guilt of each individual is unquestionably proved. It must unfortunately be said that the Dachau trials especially have not fulfilled this condition which is indispensable in a state under the rule of law.

The criminal practices in the preliminary examinations for the so-called Malmédy trial are widely known. These examinations were conducted in the prison in Schwäbisch Hall (Württemberg) by American investigating officials. Ill treatment of the severest nature with blows, beatings, and kicks have been proved through numerous affidavits given by the men who were personally concerned. In addition to these we have the affidavit of the dentist, Dr. Knorr, in Schwäbisch Hall, who was called in for the treatment of men whose teeth had been knocked out and whose jaws had been broken. The men, who have been named as the chief tormentors, are: Mr. Kirschbaum, Mr. Thonn, and First Lieutenant Pearl. Mock trials were carried out and death sentences pronounced accompanied by the blasphemous misuse of the crucifix. The mock trials were followed by mock executions staged to extort confessions and incriminating statements.

Justice Van Roden, of Pennsylvania, seems to be well informed about these practices, as he was a member of the investigating committee under the chairmanship of Justice Simpson which was sent to München in the summer of 1948 to investigate the death sentences in the American war crimes trials.

The reports on the occurrences in the American interrogation camp in Oberursel (Taunus) are appalling. There German prisoners were locked into heat cells and practically parched. In addition they were continually maltreated.

From the other internment camps downright sadistic methods of treatment have also been reported; they reveal to how large an extent those who worked here were animated by a spirit of uncontrolled hatred. They show that these men served not the law, but blind revenge.

4. *The defects and irregularities of the procedure*

(a) *The trials at Dachau.*—These trials were begun without rules of procedure. It was not until later that a few of the basic rights of the defendant were established. The defendants were not informed, as they should have been, of their procedural rights. The law that was applied to them was completely strange and unknown to the German defendants and their defense counsels. The defendants were unable to prepare their defense. For weeks and months they were almost completely cut off from the outside world in prisons and camps and during this time they were under the great pressure of bad treatment, insufficient food, and inadequate accommodation. For some time after the armistice there was neither mail nor railway service in Germany, so that the isolation of the prisoners was almost complete.

In many cases the charge sheet was not served on the defendant until a short time before the court proceedings began, so that it was still rendered practically impossible for him to prepare his defense. But even if the charge sheets had been served earlier, this would have been of little use to the defendant, as they did not as a rule contain a definite description of the deeds with which the defendant was charged. In many cases the charge sheet contained only general phrases. Frequently the defendant did not learn what individual charges had been made against him until he heard the argumentation of the prosecution during the trial. Thus the prosecution surprised the defendant with its summary of evidence during the trial, while the defendant did not have sufficient opportunity to defend himself as adequately as may be expected in regular court proceedings.

It has been reported that the reliability of the evidence was not very carefully investigated. Even in cases of grave charges such as manslaughter, murder and similar crimes hearsay evidence was admitted and accepted by the court. In an article in the Evening Star, Washington, of October 2, 1948, a member of the American prosecution, Mr. Leon B. Boullada, admitted this to be a grave defect of the proceedings. As no investigations were made by the court, it was immaterial to the prosecution whether or not a witness was a previously convicted criminal or had committed perjury. There was also the institution of "professional witnesses" who hung around the Dachau camp for weeks; they were at the prosecution's disposal as incriminating witnesses and at the same time they built up a flourishing black market with American cigarettes, etc. Thus, so the report continues, such sinister figures appeared as witnesses for the prosecution in as many as 80 trials.

Untruthfulness, hatred, and inducement to false statements were characteristic of the procedure which has become known as the Dachau stage show. This was a special manner of confronting prisoners of the camp who were to be prosecuted, with former inmates of concentration camps. In the theater of the camp the prisoners were led onto the stage, strong searchlights, which blinded

them, were turned on them while the witnesses, who had been collected in all Europe, sat in the darkened house. In the prisoners on the stage the witnesses were to recognize their tormentors and to incriminate them. The "shows" staged by the above-mentioned Mr. Kirschbaum have been designated as especially ugly events. Protests have been raised against them even by former concentration camp inmates. Kirschbaum, who had distinguished himself in Schwäbisch Hall already through his ill treatment of the prisoners, drove a car in the camp at Dachau on which the word "rache" (revenge) was written in large letters—a characterization of his attitude towards his work.

The prosecution also saw to it that as few exonerating statements as possible were made. For this reason there was a close connection between the prosecution and the organizations of those who had been persecuted by the Third Reich. The members of these organizations were told not to make exonerating statements for the defendants.

The military courts in Dachau consisted of soldiers only; each court had only one legal adviser. The provisions for the defense of the accused were insufficient. An American official counsel for the defense usually had to represent whole groups of defendants simultaneously so that it was impossible to treat each individual case with as much attention as is necessary when it is a question of life imprisonment or death sentences. The German lawyers who assisted the counsel for the defense did not have sufficient knowledge of the procedure which was applied. In addition to this it was said of the interpreters who worked in Dachau that some of them at least were in no way equal to their task.

The prosecution's superior position enabled it to gain a strong influence on the choice of what was put in the court records and what was omitted. This is still of the greatest importance today, as no oral or written reasons were given for a single one of the Dachau sentences. There are persons, it is said, who have been convicted, even persons who were sentenced to death and have in the meantime been hung, who were able to maintain that they did not know why they had been sentenced, as they had refuted all the charges made against them during the trial. After the sentence had been pronounced, the convicted were not sufficiently informed of the means at their disposal for appeal against or a revision of the sentence. In particular it was apparently unknown to the convicted that the worse of the official defense counsels came to an end when the sentence was pronounced, and that the counsels were not obliged to protect the interests of their clients when the sentences were reviewed by the competent authorities in military government. Instead, men who took part in working out the sentence were permitted to participate in reviewing the sentence. American military government in Germany has emphasized again and again that, before a sentence was confirmed, as many as eight review boards examined it to determine whether or not it could be maintained. In spite of this, however, this review of the sentences must be termed inadequate. It does not provide sufficient guaranty against the execution of misjudgments. In making this statement it is not our intention to give an opinion on the equality of the legal work which the review boards have done in individual cases. This legal work can be excellent and it is still possible that misjudgments are confirmed. The reason for this is that the work of the review boards is based solely on the files. Here, however, we must again call attention to the fact that, due to the manner in which the court records were made, these records are not an adequate and reliable basis for a just review of the case. A piece of paper does not reveal whether the witness has committed perjury, whether he is a previously convicted criminal, or whether he is unreliable for other reasons. That is the reason why the Christian churches in Germany requested that a court of appeal be established which would guarantee the exclusion as far as possible of the above-mentioned sources of error.

(b) *The Nürnberg trials.*—The Nürnberg trials are distinguished externally from the Dachau trials insofar as, due to the Göring trial and others, the searchlight of world publicity has been turned on them from the very beginning. Such incredibly grave offenses against elementary legal principles such as the Dachau trials reveal were, as we hear, not committed in Nürnberg. On the contrary the visitor to the Nürnberg trials gained the impression that these trials were being conducted in an absolutely fair manner. But he for whom this superficial impression is insufficient and who examines the matter more closely will find that it must be said against the conduct of the trials in Nürnberg that the prosecution and the defense have not fought with equal weapons. The prosecution has, on the contrary, been able to secure for itself a position which is undeniably superior to that of the defendants and their counsels.

The objections which the church raises against the Nürnberg trials, are chiefly concerned with the fact that there the victors are sitting in judgment over the vanquished and that it occurs to no one to apply the law practiced in Nürnberg to other war criminals also who are neither German nor Japanese citizens. The Nürnberg sentences have also lost value through the fact that the Russian accomplice and assistant in various capital crimes against peace and humanity has been permitted to act with the western Allies as legislator, prosecutor, and judge.

In the preliminary investigations in the Nürnberg trials the investigators did not shrink from exerting extremely heavy pressure on witnesses and other persons who were to give information. The arrest of witnesses who were held in custody for months as long as it was believed that they would be needed to give testimony, had a similar effect. During the stage of preliminary investigations persons who were later prosecuted were not told whether they were to make statements as witnesses or as defendants. It even occurred that persons who were later prosecuted were, under the threat of punishment, induced to make statements under oath. An especially popular method to induce statements was the threat with extradition to foreign powers, for instance to Poland and Russia. For this the record of the interrogation on March 6, 1947, of Dr. Friedrich Gauss, the legal adviser to the German Foreign Office, by the prosecutor, Dr. Kempner, is a classic example. After Gauss had given way to the pressure exerted upon him, he no longer had cause to fear that he would be placed in the prisoner's dock in the trial against the Foreign Office. On the contrary, he was permitted instead to help with sorting out the files for the prosecution in Dr. Kempner's anteroom.

The standpoints under which the prosecution in Nürnberg chose those whom it wished to bring to the dock can only be understood if it is recognized that they were based not on legal but on political grounds. To how large an extent political points of view determined the legal practices in Nürnberg has already become apparent in the concentrated propaganda campaign which the prosecution, in order to win public opinion, initiated in support of its work. Unfortunately it appeared that in the IMT trial the prosecution had selected a Mr. G. Ulmann, whom the press had unmasked as an international swindler, to explain the important events in Nürnberg over the radio to the German people. It should not cause surprise that his endeavors were not crowned with much success.

The difficulties for the defense were considerably aggravated by the fact that the prosecution had secured a monopoly of the historical document material. The prosecution was in a position to determine what part of the material it wished to use for its own purposes. The defense was permitted only restricted access to this material. Furthermore the defense had practically no possibility to bring witnesses and other evidence from foreign countries to the trials at Nürnberg. With two exceptions American lawyers were not admitted as counsels for the defense in Nürnberg.

The Nürnberg trials with their extensive material were under the constant pressure of having too little time; naturally this was greatly to the detriment of the thoroughness with which the defense should have been prepared and carried out after the charges had been preferred. In order to save time the Nürnberg courts even went so far as to drop the principle of the necessity to give evidence before the court and simply collected evidence indirectly through judges appointed for this task (commissioners).

In contrast to the Dachau trials the prosecution in Nürnberg made use of more refined methods, which, however, were not less effective, in order to attain its goal. It would have been of decisive importance, if the impression had been avoided in Dachau as well as in Nürnberg that the right of the victor was being practiced—a hope which seems quite justifiable in both cases, but was fulfilled in neither. It would have been of decisive importance to show the German people and the world that here international—that is, generally binding—international law was being applied. Although there was a great deal of talk about this, no convincing proofs were given. It would have been of decisive importance, if the historical truth had been searched for with genuine objectivity and not with a semblance of objectivity. The ascertainment of historical truth should not have been left for the most part to the polemical rhetoric of a prosecution whose attitude is one-sided and who is much concerned with the preservation of its own superiority. Unfortunately many of the sentences from the Nürnberg trials read like political pamphlets.

5. *Suggestions for the relief of these critical legal circumstances*

These critical legal circumstances are characterized by the fact that, as Bishop D. Wurm wrote to General Clay on November 18, 1948, "the gallows and graves in Landsberg will do nothing toward creating a memory of fair jurisdiction and of justice. In consideration of the inadequacies and mistakes in the jurisdiction at Dachau those sentences which justly punished genuine crimes must unfortunately also be subject to doubt. Instead of giving the German people an example of court proceedings whose integrity cannot be questioned, the manner in which the Dachau trials have been carried out has confused rather than strengthened their sense of right and justice."

For the relief of these critical circumstances the church has asked again and again that a court of appeal be established. No convincing reasons have as yet been given why a court of appeal should not be established for these trials which involve the life and death of human beings and in many cases extremely complex facts and circumstances, while on the other hand for insignificant property disputes and other unimportant lawsuits courts of appeal are conceded without further difficulties. It is quite understandable that a desire has arisen to bring the war-crimes trials to a conclusion at last and that there is no great inclination to begin all these trials all over again with a renewed collection of evidence. But it must be made clear that all the mistakes that have been made in these trials so far are felt to be injustices and continue to act as such. It is necessary in Germany to reestablish in the minds of the people the inviolability of the administration of justice. But this will not be possible as long as the accusations mentioned above can be made against the war-crimes trials. If retrials cannot be held in all cases, it should at least be possible in the interests of the reestablishment of offended justice to establish a completely independent committee of judges for the examination of at least those cases to which justified objections have been raised. This committee should be charged with the following tasks:

- (a) To hear the convicted and their defense counsels.
- (b) To permit the convicted or their counsels to examine the files; that is, not only the court records, but also the review files which have until now been kept strictly secret.
- (c) To examine anew the reliability of the evidence on which the sentence was based.
- (d) To give reasons for the final decision arrived at.

In contrast to the Simpson committee this committee of judges should have the authority to make decisions. If only reports which are not binding are made by the committee, it would not be worth the effort and the expense. Nor should the committee be pressed for time. The Simpson committee, for example, only had a few weeks' time in the summer of 1948 to examine numerous death sentences. It is impossible to carry out a thorough examination of the cases from all sides in so short a time.

Since the United Nations have to date not been able to make use of the Nürnberg trials for the creation of a new international criminal law, the suggestion to establish this committee within the organization of the UN must unfortunately be considered a mere illusion. It seems to me, however, to be worth considering whether the United States should not appoint neutral jurists to serve on this committee in case it should be established. Thus an important precedent would be created in international law which would be well adapted not only to prove the victor's objectivity but also to establish the belief that international law and not the law of the victor is to be applied. It would perhaps also combat in the future the opinion that it is a self-understood part of international relations that the vanquished enemy must be judged by the victor alone.

6. *The question of mercy*

In conclusion we may call attention to the fact that all jurisdiction, even the jurisdiction over war criminals, finds its highest expression not only in pronouncing sentences, in hanging and imprisoning the criminals, but also in showing mercy in suitable cases. It is not possible for us to judge from here whether the psychological situation in the countries in question will already permit a public representation of this idea. Amongst Christians this question would present no problems. But unfortunately it is a strange fact that, although the western world wishes to be Christian, its politicians do not dare to act according to Christian principles in public.

STUTTGART, February 26, 1949.

Mr. FINUCANE. They think something more than a review based on present records is required, that the Germans should have a new trial.

Senator BALDWIN. Now, you have the letters from the lawyers?

Mr. FINUCANE. This is one letter from the lawyers, signed by six of them. It came to us from Bishop Wurm. I do not believe I have any letters with me that came to us directly from the lawyers. The correspondence is bulky.

Mr. CHAMBERS. Are they available at this time?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Are they in your office now?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. I would like to ask; Have these various letters and correspondence been transmitted to other members of the Senate for their use in connection with this case?

Mr. FINUCANE. Some of them have; yes.

Mr. CHAMBERS. Was that at the request of the Senators or did you instigate that yourself?

Mr. FINUCANE. Both ways. I would say mutual.

Mr. CHAMBERS. I notice also that you said yesterday you had correspondence with the German prisoners.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. What German prisoners have you been in contact with?

Mr. FINUCANE. I thought you might ask that question. I have brought a letter here from three of the Malmedy men. Their names are Kraemer, Gruhle, and Fischer. I was surprised that they were able to write. They say, "We are now nearly 4 years behind barbed wire, behind the bars of the jail."

Mr. CHAMBERS. Could you read that for the record?

Mr. FINUCANE. Yes.

Senator WATKINS. Make it is quickly as you can because we have some other witnesses.

Mr. FINUCANE. It is from Fritz Kraemer, Hans Gruhle, Arndt Fischer, War Crimes Prison, War Crimes Jail, Landsberg, Germany, dated April 27, 1949, and addressed to the National Council for Prevention of War, Executive Secretary Mr. Frederick J. Libby, 1013-18th Street, NW, Washington 6, D. C.

DEAR SIR: As accused in the Malmedy case, please permit us to send you enclosed three copies of the petitions for review of Fritz Kraemer, Hans Gruhle, and Arndt Fischer. The originals have been forwarded in June 1948 to the Commander in Chief of the Armed Forces of United States in Germany, but up to this date we were not informed about any decisions based upon these petitions.

Now, these petitions shall show to you that we are entirely innocent, that we never committed any of the crimes raised against us, and that we never participated in crimes raised against others. We have never drafted or transmitted orders violating the laws of war. As being staff officers we also have had no disciplinary power.

We are knowing your endeavor to remove injustice, and we hope to God that it will succeed to restore our honor and freedom. We are now nearly 4 years behind barbed wire or behind the walls of the jail.

Now we got acknowledge too that a commission—War Crimes Board of Review and Recommendations—at February 4, 1948, reviewed the Malmedy case and concerning to Fritz Kraemer the following recommendations were found:

"That the finding and the sentence be disapproved."

Concerning to Hans Gruhle and Arndt Fischer we didn't get such recommendations in time, so that we are not able to show you it.

In spite of such recommendations General Lucius D. Clay confirmed on March 20, 1948, the sentences. We don't know what we can do furthermore.

Please would you be so kind to give our best regards to our most honorable counsel, Col. Willis M. Everett. He is one of our fairest and unfrightened helpers in this fate and day for day we beg God to help him in his efforts.

Our families and we, we are thinking of him all the time in deep gratitude for his hard fight against injustice.

Please inform Col. Willis M. Everett that the conclusions of War Crimes Board of Review and Recommendations of February 4, 1948, are in a special envelope in Heidelberg 1, Germany, War Crimes Branch, because we don't know if these important decisions are known to him.

With our best regards, respectfully yours—

and then signed by Fritz Kraemer, Hans Gruhle, and Arndt Fischer, and it bears the stamp of the prison censor.

Senator BALDWIN. Colonel Chambers has checked these names. For the benefit of the record, he states that none of these defendants here make any claim in any affidavits of any physical abuse of any kind.

Mr. FINUCANE. I did not know that.

Mr. CHAMBERS. This answer that you gave yesterday, Mr. Finucane, was in response to a question as to how you knew about these brutalities of your own knowledge and what investigations you had conducted?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Is this the only correspondence that you have had with prisoners?

Mr. FINUCANE. We have had correspondence—I could not answer that question without looking at the record, without looking at our files, because some of the things come in German, and I do not even know who writes them. I cannot read German and nobody in our office can read it except Mr. Libby, and he does not read it well.

Mr. CHAMBERS. Is it a safe statement to make then that insofar as your own individual investigation which corroborated the belief, hypothesis, that you had built up that our investigative staff had committed these atrocities, that insofar as the German prisoners are concerned they are confined to three letters in which they do not allege brutalities, and in which those particular three prisoners did not put in affidavits alleging brutality?

Mr. FINUCANE. As I say, there is a considerable bit of correspondence. Some of it alleges brutality. In some cases it comes from a sister, or "I am so and so's wife and I am writing for him," and there are descriptions of what has taken place.

I think this is the letter, from these three prisoners, which struck me most, because just within the last week or so we have been getting mail with the stamp of the prison censor.

Mr. CHAMBERS. What is the date of that letter?

Mr. FINUCANE. It is right there. I was impressed by the fact that they let these people write out, in view of the—

Senator BALDWIN. What particularly impressed you about that?

Mr. FINUCANE. In view of all the stories about the difficult conditions under which they are living, the fact that they do not have or have not had more entertainment, such things as even being allowed to take a walk in the courtyard.

As you know from Leer's affidavits, they claim that they were not permitted to have any exercise for a number of months.

Senator BALDWIN. These particular men do not say that, do they?

Mr. FINUCANE. No; they do not. As I say, there are some others—

Seantor BALDWIN. In other words, the American authorities over there, the military authorities, are permitting these prisoners to carry on correspondence under censorship, to be sure, with a private organization in the United States, and which is promoting this program of retrial, and so forth, for them.

Mr. FINUCANE. There is the evidence. I think you have interpreted it correctly.

Senator BALDWIN. Do you think there are many other countries in the world where that would be permitted?

Mr. FINUCANE. I think there are quite a few other countries; yes I think they should have done it from the start.

Mr. CHAMBERS. The only statement that I would like to make—and correct me if I make a wrong statement—yesterday, in telling us what investigations you had made and which supported the conclusions that you had, first your press release and later the article in the Progressive, the only investigation that you had conducted which affected you consisted of these three letters. At least yesterday you told us that you had corresponded with German prisoners and you had corresponded with General Clay; you had corresponded with German attorneys, and that you had corresponded with these two bishops.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. So the evidence from those sources, plus Van Roden's statement and the Everett petition, is what you based your conclusion on?

Mr. FINUCANE. No. I had formed my hypothesis before a lot of the material you mentioned came in.

Mr. CHAMBERS. That is the point I would like to get. On what did you form your hypothesis?

Mr. FINUCANE. If I could cite parallel—

Mr. CHAMBERS. I would like for you to answer me, if you can. On what did you form your hypothesis?

Mr. FINUCANE. We had the statement from two respected judges: the Van Roden and Simpson report, which alleged serious miscarriage of justice.

Mr. CHAMBERS. May I interrupt?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Since you are referring to that, their report is very brief, only five or six paragraphs long as you know.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. You say it alleges very serious miscarriage of justice at the Dachau trials. We are talking about the Malmedy trials. That is what your press release was written about.

The Simpson-Van Roden commission, I believe, looked into the sentence cases, of which only 12 of them were Malmedy. They, in their report, apparently in your minds, made such serious and sweeping charges as to establish this hypothesis.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Would you mind telling me what it is?

Mr. FINUCANE. I can tell you without going off that page. They recommend a clemency program for over a thousand Germans. There must have been something wrong with that whole system if they recommend a clemency program for a thousand. They recommend

commutation for 29 Germans, of their death sentences, when they started out with 43 death sentences. There were 43 sentences originally adjudged in the Malmedy case, I understand.

Mr. CHAMBERS. That is correct.

Mr. FINUCANE. There were 29 of them still to be executed—none of them had been executed. But Van Roden and Simpson recommended that the 29 death sentences, in all, be commuted.

Mr. CHAMBERS. All Malmedy cases?

Mr. FINUCANE. No. Not Malmedy. The mathematics of this, I understand, overlap in other categories.

Mr. CHAMBERS. Isn't it a fact that the review boards that had already passed on this, before Simpson and Van Roden had gone over, had reduced the 43 down to 29?

Mr. FINUCANE. That is right. And they had since been reduced to 12, which I think is a red arrow pointing to the injustice that must have taken place.

Mr. CHAMBERS. That is one way of interpreting it. Another way is perhaps a complete leaning over backward in the matter.

Mr. FINUCANE. That is another interpretation, I will admit that. And I am glad to see that the review boards have done that, when they thought it was right.

Mr. CHAMBERS. It was the Simpson-Van Roden report, then, which formed this hypothesis on which you based the statement that American investigators had committed such atrocities in the name of American justice, and that they should be prosecuted?

Mr. FINUCANE. That was one of the items; that is correct.

Mr. CHAMBERS. We went over all that yesterday in the record, and it is pretty clear. I have no further questions on that point.

Senator BALDWIN. Would you modify that statement now, or do you still think that is so?

Mr. FINUCANE. What statement, Senator?

Senator BALDWIN. The one the colonel just asked about.

Mr. FINUCANE. Could you repeat it for me.

Senator BALDWIN. In substance, based on the Van Roden-Simpson report, and Van Roden's speech, that you formed a hypothesis that American investigators had committed such atrocities in the name of American justice, and that they should be prosecuted.

Mr. FINUCANE. That was the first substantial thing that we had to go on. However, it was common knowledge, and still is common knowledge in this country—and that type of evidence has been accepted at those trials—that there was something funny about the whole administration of military justice, as it applied to the Germans since the end of the war.

Mr. CHAMBERS. May I interrupt? You say it is common knowledge and there was something funny about it?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. What is that common knowledge? Where does it stem from?

Mr. FINUCANE. There have been reviews written in legal journals in this country criticizing the set-up of the military justice program since the end of the war.

Mr. CHAMBERS. May I interrupt?

Mr. FINUCANE. Certainly.

Mr. CHAMBERS. There have also been articles written in other magazines which have criticized in most violent terms the same thing. Are these all in the same category? Are they cut from the same cloth?

Mr. FINUCANE. Yes. There have been articles on both sides of the subject. Is that what you are saying?

Mr. CHAMBERS. No. You are quoting as authority for your statement that it was common knowledge in this country that there was something funny about the prosecution of the German prisoners under the war-trial program?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Now, I am asking this question of you: There have been other articles written, in apparently reputable magazines, which make far-reaching charges; but, when you begin to analyze them, you find that the article credited to the judge from Pennsylvania was written by an employee from the Society for the Prevention of War.

Mr. FINUCANE. With his information.

Mr. CHAMBERS. I understand that. Where does this common knowledge come from? Is it all cut from the same cloth?

Mr. FINUCANE. No. This has been since the end of the war.

Mr. CHAMBERS. This article, I believe, was written in December 1948, which was some 3 years after the end of the war in Europe.

Mr. FINUCANE. That is right. That is not the first article that criticized the conduct of the war-crimes trials.

Mr. CHAMBERS. I understand that. The only point that I am trying to get at is that you made the statement that it was common knowledge in this country that there was something funny about the way they conducted these war crimes?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. I am trying to find what you predicate that on. One thing you have said is that there have been articles written in legal magazines. I was just wondering the source of those articles because, frankly—and in all honesty I will say this—when I first read in the Congressional Record this story, which I believe has been to a marked degree repudiated by Judge Van Roden, was so repugnant to everything that I thought was decent, and the people in this office could probably tell you what I said about it.

Mr. FINUCANE. What did you say?

Mr. CHAMBERS. I am afraid it should not go in the record, but simply if those things had been done, in accordance with the way that article was written, nothing, in my opinion, would have been too strong to punish the people who did it. That was my first reaction. I think that since that has been published, since it has gone in the Congressional Record, since on December 18 the National Council for the Prevention of War released it to the press, that you might just as easily say that it was common knowledge in America pointing to these things as evidence.

I would like to know your basis of common knowledge of something that was funny with the war crimes in Germany, because Colonel Dwinell, in whom you seem to have considerable confidence, and others—in fact, Mr. Strong on the stand testified that the only cases where there had been any difficulty, to his knowledge, with war crimes were the Malmedy cases. I believe if you will check the record, you will find my memory is correct on that.

Mr. FINUCANE. Yes, sir. I think if you will check the record that you will find that many of the witnesses said it was common knowledge, or talk, about certain investigators, like Perl, and yet they had difficulty in pinning it down. It is common knowledge that there is a place called China. I have never been there, but I have reliable reports on it.

Mr. CHAMBERS. I think that the existence of China has been established over a rather long period of time by many sources of information.

Now, when you get down to something like this, you have a little more difficulty in really judging what is common knowledge. Here is all I am getting at, and you and I know it, too: I had not heard; and goodness knows for the last 6 weeks, I suspect primarily because of this catalytic act that you referred to yesterday, that you prepared, I have been getting into these war crimes matters.

This is not a question of my opinion against yours, but so many people have told us, and on the stand so many people that you have relied upon have told us, that it was only in the Malmedy trials that there were any particular charges of duress or mistreatment or things of that kind. I would be willing to concede that you are bound to have complaints from anybody who was ever convicted under any system of government or team of courts. But this common knowledge you speak of is a pretty broad statement.

Mr. FINUCANE. I think that is one of the beauties of this investigation; because, if this hearing discovers that there is one rotten apple, then you can be justified in forming an opinion about the other apples in the barrel.

Mr. CHAMBERS. You mean if this particular case, the Malmedy case, if we find that that in itself is a rotten apple, that we should judge all the other—

Mr. FINUCANE. You can look a little farther.

Mr. CHAMBERS. In other words, because one black cat kills chickens, all black cats should get killed?

Mr. FINUCANE. Just be suspicious.

Mr. CHAMBERS. I have no further questions.

Senator BALDWIN. You have given us this letter, a statement, signed by the German defense counsel for the accused?

Mr. FINUCANE. Yes, sir.

Senator BALDWIN. When you got this, was it in English?

Mr. FINUCANE. It was in English.

Senator BALDWIN. In other words, this is exactly in the form in which you got it?

Mr. FINUCANE. That is the original. It has the stamp of the bishop on the back.

Senator BALDWIN. I think for the benefit of the record we might insert this one paragraph, so it will be brought to the special attention of the committee:

The undersigned have ascertained, in short, the following essential defects of the proceedings at Dachau: certain irregularities in the preliminary investigations; use of doubtful witnesses by the prosecution; failure to reexamine the credibility of statements made by challenged witnesses; acceptance of hearsay evidence; discrimination against the defense and to the advantage of the prosecution in procuring evidence; restrictions imposed on the defense from time to time; appointment of nonprofessional judges to the court; failure to give any reasons whatever for the sentence.

Then it goes on to say: "These defects have in some cases led to decisions through which the accused has suffered injustice."

Have you any other letters from the counsel, other than this?

Mr. FINUCANE. Any other letters from the bishop?

Senator BALDWIN. No; from the defense counsel?

Mr. FINUCANE. No. We have a number of statements from them.

Senator BALDWIN. I notice that this statement does not allege any physical abuse or violence or withholding of ration tickets or anything of that particular kind. I wondered if you had anything from the defense counsel that make those allegations?

Mr. FINUCANE. Yes. Dr. Aschenauer sent us a number of statements from the defendants.

Senator BALDWIN. I am talking about the defense counsel. It seems to me that if the charges alleged here were of consequence in this thing, or had foundation, that the defense counsel for these men would have mentioned it specifically. In other words, they would have said that the confessions were obtained under duress or by force and violence and trickery and so forth.

Mr. FINUCANE. I think if they had made a complete statement they would have included the brutalities.

Senator BALDWIN. You think that?

Mr. FINUCANE. If they had made a complete statement.

Senator BALDWIN. But they did not?

Mr. FINUCANE. I think in that particular document they were alluding to the technical defects.

Mr. CHAMBERS. Judge Simpson testified that Bishop Wurm and this other bishop testified before—you remember that?

Mr. FINUCANE. Yes, sir.

Mr. CHAMBERS. At that time, Judge Simpson testified that both these gentlemen approached him, not from the standpoint of alleged brutalities, but from the whole philosophy of war crimes themselves. That was their main approach. And at no time did they allege brutalities of the nature which we have discussed here. Is my memory substantially correct on that?

Mr. FINUCANE. I do not have sufficient grounds to differ with you. I think that was about it, yes.

Mr. CHAMBERS. So apparently of those two churchmen, one has been in touch with us by wire, and I think it is not in the record, and have raised repeated questions——

Mr. FINUCANE. The bishops?

Mr. CHAMBERS. Yes [continuing]. About this matter of war crimes and keeping people in prison for long periods of time, and things of that type.

Of course, we have only had the one thing from them. But in that they certainly did not bring up these charges of brutality. In these letters to you, they do not bring it up.

With the Chair's permission, I believe I can promptly locate this statement of Judge Simpson.

Mr. FINUCANE. If I could make a comment about that: Both Van Roden and Simpson were rather vague in their memories as to what they said.

Senator BALDWIN. That is your understanding of it?

Mr. FINUCANE. Yes, that is my understanding. They interviewed one-hundred-some witnesses.

Senator BALDWIN. If you have any more statements from these attorneys that make any allegations, we would like very much to have them.

Mr. FINUCANE. I will bring them up with me the next time I come up.

Senator BALDWIN. Do you have anything further?

Mr. CHAMBERS. I have no more questions.

Mr. FINUCANE. Could I give the committee the name of a witness whom the committee may be interested in? It is John V. Case, 1101 Massachusetts Avenue. He has some material.

Mr. CHAMBERS. I have talked to Mr. Case. He is present. I did not realize you were appearing as a possible witness. Mr. Finucane has mentioned the fact that you have some evidence that may be of interest to us. Do you care to make a statement in connection with the Malmedy trials.

Mr. FINUCANE. Could I say that Mr. Case does not represent the National Council, that we are separate parties in this?

Mr. CHAMBERS. Yes, surely.

Mr. CASE. The statement that I have in mind might not be relevant here.

Senator BALDWIN. It does not pertain to the Malmedy cases?

Mr. CASE. It does pertain to the war crimes at Dachau, and the conduct of the United States investigators, violating the faith and their office in working hand and glove with the Nazi prisoners who had committed brutal murders; cases where one investigator for war crimes manufactured statements and alibis for one criminal, and sent—

Senator BALDWIN. That has nothing to do with the Malmedy investigation, as such. I think that is a matter we ought to consider at another time.

Mr. CHAMBERS. I might say that Mr. Case has approached me on the matter which he is discussing here. I understood from Mr. Finucane's remark that possibly he had some light to throw on this Malmedy proposition; and if you haven't I would agree, sir. This other matter he has is a most pressing thing, but has nothing to do with this particular case.

Mr. CASE. I thought perhaps this committee would widen its scope of inquiry to include it.

Senator BALDWIN. We have not the authority to do that yet. Mr. Case, I am glad you came up and made yourself known.

Mr. CASE. Thank you, sir.

Senator BALDWIN. Mr. Lary?

(Whereupon, the witness, Virgil T. Lary, was sworn by Senator Baldwin.)

TESTIMONY OF VIRGIL T. LARY, JR., CARACAS, VENEZUELA

Senator BALDWIN. Give us your full name and address.

Mr. LARY. Virgil T. Lary, Jr., at the present time from Caracas, Venezuela.

Senator BALDWIN. For whom do you work there?

Mr. LARY. The Texas Petroleum Co.

Senator BALDWIN. How long have you been down there?

Mr. LARY. About 4 months.

Senator BALDWIN. And you came up at the request of this committee to testify?

Mr. LARY. Yes, sir.

Senator BALDWIN. I believe you wrote a letter to Senator McCarthy?

Mr. LARY. Yes, sir, and to you also, sir.

Senator BALDWIN. And sent me a copy of it?

Mr. LARY. Yes, sir.

Senator BALDWIN. We have that letter in the record?

Mr. CHAMBERS. The letter is in the record, sir.

Senator BALDWIN. I think the thing that we wanted particularly to ask you, Lieutenant, was a statement as to the testimony of Judge Van Roden, concerning some lieutenant whom he described as coming into a command post and making some statements with reference to the Malmedy thing. Have you got a prepared statement?

Mr. LARY. In conclusion only.

Mr. CHAMBERS. I would like for the purpose of identification to see if we can tie you in with this statement made by Judge Van Roden. I believe you are a survivor of the so-called Malmedy massacre, is that correct?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Were there other officer survivors of the massacre?

Mr. LARY. To my knowledge there were no other officer survivors.

Mr. CHAMBERS. After the escape from the massacre—and we will give you ample opportunity to tell us about it at a later time—did you report in to any American authorities where you were interrogated, and give your story?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Do you remember Judge Van Roden being present?

Mr. LARY. Sir, I reported to Malmedy when I finally got back. I got into a combat engineer aid station. The field hospital in Malmedy had been evacuated and there was nothing left but this combat engineer aid station. At the time, I was interrogated by a lieutenant colonel, who was their battalion commander if I recall correctly. I gave him the story of what had happened at the time.

I do not know who Judge Van Roden is, and I do not even think that I could recognize the gentleman, if he was in uniform at the time.

Senator BALDWIN. Were you in the group that was at the Malmedy crossroads?

Senator BALDWIN. You were in the group that came to the crossroads and then the German fire put you down?

Mr. LARY. That is correct, sir.

Senator BALDWIN. Then later some prisoners were rounded up—I am speaking of it from what we heard from other witnesses—and marched you out into a field? Were you in that particular group?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Were you a second lieutenant or first lieutenant?

Mr. LARY. First lieutenant.

Mr. CHAMBERS. Was this lieutenant colonel that you reported to with the Fifth Armored Division, or do you know?

Mr. LARY. I do not know, sir.

Mr. CHAMBERS. You have said he was a battalion commander.

Mr. LARY. It is my understanding he was the battalion commander for this combat engineer detachment.

Mr. CHAMBERS. Perhaps we should allow him to tell his story now, sir.

Senator BALDWIN. Yes. That would be better. Suppose you tell us your story and tell us what you reported to this colonel that you described.

Mr. LARY. Do you want the full details of the massacre and the manner in which it occurred? The reason I ask you, the only information I have been able to get in Caracas is from the newspaper reports.

It seems to me that through some of these reports some people even today feel that the massacre did not occur, that they have some doubts that the massacre occurred. I just wonder whether you want me to go to the beginning?

Senator BALDWIN. I think, since you are all the way here from Venezuela, maybe you had better go ahead so we will have it in the record in the event we need it. You go ahead and describe it to us.

Mr. LARY. On December 17, 1944, Battery B of the Two Hundred Eighty-fifth Field Artillery Observation Battalion was stationed in the Hurtgen Forest in Germany. On the night of the 16th we received orders from First Army headquarters that we were to proceed south into a small area close to Bastogne, in Belgium.

On the morning of the 17th the convoy left this particular area, and, of course, the necessary road markers and so forth had been taken ahead with the station so the convoy would not lose its location.

We proceeded more or less uneventfully until about noon of that particular day, at which time we stopped the convoy, north of Malmedy some 15 or 20 miles, and served hot food to the troops—that is, we had a kitchen on the back of one of the trucks.

We then proceeded through Malmedy to a position, or a place, about 2 miles on the other side at a point where roads crossed; about three or four roads came together at this particular point. We were directed on by an MP who was standing at this road crossing. This MP later returned with us to Germany and testified in the war crimes trials.

After passing this road intersection, approximately 100 yards, we were brought under intense fire, mortar, machine gun, and artillery, to our left and left front. Being unable to turn around or turn to the right because of a large ditch, or to go ahead, that is, in a southerly direction, we abandoned our vehicles and got into the ditches alongside of the road. The Germans continued to bring us under fire and a number of the men were killed and wounded during this time.

Senator BALDWIN. Let me interrupt you there for a minute. Did you know, or did you have reason to believe or did you suspect that there were any German forces in this locality?

Mr. LARY. No, sir. We had passed over this same area approximately 2 months before. We knew that it was the Ardennes area, and that the Germans had occupied it, but our troops were at that time 10,000 meters to the front that is, to the east. Therefore, we had no indication that the Germans were in that particular area.

After we were under fire for approximately 10 or 15 minutes, the Germans had advanced on the convoy from our left and left front and were then upon us with tanks and armored infantry. As they came down the road and came up from the fields, they continued to fire into

the men that were lying in the ditches and some of these men were returning the fire.

I was in the leading jeep with the captain. It wasn't the battery commander. I don't recall who the captain was at this time. But he was in charge of the convoy, was with the convoy. We were crawling up the ditch the entire time that they were firing.

We discussed as to what would be the best procedure of defense, or what we could do to escape from the particular circumstances we were in, and it was decided because of the overwhelming forces and the type of forces that we were combating, due to the fact that we were armed with small arms, it was decided that it would be best to surrender to this overwhelming force, the First Adolph Hitler SS Panzer Division, as we learned later. This we did.

We abandoned our arms and surrendered our persons and personnel to the Germans when they surrounded us in this particular area.

Senator BALDWIN. How did you do that? Tell us what you did. Did you throw away your arms?

Mr. LARY. Initially we stood up and put our hands over our heads. At the time I stood up and put my hands over my head there was a German in the half-track who took a pistol, aimed it at me and started to shoot me. I immediately stepped behind one of the vehicles and deflected his aim.

Captain Mills was killed. He was still in the ditch. This German took two shots at him but missed him both times. So when they saw that we had stood up with our hands over our heads and abandoned our weapons, they then started asking some of the personnel if they could drive the vehicles that we had abandoned. No one professed they could drive. They refused to give them any cooperation. So they placed us under guard.

We were approximately a thousand yards from this area where the massacre occurred. They sent us back to this particular area under guard. As we approached the area, we could see that the men were being searched for their valuables, wrist watches and whatever else they may have had.

At that time we were all placed in this field approximately 150 to 160, maybe 175 men. There were one-hundred-and-fifty-some-odd men in this particular area.

In addition to this they had rounded up numerous medical personnel, medical officers and enlisted men from other detachments, and other enlisted help from MP battalions and so forth. The distance from the road to where the groups were standing with their hands over their heads—every man had his hands over his head—was approximately the width of this room, 15 yards or so.

While we were standing there conversing, the Germans still had us under their surveillance with their small arms trained upon the group. We assumed at that time that we would be treated as ordinary prisoners of war and sent to the rear.

The Germans then, at the particular time, were continuing to advance in a southerly direction toward Bastogne, and one of their self-propelled 88-millimeter guns was ordered to stop, and it was backed around facing the group of personnel as they were standing in the field.

After what happened, I have no doubt today that if they had been able to depress the muzzle of this gun into our group, they would have

fired at point-blank range with their artillery into that group of men. They were not able to do that, however, because we were more or less in a depression below the gun and they couldn't lower it.

So this particular self-propelled weapon was blocking their advance and it was ordered off. At that time they drove up two half-tracks and parked them facing the group, at a 15- or 20-foot interval between the two. A man stood up in this vehicle, who I later identified at Dachau, and fired a pistol, or he took deliberate aim, I should say first, and fired into the group.

At that time we ordered our men to stand fast because we knew if they made a break that they would have a right then to cut loose on us with their machine guns. His first shot killed my driver. The second shot that he fired into the group then set off a group of machine guns firing into this helpless group of unarmed American prisoners of war.

Those of us who were not killed immediately in the initial burst fell to the ground. I was under the impression at the time that there were two machine guns firing into the group, but I later learned when we went back to Germany that there were eight machine guns firing into the group.

We continued to lay on the ground and the fire continued to come into us. Of course, the biggest percentage of the men were killed in the initial firing. When they ceased firing after approximately 5 minutes, maybe 3 minutes, they came into the group to those men who were still alive, and of course writhing in agony, and they shot them in the head.

One of the men, where I was laying with my face in the mud, stood at my head, fired into a man laying beside me and walked on. During the initial firing I was only hit one time.

Then these men assumed that everyone lying in the field was dead, in my opinion, so they went back to their vehicles and the convoy proceeded south into Bastogne. We lay there for approximately an hour and a half or two hours until it was becoming dusk. We saw or could count numerous tanks passing, half-tracks, armored infantry, and so forth.

As these groups would pass we could hear them laughing and every once in a while they would fire into the group of men as they lay on the ground, more or less as target practice. Then this convoy passed us and we could still hear one or two, maybe three Germans talking at the crossroads.

So in undertones we began to discuss, those of us who were still alive, began to discuss the best method of surviving the affair, and it was decided that those of us who were left would make a break for it.

SENATOR BALDWIN. How many of you were there still alive?

MR. LARY. I would say there were 20 to 25 men still alive at the time. It would be an estimate.

So one of the fellows said, "Let's go"—one of those in the group. So we got up, those of us who were able to, and made a break. I would like to state that the hardest part was to leave those men who were still there, wounded, because we felt those Germans at the crossroads would come back and kill them. In fact that is what happened.

Some of us ran off into the woods and escaped. A group of us ran into a house. I ran into a shed at the back of the house. I was the only individual there, and got under what looked like tobacco stakes

and was fortunate enough that the German's didn't come into the shed because I was positive they would have found me there and, of course, killed me.

But these men who ran into the house set the house on fire. When the men ran out—when I say they set the house on fire, I mean the Germans who were left at the crossroads, they had left a half-track at the crossroads which I observed when I got up to make a break—I presume to cover their advance, more or less a rear guard.

These Germans set up a machine gun. When the house was on fire and these men ran out they killed them. Of course, I could hear these screams of anguish where I was in the shed and realized they were killing these men in the field who were still alive.

Then, after dark—I stayed in the shed until after dark—the house was still on fire, lighting up the area. I fortunately had a compass with me and was able to get back into Malmedy, walked back into Malmedy and was able to go through the woods and so forth.

Senator BALDWIN. How far was it from there to Malmedy?

Mr. LARY. I didn't know exactly where Malmedy was. The route that I took was approximately 3 miles. I got into a small settlement of 5 or 6 or 7 houses and some Belgian people helped me into Malmedy at the time. So when I got to Malmedy I immediately reported to this lieutenant colonel—I don't know his name or who he was—what had occurred. I told him at the time how this thing occurred, and what had been done, and I understand from the newspaper articles that Judge Van Roden has said—this is just from what I read from newspaper articles—Judge Van Roden said that a lieutenant reported to him that the reason the Germans started firing into the group was because the men had made a break for it.

Senator BALDWIN. Let me read to you, Lieutenant, just what he did say:

Also, by way of that background, we went into a village called Sweiful in Germany the Friday before the Germans moved into that same section of Belgium. I happened to have had an office in a barn or stable in Sweiful in Germany and was there when a lieutenant, a rather bedraggled lieutenant, literally crawled in there and made a report to G-2 of the Fifth Armored, and I heard what he had to say about what he experienced at the time the shooting took place. The shooting certainly took place.

Senator BALDWIN. That is the Malmedy shooting?

Judge VAN RODEN. Yes. This may be hearsay, but I am tell you for what it is worth what I heard. I don't remember his name, but he was a young lieutenant, a second lieutenant, I believe, a first lieutenant or second lieutenant, and he reported to lieutenant colonel—I have forgotten his name—of the Fifth Armored Division, acting as G-2 of that division staff.

As I recall the substance of his statement, it was—he made a report, he was bedraggled, had walked, tramped, and hitch-hiked, and his vehicles had broken down going across the hills there, and he said his impression was that some Americans were trying to escape and that somebody started shooting to prevent the Americans escaping, and his impression was that the Germans became trigger-happy, as I am afraid all soldiers—you will understand as I do because I, myself, was in combat in this war, in active combat—and everybody started shooting all at once. That is what he reported as to the Malmedy incident.

I do know from that that the Malmedy massacre took place, and they were killed. It was a horrible thing to have happen.

Senator MCCARTHY. This chap had just come from Malmedy; is that right?

Judge VAN RODEN. We left the Fifth Armored, what was left of it. There had been terrible casualties in Luxembourg. They left at midnight or early morning on Friday, we got up to Sweiful that same day by vehicles, of course, and the following Sunday, which is about 72 hours later, this lieutenant came in

there and he then told us; for the first time I learned myself about the so-called massacre at Malmedy.

Senator MCCARTHY. He was an eyewitness?

Judge VAN RODEN. Yes; he was an eyewitness. I do not remember his name. I do not remember the name of the lieutenant colonel.

Mr. LARY. What was the date that he said this lieutenant reported to him?

Senator BALDWIN. The date doesn't appear in here. It was a Sunday.

Mr. LARY. If this lieutenant got to Sweiful he got there somehow. It is approximately 75 to 100 miles north of Malmedy. It is the only Sweiful that I know of in Germany. I hardly think that it is possible that a man, if he was very badly wounded, could have hitch-hiked or gotten through that type of thing, if the man was wounded, and gotten to Sweiful without some sort of treatment, medical aid, along that route of march, because we still held the road between Sweiful and Noville and on into Malmedy.

Senator BALDWIN. The report that you made, was that the only one that you made to anybody?

Mr. LARY. That is the only one, and that was Malmedy, and not Sweiful.

Senator BALDWIN. That was made how soon after the massacre?

Mr. Lary. That was made the same night that the affair took place. Approximately 12 o'clock at night.

Senator BALDWIN. You say it took place at 12 o'clock at night?

Mr. LARY. Yes, sir.

Senator BALDWIN. That is when you made it—

Mr. LARY. When I made the statement. The same night that the massacre took place I made the statement, approximately 12 o'clock that night.

Senator BALDWIN. At the time you were standing there in the field, did you have your arms over your head?

Mr. LARY. Yes, sir; in this manner [indicating], as was customary with prisoners of war at the time.

Senator BALDWIN. At the time of the shooting or immediately before the shooting had anyone started to run?

Mr. LARY. Absolutely no one, sir. I was standing in the left rear of the group, and could more or less oversee everybody, the actions of all the individuals. And no one had made a break for it.

Senator BALDWIN. Were you the only officer present at the time?

Mr. Lary. No, sir. There were all officers present of my battery, there were other officers present from medical detachments and other detachments I don't know.

Senator BALDWIN. What instructions if any did the officers give to the men at that time?

Mr. LARY. Well, sir; I only said myself, "Stand fast" when they started firing into the group. I heard the statement said by other men. I don't know whether they were officers or who they were. But others said, "Stand fast."

Mr. CHAMBERS. I would like to ask one question there.

So that after the first shot or two was fired, there was no individual or concerted effort by the group to break up, scatter or start to run?

Mr. LARY. No, sir.

MR. CHAMBERS. So in your opinion the Germans had no valid reason to believe that you were trying to escape?

MR. LARY. Sir, they took two pistol shots into the group, and they still stood there and took it. After the second pistol shot the Germans opened up. There had been no man that had made an attempt to escape.

SENATOR BALDWIN. Did any of you have any weapons at that time?

MR. LARY. No, sir. We had surrendered our weapons. In fact we had been searched for our weapons, as we were more or less massed and sent over into the field.

SENATOR BALDWIN. Do you know of any other officer, lieutenant or other officer, of that particular group, who escaped, other than yourself?

MR. LARY. No, sir. I know that all other officers in my battery were killed, and I asked the same question when we were sent to Germany. They told me that—that is, the war-crimes group here in Washington, which I believe at that time was headed by Colonel Rosenfeld—told me that to their knowledge there was no other officer that survived the massacre.

SENATOR BALDWIN. You would say of your knowledge there was no other officer in that particular group that survived?

MR. LARY. Yes, sir.

MR. CHAMBERS. Mr. Lary, after you had reported in, I believe you said that you had been wounded. What happened to you? Where did they send you? What did they do with you?

MR. LARY. They kept me there overnight; then I was sent to Liege, finally to England, then back to the United States.

MR. CHAMBERS. Back stateside?

MR. LARY. Yes, sir.

MR. CHAMBERS. In due course you had some connection with the trials of the accused in the Malmedy case?

MR. LARY. How do you mean that, sir?

MR. CHAMBERS. Did you come back to Germany to testify at the trials?

MR. LARY. Yes, sir.

MR. CHAMBERS. When did you come back to Germany?

MR. LARY. I believe it was in March 1946.

MR. CHAMBERS. That was before the trials had started. Did they send you down to Schwaebisch Hall by any chance?

MR. LARY. Yes, sir.

MR. CHAMBERS. For what purpose did they send you to Schwaebisch Hall?

MR. LARY. We were led to believe that before we got to Germany the trial would approximately take—the entire procedure—6 weeks, that is all we would have to be away from the United States. But it later developed that they were still interrogating prisoners and that other prisoners were being found that they had gotten leads on, so it ran into a longer period.

At that time we were introduced to Colonel Ellis. He invited me to come to Schwaebisch Hall to observe the prison and prisoners, and so forth.

MR. CHAMBERS. And you had an opportunity to see the prisoners being interrogated and questioned and what not?

MR. LARY. Yes.

Mr. CHAMBERS. Did they also take you down there for the purpose of trying to identify any of the accused?

Mr. LARY. Yes, sir. They didn't at the time. In fact, they didn't know at the time that I thought—in fact, when I got there, in a discussion with these gentlemen, I told them that I thought if I could see the man who started firing the initial shots, that I would be able to identify him, because he was only the distance across this room. And at that time it was decided that I would be given that opportunity.

Mr. CHAMBERS. When you got to Schwaebisch Hall and observed these interrogations and what not, were you actually present in the cells when they were interrogating the prisoners?

Mr. LARY. Yes, sir. I would like to give you the background of that, if I may.

Mr. CHAMBERS. Surely. Suppose you tell us the story in your own way, what you observed in Schwaebisch Hall.

Mr. LARY. I should say when I arrived at Schwaebisch Hall I was invited by Colonel Ellis to have complete freedom and access to the prison, with a special pass, of course, to observe the interrogation and to observe the treatment and to observe anything that I wished to observe while I was there.

I was there approximately 3 to 4 weeks. During that time I made many visits to the prison and, unbeknown to the interrogators, I watched their interrogation at numerous times. The cells were so arranged that they had a peep hole in them. That is, you can see through, but the prisoner inside couldn't see out. Many times while interrogation was going on—I say many times, half a dozen, maybe a dozen times—I observed Mr. Perl—Lieutenant Perl—Mr. Thon. I don't recall if there were others, I don't remember the names. But I observed those two men in their interrogations.

Mr. CHAMBERS. Do you remember a Mr. Kirschbaum?

Mr. LARY. No, sir.

Mr. CHAMBERS. Do you remember a Mr. Ellowitz?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Did you ever observe him?

Mr. LARY. Yes; I observed his interrogations.

Mr. CHAMBERS. Do you remember a Captain Shumacker?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Did you ever observe him?

Mr. LARY. No, sir.

Mr. CHAMBERS. You mentioned Perl and Thon particularly. If you have been reading the newspaper you will know that from time to time there have been charges made concerning the way they handled prisoners. Do you have any comment to make on that?

Mr. LARY. Yes; I would like to say that it wasn't at first, when I first arrived there, that I took so much interest in watching interrogations. But in conversing with Colonel Ellis it was more or less thought it would be a good idea if I did see how these men were interrogated—no thought occurred that anything like this would occur in the future, such charges—but more or less for my information to see what procedure and methods were used in handling the interrogation, so that I would know how they got their information.

I observed Mr. Perl in his interrogations, and I observed that in particularly tough cases he had to crack—I say in tough cases because he was working with the type of mind that had been trained from

youth in their beliefs and in their mannerisms. They were all working with very tough individuals as an SS man.

And when he would interrogate a particularly tough man I would say that Mr. Perl became very red in the face and would shout at the prisoners. He used no physical force, to my knowledge, whatsoever. He did use forceful, persuasive means, as far as his voice was concerned, but not as far as physical violence.

Mr. Thou was more or less of a persuasive-talking individual. He would stand up very close to the prisoner and tell him that—of course, I can't understand German, and they could speak it fluently and understand it—but he would stand up close to the prisoner and talk into his face and say that such and such and such, whatever it may be, emphasizing his words, you might say, more or less, by gestures.

But at no time while I was at Schwaebisch Hall did I hear of or see any mistreatment of a prisoner of war, as far as physical violence is concerned. As far as using loud language, yes; I did observe the loud language being used on this type of mind.

Mr. CHAMBERS. To nail this down for the record: You had complete freedom of the prison?

Mr. LARY. Yes, sir; complete freedom. Special privileges.

Mr. CHAMBERS. Did you have opportunity to see how prisoners were moved from spot to spot?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Did you have any opportunity to see how they were fed?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. How they were clothed?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. You have already testified that you watched unknown to the interrogators, quite a few of the interrogations. Did you ever observe or take part in any of the mock trials, the Schnell procedures?

Mr. LARY. No, sir.

Mr. CHAMBERS. During this period of observation, which lasted approximately a month to 6 weeks, did you ever see or hear of any physical violence being used on a prisoner?

Mr. LARY. No, sir.

Mr. CHAMBERS. By the guards?

Mr. LARY. No, sir.

Mr. CHAMBERS. By the interrogators?

Mr. LARY. No, sir.

Mr. CHAMBERS. Did you ever hear of them being deprived of food, having their blankets taken away from them, or anything of the kind?

Mr. LARY. No, sir. I might say, in connection with the mock trials, that you have brought out, I was told at the time that they were using such a system. And I asked Colonel Ellis why they were using such a system to obtain confessions. He said, "Lary, we are working with individuals who understand from their bringing up, and from their own misdeeds and crimes, brutality. Certain persuasive means must be used, not physical violence, but persuasive means, every persuasive means and ruse that we can devise because of these, you might say, first times that these things have been done to get confessions. We must use these things to obtain confessions from individuals."

Mr. CHAMBERS. You were living very intimately, I take it, with the prosecution staff and the guards there. Is that correct?

Mr. LARY. I was a guest in the home where all of the prosecution was eating and sleeping; yes, sir.

Mr. CHAMBERS. Did you hear them discuss or discuss with them various methods of cracking cases and getting confessions and so on?

Mr. LARY. At one particular time, at supper, when we were at the table—I had my own room there so I didn't know what was going on in the other places, in the discussions—one time at supper Mr. Thon came in and he was more or less, you might say, tired. He said, "I have had a very tough case today, it has been a mental trial to try to get out"—words to this effect—"it has been a mental trial in attempting to get out what we have to find out from these people."

Mr. CHAMBERS. Did you ever hear any general discussions or conjectures or arguments that if they used physical force on these people they might get better results? I am speaking now of general discussions and arguments.

Mr. LARY. I will say this: Of course, you realize that I have great feeling in the matter. I tell you this: I said, "Colonel Ellis, why is it that when you can't crack these people, why is it that when you know these people have murdered, from the Russian front to our front, that you cannot use physical violence, or use any means to get the confession that you—that I know they are guilty of?"

He said, "We are not permitted under our rules to use physical force. I have to keep constant surveillance to prevent any such thing."

I said, "Haven't you ever used physical violence?"

He said, "No, the only time was when two British sergeants brought in a man from the British zone. They had beaten the individual or individuals up very badly, and I immediately relieved them and sent them back to their unit with a reprimand."

Mr. CHAMBERS. Did you ever hear Perl or Thon or anyone else at the lunch table or dinner table conjecturing how these prisoners would be treated if they were prisoners of the Russians or something like that?

Mr. LARY. No, sir.

Mr. CHAMBERS. Did you know Dr. Karan while you were there?

Mr. LARY. No, sir.

Mr. CHAMBERS. Did you know Dr. Richter?

Mr. LARY. No, sir.

Mr. CHAMBERS. After the period of time that you spent at Schwabisch Hall, and they took the prisoners on to Dachau for trial, did you go there to testify?

Mr. LARY. Yes, sir. There are some other things I would like to tell you about Dachau if I may.

Mr. CHAMBERS. Before we leave Schwabisch Hall is there anything else you would like to tell us about that?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Please do.

Mr. LARY. I noticed that the prisoners, from my observation in the prison, were always moved from cell to cell or from cell to interrogation cell, with a black hood over their head. I commented on this to Colonel Ellis.

I said, "Colonel Ellis, why is it necessary to move these men in such a manner?" He said, "Due to the type of individuals that they are,

we must take every precaution and security means to prevent them planning an escape. This is an old SS prison. Undoubtedly some of these men have been in this prison as masters, you might say. We must move them from place to place with this blindfold, or with this hood over their head, so that they will not know their surroundings, and cannot talk, or make any plans for escape" which to me seemed very feasible.

I also had an opportunity, an ample opportunity, to observe their food. I would like to say that the cells were kept clean, they were inspected. Each cell had two cots, a mattress, and, of course, a blanket.

Mr. CHAMBERS. You say two cots?

Mr. LARY. Two cots; yes, sir. To my recollection, they had two cots.

Mr. CHAMBERS. Was there more than one prisoner to a cell?

Mr. LARY. There were two prisoners to each cell that I observed. They took me around—when I was first introduced they took me around the entire cell block, and I was able to look in on each man and see how many men were in there. There were two men to a cell. That is, the officers, I think, had a cell to themselves.

Mr. CHAMBERS. Did you have an opportunity to actually see all the cells and all the prisoners?

Mr. LARY. Well, sir, I had an opportunity to observe all of the cells that I had any interest in, where the prisoners of the Malmedy massacre were interned.

Mr. CHAMBERS. Mr. Lary, it has been testified to here by many people that this prison had single cells, and that it had others that had to take more people, and that there were a large number of these people who were kept in the single cells by themselves. Didn't you see any of those people?

Mr. LARY. Yes, sir. I saw Joachim Peiper.

Mr. CHAMBERS. He was kept in the hospital area, wasn't he?

Mr. LARY. To my knowledge, sir, he was kept in a single cell.

Mr. CHAMBERS. But was that in the hospital area? That was one block of cells.

Mr. LARY. That was one block of cells separate from the others. I don't know whether it was hospital or not. And I believe Sepp Dietrich also had a single cell.

Mr. CHAMBERS. Outside of those two you didn't see any others in single cells?

Mr. LARY. There was one other man that I saw in a single cell on the same floor and cell block, where they were keeping those of double—that is, double bed cells. This man was particularly interesting because he was there by himself.

I commented, "Why is he there?" I was told, I don't recall who told me at the time, that he would not confess to his crimes, therefore he was kept alone and away from companionship until he could more or less—that is, you might say, mental deprivation, until he could be made to confess.

Mr. CHAMBERS. I would like to get it perfectly clear. You feel that you saw all of the prisoners confined in Schwabisch Hall?

Mr. LARY. I feel certain that I did.

Mr. CHAMBERS. And that you had an opportunity to look in all cells?

Mr. LARRY. Yes, sir.

Senator BALDWIN. Were there any so-called death cells there that you heard anything about?

Mr. LARY. No, sir. Not for this group of men. I was told that there were other prisoners convicted by courts for crimes against humanity, who were held in other parts of the prison. But I did not see them.

I would like to say, sir, that these cells were clean, equipped with sleeping facilities. They each had a toilet. In the morning each man was given a razor blade to shave with. The razor blade was then taken away from them. They were served, I would say, rations that were superior to those that we received in combat. The testimony that I understood has been given that the food was poor and inadequately cooked, I can only say that is true because the Germans did not know how to cook it themselves, because they had their own German cooks.

Senator BALDWIN. What time were you there? Can you give us the dates?

Mr. LARY. I can only give you an approximate date, Senator. It was somewhere around the first, maybe the middle of April 1946.

Senator BALDWIN. Do you know whether or not there were any American medical officers in attendance?

Mr. LARY. I do not know, sir. I did not ask.

Senator BALDWIN. Was it one of your purposes for being there to see if it were possible for you to identify any of these men?

Mr. LARY. That was not the purpose when I originally went there, but when I told them that I thought I could identify one of the men who started firing into the group, then Colonel Ellis said, "There will be only one way that we can submit to such scrutiny of the prisoners and that would be that they be brought before you in groups, or in twos and threes, and a number of men, so that there would be no subterfuge in the matter. And if that is done, it must be done in court."

I said, "I do not think it will endanger the proceedings or weaken the proceedings if you handle it in such manner."

Senator BALDWIN. Did you ever identify the man who started firing?

Mr. LARY. Yes, sir.

Senator BALDWIN. You did identify him?

Mr. LARY. I did identify him; yes, sir.

Senator BALDWIN. Where did you identify him?

Mr. LARY. First at Schwaebisch Hall.

Senator BALDWIN. How was that identification made?

Mr. LARY. On the morning that they decided to let me see if I could identify the man, they told me the men would be brought in in groups and that I would have an opportunity to bring back any man that I so desired, and that was done. They brought in, as I remember correctly, a group of four men first. Out of that group I was not able to identify anyone. They then brought in a group of three, and of the three men, I definitely, in my own mind, identified this particular individual.

They then brought in another group. I said nothing about it at the time, until the last group had been brought in. Then I told them that it would not be necessary to bring any more men into the room

because I felt certain that I had identified this particular individual in the second group, and asked that they be brought back. This was done, and I pointed out the man who started firing initially.

Senator BALDWIN. Do you recall his name?

Mr. LARY. I did not know it at the time, but I later learned at Dachau that his name was Georg Phleps—P-h-l-e-p-s.

Mr. CHAMBERS. I would like to verify the spelling for the record.

We have a G-e-o-r-g Fleps—F-l-e-p-s. Is that the man?

Mr. LARY. Yes; I thought it was P-h-l-e-p-s.

Senator BALDWIN. Was he an officer?

Mr. LARY. No, sir. He was not an officer.

Mr. CHAMBERS. How could you identify him?

Mr. LARY. You mean how could I identify him as the man who started firing?

Mr. CHAMBERS. That is correct.

Mr. LARY. Sir, when we were standing in the field, the distance, as I say, was approximately across this room where we were standing facing these half tracks. This man stood up in the half track. We could view him from his waist up. I had ample opportunity because he took sufficient time to more or less torment us, by aiming into the group, three times. He brought his pistol down and aimed. The third time he brought his pistol down he fired. I had ample opportunity to see that man's face.

Of course, any man who is getting ready to shoot you in broad daylight, you might say the distance of this room, you would remember his face, I feel certain. At least I did.

Mr. CHAMBERS. Did you at Dachau testify to the identity of Fleps before the court?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Did you attempt to identify others at Dachau?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. Did you identify anybody else?

Mr. LARY. No, sir.

Mr. CHAMBERS. And this identification was made at Schwaebisch Hall? Was that along toward the end of your stay there?

Mr. LARY. Yes, sir. Along toward the end of the stay.

Mr. CHAMBERS. Do you know approximately the date that that took place?

Mr. LARY. No, sir; I do not.

Mr. CHAMBERS. Do you know whether or not by that time the interrogators had completed their interrogation of these people?

Mr. LARY. No, sir. It was my understanding that they were still interrogating prisoners at the time.

Mr. CHAMBERS. Were these particular individuals that were brought in for identification those on which interrogation had been completed?

Mr. LARY. I do not know. They did not tell me. They just brought these men in to face me.

Mr. CHAMBERS. Did these men, when brought to you, have a black hood on?

Mr. LARY. No, sir.

Mr. CHAMBERS. They brought them in without the hoods?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. There has been considerable testimony here that prior to the time they were here—through the interrogation these people were kept absolutely separate from each other.

Mr. LARY. During the time of interrogation of each individual?

Mr. CHAMBERS. Up until such time as they had their confessions.

Mr. LARY. I see what you are speaking of. I do not know about that, Colonel. I got into Schwaebisch Hall more or less, you might say, at the end of the entire proceeding. It is my understanding they had been working on this for some eighteen-some-odd months.

Mr. CHAMBERS. You got there in the middle of March?

Mr. LARY. It is my recollection it was around that time.

Mr. CHAMBERS. And left there about the middle of April?

Mr. LARY. Yes, sir.

Mr. CHAMBERS. To go to Dachau?

Mr. LARY. No, sir. We returned to Wiesbaden for another period of wait, then went to Dachau.

Senator BALDWIN. It might be well to put in the record at this point, that in this document you state against Valentin Bersin and others, case 26-24, review and recommendations of the deputy judge advocate for war crimes, that this case of Fleps appears on page 61 of that record.

Have you anything more that you want to say, Lieutenant, about your stay at Schwaebisch Hall?

Mr. LARY. No, sir. Only to emphasize that at the time I was there I saw absolutely no physical violence, or no evidence of physical violence, on the prisoners.

Senator BALDWIN. Did you hear any shouts of screams or anything of that kind?

Mr. LARY. No, sir.

I will say this: I asked permission to speak to Joachim Peiper and was granted permission. I was permitted to go into his cell and talk to him. And at the time, to the best of my recollection, these are the words that passed between us. The man spoke perfect English.

I said, "Peiper, I would like to know why your outfit committed such a crime."

He said, "We had orders to do so, and you are responsible for similar crimes."

I said, "Colonel Peiper, we never, to my knowledge, in this war or the last war, treated prisoners of war in such a manner."

Of course, it was difficult to talk to him—I mean it was difficult for me to talk to him because I had great feeling against the man.

I said, "Do you admit that you committed these crimes?"

He said, "I have given a written testimony to the effect, and I take full responsibility."

Then I said, "How has your treatment been since you have been here?"

He said, "I commend the treatment that I have received—commend Colonel Ellis"—or the chief prosecution; I forgot what the designation was, but I assume it was Colonel Ellis he was speaking of—"for the treatment that we have received while we were at Schwaebisch Hall."

Those were the words that passed between us at that time.

Senator BALDWIN. Did you talk with the other officer whom you mentioned—Dietrich?

Mr. LARY. No, sir.

Mr. CHAMBERS. Did you talk to General Kraemer?

Mr. LARY. No, sir.

Mr. CHAMBERS. Did you have an opportunity to talk to any of the other prisoners?

Mr. LARY. That was the only prisoner to my knowledge that could speak English.

Mr. CHAMBERS. You say you went to Dachau to testify at the trial. Did you stay there throughout the entire trial proceedings?

Mr. LARY. No, sir.

Mr. CHAMBERS. What did they do: put you on the stand early in the game?

Mr. LARY. The trials were in progress approximately a week and then we were put on the stand to testify.

Senator BALDWIN. What did you see at Dachau, if anything, concerning these prisoners?

Mr. LARY. I saw that the prisoners were being thrown together in larger groups. I asked permission to go into the compound to see how they were being kept. There were other groups being retained because of these crimes. I think the Mulhausen case, the group were still there. And I saw that these prisoners were thrown together in larger groups.

I commented to Colonel Ellis. I said, "Colonel Ellis, I see they have thrown the men together in larger groups."

He said, "Yes, that would be a fine opportunity for them to get together. And after our work and the efforts we have made, it will be a fine opportunity for them to get together and trump up lies."

That was the observation that passed between us, and that was the only observation that I had in the compound.

Senator BALDWIN. Did you have opportunity at Schwaebisch Hall to observe the attitude of the prosecution staff toward the prisoners?

Mr. LARY. Yes, sir.

Senator BALDWIN. What was their general attitude? Can you describe it? Was it one of hate or one of violence or extreme dislike and disdain? What was it? How would you describe it?

Mr. LARY. I would say, sir, it was an attitude of complete impartiality on their behalf. That is, they took their work seriously. I say this in speaking of Colonel Ellis, Captain Shumacker, and the others that I did not know too well; they took their work seriously, they worked long hours, many hours a night, in typing these reports, and to my knowledge—and as far as I can see—they were conscientious, and as far as their treatment of the prisoners was concerned it was absolutely on an impartial basis, you might say, neither with disdain, absolutely no respect, or no disdain, just an impartial basis.

Senator BALDWIN. In any of your conversations at the mess table or anywhere else, did you ever hear any discussions about "We should use physical violence in order to get these so and so's to confess," or anything of that kind?

Mr. LARY. No, sir. I have heard them called so and so's, but the use of physical violence was never brought into the conversation to my knowledge while I was there.

Senator BALDWIN. You said in one of your statements that Colonel Ellis said they had to use ruses. I think you used the word. Is that correct?

Mr. LARY. Yes, sir.

Senator BALDWIN. Did he tell you about what the ruses were?

Mr. LARY. Yes, sir. I am referring to the mock trials that they used. And to my knowledge, as to what he told me, to the best of my memory, the men who were brought into the cell, a dark end cell you might say, with a crucifix on the table and candles, not as a disrespectful symbol toward religion but more or less to make them aware, to make them aware before the eyes of God, of the crimes that they had committed, if they had committed those crimes.

In no way, as a disrespect to the crucifix. I would like to emphasize that point. It was a psychological ruse, or use, to make a man, if he had any religion at all, realize that if he had committed the crimes against humanity, that this crucifix and possibly the candles, as I understand the Catholics in that country use for certain reasons, possibly such things would make him aware of his sins, you might say, or crimes, and make him confess.

Senator BALDWIN. Did they say how they interrogated him there?

Mr. LARY. No, sir. They did not tell me.

Senator BALDWIN. You never witnessed one of these so-called trials?

Mr. LARY. No, sir.

Senator BALDWIN. You said you had something you wanted to say about Dachau.

Mr. LARY. I spoke of that when I said that they threw the prisoners together. Oh, yes, and I will say that before and during the trial, when I had ample opportunity to observe the prisoners, there were no marks of physical violence on any of the men. They were still at their ramrod attention when they stood up; they were capable of walking to and from the cells in perfect order.

Their appearance was excellent as far as their physical appearance was concerned. They all appeared to be well-fed and well-treated.

Mr. CHAMBERS. Do you have a statement that you want to make, a general statement?

Mr. LARY. Only in conclusion.

Mr. CHAMBERS. I have no more questions, Senator Baldwin.

Senator BALDWIN. Have you talked with anybody about the case since you have been here? Have you talked with Ellis at all?

Mr. LARY. I was in correspondence with Colonel Ellis as soon as I found out that this investigation was being conducted. I told him that at the time I would like to have the opportunity to return if possible to give the testimony that I was able to give.

Mr. CHAMBERS. Have you also been in contact with Major Fanton?

Mr. LARY. No, sir.

Senator BALDWIN. Have you anything further you want to say, Lieutenant?

Mr. LARY. In conclusion, yes, sir; if I may take the liberty.

Senator Baldwin, Colonel Chambers, and other gentlemen of the investigating committee, I take this opportunity to express my appreciation to you for the opportunity to testify. In conclusion, may I give these additional opinions: I hold in great esteem the members of the war crimes and other units who conducted the Malmédy trials. Their efforts in ferreting out the SS men from every conceivable hole in Europe are outstanding.

The interrogation of those prisoners was excellent and beyond reproach. I feel certain that charges of misconduct against them or

their methods of procedure will be proven false. I charge that any person or persons who has stated that the prisoners were beaten or tortured have no basis for their charges. I am positive in my own mind as an eyewitness that those accusations are absolutely untrue, unjust, and improper.

I feel certain that those statements are based on the words of SS men who were under sentence of death and who naturally took any encouragement to escape their punishment. You may or may not be aware of the fact, but the people of the world are watching with great interest this investigation. This is true in the country where I am now stationed—Venezuela. Your decision will be, I know, fair and impartial. For the benefit of any who may doubt that the massacre may have occurred, I am certain that they could no longer have that doubt.

It is great compassion and sorrow for the parents and wives and children of my men and fellow officers that I feel, because those murderers responsible for the Malmedy massacre have not paid for their crime. To those relatives I say be patient, for this committee will prove, I am certain, that this penalty must be paid. It is only just that this investigation be conducted, for in this manner our system of justice will be absolved of any blot and the untruths of certain individuals will be returned to them in kind.

This completes my statement.

Senator BALDWIN. What is your position with the company, Lieutenant?

Mr. LARY. I am an accountant.

Senator BALDWIN. Are you a college graduate?

Mr. LARY. Yes, sir.

Senator BALDWIN. What college?

Mr. LARY. University of Kentucky.

Senator BALDWIN. What year did you graduate?

Mr. LARY. I graduated in 1948. When I returned from the service I took advantage of the GI bill of rights and returned to school.

Senator BALDWIN. When did you enter the Army?

Mr. LARY. In January 1941 as an enlisted man in the Regular Army.

Senator BALDWIN. You enlisted in the Regular Army?

Mr. LARY. Yes, sir.

Senator BALDWIN. How old were you then?

Mr. LARY. Eighteen.

Senator BALDWIN. Where were you living at that time?

Mr. LARY. Tulsa, Okla.

Senator BALDWIN. Tell us something, Lieutenant, about your military career. Where did you serve; where did you go for your training?

Mr. LARY. I enlisted in the Field Artillery in 1941 and went to Fort Sill where I received training as a recruit. They did not have basic training camps at the time. When we later returned to duty and I joined my battery I was sent on maneuvers to Texas and Louisiana. Out of the Louisiana area I transferred to the Air Force where I spent 2 years, and attained the rank of staff sergeant, and applied for Officers Candidate School and was commissioned at Fort Sill, Okla., in the Field Artillery as a second lieutenant.

Senator BALDWIN. When did you go overseas?

Mr. LARY. In 1944, sir. I do not remember the exact date.

Senator BALDWIN. And you went to the European theater?

Mr. LARY. Yes, sir.

Senator BALDWIN. Where did you land in Europe?

Mr. LARY. We landed at Normandy. Not on D-day, but a considerable time after D-day. I would say 3 months after D-day.

Senator BALDWIN. Then you were in those campaigns, the final campaigns?

Mr. LARY. Yes, sir. We were in Luxembourg and we were in Holland; we were in Belgium and we were in Germany. We were in the Hurtgen Forest when we were ordered to proceed south to Bastogne.

Senator BALDWIN. That is when this incident occurred?

Mr. LARY. Yes, sir.

Senator BALDWIN. In this massacre you were wounded. Where were you wounded?

Mr. LARY. I was very fortunate. I was shot through the foot.

Senator BALDWIN. Thank you. Thank you very much. We appreciate your coming up here to offer your statement on this matter.

Mr. LARY. Thank you, sir.

Senator BALDWIN. Colonel Straight, can you be with us tomorrow?

Colonel STRAIGHT. Yes, sir.

Senator BALDWIN. The hearing is recessed until tomorrow morning at 10 o'clock.

(Thereupon, at 4:05 p. m., the committee adjourned, to reconvene Friday, June 3, 1949, at 10 a. m.)

MALMEDY MASSACRE INVESTIGATION

FRIDAY, JUNE 3, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10:30 a. m., in room 212, Senate Office Building, Senator Raymond E. Baldwin presiding.

Present: Senator Baldwin.

Also present: J. M. Chambers, of the committee staff, and Colonel Fell.

Mr. CHAMBERS. Colonel Straight, when your testimony was interrupted last time, we were in process of developing with you some of the details of the organizational set-up of the War Crimes Branch, and my memory is a little hazy as to where we left off.

TESTIMONY OF LT. COL. CLIO E. STRAIGHT—Resumed

Colonel STRAIGHT. I suggest, what I was doing was answering your questions about the reviews, preceding General Clay's action, wasn't I?

Mr. CHAMBERS. That is correct. We had reached the point in our testimony where we had said that there had been a great many reviews made and we were asking you to give us rather a detailed picture leading up to Clay's final approval.

Colonel STRAIGHT. That's my view.

Mr. CHAMBERS. Proceed from that point.

Colonel STRAIGHT. In that testimony I mentioned the fact the drafts had been prepared by three men, and I named the men that I thought prepared them. I am not sure of it because the cases were assigned for review by the chief of my post-trial section. I did not, except in rare instances, take any part in it and say that this case should be assigned to such and such a man.

I also mentioned the fact that we had to go back and build it up again from the ground, from the record, and we assigned Mr. Denson to that task.

Mr. CHAMBERS. May I interrupt? I believe that on the first review, one of the three men was Maxmillian Koessler.

Colonel STRAIGHT. That's my best memory, yes.

Mr. CHAMBERS. Why did you feel it was necessary to go back to the record and build up the review the second time?

Colonel STRAIGHT. For the reason that I did not believe that it accurately portrayed the record. It was not editorialized in such a manner that it facilitated my work or my superiors, but it accurately portrayed what was in the record.

Mr. CHAMBERS. Did you find that you were in disagreement with the conclusions they had drawn from their analysis, or was your objection to it that the review itself was so prepared and so presented that it did not permit you to really evaluate their conclusions?

Colonel STRAIGHT. In trying to refresh my recollection I have given a lot of thought to the matter, and to the best of my memory, I cannot recall with any degree of accuracy whatever, as to the recommendations that were made; but, in the review work the fact that I might have disagreed, or thought that I might ultimately have disagreed with their proposal as to what action should be taken as to a sentence, was beside the point, if it accurately portrayed what was in the record of trial. I hope I can demonstrate it so that you will appreciate my point of view. The action with regard to the sentence only involved about one sentence, and obviously I disagreed with many recommendations in many reviews as to what should be done with the sentence by way of commutation, reduction, approval, or setting it aside.

There certainly would have been no point, and I never did send back any reviews to be built up again for the record, if I thought that it appeared to be an accurate portrayal of what was in the record.

Mr. CHAMBERS. Now, Colonel Straight, as executive officer of the War Crimes Branch, one of the organizational units you had was this Posttrial Section?

Colonel STRAIGHT. Yes. However, the executive officer of the War Crimes Branch, or group, never had any responsibility in connection with the review of cases, until Colonel Mickelwaite was assigned as theater judge advocate.

Mr. CHAMBERS. When was that, sir?

Colonel STRAIGHT. Approximately May 13, 1945—I was assigned in charge of the group on May 13, 1945.

Mr. CHAMBERS. You were in charge of what—

Colonel STRAIGHT. War Crimes Group, May 13, 1945. His appointment as theater judge advocate no doubt preceded that by a day or two, or it might have been simultaneous.

Mr. CHAMBERS. Subsequent to that assignment did anyone come in superior to you in the War Crimes Group?

Colonel STRAIGHT. No.

Mr. CHAMBERS. So, in effect the Posttrial section or branch was really recommending to the head of the War Crimes Group, the recommendation that you would make the higher authority, as to the disposition of the sentences of the court?

Colonel STRAIGHT. It is all a question of phraseology. I think it is better expressed by this: That the Staff Section doing spadework for me—I had the responsibility by a theater directive to make direct review and recommendation for the theater commander, and it passed through the judge advocate for his action.

Mr. CHAMBERS. So it is a fair statement that starting with the time that you were appointed that you were responsible for the review action of these cases for the theater commander?

Colonel STRAIGHT. Exactly.

Mr. CHAMBERS. Now, to carry this continuity on through did the theater commander set up any review of your review? Was there another group or layer between you and the theater commander before he made his final decision?

Colonel STRAIGHT. The theater directive required, as I said the other day, that the theater judge advocate give the theater commander his view, the theater judge advocate's views as to the reviews and recommendations of the deputy judge advocate. In other words, there was, by directive a requirement that the theater judge advocate also go over the case.

Now, as something directly related to that, about July or August 1947, because of the tremendous volume of reviews of war crimes cases and the multitudinous duties of the theater judge advocate in that connection, he, informally and not by way of a theater directive, assigned men in his staff to agencies or boards which he termed boards of review, to facilitate his work in taking his action in coming to his recommendations as to the records.

Mr. CHAMBERS. Now, were these informal boards of review that were created by the theater judge advocate, those boards of review which have been referred to in our records from time to time as the Frankfort Board or the Harbaugh Board, and so on?

Colonel STRAIGHT. No doubt, both—I don't remember the record, but it is entirely probable that those expressions have been used.

Mr. CHAMBERS. Because it was a fact that they were located in Frankfort, and Colonel Harbaugh at that time, was he responsible for doing that work for the theater judge advocate?

Colonel STRAIGHT. Oh, yes. Colonel Mickelwaite ceased to be theater judge advocate and was returned to the United States the latter part of March 1947. Colonel Harbaugh reported to the theater 2 or 3 weeks before that time, and as Mickelwaite left the assignment, Colonel Harbaugh took it over.

Mr. CHAMBERS. Well, now, there has been mentioned in the record, it has been repeatedly mentioned, that when Colonel Dwinell was assigned as an adviser to one of the review boards—was that your posttrial section or was it the so-called Frankfort Review Board?

Colonel STRAIGHT. It had nothing to do with my organization. That is in connection with the informal staff board, or whatever you term it, that was working for Harbaugh.

Mr. CHAMBERS. Now, Colonel Straight, perhaps you are not the best person to ask this question, but who assigned Colonel Dwinell to duties in connection with the reviewing of cases in which he had been an active participant?

Colonel STRAIGHT. I can help you out by way of hearsay.

Mr. CHAMBERS. Let's have that.

Colonel STRAIGHT. As I recall, I was aware of the fact that he was being so assigned as an aide to the board at the time or soon afterward. I cannot be at all sure, but my best memory is that Colonel Harbaugh discussed the matter with me by telephone. Also, my best memory is that I recommended against it, on general principles. It certainly was a novel thing to do. Also, my best memory is that he expressed the view, in the discussion, that the record was extremely complicated. The facts back of the case in this combat action were difficult to portray, incidentally there was great difficulty for us in preparing the review and recommendations, that is, my staff—and he thought under the circumstances, and I believe also that the question was mentioned as to the rumors and gossip in connection with the development of the case—he thought it appropriate under the circumstances in order

to make certain that no injustices resulted to any accused, that Dwinell's knowledge of the record be made available to the board to facilitate their action.

Now, since the hearing started, I discussed the matter with Colonel Harbaugh. I was surprised at some assertions that he had appointed Dwinell to the Board, and he had required him to assist the Board, to some extent, over his objections; and I was told by Colonel Harbaugh that the first he realized that Dwinell was assigned to a board, and was to review the Malmedy case, was when Dwinell came to his office and raised the question of his serving in connection with the Board. I think I accurately portray his remarks to me when I say that he then told him, "Oh, no. It's not right for you to be on this Board." A lengthy discussion of an hour or two ensued, Colonel Harbaugh's interest being an interest in the case generally, and as an outcome of it, the idea was born for Colonel Dwinell to render some ex-officio assistance to the Board in working the records.

Mr. CHAMBERS. Well, now, would it have been possible for Colonel Dwinell, in fact without his duties having required it—serving as an ex-officio member of that Board of Review—to have reviewed cases other than the Malmedy case, in which he might have been a participant?

Colonel STRAIGHT. No; I don't think that follows at all; for the reason that the membership on the boards, he first had only one, and later near the end of the review program, I think he had four or five, but the personnel on a particular board was not static, they were shifted in order that, one of the reasons for shifting them, the primary one was, to be sure that the men didn't work on them in connection with the cases that they prosecuted or defended. Most of the personnel on these boards were personnel that were assigned to my Dachau detachment.

Mr. CHAMBERS. Did Dwinell only work on the Malmedy case during his assignment to the Frankfort Review Board?

Colonel STRAIGHT. I can't be at all sure about that, but I think it is quite certain that he worked on other cases.

Mr. CHAMBERS. And isn't it a fact that Dwinell, while working as a part of the War Crimes Group, with the exception of the case involving the WAC captain that was mixed up in some thefts, that Dwinell normally was on the prosecution side of the cases?

Colonel STRAIGHT. First, about the WAC captain, the Litchfield cases, and the Kronburg cases which incidentally drained my personnel by General McNarny's personal direction, that I was to deliver up personnel for those cases—had nothing to do with war crimes operation, nothing to do with my functions at all; and, insofar as Dwinell worked on those he was on temporary duty with the judge advocate of the Continental Base Section.

Senator BALDWIN. What was that case, that escapes my mind?

Colonel STRAIGHT. I didn't work on it—

Senator BALDWIN. That had to do with our own personnel?

Colonel STRAIGHT. Some American military detention facilities in England, and a colonel in the American Army, and I cannot tell you his name right now.

Mr. CHAMBERS. Killian.

Colonel STRAIGHT. That's right.

Mr. CHAMBERS. The point I am getting at, Colonel, is simply this, that as I understand the picture Colonel Dwinell probably did work

on other cases in a review capacity, for Colonel Harbaugh, and I further believe, this is why I am checking the record now, that Colonel Dwinell himself said it would have been possible for him to review the other types of cases.

Now, it is rather an unusual procedure to find a man who had been a defense counsel placed in a position to advise the Board of Review on the case, but it would seem to be even much more unusual to find that same man who had handled the case from the prosecution point of view to have been put in the position where he might have been passing on it, or advising groups of people who were passing on cases in which he had been a prosecutor.

Colonel STRAIGHT. I don't think at all that you will find that Colonel Dwinell ever, while working in Harbaugh's office, aided in any manner in reviewing any case in which he served as a prosecutor. I don't think you will find it. I don't know, myself.

Mr. CHAMBERS. I certainly know that the record does not show that, but I also know that the record shows that a man who had been working in inferior courts was up there in one case of your courts reviewing a case in which he had been an active participant for the defense.

Colonel STRAIGHT. Well, it's a question of phraseology in reviewing. However, I don't want to argue about that. I can concede this, that Harbaugh's problem was a problem on which reasonable might might differ. I recall quite positively, I recommended against it when he discussed it with me.

Mr. CHAMBERS. Without trying to impeach Colonel Harbaugh or yourself or anyone else but speaking as a matter of procedure, before we get through here I will find this particular statement, Colonel Dwinell said that as an ex officio member, that he was advising the Board of Review on the Malmedy cases, and Colonel Dwinell further stated that he took occasion, at every opportunity, to advance the cause of the defense.

Colonel STRAIGHT. I realize his testimony to that effect.

Mr. CHAMBERS. That is in the record.

And in addition to that, Colonel Dwinell said that he assisted in the preparation of the recommendations of the so-called Harbaugh Board, and I am merely speaking now from a procedural point of view; that there are two inferences or two conclusions that could be drawn: One is that Colonel Harbaugh felt that the earlier reviews, and the handling of the trial were under such a cloud that he needed to bring somebody from the defense staff up to help advise him on it; or the other conclusion is that either due to a scarcity of personnel, or something of the kind, they reached out and picked out a trained man to help them.

Now, there may be other conclusions, Colonel, but those are two immediate ones that come to my mind.

Colonel STRAIGHT. There is an implication or inference there that I don't think it is appropriate for me to respond to. However, I would be extremely glad if you would get Colonel Harbaugh to express his views, both from the standpoint of my ability and my integrity. People at times may have more than I have—

Mr. CHAMBERS. Colonel Straight, I would like for the record to show very clearly that this line of questioning is not aimed at you—

Colonel STRAIGHT. I realize that.

Mr. CHAMBERS. This line of questioning, however, is a sincere effort on my part to bring out evidence which might indicate where this committee could be helpful in avoiding some of the mistakes that have crept into this matter. I am not referring to the Malmedy case particularly, but in the Malmedy case we did find that a man that had been an active participant in the lower court, through action, certainly of higher authority, was placed in position to materially, according to his own statement, argue his side of the case before a board of review.

I submit to you, and I think you have answered it fully, but I submit to you that it should have been impossible, that after having been assigned to work with the board of review to have also been passing on cases in which he had been on the prosecution side of the matter—if I may finish the situation to show you what I am after here: A great many of the difficulties that seem to have gotten into the war crimes situation stem from this matter of adequacy of competent personnel. It would appear that the reasons why Dwinell was put there were rather important. Now, if it is based on this personnel situation, then definitely it is something that gets into the question of long-range planning to meet situations of this kind in the future; if Colonel Harbaugh had, because of all the rumors and gossip and stores that have been connected with the Malmedy case in particular, felt it necessary to bring Dwinell up there, I agree with you we should get Colonel Harbaugh over to tell us why he did it.

Now, I repeat again that so far as the evidence we have before us is concerned, on this particular point or any of the others, that nothing affects your integrity or ability, but this whole situation is confusing.

I have made rather a long speech only for the purpose of clarifying my line of questioning, and if you care to comment or elaborate on the matter, go right ahead.

Colonel STRAIGHT. Well, my only remark would be this, to be sure the record is correct as I know the facts: That is, the Ilse Koch hearings to the contrary, prosecution and defense counsel were not positioned in my organization to influence the action of the staff that worked for me in preparing reviews and recommendations. And, insofar as I have been able to gather, by hearsay, I don't think that in Colonel Harbaugh's office that anybody ever worked in a capacity similar to what Dwinell did, except in this Malmedy case.

Mr. CHAMBERS. And I presume that, you have already said that this was a rather unusual procedure, that in talking to Colonel Harbaugh about it you said it was rather an unusual thing.

Now, I presume from the standpoint of procedure, that it is not a desirable situation to have either a prosecutor or defense counsel assisting in the review of cases.

Colonel STRAIGHT. Not in my opinion. I agree with you thoroughly.

Senator BALDWIN. There was testimony from Colonel Mickelwaite that there was a great shortage of personnel. Would you concur in that, Colonel?

Colonel STRAIGHT. Yes, I certainly would. I could give you, if you are interested, orally, a brief résumé of the situation throughout the program, and also some brief idea as to the tremendous steps we took to try to get personnel.

Senator BALDWIN. I would like to have you say what you would like to say on that, because I think that is an important factor in this whole thing.

Colonel STRAIGHT. I have quite a lot of documents here that I can give you. You can have an opportunity to look at as many of those as you would like, in that connection.

When I came to Paris, at General Betts' direction——

Senator BALDWIN. When was that?

Colonel STRAIGHT. March 13, 1945, and assigned second in charge of the War Crimes Branch, as it was then called, to look over the situation, it appeared to me that, if even part of the plans of the War Department were carried out, that it would be a tremendous task. It would call for a tremendous number of personnel, as compared with what those then working on the problem had in mind.

I was successful, to a considerable degree, in getting General Betts to the same point of view, sufficiently so that I think that on April 6, 1945, he flew to London to have a conference as personal adviser to President Rosenman, I believe his name was, who was with Roosevelt and President Truman. He took a considerable interest in it and he said that he would take direct action, and indicated that the direct action he intended to take was take it up personally with Assistant Secretary McCloy.

About a week following that, Assistant Secretary McCloy and Col. M. I. Cutter, who was then McCloy's adviser on war crimes, were in Paris, and General Betts had a conference with them.

As a result of that conference, a telecon conference was arranged with the War Department, I think General Henry, and at least a couple of generals in G-1 of the War Department, and they placed quite a sizable requisition for personnel and tried to impress upon the War Department that personnel were not procurable, either by way of training or in numbers in the theater, and incidentally those were not in large enough numbers to satisfy my ideas as to the answer to the problem.

The War Department finally got some action. They sent over some lawyers. They sent over some court reporters and some interpreters, but they never did fill even this initial requisition, during 1945. I do not remember whether that requisitioning included the requirements that they had for about 25 or 30 lawyers of proven legal ability with 5 or 10 years' practice, I forgot which, it was in that area, but I know for sure that soon thereafter, I was successful, Jaworski and I. Colonel Jaworski is a very bright partner of the firm Colbright, Cooper & Freeman, of Texas. We were successful in selling the idea that they should be German-speaking lawyers. Incidentally, Colonel Jaworski could speak German. We had a requisition for 25 I think was the actual number that was put in for.

Well, about VJ-day, or a little before, a considerable portion of the recommendations for a requisition for court reporters and interpreters canceled out and they said they couldn't send them. They also said they couldn't send a portion of the lawyers that were requested, as I recall.

We had staff studies going about every week or 10 days, as much as we felt we could and still be within the bounds of military propriety. In the early fall, or middle fall, about October, I think, the idea was born in the War Department that they couldn't furnish the officers,

VJ-day having happened, but they might be able to procure civilians if we could use them.

Now, the situation at that time was not very advantageous from the standpoint of handling civilians, but we told them we could if they would put them in uniform and give them proper—that is, the uniform they required civilians to have—and I think there was another telecon conference between General Betts and G-1, War Department, in August and another one about October, or November, as Colonel Mickelwaite indicated the other day General Betts was in Washington at the end of the year 1945, to personally pursue the problem, and our results in the War Department were very, very meager until December of 1946. I think we had a telecon conference in the spring of 1946, but, any rate, we got General Bevins and General Ball—General Ball was chief of staff under General McNary and was particularly interested in this thing—and they started sending some personal cables to the War Department.

Following, about May 1946, the position of the theater headquarters was extremely adamant that they just had to have personnel in proper numbers and proper capabilities, and I sent, or we sent, Colonel Carpenter, who was here to testify the other day, to Washington in June to aid in plans for selection, in efforts to get the personnel.

Starting about August 1946, personnel turned up in numbers that were quite satisfactory from sources within the War Department, within the theater, and, incidentally, I think in about February they ran all the officer personnel in the theater to locate officers with legal experience, and it was a command directive that if they had legal experience of any kind they were to be assigned to the war crimes, which was done.

Following, about September or October 1946, we had personnel in sufficient numbers. Our efforts to get German-speaking lawyers and lawyers generally with considerable trial experience and experience in law never materialized. I don't mean to say that we didn't have quite a few very good personnel in the war crimes. We did. At the same time, from the very start we were required to utilize young lawyers with no experience at all, just out of law school and in the Army. In that connection it might be of interest to note that we took the position that each war-crimes investigating team had to be staffed by two lawyers, two or more. We took the position that the evidence should not be procured by laymen, and I am still extremely sold on that conclusion. There was pressure from General Betts and some people at headquarters to use CIC personnel, but, particularly in view of the fact that we were going to use the sworn testimony, the extrajudicial statements of witnesses, I was of the view that it was essential that it be done by capable lawyers.

We ultimately got to the place where there was no other solution, other than to use laymen almost exclusively on the war-crimes investigating teams. We had 19 of those working in areas from the North Sea to the Alps, down into Austria, in the early days. Also, there was agitation, which was a factor, from the standpoint of consumption of personnel, for us to take on projects other than what we had in mind. The directive at the outset, of the War Department, was not too much in detail, and we concluded that the only people we could ever possibly expect to try would be those who had committed crimes involving American nationals, as victims, and mass atrocities com-

mitted in the American zone of occupation. When I say "mass atrocities," I mean such cases as concentration-camp cases, and so forth. But, there were letters from the War Department, agitating for us to investigate cases involving nationals of any of the United Nations. We successfully avoided their burdening us with that. Also, there was agitation for us to take over the job of trying—I think Colonel Mickelwaite mentioned this the other day—members of the criminal organizations that were on trial at Nuremberg. We successfully avoided taking over that job.

Also, there was agitation, after the decision at Nuremberg, which we successfully avoided, for us to include a charge in each of our cases based upon the Nuremberg decision control counsel law No. 10, touching such of the accused as were members of criminal organizations, with that. We did it in one case, and then we got thereafter relieved from that. That would have dragged our cases out and made the investigation problem much more burdensome.

I think I have covered that, perhaps, as well as possible.

Senator BALDWIN. Well, the cases that you did try were those that were violations of the rules of war in one phase or the other?

Colonel STRAIGHT. Yes, sir. Incidentally, almost without exception, I cannot say to you for sure, but almost without exception every case we tried involved an ordinary crime, had it been a violation of the municipal criminal law, and was a violation of the very wording of the Hague Convention, the annex thereto, or the Geneva Prisoner of War Convention of, I think it was, 1909. In other words, we were not proceeding on untrodden ground.

Senator BALDWIN. When you got this personnel, what procedures or programs did you follow with reference to them? I mean, here comes a man over from the United States, that was to report to you for duty. How did you deal with them? What was your procedure?

Colonel STRAIGHT. In the days when I was executive officer, I think it is fair to say that I personally interviewed 95 or more percent of all officers, court reporters, and interpreters that came in.

Senator BALDWIN. What was the nature of that interview? What did you discuss in those interviews?

Colonel STRAIGHT. I had the personnel people cause the man to fill out a mimeographed questionnaire that I had prepared for that purpose, in an endeavor to find out what his experience and capabilities were. Then the man was sent to me, with that questionnaire completed, and with his 66-1 card, and such other records as he had available.

Senator BALDWIN. What is the 66 card?

Colonel STRAIGHT. It is merely a card with rather meager amount of information on it, but it is an official card that travels with the officer.

Senator BALDWIN. I see.

Colonel STRAIGHT. It shows a little bit about his activities in civil life, and his assignments in the Army, and incidentally, his rating in the Army.

They came to me and I talked to them and endeavored to find out the things I needed to know, in addition to what I could see by looking at their 66-1 card, and also the mimeographed sheet.

Senator BALDWIN. You did this individually, or in groups?

Colonel STRAIGHT. Individually.

However, in addition, particularly with the larger groups that came in, I had some of the others, talked with them in an endeavor to orient them on the work; and, moreover, we had a mimeographed set of printed directives and instructions in regard to the operations, that we delivered to them. As a matter of SOP routine to each officer that came in.

Senator BALDWIN. Well—

Colonel STRAIGHT. After Colonel Mickelwaite was assigned as theater judge advocate, I still interviewed quite a few of the people that came, but I don't think the percentage was near as high as it was before.

Senator BALDWIN. Well, in those conferences, did you ever say anything to them that would indicate your feeling, if you had a feeling, about what the outcome of these trials ought to be, or how these people should be handled, or that we should make short shrift of them, or anything of that kind?

Colonel STRAIGHT. No, sir. I, from the beginning to the end of the program, I made every endeavor I could, with the time and personnel available, to assure that people had a fair trial.

Senator BALDWIN. One of the witnesses here, I think—

Off the record.

(There was discussion off the record.)

Senator BALDWIN. Did you at any time at any of these meetings, either in conferences with individuals or in general meetings, say anything to the prosecution staff, or to the defense staff, or to any of the personnel that they were not to be involved in technicalities; that they were to make short work of it, and that they were to proceed as rapidly as possible, or language of that kind?

Colonel STRAIGHT. No doubt I have used expressions somewhat similar to what you used. This situation obtained: That some of the defense counsel were set on the idea of haggling about this and that, as one would if he were trying a case in American municipal criminal law. As you have observed at the hearings, you well know that following the rules of evidence that the President prescribed, such as in the saboteur case, that such evidence as the court thought to be of probative value was admissible; hearsay evidence would be admissible, and so on. The statements, extrajudicial sworn statements of one accused against another were used. My superiors were doing their duty. They were urging me to get along with the job, and, very appropriately, they were urging me to see that every man, to the greatest extent possible, did a day's work for the Government, and I attended, I think, two—I don't know whether you refer to the counsel meetings at Dachau—I attended, I think, two counsel meetings at Dachau. I think they were started by Colonel Breese and Colonel Durst in the forepart of 1947; I attended two and I am sure that I made remarks about the law applicable, the rules of evidence applicable, and discouraged the idea of purely dilatory tactics in connection with argument on rules of evidence, endeavors with that reason to apply the rules of evidence in American municipal court law as contrasted with the rules of evidence applying to the war-crimes trials. In other words, I have said that I am sure I discussed the rules; I discouraged indulging in dilatory tactics by way of arguments or repetitious objections every time someone asked a question that the court would obviously have to overrule.

Senator BALDWIN. Well, in that case——

Colonel STRAIGHT. It was inescapable.

Senator BALDWIN. Is the committee to infer by that that what you are saying is that the point that you stressed was that these cases were tried under the rules that were different from those that are obtained in American criminal courts; that is, they were tried under rules established for military courts. Is that what you mean to imply?

Colonel STRAIGHT. Exactly, exactly; and also in those conferences I touched on such questions as lawyers going ahead preparing their cases and not being dilatory and saying, "Well, no," never being ready to try cases.

Also, I stressed the fact that they were not to grasp every opportunity to run over to Munich with pretenses of going over to interrogate somebody and actually going out on a frolic, and so forth. The administration at Dachau was very difficult, because our war-crimes operation was carried on in a series of low one-story buildings that had been used, part of them, at least, had been used as small-arms ammunition factories, or at least small-arms factories, and had been operated as concentration camps. There were innumerable entries to these little buildings, and personnel rightfully had excuses for going out, maybe down to inside the prison enclosure to interrogate witnesses, or go outside to interrogate witnesses, and the problem of keeping people on their work was a very difficult one.

Senator BALDWIN. Was your task as executive officer, Colonel, concerned with the selection of the defense counsel?

Colonel STRAIGHT. We had little occasion to select defense counsel during the time I was executive officer, because—defense and prosecution—because at that time the responsibility for the actual operations, the investigation of cases and the trial cases was in the armies, the Third and Seventh Armies. It is true that we did lend personnel to the Armies from time to time, as we did in the Malmédy case, to prosecute and defend; and I led quite an active life as executive officer and no doubt in some instances I did, and there were instances where we were going to lend personnel, recommend to Colonel Mickelwaite that this or that officer be assigned to the task.

Senator BALDWIN. How was the defense counsel selected? From your knowledge, that is.

Colonel STRAIGHT. In cases generally?

Senator BALDWIN. Yes.

Colonel STRAIGHT. At the time when we took over the operation or while it was in the Armies?

Senator BALDWIN. Both times.

Colonel STRAIGHT. The people working for the Judge Advocate for the Armies, I assumed, made recommendations to or in the name of—that is, recommendations to the Judge Advocate of the Army as to who should serve as prosecution and defense, and as a result memorandums were processed to the adjutant at the Army headquarters for the propagation of orders.

I do know that insofar as the operations of the Third Army were concerned, that Colonel Corbin, who was in charge at Dachau at the time the Malmédy cases went to trial, was given almost a complete hand by Colonel Cheever in all those matters. As a matter of fact, I think he would call up the Judge Advocate General of the Third Army

and ask for orders to be issued and there was no coordination there with Colonel Cheever at all.

Now, if you are getting to the question of whether the cards were stacked against an accused, I never at any time saw any evidence of that. The contest was pretty well matched from a standpoint of prosecution and defense counsel, insofar as those, while we had the responsibility of those in the Army—when we took over the operational end of the war crimes program—

Senator BALDWIN. When was that?

Colonel STRAIGHT. Around July 1, 1947, 1946, pardon—we concentrated everything at Dachau. We closed the enclosure near Ludwigsburg, the war crimes enclosure that was established and moved them all to Dachau, and the court section that was operating near Ludwigsburg was moved to Dachau, and the man who acted as chief of the Dachau detachment, to a great extent, was the man who made recommendations as to the appointment of counsel. I will be very frank with you in saying that, except in the larger cases, after that time I did not personally deal with the problem because I was of the opinion that Colonel Bresee was proceeding in an appropriate manner.

On the bigger cases, I did take an active part in assigning counsel, but to a great extent it was merely okaying recommendations to Colonel Bresee.

Senator BALDWIN. It is not clear in my mind just what your duties were, in connection with the assignment of defense counsel, prosecution counsel, investigators, and interpreters.

Colonel STRAIGHT. During the stage, after the operations were taken over at theater headquarters—or afterwards?

Senator BALDWIN. When you first went. You spoke of going to Paris as an executive officer under General Betts—

Colonel STRAIGHT. Yes. At that time the organization consisted solely of the little section in the office, with the theater directive requiring that the Army groups establish a War Crimes Branch in the judge advocate of that group, and that there be likewise one established in the judge advocate sections of the armies. All those agencies were virtually without personnel. As we campaigned for personnel, we also organized war crimes teams and we organized and equipped them in Paris and assigned them down to the Army groups for reassignment later.

At the end of hostilities we had organized and staffed and delivered eight such teams. Later we organized the additional number going up to 19.

The teams, with the exception of one or two, were all assigned to the armies with no opportunities for headquarters to control them, other than to give them suggestions on down the line.

Virtually all the time before the operations were taken over by the headquarters, to July 1, 1946, there was one or two what we called formal teams assigned to an agency near our office so that we could in fact, even though a staff section, direct their actions; and, on certain important cases we had what we called informal teams, people of certain ability that went out and gathered evidence.

Senator BALDWIN. At the time of the Malmedy trials you were at Dachau, were you?

Colonel STRAIGHT. No.

Senator BALDWIN. Where were you?

Colonel STRAIGHT. Our headquarters were moved from Paris to Wiesbaden in June 1945. The headquarters remained there until about the 20th day of November 1946 when they moved to Augsburg, so the headquarters were at Wiesbaden at the time of the Malmedy trials.

Senator BALDWIN. Well, what is not clear in my mind at all, is how the prosecuting attorneys that tried the Malmedy cases, for example, and how the defense attorneys that tried the Malmedy cases were selected.

Colonel STRAIGHT. I think that Colonel Mickelwaite, in that instance, in fact I know that he selected Colonel Everett. It is entirely possible that by 'phone call in from the field, Everett expressed the desire to have Mr. Strong, and he was assigned to him. I have no recollection whatever of being involved in the assigning of Colonel Dwinell. As a matter of fact, I am not sure that I knew him; at the same time it is entirely probable that he came in, was shipped over from the States, and if he did he was processed through headquarters and I did know him.

I took quite an active part in the development of the Malmedy case by assigning Major Fanton and some of his staff down at Schwabisch Hall. Major Fanton, I remember there was the question came up as to who would take his place. Colonel Ellis was then head of what we call the Evidence Branch, and he wanted very much to go down and take over the balance of the investigation and try the case. I think it entirely probable that I recommended to Colonel Mickelwaite that that be done.

Of course, in technical approach to it, these men that were assigned as prosecution or defense counsel were agents of the Third Army. The Third Army headquarters issued the order appointing the court, the court was working for the Third Army in its technical aspects.

These men that came from headquarters were loaned to the Third Army for that purpose.

Senator BALDWIN. Well, was your War Crimes Division under the Judge Advocate General's Office of the theater?

Colonel STRAIGHT. It was part of it; yes, sir.

Senator BALDWIN. And then, I mean in other words, your work was a separate division under the Judge Advocate General's office?

Colonel STRAIGHT. Exactly. In other words he had a deputy for what he called operations and a deputy for war crimes.

Senator BALDWIN. Well, the deputy for operations was the deputy that dealt entirely with the procurement of the personnel—

Colonel STRAIGHT. No, he dealt with the military justice side and then there was a war crimes side.

Senator BALDWIN. And the war crimes side is the side that—

Colonel STRAIGHT. That I was involved with.

Senator BALDWIN. And that was the side that set up the organization for the prosecution, the defense, the investigation and the interpreters, is that correct?

Colonel STRAIGHT. Yes, sir.

Senator BALDWIN. What I am trying to get is, the record of, in my own mind, the organizational set-up of this thing. Of course, the whole originally was under the Third Army or the Seventh Army, is that correct?

Colonel STRAIGHT. The operational responsibility for the gathering of evidence and the trial of cases was under the Seventh and Third Armies, following about the 1st of July 1945, when the other armies were deactivated. The War Crimes Agency at the Headquarters, part of the Theater Judge Advocate's Office was purely and simply, at least in the technical aspects, a part of the staff section, up until July 1, 1946, when the theater headquarters took over complete responsibility for all operational aspects for the war crimes program.

Have I made myself clear?

Senator BALDWIN. In a way, yes. It is still a little bit hazy in my mind.

Colonel STRAIGHT. I think if we started in with this thing in its chronological order, it probably would have been easier for us to bring out the picture.

Mr. CHAMBERS. Colonel Straight, would it be possible for you to reconstruct an organizational chart and keep it on a chronological basis? You might have four or five charts.

Colonel STRAIGHT. I can show you organizational charts. I think there is one about July 1945—yes, here is one.

Then, I am sure there is a later one.

Senator BALDWIN. I would like to have that.

Colonel STRAIGHT. Here is one July 1945, and one December 1946, which shows the thing at the time the armies had the operational responsibility and at the time when the headquarters had the responsibility.

Mr. CHAMBERS. What are you quoting from or showing us the chart from, Colonel Straight?

Colonel STRAIGHT. History of War Crimes Operations which I was required by an operations directive to make at the end of the operation.

Mr. CHAMBERS. That is an official document of the Department of the Army?

Colonel STRAIGHT. Yes, it is in this sense, that I was required to make it, as you make histories of organizations in the armies.

Now, I might add this, that General Harbaugh planned, in publishing it and printing it, to change its form, and he was going to add a preface to it by way of another volume possibly and portray the end of the operation that took place in his office. That other aspect of it has not yet been covered but that is an official document as such.

Mr. CHAMBERS. It would then be possible to secure a copy of it for the record?

Colonel STRAIGHT. Yes.

Mr. CHAMBERS. Will Colonel Fenn or yourself see that copies of those get in the record?

Senator BALDWIN. I wonder if we have available the report of the Deputy Judge Advocate for War Crimes.

Colonel STRAIGHT. I am quite sure you do not, as yet.

Colonel FENN. Could they have that?

Colonel STRAIGHT. Yes; I imagine they can get that. I hope I can get another one.

Colonel FENN. You can have that.

Senator BALDWIN. I think that is very important, particularly these two organizational charts.

Mr. CHAMBERS. That will be fine.

Colonel STRAIGHT. That gives the history of all applicable operational records, and otherwise, in connection with it.

Senator BALDWIN. Colonel, Mr. Chambers was questioning you concerning the participation of Colonel Dwinell in the review of some of these cases.

In these reviews were there any members of the prosecution, to your knowledge, that were ever concerned with the reviews, as a member of the reviewing board?

Colonel STRAIGHT. The answer is "No."

Certainly not in my operations or in my office, and I have every reason to believe that Dwinell constitutes the only exception to the proposition that prosecution and defense never worked or aided in making reviews and recommendations.

Senator BALDWIN. In making these recommendations and reviews, would Colonel Dwinell, to your knowledge, actually participate in the final decision as to what was going to be done about the review?

Colonel STRAIGHT. I don't think he would. That is, I do not think he did; but, that was in Colonel Harbaugh's office and I cannot help you on that, except that I put in so much hearsay before with regard to that matter that I do recall Harbaugh saying, "Well, he wasn't interested in Dwinell's views." The last 2 or 3 days, he made that remark.

Senator BALDWIN. Here's what Colonel Dwinell testified to:

Mr. CHAMBERS. At the time that the board of review sat on this, did you have any contact with or relation with the board of review?

Colonel DWINELL. I certainly did.

Mr. CHAMBERS. Did you know that while you were working with the board of review that you were working on these cases?

Colonel DWINELL. I did.

Mr. CHAMBERS. Did you have anything to do with the preparation of this report?

I don't recall what report that was.

Mr. CHAMBERS. It was the report of the Harbaugh board on the Malmedy cases.

Senator BALDWIN (continuing):

COLONEL DWINELL. I did not; not to this extent. The report that I have before me was written in the main by Colonel Scarborough—

Mr. CHAMBERS. That's correct.

Senator BALDWIN (continuing):

and every day he and I discussed the language therein, and wherever I could speak for the defense I did.

Now, I will frankly state so.

Mr. CHAMBERS. Then you would say that the points of view of the defense certainly had adequate representation before the board of review?

Colonel DWINELL. They did; very vigorously did I advocate the defense.

You, yourself, did not sit on this board of review?

Colonel STRAIGHT. No, sir.

Senator BALDWIN. What was your connection with it?

Colonel STRAIGHT. None actually. That board of review was in Colonel Harbaugh's office, the theater judge advocate's office, see. Our office headquarters was at Munich, and I had no connection with it at all, except that I was on Colonel Harbaugh's staff, too, located about 250 miles away.

Senator BALDWIN. So it is a fact that at the time these Malmedy trials were reviewed that Colonel Dwinell was working with the review board?

Colonel STRAIGHT. I wasn't at Frankfort at that time, during the entire time, but I understand it is true. I think I was told so over the telephone more than one time and the record here says it is true.

Mr. CHAMBERS. Volume 10, page 1054, Colonel Dwinell said further on that point, in response to a question by Senator Hunt when he asked him after some discussion about the board of review:

Senator HUNT. Then the fact that you were just in an advisory capacity is more or less of a technical term than it is a fact that you did not participate because if you were there for that time and actually in conferences with them on the review board, then you were functioning really as a member of the review board, although technically you were not so designated?

Colonel DWINELL. Well, I can say this without trying to evade any particular question, that when the conclusions were reached by the board I did not sign my name to any report. I refused to be a part of the board to any extent that I would go on record as agreeing with them. Naturally as defense counsel I could not.

Senator HUNT. Did you at any time argue any of your points of view before the review board?

Colonel DWINELL. Every day.

Senator HUNT. And you participated just about as fully as you possibly could?

Colonel DWINELL. For the defense.

So I think the record shows pretty clearly from Colonel Dwinell's own testimony that he had a very active part in these review procedures, and I think it is highly significant, Senator Baldwin, that this particular board of review, the Harbaugh board of review, recommended to Colonel Harbaugh that 27 of the sentences which Colonel Straight's board of review had recommended to him be disapproved in their entirety. I think it is also significant that that recommendation was only accepted by Colonel Harbaugh in 11 cases. I would like to ask Colonel Straight this question just to clear the record: Did Colonel Harbaugh talk to you about that situation? That is, did he talk to you about the fact that Scarborough and the board of review had recommended that a lot of these cases be disapproved?

Colonel STRAIGHT. We discussed the Malmedy case many, many times over the telephone, and I am sure that Colonel Harbaugh was in my office in Munich on one occasion, in which we discussed the case, at the time they were reviewing it at Frankfort, and there is no doubt but that he mentioned the position of his board on one or more occasions. I don't remember anything specifically about it, however, about the remarks insofar as they involved any particular accused. I do have the distinct recollection that the matter of wanting to disapprove so many of them was mentioned because obviously I thoroughly disagreed with it. I did then, and do now, in that review and recommendations—

Mr. CHAMBERS. Which is the review and recommendation prepared under your jurisdiction by the posttrial section?

Colonel STRAIGHT. That is right, and incidentally you might be interested in this, that Mr. Reynolds who did the final spade work on that thing, is the best man I ever had in my posttrial branch. He later went to Berlin and worked for Colonel Raymond, head of the Legal Division up there, and I understand that he has done some extremely good work up there.

I should mention this, that that constitutes a rework of Mr. Denson's draft. I told you before it was assigned to him. Mr. Denson did very good work. However, if he were to look at that he would probably say it doesn't bear much resemblance to what it did, for the reason that he expressed himself, his review was extremely long and the review of the case, in order to portray it for one's self, or for anybody else, was extremely difficult in view of the nature of the charges, and the actions of the Combat Group Peiper. Mr. Denson's work from the record was very accurate. However, after we got Mr. Denson's draft, I read the thing through a time or two, and I couldn't visualize what happened. Mr. Reynolds the same way. We finally devised a scheme to rearrange it editorially and approach it both from the general evidence from the defense and prosecution and with regard to a particular accused, set it up on an incident basis, and that for the prosecution as to that incident and that for the defense as to that incident, so that in reading the thing and working it back to the record and weighing the evidence and reaching a conclusion there would be set out there, one against the other.

Mr. CHAMBERS. Did Colonel Denson arrive at conclusions and make recommendations affecting the sentences?

Colonel STRAIGHT. Yes.

Mr. CHAMBERS. Did you agree with those recommendations or did you change them?

Colonel STRAIGHT. I didn't agree with all of them. I doubt that I ever agreed with all of the recommendations any of my men ever made, particularly involving that many accused.

As I recall, he took the position that two, possibly three sentences should be disapproved. I only recommended that one sentence be disapproved; and, as to the sentences, altering sentences which were to be approved, I don't remember too well what his recommendations were; but I know this, that with regard to the men under 20 years old, I took a stronger view than Mr. Reynolds or Mr. Denson did, that I could not see the death sentences being executed against those men in view of the fact that these atrocities were closely connected with military operations; there is a difficult situation in the Army when superiors tell inferiors they will do something, particularly in connection with combat operations. Also, over and above everything else, I was of the view that these men who were untrained, some of them as I recall it were down to 18 or 17 at the time of these acts, had been brought up in the shade, they had not seen the sunlight, they had been taught doctrines that are quite far-reaching for our imagination to grasp and it occurred to me that they can be salvaged and that is the better thing to do than to go ahead and approve the death sentences.

Mr. CHAMBERS. Then you were basing that, to a large degree, in that type of case, on the youth of the accused?

I believe that the record shows that approximately, in 37 out of the 73 cases, the sentences were reduced, which included this one disapproval that you referred to.

Colonel STRAIGHT. You mean, my recommendation?

Mr. CHAMBERS. Yes.

Colonel STRAIGHT. I don't remember the figures.

Mr. CHAMBERS. I was tabulating them as you talked, but you did believe because of the age of the accused in a lot of cases they should be

reduced, they were in fact guilty but because of their age, there were mitigating circumstances which should bring about a mitigation of sentence, is that correct?

Colonel STRAIGHT. Exactly.

Mr. CHAMBERS. It was testified to here by Colonel Ellis, and I believe by others, that Colonel Ellis submitted a recommendation for clemency in the case of some of these younger people. Were you aware of that?

Colonel STRAIGHT. I was; yes.

Mr. CHAMBERS. What happened to that recommendation?

Colonel STRAIGHT. My best memory as to all aspects of it is as follows:

In talking to Colonel Ellis in connection with other operations, near the time I was concentrating on the preparing of this review and recommendation, I gathered from him that he had submitted a recommendation in addition to that one in relation to Junker and somebody else. And, in pestering, I say that advisedly, Mr. Reynolds to find that for me, he couldn't locate it. I have talked to Colonel Ellis during this hearing about what he did with it. He is not sure whether he delivered it to Mr. Denson in Dachau, where Mr. Denson worked on the case, or whether he had it delivered to somebody for my office. I do not ever remember seeing it.

Now, either in talking to Colonel Ellis, before I made various demands on Mr. Reynolds to find it, or afterwards, I gathered the very distinct impression that his recommendation was based solely on age. Also, I gathered that my views in that connection were stronger than his, and that the thing did not contain anything by way of analysis of the evidence, or other information that would be helpful, and therefore I dismissed the problem of finding it.

Now, I would like to hasten on to say—

Mr. CHAMBERS. It would save me a question if you do, Colonel.

Colonel STRAIGHT. Much to my surprise, it came out in this hearing that he had a copy of it and I seriously regret that I didn't ask him for a copy of it to attach to this record; but I say to you, my information as to what was in it was correct, even after seeing a copy of it after he had it here as I think somebody in the line of questioning, when he was here as a witness, somebody pointed out that there was nothing to it other than a blank recommendation to reduce the following sentences as indicated opposite their names.

Mr. CHAMBERS. Colonel, I recognize the situation—

Colonel STRAIGHT. How come it did not occur to me to ask him for a copy and direct Mr. Reynolds to get a copy, if he had one, I can't help you. I don't remember.

Mr. CHAMBERS. It would appear that had Ellis' recommendations perhaps been stronger than your point of view, that that would have been rather a serious thing not to ask Ellis to submit a new one, or to have gone further in trying to find the copy that he did submit—I believe that a fair statement of your testimony is: In your opinion, as of today, after looking at Ellis' recommendation, that none of the accused suffered thereby?

Colonel STRAIGHT. Oh, I got so exercised about the problem that I sat down to check it out name by name to see, and it is true that my recommendations, as I recall, in every instance go further in that connection than his.

Senator BALDWIN. Off the record.

(There was discussion off the record.)

Mr. CHAMBERS. I have one other series of questions, that I would like to ask you about.

We have had presented to this committee as a part of the record, since the report of the Everett petition before the Supreme Court, and then from many other sources in the form of magazine articles and statements, concerning alleged mistreatment and very brutal and sadistic treatment of these Malmedy accused.

Now, being in charge of this War Crimes Branch, and I think you have already made reference to the whisperings and the undercurrents about this particular case which affected Colonel Harbaugh to some degree: you must have had some knowledge of the general situation.

Now, I would like to ask you if you knew of this business of accused, sometime after conviction, beginning to sign affidavits, and whether or not you made any effort to investigate the matter and find out what the situation was?

Colonel STRAIGHT. First, I want to correct an impression I may have given. I didn't intend to convey the idea that Colonel Harbaugh was impressed by the rumors and the gossip. I don't know.

As regards the rest of your question, it is rather general. However, up to the middle of 1947, around July, any assertions or informal letters or anything coming to us about any improper conduct by investigators were very few, mild, and far between.

The picture changed definitely, however, in 1947—that is, July 1947. I distinctly remember that soon after moving my headquarters again to Freising, which was about the 5th of July 1947, soon after that I had a letter, I think two letters, one came in before I decided to answer it, and there was another that came, letters by a high church official in Munich to General Milburn who was commanding our First Division. Why he wrote him, I don't know, because he had nothing to do with the operation, and was purely a stranger to it, but the rank sounded good.

Those letters by that high church official were the first ones I had seen, where there were broad fantastic allegations of, shall I say, atrocities committed by American personnel?

Senator BALDWIN. What was the date of that?

Colonel STRAIGHT. The date?

Senator BALDWIN. Yes.

Colonel STRAIGHT. In July or August 1947.

As I recall, General Milburn's headquarters sent it to me for such action as I thought fit. I originally toyed with the idea of going in to see this high church official, and see if I could get some leads to the sources of his information, what war crimes the accused were involved in, what cases were involved, and what it was about.

Then, however, before I definitely decided on action in connection with those two letters, the CIC personnel of the War Crimes enclosure, that is, the personnel operating the enclosure for us, the housekeeper service, intercepted a legal-sized envelope with a packet of papers probably about an inch and a half or two inches thick. Some of the statements were signed, and some were not. I then decided that I should make a recommendation—

Mr. CHAMBERS. May I interrupt and ask what was the substance of those papers? You say there were papers in a manila envelope?

Colonel STRAIGHT. They were of the same character. Incidentally, that is, they were broad, extreme allegations of a type different than I had theretofore seen.

Mr. CHAMBERS. What was the form of these papers?

Colonel STRAIGHT. Some signed and some unsigned, incidentally.

Mr. CHAMBERS. You mean that these were a series of apparent affidavits or statements that various accused, some accused had signed and that others were still unsigned?

Colonel STRAIGHT. Yes.

Mr. CHAMBERS. And they were all grouped together at that time indicating that they—

Colonel STRAIGHT. I distinctly remember one fantastic, as I recall, there was one fantastic story about a man who had been tried and something about convicted with perjured testimony and, in fact, the man had been acquitted. I am quite sure with regard to another—

Mr. CHAMBERS. Was that signed or unsigned?

Colonel STRAIGHT. I don't recall. In regard to another supposed-to-be recipient of abuse, the records of the War Crimes enclosure did not indicate that he had ever even been there. Those are merely two of the items that I recall. I had my inspector run it out as best he could, following the submittal, and I couldn't establish, couldn't find evidence that my personnel had done the things alleged. And, as I started to say a while ago, I recommended that the chief of staff, headquarters, submit it to Colonel Harbaugh, my superior judge advocate, have the CIC investigate the American side. That is, the American side, for possible subversive activity and following that, partially depending on what they found, that they have a very vigorous I. G. investigation of my own organization thinking that somebody outside might find what I could not inside.

Mr. CHAMBERS. Colonel Straight, I am quite interested in this particular situation.

Let us see if I have it clearly in mind.

In 1947, and of course we date everything from Malmedy here, some few months after the Malmedy trials were over—

Colonel STRAIGHT. About a year.

Mr. CHAMBERS. About a year after the Malmedy trials were over, one of your personnel brought to you a large Manila envelope in which were grouped a large group of statements alleging mistreatment, brutalities, and things of that type—part had been signed and part had not been signed.

Colonel STRAIGHT. Yes.

Mr. CHAMBERS. This brown envelope was found by your personnel in the vicinity of the prisoners?

Colonel STRAIGHT. Not mine, CIC personnel who operated the War Crimes enclosure.

Mr. CHAMBERS. Did he find these in relation to the enclosure?

Colonel STRAIGHT. Yes, inside the enclosure at Dachau.

Mr. CHAMBERS. Up until that time, there had been very few accusations of a serious nature concerning mistreatment of prisoners?

Colonel STRAIGHT. That is true. And my answer to that is, what I intended to portray was that following that time, there has been a stream of it all the time, at least until I left over there, and in view of what I have seen since I got back here in September, there has been quite a volume continuing.

Mr. CHAMBERS. Colonel Straight, did you arrive at the conclusion that someone had brought this in for the purpose of getting signatures on these things and submitting them and using them at a later time?

Colonel STRAIGHT. My belief was, at the time, that somebody from outside was the instigator and was procuring these things from inside the enclosure. In other words, there was someone outside that had some sort of a plan to discredit the occupation of the war-crimes operation, or something, and that they were after these items from detainees inside the war-crimes enclosure.

Mr. CHAMBERS. I think it is important we find the form they were in. Were these individual statements that had been written by people or were they prepared in such a way as it would look as though they had been prepared on the outside and brought in for signature?

Colonel STRAIGHT. Well, it is entirely possible that some German personnel helping, not in detention, helping operate the enclosure, could have used a typewriter available inside the enclosure to write them with. As I recall it, there was no statement in longhand. I am quite positive each had been written on a typewriter. Now, I don't think it's probable, however, that German personnel aiding Colonel Kohler in running the enclosure typed them out. It could easily be true.

Mr. CHAMBERS. You don't think it probable?

Colonel STRAIGHT. Certainly typewriters are not available to the detainees themselves.

Mr. CHAMBERS. Were there as many as 10 of these statements?

Colonel STRAIGHT. I think there were about—18 or 19. Some of them were pretty long. There was one tirade about the procedure used that was quite long, written by a man who professed to be a lawyer, and his complaint was that we were not following German procedure in the trial of the cases.

Senator BALDWIN. Where are these documents now, do you know, Colonel?

Colonel STRAIGHT. They would be in headquarters, I suppose, over there—

Mr. CHAMBERS. In Europe?

Colonel STRAIGHT. In Europe. Yet, it is entirely probable that copies of all those exhibits were with the records of the war crimes group which were sent to inactive records at St. Louis at the time I closed the doors over there.

Mr. CHAMBERS. But there should be available in the official records of the Department office, a report of this matter, along with your recommendation for an investigation, and there should also be available, copies of the documents that were picked up by the CIC personnel?

Colonel STRAIGHT. Oh, yes.

Senator BALDWIN. I think we had better recess. I think we will recess until 1:15, and get an early start, because we want to go ahead and get through this afternoon as much as we can.

Mr. CHAMBERS. I would like to ask this. Do you have other questions to ask Colonel Straight?

Senator BALDWIN. Yes.

(Thereupon, at 12:05 p. m. a recess was taken until 1:15 p. m.)

AFTERNOON SESSION

Senator BALDWIN. The meeting will come to order, please. Colonel Straight, will you take the stand again.

TESTIMONY LT. COL. CLIO E. STRAIGHT—Resumed

Senator BALDWIN. Up to the time that you had these letters or these papers that you found or that were brought to you making these general accusations about the conduct of the investigation, were there any complaints of physical abuse or violence or anything on these prisoners?

Colonel STRAIGHT. Very few, Senator Baldwin.

Senator BALDWIN. There were some?

Colonel STRAIGHT. Yes.

Senator BALDWIN. And did they come up in connection with the review, do you recall?

Colonel STRAIGHT. I particularly remember one case where there was a lot set forth in the record. It involved a number of SS people up in what is now the British zone. There was a burgomaster up there who had received some abuse from them, and when the American forces came in, he immediately got himself appointed as burgomaster. He was not before.

He proceeded to put this gang in jail, and by his own testimony he went from cell to cell and told them he knew about their killing these American fliers and they had better put it in writing and confess. He indulged in considerable violence.

Senator BALDWIN. What you are referring to now is not the record of the Malmedy trial?

Colonel STRAIGHT. This is a flier case.

Senator BALDWIN. Was there any in the Malmedy case, do you recall?

Colonel STRAIGHT. There was a little bit. There were, I think, two or three who gave a little testimony to the effect that they had been the recipients of force and threats of force.

Senator BALDWIN. I want to call your attention to the book that contains the review that was made under your direction. I find here in that report in the case of Anton Motzheim, he stated in his evidence for defense concerning the pretrial investigations, he said there in connection with his extrajudicial sworn statement that he—without going into details of the thing—he claims that Lieutenant Perl kicked him four times in his sexual parts and Mr. Thon kicked him on the leg. This lasted for one-half hour.

Then there is another record I notice in the review record that you prepared of the accused Peiper.

Incidentally, the first page referred to in the record is page 100 and this page is page 112.

While in the cell, he did not have any physical movement. The day before he left Schwabísch Hall he was beaten. He could not find out who did the beating, but he had a hood over his head. He assumed Poles were responsible. This occurred only on one occasion. On the last day of his stay there he was standing waiting in the hall for interrogation and had a black hood over his head, had to wait there for about 5 minutes, and while the American sergeants who came for

him went to get some others from their cells, while he was standing quietly waiting he was struck in the face and several times in his sexual parts with a stick. He was of the opinion that it was a Pole, inasmuch as Poles were used as guards.

Do you recall any other in that record?

Colonel STRAIGHT. I think Hennecke also contended that he had been beaten. The subdivision near the end under "Hennecke" under the title "Interrogations," or something like that.

Senator BALDWIN. Pretrial interrogations?

Colonel STRAIGHT. Yes; it is under that.

Senator BALDWIN. I think Hennecke's complaint was based upon threats that had been made to him in the mock trials.

Colonel STRAIGHT. Probably so.

Mr. CHAMBERS. Do you recall the testimony of Christ, by any chance?

Colonel STRAIGHT. Not right now; no.

Mr. CHAMBERS. I think Christ made some allegations that he was terribly cursed. I believe we looked into that when Senator McCarthy was here. But outside of Peiper and Christ and Hennecke's charges concerning the Schnell procedures and whether or not Lieutenant Perl was his defense counsel, and there was a lot of stuff in the record on that, I do not recall of the nine who took the stand anyone who testified that they had been physically mistreated.

Senator BALDWIN. Do you recall during the trial of the Malmedy cases whether or not any complaint came to you as executive officer concerning pretrial irregularities of any kind?

Colonel STRAIGHT. Yes. I played a part in this inspection that Carpenter made down there. That is, I was in on conferences in the offices with Colonel Mickelwait as to what we should do, and I know I was in the conferences we had after Carpenter came back, and I know I was of the same view that Colonel Mickelwait was, that inasmuch as we found no credible evidence that physical force and violence and threats of force had been used—true, there was indication that some ceremonies of some kind had been had. We were jointly of the view that we should go ahead with the trial and also at that time, either at Colonel Ellis' suggestion or our direction—I would say it was our direction, and I think if you asked Colonel Ellis he would say it was his suggestion—that he should put all the interrogators on the stand, develop exactly what happened, and have them there available for cross-examination, which the record does indicate was done.

In that connection, there was another thing. Perl, for instance, was ready for redeployment to the States, and we got special permission from General Bevins' office, G-1, to hold him there and all interrogators until the trial was over so they could be there and the court would have a chance to see them and cross-examine them and the defense, too.

Senator BALDWIN. That is all. Do you have anything further you would like to say?

Colonel STRAIGHT. Yes; very briefly.

Senator BALDWIN. All right.

Colonel STRAIGHT. There have been contentions about law in the record, as to whether it is legal to kill prisoners of war, and I have authorities noted in the front of that book in longhand with regard to that matter, which are as follows:

Article 2 of the Geneva Prisoner of War Convention of July 27, 1929, which provides the positive duty to protect prisoners of war against acts of violence.

Paragraph C, article 23, annex to the Hague Convention, No. 4, of October 18, 1907, prohibits the killing or wounding of any enemy who has laid down his arms and has no longer means of defense.

Now, prior to that time, Winthrop, an American writer on military law, in his book entitled the "Military Law and Precedents," pages 790 to 792, took a like position.

The trial of Henry Werz during the Civil War was based on the same theory of law.

In the authorities collected by Winthrop in that work he cites hearings in the House or Senate during the Revolutionary War, the War of 1812, and, I think, the Civil War—I am sure about the first two—in which the same view was expressed.

Wheaton and Hyde, writers on international law, take a like position.

There has been a lot said about our treatment of these war-criminal suspects. I collected some authorities in the law portion of this review and recommendation on that matter in which I cited the decision of the United States Supreme Court in the Yamashita case, and I think Wheaton also; in addition to that, Oppenheim and Hyde contend that prisoners of war who have committed violations of the law of war prior to capture are not entitled to the affirmative privileges set forth in the Geneva Prisoner of War Convention.

On the question of killing prisoners of war because of military necessity or otherwise, I have never been able to run into any writers on the subject who contended there was any such thing as a right under anything called military necessity, except one or two German writers. The writers in all other countries are uniform that it is illegal.

One other aspect of law that I think is of considerable interest is that these cases were not tried in accordance with American municipal criminal law, they were tried in accordance with American law in this respect, because it is the procedure applied in the trial of war prisoners since the Mexican War and further back. One has only to examine Winthrop to ascertain that and particularly the rules of evidence, about which there has been a lot said, spring from President Roosevelt's order creating the court that tried the saboteurs in the Quirin case.

Colonel Mickelwait mentioned the other day that Great Britain has followed similar rules of evidence. I would like to add that all English-speaking countries have followed procedures, rules, almost precisely like that of the British—South Africa, Canada, Australia. The question of whether it is good wisdom is something else. Frankly, I do not quarrel with it.

It is of interest that Wigmore even doubts the utility of the hearsay rule in our own municipal criminal law trials.

It is also interesting to me to note that the hearsay rule is common only to English-speaking countries' jury trials. It does not exist other places.

Senator BALDWIN. Could I look at those authorities again? I would like to make a note of it.

Colonel STRAIGHT. With regard to the killing of prisoners of war?

Senator BALDWIN. Yes; these authorities that you mentioned here. Have you anything further you want to say, Colonel?

Colonel STRAIGHT. With regard to the submission of the general sweeping statements about abuses, my report and recommendation that an inspection be made, Colonel Harbough, I was told at the time—and, in fact, as I recalled—through the fall of 1947 recommended to the Chiefs of Staff that such inspection be made. I also understood it was not made.

Temporarily I considered it possibly a compliment to the war crimes organization, that they felt they had sufficient knowledge of what we were doing that it was not being done.

However, at the same time I was convinced even at that time—at least, I was suspicious—that the general attacks would progressively increase.

With regard to Mr. Kessler, I would like to say that I think Mr. Kessler is a fine man. Examining his academic record, I have reason to believe that academically he has a very active mind. However, insofar as work in defense work or prosecution work and review work, it seemed to me that, while he would probably make a brilliant law professor, he was not too good a man in applying law in everyday work.

In writing reviews his favorite trick—to show the agility of his mind, and he does show it—he would set up a straw man and take pages and pages to whip him and then set up another one. The volume of our review work was such that even that tendency and characteristic was not, in my opinion, a profitable thing.

Now, there was a question asked this morning that seemed to bear upon my attitude toward giving these people a fair trial. If I made any inappropriate statements at counsel meetings, there ought to be 30 to 50 witnesses whom the committee could get to say that I did. On the very face of things, if I was not interested in giving these people a fair trial, I certainly was wasting my efforts in working nights, Sundays, week ends, all the time for no other purpose, I thought, than to get them a fair trial.

With regard to reviews, they piled up, the backlog got larger and larger. I would not let them go out unless I was satisfied with them. I had considerable, to say the least, administrative duty to perform.

Nevertheless, unless I was satisfied with them, I did not let them go out, and it was only after the trial program at Dachau began to level off and toward the end of it that we took from the personnel there personnel for the Post Trial Branch having no experience in review work and gave them on-the-job training and got at the backlog of reviews and cases.

I have nothing further.

Senator BALDWIN. One case that comes to my mind, Colonel, in the light of what you have just said, is the case of Georg Fleps, and it comes to my mind because Lieutenant Lary was here yesterday.

In his extrajudicial sworn statement Fleps stated that he was at the crossroads—at Malmedy, I assume—December 17, 1944, and saw approximately 80 unarmed and surrendered American prisoners of war standing in a field with their hands raised.

The accused admitted that he fired the first shot at the crossroads from his pistol at one of the American prisoners and later shot at two others.

Lary, an American lieutenant who was present at the crossroads, identified the accused as one who fired the first two pistol shots into the group of American prisoners; one of whom was hit. Lohman testified that the accused said that he fired several shots into the prisoners. So, apparently, you had an American officer who identified this Fleps; you had his sworn statement for what that might be worth, and you had the testimony of two other witnesses that they saw the accused fire these pistol shots.

The evidence for the defense was that the accused stated in his extrajudicial sworn statement that he fired the shot at the crossroads pursuant to the command of his platoon leader Siptrott.

This is corroborated by an extrajudicial statement of Siptrott to the extent that Siptrott permitted the accused to fire.

On the question of sufficiency of evidence the court concluded that the accused willingly killed prisoners of war in accordance with the directions of his superior, a noncommissioned officer. However, in the absence of some positive evidence that some compulsion did not exist in the absence of his superior, and so on, this fact should be considered in mitigation. The findings of guilty are warranted by the evidence. The sentence is excessive.

On the petition for review filed by the American defense counsel and by others, whom it is not necessary to mention here, apparently this man was a Romanian, who was an ally or a cobelligerent of Germany at that time, the recommendation is that the findings and sentence be approved, but the sentence of death by hanging be commuted to life imprisonment.

Do you remember whether or not that was your recommendation or whose recommendation was that?

Colonel STRAIGHT. The recommendations provided in that book that you have, whatever you term it, are certainly mine.

Senator BALDWIN. These are all your recommendations?

Colonel STRAIGHT. Oh, yes. It is true that while Mr. Reynolds signed it, that we did not agree—I do not remember disagreements, but there was a lot of discussion, and I have no reason to think he thoroughly agreed with me in each instance, but I was the one who had the responsibility of making the recommendations. It had to be mine.

Senator BALDWIN. Apparently you felt there was evidence of compulsion on the accused from his superior officer or officers.

Colonel STRAIGHT. I felt this: I think you will find in examining that review and recommendation that in the absence of very strong evidence as to the eagerness with which a man went about his work, that if he did it in the presence of his superior, that military organizations are such, even though these were SS men and apparently they had been taught to do these things, that there was an element, a circumstance, that should be taken into consideration in mitigation.

You will also find in there in the case of the officers that did not do anything else by way of giving directions other than passing on the general campaign plans and orders for this application of terrorism in warfare, that I recommended commutation of those sentences from death to life. To me there was a considerable difference in passing on those general orders from possibly passing them on and having definite evidence that he told a certain sergeant or enlisted man to kill some prisoners or civilians at a certain point.

Senator BALDWIN. Any further questions?

Mr. CHAMBERS. No, sir.

Senator BALDWIN. Are you going to be around awhile, Colonel?

Colonel STRAIGHT. Yes, sir.

Senator BALDWIN. We may want to question you again. If you could be available, it would be very helpful to us.

Mr. CHAMBERS. Judge Van Roden.

Senator BALDWIN. Judge Van Roden has already been sworn.

STATEMENT OF JUDGE EDWARD LEROY VAN RODEN—Resumed

Mr. CHAMBERS. Judge Van Roden, when you were last before us Major Fanton had just introduced into the record a statement which contained in part some references to yourself. We realized that you had not had an opportunity to read it in any detail and gave you the opportunity of submitting a statement or appearing again before the committee for the purpose of referring to that statement.

I believe you now have a statement you would like to make, and you may proceed.

Judge VAN RODEN. I will just read it into the record, if I may do so, and any questions you have I would be happy to try to answer.

Senator BALDWIN. Very well.

Judge VAN RODEN. Your committee very graciously and very properly suggested that I have an opportunity to answer and comment upon a prepared statement made by Maj. Dwight F. Fanton which he filed and which he orally read to the members of the committee at the last meeting which I attended. I did not arrive in time to hear this statement read, and your chairman furnished me with a copy for me to read and answer if I so desire.

Let me make it clear at the outset that my position has not been, and is not, that of an advocate for or against any theory or any action taken for or against any individuals or groups of persons who were connected with the preparation and trial of the Malmedy case. I have simply endeavored to bring to the attention of the Secretary of the Army and now to your committee conditions which were disclosed by investigation with the Simpson Commission, of which I was a member, discovered.

It is noted with great satisfaction that your committee agrees with me that all of the facts shall be brought to the attention of the American public, because of the great importance of the issues raised in this matter now under investigation.

Accordingly, I have read Major Fanton's statement, and my initial comment is that it shows careful and cautious thinking by a lawyer of no mean ability, and it is evident that he has prepared this with great care and has exerted his very best efforts to present his view of the situation in its most favorable light.

The best way to answer Major Fanton's prepared statement seems to be to submit a summary thereof, and I believe you will find the following to be an accurate summary of all of the essential portions of the statement:

1. It was determined that in all probability the Malmedy massacre had been perpetrated by units of the First SS Panzer Regiment, and Colonel Peiper, the regimental commander, was interviewed in August 1945.

2. A team of interrogators screened prisoners and suspects were located.

3. Interrogators were instructed to conduct extensive examination of persons not members of the units implicated in the crimes being investigated in order to secure stool pigeons and they reported "the nature of rumors circulating within the enclosure."

4. A description is given of the general set-up and administrative plan of evacuation of persons not implicated and the classification of persons according to their importance.

5. The information was organized through an analysis of material received from the interrogators. Files and index cards were made.

6. The statement expresses with great particularity that "it was realized from the outset that any statements or confessions secured had to be voluntary and that such statements and confessions would be subjected to careful scrutiny by the court trying this case to determine whether or not they were admissible under Anglo-American Rules of Evidence."

7. The key interrogators were all lawyers who fully appreciated the importance of employing "proper interrogation techniques."

8. "Other interrogators were carefully briefed so that they entertained a similar awareness of the importance of these considerations" (techniques).

9. Major Fanton issued "SOP No. 4" as stated by him "in order that the interrogations might be properly controlled and coordinated to insure maximum exploitation of the witnesses and suspects." He discussed this with interrogators prior to the issuance of the order and discussed it in detail with interrogators who joined his team later, and he "constantly supervised interrogations." His statement sets forth that this order forbid the use of threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment "by all the interrogators." He does not state whether his instructions were carried out; and apparently he does not know of his own knowledge whether they were carried out as he fails to make such a very important statement in his report.

10. In a great many places in Major Fanton's statement he uses the words "interrogation techniques," but leaves it to the imagination of the members of your committee as to what he means by techniques.

11. He states that "most of these techniques were discussed by him with the interrogators before being used on particular subjects" (referring to the accused). He then goes on to say in the next sentence that he observed the interrogations "frequently," but in no place in his statement does he say how frequently or how often he observed the interrogation of the accused by the interrogators, nor does he give any names of the accused who were interrogated in his presence. It is suggested at this point that if Major Fanton knew about the treatment of the accused by the interrogators of his own knowledge, this being the real issue in this investigation, he would give the committee some definite testimony upon this subject. I cannot find it in his report.

12. Although he refers to Colonel Everett's version of the mock trials as reading like "flights of fancy" he does not deny that mock trials were resorted to and used. He describes the mock trials as "techniques" and calls the term "mock trial" a "misnomer." He admits

that a "black cloth was thrown over a table and candles were lit before a crucifix at the taking of the oath in order to convey the impression of a court"; and he then proceeds to state "this 'board' or 'court' usually consisted of three persons. Officers, enlisted men, or civilians were used. When important subjects were involved, I sat in on the proceedings."

13. The statement then contains one entire page in single spacing about these mock trials which he describes as "the fast procedure," and he describes this ceremony of lighting the candles before the crucifix "as a formality to impress the subject with the sanctity of the oath through the use of a ceremony which customarily attended the taking of the oath on the continent," and "it was then explained to him [the accused] * * * that he must tell the truth." He even describes how the interrogator would reconstruct the details leading to the implication of the accused in the crime, and that when they could not get the accused to "tell the truth," which, of course, means admit his guilt, "further investigation of such a suspect would be postponed," assuming that he would then go through a second mock trial. Major Fanton continues to state that if an accused happened to be impressed by the ceremony but "was afraid to tell the truth" he was given an opportunity to think about it, and then visited by another interrogator who advised him that he would have another chance in a "fast procedure," and that in some cases after a second hearing the accused told a different story than he had told at the first hearing. He concludes on this page, by stating "Others persisted in lying. These had to be reserved for other techniques." He does not state what these "techniques" were. He does not deny that these "techniques" were what the interrogators described as "persuasive methods and expedients."

14. He states as his conclusion that he was satisfied that the court believed that the confessions and statements secured through the use of this technique (mock trial) were in all respects voluntary and truthful, although he says in his prepared statement that he was not present at the trial.

15. Illustrations and expressions of opinion permeate the entire written statement such as what he understood happened after his departure, and how two interrogators, one friendly and the other hostile, participated in the proceedings, and how witnesses were "rarely used in this procedure," and "I am told that they were not used very much after my departure," and "I believe the number convicted through the use of this technique was very small."

16. The statement admits that "it was only the more important suspects who were held in solitary confinement." He further states that stool pigeons were used only with important suspects and "to my knowledge they were never used in connection with the so-called 'mock trials' which were generally reserved for the interrogation of simpler subjects." In other words, he tells us that the mock trials were used for the accused who were not very intelligent.

17. In a very carefully worded paragraph wherein Major Fanton attempted to give the impression that "these accounts of beatings, threats, inducements, starvation, spiritual deprivation, and a variety of tortures are all untrue" what he really says is contained in the next sentence of that paragraph in which he states "I have been told many

of these stories have been admitted as such by those responsible for them." He does not state the source of his information, nor does he indicate for the benefit of the committee who has admitted these accusations to be untrue. This would seem to be the very crux of the matter before the committee, and Major Fanton should have given the committee the benefit of facts instead of avoiding the subject matter at issue.

18. The statement goes on to admit that it was customary for the interrogator to rephrase the subject's language, which would seem to corroborate Colonel Everett's accusation that the statements were prepared by the interrogator and would not always reflect what the accused had said. Following this the statement proceeds to set forth that "there is a very strong urge on the part of a person guilty of a serious crime to unburden himself through confession." He does not further explain what he means by "confession" and adroitly avoids making any denial of or affirmation that improper and profane use of sacramental confession was had.

19. He states frankly: while "not present for the trial of this case" he has "every reason to believe" that the claims that Colonel Everett made in his petition were "distorted and untrue," but he does not state any basis for his personal opinion and belief, and in the next paragraph he refers to "what I have learned about what transpired after my departure." He believes the accused were given a fair trial. He has no actual knowledge of this, of course. He frankly admits this to be true, and then proceeds to state "I have been told that the defendants who did take the stand to testify with respect to these matters were thoroughly discredited." Such statements of opinion by Major Fanton would have no weight before any American court, particularly where based on hearsay, and it is submitted that they should have no more weight with the members of this committee.

The concluding comments in the statement are criticisms and attacks upon the Army, the Simpson commission, and the Administration of Justice Review Board, and although there are no averments of facts, simply name calling, they may be commented upon briefly as follows:

(a) It is difficult to understand what Major Fanton means when he states, "I was, and remain, highly critical of the manner in which the Army has handled this case since its trial and initial review."

(b) In a somewhat bombastic outburst justifying the trial and the review and criticizing claims of mistreatment and indicating that the court acted properly with respect to convictions and death sentences, the committee is referred to the record, which directly contradicts this statement in that, although the court had sentenced 44 of the defendants to death, only 12 of these sentences were approved by General Clay after reviewing the record of this trial. Perhaps this explains the criticism above referred to that Major Fanton has of the Army, to wit, that even before the commission of which Colonel Simpson and I were members was appointed the action of General Clay in disapproving 32 of the 44 death sentences.

(c) Major Fanton's attack upon the Simpson commission does not merit any reply, except to say that his statement that we heard only the defense is not accurate.

(d) The criticism of the Administration of Justice Review Board for considering the report of the German dentist (relating to the

injuries claimed to have been inflicted by the interrogators upon the defendants), claiming this to be a false affidavit, does not give any explanation or any assistance to your committee to controvert the findings of that Board.

(e) The final criticisms of General Clay's headquarters for disapproving and commuting many of the sentences without giving any reasons does not merit any reply.

(f) The statement that Colonel Simpson deserves credit in that "he realized the importance of refuting these unfounded claims and publicly repudiated Judge Van Roden" indicates that Major Fanton, apparently not thinking it important, did not familiarize himself with what Colonel Simpson stated.

The best answer to this is the official report made by our commission, which was joined in by Colonel Simpson, Colonel Lawrence, and myself, and which I believe is before your committee in its entirety; and I shall only point out what I believe are points which Major Fanton has overlooked and quote from our report as follows:

(a) The unexecuted confirmed death sentences resulting from the Dachau war-crimes trials are based upon records which, under the procedures prescribed in title 5, Military Government Regulations (tab F), as modified by Manual for Trial of War Crimes and Related Cases (tab G), reflect that the trials were essentially fair.

(b) There was no general or systematic use of improper methods to secure prosecution evidence for use at the trials.

(c) Except as to the cases of the 29 prisoners referred to in tab H, no reason is perceived why the death sentences under consideration, all of which were imposed for participation in murder, should not be executed.

It is stated in tab H, referred to in paragraph (c), above, as follows:

The so-called Malmedy case is distinguishable from all the other war-crimes cases tried at Dachau. These offenses were committed in the heat of one of the most furious battles of the war. The Ardennes offensive by German forces began on December 16, 1944, and the members of Combat Group Peiper who committed these crimes were supposed at all hazards to reach the Maas River within 2 days. The assassinations which were the basis of this prosecution occurred on December 17. They are most reprehensible and merit stern retribution. However, it is extremely doubtful that an American court martial would fix any punishment more severe than life imprisonment if it were trying members of the American Army who committed like offenses in the heat of battle.

Moreover, the prosecution testimony in this case was made up in large part of the extra judicial statements of the accused. Many of these statements implicated to a damaging degree other of the accused. Admittedly, some of the statements were obtained by the use of mock trials in which one or more persons attired as American officers pretended to preside as judges and others attired in Army officers' uniforms pretended to be the prosecutor and defender of the accused. The room where these proceedings were held contained a table covered with a black cloth on which stood a crucifix and burning candles. The accused was conducted to this room with a black hood over his head. The mock trials were designed, among other things, to gain the confidence of the accused in his supposed defense attorney and thus to elicit a statement from him.

Other practices, some of which were not brought out during the trial, were developed in the testimony before the Administration of Justice Review Board for the European Command as is reflected in its report of August 18, 1948.

The propriety of many of the methods employed to secure statements from the accused is highly questionable and, we conclude, cannot be condoned. The extent to which the use of these methods operated to elicit statements from the accused cannot, in the nature of the situation, be accurately estimated. Sufficient doubt, however, is cast upon the entire proceedings because of these factors to make it unwise, in our opinion, to proceed with the executions of the death sentences which have been confirmed.

The record of trial, however, sufficiently manifests the guilt of the accused to warrant the findings of guilty. We conclude that any injustice done the

accused against whom death sentences have been approved will be adequately removed by commutation of the sentences to imprisonment for life. This we recommend.

It will be seen that there is no disagreement between Colonel Simpson and myself. I might add, however, that although not specifically stated in our report, by reason of the policy still in force that no new trials would be granted, all three members of our Commission recommended commutation of the 12 death sentences in the Malmedy cases for the reasons stated and in order that at some future time some proper tribunal (perhaps your committee is such a tribunal) might ascertain whether any or all of these 12 defendants were guilty, and, if so, what a proper sentence other than death would be. There is positively no dispute or disagreement that these 12 defendants did not merit the death penalty for the reasons stated in our report.

Having summarized Major Fanton's prepared statement, it seems clear that the entire statement is patently an effort to justify what was done rather than deny that these things were done. It is clear from reading Major Fanton's statement that he knows very little of his own knowledge, and his statement is almost entirely a statement of personal conclusions and opinions with no definite statements of the facts or the actions upon which his conclusions and opinions are based.

A careful reading of this statement indicates to me only two places where he makes any suggestion that he has personal knowledge of what the investigators did: and I quote these references:

I constantly supervised interrogations in progress to insure strict compliance with all of its provisions.

Most of these techniques were discussed with me by the interrogators before being used on particular subjects. I covered the interrogations frequently while they were in progress and witnessed certain important confessions secured through the use of such techniques.

The statement fails to state whether he knew that his instructions to the interrogators were carried out.

The references to "techniques" and "fast procedure" are not explained.

No statement is made of just how many interrogations the major witnessed or the names of the accused in such cases, nor is it stated that he knew of his own knowledge the treatment accorded the accused by the interrogators; simply the hearsay reports of these interrogators to him.

No denial of the use of mock trials, simply calling them by different names.

Repeatedly he uses phrases indicating his testimony is based upon hearsay and personal opinion, such as "I am told," "I believe," "to my knowledge," "what I learned after my departure," and so forth.

In conclusion, if Major Fanton feels that he has been put on the defensive by Senator McCarthy, who is apparently trying to ascertain the true facts of the situation, and if he attacks Senator McCarthy for this reason, and goes on to call Colonel Everett and me names, with the purpose of drawing me into a personal debate or controversy, my reply is that he will not be successful. This is undignified and not in line with the purposes of the investigation of your committee. I am sure the members of your committee desire to ascertain the true facts, and if any of the statements which I have made cannot be supported by the records, or if Major Fanton has any affirmative answer

which can be proven by proper evidence, I am confident that your committee will ignore the name-calling; and I respectfully request the public press to bring to the attention of the citizens of our country that Major Fanton by relying upon such methods instead of producing testimony (of himself and other competent persons) to contradict what I have said cannot be considered as a reliable source of assistance to your committee and to our Government, which is trying to find what the true facts are.

It is my earnest hope, and in confidence I believe that the members of your committee will not consider this as a controversy between individuals and certainly not any controversy amongst groups of Army officers or investigators. I have no personal desire for publicity. My only purpose is a patriotic one, and my only desire is that the conscience of America shall be saved and that our country shall not compromise with our ideals of justice and make a record in the history of nations of having condoned the practices in the administration of justice which do not measure up to our boasted high standards.

Mr. CHAMBERS. Thank you, Judge.

Judge VAN RODEN. Is there anything further you have?

Mr. CHAMBERS. There are several questions I would like to ask you, one in particular with regard to this statement. You have given a very excellent technical and careful analysis of Major Fanton's statement. I am wondering if you had opportunity to read his complete testimony before the committee.

Judge VAN RODEN. I have not.

Mr. CHAMBERS. That in many of the matters, in which you were referring only to the written and prepared statement, these very points you brought up were gone into in some detail. Some were answered by Major Fanton and as other witnesses came before us, we attempted to develop those same points.

I notice in your statement you commented that you were glad to see that our committee was in complete accord with your desire to see all the facts brought out in this matter.

Judge VAN RODEN. I believe you are, and I hope you will continue to be that way, and I know you will.

Mr. CHAMBERS. In that light, I have a few questions here to ask. One of the things which your statement has brought out—and I think it is of very great interest—is that you attack Major Fanton's prepared statement from the standpoint that he had so much hearsay in it. I think that this is in almost any area a very good method of attack, and I might say that you have also made the statement that there is no disagreement between you and Judge Simpson, and I certainly have noticed that both you and Judge Simpson—and I believe the recorder, Colonel Lawrence—all signed the same report, so there is obviously no disagreement between you two insofar as the Simpson report is concerned.

But there seems to be a rather vast area of disagreement between you and Judge Simpson insofar as the development subsequent to the rendition of that report. Judge Simpson in testifying before us was here practically as long as you, sir, and we got into this question with him of brutalities and mistreatment of prisoners because the report itself was very silent on that.

It said, I believe, there was no evidence of systematic mistreatment of prisoners. We were very anxious to find out, in view of the fact

that you, a member of that same Commission, viewing the same evidence and the same facts, had come out with apparently one conclusion as to what had happened and Judge Simpson had come out with another.

So we asked Judge Simpson whether or not in his opinion these brutalities had taken place or whether these mistreatments such as beatings and kickings, and so on, had taken place.

Senator McCarthy asked the questions. The testimony reads:

Senator McCARTHY. You said you found no evidence of any physical punishment?

Judge SIMPSON. I found no evidence of bludgeoning with clubs or kicking in the genitals or that sort of thing. I think it was possibly physical punishment to keep these men in solitary confinement as they did. I don't condone that at all.

And later on Senator Baldwin asked him:

In connection with these trials, was there evidence that came before you of beatings, physical abuse of any kind?

And the answer was:

Judge SIMPSON. I found none.

And then there followed another question and answer:

Senator BALDWIN. Was there any evidence of men being slapped in the face or kneed in the groin or anything of that kind?

Judge SIMPSON. I found no evidence of that.

Now, on the day you testified here, you were asked a great many questions about that article that appeared in the Progressive magazine. In that there were very serious allegations of physical abuse.

You rather carefully marked that copy up for us so we could tell those statements we could attribute to you and those we could attribute to your ghost writer, Mr. Finucane.

That left still in the article the charges of knocking out teeth and breaking of jaws and beatings and brutal kickings as statements which could be attributed to you.

I would like to ask Judge Van Roden what evidence—and this may be repetitious of your earlier testimony, but we have had many, many witnesses before us since you were last with us—what direct evidence did you find that there were beatings and kickings and physical abuse?

Judge VAN RODEN. It has all been covered before.

Mr. CHAMBERS. Yes, sir, I understand, Judge; but I would like to get it in the record again.

Judge VAN RODEN. It will take a long time; will it not?

Mr. CHAMBERS. It might.

Judge VAN RODEN. All I can say is what I said before, as I remember it, that we had access to a great number of records. We divided up our work among the three of us. Gordon Simpson took certain cases, Colonel Lawrence took certain cases, I took certain cases to work upon. We had the records of trial, including the testimony, the staff judge advocate's review and recommendation, we had literally hundreds of thousands of petitions filed with the War Crimes Branch there in Munich by civilian attorneys, by friends, by organizations, by clergy, and by numerous people, many of them being, we called them emotional appeals and with nothing new for consideration by the several boards of review. There were two functioning while we were there.

Mr. CHAMBERS. Many of those petitions did allege mistreatment?

Judge VAN RODEN. Oh, yes. We could not all do all the cases in the short 6 weeks' time we had. We divided up our work. I think he explained—and, if he did not, I will do so—the way we accomplished this work with respect to only, gentlemen, the 129 cases where the death penalty had been approved by General Clay not executed yet, had not up to that time been executed—of which only 12 were the Malmedy defendants. The only way we could do it was divide up this work, and when we had any doubt about the validity or propriety of the findings and/or the sentences, we then brought that to the attention of the other two, and if we felt that the record was legally sufficient to sustain the findings and sentence, we passed them on as being legally sufficient. I doubt if we even discussed them unless there were important factors we wanted to discuss.

So, it is entirely possible that Judge Simpson examined cases which I did not see; Colonel Lawrence examined cases we did not see, and I examined cases they did not see. We had these many records we worked on, shall I say modestly, very diligently, during that period of time. When we had a case where we had doubt, then we sat down and discussed it, and we would either say, "I recommend this be commuted," or whatever the recommendation might be; and after referring the disputed or the doubtful cases between or among the three of us, we then decided which cases we should recommend for commutation or clemency or whatever you choose to call it.

Mr. CHAMBERS. Do you recall whether you personally or did one of the other two study the 12 cases involving the Malmedy people?

Judge VAN RODEN. I do not recall. I read the record of the Malmedy cases.

Mr. CHAMBERS. The record of trial?

Judge VAN RODEN. Record of trial. Maybe we all read that. That was the most challenging of all the cases because of the nature of the testimony.

Mr. CHAMBERS. Do you recall any charges made in the record of trial by the nine accused who took the stand as to beatings and physical mistreatment?

Judge VAN RODEN. It was either in the record of trial or it was in some of the post trial petitions that were filed, as I just referred to.

Mr. CHAMBERS. May I ask a specific question as to the record of trial? I am well aware of these post trial petitions, and we will come to those in a moment, but in the record of trial where only nine accused took the stand, do you recall any statements or charges made by the accused on the stand that they were physically mistreated?

Judge VAN RODEN. I could not be definite on that. I think there were, but I do not remember.

Mr. CHAMBERS. You were present here when Colonel Straight testified?

Judge VAN RODEN. I came in as he was testifying.

Mr. CHAMBERS. To refresh your memory on that testimony and to state what is in the record here, there is evidence that Colonel Peiper on the stand said that near the end of his sojourn at Schwabisch Hall he was kicked in the rear by a guard, not in connection with getting his confession, but he made that as a statement.

There is record in the trial proceedings in the case of a man named Christ that he was terribly cursed.

There is record in the trial on the part of Hennecke concerning the "schnell" proceedings.

If you will accept this as a statement, sir, merely for clarifying the record, there is nothing in the testimony of those nine people alleging brutality or physical mistreatment. In view of the fact that there is nothing in the record of trial—and they are here, if you care to examine them—I would like to go on down to where the charges came from.

Senator BALDWIN. Just a moment. I might correct you on one of those. I think there is in one of these cases a claim.

Colonel STRAIGHT. I will find that for you.

Senator BALDWIN. In one of these cases in the first review made by Colonel Straight there is the claim made by Motzheim that Lieutenant Perl kicked him four times in the sexual parts and Mr. Thon kicked him on the leg. I think that is the only one I have been able to find.

Mr. CHAMBERS. I am sorry. My memory is faulty, sir, because I have been making some very general statements here. I am sorry, Senator.

I will simply say I have read all of these and in Motzheim's case apparently my memory is completely at fault, and because of that I do not want to go further along the line I was proceeding because I want to be meticulous on this.

Senator BALDWIN. Let me say this for the benefit of the record. Of the nine who took the stand in their own defense, is it not correct, Colonel, that the record shows that in one case, Motzheim, there was complaint of physical abuse?

Mr. CHAMBERS. That is correct, sir.

Senator BALDWIN. In the case of Peiper, he claims he was kicked by, he thinks, a Polish guard on the last day he was at Schwabisch Hall.

Mr. CHAMBERS. That is correct.

Senator BALDWIN. Hennecke complained of the methods that were used to extract a confession from him, the so-called "schnell" procedure. Of course, outside of these nine, none of the other accused who later filed these affidavits with Everett's petition in the Supreme Court, none of the rest of them took the witness stand.

Judge VAN RODEN. I do not recall, gentlemen.

Senator BALDWIN. They did not take the opportunity that was offered to them to testify as to physical abuse.

Mr. CHAMBERS. The point I would like to explain is, I am relying on my memory and it has been pretty accurate so far and apparently it has slipped on this one, so I would like, before pursuing that further, to check and make sure.

But the point to the question is this: In reading the record of those who took the stand in their own defense, there were very few who alleged brutality, and the great bulk of these charges that came out at a later time were based primarily on the petitions and the affidavits submitted by the accused subsequent to trial.

Judge VAN RODEN. That is probably so, and it is also so that many of the people whom we interviewed over there brought these accusations to our attention. I am not an advocate on this matter. I had a job to do for the Secretary of the Army. We made our report to him

because long before we were appointed these accusations had been made. We did not make these things up out of our heads, and that is the reason we were sent there. They had been made by Colonel Everett, and Secretary Royall sent us to see if there was truth in them.

We brought back whatever we could for the Secretary or some proper tribunal to go into the matter, and hear evidence pro and con to see what the real facts were. That is the only purpose of my duty.

Mr. CHAMBERS. I have no quarrel with what you did there, sir. In fact, I have the full belief—

Senator BALDWIN. May I ask a question here?

As I recall, Judge Van Roden, when you testified before—and if my recollection is not correct, do not hesitate to say so—you testified that your findings were based upon an examination of the records that were available, the affidavits, and the testimony of the trial itself, the affidavits accompanying Everett's petition, the letters and statements, and affidavits of interested people that were filed with the authorities; you examined those?

Judge VAN RODEN. Yes.

Senator BALDWIN. Was there any witness, eye witness, that you interviewed in this review who testified that he personally had seen any physical abuse of these prisoners?

Judge VAN RODEN. No, sir.

Senator BALDWIN. In other words, your review was based upon an examination of records and not upon statements of witnesses?

Judge VAN RODEN. That is partly so.

Senator BALDWIN. In person.

Judge VAN RODEN. That is partly so. We did interview as you see from our report, a number of persons, listed most of those whom we saw.

Senator BALDWIN. That was my next witness.

Judge VAN RODEN. Including the law member of the court, Colonel Rosenfeld, and other persons mentioned in one of the tabs attached to our official report.

We interviewed others whose names we did not record. They came in flocks the last few days we were there. One or two days toward the end of our tour of duty, Colonel Simpson had people in his room and Colonel Lawrence and I had people in our room at the same time, talking to these people. They had heard we were there, and it was published in the papers, and they came to see the Simpson Commission with the idea that we were having a retrial.

Senator BALDWIN. Were they people who claimed to have witnessed any of these claimed abuses?

Judge VAN RODEN. No, sir, for the reason that the accusation is they were all done in the cells and only the interrogator and the accused would know about it. All of the abuses transpired that way, we discovered. Nobody could have witnessed them.

Senator BALDWIN. Were there any of these people you interviewed who claimed to have seen signs on any of these prisoners of physical abuse?

Judge VAN RODEN. Yes, I think there was. He was a civilian lawyer whose name I do not recall. Maybe Colonel Straight would know.

Was there a lawyer named Schmeer, defense counsel?

Colonel STRAIGHT. An American?

Judge VAN RODEN. No, a German.

Mr. CHAMBERS. Leer?

Colonel STRAIGHT. Dr. Leer was one of them.

Judge VAN RODEN. I am not sure, but I think Dr. Leer is the one who said to us that he had seen—I am not sure he is the one, but one of the Germany lawyers whom we interviewed said that one of his clients he represented had had marks of abuse upon him. I have forgotten his name; I have forgotten what the name of the accused was.

I cannot remember all of that. We did not attempt to. We examined 129 cases over there, and my mind simply will not hold that detailed information.

Mr. CHAMBERS. Insofar as the list of persons interviewed is concerned, you say this is incomplete?

Judge VAN RODEN. Yes.

Mr. CHAMBERS. This was contained in the signed report.

Judge VAN RODEN. The last day or so, the last week we were there, there were numbers of persons—for example, one or two wives of the accused came in to us, whose names we did not record. They were not important enough to record.

Mr. CHAMBERS. Do you recall whether or not in those last few days or perhaps on other days when their names were not listed, these persons interviewed by your commission, whether or not you talked to any of the prosecution staff, that is, the investigating staff—that built up this case?

Judge VAN RODEN. I do not believe we did.

Mr. CHAMBERS. In other words, the only persons connected with the handling of the cases were the law member of the court, Judge Rosenfeld, and Colonel Mickelwait, who at that time was with the War Crimes Court?

Judge VAN RODEN. Also Colonel Bresee.

Mr. CHAMBERS. Col. Howard F. Bresee?

Judge VAN RODEN. Yes. We worked under his office. He assigned rooms for us and gave us access to files. He is a very helpful and efficient officer.

Mr. CHAMBERS. There was no effort to get into the investigating staff that was still over there?

Judge VAN RODEN. I do not recall that we did. I think most of them had left.

Mr. CHAMBERS. At that time there were some still available.

After coming back to this country, did you make any effort to get into contact with any of the investigative or prosecuting staff against whom these charges were made?

Judge VAN RODEN. We were making no charges. We were making a report to the secretary.

Mr. CHAMBERS. You were making a report to the secretary and one conclusion was there was no evidence of systematic mistreatment.

Judge VAN RODEN. Read that—of a general systematic—

Mr. CHAMBERS. No general or systematic use of improper methods to secure prosecution evidence.

Judge VAN RODEN. That is right.

Mr. CHAMBERS. That is the conclusion you arrived at?

Judge VAN RODEN. Yes.

Mr. CHAMBERS. But did that mean you had found evidence that there was—did you find evidence that there was other than a general or systematic use of improper methods?

Judge VAN RODEN. We found in certain cases that had transpired—there was no general systematic use in those 129 cases. That is what we said in our report. Is not that clear?

Mr. CHAMBERS. That is correct.

Having prepared the report and turned it in, we then come back to what, of course, is the prime thing that we have in mind here, that you, based on the study that you all had made, felt it proper to go into considerable detail concerning this mistreatment and physical manhandling of prisoners, which in the report you found was only predicated or only strong enough to support a finding that there was no general or systematic use of improper methods.

Judge VAN RODEN. I do not understand the question.

Mr. CHAMBERS. Let's go back. In your report you said that the evidence was such that there was no general or systematic use of improper methods to secure prosecution evidence.

Judge VAN RODEN. Go on beyond to the final paragraph referring to that where we said the case was recommended for clemency.

Mr. CHAMBERS. You say [reading]:

Except as to the cases referred to in tab H, no reason is perceived why the death sentences under consideration should not be executed, all of which were imposed for participation in murder.

Judge VAN RODEN. That is right.

Mr. CHAMBERS. Then a further paragraph.

Recommendations were made to the commanding general that clemency extend to prisoners listed in tab H.

Coming back to your finding 4-B, there was no general or systematic use of improper methods to secure prosecution evidence for use at the trials. That was your official finding?

Judge VAN RODEN. Yes.

Mr. CHAMBERS. However, you then saw fit in an article to say that there was apparently sufficient evidence to support a statement that there were beatings and brutalities, knocking out of teeth, posturing as priests, and so on.

Judge VAN RODEN. That is 29 of the 139 cases. We found that 111 of those cases, in regard to them there was no reason to disturb the findings or the death penalties. That is set forth in the report as clearly as can be.

We found of the 139 cases that 110 of them we felt there was sufficient competent evidence there to sustain not only the findings but the sentences of death. We so recommended.

With respect to 29 cases, which include these 12 death sentences in the Malmedy case, they were not in that category, and some of these things had been done to some or all of these persons in different degrees, and for that reason we recommended they not pay the death penalty.

Mr. CHAMBERS. You moved the Malmedy cases out of this general finding of no general use of improper methods and said in those cases there was sufficient evidence to support a recommendation for clemency?

Judge VAN RODEN. That is correct.

Mr. CHAMBERS. All right. That is correct. Then at a subsequent date you began to go into details as to what supported that particular conclusion; is that correct?

Judge VAN RODEN. That is probably so.

Mr. CHAMBERS: Then in the article which you published—

Judge VAN RODEN. I did not publish the article.

Mr. CHAMBERS. The article which appeared in the Progressive magazine under your byline, you felt you had sufficient direct evidence to publicly state that American investigators used the following methods to obtain confessions—and that this knocking out of teeth and these various things which we have already mentioned, and you felt you had direct evidence sufficient to support that and publicize it before the American public; is that true?

Judge VAN RODEN. That is substantially so.

Mr. CHAMBERS. Do you still believe that?

Judge VAN RODEN. I firmly believe those things happened. I firmly believe those things happened.

Mr. CHAMBERS. Let's go back to the basis for your belief. You do question Fanton's use of hearsay and criticized him for using hearsay.

Judge VAN RODEN. I was not criticizing, I simply say if this committee considers his report, all I tell the committee is that he is telling you what the investigators told him.

Mr. CHAMBERS. That is correct. What you are saying here is what the accused themselves told you through affidavits; is not that correct?

Judge VAN RODEN. No, sir; that is not wholly accurate. The situation, as I have tried to describe it to you, gentlemen, is this: We in our duties found evidence, we found in the records accusations and considerable basis that these things had taken place.

Mr. CHAMBERS. You found accusations that these things had taken place, and you felt that, based on that, you could let an article come out under your byline, which said they did take place, not accusations, sir. This thing said the American investigators used the following methods. That is not an accusation, that is a statement.

Judge VAN RODEN. That is right.

Mr. CHAMBERS. You have just said that over there you found accusations to that effect, but no direct evidence as to it, but then you come out and permit an article to be published, Judge, which says they did use those methods.

Judge VAN RODEN. I do not know whether you are trying to be adroit or not.

Mr. CHAMBERS. I am not trying to be adroit. Maybe we will get some basis of understanding and save a lot of detailed questioning.

A report went in from you and Judge Simpson, which was a very factual and apparently a very appropriate report, and subsequent to that time, appearing before this committee, Judge Simpson said these brutalities did not take place; you come in and say that they did.

Now, we are trying to get down to the point of finding what actually happened. Part of this thing, Judge, goes back to what is the basis for the charges that you made.

Judge VAN RODEN. Papers that we saw over there, that all three of us saw, most or all of those papers.

Mr. CHAMBERS. What type of papers were they?

Judge VAN RODEN. I will repeat it.

Mr. CHAMBERS. Thank you.

Judge VAN RODEN. The records of trial, post-trial petitions, persons we interviewed, the reports of the several boards of review—as a matter of fact, we talked to members of the boards of review over there,

including Lieutenant Colonel McClure, Colonel McClintock, and I have forgotten the other names, except for Major Haeffe, and we talked to Colonel Bresee. We had the benefit of their reports.

We talked about several cases, got their reactions, and all we could do was find out what these records indicated to those persons who were doing that job for the War Crimes Branch.

As a result of all of that, I cannot point my finger right now to each individual person we spoke to and all the papers, we read many papers. I am sure all of us, including Colonel Simpson, were convinced that some of these things had taken place in some of these cases. We had the report from the German dentist, the report of these teeth knocked out.

MR. CHAMBERS. That is Dr. Knorr.

Judge VAN RODEN. Yes.

MR. CHAMBERS. I think you might be interested in knowing that since you have been here there has been direct testimony from the medical officer station at Schwabisch Hall. There were two different people, Dr. Karan and Dr. Ricker, also some enlisted medical people there at that time. Each of them testified Dr. Knorr did come to Schwabisch Hall to treat the prisoners stationed there, primarily the internees, but some of the Malmedy people.

They also testified Dr. Knorr, any time a prisoner went down for treatment, that one of the medical staff was with him.

They also testified that to the best of their recollection and knowledge—and they were there the entire time or one or the other was there—that there was never any teeth knocked out, broken jaws, or anything of that kind in the case of the Malmedy prisoners.

Judge VAN RODEN. That may be true. I do not know.

MR. CHAMBERS. Eventually I hope to have an opportunity to get more direct evidence from Dr. Knorr, but that is the status of it at the present time.

In other words, you have a statement, an affidavit from Dr. Knorr, which I believe you folks did not have time to run down and turned it over to the Raymond board for further investigation; is that correct?

Judge VAN RODEN. That is correct.

MR. CHAMBERS. As yet that is a completely unsubstantiated statement made, and the fact is that so far on the basis of the evidence that has come in it has been completely refuted, but the point I am trying to get at is that, based on the evidence which you had picked up in the too short a time that you all had there, you felt that you had ample evidence to come back and support public statements of this kind.

Judge VAN RODEN. May I answer that this way: I was convinced when I was over there—and I believe all three of us were—that these things had taken place. We had no means, we did not have the time, we did not have the authority, I do not believe—although that is debatable—to go into hearings. We were not over there as any hearing board.

We read these papers, talked to people, went over the record. We were convinced these things which I have said, privately shall we say—and I will not say publicly, but maybe semipublicly—we were all convinced these things had taken place as to these 29 cases. That is the reason it happened.

Senator BALDWIN. I think the important thing from the standpoint of the committee is this: The basis of your convictions, as you state them.

Mr. CHAMBERS. That is right.

Senator BALDWIN. As I recall your testimony, the only witness, the only eyewitness you now recall, who I think may have said that he saw some evidence of injury on one of the accused, was a Dr. Leer.

Judge VAN RODEN. I am not sure he was the one.

Senator BALDWIN. You are not sure of anything.

Judge VAN RODEN. I cannot be sure. I was not making records of those things then. We were ascertaining whether or not there was sufficient to warrant a recommendation that these sentences not be carried out. That is what we were there for. We were sufficiently of that belief to make that recommendation as to 29 of those cases because we believed they had had those mock trials, we believed these things had happened to them, and we put in our report the reasons for it as briefly and tersely as we could.

I thought myself the report was a little too brief, but they wanted to have it in military form, Colonel Lawrence was a military lawyer, and a very able one he is, and he wanted to have it in a page and a half. I came along with that, and we had a brief report, and with the tabs or exhibits. If these things are refuted by proper evidence, I will be very happy to know that is so. We certainly were convinced over there that these things had happened or we would not have made recommendations to commute 29 death sentences if we had not thought that.

Mr. CHAMBERS. Twelve of those cases were Malmedy cases?

Judge VAN RODEN. Yes.

Mr. CHAMBERS. Do you recall bases in other than the Malmedy cases for recommending clemency?

Judge VAN RODEN. As I recall the Malmedy cases, they were based chiefly upon the mock trials. As I recall, in the Malmedy cases, they were given mock trials and other means of getting confessions, because the evidence—no doubt you have read the evidence in the Malmedy case—almost the entire record there of the prosecution consists of these pretrial or extrajudicial affidavits, and we believed that they were not secured in a voluntary way, they were not voluntary statements by the accused.

That was the chief reason we thought in the Malmedy case that the trial was not proper, even under the rules laid down in the convention of 1945.

Mr. CHAMBERS. Excuse me, Judge. Do I gather from these remarks that what you are saying here is these detailed charges of brutality stem not particularly from the Malmedy cases, but that the reasons why you recommended commutation in the Malmedy thing was based primarily on the schnell procedures or mock trials?

Judge VAN RODEN. A combination of both, but chiefly the complaint we found in the Malmedy cases was they had given these men the mock trials and had other threats to try to secure confessions, such as the boy, Friemuth, who killed himself, who had a mock trial, and then the man in his cell who had signed several pages and then hung himself before he completed it.

Mr. CHAMBERS. I am having difficulty with the article in the Progressive magazine in the light of the last statement.

Judge VAN RODEN. You are basing your cross-examination, if I may call it that, on the article in the Progressive, which is not the matter before the committee.

Mr. CHAMBERS. I was not trying to be adroit; let's see if I can be blunt.

The Simpson report is one thing, but probably the most inflammatory report that has come out in this whole matter is this article in the Progressive magazine, and if I may say so, it has received such wide circulation and such wide publication, both in the press throughout, and the magazine itself, it has been inserted in the Congressional Record, and heaven only knows, it has been used here time, time, time, and time again.

Judge VAN RODEN. That may be very regrettable.

Mr. CHAMBERS. I do not know whether it is regrettable or not. If it happened, the facts should come out. If it did not happen, then certainly they need to be disproved.

Because of articles of that kind, and this article in particular, we are constantly having difficulty finding out what actually took place. I do not think any of us have attempted to question one iota of the Simpson report, but after the Simpson report came in, you see fit to go into some detail in this particular article, and we get you before us and you say that you still have reason to believe that the statements made in that article are correct.

Judge VAN RODEN. As amended by me, if I may call it that.

Mr. CHAMBERS. There are further questions to come on that, sir, but you say that the article is substantially correct as amended. Judge Simpson comes before us and says, "We did not find any such evidence." Then we have had a long stream of people coming through here, many of them very competent persons, who have appeared to be credible witnesses, who have repeatedly and specifically denied, and I do not mean just the interrogation team.

Judge VAN RODEN. Nobody has affirmed any of these?

Mr. CHAMBERS. No, sir. The only affirmation of these charges of brutality and direct affirmation is a man by the name of Sloan, and he is the only man who has said, "I saw anything happen," and Sloan was at Schwabisch Hall for a grand total of about 2 hours.

Judge VAN RODEN. I have no idea who he is.

Mr. CHAMBERS. We found him and brought him in for the purpose of getting facts. I am perfectly frank to agree with you that I am proceeding on my cross-examination in an effort to clear out and find out if the facts as appearing in this article go beyond what you honestly believe happened, and then if it begins to appear that they are exaggerated and weighed against the other competent evidence we think we have had in here, then perhaps we can begin to find out just how much truth there is to the whole story.

On this particular article, and just so that we will get this record completely clear, I took the liberty of calling you the other day to ask you to decide what you wanted to do here because I felt you should know the developments in this thing. When you were here earlier, as I understood the story, Mr. Finucane showed up at a meeting of the Rotary Club at which you were to make a speech, and after that there was a press release issued, to which after you saw it you had some objection, and you wrote them and they retracted it in either a subsequent release or through their normal mailing channels.

Subsequent to that, you had a call from Mr. Finucane stating that a magazine desired to publish this article under your byline, and you in your testimony said you should have known, but you did not know what was meant by a byline, and that he went over it—I may not be quoting your testimony exactly here—but he went over it with you and very hastily told you some of the things he wanted to add, you objected to some and accepted others; and, based on that—and you told us in the hearing—you were a little surprised at the thing and that you had written the publishers of the magazine and mentioned a man by the name of Rubin, if my memory is correct, as the man to whom you had written, commenting on or denying some of these things, but, as far as you know, there had been no retraction or denial published by them.

Again on the assumption that that has been the basis for so much of the testimony here, insofar as brutality is concerned, so much reference made to it, I would like to ask you, Judge, how much of the detail that was to appear in this magazine did you know of at the time you approved the publication?

Judge VAN RODEN. I could not tell you that. The best answer I can give you is what I told you the last time I was here as to the parts I definitely repudiated and did not know that happened, did not know they happened, and could not be responsible for.

Mr. CHAMBERS. Mr. Finucane testified here in response to direct questions that you had a detailed knowledge of everything that went into this article.

Judge VAN RODEN. That is not accurate.

Mr. CHAMBERS. You mean my statement is inaccurate or what he says is inaccurate?

Judge VAN RODEN. What he said. I was not here to hear him testify. For example, it mentions in that article about five persons being hung. I had no knowledge of that fact that General Clay had given those orders until I saw it in the Progressive magazine when it came out.

Mr. CHAMBERS. You had categorically denied so many points that I wondered about them. My Finucane, in fairness to him, did qualify some of those statements by explaining that many of these things were based on his misunderstanding of what you said, but what I am asking you directly is this: Did he read this thing in all of its detail over the phone to you when he called you?

Judge VAN RODEN. Before publishing it?

Mr. CHAMBERS. Yes.

Judge VAN RODEN. No. Read it in detail?

Mr. CHAMBERS. Yes.

Judge VAN RODEN. No, not that I remember.

Mr. CHAMBERS. Did he explain to you he was taking the news release and adding certain things to it and explain those additions?

Judge VAN RODEN. I got the impression he was having a condensation of the news release to put in a local publication published by the LaFollettes, and that is what I knew about it. He did mention some of the items that I agree I believe now I say occurred such as some of the acts of cruelty there. He mentioned some of those and I said yes and I would still say yes, that I would adhere to it, because I believe they happened.

Senator BALDWIN. How did you first meet Mr. Finucane?

Judge VAN RODEN. How I first met him?

Senator BALDWIN. Yes, where did you first meet him?

Judge VAN RODEN. In Media. He used to live in Chester and work for the Chester Times.

Senator BALDWIN. Did you know him there?

Judge VAN RODEN. No, I knew his name. He has a brother still employed by that same newspaper, whom I just know by sight, and maybe very casually. He was visiting his brother, I believe, in Chester, and we talked, and I was going to this——

Senator BALDWIN. Did he come to your office?

Judge VAN RODEN. Yes, he came to see me at the office, and he also went to this Rotary Club meeting, maybe 20 or 30 people were there, which started this whole thing.

Senator BALDWIN. That is the thing that interests me. Why should Mr. Finucane have gone to such pains to look you up? That is the problem.

Judge VAN RODEN. I do not know.

Senator BALDWIN. One of the problems that puzzles the committee.

Judge VAN RODEN. I cannot answer that. I do not know why he took such pains.

Senator BALDWIN. When you first saw him, did he tell you he had come to talk to you about these Malmedy cases?

Judge VAN RODEN. No. I do not remember the detail. As I remember, the first thing he talked about was he said that he was associated with this National Council for the Prevention of War, about which I had never heard. Maybe he said that at the little Rotary Club gathering on the Chester pike, and I think he gave me a letterhead saying they were started some time after the First World War.

I did not know it was an organization to broadcast news releases. I thought it was a council for the prevention of war. There are many organizations, I suppose, of similar objectives. I had no idea this was going to be a coast-to-coast broadcast. All I knew or thought was he wanted information about these war crimes for their councils for whatever it might be worth, for the prevention of war. Then the news release came to me on a Saturday morning, and I was startled and surprised, and finally I telephoned to the council and talked to Mr. Libby and finally got him at his home and that is when I questioned him about this news release, told him the things I did not like about it.

I think I wrote a letter following that to him specifying certain details of that release which I said were inaccurate and should not be published, and he said he was sorry, but it had already gone out to the press. Mr. Libby told me that. That is the situation.

Mr. CHAMBERS. Perhaps you would be interested in Mr. Finucane's statement before us, because he apparently went to Philadelphia deliberately for the purpose of talking to you. We asked him about some of these circumstances: "How did you happen to be there and hear that particular speech?" Mr. Finucane said:

Mr. Libby, our executive secretary, had been in Philadelphia a week or so earlier and had been talking to a friend of his, Burton Parshall, who told him Judge Van Roden had made some shocking statements to a meeting of the Federal Bar Attorneys Association, a Federal bar association, something like that.

Do you know Mr. Parshall?

Judge VAN RODEN. No.

Mr. CHAMBERS (continuing):

Mr. Libby asked Mr. Parshall to send us a memorandum on the contents of van Roden's speech. The memorandum was from memory, and we wanted to check up on it, so I went up to see Van Roden. He said: "It happens that you came at a time when I am making a speech at the Rotary Club; you can come up with me."

Senator BALDWIN. I have one question. Had you made a speech to the bar association?

Judge VAN RODEN. Yes, I had.

Mr. CHAMBERS. Had you made other speeches on this subject, Judge?

Judge VAN RODEN. I guess I had, yes. I made talks to private individuals and to groups, a few, I do not know how many.

Mr. CHAMBERS. I believe you already testified you were so firmly convinced of these things—

Judge VAN RODEN. I was.

Mr. CHAMBERS. Mr. Finucane, in response to questioning about the article that appeared in The Progressive, said:

I called Judge van Roden on the phone and told him what the story was. I don't think he had ever heard of The Progressive magazine at that time. I explained to him and I said, "We want to incorporate in your statement"—that was the press release, I presume—"additional material."

You just testified you thought he was was condensing it. [Continuing:]

He was familiar with what we had been distributing, and as I say, had made amendments to it. So we figured those amendments had made it correct or he would have made additional amendments.

He said, "What do you want to add?" Words to that effect. I read to him over the telephone the additional material, which was the opening and closing, and said, "The editors of that magazine want to run this as your article under your byline."

I read it to him. Certain things in the original article which I read to him he deleted. Certain parts of our statement he struck out, verbally, over the telephone. He said, "No, I do not want to take that as my statement." We did work out verbal telephonic additions to this report which he agreed to.

I said, "They want to run it under your byline. Will you send them, along with your byline, one of your campaign biographies and a photograph?" He said, "Yes, I will do that," and he did do that. His secretary sent a couple of biographies—I suppose they ran more than once—and sent his picture, too.

I asked this question:

You mentioned in your prepared statement that misunderstandings will happen. It would appear rather clearly from what you said that Judge Van Roden realized that he was being connected directly with this article.

Mr. Finucane said:

That was my understanding. I understood it that way. It was my intention to make it clear to him, and it was my impression there was a meeting of minds. I presumably was mistaken as to the meeting of minds.

Judge VAN RODEN. I am sure that he was.

Mr. CHAMBERS. Then I asked him:

You say you were presumably mistaken. Did any matter concerning pay for this article come up at this or any later time?

Mr. Finucane answered:

Some time after the article was published Judge Van Roden wrote a letter and said, "As a matter of curiosity could you tell me how much money the Progressive magazine pays for articles which they publish?"

Then I said:

And at that time that is the only comment that you had received from Judge Van Roden about this article?

In other words, I was trying to find out if you had written in and taken exception to these things which you later struck out before the committee. Mr. Finucane said:

There was just routine comment. I think that was the first comment, yes.

Then I said:

This was before or after he visited you at your offices here in Washington?

Mr. Finucane answered:

That was before he visited us.

There is a great deal more along that same line in there. Mr. Finucane testified, as far as the pay is concerned, that he got a 10-dollar check and that the Progressive magazine sent you a 10-dollar check which you returned, and so on. It would appear from that, Judge, in Finucane's mind, at least, he felt that you understood thoroughly this was going to be published under your name and that you had a very detailed knowledge of what would go in there.

Judge VAN RODEN. He may have thought that, but I did not have such an idea, and I just got out my files before I came down here, got them yesterday.

Mr. CHAMBERS. May I pursue that just a second further? You say he may have thought that but you did not have such an idea. I accept that fully, but when this Progressive article came out and the copy sent you, as he said was sent to you, did you at that time either get in touch with Finucane or the magazine and repudiate any part of it or ask him to correct it?

Judge VAN RODEN. I did not correspond with the magazine at all until they wrote me a letter—I did not write them at all until on February 11, 1949, a letter came from this magazine signed by Maurice H. Rubin, reading:

DEAR JUDGE VAN RODEN: I am herewith enclosing our check for \$10 for the article which we carried in our February issue. I thought it a truly fine job and we are receiving a great deal of favorable comment on it.

I wish it were possible for us to have it reprinted and distributed throughout the country, for I think it expresses eloquently a national crime whose meaning needs to be hammered to the American people.

On February 18, about a week later, I got around to it and I wrote to him and I said:

DEAR MR. RUBIN: Thank you for your letter of February 11, enclosing check, which is apparently intended to be in the nature of compensation for the article which appeared in the February issue. The check is returned herewith for the reason that I can't accept the compensation for this article which bears my name.

I appreciate your thought and trust under the circumstances you understand I cannot accept any compensation.

Mr. CHAMBERS. Had you discussed this matter with Mr. Finucane?

Judge VAN RODEN. I want to get this accurate. Let me look here. About that photograph which you mentioned, it never was published,

and I am glad it was not, but I see here a letter, I do not know where I was, whether he spoke to my secretary but I see a letter of January 6 which my secretary, one of them, wrote to Mr. Rubin, and I will read it to you:

DEAR MR. RUBIN: At the request of Mr. James Finucane, associate secretary of the National Council for the Prevention of War; I enclose two typewritten statements of the biography of Judge Van Roden and pages 577 to 583, being an extract of volume 33 of the Delaware County Reports, from which you will be able to secure such information as you need.

I might say when I came back from the service, I happened to have been the first member of our bar to return from overseas service; I was elected to the judgeship while I was overseas and took the judgeship for 10 years, and I am still there.

The editor of the Delaware County Report put in an article about war service and what had happened, and a lot of the flowers they like to put in there as a matter of record. My secretary sent those pages, pages 577 to 583, of the Delaware County Reports, volume 33, and, continuing:

from which you will be able to secure such information as you need. Also two newspaper mat photographs and a glossy photograph are enclosed.

Now, that is signed "Sincerely yours, Iris Gorsuch, Secretary."

I was out, and came back—

MR. CHAMBERS. You knew nothing of that being sent out?

Judge VAN RODEN. I think I telephoned her and she said Mr. Finucane called, and I called her, and she said she had taken the liberty of sending this to Mr. Rubin in Madison, Wis. That went out. That is the only correspondence that I had with that Progressive at all. I did not know about it, until on January 28, the previous letter was January 6. January 28, I have a letter from Mr. Finucane. He says here:

You are in the Progressive. Hope you will be pleased with the editorial and typographical treatment which was given your article.

Senator McCarran said Monday he would appoint a subcommittee to conduct an investigation. Senator Langer introduced a bill, Senate Resolution 39, yesterday to accomplish the same purpose.

I suppose by now you have been reprinted and quoted from coast to coast, including newspapers and magazines of every description.

I am also enclosing copy of the Christian Century which contains an editorial about your statement.

That is by Mr. Finucane. He enclosed a copy of the Progressive. That is a letter I received.

MR. CHAMBERS. Having received that letter and read the article, you did not feel it necessary to either contact the Progressive or Mr. Finucane or the editors for the purpose of repudiating those things which later you repudiated to us?

Judge VAN RODEN. I would not say that. As a matter of fact, on February 3—

MR. CHAMBERS. That is what I am asking you. Did you do that?

Judge VAN RODEN. I wrote to Mr. Finucane, and I said:

I do not wish to do anything which is unethical so far as the Department is concerned. Neither do I wish to jeopardize my credit with the Department of the Army. For that reason I must be very careful about any further publications, and I shall depend upon you to communicate with me before anything further is published wherein my name will be mentioned.

And then he replied on February 7:

You can depend upon us to be judicious in handling any material of yours regarding war crimes trials.

I did not write to the Progressive. I thought I was not going to start a controversy; I would just let well enough alone, not dignify it by any further action.

Mr. CHAMBERS. Was Mr. Finucane accurate in saying that you did ask something about pay?

Judge VAN RODEN. We telephoned or talked about it. I think either he said this Progressive is a magazine which works on a sort of small margin, they do not pay much—I said, “I don’t care anything about the pay.”

Mr. CHAMBERS. He testified yesterday you brought up the subject and asked, “As a matter of curiosity, what do they pay?”

Judge VAN RODEN. That may have happened. I did not want anything for myself. I thought it was a closed issue. This letter came February 11, and I promptly sent that back, within a week, to the editor, in which I said I could not accept that.

Mr. CHAMBERS. There is something I did not realize, Judge Van Roden, and that is that when you received your congratulatory letter from Finucane—

Judge VAN RODEN. “Here you are in the Progressive, I hope you like it.”

Mr. CHAMBERS. He also made mention of the fact apparently, to you, that Senator McCarran was going to start an investigation; Senator Langer had introduced a resolution, and that other articles were picking this up. At the time that you were discussing the publication of this article, did you have any indication that it would have such widespread publication or effect?

Judge VAN RODEN. I had no suspicion of it. If I had, I would not have had the thing go out, because it has been unpleasant to have the thing bandied about. I have no guilty conscience as to what I have done or said, but I do not think it was necessary to have it done, and I would not have had it happen for anything.

Mr. CHAMBERS. Does it not appear to you an unusual situation for an organization to get the name of an eminent American jurist—

Judge VAN RODEN. Thank you very much.

Mr. CHAMBERS. I say that rather carefully [continuing]—in an article as inflammatory in character as this one is and couched in the language it is, and from which you had to publicly repudiate a great many parts, that in getting that article together, those same people had gone to the trouble of sending a reporter over, who happened to be available for this purpose, and, as a result of that, wide publicity was achieved, not for yourself so much as for the problem, and that in testifying before this committee that same man who wrote that article said that they had gone to great lengths, not great lengths, but they had been getting information from defense counsel in Germany and they had been corresponding with the accused, and so on, that these things all tie together in a rather interesting pattern which sort of puts you in the position of coming back and making these charges which were apparently broader than you actually made because you have had to change parts of them, and then use that as a springboard for this investigation, and things of that type.

I just wonder if you have any feelings or comments on that.

Judge VAN RODEN. My feelings are not very happy about it.

Mr. CHAMBERS. I think the record should show what your feelings are.

Judge VAN RODEN. My feelings are not happy about it. I came down long before it was suggested that this committee be appointed; I do not know what the time was; I came down and talked to the Judge Advocate General, General Green.

Mr. CHAMBERS. Did you come down of your own initiative?

Judge VAN RODEN. Yes; I talked to General Green. He said he would talk to the Secretary, who was upset, not by anything like this—the article in *The Progressive* had not come out then, as I remember it—upset about the fact that he felt that certain information was disclosed before it was authorized to be disclosed in regard to our report. That was the chief complaint that was made.

I talked to General Green about it, and then went from there; General Green drove me in his own car; he drove it from the Pentagon Building to Washington where the National Council for the Prevention of War had their office at 1013 Eighteenth Street NW., and I am afraid I had a little blood in my eye and worse on my lips, and went up to speak to Mr. Finucane and Mr. Libby, and I said that the matter was distressing, and I thought it had gotten beyond control and beyond any intention that I had; and he was very pleasant about it; he did not fight with me, and I have a high regard for his ability as a writer, but that is what we are talking about. We are talking about the way this was done, the way I was quoted, over-quoted, and mis-quoted, and I said the same to him that I will probably go before a committee; if I am sent for, I will have to go. Mr. Finucane said, "All right. You tell your side of it and we will have to tell ours"—words to that effect. "I will have to tell you I am disturbed about this; it is upsetting to me and upsetting to my very good friend, General Green, and I just don't think it is the way to do. This thing shouldn't have been done the way it was done."

He said, "Well, that is all right. We won't be bad friends about it"—or words to that effect. He virtually, as I remember, admitted this had made a good story in *The Progressive*. I remember one thing, I pointed out that last part of the paragraph about these five men that had actually been ordered hung by General Clay. Where is that here?

I pointed out this and I said I did not know anything about this:

However, in spite of Secretary Royall's action in this matter, there is little real room for complacency on the part of Americans. Rather our report reveals, by implication, that we still have a serious situation in Germany to clear up. Moreover, five of the men for whom we recommended commutations have been hanged since we turned in our report.

I do not know that is true yet. I certainly did not know about it. It was not included.

As I recall Mr. Finucane's answer to that part of my criticism it was that he talked to Mr. Rubin, word had just come down, and could they put that in the Van Roden article, and he said, "Go ahead and do it."

That is the conversation Mr. Finucane and I had about that particular paragraph because I had no knowledge it had happened, if it had happened. I believe it has. I do not know whether it has or not. I had a very unpleasant conversation with him, I think, and that hap-

pened promptly when I came to Washington that day and talked to General Green.

Mr. CHAMBERS. May I ask this, Judge: I believe I was in touch with you last Friday concerning this matter and getting your statement, and so on. At that time I told you some knowledge I had of what I thought Mr. Finucane was going to testify to.

Has he been in touch with you since last Friday or have you been in touch with him?

Judge VAN RODEN. Yes, sir; we talked on the telephone. As I remember it, I do not know whether he called me; I think I called him, and I said to him, "I am going to probably send a statement down to the committee, I do not know whether I am going to be down there or not, I do not want to go down, I am busy at this time of year."

He said something about he was going to be called. You told me he was going to be called.

I said to him, "Well, I may be down there and I may not," and I think I said something more about being unpleasant about this thing; it is not to my liking and it is just one of those extra worries you have on you, but I said, "I will probably have to come down, and if I do, I will be there"; words to that effect.

He said he would be there, too, and we then talked. That is about all we had to say.

Mr. CHAMBERS. Did you mention to Mr. Finucane that I had discussed the matter of his possible testimony before our committee?

Judge VAN RODEN. No; but I think I did say to him that I was told by you that he was going to be called to testify.

Mr. CHAMBERS. Did you tell him that I had mentioned to you that he probably would testify about this business of pay for the article and that you had known of it in detail before?

Judge VAN RODEN. I do not think I said anything about that. I do not recall because that was not in my mind about the pay for the article. The pay for the article is very unimportant because this check arrived and I sent it back. That is all.

Mr. CHAMBERS. Did you mention to him that I had told you I thought he was going to say that you knew in detail what was in this article, that he had read the whole thing to you over the phone?

Judge VAN RODEN. Not that I remember. I may have, I do not think I said that, no. I was not concerned so much about that. I was concerned if he was going to be here and maybe I better be here to answer him, and he and I could face each other here before you. That is my purpose in calling him. Although I still think the debate between him and me is not helping the committee in finding out whether any atrocities were committed or not, unless it is an attack on my credibility, and on that basis under the law it is admissible, and I cannot object to it.

If you wish to do that, I have no objection to answering any questions.

Senator BALDWIN. Let me say this: There is not any effort, I think, on the part of Mr. Chambers to attack your credibility.

Judge VAN RODEN. He has that right as a prosecuting attorney or defense attorney.

Senator BALDWIN. You were asked to go over by the Army to review these cases?

Judge VAN RODEN. That is right.

Senator BALDWIN. And you had yourself been a combat officer?

Judge VAN RODEN. For several of those months; yes, sir.

Senator BALDWIN. And when you came back, as is quite natural as I understand it, some of the people that you know like the bar association and your Rotary Club, knowing you had this experience, thought you might be an interesting speaker.

Judge VAN RODEN. That is so; yes, sir.

Senator BALDWIN. And you went to those places and spoke.

Judge VAN RODEN. That is correct.

Senator BALDWIN. And described some of your experiences and what you found. I assume that at those particular meetings there were no newspapermen present; or was there?

Judge VAN RODEN. At some there were. They simply made little comment about it. It was not until Mr. Finucane with his innate ability—and he certainly has ability to write—was there and got this information and has, apparently, the means of disseminating this information throughout the country that the thing became really broadcast.

May I say this, Mr. Senator: I did not know he was a reporter. He is here as associate secretary of this organization. That is his job. I did not know he was a reporter.

Senator BALDWIN. When he came to this meeting at the Rotary Club—

Judge VAN RODEN. He took notes.

Senator BALDWIN. Did you know there was going to be a press release issued by the Council for the Prevention of War on your speech?

Judge VAN RODEN. I did not understand it. I thought he was taking that for the benefit of this national council.

Senator BALDWIN. You did not know there was going to be a press release?

Judge VAN RODEN. No; unless he may have said it was to be released to some of the members of their organization, their council, not a release of this sort, until this letter come from him on a Saturday morning of December 20—no, I beg your pardon—it was before that, December 17, when he said in his letter to me:

Here is how we handled your story here in Washington to start with. We hope it will do some good and may be effective in remedying the conditions which you so vividly described in your speech.

Senator BALDWIN. Was that the first knowledge you had of the press release issued on it?

Judge VAN RODEN. Yes, sir.

Senator BALDWIN. Did he ever read the press release to you?

Judge VAN RODEN. No, sir.

Senator BALDWIN. Then after that did he call you and read an article that he has written?

Judge VAN RODEN. No, sir. And as soon as that arrived—I have it before me here—as soon as that arrived, I was just amazed at some of the things that were here. That is when I telephoned him and that is when he explained about it, and then he wrote to me on December 20, in which he says:

Thanks for your prompt editing of our report.

Editing was that I telephoned complaining about things in there that should not be published.

Senator BALDWIN. In the press release?

Judge VAN RODEN. In that original press release. He says the corrections are also being transmitted—I beg your pardon—

Your suggestions have been adopted and incorporated in the revised edition of the release.

I understand from Mr. Libby that it had already gotten out before it could be revised to any great extent. That is all that I know.

Senator BALDWIN. He issued the press release without your knowledge and before you had examined it?

Judge VAN RODEN. That is so; but I say, in all fairness to him, Senator, that at the conclusion of that Rotary club meeting we had a little talk there; he had been taking these notes, and I said, "What have you got down there", and he commented upon his notes, which was entirely all right.

He was the reporter, and getting the story for his national council, as I understood it to be, and he asked me some questions about it then, but I do not recall that he said anything about what was to be done about it, unless it was to go, as I thought, to their membership, whatever that may consist of.

I never heard of the organization before, very frankly, this national council. I did not know it was a publication outfit. It does not say so on the letterhead. He does not tell me that. It did not have Associated Press status, where it could send articles throughout the country.

Senator BALDWIN. What was the first knowledge that you had of this, that you had written, on your byline, so to speak?

Judge VAN RODEN. I told you about that, but I will repeat it again. He telephoned me later and said, "We wanted to put a short article or a condensation of what we had before into a magazine called the Progressive," of which I had never heard, which he said was originally started by Robert La Follette, and he said, "If you want to condense it and make it a shorter article along the lines that we stated in your release"—I said again, "We have to be very careful."

I never heard of that Progressive, but I said, "I do not want any misquotation, and that is why I am calling," and we had a talk, and I said to him, "These are some of the things you might publish," and "other things" I said not, and that is all we talked about.

He did not read the entire thing over the telephone to me because he could not have because it had not been written at that time; he was getting the data and, as I understood it, he was taking the revised original release, which he published in December—that is the impression I have, at least—maybe I am wrong, but I do not think that I am—that he was condensing that for a magazine, to make a condensation of this, to publish some of these things in that paper.

He did mention the byline, he told me that. I did not dispute that, did not know what it meant, very frankly—I did not dispute it—did not say he should use it, and that is how the thing developed, as I have told you.

I have tried to be frank, and I tried to be fair to him, as well as to the committee and to myself.

Senator BALDWIN. You think you have, Judge Van Roden, and I think you have been very frank about it.

I did not quite understand when it was that you came down to see General Green. Was that after the article was published?

Judge VAN RODEN. Oh, yes, that was published—because General Green had this article, had photostatic copies of it, and the Secretary of the Army.

Senator BALDWIN. Did you call him or did you go down to see him?

Judge VAN RODEN. We both called each other. At least, he called me—General Green and I are very close friends, I mean, socially as well as—

Senator BALDWIN. Well, anyway, was it as a result of the letter?

Judge VAN RODEN. I think he called me, and I came down to see him.

Senator BALDWIN. And as a result of that you came over?

Judge VAN RODEN. After I talked to General Green, he showed me the photostatic copies of the Progressive; we had a talk in his office in the Pentagon, and went over the matter with him, and I said, "I am going over there and see Mr. Finucane, and to have a talk," and he said, "All right, I am going down," and he and General Hoover went down to the car and drove me over to the office, and I had a talk with Mr. Finucane and Mr. Libby.

Senator BALDWIN. Did Mr. Finucane ever tell you that he served overseas in the Army at any time?

Judge VAN RODEN. I do not remember that he said so. Did you say that?

Mr. FINUCANE. I do not remember.

Judge VAN RODEN. No; I never knew he served overseas. I did not know it.

Have you ever served overseas? I did not know whether you had or not.

Senator BALDWIN. Well, as a matter of fact, Judge Van Roden, when you were here before, Colonel Chambers went over the article with you, and you deleted some of the things which you said, which you stated you had not said.

Judge VAN RODEN. I denied the authorship of having stated orally or any other way.

Senator BALDWIN. And you never did have an opportunity to see the article in full before it was published under your name?

Judge VAN RODEN. That is correct. I never saw the article, neither in typing nor mimeographing nor longhand in any way at all until I got a PR from Mr. Finucane, a copy of the magazine itself.

He said, "Here you are in Progressive," and he enclosed a copy of that in his letter to me.

Senator BALDWIN. What was the date of that letter?

Judge VAN RODEN. That was on January 28, when he sent me that letter. "Here you are in Progressive. I hope you will be pleased with the editorial and typographical treatment which was given your article."

Senator BALDWIN. Did you get that letter before you came down to see General Green, or was that afterward, do you recall?

Judge VAN RODEN. I do not remember. It was about the same time; that was all in that period of time.

Senator BALDWIN. I take it, from what you have said here today, you were very much upset by the whole thing?

Judge VAN RODEN. I still am upset about the way this is taken and the importance to it which has been attached, but I can readily

see how it happened when it got into the Congressional Record, but I still do not mean that to be construed as saying that I do not believe some of these things happened that we found over there overseas.

I do not want to confuse the issue. I still do not mean to say that I am taking back any of my testimony that I have given you here as to what I found over there in the records in the course of our duties.

Senator BALDWIN. But you certainly do believe that in this article in Progressive, in the treatment that has been given to it, they have exaggerated—your position has been exaggerated.

Judge VAN RODEN. Very much so, and it went way beyond anything that I told them or would agree to, and beyond the actual facts, as I have told you a previous time when I was down here, and marked these deletions.

That was done, may I say to you, Senator, at the request and the suggestion of Colonel Ellis who, during the recess, came over and said to me, "Did you write this?" and I said to him, "No," and we sat down during the recess, the noonday recess, and I checked off on this paper here the articles that I said were not accurate and were not true, and I would not be responsible for having said at any time.

Senator BALDWIN. That is, you did that voluntarily yourself.

Judge VAN RODEN. Oh, yes. Colonel Ellis and I sat here—I do not know whether you were here then or not, Colonel.

Mr. CHAMBERS. You brought it to me immediately after the recess period and called it to my attention.

Judge VAN RODEN. Yes; and that is when I did that, and the rest of it, I think, the articles that are here, that I have not deleted, I do not take back the things that I have said on that. I do not want the thing to be confused.

Now, I am not trying to beg the question, gentlemen.

Senator BALDWIN. I think the committee understands your position exactly.

Have you any further questions?

Mr. CHAMBERS. No; I have not. I have no further questions.

Senator BALDWIN. Have you anything further you wish to say?

Colonel FENN. May I say for the record that I think there has been an inference here that there was some of this physical abuse in some of these 29 cases, other than the 12 Malmedy, and you corrected your statement on that the last time you were here, Judge Van Roden. You left some inference that there were atrocities or mistreatment in some of those 29 cases, other than the 12 Malmedy. Would you care to elaborate on that? I think you went over that and said there was not any at one time, which is true. The other 17 are all on the question of area responsibility.

Judge VAN RODEN. Yes; that is correct.

Colonel FENN. And all the alleged mistreatments. I wish you would correct that.

Judge VAN RODEN. In the tabs in the report, we set forth the reasons for the other cases—not the Malmedy cases—we have set forth the reasons for our recommendations for commutation, and they were, such as in that Borkum Island case, Major Seiler, who had passed on an order of no cruelty or atrocities there. You are quite right, Colonel.

In the other cases, other than the 12 Malmedy cases, the other reasons are set forth in our report as to the manner in which those cases were handled.

Colonel STRAIGHT. And they are not cases concerning any atrocities.

Judge VAN RODEN. That is right.

Colonel FENN. And in all of those, did you not base your reasons on the responsibilities they had in the crimes, and for no other reasons?

Judge VAN RODEN. That is correct.

May I suggest this: In some of the recommendations we made in some of the other cases, other than the Malmedy cases, we did nothing more than to follow the recommendations of the War Crimes Board of Review, which were also recommended by Colonel Breese, which had not acted upon them up to that time, and we concurred in the recommendations of the War Crimes Board of Review to recommend commutation.

Colonel FENN. And in the five cases that General Clay has overruled your recommendations, it is purely on judgment as to the responsibility of those concerned, and no atrocities involved.

Judge VAN RODEN. As to securing confessions from the accused, you mean, as to the treatment of the prisoners by the investigators, you mean?

Colonel FENN. I mean on the five cases that he has ordered the executions which have been stayed now. There are no atrocities in those cases.

Judge VAN RODEN. I do not know what those five cases are. I do not know the names of the cases, who they are, and what they are.

Colonel FENN. They are part of the 29, other than the 12.

Judge VAN RODEN. Yes.

Colonel FENN. It is purely a difference in his judgment as to the area of responsibility, in your opinion.

Judge VAN RODEN. You can put it that way.

Mr. CHAMBERS. There is one other further question that comes up. You testified here earlier today, Judge, that the bulk of the reasoning back of your recommending commutation on these 12 hinged around the use of the mock trials, and the "schnell" procedures, augmented by some of these other things.

Judge VAN RODEN. It might be summarized in this way, yes: If that is not clear, please let it be cleared up before I leave. I do not want to have any misunderstanding because, to me, it is very important. It is very important not only to me, but I think to the public at large and to all of us.

Senator BALDWIN. I think that is all.

Mr. CHAMBERS. That is all, sir.

Senator BALDWIN. All right, sir; thank you very much.

TESTIMONY OF JAMES FINUCANE—Resumed

Mr. FINUCANE. I have some material which might reconcile the apparent divergence in Judge Van Roden's statement today, or the statement I made yesterday and the day before. May I present it?

Judge VAN RODEN. I would rather have it happen while I am here rather than happen later, gentlemen.

Senator BALDWIN. All right, go ahead.

Mr. FINUCANE. I think substantially everything that Judge Van Roden has said is correct. However, there are certain rather important details which are, perhaps, overlooked.

Most of the Progressive article, as is agreed by all of us, is based on the original press release, or the second edition of the press release.

Senator BALDWIN. Let me pause right there to say, that you recall Judge Van Roden has testified here that he never saw the press release.

Mr. FINUCANE. We put out an edition No. 1, a copy of which I have here, which we sent to Judge Van Roden; in return from him the same day, December 18, there are a few statements in the news release which really should not have been published. Then, he submits about eight minor corrections in his statement.

Senator BALDWIN. In the press release?

Judge VAN RODEN. I would not call them minor corrections.

Mr. FINUCANE. This is the original.

Senator BALDWIN. Let me ask you this question before we get beyond the press release.

Mr. FINUCANE. All right.

Senator BALDWIN. Did Judge Van Roden ever see this press release before it was issued?

Mr. FINUCANE. No.

Senator BALDWIN. Was it ever read to him over the telephone?

Mr. FINUCANE. No; it was not. It is not attributed to him except as our statement. It is our quotation; we put no responsibility upon him for it except that fact that were quoting him.

Senator BALDWIN. Just a moment. You say in the second paragraph of this press release:

Citing the popular lectures being made by an American judge, now in the United States after an investigation of the situation in Germany, which describe tortures used to extract confessions, the counsel asked:

Do you understand Judge Van Roden was out making a series of lectures on the subject?

Mr. FINUCANE. I knew that he had spoken on several occasions, yes.

Senator BALDWIN. You described them as lectures.

Mr. FINUCANE. Yes; that is right.

Senator BALDWIN. All right, go ahead.

Mr. FINUCANE. After having made these reservations, we corrected the release in conformance with his additions, and sent out this version of it, which is the number one release, which is the unrevised release, corrected.

Then, we sent a letter to Judge Van Roden explaining what we had done, and saying that the corrections are also being transmitted to the Senate Committee on the Judiciary, to whom we had sent the bulk of the first release, as a personal communication, or as a communication from our organization to them asking for an investigation. We followed it up with the corrections.

Mr. CHAMBERS. May I ask a question?

Mr. FINUCANE. You can have this.

Mr. CHAMBERS. Is the corrected version of release No. 1, plus the items which appeared outside the quotes, which I believe were separate things—

Mr. FINUCANE. Yes.

Mr. CHAMBERS (continuing). The identical language which appears in the Progressive magazine?

Mr. FINUCANE. Here is what happened. I can reconcile an apparent contradiction in what was said by both of us, Judge Van Roden and myself.

Judge Van Roden said there was to be a condensation, and yet material was added. What happened was the Progressive article is a condensation, but it also includes material which our organization first put out as its statements, and which we arranged with Judge Van Roden to attribute to him.

It seems that since then there has been some misunderstanding as to the correctness of that attribution.

Mr. CHAMBERS. Now, Judge Van Roden, let me ask you this: You say a copy of this present release—

Judge Van Roden. Which one are you referring to?

Mr. CHAMBERS. I have the revised copy in my hand. Did you ever see a copy of that?

Judge Van Roden. May I ask which one that is, and which date it is? I do not know to what you are referring.

Mr. CHAMBERS. This is the one which is marked "Delivered to the Senate Committee on the Judiciary, December 18, 1948," signed by Mr. Finucane.

Mr. FINUCANE. That is—

Judge VAN RODEN. Did I ever get that? I do not remember.

Mr. FINUCANE. I will tell you how you can identify them readily: The unrevised one has a covering news release because we thought it was news that day, and sent it out to some papers which did carry it.

Judge VAN RODEN. Yes, I have that here.

Mr. FINUCANE. The second does not have the cover release, just a statement.

Mr. CHAMBERS. Did you receive a copy of the revised one?

Judge VAN RODEN. I did on December 20, in which he says, "The corrections are also being transmitted," and so on, and he sends me this with, apparently, his handwriting in red pencil, as amended.

Mr. CHAMBERS. Well, looking at this very hastily, Judge, and apparently anything that was not stricken out of the initial release was left in the revised copy.

I notice that there are items left in there which you subsequently, before this committee, denied having said.

Judge VAN RODEN. That is right.

Well, this was received by me after it went out.

Mr. CHAMBERS. Yes, that is the press release.

Judge VAN RODEN. Both of them, both press releases.

Mr. CHAMBERS. That is correct, sir, but you received the initial press release after it went out, and you objected to certain of the things in there, and you sent a letter down to them asking for corrections, that is, this one here.

Judge VAN RODEN. I did two things: I telephoned first and sent this letter to specify in detail, or some detail, some of the talk we had on the telephone.

Mr. CHAMBERS. That is correct.

Now, subsequently in this Progressive magazine, which is, as I understand, substantially identical with the revised press release, you have certain items.

Mr. FINUCANE. That is right, there is one addition, I believe, this Progressive article is substantially the second edition of the press release, condensed, with one addition, which is the question of the hanging of the five men.

Mr. CHAMBERS. All right.

Now, I notice, Judge, that in the press releases which you did see, even though after they had gone out, you have these items of very limited rations, and promises of acquittal.

Judge VAN RODEN. That is right.

Mr. CHAMBERS. Which you subsequently marked out on the copy with Colonel Ellis; then, further down the line, there is a paragraph which was in the press release, and which you had an opportunity to see, which reads:

The tragedy is that so many of us Americans, having fought the war with so much sweat and blood, and having defeated the enemy, now say, "All Germans should be hung."

And so on.

Before our committee you scratched this out, and did not state it. But you did not scratch it out of the release that you had read.

Judge VAN RODEN. How could I correct it?

Mr. CHAMBERS. Excuse me. You wrote them a letter asking them to correct it, and you did not—

Judge VAN RODEN. No, sir; I did not. That is the second release. You have the revised release here.

Mr. CHAMBERS. On December 18 you wrote them a letter asking them to correct the first release, is that right?

Judge VAN RODEN. That is right. Here is your first release.

Mr. CHAMBERS. All right, sir.

Judge VAN RODEN. That is the first release they asked me to correct.

Mr. CHAMBERS. That is what we have here.

Judge VAN RODEN. I do not think that you have that one.

Mr. CHAMBERS. In the first release, which you asked them to correct, you had those two items of "very limited rations"—

Judge VAN RODEN. No, that is not there. You have got the wrong release.

Mr. CHAMBERS. You are right.

Now, Mr. Finucane, you have said this is substantially the same one, and yet this business of "promises of acquittal" and "very limited rations" have been apparently added.

Mr. FINUCANE. Are you comparing the second edition with the Progressive article?

Mr. CHAMBERS. That is correct.

Mr. FINUCANE. That is right.

When I discussed it with Judge Van Roden on the phone he struck out that particular thing.

Mr. CHAMBERS. Why did you not strike it out in your article?

Mr. FINUCANE. I did.

Mr. CHAMBERS. In the Progressive magazine?

Mr. FINUCANE. I did. You told me it was not in there in the Progressive article.

Mr. CHAMBERS. Maybe I am getting completely confused here.

Let us start over again, because I would like to get at the facts. You put out a first press release which did not contain those particular items, and we will confine ourselves for the moment to "very limited rations" and "promises of acquittal."

Judge VAN RODEN. You are wrong in that; that is the first press release.

Mr. CHAMBERS. This is the one you handed to me, marked "Unrevised."

Mr. FINUCANE. This one is not identical with this in two respects: It includes this covering press release, this single sheet, which summarizes the contents.

When we put this out subsequently there was no point in putting this summary on it because it was no longer news.

Mr. CHAMBERS. Will you please show me what Judge Van Roden saw, based on which he wrote you a letter?

Mr. FINUCANE. That, complete.

Mr. CHAMBERS. This?

Judge VAN RODEN. May I see that?

Mr. CHAMBERS. Yes.

Judge VAN RODEN. That is the original one I received; that is true.

Mr. CHAMBERS. In this there is no reference to the promises of acquittal, or "very limited rations."

Mr. FINUCANE. I know there is not.

Mr. CHAMBERS. Well, you have just said here a moment ago that with the exception of this one change over here, that this Progressive magazine article—

Mr. FINUCANE. Yes.

Mr. CHAMBERS (continuing). Was substantially the second release.

Mr. FINUCANE. That is this one here.

Mr. CHAMBERS. That is correct.

Now, may I see this second release?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Now, in the second release which Judge Van Roden had not had a chance to see until after it went out—

Mr. FINUCANE. It followed his instructions.

Mr. CHAMBERS. Yes, but he did not tell you to put in "promises of acquittal," and "very limited rations," did he?

Mr. FINUCANE. He did not strike that out here.

Mr. CHAMBERS. It was not on there?

Mr. FINUCANE. Let me see. You will find that the reason for the change between the first and second edition is explained if you read this.

Mr. CHAMBERS. Based on the first release, Judge Van Roden said he eliminated "semistarvation," "family reprisal threats."

Mr. FINUCANE. Yes.

Mr. CHAMBERS. You did eliminate that, but you placed in lieu thereof "very limited rations," is that right?

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Judge, you had no opportunity, of course, to correct that before the Progressive article came out?

Judge VAN RODEN. No, sir.

Senator BALDWIN. In other words, he struck out, after Judge Von Roden's suggestion, "semistarvation," but without his authority he inserted "very limited rations," is that correct?

Mr. FINUCANE. The authority was conveyed by a telephone conversation, which supplements this letter which we had with Judge Van Roden, and made notes.

Mr. CHAMBERS. Are you saying that Judge Van Roden knew that you were going to put in the Progressive article the language "very limited rations?"

Mr. FINUCANE. He must have known from the tenor of our conversation.

Mr. CHAMBERS. Answer my question.

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Do you know that he knew that and understood it? Do you know that?

Mr. FINUCANE. I believe he did.

Mr. CHAMBERS. You believe he did?

Mr. FINUCANE. Yes, and he had that second release to comment on if he wanted to. We sent him a copy of that, and got no comment on it.

Judge VAN RODEN. I thought what was the use of carrying on any further, of telephoning and carrying on correspondence. The more I talked and the more I wrote, the more they misquoted me, and I thought I should not write any more about it.

Mr. CHAMBERS. For the purpose of clearing up the record, Judge, did you understand when the article that the Progressive magazine was going to write, came out, was going to include "very limited rations" or "promises of acquittal"?

Judge VAN RODEN. No; because I do not know what happened over there, and I did not know. If it did not exist, I certainly was not going to say it.

Mr. FINUCANE. May I point nine counts here, and there are eight here; there was one stricken on Judge VAN RODEN's verbal order.

Mr. CHAMBERS. When you read the proposed article over the telephone to him, you read all these things in detail?

Mr. FINUCANE. I read him that word for word, and when I came to the point which—

Mr. CHAMBERS. Let me see.

Judge VAN RODEN. What do you mean, "word for word," Mr. Finucane?

Mr. CHAMBERS. I want to get just that particular word, Judge. May I understand you very clearly, Mr. Finucane, the opening paragraph is not under discussion; that is where you say or make this statement:

American investigators at the United States court in Dachau, Germany, used the following methods to obtain confessions—

that is not under discussion at the moment, but the following methods were all enumerated, and that is what we are talking about, and you are saying that you read over the telephone to Judge Van Roden—

Mr. FINUCANE. That is right.

Mr. CHAMBERS (continuing). Prior to the release of this article in the Progressive magazine in detail, these various items which had been enumerated, is that correct?

Mr. FINUCANE. That is correct, and I can tell you what he said as I went along. He would say, "Strike that." After completing another line, or paragraph, he would say, "That is a matter of fact." I would complete another paragraph and he would say, "Yes, that is what I understand to be correct," and so forth, and he struck about, I would say, 25 percent.

Mr. CHAMBERS. Now, just a moment, we are still talking about this enumeration of the methods used.

Mr. FINUCANE. All right.

Mr. CHAMBERS. And you are saying that you read each of those to Judge Van Roden over the telephone?

Mr. FINUCANE. That is correct.

Mr. CHAMBERS. Judge Van Roden, did you, in fact, have those read to you by Mr. Finucane?

Judge VAN RODEN. He did read some of the sections. I am reminded of that now. He read certain sections here, and I do remember I said—he said I cut 25 percent of it. I do not know how much I cut out of it. I told him that so much should not go in.

Mr. CHAMBERS. Can we confine ourselves to the first part here?

Judge VAN RODEN. To the first part here.

Mr. CHAMBERS. Because it is rather limited in area.

Judge VAN RODEN. That is right.

Mr. CHAMBERS. Were those read to you?

Judge VAN RODEN. Which are the items you are referring to, you mean "beatings and brutal kickings"?

Mr. CHAMBERS. Let it show completely, "used the following methods to obtain confessions." Then, there are eight in the Progressive magazine. There are, I believe, nine in the document that you have in front of you.

Judge VAN RODEN. That is right.

Mr. CHAMBERS. The first one is "beatings and brutal kickings," the second one is "knocking out teeth and breaking jaws," the third is "mock trials," and the fourth is "solitary confinement," the fifth is "posturing as priests," the sixth is "very limited rations," the seventh is "spiritual deprivation," and the eighth is "promises of acquittal."

Now, there was a ninth that appears in the thing before you.

Did you locate that as we went through it?

Judge VAN RODEN. Let me see; the ninth must have been about the torturing and the burning with splinters.

Mr. CHAMBERS. Yes.

Judge VAN RODEN. That is not in there; that was stricken out.

Mr. CHAMBERS. Those things were read to you; is that right?

Judge VAN RODEN. I believe he is right. I struck those out as we went along.

Mr. CHAMBERS. Now, Judge, before us, however, you struck them out here, saying that you did not say them.

Judge VAN RODEN. Yes. If he read them to me, I certainly must have struck them out.

Mr. FINUCANE. That is a long time ago.

Judge VAN RODEN. You are right about that, Colonel; he did read some of these items paragraph by paragraph, but I know that these things that I struck out here and now should not be published in this article were something that was published.

Senator BALDWIN. Will you come down here, Mr. Finucane?

Mr. FINUCANE. Yes.

Senator BALDWIN. First I had better ask Judge Van Roden on this letter dated December 18, your letter to Mr. Finucane—

Judge VAN RODEN. Yes, sir; I have a carbon copy.

Senator BALDWIN. There are some corrections here in pencil apparently to the paging. Did you make those corrections?

Judge VAN RODEN. No; I did not make those. Here is my carbon copy; you have the original over there. The original is over there in evidence, the original letter.

Senator BALDWIN. Let me point out this fact here: Is it a fact that when you submitted a copy of the press release to Judge Van Roden, it was the first press release or the corrected one?

Mr. FINUCANE. It was the first one.

Senator BALDWIN. The first one?

Mr. FINUCANE. This letter is based on the first one.

Judge VAN RODEN. That is correct.

Senator BALDWIN. In the letter of Judge Van Roden on December 18 you say—

Page 1: Eliminate "semistarvation, family reprisal threats, and false promises of freedom"—I do not recall having said this.

Mr. FINUCANE. "Semistarvation" was changed.

Senator BALDWIN. You put in then, in its place, "very limited rations."

Mr. FINUCANE. That is right.

Judge VAN RODEN. I did not suggest that, Senator.

Senator BALDWIN. That is what I mean; you did not suggest that; and then you said—

Mr. FINUCANE. "Family"—

Senator BALDWIN. Then you said "family reprisal." That is stricken entirely; there is no substitution for that in the second press release; and then you said—Judge Van Roden said "false promises of freedom," and you said, "I do not recall having said that."

You asked him to strike it out, but he substituted in place of it "promises of acquittal."

You did not authorize that, did you?

Judge VAN RODEN. No; I could not have.

Senator BALDWIN. Just a moment. You have had plenty to say in this thing, and let me ask you a few questions.

Mr. FINUCANE. Yes, sir.

Senator BALDWIN. Now, calling attention to page 5 of the first press release, according to Judge Van Roden's letter—

Judge VAN RODEN. Page 5?

Senator BALDWIN. I think it would appear as page 6—you have got it, but he has corrected it. Did you correct these here?

Mr. FINUCANE. Yes.

Senator BALDWIN. To make it correspond with the first press release?

Mr. FINUCANE. Yes.

Senator BALDWIN. I see.

You say on page 5—

I do not like the last sentence which reads "actually the prosecution had thrown in everything but the kitchen sink."

That was the last sentence on that page and apparently it was stricken out.

Mr. FINUCANE. It was stricken out on the—

Senator BALDWIN. Second press release.

Mr. FINUCANE. Colonel Chambers wants to check it. Page 5, of the last sentence.

Senator BALDWIN. Page 6 [reading]:

The fourth paragraph should not be published. This is really a part of our confidential report to the Secretary.

That was a statement about the 74 Malmedy massacre defendants who were tried in one room at one time in one trial.

Lawyers, who had been given only 2 weeks to prepare a defense, were frantic. Horrible beatings had made some of the defendants afraid to talk.

You asked that that be stricken out?

Judge VAN RODEN. Yes.

Senator BALDWIN. It apparently was stricken out of the second press release.

Mr. FINUCANE. Page 6.

Mr. CHAMBERS. It was stricken out.

Senator BALDWIN. Again, on page 6, Judge Van Roden says:

I would have preferred that the comments about the dentist in the fifth paragraph had been omitted.

You say—

We talked to the AMG dentist at the trials. He said the great majority of the German defendants had had their teeth knocked out and three of them had gotten broken jaws during the investigation.

Judge Van Roden asked you to strike that out.

I would have preferred that the comments about the dentist in the fifth paragraph had been omitted.

Why did you make that observation, Judge?

Judge VAN RODEN. I do not remember why I put that in, except that I felt that the report we had was, as you know, of Dr. Knorr, the dentist who had made his report, and that was a bit of exaggeration, having all the teeth knocked out.

Senator BALDWIN. You must have asked that it be stricken out, because you did not think it correctly and accurately representative.

Judge VAN RODEN. Yes. We had talked to the Secretary.

(Discussion was had outside the record.)

Senator BALDWIN (reading):

I did not say that Lieutenant Perl was dictating the statement to the 18-year defendant, and I do not know who the investigators were who prepared this statement.

So that he took issue with you on that.

Mr. FINUCANE. I would like to have that noted, that all those corrections were made.

Judge VAN RODEN. On the second release.

Mr. FINUCANE. Yes.

Mr. CHAMBERS. What paragraph?

Mr. FINUCANE. Lieutenant Perl's name.

Mr. CHAMBERS. Is that what he requested, sir?

The second release reads as follows:

One 18-year-old defendant, after a series of beatings, was writing a statement that was being dictated to him by Lieutenant Perl. When they had gotten to the sixteenth page, the boy was locked up for the night. During the early morning, Germans in nearby cells heard him muttering, "I'll not utter another lie."

Senator BALDWIN. Did you ask to strike that out?

Judge VAN RODEN. I was attributing it to Perl. I did not say that Perl said it; I did not know who said that.

Senator BALDWIN (continuing):

I did not say that Lieutenant Perl was dictating the statement—

and so forth.

Fifth paragraph—although not important, I did not say that the table was draped like a coffin.

Judge VAN RODEN. I said it was covered by a cloth, candles, and a crucifix, which was in our report.

Mr. FINUCANE. That correction was made.

Mr. CHAMBERS. That was made.

Judge VAN RODEN. I think they all have been made.

Mr. FINUCANE. They were all made.

Senator BALDWIN. The first two were not.

Mr. FINUCANE. That was in our covering release and not Judge Van Roden's.

Judge VAN RODEN. But do not blame me for it.

Mr. CHAMBERS. That is the very point in issue at the moment.

Senator BALDWIN. Page 8, "The fourth paragraph——"

Mr. FINUCANE. In parentheses stated——

Senator BALDWIN (continuing) :

The fourth paragraph from the bottom of the page in parentheses it is stated that I challenge by implication the whole procedure. This might be construed to mean that I challenge the procedure of war crimes trials rather than the procedure of investigation, and I think that it is susceptible to either interpretation and therefore unfortunate.

Then, you continue :

In the next paragraph, certainly the conversation between Secretary Royall and us was confidential, and it should not be published.

Page 9, fifth paragraph——

Judge VAN RODEN. Third paragraph.

Senator BALDWIN (continues reading) :

You mean that my exoneration is merely technical as apply to Secretary Royall? This is a very unfortunate statement.

Then, there is this statement :

I do not believe that you made any of the statements intentionally to embarrass me, but I had no idea you would write an article "quoting" me without giving me an opportunity to see the release before it was distributed.

Let us put these together.

Mr. FINUCANE. If I might offer an observation at this point, it is common practice not to send statements of this sort to the people you quote for confirmation before publication.

Judge VAN RODEN. Did you hear that, Senator?

Senator BALDWIN. Yes.

You say :

The fact that you were not consulted before the release was issued for word-by-word approval frees you to a certain extent from responsibility for the matter exactly as quoted. In other cases where it is not a matter of quoting you but is rather a matter of our independent interpretation of the facts, you are not quoted and we stand behind our own statements exclusively.

I would just like to have it appear for the benefit of the record that outside of the first pages, first and second pages, outside of the first and half of the second page, everything in this article that is in quotation marks, until we get to the bottom of page 8——

Mr. CHAMBERS. Judge Van Roden, I notice that there is another item in the Progressive magazine which you have indicated that you

did not say, which appeared in the first draft of the press release, and in the second draft of the press release. That is the paragraph which reads:

The tragedy is that so many of us Americans—
and so on.

Did Mr. Finucane read that to you the night that he was discussing this article with you?

Judge VAN RODEN. He may have, I do not remember that he did, but to me that was just sort of flowery language. That does not seem to set forth any facts. Of course, it is extravagant language; people like to read that sort of thing. The fact that we Americans did so and so is what they like to read, and I do not think that changes the factual situation; I do not remember that I made that extravagant statement; although they put it in an editorial.

Mr. CHAMBERS. But since the press release used the language "all Germans should be hung," and the Progressive toned it down to the point that "all Germans should be punished," and since you did not strike it out or indicated that it should come out of your press release—

Judge VAN RODEN. I do not recall that we even talked about it at all; we may have, but it does not make any impression upon me.

Mr. CHAMBERS. But it was in the press release.

Judge VAN RODEN. You mean the one that you have there?

Mr. CHAMBERS. Yes.

Judge VAN RODEN. That is in the revised or the original release?

Mr. CHAMBERS. That is the original press release. The one that you had an opportunity—

Judge VAN RODEN. That did not impress me as making a comment worth while at that time, because it impressed me as extravagant language, "The tragedy is that so many of us Americans," and so on; it did not make any assertion of facts.

Mr. CHAMBERS. Now, I notice that in this first press release—is this item that "all but two of the Germans, in the 139 cases we investigated, had been kicked in the testicles beyond repair"?

Judge VAN RODEN. Not over 130. I do not know how many were kicked; all we found was that some of them were kicked or kneed in the groin or in their testicles.

Mr. CHAMBERS. Now, in your original testimony you denied that categorically.

Judge VAN RODEN. That is correct.

Mr. CHAMBERS. And you said you did not say and never heard any such things.

Judge VAN RODEN. I do not know how many were kicked. Some of them were kicked; I do not say none were not. Maybe I said categorically—I did not say a specific number had been kicked. I never said all but two. I think what I said there was that when I referred to "all but 2 of the 139 cases," we recommended clemency to the extent of commutation of their death sentences, but for 2, that is life imprisonment. But for two recommendations, one got 10 years and one 2½ years, all but two; we recommended rather that they be commuted from death to life imprisonment. That may be where the confusion of that 2 came in, but I denied categorically, and still deny categorically that all but 2 were kicked in the testicles.

Mr. CHAMBERS. It is not the question of kicking, but "damage beyond repair."

Judge VAN RODEN. Damaged beyond repair.

Mr. CHAMBERS. But also since it was in your original press article which you had a chance to edit and correct, why did you not see fit to delete it from there rather than later let it get out as a later story?

Judge VAN RODEN. I do not know.

Mr. CHAMBERS. Because that particular item has been the most inflammatory thing that has come before us. I will say the same thing about that particular part of it.

Judge VAN RODEN. That one item?

Mr. CHAMBERS. That one item is probably the worst, and you furthermore made the statement, or the statement was accredited to you in the original press release, that this was standard operating procedure with our American investigators, and that also appears in the Progressive.

Judge VAN RODEN. Yes.

Mr. CHAMBERS. You denied it later before us, and you said you did not say that; but you let it stand in the press release. Now why, Judge?

Judge VAN RODEN. Oversight is all I can think of to answer that.

I remember the telephone conversation; I tried to cover all that by telephone, and I wrote a letter which has gone out there. I cannot explain it to you.

Mr. CHAMBERS. Well, Judge, here is what I am getting at.

Judge VAN RODEN. Why was it in that letter of December 18?

Mr. CHAMBERS. On December 18 you wrote a detailed letter enumerating a great many items which should be deleted from this press release, but you did not see fit to delete that one about the 139 cases with respect to having been kicked in the testicles, and the statement that they had been damaged beyond repair, and the statement that this was standard operating procedure with our American investigators.

Judge VAN RODEN. It should have been.

Mr. CHAMBERS. It should have been?

Judge VAN RODEN. It should have been.

Mr. CHAMBERS. I think all those should have been deleted—I think we will freely admit that had all of these things which should have been deleted, had not appeared, we could not have gotten into difficulties, and if we could have gotten a little more of the facts and not so much of an argument on this—

Senator BALDWIN. Colonel, I think it would be a good plan, while the judge is here, since his second press release is in the record, to give him an opportunity if he wants to correct it. Would you want to do that, Judge?

Judge VAN RODEN. Will it serve any useful purpose?

Senator BALDWIN. That is what I understood Colonel Chambers was trying to do.

Mr. CHAMBERS. I am trying to find out, Judge, what you actually think happened over there.

Judge VAN RODEN. That is right, and that is what I am trying to tell you.

Mr. CHAMBERS. That is right.

Now, you have gone through the Progressive magazine here and scratched out certain things for us.

Now, Mr. Finucane took the stand and also under oath testified that you knew all of these things.

For instance, on this particular item where it appears you had a chance to correct and did not, and which has proven to be of great controversy, it, in fact, cannot be corroborated; that is, this matter of—

Judge VAN RODEN. Let me see if we are very far apart on that. You are suggesting that because I did not correct the item with respect to the number of persons who had been kicked in the testicles, that should be repudiated in its entirety? I do not know if I follow that.

MR. CHAMBERS. I am not saying that at all, sir. I merely want to ask you this: You say that the whole thing—I read the two parts of it:

“All but 2 of the Germans, in the 139 cases we investigated, had been kicked in the testicles beyond repair. This was standard operating procedure with our American investigators’s.

Senator BALDWIN. As I understood, Judge Van Roden, you said that you did not say that.

Judge VAN RODEN. As to the number, yes, sir. I said some had been kicked, and some injured beyond repair, from what we found in the papers.

Senator BALDWIN. But you did not say a hundred.

Judge VAN RODEN. Not all but two.

Senator BALDWIN. And you did not say it was standard operating procedure.

Judge VAN RODEN. No.

MR. CHAMBERS. And you further said that should have been deleted and was not deleted when you marked that up.

Judge VAN RODEN. When I wrote that letter.

MR. CHAMBERS. When you wrote that letter; is that correct?

Judge VAN RODEN. All right.

MR. CHAMBERS. On that point, I think that is correct.

Now, there are a great many other similar instances in here—I am not so sure but that the record should be complete on it, because the way it is now, Mr. Chairman, we have got two people testifying here, and the inference is that from Finucane’s testimony he either misunderstood Judge Van Roden’s permission on these various things, or the judge has not told us the right story.

Now, the judge has told us definitely and categorically at the earlier session about these things.

Senator BALDWIN. Yes. Judge Van Roden has suggested deleting certain items in this article which he has marked.

Judge VAN RODEN. Which I declined to have attributed to me.

Senator BALDWIN. Yes.

Now, the question is in the second press release which, apparently, was gotten out, do you want the opportunity to go over that and delete some things in that which should not be attributed to you? Is that not your point?

MR. CHAMBERS. That is a further question in that, sir, and that is why, since the judge has a chance to delete in the Progressive article before us these things, why did he not delete the same articles in this press release.

Senator BALDWIN. Well, in answer to one, he said it was an oversight.

Judge VAN RODEN. In the second release I let the thing go; I was not going to be involved any more about it. The second release, when it came I did not write any more letters. I let it go and did not do anything else about it.

In the first one I telephoned immediately, and I thought the whole thing was edited in such a way that I did not approve it, and I tried to go over the items over the telephone, and I think the letter went out the same day, I believe; it must have been after the telephone conversation or immediately before or about that same time; and I dictated promptly, as promptly as I could on this Saturday morning, and probably in the haste of getting that done, I missed that item about 139 cases, all but 2 of which had been kicked, and that is one thing I have forgotten. That is all I can explain on that item.

Mr. CHAMBERS. Will you explain the one about the priests, because we had some discussion about that before, Judge. You said you were shocked, and all of us said the same thing.

Judge VAN RODEN. Yes.

Mr. CHAMBERS. And we were kind of wondering about that.

Now, as I understood it, you deleted that in this article about the priests; is that correct?

Judge VAN RODEN. Yes. But there was evidence over there—you see, we are confusing—I am so sorry I do not follow you. We are either going to have this matter before the committee to ascertain what the facts are that I found or you are going to be involved in what was published as I have said, which to me seems to me to be entirely outside of the matter here before you as a committee.

Senator BALDWIN. The point on the thing, Judge Van Roden, is this: Here is the Simpson report and here is your testimony in the case.

Judge VAN RODEN. That is right.

Senator BALDWIN. In this hearing. As opposed to that, here is the article that was published in the Progressive which you have already refuted in substantial part.

Judge VAN RODEN. Right.

Senator BALDWIN. And then, in addition to that, here are these two press releases which we are trying to get straightened out, on the basis of what statements you probably made with reference to the thing.

I mean, what we are trying to do is to give you an opportunity to correct something that has been done here, which the committee is pretty thoroughly convinced was done, at least in part, without your knowledge, or at least on the basis of misunderstanding, and we do not want to have this in the record as representing testimony which you would not substantiate.

Judge VAN RODEN. Well, I appreciate the opportunity given me to defend myself with respect to articles which have appeared in publications, and that may have a bearing to aid the committee in determining what to do about these accusations and findings which will be ascertained from the testimony.

But I think there are two distinct things. I do appreciate the opportunity that you are giving me to answer any inferences as against me as my having said things which I did not say.

Senator BALDWIN. Now, you see here—

Judge VAN RODEN. I do not see that it has any bearing on your initial problem, but I am not trying to duck it.

Senator BALDWIN. Mr. Finucane has said after the first press release was issued he sent a copy to you, which was issued without your knowledge, and you wrote back this letter in which you made these corrections, and then the second press release was issued; and in that second press release there are statements as variance with what you have already repudiated as having been placed in the article.

What I think Colonel Chambers is tryind to do is to get the second press release in the form that you think fairly represents what you said.

Judge VAN RODEN. If you consider the press release evidence, why, that is one thing.

Mr. CHAMBERS. May I say this, Judge, and perhaps we are giving it more time than we should, but over a long period of weeks of testimony here, I have sat here and heard the charges which have appeared in the Progressive article used against the prosecution staff.

Now, you will wonder——

Judge VAN RODEN. Charges used by whom, by witnesses who testified?

Mr. CHAMBERS. No, in questions asked there have been constant references to these various things which have come out in the Progressive articles.

I think if you check the record you will find that all of them have been mentioned many times.

What I am trying to find out, and what the committee is trying to find out, is if in fact you, who were attributed at least to be the author of these statements, can tell us of those which were in your opinion not correct, and then we are getting down to the point where there may be four or five or six types of things which we have to decide on their merits.

Now, you repudiated before us quite a few things in the Progressive magazine the last time you were here.

Mr. Finucane spent some little time on the stand here a couple of days ago, and endeavored to explain where he got this information, because it had to come from you, sir, or the man who wrote the story, who was Mr. Finucane.

Now, with both of you here, I certainly see something that I have not seen before, a revision of this thing, and I find that you had an opportunity in advance, in Finucane's mind, at least, to delete from the second press article, by this letter of the 18th of December——

Judge VAN RODEN. That is the first article.

Mr. CHAMBERS. That is correct. In other words, in going through the first article there was certain——

Senator BALDWIN. First press release.

Mr. CHAMBERS. First press release, which later appeared in the second press release, and which later appeared in the Progressive magazine, that you did not see fit to delete on the 18th of December.

Now, some of these things are the ones which are most controversial.

Judge VAN RODEN. All right.

Mr. CHAMBERS. Now, what I was trying to find out from you was this matter of whether or not in your opinion American investigators adopted a standard operating procedure, the custom of kicking people in their testicles for the purpose of getting confessions.

Judge VAN RODEN. No; I do not believe so.

Mr. CHAMBERS. And if you had caught that at the time you would have deleted it.

Judge VAN RODEN. I may summarize it, in answer to your question, and say this: The deletions in the Progressive that I have told you about at the previous hearing, I still say should be deleted, and they should not be attributed to me, and those same averments, either in the same words or meaning the same thing, if they appeared in any previous press release, they are hereby repudiated by me, and should be deleted, and if they were not deleted, if one that you have mentioned here was overlooked and not deleted, all I can explain that is due to the fact of the suddenness of this matter, when this release came to me on a Saturday morning, when I tried to get them on the telephone I could not, had a lot of difficulty, finally got Finucane, and I think it was that same morning, December 18—it must have been—whether it was a Saturday or not, I can tell from the calendar—

Mr. FINUCANE. Yes.

Judge VAN RODEN. I took my girl there and dictated to her in the desire to get it off as soon as I possibly could, and it must have been that I overlooked mentioning that fact of 139 only 2 had escaped—let me finish. When the second release came there I got that, and I put it in my file, and I was disgusted with the whole thing, and I did not know how far it had gone; I got the impression from Mr. Libby, as a matter of fact, that the first press release had already been distributed, and it was impossible to call it back, and Mr. Finucane said that he thought there was some that they could recall and not have them delivered and have them revised.

I think it could have happened on the following Monday. The time limit—I did not have the time to go over it thoroughly, but I was entirely upset and distressed about that going out without my having seen it, and that is the only excuse I can give you for not picking it up, picking up the one thing I should have picked up, because it certainly is not so that of 139 all but 2 were injured beyond repair.

Now, that is the fact for the committee to consider, and I repudiate that as not being attributable to me and not having been said by me.

Mr. CHAMBERS. Will you also, because this same item appears in press release No. 1 and press release No. 2 and the Progressive magazine article, and you repudiated it there, at least you scratched it out, this matter of the bogus Catholic priests going in to get confessions—

Judge VAN RODEN. No; with respect to the bogus Catholic priests, I cannot testify to that, there was some evidence there that persons—I remember I told you in my testimony that it had been reported to us that investigators—I do not know how many of them, I cannot tell how—did pretend to be Roman Catholic priests, and attempted to get confessions from these accused. Now, we learned that over there.

Senator BALDWIN. Was that in connection with Malmedy?

Judge VAN RODEN. In connection with Malmedy. After they had the mock trials with Malmedy; yes. I think you questioned me at length the last time I was here as to where I got the information from.

Senator BALDWIN. That will be very interesting to know, because all the witnesses we have heard and all the questions we asked your statement with reference to it—

Judge VAN RODEN. Did not Dwinell mention that?

Senator BALDWIN. No; I do not recall that he did. Do you, Colonel?

Judge VAN RODEN. I am pretty sure—I think he is the one who talked to us about it at the Pentagon Building before I went over, I am not sure.

Mr. CHAMBERS. I think Colonel Dwinell said he had some memory about a priest, and I showed him an affidavit in which a prisoner was asked, "Would you like to see a priest?"

Judge VAN RODEN. No, not that.

Mr. CHAMBERS. Finucane, your memory is better than mine on some of these things. Did Dwinell testify to that?

Mr. FINUCANE. Somebody started to ask him a question, and he referred to Colonel Raymond, or he had mentioned that Colonel Raymond had mentioned it to him, and was in the room, and expected to testify later, and it was the intention to ask him about it, but there was no questioning about it.

Senator BALDWIN. I think I would rely upon the witnesses in the record.

Mr. CHAMBERS. I would like to check this rapidly. It will not take but a minute, and we will complete this, I hope.

Again, Judge Van Roden, this is a minor point, perhaps, but you scratched it out from the Progressive article. Do you recall now saying, "You will now have your American trial, the defendant was told?" That was in connection with the mock trials; that appeared in the first press release, the second press release, and the Progressive article, and you scratched it from the Progressive article.

Judge VAN RODEN. That was not very important, it seems to me; they were going to have an American trial was not important. They thought they were having an American trial. They were having a mock trial. Whether the words were used, I do not think was very important. It is in our report, too; they thought they were having a trial, and it was a mock trial. It was a technique, as Major Fanton called it, or a ceremony, as it was called, but we over there learned that they were mock trials, and so described as mock trials.

Whether they were told "You are going to get an American trial." that may have been said, but I do not think that is important.

Mr. CHAMBERS. That completes these items in quotes so we need not go into Mr. Finucane's—

Judge VAN RODEN. Editorial.

Mr. CHAMBERS (continuing). Editorial at this point. But let me ask this.

Mr. Finucane, I would like to ask you, did you read to Judge Van Roden that night this paragraph, section 4 of your article, which appears outside of the quotes, and which we discussed when you were on the stand, and where you said that American investigators who committed the atrocities in the name of American justice and under the American flag are going scot free, do you recall our discussion on that? Did you read that to Judge Van Roden?

Mr. FINUCANE. Of course, I did not—I cannot remember precisely every paragraph, but I read him everything that was outside the quotes, and I read him, perhaps, part of the things that were in the quotes.

But everything he had previously signified approval of through this letter of correction, everything that he had not already approved by implication in that letter I read to him.

Mr. CHAMBERS. Well, Judge Van Roden, that is a conclusion that American investigators who committed the atrocities in the name of American justice—that is a conclusion that these atrocities were committed, and I might say, as you have testified, that you had not had an opportunity to talk to any of the prosecutors from the standpoint of getting their side of the case.

Judge VAN RODEN. Nor the defendants either. We did not talk to the defendants nor the prosecution, either.

Mr. CHAMBERS. You talked to a great many of the defense counsel.

Judge VAN RODEN. Yes.

Mr. CHAMBERS. And you did not have a chance to talk to any of the prosecution who are under attack here. That is correct, is it not?

Judge VAN RODEN. That is correct.

Mr. CHAMBERS. Mr. Fincucane drew a conclusion for you, which is that American investigators who committed the atrocities in the name of American justice—that is a conclusion, that the atrocities were committed; and later on he also drew another conclusion that American investigators who abused the powers of victory and “prostituted justice to vengeance, should be exposed in a public process, preferably in the United States, and prosecuted,” both of those you scratched out. Do you repudiate those statements?

Judge VAN RODEN. I did not say that, Mr. Finucane.

Mr. FINUCANE. If you compare press release No. 2, you will see some—

Judge VAN RODEN. That is your editorializing of my statement.

Mr. CHAMBERS. The point I am getting at is, did Mr. Finucane read that to you, Judge?

Judge VAN RODEN. Not that I recall.

Mr. CHAMBERS. And had you read that—had he read that to you, you would have repudiated it; is that correct?

Judge VAN RODEN. I believe so. That is flowery language, it seems to me, again.

Mr. CHAMBERS. Do you not interpret that as a conclusion that these atrocities in fact had been proven and that such investigators should be prosecuted?

Judge VAN RODEN. Yes; but I did not recommend that they be prosecuted. I believe that this—

Mr. CHAMBERS. In order to draw a conclusion in your report that they had committed atrocities in the name of American justice, did you say that? That was not contained in your report anywhere.

Judge VAN RODEN. That is right. It is not. Of course, I do think, and certainly if this committee should, by way of argument only, if this committee should determine that the investigators or some of them did commit atrocities, certainly they should be prosecuted. I hope you recommend that they be prosecuted; that would be a matter that anybody would draw a conclusion with respect to if found to be a fact.

Mr. CHAMBERS. Suppose the committee found after complete investigation—the word “atrocities,” of course, is subject to a broad definition, but suppose this committee is not able to substantiate the fact that atrocities had been committed. This conclusion would seem to be a little out of place with that; would it not?

Judge VAN RODEN. That is right.

Mr. CHAMBERS. And if I understand you, in your opinion, Mr. Finucane did not read that to you, and you did not authorize him to say it for you.

Judge VAN RODEN. That is my best recollection, and I am pretty sure I am right about it. He read things and he did not read them, and we talked about it. It was not in our conversation; we could not have gone over that entire article on the Progressive. We did not have that much time on the telephone.

Mr. CHAMBERS. I have no more questions on that point.

Senator BALDWIN. I have no more things to say.

Mr. CHAMBERS. Do you have anything more to say on this, Mr. Finucane?

Mr. FINUCANE. Yes; I think I can clear up a little bit of the mystery which has come up here. I have to read this paragraph from a letter from Judge Van Roden saying—this is on February 3, and up until this point, with the exception of the telephone conversation and the letter of correction, everything was going along, and the article had been published in the Progressive, and there had been no repudiation of the article in the Progressive, but on February 3, Judge Van Roden wrote:

I have received a letter from the Secretary of the Army (the contents of which, of course, I shall not comment upon at this time).

I do not wish to do anything which is unethical insofar as the Department is concerned. Neither do I wish to jeopardize my credit with the Department. For this reason I must be very careful about any future publications; and I shall depend upon you to communicate with me before anything further is published wherein my name will be mentioned.

I think that the fact that Judge Van Roden came down here and was put on the carpet by General Green might explain why he discovered now that he was not very careful in editing that first release because his memory—because he was in a hurry.

Mr. CHAMBERS. Mr. Finucane, may I interrupt?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Judge Van Roden has testified here that he initiated a trip down here to see General Green, and after a telephone conversation came down to see him, and after which he came over to see you.

Mr. FINUCANE. Yes, Mr. Chambers.

Mr. CHAMBERS. Now, you just made a remark that he was called "on the carpet by General Green."

Mr. FINUCANE. That is right.

Mr. CHAMBERS. What do you base that on?

Mr. FINUCANE. You know, it is regrettable when confidences must be infringed. Judge Van Roden and Mr. Libby and I had a very friendly talk about this, and Judge Van Roden explained that he had been criticized by the Secretary of the Army for this article.

I got the impression, although Judge Van Roden did not say so, that the Army was being criticized itself for these trials, and that they wanted some kind of a retraction by him which they could use to reply to people who complained to them.

Mr. CHAMBERS. May I interrupt?

Judge VAN RODEN. I did not say that.

Mr. FINUCANE. I say I got that impression, and he said, "Now, if this comes up, I am going to have to say certain things in that

article are not true. I don't want you to be surprised," and we talked about the points at issue, and, as he has told you, I said, "If there is ever a hearing on it, you tell the committee what happened and I will tell them what happened, and we will let the committee put the thing together and get a version of it."

Mr. CHAMBERS. You say you talked about it. What do you mean? That you all decided which points, what the judge would say on some points, and what you were going to say on them? Just what do you mean by that?

Mr. FINUCANE. No. Judge Van Roden at that point mentioned several, I would say three or four angles, of the article which apparently General Green had objected to most strenuously. One of them, the only one on which we were in agreement, which we did not think we would have to leave up to the committee to decide, was the question about the five men being hanged.

I said that I had added that without the proper editorial identification.

Senator BALDWIN. What do you mean you thought you would have to leave it up to the committee to decide it?

Mr. FINUCANE. Well, at that point, Judge Van Roden and we were differing—he said at that point, he said, "I will have to deny responsibility for"—I forget what the items were in there now, two, three, or four items, and as I said, "Well, it is not a question of fact; it is a question of opinion."

You have seen the procedure we went through to get the material; you saw the first release, the second release; we have correspondence that indicates that Judge Van Roden accepted responsibility and also accepted any credit that went along with it, and there was, as I say, a situation where we agreed on one aspect of the article, which was the one about the five men being hanged. That was a two-line paragraph, I believe, or a three-line paragraph that was added, and it should have had editorial brackets around it that indicated it was not Judge Van Roden's statement.

I am very sorry that I have to talk like this, to have to bring these things out, but I owe it as an obligation to the Progressive Magazine, which went into this thing in good faith, and to our organization which went into it in good faith, and to Judge Van Roden who went into it in good faith, but who, under pressure, is putting out another edition of the story at this time. That is my opinion.

Did I give you that letter?

Senator BALDWIN. What letter is that?

Mr. FINUCANE. That one I read from the Secretary of the Army—

Judge VAN RODEN. I quoted from that a little while ago.

Mr. CHAMBERS. It is already in the record; Judge Van Roden read it in part at least.

Judge VAN RODEN. I do not want to prolong this, gentlemen, but I want to say that I was not on the carpet in the sense that Mr. Finucane would have you think.

Secretary Royall's only comment to me was—this is not part of your investigation, but I am bound to answer this—the only comment was that some of the information had been disclosed prior to—I have his letter here somewhere, if not, back in the office—prior to its release by the PID, Public Information Division.

I think Colonel Eyster had issued an original release sometime in December, and one again in January, and the complaint was nothing at all along the lines you are investigating or discussing. His complaint was that some information had been released prior to the PID release. I showed General Green the dates, and he said, "That is wrong." He said, "The Secretary was mistaken." And it was General Green and I who talked about it, and he said to forget all about it, and he said I had better see Mr. Finucane. That is the situation.

I was embarrassed; I did not want to embarrass General Green, of course, or the Secretary. I did not want to have any more confusion about this matter, because it all developed as a result of that one Rotary Club speech. If it had not happened, and you had not been there, this would not have happened.

MR. CHAMBERS. The point is not too clear in my mind. Did you see General Green on this matter on one or more than one occasion?

Judge VAN RODEN. I generally did. The day is probably gone, and I do not know whether he is in town or not.

MR. CHAMBERS. On this particular matter?

Judge VAN RODEN. I think I saw him on two or three occasions when we were talking about it. I think on two occasions. I talked to him on two occasions about it—maybe on a third. I do not remember.

MR. CHAMBERS. Were you ever asked by General Green to come down here for the purpose of either talking to him or Secretary Royall about this matter?

Judge VAN RODEN. Not Secretary Royall. He called me, he talked to me on the telephone about it.

MR. CHAMBERS. Who did, Green?

Judge VAN RODEN. General Green. We talked two or three times; I do not know how many times. We talked a good deal on it in his office. He made some comment, and I said, "Shall I go to see the Secretary on this?" He said, "No, he will have time to hold his water," or something like that, an expression that he has, and he said, "No, I understand what this thing is now," and he said, "It is just all right. This thing is going along all right; just let the thing go."

Then the Progressive came out, I think, after that first talk—no, the Progressive had already come out, and he had a photostatic copy at that time, and then I said to him, "I think I had better go over and see Finucane." I was talking to General Green in the Pentagon, and he drove me over. I was embarrassed, so I told Finucane this—I was embarrassed about General Green, with respect to the fact that I did not want to embarrass him with the Secretary, because, after all, he was the Judge Advocate General of the Army, and I did not want to have any embarrassment of him. I did not want to put myself in that position or, as I said to him, "lose my credit with the Department."

Senator BALDWIN. Judge Van Roden, did you get a letter from Secretary Royall?

Judge VAN RODEN. I did.

Senator BALDWIN. You mentioned in this letter of February 3 to Mr. Finucane that you got a letter from Secretary Royall.

Judge VAN RODEN. I did.

Senator BALDWIN. Have you got that letter?

Judge VAN RODEN. I do not have it here; no, sir.

Senator BALDWIN. Have you any recollection of what its contents were?

Judge VAN RODEN. Yes. Just as I have told you. It was a very terse letter, such as Secretary Royall writes, to the effect that it had come to his attention that there have been statements made about the war crimes trials investigation by the Simpson Commission or Simpson-Van Roden Commission, as he called it, and it was regrettable that "you have disclosed information before proper release by the Army."

Then, I got my dates to correspond, and I found that the PID had two releases, I think—one in December and one, I think in the last part of January, and I showed it to General Green, and he said: "It is satisfactory; that is all you are going to hear about it."

Senator BALDWIN. After you got the letter from Secretary Royall you came down and saw General Green?

Judge VAN RODEN. Yes, sir; I saw General Green; yes, sir.

Senator BALDWIN. When you refer to the PID releases, what do you mean by those?

Judge VAN RODEN. The Public Information Division of the Army.

Senator BALDWIN. Yes.

Judge VAN RODEN. They are releases, restricted reports and confidential reports.

Senator BALDWIN. They were not press releases; they were instructions?

Judge VAN RODEN. No, they were releases to the press by the Army of any confidential matters. I think Colonel Eyster is in charge of the PID.

Colonel FENN. That is correct, sir, Public Information Division, and when a confidential matter or confidential information is released and it is of public interest, it is released through the Public Information Division, which is the prescribed procedure.

Senator BALDWIN. Do I understand from what you said that you found on looking into it—

Judge VAN RODEN. That it was not prematurely released.

Senator BALDWIN. That it was not prematurely released?

Judge VAN RODEN. I satisfied him, and he said he would tell the Secretary. That is all the Secretary was interested in, and I heard no more about it.

Mr. CHAMBERS. No one ever asked you for for a retraction of the statement?

Judge VAN RODEN. No, sir.

Mr. FINUCANE. I am glad to hear that.

I would like to point out to Judge Van Roden's credit, that he had the Van Roden-Simpson report at that time, which had that confidential mark across it, and he did not make it available to me.

There is a subsequent letter which I would like to read a paragraph from, which I think might—

Senator BALDWIN. May I see the letter?

Mr. FINUCANE. Do you want to put that in the record, Senator? I think it should be.

Judge VAN RODEN. What date is that?

Mr. CHAMBERS. March 11, 1949.

Mr. FINUCANE. Shall I read that paragraph, Senator?

Judge VAN RODEN. A letter from me, is it?

Mr. FINUCANE. Yes, March 11.

Judge VAN RODEN. I do not seem to have a copy of it.

Mr. CHAMBERS. I would suggest, with the Senator's permission, that we read the whole letter.

Senator BALDWIN. All right.

Mr. FINUCANE. Thank you, Mr. Chairman.

This is a letter since the hearing started, incidentally:

Thank you for keeping me on the mailing list, and I hope you will continue to send me releases with reference to the war crimes trials subject. I should be interested in having your personal opinion or guess as to whether John M. Franklin, appointed to succeed Secretary Royall, would have adopted a different policy or—

This is not important.

I have been thinking about the conversation we had when I was last in Washington, and I hope you did not get the impression that I did not appreciate all that you tried to do for me. In fact, I think that what you have published and the widespread extent to which your publications have permeated, has done a great deal of good in arousing the people of the country, and I appreciate very much your efforts which have given me Nation-wide publicity.

I shall be pleased to hear further from you, and if I have any new authentic information I shall be glad to pass it on to you.

Very sincerely,

Judge VAN RODEN.

Mr. CHAMBERS. That was after you had seen the Progressive article, of course?

Judge VAN RODEN. It must have been.

Mr. CHAMBERS. And that was in uncensored form by you?

Judge VAN RODEN. Yes.

The reason for that was I got a release from him about some other matter which I was not involved with, and it was not involved in our matter at all, and I said, "Thank you for being on the mailing list." I am keeping abreast of the times; I am anxious to keep abreast of the times, and anxious to know what was going on.

Mr. CHAMBERS. You must have been aware of some of the repercussions of this article. Did they ever worry you particularly as to the effect they were having; this investigation is, perhaps, one of them; Finucane had put you on notice that there was at least one congressional resolution and one investigation that had been started by it, and so you did not feel it necessary to try to correct those items which, as you have put it, were gross exaggerations of your position? You did not feel it necessary to take any steps at all to correct, perhaps, the exaggerated impression that the public generally was getting of this thing?

Judge VAN RODEN. No, I did not see, first of all, how they would do it. If I sent a letter to the Progressive, and they started the controversy again and broadcast it, I do not—

Mr. CHAMBERS. I have no more question, Senator.

Senator BALDWIN. Are you still in the Reserve?

Judge VAN RODEN. Yes.

Senator BALDWIN. Mr. Finucane has said something to the effect that the Army put you on the carpet. Have you ever had any instructions or letters of criticism or reprimand?

Judge VAN RODEN. No sir.

Senator BALDWIN. Or anything of that kind?

Judge VAN RODEN. No sir.

Senator BALDWIN. I think that is all.

Mr. CHAMBERS. That is all, sir.

Mr. FINUCANE. Could I make one further comment, please?

I think that Judge Van Roden started out to do a good job, and did a good job, and it is unfortunate that he was intimidated by the Army, even though they may not technically have put him on the carpet; still his letter indicates, and conversations indicate, that he was under that pressure.

Mr. CHAMBERS. Well, Mr. Finucane, you have drawn a conclusion that he has been intimidated.

Mr. FINUCANE. That is right.

Mr. CHAMBERS. Does he impress you as a man before us who has been intimidated by anybody?

Mr. FINUCANE. I can only explain his reversal of testimony after that; yes.

Mr. CHAMBERS. That is a conclusion that you have drawn?

Mr. FINUCANE. Yes.

Mr. CHAMBERS. Is that a similar type of conclusion that you drew about "American investigators committing atrocities in the name of American justice?" Did you draw that conclusion on about the same kind of facts?

Mr. FINUCANE. I do not see any analogy between them.

Mr. CHAMBERS. No comment.

Senator BALDWIN. I think that is all. We will take a short recess. (Short recess.)

Senator BALDWIN. All right, we will resume the hearing.

TESTIMONY OF WILLIAM R. PERL—Resumed

Mr. CHAMBERS. Mr. Perl, we have asked you to come back primarily for the purpose of getting some additional information that has developed since you were first here.

Mr. PERL. Mr. Chambers, excuse me, if I interrupt you. May I make a short, a very short, prepared statement?

Mr. CHAMBERS. Yes.

Mr. PERL. I have been accused here of lying by gentlemen who, after numbers of witnesses had testified as to the untruth of the accusations, retired from this investigation, and I believe that this is the time to bring out where the lies are actually to be found.

We heard here from Mr. Van Roden of how the brunt of the accusations published under his name was based on hearsay evidence or on "oversight." It is not hearsay evidence certainly with respect to the 700 American Gold Star Mothers and the almost 700 American soldiers, some of whom are being brought back dead now to the United States, while the murderers and some Americans unmolested, are spreading disgraceful rumors about the United States Army and about those officers who found the men responsible for the empty places in almost 700 American homes.

Mr. Van Roden, who, in his prepared statement against Major Fanton, stresses the high ethics of American justice, found it right to make statements regarding atrocities purportedly committed by American investigators.

Not a single member of the American prosecution team was heard by Judge Van Roden prior to this public utterance, not one member of the administrative prison staff, not one American prison officer, not one American prison sergeant or prison chaser, not one medical officer or medical enlisted man.

To say that Mr. Van Roden, before making these public utterances, heard only one side, the murderers' side of the case, would be incorrect, because many of the statements were not made even by the murderers themselves.

This article which was published under the name of Mr. Van Roden in the Progressive contains a shockingly high number of lies. I sincerely believe that for reasons of security of this country, an investigation should follow this investigation as to who is, who was actually interested in making these claims against the United States Army; what interests were behind these claims, and what their connections are between Mr. Van Roden, between the National Council for the Prevention of War, and a Mr. App, who is unknown to me, but who is reported to have demanded that General Eisenhower be executed as a war criminal.

I am ready now to answer any questions.

Mr. CHAMBERS. What was that name that you gave there?

Mr. PERL. Mr. App. I believe that this committee is aware of the facts to which I am referring. If not, I will be clearer.

Mr. CHAMBERS. Can you be more clear? At least I know nothing about it.

Senator BALDWIN. I do not recognize that name or the reference, Mr. Perl. Could you tell us about that?

Mr. PERL. I read in a New York newspaper that Mr. Van Roden endorsed, as the paper says, a book which was published by a man with the name of Fritsch, who is presently a clerk in a department store in Chicago, and that this book, which is pro-Nazi, and heavily anti-Semitic, and accuses President Roosevelt of having been surrounded by foreign Jews like Mr. Morgenthau, Mr. Baruch, Judge Frankfurter, and others, that this book was endorsed by Mr. Van Roden, who wrote about it, and this is sent out to readers, that it is strikingly true—I believe this is what he says about it; I have the newspaper article here if the committee wants it; I will read the article to the committee.

The same article stresses that it is also endorsed by Mr. App, who is a member of some Yorkville German organization who, at some time claimed that General Eisenhower should be executed as a war criminal.

Senator BALDWIN. Well, you can give us the article.

Mr. PERL. I will be glad to give it to you. I have it here.

The journalist who spoke of it, I suppose, as he says, he spoke over the phone with Mr. Van Roden.

Senator BALDWIN. All right. We will keep this. Put it in the record.

Mr. CHAMBERS. Mr. Perl, we recently have had appear before this committee a man by the name of Capt. Herbert Sloan. Do you know Captain Sloan?

Mr. PERL. I do not think so, sir.

Mr. CHAMBERS. Captain Sloan was a member of the war crimes group, I believe, and who on occasion, one occasion, took some prisoners down to Schwabisch Hall.

He has testified that Harry Thon, who was one of your contemporaries at Schwabisch Hall, asked him if he would like to watch him get a confession out of one of these prisoners that he brought down; and not to go into the entire matter, which is in the record here, he stated that he went with Thon to one of the cells, and that Thon walked into the cell where the prisoner was, told him to take his shirt off, in German, of course, and when he was apparently a little slow about doing it, hit him with his fist in the chest, and said something else in German about, "We will have obedience here," or words to that effect; and then knocked his arm up for the purpose of locating the SS mark which, apparently, was under the arm.

After that he pointed his finger at the man and said, "You did the shooting," and the German, according to Mr. Sloan said, "Ja, wohl," or "Yes, sir," was the way he translated it to us. That is the most direct testimony that we have had concerning anyone's ever striking or mistreating the prisoners at Schwabisch Hall.

Now you, and Mr. Thon worked very closely together there, and while it was seldom that you collaborated on the same prisoner, nevertheless you had a general knowledge of what the others were doing, and it appeared that it would be wise to ask you again as to whether or not you ever knew either of this instance or any other instance where force of even a minor kind was used on the accused.

Mr. PERL. Sir, I do not know—I did not notice this incident, first of all; and I never saw Thon or anyone else use any force.

I saw sometimes when the prisoners were marched outside, that they were pushed by a guard, but I would not say they used force, because you said "minor force," and I would not even call it minor force, but I am mentioning it that when they were walking and they did not walk fast enough through the open door, it happened that after the interrogation—because before the interrogation I did not see them because I was waiting inside—that he pushed them so that they should go faster through the door, but actually it was not violence, this pushing, and I never noticed any violence.

Mr. CHAMBERS. Now, you must have had many conversations with Thon, Shumacker, Kirschbaum and all the boys. Were there ever any conversations concerning the use of force and, perhaps, in conjecturing or guessing as to whether or not you could not get faster results if you did use force?

Mr. PERL. That there were conversations about the use of force, theoretically is possible, I do not recall it. It is too long ago.

But I am certain that never in the affirmative, I mean it might have been that someone spoke about force, but I am certain no one ever said, "I am using force," and I do not recall, because I would have jumped in, and I do not recall anyone to have advocated force.

Mr. CHAMBERS. Now, Mr. Perl, did you ever discuss the use of force from the angle that if the Russians had these people prisoners or if perhaps the Germans had us prisoners that they would not have hesitated to use force against us and maybe we are being too easy on these people, and so on?

Mr. PERL. Now, sir, I read Major Karan's testimony.

Mr. CHAMBERS. If you read Major Karan's testimony you know what I have reference to. Major Karan has testified here that there were quite a few discussions among all members of the prosecution

staff; you, I believe, on one occasion, at a social affair, and your wife were present, and there were comments which Major Karan said definitely did not lead him to believe that this was being done, but which, at least, indicated a very healthy interest in the subject. Do you recall those conversations?

Mr. PERL. I do not recall the conversation to which Major Karan referred, but I recall something, generally, in conversations with Major Karan which might be of interest.

You see, we were in a small place, and there was no entertainment. We had no contact with the German population there, and the desire for fun is quite strong; and Major Karan, somehow did not fit into the times, and Mr. Ellowitz started every day at lunchtime kidding Major Karan, who was a captain then.

Usually the subject was that Ellowitz pretended to be for socialized medicine, and the moment Karan heard this he jumped up, and there was a very heavy discussion, and everyone at the table agreed that we were for socialized medicine, and whatever subject was brought up by Karan we were of the opposite opinion.

I do not recall such a conversation about force, but I cannot exclude that he once said force should be used, and that I or others should have joined, and I believe that it might be worth while for you, if you were to ask Mr. Ellowitz—he was usually the one who started this conversation, with a twinkle in his eye, that he might recall a little more about this conversation.

Senator BALDWIN. Excuse me. What has been said here is that it has been reported by two or three different witnesses that there were some conversations among the investigating team that what they ought to do is to get tough with these people and use some force or knock them around, or words to that effect, and that they would get along faster.

What do you want to say about that?

Mr. PERL. I am not of the opinion that one gets along faster if one uses force against prisoners, and I do not recall this conversation.

Senator BALDWIN. You do not recall any such conversation?

Mr. PERL. Definitely not, sir.

If the subject would have been brought up I would have mentioned—I suppose otherwise I would have said this, too, that I am not for using force.

There is one thing which I read in Major Karan's testimony which he might have misunderstood. I was of the opinion, and unfortunately still am of the opinion, that the Russians understand the German mind better than we do, but that does not mean that I approve of Russian methods. I believe both peoples are used to totalitarian regimes and, therefore, one understands the mentality of the other better.

Maybe Major Karan concluded from that that I am for Russian methods, which I definitely am not.

Mr. CHAMBERS. Mr. Perl, you have testified before us at great length, I imagine, much longer than you would have liked to have testified here, and you have tried to get across to us the picture that you and your group were trying through psychological approaches and ruses and what not, to get confessions and statements which could be used in building up this case.

I recall that on one occasion you were asked did you shout, did you raise your voice, and so on, and you replied, "No, I talked to them

softly as I am talking to you now," and at that time there was no further question about it.

I would like to ask you again if your handling of prisoners was such that you ever found it necessary to use physical force?

Mr. PERL. To use—

Mr. CHAMBERS. Physical force.

Mr. PERL. No, sir.

Mr. CHAMBERS. Did you ever find it necessary or did you ever threaten to use physical force on anybody?

Mr. PERL. No, sir.

Mr. CHAMBERS. Did you ever make threats against the prisoners as to perhaps, taking ration cards away from their families?

Mr. PERL. No, sir.

Mr. CHAMBERS. Or depriving their families of other privileges?

Mr. PERL. No, sir. We had nothing to do with ration cards. I did not do it, in addition.

Mr. CHAMBERS. Now, did you find occasion to shout at prisoners or curse at them?

Mr. PERL. If you would call it cursing—I will tell you an example, sir, and I would not call it cursing.

First of all, it has nothing to do with the Malmedy case directly, but I used the same system several times in the Malmedy case, an approach which I used while I was still in military intelligence, and the story which went around and was told to me by the colonel who interviewed me before I was assigned to war crimes because he had heard of it and had laughed about it; that is what I would like to tell you about.

I used to do quite often the following thing: Just imagine this picture: Prisoners had been captured during the war, and they had been hanging around, and it was important for us to find out as fast as possible to which units they belonged.

What I did was I spread word that an American officer was coming to address them, and then I came in there. They were standing around, expecting someone to address them in the English language, and then I shouted at them exactly as a Prussian drill sergeant would shout at them "Alles stillgestanden," which means approximately "Attention." At the very some moment I would be shouting very strongly; and you must understand that the German soldier reacts to it much more dramatically than the American soldier, and everyone jumped to attention.

Their thinking ceased; they were soldiers, and I was their master, and then I shouted to them, "You are soldiers," exactly as their sergeant would shout at them.

I had taken the officers out first. I would shout to them, "You are not soldiers; you are schweinen begande, a horde of swine."

The highest ranking noncom then steps forward. He steps forward, reporting, "Sergeant So-and-So", and I shouted, "Sergeant, you are responsible for the discipline of men." "Yes, sir." He was all at my will, happy to be a sergeant again, and not to be a prisoner, and to have men under him, more men than possibly he had ever had in his life.

I said, "You are looking forward toward a very difficult time. You are looking forward toward a long imprisonment. We want to be nice to you. We want to treat you well. We do not want to break up

old friendships. We will leave you together in your units if you want to stay together. Who wants to stay together stays on this side; who wants to be separated from his unit steps over there."

No one steps over there, and then I told the sergeant, "You now organize them according to their units." He very eagerly did it so, within a few seconds, they organize one unit. No American sergeant would have done it as fast as they did.

Then, when they were organizing their units, I took the sergeant into the house, and to me, and out we went into the enclosure, through the back door. I did not need him any more.

Then I took the first one from his group and asked him to which unit he belonged. He told me, because he wanted to stay with his friends.

I asked the second one, I made a check, and so the whole unit went through the back door, and so with the other units, and did it with absolute certainty, and within the shortest possible time, the exact units to which they belonged, and with their complete cooperation.

The same system I used several times during the Malmedy investigation. It was the system of making them forget everything else but snap at a command.

If this case which is reported about Thon, which Sloan mentioned, should have happened—I never saw it—I cannot imagine it, but there is one moment in it which sounds like me in my ear, and this is the shouting at him, "Gehorsamkeit"—the only thing is that it is no German command, and in this he would be absolutely incorrect, because you had to shout to them these commands, which, of course, does not imply that the rest of the Sloan story is correct. So if perhaps someone came in and I saw he was not capable of thinking at all—that he just thought in the one way—I will say nothing; I will say nothing, and then sometimes I tried to shout at him, "Attention," and he jumped at "attention"; and sometimes when I ordered him immediately, "Now you tell me the truth," he was more pliable, because I was in his command, you understand that.

These were the cases where I shouted at prisoners, but I did not curse them. It may be I cursed them at such an occasion, but I do not recollect it. But I did not curse them in the way of threatening them, but in the way his sergeant would have cursed him, but I do not recall cursing.

I recall that I on several occasions called people to stand at attention for a moment and asked right then afterward the question.

MR. CHAMBERS. Well, there must have been occasions, Mr. Perl, when you got pretty impatient in trying to get an answer out of someone who was obviously lying, and the average person would have gotten a little excited and shouted at them, perhaps cursed at them. Did you ever, in addition to calling them to attention, find occasion to shout at them?

MR. PERL. You see, the moment I would have gone into the field of threatening or physical force I would have left the field in which I felt that I was fairly competent.

If these people—if you would actually—I do not speak now about the morality to it, but the practicality—I wanted that those people who had committed a crime should be punished; and if I wanted it, I could not beat them, because if you want to get a confession by beating it out of a man like that you would have actually to beat him more than

Judge Van Roden in one or the other cases said, or the article said, that they were beaten. You could not "break," as the term is, a prisoner and get a confession out of him or the truth out of him by slapping him. It is absolutely impossible. You would antagonize him in a line where he could feel stronger, because after attack which you used against the prisoner has to lead to success, if you are not certain of the success, do not use it.

What certainty do I have if I slap him, and more I could not do. I had Major Fanton about it; I mean I did not do it. You understand what I mean?

MR. CHAMBERS. Yes; I understand.

MR. PERL. It was an absolute impossibility. There were 20 people all around, and with slapping alone, as it seems evident that was indicated in one case, nothing would have been achieved; it would have been absolutely wrong, because if he would have been slapped, and still he would not have said anything, he would have been the victor. He would have won the game, this one round of the game.

I did not try to leave the field, where I was the stronger one. In physical force, maybe he is stronger, maybe he resists strong fear. Independent of any other attitude, this was my approach to it.

MR. CHAMBERS. Well, now, Mr. Perl, Schwabisch Hall itself was a village; is that not correct, a part of which was a prison?

MR. PERL. It was a village of about 8,000, maybe a little larger.

MR. CHAMBERS. Yes; and you lived in Schwabisch Hall; is that correct?

MR. PERL. Right, sir.

MR. CHAMBERS. And you told us that Mrs. Perl was with you at that time?

MR. PERL. Right, sir.

MR. CHAMBERS. Did you find that you were going back to the prison at night and doing a lot of work with the prisoners at night?

MR. PERL. We were there several times late in the evening; late in the night I was never there. I was never there alone.

MR. CHAMBERS. You were never there alone?

MR. PERL. I do not recall to have been ever there alone.

MR. CHAMBERS. At the prison?

MR. PERL. At the prison.

MR. CHAMBERS. Of course, you were in cells in the prison alone; is that not correct?

MR. PERL. Yes; but in the night I would have had to—I remember one or two occasions Colonel Ellis asked us to work very late hours, and Major Fanton, too, but there were all of us.

MR. CHAMBERS. That was the exception and not the rule; is that correct?

MR. PERL. It was the exception and not the rule, right.

MR. CHAMBERS. But you did on occasion go back to the hall, either at Colonel Ellis' request or because you wanted to go ahead and do your job and work; is that correct?

MR. PERL. At nighttime?

MR. CHAMBERS. Yes.

MR. PERL. I never interrogated at night time; no.

MR. CHAMBERS. You never interrogated a prisoner at night?

MR. PERL. Except I remember one case, someone came in who was suspected to be a man for whom we were looking, and I went there.

to identify him. That was about 10 or 10:30 in the evening, but he was not the right man, and he was sent out the next day.

Mr. CHAMBERS. Well, now, Mr. Perl, Lieutenant Lary, whom you probably remember—

Mr. PERL. Certainly.

Mr. CHAMBERS. Was on the stand here just recently, and he testified concerning his identification of Flets.

Mr. PERL. Yes.

Mr. CHAMBERS. I was interested in the details of it, because there was a little deviation from what I understood went on down there, and, perhaps, there was an explanation of it.

He testified that the accused were brought in groups and with their hoods off, and he had a chance to pick out Flets; he did not find him the first time, I believe, or the second—maybe it was not the second group, but at any rate I was under the impression that you never let these people get together until after they had confessed or that you were through interrogating.

Mr. PERL. Right.

Mr. CHAMBERS. Is that correct?

Mr. PERL. Right.

Mr. CHAMBERS. Then, were these people who were brought in before Lieutenant Lary those that you were through with from the standpoint of interrogation?

Mr. PERL. I do not remember whether I was the man who brought them before Lary.

Mr. CHAMBER. I do not know that either. I am merely trying to clear my own thinking on that point.

Mr. PERL. I do not think I was.

Senator BALDWIN. Where you were making a personal identification like that; how did you do it?

Mr. PERL. That was the only identification through an American, and I do not think I did it. You see, my time was mainly spent with interrogating. There were not many people there who could speak German, so I am quite certain, and as I do not recall it, that either Captain Shumacker or someone else must have done it.

Senator BALDWIN. Did you ever see them bring in witnesses for identification? I mean, for individual identification?

Mr. PERL. For identification, individual identification, by Americans?

Senator BALDWIN. Yes.

Mr. PERL. Yes; I remember one day.

Senator BALDWIN. How was it done?

Mr. PERL. It was in the daytime. That is all I remember, sir. Lary was standing outside in this corridor where there were the cells, the interrogation cells were on the side, and Lary was standing there, and people were brought in, in groups, and he looked at them, and I do not think I was present when he identified Flets.

Mr. CHAMBERS. But were those people who had already completed their interrogation?

Mr. PERL. I do not know.

Mr. CHAMBERS. You do not know.

The point I was trying to get at—

Mr. PERL. Sir, at this time almost everyone had completed their interrogation.

Mr. CHAMBERS. This was along——

Mr. PERL. It was in April, I believe.

Mr. CHAMBERS. Yes; I believe Lary testified to that.

Mr. PERL. Yes.

Mr. CHAMBERS. So, it is reasonable to assume that these people were no longer subject to individual interrogation and that they had broken the security rule for the purpose of removing their hoods and letting them see who was around.

Mr. PERL. Yes; I believe. If I recall now, Lary was shown other people, too, whom he could not identify. I believe, if I am not mistaken, I was interrogating at this time Diefenthal, and he was brought out for this purpose, too, and Lary did not identify. I am not certain, but I believe that Diefenthal was taken out during the interrogation, as to whether he could be identified by Lary.

Mr. CHAMBERS. There has been some mention made, Mr. Perl, of the delivery of some prisoners to Schwabisch Hall by two British enlisted personnel who had beaten the people up before they came to Schwabisch Hall. Do you recall anything in connection with that case? Did you ever hear either Colonel Ellis or Major Fanton talk about it?

Mr. PERL. British who had brought——

Mr. CHAMBERS. Had brought prisoners to Schwabisch Hall.

Mr. PERL. This part I do not remember, and I had nothing to do with this administratively.

Mr. CHAMBERS. Did you ever hear anybody talking about some prisoners who had been brought in who had been beaten up?

Mr. PERL. Once, sir, a general was brought in with handcuffs, and I immediately ordered his handcuffs removed, not because he was a general, but because it was not the rule and he mentioned it in the trial, I believe. It was General Kramer.

Senator BALDWIN. Why did you do it, Mr. Perl?

Mr. PERL. We never had any prisoner handcuffed. It was a mistake of the person who brought him in. I looked into the cell; they told me, "We just brought General Kramer in," and I looked into the cell, and I saw him there with his handcuffs, and I had his handcuffs immediately removed.

That is the only case where I know of anything that was not absolutely right with a prisoner who was brought in.

Senator BALDWIN. You were questioned a little while ago about shouting at the prisoner or shouting to them. Did you not ever get your face right up close to a prisoner's face or close up to him and shout at him?

Mr. PERL. Sir, it is quite probable—I do not recall the incident, but it is quite probable that I was standing close to a prisoner and told him, "Now, listen, you tell me the truth." I did it during the course of my Army career, but whether I did it in the Malmedy case, I do not know. It could have been during my intelligence experience.

Senator BALDWIN. Well, some of the time these fellows must have been pretty difficult to deal with; is that not correct?

Mr. PERL. Yes, sir; they were never fresh.

Senator BALDWIN. They were never fresh?

Mr. PERL. No; not one was ever fresh to me.

Senator BALDWIN. What do you mean by that?

Mr. PERL. I mean they did not talk back, and they were not offending in these cases, not in the Malmedy cases. During the war, and shortly afterwards, yes, sir.

Senator BALDWIN. Were they not sometimes very sullen?

Mr. PERL. Very—

Senator BALDWIN. Sullen, noncommunicative.

Mr. PERL. Yes; they were sometimes.

Senator BALDWIN. Well, did you not get exasperated at times?

Mr. PERL. No, sir. I had a purpose in my mind, and it would have defeated my purpose.

You see, I was brought up—I would not say I was brought up, but I had a very long interrogation experience before me, and I saw all the time the purpose before me.

I would not compare myself with a judge, but a judge is usually not so personally involved in a case so that he will become exasperated if the man does not talk.

If he did not talk, I tried to confront him—I spoke about one case which I mentioned—I forgot the name of this lawyer whom Senator McCarthy had—

Mr. CHAMBERS. Mr. Flanagan.

Mr. PERL. Mr. Flanagan and Colonel Chambers, after the trial, how, for instance, I got a confession from Preuss, who was absolutely uncommunicative, because I think I should mention it here since again it shows a different kind of psychological approach.

Preuss was the best-hated officer in the whole unit, more than Christ. When the soldiers died, he said, "Fine, goody-goody." That was his expression. He was called Goody-Goody in the German concentration camp.

Senator BALDWIN. "Goody-Goody"; what for?

Mr. PERL. If a German soldier was killed, he said "Goody-goody; one more German woman for me." All his soldiers confirmed it.

He was a very tough guy, and very hard to get, and I knew it in advance. When he was confronted with the facts, he did not confess; he did not do it. The facts were that there were witnesses here that had told that he had shot an American flier in the woods during the campaign. The American flier had parachuted, and they had found him there, and Preuss had had coffee with him and had given him some cigarettes and was very nice to him, and then he noticed that he had an American flier's jacket and a pair of trousers, much better equipped than the Germans had, and Preuss left for some short reconnaissance and ordered the sergeant, I believe Berkholz was the name of the sergeant, to shoot the prisoner.

We had testimony of the man who saw it, but I believe the sergeant who actually shot him was not there any more. So, we had the testimony of people who heard Preuss saying, if I recall it—this is not the essential part of what I want to say. We have the testimony of one or two witnesses who heard Preuss saying or giving this order, and saw him later on with the same kind of dress; he had his trousers shortened. Preuss would not confess.

Now, at the same time, we kept a 201 file for every one—Major Fanton kept it, and then Colonel Ellis. We knew that this Preuss had been awarded the Ritterkreuz, which is the highest German decoration, for a number of accomplishments, among them it was mentioned that he had shot a flier in the woods near this and this place who, this citation said, had jumped from a tree and he had fought him in close hand-to-hand combat and had showed presence of mind and had shot this flier.

Now, he denied having shot any flier, and we knew this story that he had shot this flier, according to the citation. So, I went to Peiper, who, at this time, already had confessed. You see, we worked it up; We considered Preuss as one of the very toughest ones, and Peiper was amongst the last ones, but I believe there were only one or more to confess after Preuss, so I told—one more story, we had heard at the same time that Preuss had stolen the ring from this dead American soldier. He was an officer, as far as I recall, a first lieutenant from Texas—that is what Preuss told us—and amongst the Germans it is a much worse crime to steal something than to murder someone. They considered this awfully dishonorable, to steal.

So, I went to Peiper and told him: "Listen, Peiper"—I was on very good terms with Peiper, and he attested to that in his last statement, that we talked like gentlemen to each other. "Something most disagreeable happened. After all, you are an officer, and I am an officer, and you recommended Preuss for the Ritterkreuz." He said, "Yes." I said, "One of the reasons was that he shot a flier who jumped from a tree and fought in close combat with him." He said, "Yes." I said, "What would you say if I tell you this is not true; that Preuss shot this flier, who was an unarmed American prisoner of war because he wanted to get his ring or his shoes or his clothes?" So Peiper said: "That is impossible." I told him, "I will bring you in the man who testified to it," and I brought a witness in whom Peiper knew, because the witness was a driver, and while usually the regimental commander does not know the men, they know the drivers; he was Preuss' driver, one of the company commander's drivers. So, he confirmed it to him. He spoke to him: "Du,"—they were on very good terms, "Yes, that is true; this is true."

Peiper was very much upset about it. I told him, "Listen, Peiper, the whole thing is very disagreeable with this ring, and I think you should straighten it out, and if you straighten it, I will try to see that the whole thing with this ring and with the trousers, if you do not make any monkey business about this stuff, does not get into the trial, because I am not interested in this ring business. I am interested in whether he killed the flier or not. That is clear, and if he killed him, and if he admits to it, I will not put into the statement this statement about the ring."

So, I got Preuss in, and Preuss was very excited, and I said, "Preuss, now, what is it? Did you ever shoot an American flier?" He said, "No, I did not shoot any American flier." So, Peiper said, "But you told me that you shot an American flier." He said, "Yes, I told you that, but it was not true. I lied to my regimental commander," he said.

So, Peiper said, "Could I stay alone with Preuss for a few minutes?" I said that I could not decide that, and I left him alone with Thon—I called Thon in, or Thon was in—I do not believe he was in, I called him in, and then I went to Colonel Ellis and told him what the story was, and I said that I believed Peiper would break Preuss for us, and Colonel Ellis said, "You must not leave them alone," so I went back and I said, "No, I cannot leave you alone"; so, Peiper said, "Listen, Preuss, you have brought disgrace to the German Army by stealing this ring which Berkholz" or whatever his name was—I do not recall the name—"confirmed to me. I think that you should tell the whole story." So, he said, "Yes, I will tell the whole story: I stole the ring,"

and he admitted that it was not true. I do not want to go into too many details.

Peiper told him, "You tell the truth," because Peiper was furious with him, and Preuss told the truth. In this way, by playing on the particular German sense of honor, I had Preuss broken, and I would even have stuck to this statement that I do not get the ring story into the trial, but Preuss himself brought it into the trial. I do not know whether you know that he tried to influence a witness about this story. So, I would just like to show how I had, on my part, to adjust the methods to every single case.

Senator BALDWIN. The last time you were here, Lieutenant Perl, you made a statement, something to this effect: "Truth has many faces, each one of which may be a lie," or something to that effect.

Mr. PERL. Yes, sir.

Senator BALDWIN. But, as I understood it, "which put together would make a true picture."

Mr. PERL. Yes, sir.

Senator BALDWIN. Just what did you mean by that?

Mr. PERL. You see, sir, I will be very exact.

Senator McCarthy asked about Hennecke, he asked me whether I am his defense lawyer before he must have believed I was his defense lawyer, and as far as I knew, the subsequent sentence already said, "and I told Hennecke I am not your defense lawyer," and whenever I wanted to get the second sentence in and refer to it, he always jumped back to the first, and I wanted to stress by this that you cannot take a truth apart. You have to consider everything together, because if you tear it to pieces, which in itself is incorrect, it might be in itself incorrect, but together they are the truth.

It was incorrect to deduct from what Senator McCarthy told me, because it was just one part of the statement, that I had told or made him believe that I am his defense lawyer.

Senator BALDWIN. But you did say to him after you said to him, "I am not your defense lawyer"—you did say to him, "but you see I am taking care of your case." What did you mean by that?

Mr. PERL. Yes, sir, I wanted him to believe that he was not a very good friend of his, but I am friendly interrogator, someone who, after all, does not mean it so bad as the other man meant it, and the other man was Thon.

Senator BALDWIN. Did you ever use any ruses where you led these people to believe that if they would tell the truth or give you a confession that you would make it easier for them?

Mr. PERL. That I would make it easier for them if they would tell me the truth?

Senator BALDWIN. Yes.

Mr. PERL. You see, I want to be correct and that is why I think over this.

Senator BALDWIN. Yes. I mean, did you ever say anything like this in German, "If you will only sign this confession and tell the truth I will see if I cannot get you off easy"?

Mr. PERL. No, certainly not this, but I certainly told them, "If you tell me the truth it will be better for you than if you are lying, because we know the truth anyhow, and if you are lying, you will be the one who shot, and at the same time make an awful impression on the court," and in this way I told him that it is better to tell the truth.

Senator BALDWIN. What I mean by that is, did you not ever make any promises of immunity?

Mr. PERL. No, sir, definitely not.

Senator BALDWIN. How did you decide which of these men you would use as witnesses against the others, and which you would include in those who were to be charged?

Mr. PERL. There was not a single one of them used as a witness, and I do not think that it was intended to use any one of them as a witness.

Shortly before the trial, after they had been indicted, then it was mentioned that one or two or three should be made as witnesses, but then they were not made, but as long as this investigation was on, to the best of my knowledge, none of the prisoners whom I treated was ever considered as a possible witness.

Senator BALDWIN. Was not there something in that S. O. P. to the effect that certain ones would be used as witnesses?

Mr. PERL. Right, sir. Major Fanton gave this S. O. P. out, and I mentioned already to Senator McCarthy that I never stuck to it. It is so entirely foreign to my conception of law, that it is certainly not correct to promise him immunity that he would be made a witness; and I never did it.

Senator BALDWIN. Did you not ever think it feasible that with a threat of repeated beatings on these prisoners, I mean if a fellow was beaten badly one day, and you said to him, "Now, if you do not come through tomorrow we are going to come around tomorrow and beat you up again," that that method would get a confession?

Mr. PERL. I do not think, sir, that you should threaten if you want to have anything that you cannot execute, because if you cannot stand behind it you can only use those methods which you can execute.

Senator BALDWIN. What I mean is this: Supposing you are interviewing a witness and you cannot get anywhere with him, and you give him a severe beating.

Mr. PERL. Yes.

Senator BALDWIN. And then you get him the next day and say, "Now, well, you know what you got yesterday, and unless you come through you are going to get the same thing today." Was that ever done?

Mr. PERL. Sir, it was never done. I am absolutely certain it was never done. I would have heard about it, and I myself never did it; and if it were done, in addition to that it would have been absolutely wrong, because this use of force was exactly what they expected, this use of force about which they had fortified themselves in 2, and 4, and 6 weeks in solitary confinement or in confinement with one man together or solitary confinement.

This is what they were waiting for, and we had to treat them in exactly the way in which they were not prepared.

Then, their stamina might go along, and you are the loser, and then you do not have anything. It would have been absolutely wrong, and if some one would have suggested it to me or said he intended to use it, I would have been intensely against it because it is not a method which you can use, which you can treat effectively SS troops. You would actually have to have broken every single bone in their bodies if you wanted to get anywhere by confessions, by beatings.

Senator BALDWIN. Why do you say that?

Mr. PERL. Because these people were beaten by their own officers. Peiper had one of his soldiers shot. It came out in his investigation. I know of one case where one young boy who had just come to the SS during the American offensive—he was a bit naive—when the Americans advanced, he took the SS signs off, nothing else, because in case he should be captured one should not know he was in the SS. They expected the worst treatment.

When Peiper heard about it, he had him come to him and had him shot because he was a coward, he said.

They were beaten. Rumpf—I have, by the way, a statement by Rumpf here with me—Rumpf was known to have beaten his soldiers on occasions; Maute beat his soldiers. They beat them, and they were used to beating, and it would have been absolutely the wrong thing to do, wrong from the point of achievement, independent of whether it was morally or immorally wrong.

Senator BALDWIN. Have you any further questions?

Mr. CHAMBERS. Yes, sir. There is one question I would like to ask Mr. Perl.

In reading over these affidavits, or rather reading over the confessions which the accused signed and which were later introduced in evidence, I ran across an expression in there which has puzzled me.

Any number of them say that in talking about statements that were made or orders that were given they would say that this German sergeant or this German said, "Take him out and bump him off, bump him off." Well, "bump him off" is just a typically American expression, and I was just wondering how that cropped up in the confessions that were made by the Germans. Can you tell about that?

Mr. PERL. Umlagen means "bump off." It was their daily bread. They spoke about it daily, 50 times a day, "This man has been bumped off," "This man has been bumped off."

Now, I could not translate the word "umlagen" into American, and I remember that I conversed about it with Cohen, because he, of course, knew the German expressions. I could not find the expression. We discussed it.

I believe Major Fanton was still there. We must use a slang expression because this "umlagen" used a slang expression, and someone, it was not me, found the translation "bumped him off."

Senator BALDWIN. What is the literal translation?

Mr. PERL. "Lay him flat."

Senator BALDWIN. "Lay him flat?"

Mr. PERL. That is the translation which I had suggested, "lay him flat," and someone said, "This does not do justice to the word 'umlagen' because 'lay him flat' is not a slang expression enough, not enough of a slang expression.

The translation of "umlagen" did not originate with me, but that the translation is correct is obvious, because they had quite a number of defense lawyers, members of the defense who spoke German and English absolutely fluently.

The word was their daily word. They spoke about it 20 times a day. This man had "bumped off this man," this man "bumped off" somebody else.

Those troops, sir, most of them, if you see the statement, many of them—I would not say most of them—had been in concentration camps before, and it was a daily occurrence; others, their whole unit.

had been for a long time in fighting in Russia where they had not made any prisoners at all. It was, therefore, used very, very commonly.

Senator BALDWIN. What do you mean they were in concentration camps? They were guards?

Mr. PERL. They were guards in concentration camps. Hennecke and Wichmann—I do not know Wichmann—Ochmann was for 7 or 8 years, he was some high-ranking noncom in Oranianburg concentration camp, and this man Ochmann who shot eight or nine prisoners of war, who was identified by a Belgian woman and German soldier as having done it—

Mr. CHAMBERS. So that this business of “bumping off” was the best translation you could give, was the best explanation you could give of a slang expression used by the German troopers.

Mr. PERL. I did not hear the expression until I heard it here. I had suggested “lay him flat,” and they said that it did not do it justice, because this is the literal translation.

Senator BALDWIN. There has been some testimony from Judge Van Roden, I think it was, or in the record somewhere, to the effect that at Schwabisch Hall there were bogus priests who were used to obtain confessions.

Mr. PERL. Definitely not, sir, never.

Senator BALDWIN. There was—I read here in the record somewhere of one case where a priest went in, a bogus priest, presumably to obtain a confession, and was told—the story is that he told the German to lie about it, and admit it because that would help him get out of it, and he would absolve him for the falsehood.

Mr. PERL. That is definitely incorrect, sir, absolutely. This could not have occurred without my knowing about it, and I would have very severely objected. It is impossible. I would have severely objected for many reasons. It would have been wrong, and then because I am Jewish I am in a very particular position, so that I would have very heartily objected to this occurring.

We were a small community; we were eight or nine people sticking together, eating together. In the evening we were together. We knew what went on. We could not go any place; we were sticking together every evening.

Senator BALDWIN. Were these SS troopers, did they have any religious affiliations of any kind?

Mr. PERL. This, I wanted to stress, too; no, sir, they were all—now, they have suddenly called the bishops to their support, but they were all, as far as I remember, Gottgläubig, which means the new German religion; Gottgläubig means, through a literal translation, “believing in God,” but not any particular god. It was the German pagan religion. They had it in their book. Every German soldier had a kind of identification passport where his pay was written and his promotion and the SS had it in their Gottgläubig, and I do not think any one of them could have had another religion at all.

Senator BALDWIN. How did they say it?

Mr. PERL. Gottgläubig, which means “believing in God.” But it means exactly the contrary. It was this Rosenberg religion.

Senator BALDWIN. It was the what religion?

Mr. PERL. It was the Rosenberg religion; Rosenberg, who was executed, I believe, in Nuremberg, had invented this paganistic German religion.

Senator BALDWIN. Well, during the time that these men were there, did any of them ask for priests?

Mr. PERL. No, sir; I never heard of it.

Senator BALDWIN. Well, if these men had no religion—

Mr. PERL. Yes.

Senator BALDWIN (continuing). How was it that you felt that it would impress them to bring them into a room where there was a crucifix and a candle?

Mr. PERL. I handled these questions, and I said I do not know to which degree they will be impressed by this procedure, but it is not so much the crucifix as such, but the whole ceremony of the taking of the oath, which, after all, even under the Nazi Germany, as I know, was used. It is the familiar set-up of giving an oath.

Senator BALDWIN. In other words, it is a Nazi—it was even in Nazi Germany that they used a crucifix to administer an oath?

Mr. PERL. I am not certain of this, sir, but I believe—

Senator BALDWIN. What do they do in the courts of Austria, where you were?

Mr. PERL. They definitely—they used it all the time.

I understand that in Germany—I am not certain of this—it is not originally arranged into Catholic regions, into Bavaria and others. Certainly they use it in Austria, the crucifix, the candle, even now, and they used it in Czechoslovakia, and the Communists, what they are doing now, I do not know. In the Sudeten, they had 3,000,000 Germans, and whether they are using it now I do not know. They used it, the German-born in Rumania, and so on.

Senator BALDWIN. Any further questions?

Mr. CHAMBERS. Senator, I have no further questions.

Mr. PERL. Sir, I think I should show you—I mentioned that some of the prisoners made statements in their cells, and I showed you some—

Mr. CHAMBERS. Yes.

Mr. PERL. Here, for instance, I have a statement of Rumpf, which he wrote in his cell in pencil. The original final statements are all written in ink, which I still have under the remark "Rumpf, La Gleize, very good." This is as it came in, it was put in the 201 La Gleize statement.

Here he describes how he received in La Gleize the order from Peiper, the order to shoot prisoners of war, and how he dispatched men from his unit to shoot prisoners of war that he had orders to shoot.

Senator BALDWIN. What is this map here?

Mr. PERL. This is the map that he drew in his cell of the location where it happened. If you want I can read you the statement here. It is not long.

Senator BALDWIN. I would be interested.

Mr. PERL. It reads, "Rumpf E." That is his initial—"La Gleize."

When we retired from Stoumont toward La Gleize, I marched together with First Lieutenant Sievers, and there arrived, when it started to become I was told by Genneke, First Company, that tanks were standing around the church. I saw prisoners standing there supervised by tankmen, and I saw them walking around there.

You see, this is not what is a dictated statement. It is not that I translate so abruptly, but the sentences are abrupt.

Senator BALDWIN. Yes.

Mr. PERL (continuing):

By speeches, by conversations I heard that prisoners were forced to work. Second Lieutenant Genneke, First Company, came to me and said that I should dispatch a few men who on orders of the Commander Peiper should shoot prisoners of war because they had refused to work. I went into a basement where I knew that there are members of my company, and I told them that I need a few men for this order. One of them was Maute. According to the recollection—

he does not say “to my recollection”—I translate as he writes—

according to the recollection there were in this basement members of the First Platoon. Who it was particularly I do not know, and I cannot say it with certainty. I ordered them to go to the church because there they would receive their orders. Where the prisoners were shot I do not know, but I saw dead American soldiers without arms approximately six to seven. They were probably shot (look at the sketch). The drivers of the company spoke of the shooting of American prisoners of war already at the time when we arrived. Whether they meant this case or whether prior to our arrival other shootings had taken place, I do not know.

It is written in his handwriting, and there is a sketch attached to it, which reads “La Gleize,” and several points.

This point here, he writes—he did not put numbers on it because then when we made it ready for trial we made it ready for the court.

Here he writes, “Point where the dead American soldiers were lying.” This is obviously the church. To this building he writes, “School,” and a sign at it reads “Headquarters Peiper Poetschke.” Here is another sign “Headquarters of Western Hagenoder Diefenthal.”

This is one of the sketches which was not used in the trial because in the end we had—you see he confessed to five or six or seven more incidents, and then it was all put together.

I also would like you to see how exact the final drawings were. You see this is a drawing. We had, I do not know about how many drawings. One of them should be that La Gleize drawing. This is not even amongst them, but exactly they drew it, and, for instance, I know that Siegmund accused me of beating him. If you will just look, sir, this is a copy of the way he treated a handwriting margin and only someone who has time and is not in an utter state of confusion or excitement could treat a margin like this. I believe he probably wrote it even with a ruler. This is his confession. These are the various drawing the people made.

Mr. CHAMBERS. Mr. Perl, on this Rumpf statement—

Mr. PERL. Yes, sir.

Mr. CHAMBERS. Are those prisoners who are supposed to have been shot down there the ones that the defense alleged in fact were never found?

Mr. PERL. Right, sir.

Mr. CHAMBERS. And the ones that the priest later made some statement about not seeing the bodies.

Mr. PERL. I do not think so. I believe this priest who appears in Colonel Everett's—

Mr. CHAMBERS. Petition.

Mr. PERL. Petition was in La Gleize, was in Wanne, I believe.

Mr. CHAMBERS. No; it was La Gleize.

Mr. PERL. But there were many shootings in La Gleize. This was the shooting at the church, and this is the case in which the defense

alleged that it never occurred, but that you might have noted in the record that an American who was not connected with the case at all testified that right after they moved into the town of La Gleize, they removed heaps of bodies of American soldiers.

Senator BALDWIN. Any further questions?

Mr. CHAMBERS. No, sir.

Senator BALDWIN. I think that is all.

You are excused. Thank you very much.

Mr. PERL. Sir, I would like to state just one more thing.

Senator BALDWIN. I was going to ask you: Do you have anything further to say?

Mr. PERL. The question of hatred of the Germans was brought up again in the course of interrogation of Major Karan, I believe, and I made a few statements with respect to that, and I would like to add a few very concrete data.

On the 1st of November 1948, a German girl arrived in the United States on the boat *Gripsholm*, only on the strength of my affidavit. I brought her over. She is a German, not a Jewish girl. She was a friend of Mrs. Perl over there.

A little boy with the name of Rudy Safarosky was on my expense, a German boy, a German gentile boy, was on my expense during the time of this investigation in a German children's hospital or home, the Elizabeth Children's Convalescent Home, in Bad Nauheim, Germany, for approximately 2 or 3 months. He was sick, and I took care of him, and before leaving from there, I deposited 3,000 marks in an account for him. I later on intended to adopt this child, and there is correspondence between me and his aunt—he has no parents—and I could not adopt him because I was informed by the agencies in New York that I cannot adopt him because the child is Catholic and I am Jewish, and due to the difference of religion I cannot adopt him.

He is getting parcels occasionally still now from us.

Other persons to whom I am sending parcels regularly are Dr. Wather of 3 Lessingstrasse, Bad Nauheim, who was a captain in the German Army, or a major in the German Army, a prisoner of war when I met him. He was later on Mrs. Perl's physician, and I am sending him parcels regularly.

Mrs. Friedel Pohl of Berlin, Charlottenburg, No. 16 or 76 Kantstrasse, equally a German gentile girl, a woman, is receiving regularly parcels from me.

Mr. Kurt Fietkau of 24 Lieberburg, Wiesbaden, is a friend of ours. I met him while I was serving with the War Crimes Group in Wiesbaden. I am sending him parcels, and to his wife, regularly.

I could go on with this list, but I thought I should mention it.

Senator BALDWIN. Why do you do that?

Mr. PERL. I will tell you something else—unfortunately, I forgot this letter at home. I wanted to bring it with me, but I will send it to you if you are interested in it. I have a letter of which I am rather proud. It was written to me by the former British Secretary of Labor, Lord Josiah C. Wedgewood, and he writes me on paper of the House of Commons or House of Lords, "Dear Dr. Perl: You saved 2,400 lives from death by cold and starvation. You ought to be a proud man, and I am proud of your friendship." It is signed "Josiah C. Wedgewood."

My whole life I have tried to help other people. These people, these 2,400 whom I helped here, most of them were just those who tried to flee Germany but they were not necessarily Jews; everyone who tried to flee I tried to help him out. It would be too long if I would go into details of how I did it. If you are interested, I will tell you these things, too, and I thought I should mention this so that you can see that you are dealing with a man, I would not say of some standard but of some ethical standard, and while I certainly tried to help those first who were nearest to me and of whose plight I understood better than others, the Jews, I did not tell you about them, because my attitude toward them was not in question, but only after you asked it. I did not want to boast of this fact, that I mentioned this case. I think if a human being is in need, he should be helped; which would not change the fact that, on the other hand, I believe that those who killed our boys with premeditation, who did it in cold blood, should be executed. I believe that this is just a part of justice and that we owe this to our boys who died there for us, exactly as I owe it to this German major or captain who was not a Nazi, to help him because he is a decent man.

Senator BALDWIN. Thank you very much.

That is all.

Mr. PERL. Thank you very much.

Senator BALDWIN. We can excuse you, Mr. Perl.

Mr. CHAMBERS. Yes; and you can go back to California.

Mr. PERL. I am not going back to California.

Senator BALDWIN. We will recess until 2 o'clock Monday afternoon.

(Whereupon, at 6:05 p. m., an adjournment was taken, to reconvene at 2 p. m., Monday, June 6, 1949.)

MALMEDY MASSACRE INVESTIGATION

MONDAY, JUNE 6, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 p. m., in room 212 Senate Office Building, Senator Raymond E. Baldwin presiding.
Present: Senator Baldwin.

Also present: J. M. Chambers, of the committee staff; Colonel Fenn, and Colonel Straight.

Senator BALDWIN. The committee will be in order.

Mr. CHAMBERS. General Harbaugh, will you come forward, please?

Senator BALDWIN. Will you hold up your right hand?

Do you solemnly swear the testimony you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

General HARBAUGH. I do.

TESTIMONY OF BRIG. GEN. JAMES L. HARBAUGH, JR., OFFICE OF THE JUDGE ADVOCATE GENERAL, DEPARTMENT OF THE ARMY

Senator BALDWIN. General Harbaugh, will you please give your full name and your present station for the record?

General HARBAUGH. James L. Harbaugh, Jr., brigadier general, United States Army, Office of the Judge Advocate General, Department of the Army.

Mr. CHAMBERS. General Harbaugh, I presume, being in the Judge Advocate branch, you are a graduate lawyer.

Will you give us some idea of your background?

General HARBAUGH. I am a graduate of the United States Military Academy. I have a juris doctorate degree from New York University, a master of law and S. J. D. degree from Georgetown.

Mr. CHAMBERS. Now, during the war, General, I believe it has been testified that you had some connection with the war crimes work in Europe. I wonder if you would tell us the relationship you had to that, in your own words, and just give us the picture so we can see how you fitted into the organization?

General HARBAUGH. Actually, during the war I was staff judge advocate general of the United States Strategic Air Forces in Europe, from June of 1942 until September or October of 1945; and our work in connection with war crimes was rather incidental. We had some screening to do, but no direct connection with it.

I returned to the United States in September of 1945, and was on duty in the United States until February of 1947, when I went to Germany to replace Colonel Mickelwait as staff judge advocate of EUCOM. That was in February of 1947. Part of the responsibility of the judge advocate of EUCOM were the war crimes trials at Dachau.

Mr. CHAMBERS. Did you serve as a member of the so-called Raymond board?

General HARBAUGH. Yes, sir.

Mr. CHAMBERS. Could you tell us very briefly in your own words, how that board happened to be organized, and the mission that was assigned to it?

General HARBAUGH. Well, this board was called the Administration of Justice Review Board. It was established by General Clay. I forget the exact time, but it was established for the purpose of looking into all matters concerning the administration of justice in the European command. As I remember, it was originally established by General Order No. 90 of 1947.

Mr. CHAMBERS. This board I believe was created as a result of General Clay's interest which, in turn, was a result of the petition which had been filed before the Supreme Court in the Malmedy matter and also the appointment of the Simpson-Van Roden board; is that correct?

General HARBAUGH. I don't believe so. I think the Administration of Justice Review Board was appointed with general responsibility for everything that occurred in the command. We had questions that arose in military government courts, in the court-martial cases and several other classes of cases.

Mr. CHAMBERS. Did you make a particular study of the Malmedy matter?

General HARBAUGH. Yes, sir.

Mr. CHAMBERS. I noticed in this report that you all draw certain conclusions as to the conduct of the pretrial activities, as well as the trial procedures later on.

Generally speaking, I believe you divided those down into those matters involving physical mistreatment, and those involving mock trials and ruses and stratagems, and what not.

General HARBAUGH. That is correct.

Mr. CHAMBERS. Now, did you, during the course of your study of the Malmedy case, call in witnesses who had direct knowledge of these Malmedy matters?

General HARBAUGH. We made a study of all the available people in the European command. In fact, we got the names of everybody we could get, who had anything to do with the pretrial investigation, and I believe that we summoned before us all of the members of the prosecution staff or the investigating teams who were then in Europe.

Mr. CHAMBERS. In addition to that, did you get affidavits from those who were state-side?

General HARBAUGH. Well, in our interim report, we recommended to the War Department that additional evidence be obtained in the United States, particularly from Colonel Ellis and others who had been mentioned in the various affidavits that we had, from the men convicted in the Malmedy case.

Mr. CHAMBERS. Now, did you talk to any of the accused, themselves?

General HARBAUGH. You mean——

Mr. CHAMBERS. The German accused.

General HARBAUGH. No, sir.

Mr. CHAMBERS. Did you talk to their defense counsel or anyone who represented them at the trial?

General HARBAUGH. I do not believe we did. Our report shows a list of the witnesses; I do not recall.

Mr. CHAMBERS. Did you study the record of the trial in the Malmedy case?

General HARBAUGH. Not directly; no, sir.

Mr. CHAMBERS. Did you have someone available to you to tell you what was in the record of trial?

General HARBAUGH. Yes, sir. When we wanted any information from the record, we called Colonel Costello, who was in my office.

Mr. CHAMBERS. Did you study any, or have access to any, affidavits or any charges alleging mistreatment or mishandling of prisoners at Malmedy?

General HARBAUGH. Yes, sir. We had a great many affidavits that were submitted, I guess most of them to my office, from a great many sources.

I might say, the board was appointed to investigate the allegations made in Mr. Everett's petition, and that was our general problem.

Mr. CHAMBERS. In addition to that, however, you had these collateral responsibilities that you have already mentioned; is that correct?

General HARBAUGH. I do not believe I understand.

Mr. CHAMBERS. You said that you had other responsibilities in addition to the Malmedy matter; is that correct?

General HARBAUGH. You mean in the Administration of Justice Review Board?

Mr. CHAMBERS. Yes.

General HARBAUGH. Well, at that time the board was only engaged in investigating this one case.

Mr. CHAMBERS. In other words, it was started originally to look into these allegations made in the Everett petition as to the Malmedy case, but it later became somewhat of a continuing board; is that it?

General HARBAUGH. No, sir.

Mr. CHAMBERS. I am sorry; I must be confused on it, General.

General HARBAUGH. My recollection is just to the contrary; that the Administration of Justice Review Board was originally appointed for the general responsibility to report to General Clay on any maladministration of justice in the European command.

Mr. CHAMBERS. Yes?

General HARBAUGH. And as far as I know, at the time he designated this board the Malmedy case was not in the picture. I do not know what General Clay had in his mind.

Mr. CHAMBERS. Did you get a special directive to take a look at the Malmedy matter, or how did you get into that particular case?

General HARBAUGH. According to my recollection, the Secretary of War directed General Clay to make an investigation of the allegations in Mr. Everett's petition to the Supreme Court. General Clay designated the Administration of Justice Review Board to make the investigation and report to him.

Mr. CHAMBERS. Had the Simpson-Van Roden board already been to Europe when you started studying the Malmedy case?

General HARBAUGH. No, sir.

Mr. CHAMBERS. General, I wonder if you could tell us, as the result of your studies, how much credence or how much weight did you give the charges that had been concerning physical mistreatment and brutality?

General HARBAUGH. I think I could speak for Colonel Raymond, too, in saying that neither of us believed that there was any systematic violence or mistreatment of the accused.

Mr. CHAMBERS. What do you mean by "systematic"? That is the key word here, I believe.

General HARBAUGH. Well, that it was a planned procedure, that violence was to play any part in the obtaining of confessions.

Mr. CHAMBERS. Did you believe that violence had taken place?

General HARBAUGH. Well, we believed that maybe on occasions some interrogator may have been antagonized by a witness and may have pushed him around.

Mr. CHAMBERS. Did you believe that they were beaten and were kneed in the groin or kicked in their genitals, as has been testified here?

I must change that. I don't mean to say it was testified here—I mean as has been alleged here that it happened.

Did you believe that there were broken jaws and knocked-out teeth, and things of that type?

General HARBAUGH. No, sir.

Mr. CHAMBERS. Well, now, how much of an investigation did you make to determine that? Did you have any physical examination made of the prisoners, General, or anything of that kind?

General HARBAUGH. No, sir; we did not.

Mr. CHAMBERS. Why did you arrive at the conclusion that this thing or these things did not happen?

General HARBAUGH. We heard the witnesses. We read and studied all these affidavits, some of which portrayed every possible form of mistreatment that could possibly be conceived of. We considered the facts and the fact that most of these affidavits had been submitted long after the trial and were obviously submitted by men who had everything to gain and nothing to lose by making false statements.

Mr. CHAMBERS. Did you talk to Colonel Carpenter by any chance?

General HARBAUGH. No, sir.

Mr. CHAMBERS. Colonel Mickelwaite was not present at that time either?

General HARBAUGH. No, sir.

Mr. CHAMBERS. Did you have knowledge of the fact that an investigation had been made by the theater at the time of trial, of the alleged mistreatment of prisoners?

General HARBAUGH. Yes, sir. I think that was included in either Colonel Ellis' affidavit or Mr. Fanton's, I have forgotten which.

Mr. CHAMBERS. No one appeared before you presenting the accused to try to prove that these things actually happened? The only things that you had alleging mistreatment were the petition of Everett and the affidavits; is that correct?

General HARBAUGH. That is correct.

Mr. CHAMBERS. Now, General, let's come back to this systematic thing a little bit.

You say that you believe at times the interrogators might have become sore or irritated at some other prisoners and shoved them around a little bit. What do you mean by that?

General HARBAUGH. Well, pushing—

Mr. CHAMBERS. Do you mean struck them with their fists or kicked them?

General HARBAUGH. Not kicked, perhaps gave them a shove but no extreme form of violence in any way.

Mr. CHAMBERS. Well, now, what did you base that on?

What evidence did you have that they did shove the prisoners around?

General HARBAUGH. Well, I think we did have some testimony to that effect from Steiner.

Mr. CHAMBERS. Steiner?

General HARBAUGH. Yes.

Mr. CHAMBERS. That he personally had done it?

General HARBAUGH. I believe he said that he personally had not done it—but I am just speaking from recollection—I am not sure, and also we had the affidavits; we listened to the testimony of Kirschbaum and Mr. Thon; and Colonel Raymond and I both arrived at the same solution, separately.

Mr. CHAMBERS. Am I to gather from that, that Kirschbaum and Thon, and possibly Steiner, admitted that they had on occasions shoved these people around?

General HARBAUGH. No, sir. I don't believe Mr. Thon or Mr. Kirschbaum admitted touching anyone, and I don't believe Mr. Steiner admitted personally touching anyone; but it seems to me Mr. Steiner did mention the fact that he had seen somebody pushed around.

I am speaking from recollection now.

Mr. CHAMBERS. That has been some time ago.

Now, before you got into this study of the Malmedy case, you also had had some contact with the Malmedy trials through your normal duties as deputy judge advocate, isn't that correct?

General HARBAUGH. Colonel Straight was the deputy judge advocate—

Mr. CHAMBERS. That is correct.

General HARBAUGH. I was the judge advocate, and the Malmedy trials took place before I arrived in the command. I think it took place between—

Mr. CHAMBERS. April?

General HARBAUGH. Between April and July of 1946, and I arrived in Eucom in February of 1947.

Mr. CHAMBERS. Were review procedures in process when you got here?

General HARBAUGH. Yes, sir. The records were coming in, from time to time, from the deputy into my office and had been coming in to Colonel Mickelwaite's office for review prior to presentation to the theater command.

Senator BALDWIN. May I interrupt?

Mr. CHAMBERS. Surely, sir.

Senator BALDWIN. General, I notice in your report that you head the report "Final Report of Proceedings of Administration of Justice Review Board:

Concerning allegations contained in petition for writ of habeas corpus filed in the United States Supreme Court by defendants in case of United States against Bersin et al. (the Malmedy case).

In other words, as I understand, the sole purpose for which you and Colonel Raymond conducted this investigation was to investigate the allegations made in the petition.

General HARBAUGH. Of Mr. Everett.

Senator BALDWIN. Of Mr. Everett, and the affidavits accompanying the petition that Mr. Everett filed in the Supreme Court of the United States?

General HARBAUGH. That is correct; but we also considered some other affidavits which I have in my office, which pertained to the same matter, and were within the scope of the investigation.

Senator BALDWIN. Well, as a result of it you worked—

met pursuant to the order of reference (exhibit 2) at Berlin and Frankfurt, Germany, on 7, 16, 17, and 26 July and 20 August, 1948, to investigate the allegations in a petition of writ of habeas corpus * * *

And then further on, you say:

Thereafter on the date of 20 August 1948 the Board submitted a preliminary report in which it recommended that testimony of additional witnesses in the United States be furnished to the Board. This has now been done. The Board reconvened on 11, 12, and 13 January, and on 10 and 11 February, 1949, for further consideration of the matter. Between 20 August 1948 and 11 January 1949 the Office of the Advisor to the Military Governor for Military Government Affairs became vacant, and therefore, at the subsequent hearings the Board consisted of Col. John M. Raymond, director of the legal division, OMGUS, chairman, and Col. J. L. Harbaugh, Jr., judge advocate, EUCOM member, both of whom were present at each meeting. Although the chief judge of the military government court of appeals, United States Military Government courts for Germany, was appointed a member of the Board on 24 January 1949, he was excused by the chairman and took no part in the proceedings inasmuch as he had not been present at any of the earlier sessions.

So, when you were originally getting into this, it was on the basis of this petition, as I understand and what you were specifically looking for was proof, if you could find it, to support the allegations of the petition; and, the affidavit accompanying the petition—is that correct?

General HARBAUGH. Yes.

I might say, Dr. Carl Friedrich was the third member of the Board prior to our rendering of the interim report.

Senator BALDWIN. He didn't sign the report however.

General HARBAUGH. No, sir.

Senator BALDWIN. Why is that, do you know?

General HARBAUGH. He left EUCOM shortly after we submitted our original report.

Senator BALDWIN. Now, you say in your report here that you examined 7 witnesses that appeared before the Board, and 26 exhibits were received.

In addition, another witness was interviewed by Dr. Friedrich, a member of the Board, who reported to the Board the substance of what the witness would testify if called. The Board accepted in evidence affidavits from 52 of the petitioners who filed the petition for habeas corpus as indicating the testimony they would give regarding the allegations in their petition.

Do you have any idea where those affidavits are?

General HARBAUGH. I think they are attached to the report of the Board.

Senator BALDWIN. To your report?

General HARBAUGH. Yes, sir.

Senator BALDWIN (reading):

Other witnesses in this command who would appear to have any knowledge of the matters in question were interrogated. Most of the witnesses having first-hand knowledge of the matters complained of, other than the petitioners themselves, are no longer within this command.

At the hearings in January and February 1949 the Board received in evidence affidavits from the following individuals.

Then, you say that you received the affidavits of Colonel Mickelwaite, Lieutenant Colonel Ellis, former Major Fanton, former Lieutenant Colonel Crawford, former Captain Shumacker, former Lieutenant Perl, and former civilian interrogator Morris Ellowitz.

General HARBAUGH. That is correct.

Senator BALDWIN. So, I would say you made a fairly thorough study of this thing.

General HARBAUGH. We did the best we could with the available witnesses. There were a great many other witnesses whose names we had, like the doctors and certain other people that we could not call, and they were not called.

Senator BALDWIN. Did you, among the seven witnesses, interview the physicians, the American surgeons?

General HARBAUGH. No, sir; they were all in the United States.

Senator BALDWIN. I mean, the men attached at Schwabisch Hall.

General HARBAUGH. They were not in Europe at the time.

Senator BALDWIN. Beyond the reach of your investigation?

General HARBAUGH. Yes, sir.

Senator BALDWIN (reading):

The Board also received in evidence additional affidavits of several individuals submitted by the defendant Peiper in the Malmedy case (exhibit 36) and a number of affidavits submitted by Cardinal Frints, archbishop of Cologne, the latter being duplicates of certain of the affidavits in exhibit 23 (exhibit 37).

That is the petition, I assume.

General HARBAUGH. Yes, sir.

Perhaps I can explain about those affidavits. In my capacity as staff JA of EUCOM, I received petitions and affidavits from a great many people. A great many of them would be duplicates. For instance, a great many of these affidavits that we received from Cardinal Frints were duplicates of the affidavits which were attached to Mr. Everett's petition, and I think we received some from the Pope, but they were all the same identical affidavits, in most cases.

Senator BALDWIN. Now, General, did you personally know any of these men involved?

General HARBAUGH. Of the interrogators?

Senator BALDWIN. Yes.

General HARBAUGH. I think the only ones I met would be—I know Colonel Straight, of course; and Colonel Ellis; and I believe that is all, Senator.

Senator BALDWIN. Are they in any way, or have they been in their service in the Army, in any way associated with you?

General HARBAUGH. Well, all during the war-crimes operation, Colonel Straight was the deputy judge advocate for war crimes; and Colonel Ellis was down at Dachau as one of his officers.

Senator BALDWIN. What I am getting at, frankly, is this, General: Have you any reason to feel particularly friendly, or kindly disposed toward any of these men whom you were investigating; I mean friendly?

General HARBAUGH. No, sir. I think our approach was a judicial approach. We were striving to find the facts.

Senator BALDWIN. Did you, yourself, feel that the Army was sort of on the spot here? I mean, did you yourself feel that the Army was on the spot here in connection with this thing?

General HARBAUGH. Not necessarily on the spot, but I couldn't help but know all the accusations that were going on because of the affidavits that were just flowing into my office. Cardinal Frings, Bishop Worm, and Bishop Neuhauser were not only sending letters to General Clay which would be referred to me, but I knew all about what was going on particularly in Germany.

Senator BALDWIN. When did these affidavits first begin to appear, and these letters and petitions?

General HARBAUGH. I think there were a number of them attached to the record of the trial, but I think the great mass of them came in early in 1948.

Senator BALDWIN. That would be—

General HARBAUGH. No, no; it was later than that. No, that is probably right, in 1948.

Senator BALDWIN. This trial took place in April, as I recall, of 1946?

General HARBAUGH. Yes, sir.

Senator BALDWIN. You went over there as I remember it prior to April 1946?

General HARBAUGH. No, sir. I went over as JA of Eucom in February of 1947.

Senator BALDWIN. That is right.

General HARBAUGH. I was in Europe all during the war.

Senator BALDWIN. And you came home in 1945?

General HARBAUGH. Yes, sir.

Senator BALDWIN. And you went back in 1947?

General HARBAUGH. That is correct.

Senator BALDWIN. Did the matter of the investigation of this whole thing come under your charge in any way? What I mean is—was it part of your regular duties?

General HARBAUGH. Not the pretrial investigation of the Malmedy case because that occurred while I was in the United States.

Senator BALDWIN. Was the prosecution, the actual prosecution of the trial?

General HARBAUGH. No, sir, that had been completed when I arrived.

Senator BALDWIN. So, in other words when you approached this investigation you had had no connection with it, with the interrogation, and you had had no connection with the preparation of the prosecution of the trial.

General HARBAUGH. That is correct.

Senator BALDWIN. You said, early in your direct testimony I believe, that you made some statement to the effect that while you were judge advocate general for the Air Forces, as I recall it—

General HARBAUGH. Yes, sir.

Senator BALDWIN. You had some screening to do. What was that?

General HARBAUGH. Well, that was when the prisoner-of-war camps were overrun by our troops, and all the American prisoners of war were interrogated as to any possible war crimes; and, the Air Force, as well as the Ground Forces had a general directive to get affidavits from anybody who had any knowledge of any war crime. However, my Air Force connection with the investigation of war crimes, while I was there, was not to any great extent.

Senator BALDWIN. In other words, the screening you had to do was to take our men who were being released from prisoner-of-war camps, under the Germans, and find out what they might know or say concerning the war crimes?

General HARBAUGH. Yes. As I remember, we had to interrogate everybody before they went back, not only those that had been prisoners, but all the soldiers, before they went back.

Colonel Straight would know, because I think he was drafted by the directive of August of 1945—

COLONEL STRAIGHT. The requirement was to interrogate and get information from any who indicated that they had knowledge or had witnessed the commission of a war crime.

Senator BALDWIN. Well, we will resume here.

You said:

Finally the Board received in evidence a copy of an affidavit of Dr. Eduard Knorr who had been part-time dentist at Schwabisch Hall (exhibit 39), and a document purporting to be a copy of an affidavit by Carl Diebitsch, German camp commander at Schwabisch Hall, (exhibit 40) and an affidavit from Lt. Col. J. B. Costello, who had previously testified as a witness (exhibit 41).

You said the allegations in the petition for habeas corpus related to three distinct matters:

- A. Alleged improper methods used in procuring testimony,
- B. Impropriety in the conduct of the trial,
- C. Certain legal questions bearing principally on the guilt of the accused and the sufficiency of proof to support conviction.

Then, you say:

The allegations as to misconduct fall into two principal categories:

- A. The use of mock trials, threats, inducements and stratagems to procure sworn statements against other accused and to obtain confessions; and
- B. The use of physical violence for similar purposes.

In your findings, you say this:

That there was a limited use of mock trials.

Would you expand on that a little bit, General?

General HARBAUGH. Well, the various witnesses gave different numbers—I think Colonel Ellis had said five or six and somebody else said eight or nine, and we took that number from testimony that we had.

Senator BALDWIN. Did you find that that was a part of a general program that was to be applied to all prisoners, or if it was used only in specific cases?

General HARBAUGH. No, sir. We found that the maximum number of cases in which it was used was 10 or 12, and there were 73 defendants.

Senator BALDWIN. Then you say:

B. That there was a general use of the practice of persuading underlings to back by telling them the prosecution wanted to get their superiors and was not so much interested in them.

General HARBAUGH. Yes, sir.

Sentaor BALDWIN. Would you, as a lawyer obtaining evidence for a prosecution, be willing to express an opinion as to whether or not that was fair or unfair—whether or not it was proper practice or improper practice?

General HARBAUGH. Well, I didn't regard that as very improper.

Senator BALDWIN. I think you said, in your detailed discussion of this thing, that it was apparently the program of the prosecution, or the interrogators to break down, so to speak, the enlisted men by telling them that the only people that the prosecution was trying to get to was the officers, in order to try to get them to speak. Is that correct?

General HARBAUGH. Yes, sir.

Senator BALDWIN. What is your opinion on that, as to the propriety or impropriety of it?

General HARBAUGH. Well, I regarded that as sort of borderline. I didn't regard it as highly improper.

Senator BALDWIN. In other words, is it your feeling it would have been better if it had not been done?

General HARBAUGH. Yes, sir.

Senator BALDWIN. Then in "C" you say:

That physical force was not systematically applied in order to obtain statements, but that undoubtedly in the heat of the moment on occasions interrogators did use some physical force on a recalcitrant suspect.

Were you able to identify any particular cases?

General HARBAUGH. No, sir.

Senator BALDWIN. Well, upon what did you base your conclusion of that kind?

General HARBAUGH. As I said before, I think we had the testimony of Mr. Steiner, that he had seen some violence.

Senator BALDWIN. Who was Steiner?

General HARBAUGH. He was an interpreter who was there for 2 or 3 weeks.

Senator BALDWIN. Do you have Steiner's testimony before the Harbaugh Board?

Mr. CHAMBERS. He was still in Germany.

General HARBAUGH. I may be mistaken, but that is my recollection. We also heard Mr. Kirschbaum and Mr. Thon's testimony, we read the affidavits and we just had our experience in the world and arrived at that determination. From the testimony of Mr. Kirschbaum and Mr. Thon, why, it was a ladies' seminary, and that didn't strike us as being true to life, and we just used our judgment of what we had.

Senator BALDWIN. In other words, from your experience in the Army, I take it what you mean to say is this: You thought it highly improbable that a group of prisoners such as they had at Schwabisch Hall, these 74 SS troopers could be handled and interrogated and let around and returned to their cells and all that sort of thing without there being, at some time, some physical force used?

General HARBAUGH. Not to any great extent, but they were not just Gaston and Alphonse. When they wanted a prisoner to move, he moved.

Senator BALDWIN. Was there anything in the examination of the matter you made to indicate that the idea of threats of force, or physical force itself was used in order to secure a statement?

General HARBAUGH. No, sir; I didn't come to that conclusion.

Senator BALDWIN. You are quite sure of that?

General HARBAUGH. Yes, sir. I mean, I didn't think—I don't know, I can't speak for Colonel Raymond, but I didn't think that physical force itself played a part in obtaining the confessions.

Mr. CHAMBERS. I would like to ask a specific question at this point. We have this statement which appeared in the magazine known as the Progressive, under date of February, 1949, which states categorically that:

American investigators at the United States courts in Dachu, Germany, used the following methods to obtain confessions:

Beatings and brutal kickings; knocking out teeth and breaking jaws; mock trials; solitary confinement; posturing as priests; very limited ration; spiritual deprivation; and promises of acquittal.

It says that they used those methods in obtaining confessions. Do you agree with that statement?

General HARBAUGH. It is hard to answer that question because there are so many factors involved. I know that mock trials were used.

Mr. CHAMBERS. All right, sir. Suppose we take them in the order in which they are listed:

Beatings and brutal kickings.

General HARBAUGH. I don't believe that beatings or kickings played any part in obtaining confessions.

Mr. CHAMBERS. "Knocking out teeth and breaking jaws."

General HARBAUGH. Same answer.

Mr. CHAMBERS. Mock trials.

General HARBAUGH. I believe—I know that mock trials were, from the testimony in the record of the trial itself. It was conceded by the prosecution that mock trials did take place.

Mr. CHAMBERS. "Solitary confinement."

General HARBAUGH. Well, it is hard to answer that question exactly. I don't believe anybody was confined in solitary confinement for the express purpose of obtaining his confession; but, I do know that, from the testimony, that they kept the accused separated during the course of the interrogation because they did not want to send them back to their co-accused so they could talk over the story.

Senator BALDWIN. From your studies of the thing, and the investigation of it, was there any occasion where any one at the mock trials said, "Now, we have decided that you are going to be hung tomorrow. If you want to make a confession, this is your last chance to save your neck."

And then, they were put in a death cell.

Do you know of anything of that kind?

General HARBAUGH. We did our best to find out what was meant by the expression "death cell"; and, the best we could find out was that certain cells were there that may have been used for purpose in the old days of the prison, and as far as we could ascertain, no executions occurred while the Malmedy suspects were at Schwabisch Hall.

Mr. CHAMBERS. But, they did, as a matter of routine, keep these people in separate cells in this prison during the course of interrogation?

General HARBAUGH. That is what I believed, and I think that was what they said they did.

Mr. CHAMBERS. That is the same process of keeping prisoners in separate cells that exists in normal civil prisons, is that correct?

General HARBAUGH. Yes, and also they were faced with the proposition that they didn't want the accused to get together and make up a common story. They wanted to interrogate them separately.

Mr. CHAMBERS. Did you ever hear, or get any evidence that they postured as priests for the purpose of getting confessions?

General HARBAUGH. No, sir; we could find nothing excepting, I think, in some of the affidavits that allegation might have been made.

Mr. CHAMBERS. How about their being deprived of rations or placed on very limited rations for the purposes of getting confessions?

General HARBAUGH. To the best of my recollection, we found nothing that would warrant a conclusion that they were deprived of any rations.

Mr. CHAMBERS. Were they kept away from spiritual advice during that time?

General HARBAUGH. I don't recall much evidence on that point.

Mr. CHAMBERS. Now, did you find, and this has been a rather important point before the committee, whether or not, for the purpose of getting confessions that they made promises of acquittal, and things of that type?

General HARBAUGH. I don't believe they promised anybody immunity.

Senator BALDWIN. You say:

That in certain instances interrogators made threats to the accused that if they did not talk, their relatives would be deprived of their ration cards.

Were there any specific instances of that, that you recall? This is one of your findings.

General HARBAUGH. I recall that; yes, sir.

I think that allegation was repeated in almost every affidavit that we had, and I don't recall right now whether or not we had any direct evidence to support it.

Senator BALDWIN. You say "in every affidavit you had." Do you mean the affidavits of the Germans?

General HARBAUGH. Yes, sir.

Senator BALDWIN. Were there any affidavits of others who were not Germans who said that, do you recall?

General HARBAUGH. I don't recall any.

Mr. CHAMBERS. General Harbaugh, I noticed that Colonel Steiner, in his testimony before your board, was asked—

General HARBAUGH. Colonel Steiner?

Mr. CHAMBERS. Mr. Steiner, pardon.

General HARBAUGH. Yes, sir.

Mr. CHAMBERS. Was asked about this business of telling the accused that food tickets would be taken away from the mothers and wives, and in one instance, the testimony is as follows:

Oh, yes, I remember one instance.

Question. And when did that occur, while you were at Schwabisch Hall.

Answer. Yes. I don't know whether you referred to this incident that just comes to my mind. One of the accused was told that the food ticket had been taken away from his mother and his wife, or from his mother, parents, and sister, because the accused was a war criminal. Is that to what you are referring, sir.

Question. No. Was the accused ever told that?

Answer. Yes, sir.

Question. By whom?

Answer. Most likely by Mr. Ellowitz because he was the only man I worked with extensively. Yes, I remember that. He told him because he was a war criminal his folks would have to starve because the food ticket had been taken away from them.

Question. Who was the suspect, if you remember?

Answer. Nave, I guess, Nave, the man who had fits, the man who fainted several times. That is the same man if I am not mistaken. He comes from the north of Germany.

I have read all of Mr. Steiner's testimony, and that is the only reference he made to it.

Outside of that, Thon and Kirschbaum do not appear to make any reference to that particular matter.

General HARBAUGH. I thought we had some testimony to that effect.

Mr. CHAMBERS. Based on this testimony by Steiner you believe that it was possible that had happened?

General HARBAUGH. Yes, sir.

Senator BALDWIN. Off the record.

(There was discussion off of the record.)

Mr. CHAMBERS. That was the translator or interpreter who said he conducted an independent investigation solely for the purposes of getting the organizations and units of the accused.

Senator BALDWIN. You say in your conclusions here, with reference to mock trials, persuading underlings to talk by telling them that the prosecution wanted to get their superiors and was not so much interested in them; physical force, and this ration card thing—you say with reference to those four items, in "E":

That the practices referred to in A, B, C, and D above in certain instances exceeded the bounds of propriety but the Board has been unable to identify such cases.

Do you now want to expand on that a bit, General?

General HARBAUGH. No; that expresses it pretty well; just what we thought.

Senator BALDWIN. Do you mean by that, that you don't think or couldn't think of any particular instance or don't know of any particular instance?

General HARBAUGH. We couldn't nail down any particular accused who was subjected to any one of those particular forms of duress. We felt that from time to time those measures were used, but upon whom they were used we didn't know.

Senator BALDWIN. Then you say:

That there was a general use of other ruses, stratagems, stool pigeons, and similar practices justified by the difficulty of "cracking the case."

General HARBAUGH. Yes, sir; that is what we believed.

Mr. CHAMBERS. General Harbaugh, I wondered, on that particular point, did you feel that there was anything wrong with the custom of using stool pigeons and things of that type for purposes of getting evidence in this case?

General HARBAUGH. No, sir. Any legitimate ruse or strategy we did not question.

Mr. CHAMBERS. So that the fact that you included that in your report as a conclusion was because you were merely reporting facts as you found them, and not something that could be picked up with which you disagreed or felt was wrong?

General HARBAUGH. We didn't find that as anything that was reprehensible. We said the particular things that we thought were improper, and they were mentioned in A, B, C, and D; but this statement about ruses, stratagems, was just a statement of fact, a statement of things that were done and admittedly done, which we thought were reasonable under the circumstances.

Senator BALDWIN. Then you say:

That the conditions obtained at the prison, and the method employed in the interrogations had a definite psychological effect on the defendants and resulted in their being more amenable to giving statements.

What did you mean by that?

General HARBAUGH. Well, we meant that they were kept separately, and they were moved around with hoods on them to keep them from speaking to any of their coaccused, and those measures resulted in making them more amenable to making statements.

Senator BALDWIN. Other than the affidavit of Dr. Knorr, which we have before us in evidence, and which is only a page and a half long, as I recall it, was there any evidence at all of any broken jaws and knocked-out teeth, that you recall?

General HARBAUGH. Not directly, but I think perhaps some one of the accused may have claimed that in one of his affidavits. They claimed everything. If that wasn't included, it would be strange.

Senator BALDWIN. But other than the affidavit of the accused, you didn't find evidence of that, outside of Dr. Knorr's?

General HARBAUGH. And maybe this fellow Diebitsch. I believe Dr. Knorr was the only one who made any statements to that effect.

Mr. CHAMBERS. Did you make any effort to get in touch with Dr. Knorr or get any information from him of a direct nature?

General HARBAUGH. Yes, sir. Colonel Raymond and I were going to call him, and we had inquiries made and ascertained that he had just had either one or both legs amputated and was in the hospital, and under the circumstances we did not call him or go down there.

Senator BALDWIN. Then, you say:

That the defense had difficulties in preparation of its case, but such difficulties were ironed out, and the defense, considering all the circumstances of the case, had a reasonable time in which to prepare its case.

General HARBAUGH. Yes.

Senator BALDWIN. Was this investigation and report that you made, to your knowledge, intended to be used in any way as it affected the judgments that should have been rendered and the sentences imposed; or was it a study on the general conduct of the investigation and prosecution?

General HARBAUGH. As I stated before, General Clay directed us to investigate and render a report, and that is what we did. I think we added, in our recommendations, that our report be utilized in any future action that might be taken on the Malmedy case.

Senator BALDWIN (reading):

The Board recommends that this report, together with the testimony and exhibits, be considered in connection with any further consideration of the Malmedy case.

So, you did anticipate that in a review of the sentences imposed, this report would be considered?

General HARBAUGH. Yes, sir. We thought that whatever value it had should be made available to anybody who was considering any other cases.

Senator BALDWIN. Did you find any evidence to the effect that a very substantial number of these men, I have forgotten what the number is now, but it has been stated here on several different occasions that a number were permanently injured in their private parts by being kneed and kicked in the groin.

General HARBAUGH. I didn't believe any of that—any of those allegations.

Senator BALDWIN. What evidence, if any, was there to back up any such claim?

General HARBAUGH. The only evidence that I recall were statements in several affidavits, but by no means was that allegation general, even in the affidavits. According to my recollection, I know individuals accused claimed such mistreatment, but I do not believe that was one of the general claims.

Senator BALDWIN. You say here:

Only after the prisoners were at Schwabisch Hall, relatively isolated, and after experienced interrogators had been procured, was the case finally broken. The strategy of using one man against another was almost a necessary step. In every case that was approved the accused was convicted not only by his own statement but by corroborative testimony from others.

Do you still believe that to be a fact?

General HARBAUGH. Yes, sir.

Senator BALDWIN. Then, you say:

A second point not to be overlooked is the fact that only 9 of the 73 accused who were convicted took the stand. Whatever may be said about the method used in obtaining statements, had the defendants given completely false statements in their signed confessions, it is difficult to understand why they did not want to take the stand and repudiate them. The witness Narvid, the only member of the defense staff who testified before the board, stated that the defense staff felt that a prima facie case had not been made by the prosecution, but he further stated:

"We felt that the prosecution had still a considerable amount of other evidence in the form of statements involving these accused which they were utilizing for rebuttal, or intended to use for rebuttal * * *. They gave the impression they were hoping the accused would take the stand so that they could again 'really give it to him' * * *. They would involve themselves more than they were already involved." Colonel Everett, chief defense counsel, is reported to have stated that if he put the accused on the stand they would probably hang themselves (testimony of Straight). Lieutenant Colonel Ellis, in his affidavit, states that during the trial Colonel Everett was concerned about the unfavorable showing the accused were making on the court by their testimony, and discussed the matter with Lieutenant Colonel Ellis who told him that if he were acting for the defense and believed the accused were guilty, he would not put them on the stand. Thereafter, only three more of the accused took the stand.

You still believe that to be accurate?

General HARBAUGH. Yes.

Senator BALDWIN. You say:

Although the findings in this paragraph have only a remote bearing on the issues before the board, there was testimony on this point which was felt important enough to report. It does tend to discredit the idea advanced in the petition for habeas corpus that the methods used by the interrogators were so severe as to cause the accused to sign false confessions.

General, you investigated this thing personally, spent quite a lot of time on it, and took a good many pages of testimony. Did you examine the different sentences that were imposed?

General HARBAUGH. This board did not. I had two capacities in connection with the Malmedy case: I was a member of the Administration of Justice Review Board, which conducted this special investigation for General Clay; and, on the other hand, I was judge advocate of EUCOM, and I handled the Malmedy case as part of the war crimes cases.

Senator BALDWIN. In other words, you made this investigation of the way the case was investigated and prosecuted, I take it, on the basis of which you rendered this report?

General HARBAUGH. Yes, sir.

Senator BALDWIN. What was your other connection with it?

General HARBAUGH. In my capacity as judge advocate of EUCOM, I received the review and recommendations as well as the record of trial from the deputy judge advocate for war crimes, which was Colonel Straight.

Senator BALDWIN. Was that before or after this investigation?

General HARBAUGH. That was before.

Senator BALDWIN. So you had already passed upon, or had already considered the sentences, the judgments, and the sentences imposed?

General HARBAUGH. That is correct.

Of course, after this report, I, again, had the job of submitting the cases to General Clay for reconsideration.

Senator BALDWIN. So, you had been over them three times?

General HARBAUGH. I have been over them many times.

Senator BALDWIN. Did you participate in the recommendations, the last recommendations that were made to the theater commander, General Clay, for the reduction of sentences and the commutation of some of the sentences?

General HARBAUGH. Do you mean the last action General Clay took on the 12 condemned?

Senator BALDWIN. Yes.

General HARBAUGH. Yes, sir; I made recommendations to General Clay on each of the 12, and submitted a summary of the evidence and analysis of it and made recommendations. That was in March of this year.

Senator BALDWIN. March of this year?

General HARBAUGH. Yes, sir.

Senator BALDWIN. And, I have not compared your recommendations with the final directions of General Clay, but did he follow your recommendations, all of them, or did he not?

General HARBAUGH. Well, there were 12 cases involved. I recommended commutation in one and reaffirmation of 11. General Clay commuted 6 and reaffirmed 6.

Senator BALDWIN. Do you know what the process was in General Clay's office, of dealing with this? No doubt he personally passed on this thing, did he not?

General HARBAUGH. I wasn't there, but I know that he did, because all of these actions in these last 12 were virtually dictated by General Clay to his secretary, Captain Allen, because she would call me or I would call her when I received a copy of the cable that had been sent to the Secretary of the Army if I noted any obvious mistakes. Sometimes there would be a mistake in the translation or transmission of some word, and I would call Captain Allen and ask her about that par-

ticular matter, and she would say that she would see what General Clay had to say, and she would check with General Clay and see whether it was to be changed or not, depending upon what General Clay said.

Senator BALDWIN. What year did you graduate from the Military Academy?

General HARBAUGH. November 1918.

Senator BALDWIN. So, you saw service in World War I?

General HARBAUGH. Eleven days, sir.

Senator BALDWIN. And you spent your life in the Army?

General HARBAUGH. Yes, sir.

Senator BALDWIN. Did you start off with the idea of being in the Judge Advocate's department?

General HARBAUGH. No, sir. I was a line officer up until 1932, or 1931 rather.

Senator BALDWIN. And, then, you transferred?

General HARBAUGH. After I obtained my law degree from New York University and was admitted to the New York Bar and detailed in the Judge Advocate's department, I think in 1931 or 1932, and actually transferred to the department in 1935.

Senator BALDWIN. Would you say that you had a familiarity, reasonable familiarity, and knowledge of every single one of the death cases involved in this proceeding?

General HARBAUGH. Yes, sir. I would have to refresh my recollection, but every death sentence that was adjudged at Dachau went over my desk, practically all of them, after I relieved Colonel Mickelwait; the bulk came to me.

Senator BALDWIN. Did you review, carefully, the 12 cases on which you made recommendations to General Clay?

General HARBAUGH. Very carefully. I had a staff, of course, to assist me, but I checked the reviews against the statements of the accused, and in some instances I had retractions made where a word was very important.

Senator BALDWIN. Did you think this matter was important?

General HARBAUGH. I thought it was very important.

Senator BALDWIN. Why?

General HARBAUGH. Well, for every reason. I mean, I considered any case important, but particularly a death case, and this was probably one of the most outstanding cases that we had at Dachau.

Senator BALDWIN. I didn't ask that question, with any thought or inference that I did not consider it important. I, like you, consider them of vital importance. I was just wondering why you thought they were. I have my own opinion as to why I think so. You stated that in your opinion one thing was that a human life was involved. Was there any other reason or reasons?

General HARBAUGH. Well, I mean the public interest—there was more public interest in the Malmedy case. To be frank, my main interest was: I had a great many cases, and I wanted to come out with the right answer if I could.

Senator BALDWIN. Did you think it was of any great consequence to the Army?

General HARBAUGH. Yes, sir.

Senator BALDWIN. In what way?

General HARBAUGH. Well, I mean our procedure was under trial. There were allegations that it was improper, and I thought it was my job to examine the fact and give my best opinion.

Senator BALDWIN. Did you think that American interests were involved? I mean by that, American interests in the sense of world public opinion.

General HARBAUGH. Yes, sir.

Senator BALDWIN. In the course of your studies, General, did you ever make any special study of this matter of war crimes?

General HARBAUGH. I have made a great study of a number of war crimes cases—you mean, as to the policy?

Senator BALDWIN. Yes, as to the general policy of things, and how it should be conducted, and so forth.

General HARBAUGH. I have not made any great study as to that, because I joined up right in the middle of it. It was my job to carry it out—

Senator BALDWIN. You had nothing to do with the original set-up of the corps of the investigating staffs, prosecuting staffs, defense staffs, interpreter staffs, and so forth.

General HARBAUGH. No, sir, not as originally conceived; but after April of 1947, the whole war crimes operation came under my supervision. Colonel Straight was my deputy on the ground, but I was responsible.

Senator BALDWIN. Did any complaint ever come to you after you got over there in the theater in 1947 about the way the defense counsel had acted, or the prosecuting counsel acted—I mean, irrespective of the investigation?

General HARBAUGH. I don't remember anything definite, but I am sure I did hear something, because it was a great controversy at all times. Some people felt very strongly one way, and others felt strongly the other way.

Mr. CHAMBERS. General, I would like to come back to these last 12 death sentences.

I understand from your testimony that you recommended reaffirmation of 11 death sentences and one commutation. Now, I take it by that that you not only felt that these people were guilty in those 11 cases but that the proceedings and record and everything supported that belief.

General HARBAUGH. Yes, sir.

Mr. CHAMBERS. Do you know why General Clay changed five of those recommendations? I am not putting you in any position of judging General Clay, but was any reason given why he commuted five more than you recommended?

General HARBAUGH. He stated his reason in his cable to the Department of Army.

Mr. CHAMBERS. Could you tell us what—

General HARBAUGH. I can't recall exactly what they were.

The way I set up my recommendations, there were reasons for the commutation and reasons for the reaffirmations because I knew General Clay would have to give the reasons for his action, and I wanted to present the case to him so that he could make up his own mind. The fact is, he wanted to make up his own mind.

Perhaps I might add that the Simpson Board recommended commutation of 29 cases. Well, General Clay required my office to re-

submit all of the 29 cases and he personally told me to consider first all non-Malmedy accused, and then to take up the Malmedy accused. He further stated he did not want any recommendations from me, because I had already made one recommendation, and he had another recommendation from the Simpson Board, and he stated that he would make up his own mind. As to the 17 non-Malmedy accused, recommended for commutation by Simpson, I made no recommendation, but I saw him just before the latter part of February, on the Malmedy cases, and we discussed the best way of presenting them to him, and I asked him did he want me to follow that procedure and not make recommendations or did he want me to make a recommendation. He said: "Well, make a recommendation." So, I made a recommendation.

Mr. CHAMBERS. Now, in your opinion—and, again, if this question in the slightest degree is embarrassing at all, just say so and do not answer it, but in your opinion did General Clay believe that these people were guilty but that the evidence had either been presented in such a way, or the procedure was wrong and therefore he felt it proper to commute a total of 6 out of the 12?

General HARBAUGH. I think he stated in one of his actions that he agreed with me that the man was guilty but that because of certain matters revealed in the evidence before him, he thought it was proper to commute.

Mr. CHAMBERS. Was there any doubt in your mind as to the 12 death cases, that the men were guilty?

General HARBAUGH. No, sir; no doubt in my mind as to the guilt of any of them, no.

Mr. CHAMBERS. How about the one that you recommended for commutation?

General HARBAUGH. That was Briesemeister, and that was on the basis of the absence of much corroboration. I mean, there wasn't as much corroborating evidence in that case as we had in the others, and when I first recommended the execution I thought he was guilty. On my reanalysis, I recommended commutation, not because I did not think he was guilty, but it is hard to explain—between a death sentence and a life sentence, I mean there is a certain degree of moral certainty that you must have for a death sentence whereas, on a life sentence, any evidence beyond a reasonable doubt convinces you; but with me, on a death sentence, I had to be morally sure.

Mr. CHAMBERS. Well, now, as I understand the situation, you had made one earlier recommendation to General Clay on all of these cases?

General HARBAUGH. Yes, sir.

Mr. CHAMBERS. Let's see if I have the picture correctly on that: You had a group of officers that would analyze the reviews of the cases that Colonel Straight's office sent up to you, and they were sort of a staff for yourself, and based on their findings or conclusions, you would prepare a full recommendation to General Clay; is that correct?

General HARBAUGH. Perhaps, I could describe it as it actually happened.

Mr. CHAMBERS. All right.

General HARBAUGH. When I first arrived in April, or took over the duties of staff J. A. in April of 1947, the cases were not coming in very frequently, and Colonel Mickelwait, in the past, had reviewed them himself. I mean, he had read the evidence and either concurred with Colonel Straight or made some other recommendations. I fol-

lowed the same procedure for several months, until I finished with the Mathausen concentration camp case which involved, I think, forty-odd accused with maybe 20 or 25 death sentences, and the record consisted of roughly from ten to twenty thousand pages of testimony. I read that record which took me approximately 6 weeks, working day and night, and I arrived at the conclusion that I could not do it, that I would have to have somebody to assist me. So, as the result of that experience, I appointed boards of review in my office who had to certify to me that they had read the record, that Colonel Straight's review was correct and contained all the material facts, and if it didn't they furnished the additional facts.

Senator BALDWIN. May I interrupt?

What do you mean by "Colonel Straight's review"? You mean this document here [indicating]?

General HARBAUGH. Yes, sir, the review of the deputy judge advocate for war crimes.

Mr. CHAMBERS. I know that, but is that what might have been called a review by the Frankfurt Board? That expression has been used here in identifying various review boards. Is this the one?

General HARBAUGH. It may be. I don't know whether you referred to the Frankfurt Board and the adjutant's review board or the War Crimes Board of Review.

Mr. CHAMBERS. Is the Frankfurt Board the board that prepared the review for you in the Malmedy matter?

General HARBAUGH. That is correct. I might explain that.

Originally, I had one board of review in my office, of three officers, three lawyers. Then, the volume of work became so great that toward the end I am sure we had five boards and possibly six boards. The boards functioned directly under Col. Howard Bresee, who was chief of my review branch, and when a record of trial, together with a review of the deputy came to my office, it went to Colonel Bresee who assigned it to one of the boards, and that board rendered a report to him, and he rendered the board's report to me together with his recommendations.

Mr. CHAMBERS. Then, his recommendation was a separate recommendation from that made by the deputy judge advocate's office?

General HARBAUGH. The board of review made a separate report, signed by the members of the board.

Mr. CHAMBERS. Which, however, was not binding upon you finally, insofar as your final recommendation to General Clay was concerned?

General HARBAUGH. It was merely advisory to me. As I said before, I had them appointed because I found it was physically impossible for me to personally read all of the records of trial.

Mr. CHAMBERS. I noticed that in the Malmedy case—and we have this analysis which has been placed in the record previously—it indicates that the advisory board, to you in the Malmedy matter, recommended that 27 of the cases be disapproved.

General HARBAUGH. I think that is correct.

Mr. CHAMBERS. But that you felt that at least in 16 cases they were wrong, because you finally recommended disapproval in only 11 cases to General Clay.

General HARBAUGH. I have forgotten the exact number, but when the board's report came to me, I studied and I think I read most of the statements of the accused and the recommendations that I made

to General Clay reflected my judgment of what I thought was right.

Mr. CHAMBERS. It would appear that the Bresee board or the advisory board there had placed a little more weight on these various arguments of the defense as to duress and things of that type than you did, yourself.

General HARBAUGH. Yes, sir, and also they gave great weight to the fact that the dead bodies were not found in certain instances. In each of those instances I analyzed the evidence and I considered whether it was probable that it would be possible to discover the dead bodies under the circumstances, and where I disagreed with them, I recommended to General Clay that the convictions be sustained.

Mr. CHAMBERS. General, there has been a great deal of discussion that perhaps the defense had a little undue weight on this advisory board because of the fact that Colonel Dwinell was there in an advisory capacity. Colonel Dwinell testified here that he was assigned, not to one of these boards but to serve in an advisory capacity to the board and he further stated that he argued the defense's point of view on every occasion and as strongly as he could.

I wondered if that might have had some effect on the fact that you later had to sort of tone down their recommendations and reaffirm the decision of the earlier court?

General HARBAUGH. Well, I can explain just how that happened. I did not know that Colonel Dwinell was defense counsel in the Malmedy case when he was originally in the office. The Malmedy case came in, went to Colonel Bresee, and he had a board set up for them. He came to me and said, "Colonel Dwinell is on this board, he was a defense counsel", and recommended that we put somebody else on.

Well, it came back to the personnel job. I talked to him for a while and I said, "Who will we put on there?" And he said, "Well, I will think about it."

I think the same afternoon Colonel Dwinell came in and pointed out to me how he could not very well be defense counsel and at the same time sit on the board. I talked to him at considerable length and, as a result, relieved him from his official designation on that board.

Nevertheless, he had a vast knowledge of that case, he had been studying it with the trial; so I wanted to utilize his knowledge of that case, or I wanted the board to utilize his knowledge of the case, so I made him available to the board.

Mr. CHAMBERS. You made him available because of his technical knowledge and not as an advocate for the defense?

General HARBAUGH. I did not know that he was going to argue every question with the board. The fact is, I do not know what happened between Colonel Scarborough and Colonel Dwinell or with any other members of the board. What I received was the report of the board.

Mr. CHAMBERS. I think, perhaps, it would be well to read the short extract from the record here to you. When we were talking to Colonel Dwinell on the stand here, we asked him if he had any contact with the board of review, and the colonel said, "I certainly did." He was asked, "Did you know that while you were working with the board of review, that you were working on the Malmedy cases?" And he said, "I did." And I said, "Did you have anything to do with the preparation of this report?", and Colonel Dwinell said, "I did not, not to this extent. The report that I had before me was written in the main by Colonel Scarborough, the Review Board, and every day he and I

discussed the language therein, and wherever I could speak for the defense I did. Now, I will frankly state so." And I said to him further, then, "You would say that the point of view of the defense certainly had adequate representation before the board of review?" And he said, "They do. Very vigorously did I advocate the defense."

General HARBAUGH. He did have access to the board.

Mr. CHAMBERS. Surely.

General HARBAUGH. And what I wanted was the whole story. I think Mr. Everett was going to file a petition to the Supreme Court. I did not want to be surprised on any point.

I never talked to Colonel Dwinell, maybe a couple of times, on the case. My main connection with the review board was through Colonel Scarborough, who wrote the review. I did not know, if so, that Colonel Scarborough went over every sentence with Colonel Dwinell before he submitted it to me.

Mr. CHAMBERS. You had no knowledge at the time that Colonel Dwinell was going to assist Colonel Everett in preparing that petition, did you, General?

General HARBAUGH. No; I did not know. All I know about that is later on, after, I think, the case had been acted on by General Clay, a request came in from Everett to send Colonel Dwinell back to the States to assist him in preparing the petition; and it came back to the same old question of personnel, and I thought Colonel Everett had had more than a year and a half to work on this petition and that I needed Colonel Dwinell, so I recommended that Colonel Dwinell not be sent back.

Mr. CHAMBERS. General Harbaugh, having read the trial proceedings, the record of review, and the recommendations of your advisory board of review, and then subsequently in connection with this later board having the chance to read the Everett petition before the Supreme Court, do you feel that the allegations made by Everett in support of his petition were in accord with the record as you knew them?

General HARBAUGH. I do not believe the allegations as to physical violence were supported by any proof. I mean his statements about mock trials, I think, are more or less accurate. You might find some differences. But the best description I saw of the mock trial was Lieutenant Perl's testimony in the record of trial in connection with Hennecke.

Mr. CHAMBERS. Insofar as the charges in his petition, concerning brutality and physical mistreatment of prisoners, from your knowledge was there anything in the record to substantiate those?

General HARBAUGH. In the record of trial?

Mr. CHAMBERS. In the record of trial, or in any of the records you had seen, any evidence of probative value that would have supported his petition.

General HARBAUGH. The only things I have seen are these countless affidavits from the accused and from other people. I mean very recently—I guess the committee is familiar with Eberle's affidavit which came in rather recently. That was referred to EUCOM while I was there.

I do not know if final report has been made. We were endeavoring to run that down. At the time I left we were of the opinion that

Eberle was never at Schwaebisch Hall. I do not know whether any final report has been made to the committee. He was down in the French zone and we were checking through the French authorities.

Mr. CHAMBERS. General, I would just like to ask your comment on one other question that has come up here repeatedly. We have had this rather provocative article which has appeared both in the press and in this magazine. They end it up with the conclusion that the American investigators who committed the atrocities in the name of American justice and under the American flag are going scot free and that they should be exposed in a public process, preferably in the United States, and prosecuted.

Now, as responsible officer over there for matters of this kind, particularly the investigative branch, pretrial branch, do you feel that the facts as you know them warrant such a conclusion?

General HARBAUGH. As a matter of fact, before I left, why, we were expecting an inquiry from the newspapers at any time as to what we were going to do with respect to the accusations against the various interrogators, and I had some officers working on that problem. The only evidence that we had of any misconduct on the part of interrogators was these affidavits, and it was a question of whether you believed them.

We had arrived at no decision, but there was no—as a matter of fact, we stopped it as soon as we heard that this committee was investigating it because we knew you would be able to obtain a great deal more evidence than we would ever be able to get.

Mr. CHAMBERS. I have no further questions, Mr. Chairman, except I do think we should put in the record just one very brief statement here by Steiner. I have skipped through his report, and insofar as this question of brutality and beatings is concerned, Steiner was asked several times, both by yourself and Colonel Raymond:

Question. Did you ever witness any physical violence being used on these suspects by the interrogators or by their translators?

Answer. Real physical violence I never witnessed myself. Probably pushing, something like that; I wouldn't deny that. I have seen it two or three times. I don't remember exactly who did it, but I mean what you would probably call beating up; personally I never witnessed anything of that kind.

And there are six or eight answers of a similar vein here which corroborates completely the statement.

General HARBAUGH. What I had in mind was the statement that that was the only testimony of that character we had. I would also say I used my own judgment. I have been on duty in a prison for 4 years, and I have also investigated cases, and I know that it is not any girls' seminary, and some of Mr. Kirschbaum's testimony and Mr. Thon's did not impress me as being—I do not mean they were lying, but it was too gentle.

Senator BALDWIN. They gave themselves the benefit of the doubt?

General HARBAUGH. Yes, sir. I just used my own experience in the world in general.

Mr. CHAMBERS. But you did not feel that beyond this pushing around that any of these other charges were substantiated?

General HARBAUGH. That is correct. I did not believe they were beaten with a view of obtaining confessions from them or that they were struck.

Mr. CHAMBERS. Did you believe they were beaten?

General HARBAUGH. No; I say I do not believe they were beaten for the purpose of obtaining confessions. There was evidence, I believe, from Peiper, which may have been true, that some Polish guard kicked him in the back side, which might have happened, I do not know, but that had nothing to do with his confession.

Mr. CHAMBERS. As a matter of fact, if I remember the record of trial on that, that was shortly before they were taken to Dachau.

Senator BALDWIN. The day before, I think he said.

Mr. CHAMBERS. I have no more questions.

Senator BALDWIN. When I said that they gave themselves the benefit of the doubt, I mean I was putting words in your mouth. I did not intend to do that, General. But what I meant was that, as I said before, it was your opinion that in handling the SS troopers, it is highly improbable that there was not at any time some pushing or shoving or maybe some physical force used, but that you did not find there was any systematic use of physical force in order to obtain confessions; is that true?

General HARBAUGH. That is correct.

Senator BALDWIN. I think that is all. Thank you very much, sir.

Mr. CHAMBERS. Mr. Sutton.

Senator BALDWIN. Hold up your right hand. Do you solemnly swear that the evidence you shall give in the matter now in question shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SUTTON. I do, sir.

TESTIMONY OF GRANGER G. SUTTON, WASHINGTON, D. C.

Mr. CHAMBERS. Mr. Sutton, will you give us your full name and present occupation?

Mr. SUTTON. Granger G. Sutton, lawyer and printer.

Mr. CHAMBERS. Would you give us some knowledge of your legal background, Mr. Sutton?

Mr. SUTTON. I graduated from National University in about 1930 or 1931 with an A. B., and about a year later with a master's degree.

Mr. CHAMBERS. When did you go in the Army?

Mr. SUTTON. November 29, 1940.

Mr. CHAMBERS. Did you go directly into the JAG Corps, or in what capacity?

Mr. SUTTON. I have never been detailed or assigned to the JAG Department, but I have had extensive legal work on the general courts, special courts, as well as summary courts.

Mr. CHAMBERS. Were you a practicing attorney before you went in the Army?

Mr. SUTTON. Yes, sir.

Mr. CHAMBERS. A member of the District bar?

Mr. SUTTON. Member of the District bar and also member of the bar of the State of North Carolina.

Mr. CHAMBERS. I believe during the war you were assigned to the War Crimes Branch.

Mr. SUTTON. Yes, sir; I was sent over from Vienna, Austria. They were in need of lawyers, and they selected about six of us and sent us over to EUCOM. From EUCOM I was assigned over to Wies-

baden, and very shortly after that, a day or two, went down to Dachau.

MR. CHAMBERS. You were one of the defense counsel in the Malmédy trials?

MR. SUTTON. Yes, sir.

MR. CHAMBERS. Mr. Sutton, I wonder if you could tell us in your own words or give us any comments in your own words about the Malmédy trials. As you know, there have been a great many charges made, both pro and con, in connection with the way the Malmédy trials were prepared and the way they were conducted, and I thought you might have some general statements you would care to make, based on which we might develop further testimony by questioning.

MR. SUTTON. I was the last of the defense counsel to be assigned to the Malmédy case. The special order, which is mentioned in the writ of habeas corpus filed by Colonel Everett in the Supreme Court of the United States, is in error. I was not the trial judge advocate. I was one of the defense counsel.

At the time I arrived it was several days before we could get any interpreters, and when we did get interpreters, their German was not too good and their English was not very good. Some of the interpreters assigned to the other defense counsel were very good.

The defense was divided up so that the German defense counsel had various officers; all of the higher-ranking officers were represented by German Counsel.

MR. CHAMBERS. Were they civilian defense counsels hired by the Germans, or military defense counsels who could speak German who were assigned to them?

MR. SUTTON. There were five German lawyers, and they were paid, if at all, from other funds than that of the United States Government.

MR. CHAMBERS. And they pretty generally handled the officers; is that correct?

MR. SUTTON. Colonel Dwinell and Mr. Strong also were charged with responsibility of defending all of the commissioned officers. Mr. Wahler and then Capt. Ben Narvid were assigned to defend the non-commissioned officers, and Second Lieutenant Wahler and myself were detailed to defend the privates and private, first-class.

MR. CHAMBERS. How many privates and privates, first-class, were there in the group, do you recall?

MR. SUTTON. Twenty-four.

MR. CHAMBERS. Twenty-four out of seventy-three?

MR. SUTTON. And the noncommissioned officers ran about the same. It figured out it was very well divided in three ways as to numbers.

MR. CHAMBERS. So that this division did give a fairly uniform distribution of the work load, with the exception of the fact that there were five additional German attorneys who had been retained by some of the officers?

MR. SUTTON. That is correct.

MR. CHAMBERS. When you first got down to Dachau, did you find that it was possible to get going with the preparation of the case for defense and did you have adequate time to prepare your defense?

MR. SUTTON. As I previously stated, it was some time before we got any interpreters.

MR. CHAMBERS. I wonder if we can pin that down. Do you recall when you got there? Sometime in April, I take it.

Mr. SUTTON. Yes; it was sometime in April. I would say maybe about the 10th of April, right around there, I am not positive of that date.

Mr. CHAMBERS. How long did it take you to get an interrogation staff that was adequate to do the job?

Mr. SUTTON. Maybe 4 or 5 days, maybe even longer.

Mr. CHAMBERS. Did you feel that you had after you got your interrogators adequate time and adequate facilities to prepare your case for defense?

Mr. SUTTON. We could have done a much better job if we had had more time.

Mr. CHAMBERS. Did the prosecution or the Army authorities generally assist you by making facilities available to you or did they perhaps go the other way and impede your efforts?

General HARBAUGH. I would say that the facilities there were adequate. There was nothing elaborate. Lieutenant Wahler and I had a room there and, as I stated, we had most of the time two interpreters there. They could do a little typing, but I did most of the typing that was done for our group.

Mr. CHAMBERS. I believe it has been testified that shortly after the defense began to work on this matter, they prepared a questionnaire which was circulated to all the accused for the purpose of developing certain basic data in connection with their own particular part in the matter. Had that been prepared when you arrived?

Mr. SUTTON. No, sir; that was not prepared until sometime after I arrived. As a matter of fact, I participated in framing this questionnaire.

Mr. CHAMBERS. In the preparation of it?

Mr. SUTTON. Yes, sir.

Mr. CHAMBERS. When those questionnaires came in, did they turn over the 24 that were assigned to you or did they keep those in the central office or how was that handled?

Mr. SUTTON. My recollection is that they filled them out, and those of the enlisted men were given to Lieutenant Wahler and myself, and the others were given to other teams.

Mr. CHAMBERS. That means you had an adequate opportunity to study those questionnaires and get all the data off them; is that correct?

Mr. SUTTON. Yes, sir. I will state, though, that those questionnaires did not develop by any means what was developed later. These men seemed to have a kind—they were leery about taking us into their confidence, notwithstanding the fact that we tried to impress upon them, and we had to do it frequently, that we were representing them and that what they told us we were not to divulge to others, except in the use and defense of themselves and their fellow officers and enlisted men.

Mr. CHAMBERS. Mr. Sutton, when did you first become aware of the charges being made by the accused concerning this physical mistreatment and violence?

Mr. SUTTON. Well, I had statements prepared from each one of the 12. I had 12 of the ones who actually were at Malmedy; and from the time that we gave the questionnaire, that was the beginning of when we got information about it, and in preparing for the trial we were required to write down every question and every answer that

we proposed to put to them, and that involved a considerable amount of work.

Mr. CHAMBERS. By whose requirement was that; sir?

Mr. SUTTON. The chief defense counsel's requirement.

Mr. CHAMBERS. Colonel Everett?

Mr. SUTTON. Yes, sir.

Mr. CHAMBERS. Go ahead, sir.

Mr. SUTTON. I thought it was a very good idea and, of course, if anything else developed, we could ask additional questions, and if something else was brought out on the stand, then, of course, we could pursue the points that were brought out. We were not confined to those questions and answers.

Mr. CHAMBERS. Surely. As I understand the picture, you had direct responsibility for 12 of this number of privates or privates first class.

Mr. SUTTON. Yes, sir.

Mr. CHAMBERS. Now, did they in the preparation of the case for trial after you began to get into their confidence a little bit, begin to allege physical mishandlings and brutalities in connection with getting their confessions?

Mr. SUTTON. Yes, sir; out of the 12 I represented there was some form of either duress or promises of reward or mistreatment or threats.

Mr. CHAMBERS. Can we sort these out, Mr. Sutton, because we have this matter of promises of reward or immunity, then we have this matter of threats, and then we have this matter of physical force used as duress or for the purpose of getting their confessions.

Included, I presume, in duress would be many things, but we can take this matter of physical brutality and mistreatment and talk about that for the moment.

Mr. SUTTON. My recollection is there were about four or five. Now, the group that I have would be more than likely, they would be most subjected to bad treatment, if bad treatment was given, and I have their words for it and also the words of other people questioned there and those that we questioned. Those we questioned outside of the actual accused were also members of that regiment, almost without exception.

Mr. CHAMBERS. Did you feel these four or five who alleged physical mistreatment were telling the truth?

Mr. SUTTON. I only have their word for it, and I have nothing else to say.

Mr. CHAMBERS. I am not pinning it down on you; but, as I gather, you have had some experience in the law and other matters, and here you have men who have given you a confession. The thing I am trying to get is your honest evaluation as to whether or not these people had been beaten up and perhaps gone through this rather strenuous physical mistreatment you have heard discussed here this afternoon for the purpose of getting their confessions.

Mr. SUTTON. These four, I do believe they were mistreated. I have no reason to disbelieve their statements.

Mr. CHAMBERS. Do you recall any of the particulars of their charges? Was it physical beating, knocking out of teeth, was it kicking in the genitals, or what is the story?

Mr. SUTTON. One, I believe, said he was kicked, and two or three said they were hit by either interpreters—one or two said they were hit by Polish guards.

Now, at Schwabisch Hall—

Mr. CHAMBERS. Excuse me, sir. You said, "interpreters" and "Polish guards." How about interrogators?

Mr. SUTTON. When I said "interpreters", I meant "interrogators," the teams that worked with them in getting statements.

Mr. CHAMBERS. Yes. Did they mention any particular names or any particular individuals?

Mr. SUTTON. We had a photograph there of the Army team—that is, there were in my recollection ten or twelve, and included among those were Colonel Ellis, Captain Shumacker, Mr. Thon, Mr. Perl—

Mr. CHAMBERS. Mr. Ellowitz?

Mr. SUTTON. Ellowitz was on there. There was a lieutenant there, promoted to captain just before he left.

Senator BALDWIN. Shumacker?

Mr. SUTTON. No, sir. He participated as assistant trial judge advocate. They pointed out three or four of these as people who had been mistreated. I am quite sure Colonel Ellis was not involved, nor was this young lieutenant I mentioned. My recollection is that Ellowitz and Perl and Thon were the ones they centered on.

Senator BALDWIN. What did they say they did?

Mr. SUTTON. Just pushed them around, hit them or kicked them.

Senator BALDWIN. Did they say they had knocked out any of their teeth?

Mr. SUTTON. No, sir, Senator, the only thing I recall about anyone getting teeth knocked out was a statement by one other than the accused, and this thing about being kicked in the genitals, I do not recall whether it was one of the accused or not.

Senator BALDWIN. There was one case you remember, though, Mr. Sutton, of a boy, some one of them being kicked in the genitals?

Mr. SUTTON. Yes, sir.

Senator BALDWIN. Do you know by whom?

Mr. SUTTON. No, sir, I do not recall that. I can say this, though: That frequently when we could get an opening on the stand, when the prosecution would put a witness on, if the prosecution would open the door, frequently we could get evidence in of mistreatment of the accused as well as others by the teams.

Senator BALDWIN. You say there one case of a man who had teeth knocked out but he was not one of the accused?

Mr. SUTTON. My recollection is that he was not one of the accused.

Senator BALDWIN. You say there was another one of the enlisted men that you defended—that is, the privates or privates first class—another one who claimed he had been kicked in the genitals?

Mr. SUTTON. I am not positive whether it was one of the accused or one of the others. I believe it was one of the accused. It has been sometime ago.

Senator BALDWIN. You do not recall positively?

Mr. SUTTON. Not positively.

Mr. CHAMBERS. When these charges came in, I believe you were conferring with the other defense counsel on this matter, and they had similar complaints from their people; is that correct?

Mr. SUTTON. Yes, sir. As a matter of fact, the way it worked out after the trial, we wrote up the petition for review and in that petition we covered the record thoroughly, pointing out the deficiencies in it.

as much as we could and analysed the evidence and, in addition to that, there were quite a few statements, I believe, attached to that petition that went on up to the higher headquarters, which is EUCOM.

Mr. CHAMBERS. How do you account for the fact, Mr. Sutton, that it was not until some 2 years later that we suddenly got this flood of affidavits, the majority of which allege most serious things, and I would say that a great number of them allege kicking in the genitals and beatings—they are just uniform throughout all of them—and their being kept on short rations, and I think about 10 or 15 in this group who charged that the only drinking water they could get was drinking from the toilets in their cells, and very exaggerated things.

Were stories like that told you when you were preparing the cases for the trial?

Mr. SUTTON. As I stated, there was evidence of promises and threats and some violence.

Mr. CHAMBERS. Have you had an opportunity to read the affidavits that supported Everett's petition for habeas corpus?

Mr. SUTTON. No, sir; I have not. I have not had an opportunity to read them all. There were a few prepared while I was still at Dachau.

Mr. CHAMBERS. Can you remember the name of any one or two of the people you defended?

Mr. SUTTON. Oh, yes. I have got a sheet here.

Senator BALDWIN. Will you read their names off?

Mr. SUTTON. I am not sure whether I can give them all or not.

Mr. CHAMBERS. Just one or two.

Mr. SUTTON. Marcel Boltz is the first one.

Mr. CHAMBERS. He was released to the French zone. Can we have somebody else?

Mr. SUTTON. Eckman is the next one; Fritz Eckman.

Mr. CHAMBERS. Another?

Mr. SUTTON. Georg Fleps.

Mr. CHAMBERS. Do you remember, by any chance—

Senator BALDWIN. Let's get him to read off those he represented as well as he can remember.

Mr. SUTTON. You must remember, Senator, it has been a long time since I have seen this list, and it is a little difficult.

Senator BALDWIN. Do the best you can with it.

Mr. SUTTON. I think Gebauer.

Senator BALDWIN. I think they have their ratings in this report here.

Mr. SUTTON. If I could see a copy of that—Fritz Eckman, Rolf Ritzer, Georg Fleps, Wolfgang Richter, Heinz Friedrichs, Fritz Gebauer, Joachim Hofmann, Siegfried Jakel, Friedel Kies, Springer—I do not see his name on here—Johann Wassenberger.

Mr. CHAMBERS. Did you get your 12?

Mr. SUTTON. That is the best I can remember.

Senator BALDWIN. Do you remember which were the four that alleged brutalities, physical beatings of any kind?

Mr. SUTTON. No, sir; I do not recall that.

Mr. CHAMBERS. Did anybody ever say they had been beaten with a club, for instance, beaten to the ground, knocked unconscious?

Mr. SUTTON. There were statements to that effect from some of the men, but I do not recall just who they were.

Mr. CHAMBERS. It is down to the point, however, where there were about four of the group who alleged physical mistreatment?

Mr. SUTTON. I would say four or five alleged physical mistreatment.

Mr. CHAMBERS. We will take a look at a couple of these affidavits here. Here is the affidavit of Eckmann. I am going to take the liberty of just pulling extracts from it about physical brutality. He said:

I had my first interrogation on December 18. Those present were Perl, Ello-witz, and an interpreter. I was told by Perl I would be executed the next morning. He thereupon asked me if I wanted to talk to a priest. I was then taken into the death cell. I was fully convinced of it. On January 7, I was interrogated by the prosecutor, Ello-witz. I was beaten in the face by the interpreter, and my head was beaten against the wall. When I did not say anything, Mr. Ello-witz turned away and nodded to the interpreter, whereupon he beat me with his fists in the face again. I then fell to the ground.

Following this, I had to stand at attention against a wall when the interpreter said, "I am told that you are a hard nut to crack, but I'll soften you up." I received some more slappings and fists in the face and then they left the cell.

I then once again was taken into a death cell and was kept for 14 days. The windows were open day and night; there were no blankets and mattresses at all. I had to lie on the wooden bed day and night. There was no sleeping due to the cold.

On about February Mr. Thon and Mr. Perl came to my cell and wanted me to make a statement. Mr. Thon then beat me in the face with his fists till I fell to the ground. Then they left the cell. I was supposed to be taken to Klein-Ursel to be executed. When I was standing in the hallway, I was beaten with a club, but I cannot say by whom because I was always wearing a hood.

Whenever we wanted a drink of water, we had to drink it out of the toilet—and so on.

Now, were statements like that made to you by Eckmann or can you recall?

Mr. SUTTON. I cannot recall that Eckmann made a statement, but that is typical of at least five who made statements of that kind, at least five.

Mr. CHAMBERS. Who was the next one, Fleps?

Mr. SUTTON. George Fleps; yes, sir.

Mr. CHAMBERS. Fleps said that Perl kicked his legs—he says:

Perl kicked my legs and shouted for me to undress my upper body—talking about Lieutenant Perl.

I was then led by Perl to the death cell but was returned right away to the interrogation cell where I was beaten from the back with a club by a guard.

That is Fleps.

Mr. SUTTON. Yes, sir. Fleps was the one that was alleged to have fired the first shot there at Malmédy.

Mr. CHAMBERS. Do you recall Fleps making charges of physical mistreatment?

Mr. SUTTON. I will be frank, I do not have definite recollection of the statements they made, but that is the tone of the statement, that at least five made, and when I gave the figure "5" I was conservative.

Senator BALDWIN. In other words, your best recollection of it now is that, conservatively estimated, five of these privates and privates first class that you represented made statements sort of in the nature along the lines of those contained in the affidavits about their treatment at Schwaebisch Hall?

Mr. SUTTON. There were a least five who testified as to physical violence in obtaining confessions, and there were about six others testified about threats of withholding rations and also promises that they would

be given lighter sentences if they would confess and also that they were not interested in prosecuting the small fry; they wanted to get their officers.

As a matter of fact, they kind of led them to believe that they were not going to get any punishment if they would just talk, and one of them did talk, namely, Springer, to the extent of his first statement consisting of around 14 or 16 pages, legal-sized paper, single-spaced. His second statement was almost as long, and then, in addition to that, he had two or three additional short statements.

Now, the question has been asked here: Why did we not put them on the stand and bring out the fact that there were threats and duress and promises of reward?

The reason was this: That it was talked over with the law member of the court as well as the prosecution, Colonel Ellis, and they said, both of them, if they were put on the stand for any purpose that would open the door for any question the prosecution or the court wanted to ask; and we figured it would be better not to put them on the stand with that in our face.

I only put one man on the stand, and that was Marcel Boltz, and the way he got out of it was this: That he happened to be an Alsatian, the Germans came along and picked him up like that—they had a lot of other people in that part of the country—put him in the army; he did not have any choice, just like some of the others there. He did not have any choice of being in this SS outfit.

There was a lawyer who came down from Paris to talk to us about that. He was there 3 days, and I let him have all the information I had. He was a graduate of Harvard Law School, a Frenchman. I told him when he first started talking about it that the only thing he could do, in my opinion, was to get in touch with our State Department and have the French authorities get him out of there.

Presumably that is what happened, because after he took the stand, just about 2 days later, a telegram came from EUCOM dropping him from the case. I do not know where he went from there.

Mr. CHAMBERS. Mr. Sutton, you say that the reason you all did not put them on the stand to give them a chance to tell about duress, physical force, and what not, was because you were afraid you would open up a line of questions about other matters which might condemn them because they had been associated with other units or other activities which would prejudice their case; is that correct?

Mr. SUTTON. Well, of course, the way I understand the law is that you can put a man on the stand and he can testify about things that are not pertaining to the issue.

For instance, in your courts martial, you can put an accused on the stand and, assuming that he is being tried on five specifications, he can testify about one, and the prosecution is not permitted to ask him questions about the others.

He can get up there on the stand and testify about his good conduct, what a good soldier he is, and have other people testify to this effect, what campaigns he has been in, the duties he has performed, length of service, and things of that kind, and he cannot be questioned about the specifications.

But that departure was taken along with other departures, not only in procedures, but, I believe, in the findings of some of the courts—and I speak advisedly because I was a member of many a court down there.

Right here, this is the law that worked over there. It is taken from the handbook:

Rules of Evidence and Procedure: A, Ordnance No. 3 of Military Government, which ordnance is incorporated in the Technical Manual for Legal and Prison Officers, second edition. rule 3, ordnance 3, evidence: A military government court shall in general admit oral, written, and physical evidence having a bearing on the issues before it and may exclude any evidence which in its opinion is of no value in proof. If security is at stake, evidence can be taken in camera, or in exceptional cases where security demands, it may be excluded altogether.

2. The court shall in general require the production of the best evidence available.

3. Evidence of bad character of the accused shall be admissible for finding only when the accused has introduced evidence as to his own good character or as to the bad character of any witnesses for the prosecution.

B, Guide to Procedure: Military government courts may waive requirements from the guide to procedure. Evidence: Rule 12 does not incorporate the rules of evidence of the British or American courts or the courts martial.

In other words, Senator, they made their own rules over there.

Mr. CHAMBERS. Mr. Sutton, did they make the rules—not to beggar this point, but it has been one which has been discussed at great length by both sides—you were operating under a set of rules for the conduct of these military courts and commissions, which originally, as I understand it, were prepared by SHAEF, and when SHAEF went out of business, a manual which was substantially the same was prepared and came out, and insofar as the rules of evidence were concerned, they pretty much followed the continental system in that they would admit any evidence that had probative value to a reasonable man, which is entirely different from our common law rules of evidence; is that correct?

Mr. SUTTON. I have never practiced in Europe except in military government courts and courts martial cases, but I did talk with German lawyers in regard to the matter, and they say they have no procedure that compares with our type of procedure. That is, the type that was conducted over there in these cases. Now, continuing here:

The only positive rules binding upon the military government courts are found in rule 12 (3), rule 17 (1), rule 10 (5), hearsay evidence, including the statement of a witness not produced is thus admissible, but if the matter is important and controverted, every effort should be made to obtain presence of the witness, and an adjournment may be had for that purpose. The guiding principle is to admit only evidence that will aid in determining the truth.

On that hearsay evidence, let me tell you an instance. This is in the record. After beating this fellow down, wearing him down—and, undoubtedly, a man getting in that frame of mind was not treated with kid gloves—he committed suicide, and, Senator, the court admitted that statement, unfinished statement, not signed, admitted it in evidence. Now, they do not bother about admitting hearsay only, they will even get secondary hearsay, and, I believe, the record will show some of that is in. I know they even got tertiary hearsay in some of the other cases because I was a member of a court when such evidence was presented.

Senator BALDWIN. In the Malmedy cases?

Mr. SUTTON. In regard to this fellow's statement who committed suicide, which was in the Malmedy case.

Senator BALDWIN. Were the others you referred to in the Malmedy cases?

Mr. SUTTON. Quite a bit of hearsay was admitted, even in the Malmedy cases, and in other cases secondary and even third-hand information was put in. As a matter of fact, in one of the cases a clipping from one of the magazines in the United States was entered in evidence.

Mr. CHAMBERS. This is a case you have reference to, the Freimuth case?

Mr. SUTTON. Freimuth was the man who committed suicide.

Mr. CHAMBERS. And he had been in process of preparing a rather lengthy statement which he had not had an opportunity to sign and in which he implicated other accused, which was admitted in evidence against those accused; is not that correct?

Mr. SUTTON. That is correct; and, incidentally, his statement involved one man, I think his name was Rau, and that was the only scintilla of evidence in that entire case involving Rau, if I remember correctly. The record would show and I believe that is a correct statement.

Mr. CHAMBERS. The record of review prepared by the Deputy Judge Advocate's office says about the Rau case—there were two crimes, individual crimes charged against him—and it says:

The accused was in Cheneux from 1800 to 1900 hours December 18, 1944, and saw 30 to 40 American prisoners of war with their hands clasped behind their heads standing directly in front of a house. Reiher had a conference with the accused's group leader, who returned to the vehicle and stated, "These prisoners of war will have to be bumped off." The group leader, Sergeant Weilfer, then gave the order to fire, and the accused shot down three prisoners. He then fired at two Americans who were lying on the ground writhing in pain. This is corroborated by the extra judicial sworn statement of Gebauer.

Mr. SUTTON. There are two Rauses in the case.

Mr. CHAMBERS. This was Fritz Rau.

Mr. SUTTON. It must have been the other Rau.

Mr. CHAMBERS. Was it Theodore Rauh?

Mr. SUTTON. Yes, sir; I think so.

Mr. CHAMBERS. I might say in there that, without reading the whole thing, in the case of Theodore Rauh, I notice that at La Gleize—he was mixed up with Freimuth, all right—but it says:

The accused shot at the back of the head of one prisoner and saw him fall forward dead. This instance is corroborated by the extrajudicial sworn statement of Seigmund and the pretrial unsworn and unsigned statement of Freimuth.

So that there was corroboration over and beyond Freimuth's statement.

Senator BALDWIN. What was the disposition of the case?

Mr. CHAMBERS. Found guilty, sentenced to death by hanging, recommendation that it be commuted to life imprisonment.

I might say also on this Rauh case that there was another instance where Stock in his extrajudicial sworn statement says that he saw the shooting of six to eight prisoners of war and that the accused was one of those who participated in the shooting. Now, his sentence was finally approved for life. There was more evidence than just Freimuth in that case.

Mr. SUTTON. My recollection was—

Mr. CHAMBERS. That is all right. May I ask this: Coming back to the point of putting the accused on the stand, because this has puzzled us, you state that the reason you did not think they should be put on the stand was due to the fact that they would open themselves up to any line of questioning that should be directed toward them.

Mr. SUTTON. I said the reason for it was because the chief prosecutor, Colonel Ellis, and also Colonel Rosenfeld, stated if they were put on the stand they could be asked any question by the prosecution or by the court.

Senator BALDWIN. Your point was, evidently, that was the rule under which the trial was being conducted.

Mr. SUTTON. Yes, sir.

Senator BALDWIN. That is a different rule than you have in an ordinary court in the United States. A man can take the witness stand in a criminal trial and testify, for example, as to his moral character, and what his business had been, et cetera. He can testify as to the fact that he was somewhere else. He can prove an alibi or something of that kind.

Mr. SUTTON. I believe there is a division of authority on that, but the way the authority is: If a person gets on the stand to testify about one particular defense, his cross-examination is limited to that.

Mr. CHAMBERS. When Colonel Dwinell was here he testified that after the prosecution has rested its case he, himself, wanted to rest. He did not want the defense to put on anything; he did not believe a prima facie case had been made by the prosecution, and there was considerable discussion among the accused, the German lawyers and the balance of the defense staff, and he says:

Well, then, we had a lot of bickering. In fact, not only did we have it with them but particularly with the German lawyers. The German lawyers wanted to go ahead and put the whole 74 accused on the stand.

Well, it was voted—we decided, as long as 1 accused out of the 74 insisted on taking the stand, we would have to go along with them and let them all take the stand. Consequently, when we came back and opened up our case we started off with Hennecke, Tomhardt, and one other fellow, and then we began to notice, like a bunch of drowning rats, they were turning on each other and they were scared, and, like drowning men clutching at straws, they would say, "No, I was not at the crossroads; I am certain I was not, but So-and-So was there"; trying to get the ball over into his yard. So, we called a halt.

Senator BALDWIN. Whose testimony is this?

Mr. CHAMBERS. Dwinell's. Then a little further along, still discussing the same problem, Dwinell says in response to a question from me—apparently this was sound from the standpoint of the defense:

That is right; but suppose my client gets on the stand, in other words, to save his neck, and lies and hangs the coaccused, and that was being done in my opinion. * * *

And then further on Dwinell says, talking about Marcel Boltz, the client you just referred to, one of your cases—he had previously mentioned Christ and some of the others as having been lying, then he said in response to a question from me as follows:

Mr. CHAMBERS. When you began to get some of the enlisted men and some of the officers I presume they began to point the finger at another accused.

Colonel DWINELL. That is right. As a matter of fact, the best illustration of that is our good friend, the one who was taken out of the trial, Marcel Boltz, who insisted on taking the stand more at the German lawyers' insistence than his, and we had some bitter words over that. He took the stand, and pointed the finger at several people, and then he was taken out of the trial and sent up to France, as I recall it, and I understand he was acquitted. * * *

Dwinell went on to say:

But the members of the accused, in the group, were so bitter about him because as soon as that trial day was over they all could not wait to tell us how he had been lying, so, they said, to clear his own skirts.

So, I said that there will be no more of that. Each individual accused has his own interest, but I have the interests of the entire accused, and that was the theory under which we operated.

He further testified they decided not to put any more on the stand. If these people were taking the stand and lying at that time, were they still lying or were they telling the truth when they prepared these affidavits charging brutalities? That is pretty much the problem we are up against.

Mr. SUTTON. Colonel, that is so much a question of conjecture I do not think anyone can answer it. I think they were pretty honest with me, the ones I handled. I think they were telling me the truth. Marcel Boltz was about the only one, I am sure he was the only one, that did not testify to some form of duress or promises or threats, and he had quite an argument on the stand.

He disputed the testimony, the method in which the statement was taken. I think Shumacker and Colonel Ellis were in the office there when they took the statement, and Boltz was on the stand and very vehemently in the office denied that he made a part of that statement. That is, the wording, according to Boltz, was changed. Now, Colonel Ellis does not speak German—that is, not fluently.

Mr. CHAMBERS. He does not speak it.

Mr. SUTTON. Shumacker does. Well, who would the court believe under those circumstances? I think Shumacker was put on the stand to rebut it, if I remember right.

On this thing of putting people on the stand—as a matter of fact, I advocated not putting one on the stand, and I do not think the record would have been sufficient to convict any of them according to American rules of jurisprudence.

Mr. CHAMBERS. Did any of the people you handled take the stand?

Mr. SUTTON. He was the only one and did it against my advice.

Mr. CHAMBERS. I notice that in the record. As I see the picture, you believe from your association with these 12, at least, that they were telling you the truth about these physical mistreatments.

Mr. SUTTON. I do.

Mr. CHAMBERS. But that it is correct to say, and it is a fair statement, that it was all hearsay with you and based on stories that they, the accused, told you. You saw no evidence of it, no bruises or anything of the kind which would indicate that they had been beaten around.

Mr. SUTTON. No, sir; I did not see any bruises on them. You must recall it was several months after the investigating teams, interrogating teams, had interviewed them, and if there had been any physical damage done to them, undoubtedly it would have been cured by that time.

Senator BALDWIN. Are you practicing law now?

Mr. SUTTON. No; I am not right now.

Senator BALDWIN. You are in business?

Mr. SUTTON. I am working at the Government Printing Office right now, sir.

Mr. CHAMBERS. Have you had an opportunity to read or study Colonel Everett's petition before the Supreme Court?

Mr. SUTTON. I read it over once or twice. I have it in front of me now.

Mr. CHAMBERS. You have had an opportunity to read it but not necessarily in detail. Do you agree with the statements made by Everett charging physical mistreatment in there and brutalities to the degree that he has charged?

Mr. SUTTON. I think my testimony is that there was some brutality and that is as far as I would care to go. As a matter of fact, I have not tried to cover it all. I do not have any particular interest in it except to answer the questions according to my best recollection; and if I have leaned one way, it certainly has been leaning toward the Government.

Mr. CHAMBERS. May I read one brief statement, which is not in Everett's petition, it was in a thoroughly discredited news account, but it was one of the most inflammatory statements, to the effect that all but 2 of the 139 accused had been kicked in the genitals until they were ruined for life and that this was standard operating procedure with American investigators.

Mr. SUTTON. That is exaggerated. I do not think that could be substantiated.

Mr. CHAMBERS. I have no further questions.

Senator BALDWIN. Thank you very much for coming, sir.
(Whereupon, the subcommittee adjourned.)

APPENDIX

- Exhibit A. Petition filed in the Supreme Court of the United States by Willis M. Everett, Jr., on behalf of Valentin Bersin and others.
- Exhibit B. Copy of brief and supporting documents filed by Dr. Eugene Leer has been omitted from the printed record because of its great bulk and ordered placed on file in the offices of the Armed Services Committee.
- Exhibit C. Copy of memorandum to Secretary of the Army dated 14 September 1948, from Col. Gordon Simpson, JAGD, Col. Edward L. Van Roden, JAGD and Lt. Col. Clarence W. Lawrence, Jr., JADG (Simpson Commission) rendering their opinions and recommendations on the war crimes trials held at Dachau, Germany.
- Exhibit D. Final Report of Proceedings of Administration of Justice Review Board, 14 February 1949.
- Exhibit E. Excerpt from Preface of Technical Manual for Legal and Prison Officers (2d edition).
- Exhibit F. Rules of Procedure in Military Government Courts (excerpt beginning on p. 33 and ending p. 48).
- Affidavit with six exhibits of Lt. Col. Burton F. Ellis, JAGD.
- Letter to Senator Raymond E. Baldwin dated May 24, 1949, from Lt. Col. F. W. Carstens.
- Letter to Lt. Col. Burton F. Ellis, dated May 29, 1949, from Judge Gordon Simpson, chairman of the Simpson Commission.
- Letter to Senator Raymond E. Baldwin, dated June 21, 1949, from Mr. Louba Schirman, of Paris, France, together with affidavit concerning his knowledge of conditions at Schwaebisch Hall.
- Letter to Armed Services Committee, dated August 1, 1949, from Mr. Morris W. Kolander.
- Letter to Armed Services Committee, dated August 3, 1949, from Mr. Frederick K. Baer.

EXHIBIT A

In the Supreme Court of the United States. *Willis M. Everett, Jr., on behalf of Valentin Bersin, et al*, Petitioner, v. Harry S. Truman, Commander in Chief of the Armed Forces of the United States, and James V. Forrestal, Secretary of Defense of the United States, and Kenneth C. Royall, Secretary of the Army of the United States, and General Omar N. Bradley, Chief of Staff of the Army of the United States, and Thomas C. Clark, Attorney General of the United States, Respondents. Habeas Corpus No. —

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Fred M. Vinson, Chief Justice of said Court and the Honorable Associate Justices thereof:

This petition of Willis M. Everett, Jr., on behalf of Valentine Bersin, Friedel Bode, Willi Braun, Kurt Briesemeister, Willi Von Chamier, Friedrich Christ, Roman Clotten, Manfred Coblentz, Josef Diefenthal, Joseph (Sepp) Dietrich, Fritz Eckmann, Erndt Fischer, George Fleps, Heinz Freidrichs, Fritz Gebauer, Heinz Gerhard, Godicke, Ernst Goldschmidt, Hans Gruhle, Max Hammerer, Armin Hecht, Willi Heinz, Hendel, Hans Hennecke, Hans Hillig, einz Hofmann, Joachim Hofman, Hubert Huber, Siegfried Jakel, Benoni Junker, Friedel Kies, Gustav Knittel, George Kotzur, Fritz Kraemer, Werner Kuhn, Oskar Klingelhofer, Erich Maute, Arnold Mikolaschek, Anton Motzheim, Erich Munkemer, Gustav Neve, Paul Hermann Ochmann, Joachim Peiper, Hans Pletz, Georg Preus, Hermann Priess, Fritz Rau, Theo Rauh, Heinz Rehagel, Rolf Roland Reiser, Wolfgang Richter, Max Rieder, Rolf Ritzer, Axel Rodenburg, Erich Rumpf, Willi Schaefer, Rudolph Schwambach, Kurt Sichel, Oswald Siegmund, Franz Siever, Hans Siptrett, Gustav Adolf Sprenger, Werner Sternebeck, Heinz Stickel, Herbert Stock, Erwin Szyperski, Edmund Tomczak, Heinz Tomhardt,

August Tonk, Hans Trettin, Johann Wasenberger, Gunther Weiss, Erich Werner, Otto Wichmann, and Paul Zwigart, most respectfully shows unto this Honorable Court as follows:

1. That petitioner, Willis M. Everett, Jr., is an Attorney and Counsellor at Law of Atlanta, Georgia, but from September 1, 1940, to June 15, 1947, was an officer in the United States Army. In May 1946 while serving under the Commanding General, United States Forces, European Theater, your petitioner was directed by him to serve as Chief Defense Counsel for each of the above-named parties who will hereinafter be referred to as parties plaintiff or accused. Petitioner is unable to secure the verification by individuals named as plaintiffs due to the lack of time and the facts hereinafter set forth. Petitioner has continued to act as Chief Defense Counsel for plaintiffs herein and they have full knowledge, coupled with a request, that this petition is being brought by petitioner on their behalf to this Honorable Court.

2. That each plaintiff named herein was an enemy soldier who unconditionally surrendered to the Army of the United States of America. Further, each plaintiff is a citizen and national of Germany. Each plaintiff is presently unjustly and unlawfully detained and imprisoned at a United States Army Penitentiary at Landsberg, Germany, or a Penitentiary operated under the Commanding General, European Command, at Landsberg, Germany. Each plaintiff is being illegally restrained thereat as a result of the verdict and sentences of a certain General Military Government Court at Dachau, Germany, on July 16, 1946.

3. The respondent, Harry S. Truman, is Commander in Chief of the Armed Forces of the United States of America. In his capacity as Commander in Chief he has custody and control of each plaintiff herein.

4. The respondent, James V. Forrestal, is the Secretary to the President of the United States of America in charge of all Defense, including the Department of the Army, who also has custody and control of each plaintiff herein.

5. The respondent, Kenneth C. Royall, is the Secretary of the Army under the Secretary of Defense and is directly responsible for the Department of the Army. In his capacity he has custody and control of each plaintiff herein.

6. The respondent, General Omar N. Bradley, is the Chief of Staff of the Army, Department of the Army, who was selected by the President of the United States, and has supervision of all troops of the line and in this capacity has custody and control of each plaintiff herein.

7. The respondent, Thomas C. Clark, is the Attorney General of the United States of America and in his capacity as Attorney General is the Chief Prosecutor for the United States of America and the proper person upon whom service shall be perfected under existing laws.

8. Petitioner alleges with certainty that the trial before the General Military Government Court at Dachau, Germany, hereinafter referred to as the War Crimes Trial or Malmedy Trial, was utterly void because of the facts hereinafter set out and especially for the reasons that:

(a) No defense was possible due to the short period of time, less than two weeks, to prepare the defense for the 74 accused, and

(b) The unfamiliar and arduous task of communicating through inexperienced interpreters as well as a lack of assigned stenographers and interpreters so hampered the Defense Staff that it was not even physically possible to interrogate all of the accused, much less plan a defense, prior to the forced commencement of the trial, and

(c) The entire plan of this forced trial was calculated to make the whole defense impossible by not allowing time to procure and interview witnesses.

Upon assignment as Chief Defense Counsel petitioner was assured by various responsible Officers of the United States Army that these 74 accused would be given a fair trial, but the entire trial was totally lacking in due process as known in the courts of the United States of America, Great Britain, France, Italy, Belgium, Netherlands, and other Nations.

9. Plaintiffs were of varying ranks from Generaloberst (General) to Sturmmann (Private) with varying length of service in the German Army but each plaintiff was in the German Army until the Commanding General, United States Forces, European Theater did, on or about May 9, 1946, purportedly discharge all of plaintiffs from the German Army, thus attempting to end their Prisoner of War status. Copy of said original carrier note requesting and confirming such discharge is hereto attached, marked "Exhibit A", and made a part of this petition.

10. Plaintiffs were, under the Geneva Convention, prisoners of war after surrender and apprehension by the United States Army until they were discharged as

aforsaid. However, their status probably changed to that of an accused war criminal on April 11, 1946, when they were first served with notice that they were being charged with war crimes. Copy of said charge sheet, less the German translation, is hereto attached, marked "Exhibit B," and made a part of this petition.

11. Plaintiffs had been illegally and forefully incarcerated in Schwabisch Hall, Germany, a German Penitentiary the equivalent of one of our United States Federal Penitentiaries and used by the United States Army as an Interrogation Prison, for varying lengths of time but generally in excess of ten (10) months prior to being served with charges of War Crimes as set forth in Paragraph 10 above. There were approximately 500 other German soldiers, suspected war criminals, also confined thereat. With few exceptions, each was placed in solitary confinement throughout this period. That the said Schwabisch Hall was exclusively under the control of and used by the United States Army for all suspects in the Malmedy Case. One Lt. Col. Burton F. Ellis JAGD United States Army was the senior officer thereat and responsible for the abuse and mistreatment of plaintiffs herein at said penitentiary.

12. The forced and illegal detention of plaintiffs as aforsaid was in violation of the Geneva Convention which provides that prisoners of war must be humanely treated and protected, particularly against acts of violence and insults. They should be equally treated. No coercion may be used on them to secure information, and under no circumstances will they be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind whatever. They are entitled to have their honor and person respected. They must have sanitation, open air, and exercise. Under all circumstances, prisoners of war are subject to the laws in force of the detaining power. Attention is invited to Exhibit C.

13. As illustrative of these violations of International Agreements, the American Prosecution Team in Schwabisch Hall, Germany, would place a helmet hood completely over the head of individual plaintiffs herein, then usually a beating would be administered, after which they would be forced into a completely dark cell which was their "trial" room. The hood was removed and each plaintiff would see before him a long table, draped with black cloth touching the floor, with candles burning at both ends of the table and a crucifix in the center. Sitting behind this table were varying numbers of American civilians, members of the Prosecution Team, who were wearing illegally the Uniform and Rank of United States Army Officers. A mock defense counsel, usually an Officer of the United States Army on the Prosecution Team, was furnished these youthful German soldiers, who, although he was not an Attorney, held himself out to the plaintiffs herein as their defense counsel. They were informed or led to believe that they were being tried by the Americans for violations of International Law. At the other end of the table would be the Prosecutor who would read the charges, yell and scream at these 18- and 20-year-old plaintiffs and attempt to force confessions from them. If this method of threats failed to force desired false confessions from those plaintiffs, the mock trials would proceed by bringing in one false witness after another against them, "proving" beyond a doubt by falsehoods that these plaintiffs were guilty of many war crimes. During the entire mock trials these purported defense counsels were making a sham and pretext of defending them. At the end of these illegal trials conducted in the name of the United States of America, these guileful defense attorneys would pretend to make a plea to this purported Army Court for mercy. Upon conclusion, these sham courts would render death penalties within 24 to 48 hours by hanging. Thereupon said false defense attorney would express his sympathy, stating that he had done the best he could for these various plaintiffs. After these mock trials, the pretended defense attorney would attempt to and was in a majority of instances successful in coercing these plaintiffs to sign false and void confessions, admitting any and all charges brought against them, because, as this false defense counsel would in effect say, "You will be hanged in 24 hours anyway, so why not absolve someone else by taking the blame and writing out this confession I will dictate to you." Many variations and modifications were made in the conducting of these mock trials which appeared entirely regular to these plaintiffs as they were devoid of any knowledge of the American Army Courts Martial System or War Crimes Trials. There were 74 defendants, and there were 74 Prosecution-dictated statements. All of the above-described acts, deceptions, and chicanery of American Justice were performed by United States civilians, under Army jurisdiction, and by Officers of the United States Army or executed under their immediate supervision and control.

14. As further illustrative of the violations of said International Agreements and Treaties, many plaintiffs herein at various times were deprived of food for days, all blankets were withdrawn in the middle of winter, many were given severe and frequent beatings and other corporal punishment, many were forced into what was called the death cell for days and weeks, others were given promises of immunity or light sentences if they would sign confessions implicating others, and endless tricks, ruses and so-called strategem, all performed by these United States civilian employees of the Army or Officers or Enlisted Men in the United States Army, or under their direct supervision, instruction, or acquiescence. Said group of American investigators or a majority of them subsequently became the Prosecution Team in said Malmedy Trial.

15. As illustrative of promises of immunity or hope of reward, various hooded plaintiffs herein would be conducted to a room, then allowed to look out of a window where unknown persons were playing volley ball and similar games, at which time some American member of the Prosecution Team would urge plaintiffs to sign a confession, stating that they were not interested in punishing them, but were trying to convict their high-ranking officers, and if they would sign these dictated confessions implicating their officers they would be released within a few months and be out playing games with those other boys. Various plaintiffs herein would be assured and promised by the Americans that if they assumed full and complete responsibility for all the acts or alleged crimes committed by the soldiers under them and signed these Prosecution-dictated statements or confessions, then the Prosecution would not prefer any charges against members of their command.

16. As illustrative of the cruel torture and inhumane treatment of these plaintiffs as well as others in Schwabisch Hall, Germany, while prisoners of war, reference is made to the introduction into evidence of an unsigned statement by Arvid Freimuth, a young German soldier who had been through the various tricks, ruses, and strategem administered by the American Prosecution which ended in one of those fateful mock trials. Lieut. William R. Perl, an officer of the United States Army, had purportedly defended this youth. He was dictating to Freimuth one of these forced confessions in March 1946. Only 16 pages had been written by this boy and due to the lateness of the hour the completion was delayed until the next day. His death would not occur until then, according to the fake verdict of this false American Military Court. He was forced to write lies about his "comrades in arms" pointing to their guilt in crimes never committed. About two o'clock in the morning other prisoners heard him crying out in his cell, "I cannot utter another lie," or words to that effect. The body of that 20-year-old German youth was found dead hanging from his prison cell in Schwabisch Hall, Germany, when the guard opened the door a few hours later. The American Prosecution was not satisfied with having the blood of this youth on their hands. During the real Malmedy Trial the Prosecution, over the objection of the Defense Staff, introduced this unsigned and unfinished statement in evidence against other plaintiffs herein, all with the approval and favorable ruling of the law member of the court. It was then that the American Prosecution commenced asking this Lieutenant Perl, under oath, what this dead German youth would have said in his statement if he had lived. This incident is illustrative of the total lack of justice both pretrial and during trial.

17. In furtherance of illustrations wherein violations of International Law were carried out by the United States Army investigation team or Prosecution, while holding plaintiffs in solitary confinement in Schwabisch Hall, Germany, the investigators would forge the names of certain of plaintiffs' superior officers to confessions or statements, which would completely detail and point out the purported guilt of another accused. Then they would confront these young German soldiers with one or more of these forged statements and induce them to sign confessions to acts never committed by them. Many of plaintiffs herein while in Schwabisch Hall, Germany, would be hooded and taken to the "death chamber" and there unhooded and shown bullet holes in the wall where gruesome human flesh and hair would be imbedded from one of their "latest executions." By this method the American Prosecution would force confessions of crimes never committed. On other occasions various hooded plaintiffs herein would be taken to the "hangman's room" and there unhooded, placed on a high stool and a hangman's rope placed around their necks. It was then that various plaintiffs herein would, upon belief that they would be hanged forthwith, sign directed statements not only admitting their own guilt of crimes never committed, but implicating

other plaintiffs herein of crimes they had committed, which in truth had never been committed.

At the conclusion of many of these mock trials where other ruses had failed, the United States Prosecution Team would suggest and allow these youthful plaintiffs to write farewell letters to their parents before they would be hanged, which was in furtherance of the duress, scheming, and conniving of the Americans. Also the American Prosecution would offer the privilege of seeing a Priest in order to secure the "Ministration of a Catholic Priest before death." The American Prosecutor would make many threats of violence and torture directed toward the mothers, fathers, sisters, wives, and children of various accused unless they signed complete dictated confessions of acts and deeds never committed by them, and acts and deeds of other accused never witnessed by them.

18. One favorite ruse of the United States Prosecution Team in Schwabisch Hall, Germany, was to place plaintiffs in solitary confinement upon first being captured. These German youths had no knowledge of why they were placed in this penitentiary. For weeks and months they would stay in the same cell without seeing a single person, not allowed to receive or write even a letter to their parents or wives, and not allowed to read anything. Then a "stool pigeon" would be placed in the same cell who was another German soldier. This youthful plaintiff was anxious to know what it was all about. This Prosecution "stool pigeon" would relate an imaginary story of how he had just been tried by the American Army for shooting many Belgian civilians and maybe a few American soldiers. The "stool pigeon" would go into much detail about his own trial and then conclude with how light the verdict had been because he had cooperated, admitted everything whether true or not, and had written exactly what the Americans had dictated. Although he, the "stool pigeon," had admitted many murders he had received only one, two or three years confinement for all that he had done. It was only a few days thereafter until the German lad would be hooded and brought before one of these "mock trials" with the hope and expectation of a light sentence such as the "stool pigeon" had described if he would sign an American Prosecution dictated statement.

19. All of the foregoing illustrations of violations of International Laws, or practically all, were laughingly or jokingly admitted by the American Prosecution Team during their presentation of their case in the Malmedy Trial or on direct examination of the witnesses. At this point these questions strongly suggest themselves: What did the American Defense do about these forced confessions at the real Malmedy Trial? Why were these confessions admitted as evidence and in many cases constituted the sole and only evidence against certain of those plaintiffs? Attached here, marked "Exhibit C," and made a part of this petition, is a copy of Motion to Withdraw Confessions or Statements of Accused which were properly presented and pleaded at the Malmedy Trial, but this motion was promptly denied by the ruling of the Law Member of the Court.

20. The question of Jurisdiction of the General Military Government Court of the United States of America at Camp Dachau, Germany, is specifically raised because all of the crimes alleged to have been committed occurred within the Sovereign State of Belgium and the situs of the crimes lay entirely outside the American Occupation Zone of Germany. The claim as to jurisdiction by the United States Army was by virtue of the physical custody of plaintiffs herein. Generally speaking International Law has repeatedly ruled that a person must be tried before the forum where the crime was committed. These principles were recognized in the Moscow Declaration, the Potsdam Declaration, and the London Conference. Reference is made to the Moscow Declaration of 30 October 1943, which was entered into by Great Britain, the United States, and the Soviet Republic. The pertinent portion of said agreement touching on the subject presented to this Honorable Court is herewith quoted:

"German war criminals whose deeds can be localized will be sent back to those countries in which their abominable deeds were done in order that they may be punished according to the laws of those liberated countries."

Again in the Potsdam Declaration of 2 August 1944, entered into at Cecilianhof, near Potsdam, by the United States, Great Britain, and the Soviet Republic, the following is provided under Article VII which reads:

"The three Governments have taken note of the discussions which have been proceeding in recent weeks in London between the British, United States, Soviet, and French Representatives, with a view to reaching an agreement on methods

of trial of those major war criminals whose crimes under the Moscow Declaration of October 1943, have no particular geographical allocation. The three Governments affirm their intention to bring these criminals to swift and sure justice. They hope that the negotiations in London will result in a speedy agreement being reached for this purpose and they regard it as a matter of great importance that the trial of these major war criminals should begin at the earliest possible date. The first list of defendants will be published before September 1."

This London Agreement entered into by the United States, Great Britain, the Soviet Republic, and the provisional government of the French Republic on 8 August 1945, provided as follows:

"Whereas the United States have from time to time made declarations of their intention that war criminals shall be brought to justice and whereas the Moscow Declaration of 30 October 1943 on German atrocities in occupied Europe stated that those German officers and men and members of the Nazi Party who have been responsible for or who have taken a consenting part in the atrocities and crimes, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished by the laws of those liberated countries and the free government that will be created therein, and whereas this declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the governments of the Allies."

This London Agreement went on to establish the International Military Tribunal to be held at Nuremberg, Germany, for the trial of war criminals whose offenses have no particular location. Article IV of this London Agreement further provides:

"Nothing in this agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes."

A Central Control Council was instituted for the establishment of a military government in Germany by the four powers (United States, Great Britain, Soviet Republic, and the Provisional French Republic) and to each was allocated a zone of occupation, wherein each power was to establish its own Military Government. In the United States Zone of Occupation the Military Governor was and is the Commanding General of the United States Forces, European Theater. General McNarney, the then Commanding General aforesaid, did on 12 January 1946 issue a directive as an amendment to the previous directive dated 7 July 1945 subject "Administration of Military Government in United States Zone in Germany," which embodied Control Council Law No. 10 and reads as follows:

ARTICLE I, Control Council Law No. 10 provides: "The Moscow Declaration of 30 October 1943 concerning responsibility of Hitlerites for committed atrocities and the London Agreement of 8 October 1945 concerning prosecution and punishment of major war criminals of the European Axis are made integral parts of this law."

The Military Governor was without authority to alter or change the Moscow Declaration, the Potsdam Declaration, or the London Agreement. His own orders authorizing the Court and requiring Officers under his command to act as Judges of plaintiffs herein and to direct the Prosecutor to draw charges and prepare for their trial was in violation of and inconsistent with his own directive.

21. Petitioner shows that the detention, confinement, and restraint of liberty of plaintiffs herein is unlawful and without authority in law is that:

(a) The General Military Court which tried plaintiffs herein was unlawfully constituted and the individual members or a majority of them were not lawfully appointed to such purported General Military Court, and said war crimes trial and the proceedings thereof were void *ab initio*.

(b) On May 10, 1946, the Commanding General, Third United States Army, did attempt to appoint to such Court eight officers by Special Orders Number 117, and that six of such officers at the time of such purported appointment were not attached to, or under the command of the appointing authority, and that said appointing authority had no command over or authority to control or right to appoint these six officers to said purported General Military Court.

(c) Further that said six officers, Colonels Berry, Watkins, Raymond, Steward, Sonder, and Rosenfeld, were not even subsequently transferred or assigned to said Third United States Army, thereby placing them under the control and authority of said Commanding General.

Petitioner thus charges that by virtue of the above orders all members of the purported Court with the exception of Brig. Gen. Josiah T. Dalbey and Col. Paul H. Weiland were not subject to the command of the appointing authority, had never been assigned or transferred to the command of the appointing authority, and the appointing authority had no authority in law to appoint said officers with the exception of General Dalbey and Colonel Weiland to the purported Court, and therefore the Court had no jurisdiction whatsoever over any of the 73 plaintiffs herein or the subject matter thereof, and that the proceedings, trial, and subsequent verdict were void *ab initio*. Attached hereto and marked Exhibit "D" is copy of the Third United States Army order which is made part of this petition.

22. Petitioner shows that only six counsel were assigned him immediately prior to the commencement of this Malmedy Trial and several of said Attorneys were not adept, experienced or skilled in defending criminal cases. Petitioner shows that less than two weeks' time was allowed by the United States Army to prepare the defense for seventy-four (74) defendants in the case. At first the Chief Prosecutor, Lt. Col. Ellis, even refused to turn over these forced confessions to the Defense for inspection. Petitioner shows that three meetings of all the plaintiffs herein on different days were required, with their own officers exhorting them to confide in this petitioner and his staff, before it was possible to break down the barrier of mistrust between attorney and client created by the misdeeds of the American Prosecution. Each of plaintiffs herein thought this was merely another mock trial. Not even all of the plaintiffs herein could be interviewed prior to the commencement of the Malmedy Trial due to lack of interpreters and stenographic help which the United States Army failed to furnish upon repeated requests. Irrespective of many demands of petitioner, as Chief Defense Counsel, insufficient time was given to make any investigation whatsoever prior to the beginning of the trial. Vigorous protests were made to the proper officers of the Third Army and the United Forces, European Theater, over the lack of time to prepare the defense, the lack of assistants required to make an investigation, and the questionable actions of the Chief Prosecutor and his staff.

23. As illustrative of the inadequacy of time to properly prepare a defense for the 74 defendants in the Malmedy Case and the falsity of the confessions forced from the plaintiffs herein, reference is made to two atrocities alleged to have been committed by certain ones of the plaintiffs. When the prosecution rested its case, a few days were allowed the Defense Staff to interview witnesses and plan the defense for their 74 defendants. An Officer was sent to Belgium and he investigated an incident in Wanne, Belgium, where it was alleged that one of plaintiffs herein had entered the house of a Belgian civilian and without provocation murdered a woman while sitting in her chair. This plaintiff in a forced false confession fully admitted the commission of this war crime and four or five of his codefendants swore to the same facts in their forced false confessions and related every detail exactly the same. This Defense Officer brought back an affidavit by the husband of the purportedly murdered woman to the effect that his wife had been killed during enemy action, but that his wife was standing in the street in front of his home when an American artillery shell exploded and killed her. This statement was properly sworn to before his Priest.

The second illustration of the falsity of these forced false confessions relating to alleged atrocities concerned certain incidents within the churchyard at La Gleize, Belgium. Certain ones of plaintiffs herein admitted, in their forced false confessions, placing two or three groups of surrendered American soldiers, numbering 20 to 30, against the inside wall of this churchyard and shooting them down in cold blood with machine guns. The Defense investigation developed the fact that there was no inside wall of the churchyard, but merely an outside retaining wall. The Priest furnished this Defense Officer with a sworn affidavit that he was present in the Church the entire time of the battle and alleged crimes, that he had examined the outside walls of the churchyard and no sign of any bullet marks were visible, that no such atrocities had ever been committed in the vicinity of his Church, and that the only dead Americans he had seen in the town was the body of one in an American tank which was burned beyond recognition, and finally that on the afternoon the crimes were purportedly occurring he had walked along the outside wall and no dead Americans were there. Many more of the plaintiffs herein had corroborated these same detailed purported crimes under oath, but in forced false confessions. No additional time was given the Defense Staff to investigate each and every charge although repeated requests were made.

24. On several occasions when witnesses were requested for various plaintiffs herein the members of the American Prosecution Staff would call them into their office before they could even be interviewed by the Defense Staff and would threaten them with being made defendants in the Malmedy Case if they testified as to any knowledge of certain incidents and thereupon took sworn statements under duress from those witnesses to the effect that they knew nothing. Tampering with witnesses in the Malmedy Trial was not an uncommon occurrence on the part of the United States Army Prosecution Staff.

25. Many witnesses for the Prosecution were interviewed by the Defense Staff after they had testified on the witness stand and several were returned to the stand by the Defense who thereby adopted them as their witnesses. In each case they positively denied any truth in their original testimony and freely admitted perjury, giving as their reason therefor that they had been the victims of force, duress, beatings, and other forms of torture. However, when details of the hearings, etc., were requested, the Prosecution would object and the law member of the Court would always sustain the objection and prevent the evil and ruthless tactics of the Prosecution from being further exposed in open court.

26. As illustrative of violations of the laws of all civilized nations the following is given. The relation of Attorney and Client is one of universal application. During the presentation of the defense of those plaintiffs, petitioner was in Court with all his assistant counsel and all of the defendants, when petitioner noticed Lt. Perl slip into the "bunker" or long cell block where defendants slept. Shortly thereafter he was observed slipping out with an armful of papers. No American was allowed in this building as directed by competent American military authority. Lt. Perl then reported to the Chief Prosecutor Lt. Col. Ellis and after a short conference went out of the courtroom. Within a few minutes petitioner secured the assistance of the Officer of the Guard who then surprised Lt. Perl in the Chief Prosecutor's office, and he admitted taking the private notes and papers written by the accused to their defense counsel and was translating them in accordance to instruction of Lt. Col. Ellis.

During the course of the said Malmedy Trial one or more of the Prosecution Staff would approach the wives of plaintiffs herein who were attending said trial and falsely represent themselves to be members of the Defense Staff. While posing as their husband's defense attorney they would attempt to gain further information about any and all privileged communications between husband and wife.

27. In addition to the absolute grounds of total lack of jurisdiction by this alleged Court, petitioner has dealt briefly with many details which are recognized as not pertaining exclusively to the subject matter of jurisdiction, but in consideration of the broadened view of recent cases in the United States Supreme Court and Federal Courts, it now appears a well established rule that other matters such as due process may be inquired into by this Honorable Court.

28. Petitioner charges that the misconduct of the Chief Prosecutor in the sanctioning of said acts and many of his staff in the execution of said acts was of such a grave character, both before and during the trial, that it rendered the entire proceedings void. In addition to illustrations hereinabove enumerated, the abusive manner of members of the Prosecution Staff in the questioning of plaintiffs herein as well as witnesses for the defense in open court was so offensive that it became necessary for the petitioner to call two recesses during the trial and advise all the plaintiffs herein not to take the stand in their own behalf. Finally early in July 1946 petitioner, as Chief Defense Counsel, announced in open court that he was taking the full responsibility in preventing the remaining defendants from taking the stand in their own behalf and further testifying as to the force, duress, and so-called tricks of the Prosecution because "the fear of those Prosecutors lingers on."

29. Petitioner requested from the United States Army copies of the record of the Malmedy Trial held during May, June, and July 1946, but the same was refused. For that reason petitioner is unable to give with certainty exact names, dates, quotations, facts, and places that involve the mass trial of 74 defendants and which covered a period in excess of two months. Furthermore this trial was concluded almost two years ago.

30. Petitioner shows that from the best information available, three reviews of said case were made by the Deputy Judge Advocate for War Crimes and one review by the Judge Advocate, European Command, but petitioner has not received any of said reviews. Further that on or about March 20, 1947, General

Lucius D. Clay, Commanding General, European Command, pronounced final judgment on plaintiffs herein. That execution of the death penalties will be carried out on Valentin Borsin, Friedel Bode, Kurt Briesemeister, Friedrich Christ, Josef Diefenthal, Ernst Goldschmidt, Hubert Huber, Paul Herman Ochmann, Joachim Peiper, Georg Preuss, Erich Rumpf, and Paul Zwigart on or about the 20th day of May 1948.

31. Petitioner further shows that much time and effort has been spent following the final verdict in said Malmedy Trial pointing out many defects, deficiencies, and incorrect rulings during the course of said trial by preparing a brief based on the record and filing the same with the original record. Copy of said brief is hereto attached and marked "Exhibit E" and made a part of this petition. Due and impartial consideration was not and could not be given to said brief because the appointing authority was directed by the reviewing authority to try those plaintiffs and no latitude or freedom of judicial action could be accorded under such circumstances.

32. Petitioner has just received a petition addressed to this Honorable Court from Dr. jur. Eugen Leer, a German attorney who was an assistant to petitioner during said Malmedy Trial. Said petition, it is believed, points out additional facts of other force, duress, cruel and inhuman treatment against certain plaintiffs herein by the American Prosecution which was unknown at the time of said trial. Said petition is substantiated by various sworn statements of witnesses as well as medical examiners. Said petition is in German, and your petitioner has no English translation thereof and is unable to present the same either separately or in conjunction with this petition. After translation, permission is requested to amend this petition by adding the same hereto if its contents speak to the issues herein. Said petition is addressed as follows:

To: SUPREME COURT

Via Chief Defence Counsel
Colonel Willis M. Everett
Connally Building
Atlanta, Georgia.

33.

That such imprisonment and restraint of plaintiffs is not by virtue of any process issued by a court of the United States, or by a judge or commissioner or other officer thereof in a case where such court, judge, commissioner or officer thereof had, or has acquired exclusive jurisdiction under the laws of the United States, and

That such imprisonment and restraint is not by virtue of any judgment or decree of a competent tribunal of criminal jurisdiction, nor by virtue of an execution issued upon such judgment or decree, and

That the cause or pretense of such imprisonment and restraint is by virtue of the verdict and sentences of the illegally appointed General Military Court at Dachau, Germany, on July 16, 1946, and

That there is no judge or officer in Germany or Europe competent to issue or grant a writ of habeas corpus or other legal remedies, and

That none of plaintiffs herein has any funds to defray the expenses in connection with the bringing a writ of habeas corpus in any other court, thereafter perfecting an appeal to this Honorable Court, and under existing statutes and the decisions of the Federal Courts no alien is permitted to proceed in forma pauperis, and

That the Commandant of the Landsberg Prison is an officer of the United States Army but is not made a respondent herein because he is not situated within the jurisdiction of this Honorable Court and cannot be served with any process of this Honorable Court. However, said Commandant derives his power from and is subject to the direction and commands of the respondents Harry S. Truman, James V. Forrestal, Kenneth C. Royall, and General Omar N. Bradley, all of who are located within the jurisdiction of this Honorable Court, and

That the facts hereinabove stated are questions of great moment and many difficulties are involved, to such an extent that both the principles of law and facts clearly classify this petition for a writ of habeas corpus as an exceptional matter. The case is therefore one within the jurisdiction of the Supreme Court of the United States.

Wherefore petitioner on behalf of plaintiffs named in the opening paragraph of this petition respectfully prays:

1. That a writ of habeas corpus issue directed to Harry S. Truman as Commander in Chief of the Armed Forces of the United States of America, Washington, D. C.

2. That a writ of habeas corpus issue directed to James V. Forrestal, Secretary of Defense of the United States, Washington, D. C.

3. That a writ of habeas corpus issue directed to Kenneth C. Royall, Secretary of the Army of the United States, Washington, D. C.

4. That a writ of habeas corpus issue directed to General Omar N. Bradley, Chief of Staff of the Army of the United States, Washington, D. C.

5. That service be perfected on Thomas C. Clark, Attorney General of the United States, Washington, D. C.

6. That respondents Harry S. Truman, James V. Forrestal, Kenneth C. Royall, and General Omar N. Bradley be directed to withhold instantly any action contemplated in the execution or hanging of any of the plaintiffs herein by the Commandant of the Landsberg Prison in Germany until further order of this Court.

7. That respondents be required to furnish any necessary copies of the original record and all allied papers, documents, and exhibits to this Honorable Court and furnish petitioner with two copies of the original record and all allied papers, which shall include two copies of all reviews made in said Malmady Case.

8. That, after sufficient time has been afforded petitioner to read and study the proceedings of this trial and reviews, petitioner may amend or make additions to this position to conform to the record if any changes are necessary.

9. That respondents furnish to petitioner any necessary German-English translations of papers and documents received from plaintiffs or their German attorneys in connection with this case.

10. That respondents shall be required to cooperate with petitioner in the taking and securing of any necessary depositions of plaintiffs herein or of witnesses to the extent that the truth may be freely testified to, rather than the fear of prosecution. Also that depositions may be had, where necessary, from members of the Prosecution Staff, and

11. That respondents shall do what this Honorable Court shall order and direct concerning the illegal detention and restraint of plaintiffs herein.

(S) WILLIS M. EVERETT, Jr., *Petitioner.*

(Willis M. Everett, Jr., 402 Connally Building, Atlanta, Georgia. Attorney for Petitioner and Plaintiffs. Everett & Everett, Attorneys for Counsel.)

STATE OF GEORGIA,

County of Fulton, ss:

Personally appeared before me Willis M. Everett, Jr., who being duly sworn, deposes and says:

1. That affiant is a citizen and resident of the State of Georgia,

2. That affiant is the petitioner named above, and

3. That affiant has read the foregoing petition and knows the contents thereof and that the same are true of my own knowledge except as to the matters therein which are on information and belief, and as to those matters affiant believes them to be true.

4. That affiant has carefully examined the case and has just cause and verily believes that because of poverty, petitioners are unable to pay costs or give security therefor. It is further stated with certainty that no agreement or understanding has been entered into between plaintiffs herein and this affiant for any compensation for the services of affiant and there is no understanding to pay affiant on the part of anyone whatsoever in or on behalf of plaintiffs herein.

(S) WILLIS M. EVERETT, Jr.

Sworn to and subscribed before me this 11th day of May, 1948.

[SEAL]

(S) MARY EVERETT TOWNSEND,

Notary Public, State of Georgia at Large.

My commission expires April 2, 1950.

EXHIBIT A

Internal route slip, headquarters, U. S. forces, European theater

[File No.: —. Subject: Discharge of German Prisoners of War. Date: 26 April 1946]

No.	From--	Pass to--	Date	Has this paper been coordinated with all concerned?
1	JA., War Crimes Branch.	G-1, German Affairs Group.	Apr. 26, 1946	<p>1. The Malmedy War Crimes Case involving seventy-four (74) members of the German military establishment is scheduled to go to trial at Dachau, Germany, on or about 2 May 1946.</p> <p>2. In order to preclude the possibility of legal complications arising with respect to the trial of the case, it is desirable that the provisions of "Disbandment Directive No. 8," Headquarters, United States Forces, European Theater, dated 16 February 1946, be carried out at once. It is therefore requested that the perpetrators in this case named in the attached list, now in custody at Dachau, be immediately discharged as prisoners of war and documented as civilian internees.</p> <p>3. It is requested that this office be advised when documentation as civilian internees has been accomplished.</p> <p>(S) C. B. MICKELWAIT, Colonel, JAGD, Deputy Theater Judge Advocate</p> <p>1 Incl., as stated. Telephone: WIESBADEN 8707. GA/HHC/eeg/2-1267. Forwarded for your immediate action. For the A C of S, G-1: (S) HAL H. COOK, Lt. Col. GSC (For J. M. COLEMAN, Lt. Colonel, GSC, Chief, German Affairs Branch).</p> <p>1 Incl.: n/c.</p>
2	G-1, GA Br.....	TPM.....	Apr. 26, 1946	<p>Documentation as civilian internees as requested in c/n above was completed on 9 May 1946.</p> <p>For and in the absence of the Theater Provost Marshal: (S) FREDERICK R. LAFFERTY, Colonel, Cavalry, Deputy Theater Provost Marshal.</p> <p>/s/ 3-3771 1 incl.: n/c GA/RWG/ews/2-4607. Request contained in Minute #1 has been complied with. For the A C of S, G-1: (S) A. F. S. MACKENZIE, Lt. Colonel, GSC, Acting Chief, German Affairs Branch.</p> <p>Incl.: n/c.</p>
3	TPM, USFET....	G-1, German Affairs JA War Crimes Branch (in turn).	May 31, 1946	<p>Documentation as civilian internees as requested in c/n above was completed on 9 May 1946.</p> <p>For and in the absence of the Theater Provost Marshal: (S) FREDERICK R. LAFFERTY, Colonel, Cavalry, Deputy Theater Provost Marshal.</p> <p>/s/ 3-3771 1 incl.: n/c GA/RWG/ews/2-4607. Request contained in Minute #1 has been complied with. For the A C of S, G-1: (S) A. F. S. MACKENZIE, Lt. Colonel, GSC, Acting Chief, German Affairs Branch.</p> <p>Incl.: n/c.</p>
4	G-1, GA Br.....	JA War Crimes Branch.	June 4, 1946	<p>Documentation as civilian internees as requested in c/n above was completed on 9 May 1946.</p> <p>For and in the absence of the Theater Provost Marshal: (S) FREDERICK R. LAFFERTY, Colonel, Cavalry, Deputy Theater Provost Marshal.</p> <p>/s/ 3-3771 1 incl.: n/c GA/RWG/ews/2-4607. Request contained in Minute #1 has been complied with. For the A C of S, G-1: (S) A. F. S. MACKENZIE, Lt. Colonel, GSC, Acting Chief, German Affairs Branch.</p> <p>Incl.: n/c.</p>

EXHIBIT B

MILITARY GOVERNMENT COURT CHARGE SHEET

DACHAU, GERMANY, 11 April 1946.

NAMES OF THE ACCUSED

Valentin Bersin
Friedel Bode
Marcel Boltz
Willi Braun
Kurt Briesemeister
Willi Von Chamier
Friedrich Christ
Roman Clotten
Manfred. Coblenz

Josef Diefenthal
Josef (Sepp) Dietrich
Fritz Eckmann
Arndt Fischer
Georg Fleps
Heinz Friedrichs
Fritz Gebauer
Heinz Gerhard Godicke
Ernst Goldschmidt

Hans Gruhle
Helmut Haas
Max Hammerer
Armin Hecht
Willi Heinz Hendel
Hans Hennecke
Hans Hillig
Heinz Hofmann
Joachim Hofmann

EXHIBIT B—Continued

Hubert Huber	Worner Pedersen	Kurt Sichel
Siegfried Jakel	Joachim Peiper	Oswald Siegmund
Benoni Junker	Hans Pletz	Franz Sievers
Friedel Kies	Georg Preuss	Hans Siptrott
Gustav Knittel	Hermann Priess	Gustav Adolf Sprenger
Georg Kotzur	Fritz Rau	Werner Sternebeck
Fritz Kraemer	Theo Rauh	Herbert Stock
Werner Kuhn	Heinz Rehagel	Erwin Szyperski
Oskar Klingelhoef	Rolf Roland Reiser	Edmund Tomczak
Herbert Losenski	Wolfgang Richter	Heinz Tomhardt
Erich Mauto	Max Rieder	August Tonk
Arnold Mikolaschek	Rolf Ritzer	Hans Trettin
Anton Motzheim	Axel Rodenburg	Johann Wasenberger
Erich Munkemer	Erich Rumpf	Erich Werner
Gustav Neve	Willi Schaefer	Otto Wichmann
Paul Hermann Ochmann	Rudolf Schwambach	Paul Zwigart

are hereby charged with the following offenses:

First charge: Violation of the Laws and Usages of War.

Particulars: In that Valentin Bersin, Friedel Bode, Marcel Boltz, Willi Braun, Kurt Briesemeister, Willi Von Chamior, Friedrich Christ, Roman Clotton, Manfred Coblenz, Josef Diefenthal, Josef (Sepp) Dietrich, Fritz Eckmann, Arndt Fischer, Georg Fleps, Heinz Friedrichs, Fritz Gebauer, Heinz Gerhard Godlicke, Ernst Goldschmidt, Hans Gruhle, Helmut Haas, Max Hammerer, Armin Hecht, Willi Heinz Hendel, Hans Hennecke, Hans Hillig, Heinz Hofmann, Joachim Hofmann, Hubert Huber, Siegfried Jakel, Benoni Junker, Friedel Kies, Gustav Knittel, Georg Kotzur, Fritz Kraemer, Werner Kuhn, Oskar Klingelhoef, Herbert Losenski, Erich Maute, Arnold Mikolaschek, Anton Motzheim, Erich Munkomer, Gustav Neve, Paul Hermann Ochmann, Werner Pedersen, Joachim Peiper, Hans Pletz, Georg Preuss, Hermann Priess, Fritz Rau, Theo Rauh, Heinz Renagel, Rolf Roland Reiser, Wolfgang Richter, Max Rieder, Rolf Ritzer, Axel Rodenburg, Erich Rumpf, Willi Schaefer, Rudolf Schwambach, Kurt Sichel, Oswald Siegmund, Franz Siever, Hans Siptrott, Gustav Adolf Sprenger, Werner Sternebeck, Herbert Stock, Erwin Szyporski, Edmund Tomczak, Heinz Tomhardt, August Tonk, Hans Trettin, Johann Wasenberger, Erich Werner, Otto Wichmann, Paul Zwigert, German nationals or persons acting with German nationals, being together concerned as parties, did, in conjunction with other persons not herein charged or named, at or in the vicinity of Malmédy, Honsfeld, Buellingen, Ligneuville, Stoumont, La Gleize, Cheneux, Petit Thier, Trois Ponts, Stavelot, Wanne, and Lutrebois, all in Belgium, at sundry times between 16 December 1944 and 13 January 1945, willfully, deliberately and wrongfully permit, encourage, aid, abet and participate in the killing, shooting, ill-treatment, abuse, and torture of members of the Armed Forces of the United States of America, then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, the exact names and numbers of such persons being unknown but aggregating several hundred, and of unarmed allied civilian nationals, the exact names and numbers of such persons being unknown.

Officer preferring charges:

(S) HOWARD F. BREUSE,
Colonel, CMP, Army of the United States.

The above charges are referred for trial to the General Military Court appointed by Par. 24, Special Order Number 90, Headquarters, Third United States Army, dated 9 April 1946, to be held at Dachau, Germany, on or about 2 May 1946.

By Command of Lieutenant General Keyes:

(S) W. G. CALDWELL,
Colonel, Adjutant General's Dept., Acting Adjutant General.

Copy of above served on accused -----, 1946.

(Signature of person making service)

EXHIBIT C

In a General Military Government Court of the United States of America, Camp Dachau, Germany. In the matter of the accused Bersin, Valentin, et al.

MOTION TO WITHDRAW CONFESSIONS OR STATEMENTS OF ACCUSED

1. Now come the defendants or accused and move to withdraw all their statements or confessions and expunge all reference thereto from the record.

A. (1) All of the above defendants were prisoners of war until 11 April 1946, which date was the day of the service of charges against each defendant. On and after 11 April 1946, each of the defendants were removed from the status of prisoner of war and became accused war criminals.

(2) The only law controlling this point is the Yamashita case in the Supreme Court of the United States of America which is quoted as follows:

"The day of final reckoning for the enemy arrived in August 1945. On September 3rd, the petitioner surrendered to the United States Army at Baguio, Luzon. He immediately became a prisoner of war and was interned in prison in conformity with the rules of international law. On September 25, approximately three weeks after surrendering, he was served with the charge in issue in this case. Upon service of the charge he was removed from the status of a prisoner of war and placed in confinement as an accused war criminal."

Although this opinion is in Justice Murphy's minority opinion, it is in no sense a dissent from the majority opinion, as the issue was not raised in the petition. The majority opinion is therefore silent on this subject and the court was not asked to decide this point. No other law or decision touches on this "change of status" and this expression of fact is the controlling law.

B. (1) Under the Geneva Convention, they, as prisoners of war must be humanely treated and protected, particularly against acts of violence and insults. They should be equally treated. No coercion may be used on them to secure information, and under no circumstances will they be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind whatever. They are entitled to have their honor and person respected. They must have sanitation, open air and exercise. Under all circumstances, prisoners of war are subject to the laws in force of the detaining power. Does solitary confinement for months or black hoods or mock trials, or stool pigeons meet the dignified provisions of the Geneva Convention?

(2) Chapter 6, *Prisoners of War* of Geneva Convention of July 1929:

(a) Under Article 2 of the following applicable paragraph is quoted: "They must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity."

(b) Under Article 3 the following applicable paragraphs are quoted: "Prisoners of war have the right to have their person and their honor respected. * * * Difference in treatment among prisoners is lawful only when it is based on the military rank, state of physical or mental health, professional qualifications or sex of those who profit thereby."

(c) Under Article 5 the following applicable paragraph is quoted: "No coercion may be used on prisoners to secure information relative to the condition of their army or country. Prisoners who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind whatever."

(d) Under Article 9 the following applicable parts of paragraphs are quoted: "They may also be interned in enclosed camps; they may not be confined or imprisoned except as an indispensable measure of safety or sanitation, and only while the circumstances which necessitate the measure continue to exist."

(e) Under Article 10 the following applicable paragraph is quoted: "Prisoners of war shall be lodged in buildings or in barracks affording all possible guarantees of hygiene and healthfulness."

(f) Under Article 13 the following applicable paragraph is quoted: "It shall be possible for them to take physical exercise and enjoy open air."

(g) Under Article 21 the following applicable paragraph is quoted: "Officers and persons of equivalent status who are prisoners of war shall be treated with the regard due to their rank and age."

(h) Under Article 45 the following paragraph is quoted: "Prisoners of war shall be subject to the laws, regulations, and orders in force in the armies of the detaining power."

(i) Under Article 46 the following applicable paragraph is quoted:

"Any corporal punishment, any imprisonment in quarters without daylight, and in general, any form of cruelty, is forbidden."

(j) Under Article 56 the following applicable paragraphs are quoted:

"In no case may prisoners of war be transferred to penitentiary establishments (prison, penitentiaries, convict prisons, etc.) there to undergo disciplinary punishment. * * * These prisoners shall every day be allowed to exercise or to stay in the open air at least two hours."

C. (1) As prisoners of war under the Geneva Convention all confessions were extracted by using varying degrees of force, duress, trickery, deception, mock trials, ceremonies, including the passing of judgment on those accused. In every situation involving a stress on the physical well-being, the natural impulses dominate the reasoning faculties. Any alternative that promises relief from a present intolerable situation is accepted without regard to consequences. When the primary feelings are stirred, the reasoning faculties are practically suspended. Under a promise or inference of relief, a person will choose to make a false confession as the speediest way to make his freedom certain. The question arises: Was the situation such that there is a reasonable probability that the accused made a false statement under duress? If so, the confession must be excluded.

(2) Attention is drawn to the opening statement of the prosecution in which the following language was used: "Despite the youth of these suspects, it took months of continuous interrogation in which all the legitimate tricks, ruses, and stratagem known to investigators were employed. Among other artifices used were stool pigeons, witnesses who were not bona fide, and ceremonies."

The Prosecution's own witnesses testified on direct examination as follows:

"Q. Did you use any ceremony of any kind in the interrogation of Nevo?"

"A. I guess you would call it a ceremony. We used sort of a mock trial I guess you would call it. We had whoever wasn't busy sitting in the chairs behind the table, posing as officers hearing the testimony. * * * First the witnesses that we had against him were brought in, and if they were bona fide witnesses, they were sworn. And the interrogator sat down at a table with him and took notes, or maybe he started writing the statement right then.

"Q. Do you know whether or not the accused (sic) were confronted with witnesses who were not bona fide?"

"A. I know that they were.

"Q. Do you know whether or not the interrogators ever raised their voices during interrogation?"

"A. I am sure they did.

"Q. Do you know whether or not suspects ever broke down and cried after they had confessed?"

"A. I saw a few; yes, sir.

"Q. Did they cry silently or did they sob out loud?"

"A. I think out loud, sir.

"Q. Do you recall any other methods used for eliciting information other than you have already described?"

"A. No special methods. Each interrogator had his own bag of psychological tricks, you might call it."

D. (1) The laws of military courts martial certainly control insofar as these accused are concerned up to the moment they were served with charges, alleging war crimes, at which time the Supreme Court has ruled that their status changes to a suspected war criminal. Under our Court Martial Laws no confession could be used and admitted against another jointly accused. In view of the position of authority of the prosecution staff, it will go without contraversion that all the accused were in an inferior position and confessions to superiors should be regarded as clearly incompetent. It is not believed that by the widest stretch of imagination could these confessions or statements be used in a trial by courts martial due to the varying degrees of force and duress employed by the prosecution. On the other hand, it is readily conceded that if those statements had been subsequently reexecuted after the accused became suspected war criminals, no grounds for this motion would exist.

(2) On page 329 of Winthrop's Military Law and Precedents, we find the following language with appropriate substantiating cases:

"In military cases, in view of the authority and influence of superior rank, confessions made by inferiors, especially when ignorant or inexperienced, and held in confinement or close arrest, should be regarded as incompetent unless very clearly shown not to have been unduly influenced. Statements, by way of

confessions, made by an inferior under charges to a commanding officer, judge advocate or other superior whom the accused could reasonably believe capable of making good his words, upon even a slight assurance of relief or benefit by such superior, should not in general be admitted. And it has been similarly ruled in cases of confessions made by soldiers, upon assurances held out, or intimidation resorted to, by noncommissioned officers."

On Page 427, Sec. 493, of Evidence from American Jurisprudence, the following is quoted as a clear statement of the law on confession implicating several persons:

"The voluntary confession of a co-defendant or co-conspirator made after the commission of a crime or the termination of the conspiracy can not be admitted against the other defendants when such confession was not made in their presence and assented to by them, even though the several defendants are being tried jointly."

This principle is briefly confirmed on Page 327 of Winthrop's Military Law and Precedents, as follows:

"A judge advocate upon a military trial may desire to keep out of sight a portion of confessions because it implicates parties other than the accused; but this is a reason not recognized as sufficient at law, since a confession is not evidence against any person (not an accomplice) other than the one who makes it."

E. The alleged confessions or statements of these accused are absolutely void and not admissible in evidence in this case. The laws of our nation provide that a man should have only one wife at a time, and any subsequent marriage without appropriate divorce decrees render the second marriage void. The contracts of minors are void unless subsequent ratification after they reach their majority. The contracting of a party to commit a crime is void. Certain prerequisites are unnecessary to make a note negotiable, such as date due, a sum certain to be paid, etc., and without those elements they are void. So in criminal laws certain safeguards surround confessions or statements, in order to be admissible and not void. As previously outlined, International Law laid down certain safeguards for treatment of prisoners of war, and any confession or statement extracted in violation thereof is not admissible in a court martial or any subsequent trial under a code set up by Military Government. If a confession from a prisoner of war is born in a surrounding of hope of release or benefit, or fear of punishment or injury, inspired by one in authority, it is void in its inception and not admissible in any tribunal of justice. Could anyone, by artifice, conjure up the theory that the Military Government Rules and Ordinances are superior to the solemn agreements of International Law as stated in the Geneva Convention of 1939? Is this court willing to assume the responsibility of admitting these void confessions? Is this court willing to condemn those accused on written statements that are stained with illegality, due to their being obtained in the first instance in violation of the Geneva Convention to which our Nation is a signatory and which has been championed from its inception?

F. That the so-called confessions or statements of these accused must be excluded from the record is apparent. It is not believed that the Court will put itself in the anomalous position of accepting statements into evidence which were elicited from prisoners of war in contravention of the Geneva Convention and therefore a violation of the Rules of Land Warfare on the one hand and turn squarely around and mete out punishment for other acts which they deem violations of the same laws. To do so would be highly inconsistent and subject the Court and all American Military Tribunals to just criticism.

EXHIBIT D

[Restricted]

SPECIAL ORDERS } HEADQUARTERS, THIRD UNITED STATES ARMY, APO 403,
No. 117 } 10 May 1946.

EXTRACT

32. Pursuant to authority delegated to the Commanding General, Third United States Army by Commanding General, United States Forces, European Theater, a General Military Court consisting of the following officers is hereby appointed to meet at the time and place designated by the President thereof for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT

Brig. Gen. JOSIAH T. DALBEY O12440 USA Hq. 3rd Inf. Division.
 Col. PAUL H. WEILAND O8418 FA Hq. Third U. S. Army.
 Col. LUCIEN S. BERRY O4461 CAV. 9th Inf. Division.
 Col. JAMES G. WATKINS O7249 FA 32nd FA Brig.
 Col. ROBERT R. RAYMOND, JR. O12274 FA 9th Inf. Division.
 Col. WILFRED H. STEWARD O8448 CAC Hq. 31st AAA Brigade.
 Col. RAYMOND C. CONDER O16131 FA Hq. 9th Inf. Division.
 Col. A. H. ROSENFELD O212685 Inf. Hq. USFET.
 Lt. Col. GRANGER G. SUTTON O185405 Inf. Hq. USFET, *Trial Judge Advocate*.
 Lt. Col. HOMER B. CRAWFORD O902586 AC Hq. USFET, *Asst. TJA*.
 Capt. RAPHAEL SHUMACKER O1798521 CMP Hq. USFET, *Asst. TJA*.
 1st Lt. ROBERT E. BYRNE O1826233 JAGD Hq. USFET, *Asst. TJA*.
 Mr. MORRIS ELOWITZ, U. S. Civ., *Asst. TJA*.
 Col. WILLIS M. EVERETT JR. O179702 MI Hq. USFET, *Defense Counsel*.
 Lt. Col. JOHN S. DWINELL O241872 CAC Hq. USFET, *Asst. Defense Counsel*.
 Capt. B. N. NARVID O1557506 CE Hq. USFET, *Asst. Defense Counsel*.
 2nd Lt. WILBERT J. WAHNER, O2052758 JAGD Hq. USFET, *Asst. Defense Counsel*.
 Mr. HERBERT T. STRONG, U. S. Civ., *Asst. Defense Counsel*.
 Mr. FRANK WALTERS, U. S. Civ., *Asst. Defense Counsel*.
 The employment of stenographic assistance is authorized.
 By command of Major General Parker :

DON E. CARIETON,
Colonel, General Staff Corps, Chief of Staff.

(S) W. G. CALDWELL,
Colonel, Adjutant General's Department, Acting Adjutant General.

EXHIBIT B

At the direction of the chairman this exhibit, which was a copy of a brief and supporting documents filed by Dr. Eugene Leer, has been omitted from the printed record because of its great bulk, and ordered placed on file in the offices of the Armed Services Committee.

EXHIBIT C

14 SEPTEMBER 1948.

Memorandum for : The Secretary of the Army.

Subject : Survey of the Trials of War Crimes Held at Dachau, Germany.

1. Pursuant to Department of the Army orders (Tab A), the undersigned reported 30 July 1948 to the Commander in Chief, European Command, and informed him of their mission as set forth in those orders and amplified by Department of the Army radio 85938, 16 July 1948 (Tab B).

2. There were tried at Dachau 489 cases involving 1672 accused. The following tabulation reflects action taken as of 12 August 1948 :

Number of accused convicted.....	1, 416
Number of accused acquitted.....	256
Number of death sentences approved.....	297
Number of death sentences disapproved.....	10
Number of life sentences approved.....	220
Number of disapproved sentences (including 10 death sentences) ..	69
Number of sentences reduced.....	138
Number of death sentences commuted.....	119
Number of death sentences executed.....	152

In view of the voluminous records (estimated to weigh 12½ tons) appertaining to the trials of war crimes at Dachau, it was determined, after consultation with the Commander in Chief, European Command, to direct the survey principally but not exclusively to that portion of the records (65 cases) involving the 139 confirmed death sentences (underscored on Tab C) which remain unexecuted.

3. In the course of this survey there has been examined, in connection with each approved and unexecuted death sentence, the Review of the Deputy Judge

Advocate for War Crimes, the recommendations of the Chief, War Crimes Branch, the recommendations of the War Crimes Boards of Review, and the recommendations of the Judge Advocate, European Command, both with reference to the original proceeding as well as any petition for review or clemency subsequently filed. It would not have been possible to have made an examination of the entire record in each case within the time allotted; and, in view of the information furnished by the Chief, War Crimes Branch (Tab D), and confirmed by the Judge Advocate, European Command, this was not necessary to accomplish this mission. The assumption made with reference to the correctness of the facts as stated in the reviews has been verified by a complete examination of the record in doubtful cases including, but not limited to, those in which the claim has been advanced that prosecution evidence was improperly obtained by pretrial investigation or otherwise.

4. Based upon the examination made and additional information from other sources, including interviews with persons connected in varying ways with the war crimes program (Tab E), it is the opinion of the undersigned that:

(a) The unexecuted confirmed death sentences resulting from the Dachau war crimes trials are based upon records which, under the procedures prescribed in Title 5, *Military Government Regulations* (Tab F) as modified by *Manual for Trial of War Crimes and Related Cases* (Tab G) reflect that the trials were essentially fair.

(b) There was no general or systematic use of improper methods to secure prosecution evidence for use at the trials.

(c) Except as to the cases of the twenty-nine prisoners referred to in Tab H, no reason is perceived why the death sentences under consideration, all of which were imposed for participation in murder, should not be executed.

5. Recommendation has been made to the Commanding General, European Command, that:

(a) Clemency be extended to the prisoners listed in Tab H to the extent and for the reasons there stated.

(b) The temporary system presently in operation in the Office of the Judge Advocate, European Command, for the consideration of petitions for clemency be continued; and the Commander in Chief, European Command, as soon as is practicable, supplant that system by establishing a permanent clemency program for the consideration of sentences of prisoners convicted in War Crimes cases.

6. In compliance with paragraph 2 of the applicable orders (Tab A) the Commander in Chief, European Command, has been informed of the substance of this report.

(S) GORDON SIMPSON,
Colonel, JAGD.

(S) EDWARD L. VAN RODEN,
Colonel, JAGD.

(S) CLARENCE W. LAWRENCE, Jr.,
Lieutenant Colonel, JAGD.

8 Incls.: Tabs A-H

U. S. WAR DEPARTMENT

U. S. WAR DEPARTMENT

(Material MUST NOT be removed from or added to this file)

ADMINISTRATION OF JUSTICE REVIEW BOARD IN THE MALMEDY CASE

WAR CRIMES OFFICE—JUDGE ADVOCATE GENERAL'S OFFICE

HEADQUARTERS, EUROPEAN COMMAND,
14 February 1949.

FINAL REPORT OF PROCEEDINGS OF ADMINISTRATION OF JUSTICE REVIEW BOARD
Concerning Allegations Contained in Petition for Writ of Habeas Corpus
Filed in the U. S. Supreme Court by Defendants in Case of U. S. Against
Bersin et al. (The Malmedy Case)

1. The Administration of Justice Review Board, established pursuant to General Order No. 90, Headquarters European Command (Ex. 1), met pursuant to the order of reference (Ex. 2) at Berlin and Frankfurt, Germany, on 7, 16, 17

and 26 July, and 20 August 1948, to investigate the allegations in a petition for Writ of Habeas Corpus filed in the U. S. Supreme Court by defendants in the case of U. S. against Bersin et al. (The Malmedy Case). Colonel John M. Raymond, Director of the Legal Division, OMGUS, Chairman of the Board, and Colonel J. L. Harbaugh, Jr., Judge Advocate, EUCOM; Member of the Board, were present at each meeting. Dr. Carl J. Friedrich, Advisor to the Military Governor for Military Government Affairs, Member of the Board, was present at all meetings except a portion of the hearing on 17 July and a portion of the hearing on 26 July 1948.

2. Thereafter on the date of 20 August 1948 the Board submitted a preliminary report in which it recommended that testimony of additional witnesses in the United States be furnished to the Board. This has now been done. The Board reconvened on 11, 12, and 13 January, and on 10 and 11 February, 1949, for further consideration of the matter. Between 20 August 1948 and 11 January 1949 the Office of the Advisor to the Military Governor for Military Government Affairs became vacant, and therefore, at the subsequent hearings the Board consisted of Colonel John M. Raymond, Director of the Legal Division, OMGUS, Chairman, and Colonel J. L. Harbaugh, Jr., Judge Advocate, EUCOM, member, both of whom were present at each meeting. Although the Chief Judge of the Military Government Court of Appeals, U. S. Military Government Courts for Germany, was appointed a member of the Board on 24 January 1949, he was excused by the chairman and took no part in these proceedings inasmuch as he had not been present at any of the earlier sessions.

3. At the hearings prior to its preliminary report, seven witnesses were called and appeared before the Board, and twenty-six exhibits were received in evidence. In addition, another witness was interviewed by Dr. Friedrich, a member of the Board, who reported to the Board the substance of what the witness would testify if called. The Board accepted in evidence affidavits from fifty-two of the petitioners who filed the petition for habeas corpus as indicating the testimony they would give regarding the allegations in their petitions. Other witnesses in this command who would appear to have any knowledge of the matters in question were interrogated. Most of the witnesses having first-hand knowledge of the matters complained of, other than the petitioners themselves, are no longer within this command.

4. At the hearings in January and February, 1949, the Board received in evidence affidavits from the following individuals:

Colonel C. B. Mickelwait, JAGD, formerly Deputy Theater Judge Advocate for War Crimes, USFET and later Theater Judge Advocate, USFET (Ex. 27).

Lt. Colonel Burton F. Ellis, JAGD, formerly Chief, Investigation Section, War Crimes Branch, Office of Theater Judge Advocate, USFET and later Chief Prosecutor of Malmedy Case (Ex. 28).

Dwight F. Fanton, formerly Major assigned to Investigations Section, War Crimes Branch, Office of Theater Judge Advocate, USFET and in charge of investigation of Malmedy case until March 1946 (Ex. 29, 30).

Homer B. Crawford, formerly Lt. Colonel, Air Corps and a member of the investigating team in the Malmedy case (Ex. 31).

Raphael Shumacker, formerly Captain assigned to War Crimes Branch USFET and formerly Interrogator connected with the Malmedy case (Ex. 32, 33).

William R. Perl, formerly 1st Lieutenant and Interrogator in Malmedy case (Ex. 34).

Morris Ellowitz, formerly Civilian Interrogator in Malmedy case (Ex. 35). The Board also received in evidence additional affidavits of several individuals submitted by the defendant Peiper in the Malmedy case (Ex. 36) and a number of affidavits submitted by Cardinal Frings, Archbishop of Cologne, the latter being duplicates of certain of the affidavits in Exhibit 23 (Ex. 37). The Board received in evidence copies of letters written to the Secretary of the Army by Senator Baldwin and Senator Ecton, and copy of a telegram to the Secretary of the Army from Representative Case (Ex. 38). Finally the Board received in evidence a copy of an affidavit of Doctor Eduard Knorr who had been part-time dentist at Schwabisch Hall (Ex. 39), and a document purporting to be a copy of an affidavit by Carl Diebitsch, German Camp Commander at Schwabisch Hall, (Ex. 40) and an affidavit from Lt. Col. J. B. Costello, who had previously testified as a witness (Ex. 41).

5. The affidavits included in Exhibit 23 have been accepted as representing what the petitioners would testify. The Judge Advocate, EUCOM, has in its possession

a number of additional affidavits from various sources, many of which claim similar mistreatment. The Board has looked these over and is of the opinion that such evidence would only be cumulative in showing an alleged course of conduct, which is fully described in the affidavits now in evidence. Therefore, these additional affidavits have not been received in evidence.

6. The allegations in the petition for habeas corpus relate to three distinct matters:

- a. alleged improper methods used in procuring testimony,
- b. impropriety in the conduct of the trial, and
- c. certain legal questions bearing principally on the guilt of the accused and the sufficiency of proof to support conviction.

The Board has construed the order of reference as relating only to the first two of these matters and has not dealt with any questions of law, questions regarding the guilt of the accused or questions of possible clemency action. Questions regarding the sufficiency of the evidence to support their conviction were only considered incidentally. After careful consideration of the testimony and the exhibits the board makes the following findings:

FINDINGS

7. On or about 16 December 1944, a combat team of the German Army known as "Combat Group Peiper," to which the several accused belonged, participated in a counteroffensive known as the "Ardennes Offensive" or the "Battle of the Bulge." In the course of this offensive surrendered and unarmed prisoners of war as well as unarmed allied civilians were killed at various places in Belgium by members of Combat Group Peiper, the largest mass killing being at the "Crossroads," at Malmedy, Belgium, on 17 December 1944. At this place surrendered American prisoners of war estimated from 80 to 200 in number were herded into a pasture and fired upon by the Germans of Combat Group Peiper with machine guns, tanks, and various other kinds of weapons. Various members of the group walked among the bodies, fired additional shots at prisoners who appeared to be alive. Similar ruthless killing by Combat Group Peiper took place in other vicinities.

8. From that time on there was considerable public demand for arrest and trial of those responsible. In June 1945 work started on the case. While there was plenty of evidence of the atrocities committed, particularly at the Crossroads, the names of those participating were not known. Consequently steps were taken to locate all members of Combat Group Peiper including the 1st SS Panzer Regiment. As a result, over nine hundred and ninety known members of the First SS Panzer Regiment were collected in one place. It then developed that Colonel Peiper was still controlling his men, and it was impossible to develop the story. To avoid intercommunication, they were moved to a modern German prison in Schwabisch Hall, Wuerttemberg-Baden, where prisoners could be reasonably well segregated from each other. Ultimately 74 such prisoners were tried and 73 convicted; 60 convictions were finally approved by the Commander-in-Chief, including 12 cases involving the death sentence.

9. The allegations in the petition for habeas corpus which the Board is charged with investigating charge that improper methods were used in obtaining evidence from the accused. Such charges relate almost exclusively to what was done at Schwabisch Hall. The interrogation of the accused and witnesses confined there was at first under the command of Major Dwight F. Fanton, then for a short time under Captain Raphael Shumacher, and finally under Lt. Colonel Burton F. Ellis, who became Chief of the Prosecution staff at the trial. Those primarily accused of misconduct were Captain Raphael Shumacher, 1st Lt. William R. Perl, Morris Ellowitz, Joseph Kirschbaum, and Harry W. Thon, the last three being civilians. Of all these people only Kirschbaum and Thon were available to the Board as witnesses. However, affidavits were received from all the other people named in this paragraph.

10. The allegations as to misconduct fall into two principal categories:

- a. the use of mock trials, threats, inducements, and stratagems to procure sworn statements against other accused and to obtain confessions; and
- b. the use of physical violence for similar purposes.

11. *Mock Trials.*—At the trial the prosecution admitted and the Board finds in the evidence before it, that in certain instances, probably about eight or ten, the use of a so-called mock trial was resorted to in an attempt to "soften up" a witness who was thought to be susceptible to such procedure. Those trials were held at Schwabisch Hall in one of the cells, sometimes a small cell about 6 x 8 feet, sometimes in a larger room two or three times that size. There would be a

table covered with a black cloth on which stood a crucifix and burning candles and behind which sat one or more people impersonating judges.

12. The defendant would be brought from his cell hooded. The practice of using black hoods whenever a defendant was taken from his cell was universally employed at Schwabisch Hall to prevent communication with other prisoners and to prevent knowledge of where he was going. Allegations that these hoods were bloodstained were not supported by any testimony before the Board, other than affidavits of the petitioners.

13. When the prisoner was brought into the mock-trial room sometimes other people were brought in who purported to testify against him. There is no evidence on which the Board can find that the prisoner himself was forced to testify at such trial. One member of the prosecution team would play the part of prosecutor and another would act as a friend of the defendant. While this latter may have been not held out affirmatively as defense counsel the accused had every reason to believe he was taking that part. No sentence was pronounced, but the accused was made to understand that it was his last chance to talk and undoubtedly in some cases understood he had been convicted.

14. Following the mock trial the man who had played the friend of the accused at the mock trial would talk to him confidentially and advise him to tell what he knew. This procedure met with varying success, but undoubtedly some defendants would confess at least part of their crimes under the influence of such procedures.

15. This procedure has a further bearing on the preparation of the case when it really came to trial. Defense Counsel appointed for the accused found difficulty in getting the confidence of the defendants because of their experience with the mock trials, but it appeared that such difficulty was overcome after the first two or three days.

16. *Intimidation and Abuse.*—It is further alleged in the petition for habeas corpus or in the affidavits of the accused that various methods were used in connection with the interrogation which had the effect of intimidating or abusing the accused. For example, it is alleged that floodlights were thrown in their eyes when they were being interrogated. On all the evidence the Board finds that this was not a general practice, and that if any light was used in the interrogation room it was a low-candlepower light and its use was not in any objectionable way. Again it is claimed that the accused were deprived of blankets and clothing on occasions when they refused to testify. The Board cannot find that there was any deprivation of clothing, but does find that certain cells did not have blankets for a short period of time. However, these cells were heated to normal room temperature. It is also claimed that they were deprived of food until they would confess. The Board finds that when food was brought before a particular interrogation had ended the accused may have had to wait until the interrogation was finished before he was allowed to eat his meal, but there was no deliberate withholding of food to force a confession. It is further claimed that in one of the cells where defendants were taken there were bullet holes in the walls and human flesh and hair clinging to the bullet holes. There was no substantial testimony to support this. The Board is not convinced there was basis in fact for this allegation.

17. *Dictation of Confessions.*—There is a claim that confessions were written or dictated by interrogators and that the accused were forced to sign them as so prepared. The Board finds that after many interrogations the story of the accused would be pieced together and he would then be told to write out his story covering such and such points. When something was omitted it would be pointed out to him and he would be told to include it if it was the truth. In some cases the interrogator undoubtedly would dictate the exact language, but the Board finds that in such cases the language probably represented substantially what the accused had already confessed in his interrogations. The accused was permitted to read over and to correct what he had written. All such confessions were signed and sworn to before an officer, so that when the interrogation was by a civilian (for example Kirshbaum, Ellowitz, and Thon) the statement was signed and sworn to before Captain Shumacher or Lt. Perl. There is no evidence that these officers in such cases forced the defendant to sign and swear to anything that he was not willing to sign or swear to.

18. *Suicide Case.*—It was alleged that mistreatment caused a suicide of one of the prisoners at Schwabisch Hall named Freimuth. Freimuth committed suicide by hanging himself in his cell. He had been under interrogation, as had the other accused. The Board is unable to make any findings as to the reason of the suicide, but in view of all the testimony is not convinced that Freimuth received the mistreatment alleged.

19. *Death Cell.*—There is constant reference to a so-called "death cell," or death cells, the inference being that prisoners who were placed in such a cell had been sentenced to death. While this term was generally used at Schwabisch Hall for a particular cell, the origin of the term goes back to the fact that when it was a German prison that cell was used to confine prisoners who had been sentenced to death. There is no evidence, apart from the use of the term, that the accused were threatened with death by being placed in that cell. The Board finds that there were no gallows or other means of execution in the so-called death cell or anywhere in the prison, and no executions took place there during the period in question.

20. *Solitary Confinement.*—Prisoners were from time to time placed in solitary confinement for infraction of prison rules or to prevent their communicating with other prisoners. It is not clear whether this practice was followed in the case of prisoners who refused to give statements, although this is possible. Solitary confinement was usually for a period of only a few days. However, after the number of prisoners at Schwabisch Hall had been reduced by weeding out suspects who were not to be charged and not to be used as witnesses, as far as possible the remaining prisoners were confined in individual cells or in cells with not more than one other man. This was part of the plan to prevent intercommunication, between prisoners, which was deemed necessary as a result of early experience in order to prevent coordination of stories by the accused.

21. *Inducements.*—It is alleged that prisoners were told that the prosecution was only interested in convicting the officers, and that this was held out as an inducement to enlisted men to give testimony against their officers, and incidentally, to state their participation in the affair. The Board finds that the strategy of the prosecution, in order to break the case, was to get statements first from the enlisted men, who were men more likely to talk, and get them to involve their immediate superiors, then to confront those superiors with these statements and get them to involve people still higher up, until finally the top man was involved. Undoubtedly representations were made along the lines: "You know that what you did was under orders. Now who gave you the orders and what were they?" It is probable that in certain cases the interrogators went further in their representations.

22. *Relatives of Accused.*—It is alleged that representatives of the prosecution threatened harm to relatives of the accused if they did not confess, such as deprivation of ration cards. There was evidence that this did occur. The Board finds it is probable in certain instances such threats may have been made, but the Board is unable to identify the particular instances involved. It did appear that during the trial certain members of the prosecution staff invited relatives of the accused who attended the trial to a party at the Officers' Club. There was no evidence, however, that this means was used to obtain any statements that could be used against the accused.

23. *Stool Pigeons.*—It is admitted, and the Board finds, that stool pigeons were placed in cells with the accused in an attempt to get statements.

24. *Physical Violence.*—As to the claim that physical violence was used against the accused, considerable evidence was taken. Practically all of the accused in their recent affidavits claim violence was used on them. On the other hand all of the interrogators and those in charge of the interrogators assert no violence was used.

25. Corroborating the claims of the various accused as to physical violence, there is the affidavit of Doctor Knorr, the dentist at Schwabisch Hall, that he treated 15 or 20 of the suspects for injuries to the mouth and jaw, apparently inflicted by blows. There is also the affidavit of a German prisoner of war who worked in the hospital that he observed a number of the prisoners who had to be treated for bruises and contusions. On the other hand, Karl Diebitsch, in an affidavit dated 11 April 1946, stated that he was the German Camp Commander of the suspects in Schwabisch Hall during the period in question, and did not personally see any ill treatment, although he repeats in his affidavit rumors of mistreatment that he heard from various sources.

26. It appears that on 7 February 1946, an SOP was published by Major Fanton, then commanding the interrogators at Schwabisch Hall, which contained the following provisions:

4. RULES GOVERNING INTERROGATION

a. Any ruse or deception may be used in the course of the interrogation, but threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment, should be scrupulously avoided.

b. Where a prisoner being interrogated in a crime is implicated in that crime, it is permissible to tell him that he will be recommended as a witness, if such statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant. However, before any such statements are made to a prisoner, the matter must be cleared with the Commanding Officer.

c. Stool pigeons may be employed, but prior to their selection or preparation, the matter of their employment must be cleared with the Commanding Officer.

It also appears that these instructions were never changed and were continued in force until the end of the investigation.

27. As bearing on the likelihood of there having been physical mistreatment it is to be noted that the Deputy Judge Advocate for War Crimes ordered an investigation of similar allegations in April 1943 before the trial started, at a time when all concerned were available. Both Colonel Mickelwait and Lt. Colonel Ellis state that the Investigating Officer reported that he could find no evidence warranting the conclusion that allegations of improper actions, such as the use of violence or the threats of violence, were true. A similar report was rendered by the Chief Prosecutor, after inquiry of his staff. It furthermore appears that four of the defendants admitted to the Investigating Officer that their accusations of violence and beating were only made "to get out from under" their confessions and were not true, and this was admitted at the time by the Chief Counsel for the Defense.

28. It is to be noted that the Chief Counsel for the Defense, shortly after he was appointed and before the trial, submitted forms to be filled out by each of the accused. These forms called for information as to any mistreatment that they had suffered. Presumably these forms were completed and in the hands of the Chief Defense Counsel prior to trial. Nevertheless, only nine of the seventy-three defendants who were convicted took the stand in their own behalf, and of these nine only three (Motzheim, Sievers, and Tomhardt) then claimed any physical mistreatment in connection with their interrogation. In January or February 1948 when these same individuals prepared affidavits they advanced new and greatly expanded claims of mistreatment. For example, Goldschmidt, testifying at the trial, made no claim whatsoever that he was subjected to duress or improper treatment (Ex. 41). Yet, in his affidavit of 11 February 1948 (Ex. 23) he claims that on 12 February 1946 he was "kicked and beaten in the face" and after a hood was put over his head "I was taken to a cell opposite where I was beaten in the abdomen, fell to the ground and screamed"; that thereafter he was made to stand between two objects which were pressed together strongly "and was beaten several times over the head with a hard object." Two days later "I was kicked twice in my lower body" and later "was beaten in the face and kicked in the legs." An example of a greatly elaborated claim of mistreatment being made for the first time long after the trial is the case of Motzheim. At the trial he mentioned beating administered by Mr. Thon and Lt. Perl but without giving any details (Ex. 41). In his affidavit of 11 February 1948 (Ex. 23) he stated, "I was beaten by Mr. Harry Thon and Lt. Perl into the face, in the abdomen and in the genitals." Later Thon "kept pushing my head against the wall of the cell and Lt. Perl kicked me in the genitals. * * * I was kept on being beaten until I collapsed." In his next interrogation he says the same methods were used, and he was hit in the face and in the abdomen, and his interrogation "continued till late at night with constant beatings by Mr. Harry Thon and Lt. Perl." On his third interrogation he says "after a half-hour two U. S. guards appeared and beat me with their clubs when I was wearing the hood and when I lay on the ground kicked me with their feet. Then Mr. Thon and Lt. Perl continued the interrogation till noon by means of beatings and other mistreatments." Certainly if any such actions had taken place it was within the knowledge of the defendants at the time of the trial and presumably within the knowledge of their counsel. No reason appears to explain the fact that the matter was not brought out at that time, or if brought out was not developed to the fullest extent.

29. The affidavits of mistreatment which has been received in evidence and those which are in the possession of the Judge Advocate, EUCOM, were almost universally executed in January or February 1948, two and a half years after the trial was concluded. In view of the doubt as to the reliability of the statements contained in affidavits executed at that time by the accused who testified at the trial, further doubt is cast on the affidavits also prepared at that time by the other accused.

30. On all the evidence, the Board finds that physical force was not systematically applied in order to obtain statements, but that undoubtedly in the heat of the moment on occasions, interrogators did use some physical force on a recalcitrant suspect. The Board further is satisfied that the description of physical violence that is given in the affidavits of the accused is exaggerated far beyond anything that might have taken place, and that the individuals who may have been subjected to some physical violence were probably few in number.

31. The allegations relating to the trial and preparation for trial can be grouped as follows:

- a. Difficulties of preparation of defense.
- b. Tampering with witnesses.
- c. Hampering defense at the trial.

There is further allegation that the prosecution jokingly admitted at the trial that there had been misconduct during the interrogation of the accused.

32. *Difficulties of Preparation of Defense.*—Findings as to difficulties of the defense caused by the use of mock trials are set forth in paragraph 15 above. The petition for habeas corpus further alleges that the time for preparation of defense was too short. The order appointing defense counsel was dated 9 April 1946. Charges were served 11 April 1946 and trial commenced 16 May 1946. The prosecution's case lasted four weeks and at the conclusion there was a recess of one week to allow the defense further opportunity to prepare its case. The defense staff included seven American lawyers, two of whom had command of the German language. There was not limit placed on the number of German counsel the defense could employ. Actually, about a half dozen German defense counsel were used, at least one of whom spoke fluent English. The defense were permitted complete access to their clients. Each defense counsel had a secretary and in addition an interpreter, and other interpreters were available if needed. American vehicles and personnel were made available to counsel to go out to look for witnesses and evidence. There was some lack of cooperation and unpleasant relationship between the prosecution and defense at first, but these difficulties were ironed out by the Third Army Chief of War Crimes under whose jurisdiction the case fell. One of the principal causes of such friction was that the prosecution continued to interview the accused while the defense was trying to prepare its case. Another was a refusal on the part of the prosecution to let the defense interview certain witnesses, and when they were interviewed by the defense the prosecution would again interview them and the witnesses would change their story. The defense were furnished copies of statements of the accused before trial, but were not furnished testimony of all other witnesses. The Board finds that the prosecution did interfere with the preparation of the defense in the manner above indicated, but by the time the defense was required to put in its case they had had sufficient opportunity, generally speaking, to prepare the same. At the opening of the trial there was no request for any delay or continuance, and at the close of the prosecution's case the only continuance asked by the defense was granted.

33. *Theft of papers.*—There is a particular allegation that during the trial Lt. Perl, while the trial was in progress and all the accused and counsel were in court, entered the rooms of some of the accused and took papers which they had prepared for their counsel, and examined them at his office. It appears from the affidavits of Lt. Colonel Ellis and Lt. Perl that these papers were taken by Lt. Perl in connection with a search growing out of an attempt to escape. The Board is not convinced that the papers were taken for any improper purpose.

34. *Hampering of Defense at Trial.*—It is alleged that the Defense was hampered in presenting the case. This boils down to an allegation that they felt the rulings of the court were unfair although not illegal. The court frequently would say they had heard enough evidence on a certain point or did not care to hear anything along a particular line, or would overrule objections of the defense to testimony offered by the prosecution. The rules under which the court was operating permitted the introduction of "oral, written, and physical evidence having a bearing on the issues before it" and permitted the exclusion of "any evidence which in its opinion is of no value as proof" (Ex. 10, page 68, rule 12). The Board finds that the court might have been more considerate of the position of the defense, but considers it beyond the scope of the order of reference to deal with any legal questions involved.

35. *Testimony of Prosecution Witnesses.*—The prosecution witnesses testified at the trial regarding the mock trial proceedings. The Board finds that while this testimony was not given in a joking manner, the witnesses would make light of it although frankly admitting the facts.

36. *Additional Considerations.*—As to the case as a whole, two additional facts must be stressed. Findings have already been made in paragraph 8 above regarding some of the difficulties facing the team that was charged with preparation of this case for trial. The accused were hostile witnesses at all times. Although young they were tough SS men, who had been trained to hate Americans. They were all controlled by Colonel Peiper who had issued instructions not to talk. There were no eyewitnesses to identify perpetrators of the crime, with one exception. As a result the entire case had to be developed from statements procured from members of the First Panzer Regiment. About 1,000 such people were collected, but no one knew which of them had knowledge of this particular affair. With public demand for a trial aroused by the brutality of the Malmedy Massacre, which had received tremendous publicity in the American press, the interrogating team was under pressure to crack the case. Methods tried at first failed. Only after the prisoners were at Schwabisch Hall, relatively isolated, and after experienced interrogators had been procured, was the case finally broken. The strategy of using one man against another was almost a necessary step. In every case that was approved the accused was convicted not only by his own statement but by corroborative testimony from others.

37. A second point not to be overlooked is the fact that only nine of the 73 accused who were convicted took the stand. Whatever may be said about the method used in obtaining statements, had the defendants given completely false statements in their signed confessions it is difficult to understand why they did not want to take the stand and repudiate them. The witness Narvid, the only member of the defense staff who testified before the Board, stated that the defense staff felt that a prima facie case had not been made by the prosecution, but he further stated: "We felt that the prosecution had still a considerable amount of other evidence in the form of statements involving these accused which they were utilizing for rebuttal, or intended to use for rebuttal. * * * They gave the impression they were hoping the accused would take the stand so that they could 'really give it to him' * * * they would involve themselves more than they were already involved" (testimony of Narvid, Q. 798). Colonel Everett, Chief Defense Counsel, is reported to have stated that if he put the accused on the stand they would probably hang themselves (testimony of Straight, Q. 207). Lt. Colonel Ellis, in his affidavit, states that during the trial Colonel Everett was concerned about the unfavorable showing the accused were making on the Court by their testimony, and discussed the matter with Lt. Colonel Ellis who told him that if he were acting for the defense and believed the accused were guilty, he would not put them on the stand. Thereafter only three more of the accused took the stand (Ex. 28). Although the findings in this paragraph have only a remote bearing on the issues before the Board, there was testimony on this point which was felt important enough to report. It does tend to discredit the idea advanced in the petition for habeas corpus that the methods used by the interrogators were so severe as to cause the accused to sign false confessions.

CONCLUSIONS

38. The Board concludes:

- a. That there was limited use of mock trials.
- b. That there was a general use of the practice of persuading underlings to talk by telling them the prosecution wanted to get their superiors and was not so much interested in them.
- c. That physical force was not systematically applied in order to obtain statements but that undoubtedly in the heat of the moment on occasions interrogators did use some physical force on a recalcitrant suspect.
- d. That in certain instances interrogators made threats to accused that if they did not talk, their relatives would be deprived of their ration cards.
- e. That the practices referred to in a, b, c, and d above, in certain instances exceeded the bounds of propriety but the Board has been unable to identify such cases.
- f. That there was a general use of other ruses, stratagems, stool pigeons and similar practices justified by the difficulty of "cracking the case."
- g. That the conditions obtaining at the prison and the methods employed in the interrogations had a definite psychological effect on the defendants and resulted in their being more amenable to giving statements.
- h. That the defense had difficulties in the preparation of its case, but such difficulties were ironed out, and the defense, considering all the circumstances of the case, had a reasonable time in which to prepare its case.

i. That the remaining allegations of the petition relate to matters which are not deemed to have been substantial abuse under the circumstances.

RECOMMENDATIONS

39. The Board recommends that this report, together with the testimony and exhibits, be considered in connection with any further consideration of the Malmedy case.

JOHN M. RAYMOND,
Colonel, GSC, Chairman of the Board.
J. L. HARBAUGH, JR.,
Colonel, JAGC, Member of the Board.

EXHIBIT E

SUPREME HEADQUARTERS, ALLIED EXPEDITIONARY FORCE G-5 DIVISION

This Manual is published for the guidance of Legal and Prison Officers and other Officers concerned with the discharge of legal and prison duties. The Manual is divided into four parts, the first of which is intended for Legal Officers and the second for Prison Officers. Parts III and IV provide a Glossary and an Index. The Manual contains Rules for Military Government Courts and the Guide to Procedure. It also contains detailed instructions with respect to the supervision of German Courts and an outline of German Criminal Law. The relevant forms to be used by Legal and Prison Officers are placed at the end of each section.

Certain extracts from Chapter V of Part II of the Military Government Handbook for Germany have been incorporated in the text, and a marginal reference to the section number in the Military Government Handbook is given in each case. It should be noted, however, that the whole of Chapter V of the Handbook has not been reprinted in the present edition. As Chapter V of the Handbook is now being revised, opportunity has been taken to introduce the proposed revisions in this Manual. Until, therefore, the revised Chapter V is issued there will be a discrepancy between the Manual and the Handbook. The former, of course, should be followed.

For the convenience of those who have used the first edition of the Manual, a separate table has been made showing where the old documents and supplements are incorporated in the new text. Supplements 2, 3, 4, 5, and 6 have been included in the main text and no longer appear as supplements. A list of the subjects covered by such supplements is included in the comparative table referred to above.

An English-German glossary of technical Military Government terms has been added.

In view of the provisions of Ordinance No. 3 making the English language official for the areas under the control of the English-speaking forces and the French and English languages in the area under the French Military Government control, German translations of the proclamation, laws, and ordinances have not been included. However, German translations of the forms to be used by Military Government Courts and directions to German authorities, though they are not official texts, have been included for the convenience of practitioners.

A. E. GRASSETT,
Lieutenant General, Assistant Chief of Staff, G-5.

EXHIBIT F

RULES OF PROCEDURE IN MILITARY GOVERNMENT COURTS

1. *Construction of Rules.*—These Rules shall be read with and subject to the Proclamation and Ordinance of the Military Government.

COURTS, PROSECUTORS AND COUNSEL, AND OFFICIALS

2. *Courts.*—(1) Before proceeding with the hearing of any case, a Military Government Court shall satisfy itself that it is properly constituted, having regard to whether it is a General, Intermediate or Summary Military Court, that no

member of the court has a personal interest in the case, and that it has jurisdiction over the person and offense.

(2) In General and Intermediate Military Courts, and, when practicable, in a Summary Military Court, at least one member shall be a lawyer serving with the Military Government.

(3) When the court consists of more than one officer, the senior in rank shall preside except that when feasible a Legal officer shall be designated to preside by the Appointing Authority or by the senior in rank. The presiding officer shall be responsible for the making of the record and may require any other member to assist him in making it. Any member of the court may sign the record.

(4) No addition to or substitution in the membership of the court shall be made in the course of a trial. The failure of any member to be present throughout any trial shall not invalidate the trial, provided that the court is at no time reduced below the legal minimum. No member who has been absent at any time shall take any further part in the trial.

(5) Every issue shall be determined by a majority of the votes of the members of the court as then constituted, except that a two-thirds vote shall be required for a sentence of death. When the voting is evenly divided the presiding officer shall cast a second vote. When the court consists of more than one officer, voting shall be in inverse order of rank; except that the presiding officer shall always vote last.

3. *Prosecutors and Counsel.*—(1) Any officer of the Allied Forces, or any other person acceptable to the court, may act as prosecutor.

(2) Any lawyer not debarred from appearing by the Military Government or by the court, or any other person with the consent of the court, may appear as defending counsel. The court may appoint an officer of the Allied Forces, or with the consent of the accused designate local counsel, to represent the accused or assist in his defense if the nature of the case makes it desirable. Before a General Military Court, where a sentence of death may be imposed, and the accused is not represented, the court shall appoint an officer of the Allied Forces to represent him at his trial.

4. *Officials.*—A Military Government Court may appoint interpreters, reporters, advisers and other officials, either generally or for the trial of a particular case, who need not be members of the Allied Forces. Any official reporter or interpreter shall, before assuming his duties, take an oath in the form set out in Legal Forms, Military Government Courts, for the purpose of particular proceedings or of any term or session of the court.

PRELIMINARY PROCEEDINGS

5. *Arrest and Summons.*—(1) All proceedings in a Military Government Court will be commenced by summons to appear, warrant of arrest, or arrest without warrant.

(2) A warrant of arrest may be issued by any officer of the Allied Forces and may be executed by any member of the Allied Forces or any person acting under the authority thereof.

(3) A summons may be signed and served by any member of the Allied Forces or any person acting under the authority thereof except as may be otherwise directed by or under the authority of the Chief Legal Officer or an Army Group Commander.

6. *Charges.*—(1) A copy of the charges shall be delivered to an accused or his representative as soon as practicable after arrest and in any event before trial. Where proceedings are commenced by service of a summons adequately stating the charges, no separate charge sheet need be used. A copy of any amendment to the charges shall also be given to the accused unless waived in open court by him or his counsel.

(2) Each charge shall disclose one offence only and shall be particularised sufficiently to identify the place, the time and the subject matter of the alleged offence, and shall specify the provision under which the offence is charged.

(3) Any number of charges may be contained in the same charge sheet, and alternative charges may be based on the same facts.

(4) Two or more persons may be tried jointly for the same offence where the charge arises out of the same set of circumstances.

7. *Arraignment and Pleadings.*—(1) All persons arrested for an offence with or without a warrant will be brought as soon as practicable before a Summary Military Court, except that the Chief Legal Officer or any officer authorised by him in order that any particular case or class of cases be brought directly before an Intermediate or General Military Court for trial.

(2) A Summary Military Court, on the accused appearing before it, may defer the hearing if the accused has had insufficient time to prepare his defence or for other reasons, and in that event will order the accused to be detained in custody or released on or without bail on such terms as the court thinks fit.

(3) In the event of a decision to proceed, the court will read to the accused the charges brought against him and will ask the accused after the reading of each charge whether he pleads guilty or not guilty to it. If necessary, the Court will explain these terms to the accused. The Court will enter in the record of the case the plea made to each charge.

(4) At the time of pleading to the charges, the court may interrogate the accused as provided in Rule 10 (5).

(5) The court may accept a plea of guilty to an offence other than that charged and a plea of not guilty to the offence charged.

(6) If the answer of the accused to any charge is such that it appears he may not be guilty of the offence charged, then whatever his plea may be the court shall enter a plea of not guilty.

(7) A plea of not guilty of any offence for which a sentence of death may be imposed shall be entered by a Summary Military Court in any case reported for transfer to a General Military Court.

(8) A Summary or Intermediate Military Court may deal with any offence for which the penalty of death is authorised if it is satisfied that, in fact, a penalty, which it has power to inflict, is adequate.

(9) All charges to which an accused person pleads not guilty shall be tried together, unless on the application of the accused the court grants leave for any of them to be tried separately.

8. *Procedure of Plea of Guilty in Summary Military Court.*—(1) Upon a plea of guilty of all offences charged, a Summary Court will hear such statements for the prosecution and the defence and such evidence as it requires to enable it to determine the sentence to be imposed. If it has power to impose adequate punishment, it will proceed at once to the sentence.

(2) If in the opinion of the Summary Military Court a sentence should be imposed in excess of that which it has power to impose, it will report the case to the legal officer of the next higher Military Government echelon for reference to the appropriate Intermediate or General Military Court.

(3) Before such reference, a Summary Military Court may, however, in its discretion for the purpose of perpetuating the testimony or for any other reason, receive evidence respecting the commission of the alleged offence.

9. *Procedure on Plea of Not Guilty in Summary Military Court.*—(1) Upon a plea of not guilty, the court, either by way of preliminary hearing or as part of the trial, will hear such statements for the prosecution and the defence and such evidence as it requires to enable it to determine:

a. Whether the case should be referred for trial to an Intermediate or General Military Court, either because of its own lack of power to impose adequate sentence in the event of conviction, or for any other reason;

b. Whether there is sufficient substance to the charge to justify a trial thereon by any court.

(2) A Summary Military Court will then either:

a. dismiss some or all of the charges (whether or not the court would have had power to impose sufficient sentence in the event of a conviction);

b. report the case to the legal officer of the next higher M. G. echelon for reference to the appropriate Intermediate or General Military Court; or

c. retain the charges and proceed with the case.

(3) The court, even if it decides to report the case for reference to a higher court, may receive further evidence as provided in para. (3) of Rule 8, and should do so if there is any doubt as to the future availability of witnesses.

TRIAL PROCEDURE

10. *Trial Procedure in Summary Military Courts.*—(1) A Summary Military Court shall be guided by the following outline of procedure, which may be modified to fit the circumstances of the particular case:

a. a statement by the prosecutor outlining the facts to be proved by the prosecution, and the calling of the prosecution's witnesses;

b. after each witness has given his evidence, cross-examination by the accused or his representative;

c. reexamination by the prosecutor of any witnesses upon any new matter appearing in the cross-examination or, with the court's consent, upon any other matter;

d. when all the witnesses for the prosecution have been called and the case for the prosecution closed, a statement by the accused or his representative, followed by the calling, examination, cross-examination and reexamination of the witnesses for the defence;

e. when all the witnesses for the defence have been called and the defence closed, the calling by the prosecution, with leave of the court, or recalling of any witnesses for the purpose of rebuttal of any material made by any witness for the defence or of giving evidence on any new matter raised by the defence;

f. a summing up by the prosecution following by a summing up by the accused or his representative;

g. consideration and announcement of the findings;

h. in the event of acquittal on all charges, the discharge of the accused;

i. in the event of conviction, hearing of statements and evidence for the prosecution and the defence, including evidence of prior conviction, bearing upon the sentence to be imposed;

j. consideration of sentence and its announcement in open court.

(2) After the close of the case for the prosecution, the court may acquit the accused on any charge if it decides there is not sufficient evidence to support the charge and that the accused should not be required to answer it, and any such acquittal shall be entered in the record of the case. The court may on application of the prosecution also direct that any further charge or charges be preferred against the accused and may grant any necessary adjournment for that purpose.

(3) The court may at any stage of the examination question any witness and may call or recall any witness at any time before finding if it considers it necessary in the interest of justice.

(4) Each witness called shall take an oath or make affirmation in the form contained in Legal Forms, Military Government Courts, before giving evidence, except that a child under fourteen years of age who in the judgment of the court does not understand the nature of the oath but nevertheless understands the duty of speaking the truth may give evidence without being sworn or making affirmation. The oath or affirmation may be administered either in English or in any other language.

(5) The court may interrogate the accused at the time of pleading or at the trial, but shall not apply any compulsion to require him to answer. Any statements then made may be received as evidence. If the accused chooses to testify at a later stage of the trial, he may do so, but he may not be required to do so and shall not be sworn.

(6) The Court shall have power to order trial in camera if it is necessary to prevent any prejudice to the security of the Allied Forces or for some other exceptional reason.

(7) In the event of the accused not appearing before the Court, the following action may be taken:

a. if it is proved that the accused was duly served with a summons to appear, the Court may proceed with the trial in his absence and may, if it considers the case against him proved, record a conviction and sentence;

b. if it is not so proved but the Court is satisfied that after reasonable steps have been taken to find and summon the accused he cannot be found, the Court may proceed in his absence up to but not beyond the recording of evidence and making any order permitted under subrule (e) of this Rule. In the event the accused being subsequently brought before the Court, such recorded evidence shall be admissible as evidence in the case, provided that the accused shall be entitled to cross-examine any of the original witnesses for the prosecution whose attendance can be procured (in which case the prosecution shall be entitled to reexamine) and both the prosecution and the accused shall be entitled to call fresh evidence;

c. in either of the above cases the Court shall appoint an officer of the Allied Forces or other suitable person to represent the defence;

d. in addition to its powers under Rule 14 (4) the Court may, in proceedings under subrule (a) of this Rule, for the purpose of enforcing a sentence of a fine make such order regarding the custody or disposition of any property which the accused owns or in which he has an interest as appears to be just and appropriate;

e. in proceedings under subrule (b) of this rule the Court may, whenever it appears to be just appropriate, make an interim order for the custody or impounding of any property which the accused owns or in which he has an

interest, pending the conclusion of the trial or may make any final order with respect to such property as may hereafter be authorized by further Rules of Procedure. This power of the Court is without prejudice to the powers of the Military Government under Law No. 52 (Blocking and Control of Property).

11. *Trial Procedure in Intermediate and General Military Courts.*—The procedure in Intermediate and General Military Courts shall be the same as that provided herein for Summary Military Courts except that:

(1) the record of any evidence taken in a Summary Military Court will be made available to the Intermediate or General Military Court, and the record of any evidence taken in the Intermediate Military Court made available to the General Military Court, and any witness whose evidence differs from that given by him before the lower court may be cross-examined thereon or questioned by the court;

(2) if any witness is unavailable, the Intermediate or General Military Court may, after hearing the prosecution and defence, receive in evidence the record of his testimony in the lower court;

(3) a plea of guilty to an offence punishable by death may be accepted provided the court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment which it is within its power to impose would suffice.

12. *Evidence.*—(1) A Military Government Court shall in general admit oral, written, and physical evidence having a bearing on the issues before it, and may exclude any evidence which in its opinion is of no value as proof. If security is at stake, evidence may be taken in camera or in exceptional cases where security demands it may be excluded altogether.

(2) The court shall in general require the production of the best evidence available.

(3) Evidence of bad character of an accused shall be admissible before finding only when the accused person has introduced evidence as to his own good character or as to the bad character of any witness for the prosecution.

13. *Amendment of Charges and Pleas.*—(1) A Military Government Court may amend a charge at any time before finding, provided that an adjournment is granted if necessary, and that no injustice is thereby done to the accused.

(2) An accused person may at any time before finding, with the leave of the court, alter a plea of not guilty to one of guilty.

(3) The court may on its own motion or at the request of the accused at any time before sentence alter a plea of guilty to one of not guilty.

(4) An accused person who has pleaded guilty to a charge in a Summary or Intermediate Military Court may, if the case is referred to a higher court for trial, alter that plea to one of not guilty.

14. *Sentences.*—(1) A Military Government Court shall announce its findings on each charge before it and shall pronounce one sentence in respect of all the charges upon which the accused is found guilty.

(2) Every sentence of imprisonment shall state the date of commencement thereof, which, if the accused was previously in custody, shall ordinarily make allowance for the period of custody.

(3) A Military Government Court shall, when imposing any fine, impose a sentence of imprisonment to be served in default of payment of such fine, and may direct the period within which the fine shall be paid. In the event of default in payment of a fine, the court may order the alternative sentence to be put into effect without bringing the accused again before the court. A report shall be made in the manner provided for transmission of records.

(4) In addition to or in lieu of sentence, imprisonment or death (within its jurisdiction) a Military Government Court may:

(a) order the restitution to the lawful owner, or the forfeiture to, or temporary custody by, the Allied Forces or local public authority of any property including any proceeds thereof whether in their original form or converted into some other form of property when the accused is found guilty of an offence of which the illegal possession, use, purchase or sale of such property is an essential element:

(b) order the closing of any business premises or residence, the suspension of business, or the withdrawal or suspension of any license for the operation of the same or any similar business, where the accused is found guilty of the illegal operation of a business, and, in any such case, may order the forfeiture to, or temporary custody by, the Allied Forces or local public authority of any stock in trade to which such illegal operation relates;

(c) order the accused to establish his residence within or without a designated area or not to leave or enter a designated area without permission.

(5) A Military Government Court in imposing any sentence may in exceptional circumstances suspend the execution thereof in whole or in part on such terms as it thinks fit.

(6) Except as the court may otherwise direct, every sentence except a sentence of death shall be put into execution forthwith and without awaiting the action of the Reviewing Authority.

(7) When an offense is charged under German Law the Court on conviction is not limited by the maximum sentence permitted under such law but may impose such sentence within its powers as the circumstances of the case may require provided that:

(a) except in cases of homicide, attempted homicide, or assault with intent to do grievous bodily injury, no death sentence shall be imposed when it could not have been imposed under the German Law under which the charge was framed; and

(b) when the offence charged is a contravention (Ubertretung) only, any sentence of imprisonment shall not exceed two years.

GENERAL PROVISIONS

15. *References to Higher Court.*—(1) Whenever a Summary Military Court or Intermediate Military Court reports a case for reference to a higher court for trial, which either may do at any stage of the proceedings, the court shall:

(a) make a notation of such report in the record of the case;

(b) make and enter in the record, after hearing the prosecution and defence, an order directing that the accused be held in custody, or leased on or without bail, pending trial; and

(c) send the record to the Legal Officer of the next higher M. G. echelon.

(2) Unless otherwise directed by the Chief Legal Officer, the Legal Officer of the next higher M. G. office shall refer the case for trial to an Intermediate or General Military Court as he deems appropriate, or may direct that the case be tried by the court which reported the case or by any other court.

16. *Attendance and Detention of Witnesses.*—(1) A Military Government Court shall have power to summon as a witness any person except a child under fourteen years of age, in which case it may summon the parent or guardian to bring the child to attend as a witness, and except a member of the Allied Forces, in which case it may request the Commanding Officer of such member to order his attendance.

(2) Any person whom the court may summon as a witness may be ordered to bring with him any document or article in his possession or under his control which has a bearing on the issues in the case.

(3) Wherever the court has reason to believe that a witness may be intimidated or become unavailable at the trial, it may direct that he be detained as a material witness, provided that no such person shall be detained for a period of more than 21 days without a further order being made. A report of such detention shall be made forthwith in the manner provided for the transmission of the record.

17. *Compellability of Witnesses.*—Any person other than the accused may be required to testify before a Military Government Court except a person of unsound mind, provided that no witness shall be required to incriminate himself and provided also that a court shall not compel—

(1) a husband or wife or a parent or child to give evidence against the other;

(2) a legal adviser to disclose any communication between himself and a client made in the course of a professional relationship except when the communication was part of or connected with an unlawful act or omission;

(3) a priest to disclose any communication made in the course of a confession.

18. *Contempt.*—A Military Government Court shall have power to hold in contempt any person, including the accused, counsel, witness, officials, or spectators, who offends the dignity of the court, in any manner, or disregards its orders. Such contempt may be punished by fine, imprisonment, or other appropriate punishment. In exercising its powers to punish for a contempt, a Military Government Court shall make a record which shall be transmitted and reviewed as in the case of any other sentence.

19. *Impounding.*—A Military Government Court may in its discretion impound, by an order directing any person to be charged with the care thereof, any document or article relating to proceedings before it, whether or not it has been received in evidence.

20. *Disposition of Funds.*—Receipt shall be given for all fines and property forfeited to the Allied Forces. Property forfeited to the Allied Forces shall be disposed of as the court shall direct, or in accordance with such procedure as may be prescribed with respect thereto by the Chief Legal Officer or under his authority. All fines treated as funds of the Military Government to be accounted for in accordance with financial instructions, Military Government. A record of fines shall be kept, by each court and report made to the Chief Legal Officer or as he may direct.

21. *Insanity.*—Wherever a court is satisfied that the accused is unable by reason of insanity to understand the nature of the charges against him or the proceedings of the court, or that the accused committed the offense for which he is being tried but was insane when he committed it, the court shall record a finding of either such fact and may make an order providing for temporary custody pending direction by the Reviewing Authority for permanent custody or other disposition.

22. *Juvenile Offenders.*—(1) In cases involving offenders under the age of 18 years, the Military Government Courts shall adopt a flexible procedure based on the accepted practices of local juvenile courts and those of Great Britain and the United States or France (according to the nationality of the court), including so far as practicable the following measures:

- a. report by a Welfare Officer in advance of trial;
- b. detention, where necessary, in a special institution, or in any event apart from adult offenders;
- c. hearing informally in closed sessions;
- d. interrogation of parents and release in their custody if appropriate.

(2) An offender over 16 years of age but under 18 years of age may be treated in all respects as an adult unless in the opinion of the court his physical and mental immaturity make his treatment under section I (above) advisable.

23. *Records.*—(1) Every Military Government Court shall in every case make and transmit to the Chief Legal Officer or as he may direct a record containing the date and place of its proceedings, the names of the members of the court, of the accused, of the prosecutor, and of defence counsel, the original charge sheet or summons, and pleas, any amendments to the charges or pleas made during the course of the trial, the name and the opinion of the adviser, if any, the findings, and the sentence or order of the court. In addition, in every case in which there is a plea of not guilty, the record shall contain minutes or summary of the essential evidence. A Summary Military Court may include the record of more than one case in a single report.

(2) Every Military Government Court shall keep a permanent register of its proceedings.

(3) If before the conclusion of any proceeding or before review, the record of such proceeding is lost or destroyed and no sufficient certificate of the substance of the proceeding can be obtained, the court or the Reviewing Authority may declare such proceeding null and void and remand the case for a new trial. A sufficient certificate shall be one signed by any member of the court embodying to the satisfaction of the Reviewing Authority the charges, findings and sentence and the effect of the material evidence.

24. *Review.*—(1) Such cases or classes of cases as the Chief Legal Officer may direct will be administratively examined, and, if considered appropriate, submitted to a Reviewing Authority for review.

(2) A petition by a convicted person for review of the finding or sentence must be filed with the court within ten days of conviction, i. e., completion of announcement of findings and sentence (Rule 10 g. and j.). Petitions for Review shall be transmitted to the Chief Legal Officer or as he may direct in the same manner as records.

25. *Powers of Reviewing Authority.*—(1) The Reviewing Authority may upon review:

- a. affirm any finding of guilty, or set aside any such finding with or without ordering a new trial;
- b. substitute for any finding of guilty a finding of guilty on an amended charge if it appears that the court might before finding and without prejudice to the accused have so amended that charge and that the court would have been satisfied on the evidence that the accused was guilty on the charge so amended;

c. affirm, suspend, reduce, commute or modify any sentence or order, and make appropriate order for the discharge of the accused or the return of fine or restitution of property;

d. increase any sentence where a Petition for Review which is considered frivolous has been filed and the evidence in the case warrants such increase.

(2) The Reviewing Authority may at any time remit or suspend any sentence or part thereof.

26. *Effect of Irregularities.*—The proceedings shall not be invalidated, nor any findings or sentence disapproved, for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the Reviewing Authority, after an examination of the entire record, it shall appear that the error or omission has resulted in injustice to the accused.

27. *Procedure in Absence of Specific Rule.*—Where no procedure has been directed in any matter, a Military Government Court may adopt such procedure as it thinks fit, provided no injustice is thereby done to the accused.

28. *Forms.*—Forms used by Military Government Courts shall conform substantially to those set out in Legal Forms, Military Government Courts in Part I, section 4 hereof.

GUIDE TO PROCEDURE IN MILITARY GOVERNMENT COURTS

This guide is based upon and should be read in conjunction with the Military Government Courts Ordinance and the Rules of Military Government Courts, which for cross-reference purposes are represented by the symbols O and R, respectively. The comments contained in Part I, below, are referred to thereafter by the symbol C. The Guide is designed primarily for Summary Military Courts and prosecutors. Provisions inapplicable to Intermediate and General Courts should be disregarded by officers concerned with those courts.

I. GENERAL

1. *Basic Principle.*—The purpose of Military Government Courts and of the principal enactments enforced by them is the protection of the Allied Forces and the advancement of their military objectives. All pertinent enactments must therefore be interpreted (as in fact a German defendant and defending counsel will expect them to be interpreted) broadly and in accordance with their obvious intention: all courts must be conducted with a view to the attainment of this purpose to the fullest possible extent. It is important, therefore, that when an offense against the Allied Forces has been established, appropriate punishment should be imposed with a view to the prevention of further such offenses. A technical and legalistic viewpoint must not be allowed to interfere with such a result.

2. *Role of Judge.*—It is the practice in continental countries for the presiding judge to conduct the examination of the accused and witnesses and generally to take the leading part in the proceedings. Officers presiding in Military Government Courts where the prosecutor, defending counsel, or accused are not familiar with common law procedure may be obliged to do the same, and must in any event see that the interests of the accused are protected, and that the facts are fully brought out.

3. *Dignity of Court.*—The court is responsible that its proceedings are such as to enhance the prestige of the Allied Forces. The judicial officer, prosecutor, and other military personnel should, if circumstances permit, wear full uniform, including tie if summer uniform, tunic or blouse if winter uniform, and maintain a high standard of conduct. No disorders should be tolerated in or near the court.

4. *Modification of Procedure.* R 10 (1).—In simple cases, steps set forth in the Rules may be omitted or greatly abbreviated, but no rights of the accused may be disregarded. Opening statements in particular may frequently be omitted. The court is in complete control of the proceedings, and may cut short any person who becomes repetitious or wanders from the issue.

5. *Jurisdiction.* O II.—a. Over persons: During the presurrender period, Courts may be met with claims from accused to be treated as prisoners of war. Any person who succeeds in establishing this status is not subject to the jurisdiction of Military Government Courts and must be turned over to the Provost to be dealt with in accordance with the Geneva Convention of 27 July 1929. Doubtful case should be turned over to Counter Intelligence for interrogation.

b. Over offenses: The jurisdiction of Military Government Courts only arises in respect of offenses committed subsequent to occupation. Offenses committed prior to occupation must be left to be dealt with by German courts unless they come under the category of War Crimes. The manner in which war criminals in

general are to be dealt with will form the subject of separate instructions. In any case in which a specific accusation or evidence of a war crime is to be made against any person, the accused and the evidence should be held and disposed of under existing instructions.

6. *Adviser. O IV 6.*—Whenever deemed necessary a Military Government Court may, on its own motion or the request of the accused, appoint an impartial adviser to assist the court in a particular case in checking the interpreter, giving testimony or written opinions as an expert on German law, local customs or technical matters. Such adviser may be invited to sit with the court, but not participate in the decision, and may be paid as a court official.

7. *Prosecutor. R 3 (1).*—The prosecutor should preferably be an officer of the Allied Forces, and may be a qualified other rank or enlisted man, or a member of the indigenous police or other indigenous authority.

8. *Interpreter.*—Pains should be taken to obtain a qualified interpreter, because the task is difficult and important. The interpreter should translate directly and in the same person everything that is said, subject to the direction of the court. He should not be permitted to engage in colloquy on his own, or to conduct the proceedings in any respect in lieu of the court. Questions to witnesses should be addressed to the witness and not to the interpreter.

9. *Evidence.*—Rule 12 does not incorporate the rules of evidence of British or American courts or of courts-martial. The only positive rules binding upon the Military Government Courts are found in Rule 12 (3), Rule 17, and Rule 10 (5). Hearsay evidence, including the statement of a witness not produced, is thus admissible, but if the matter is important and controverted every effort should be made to obtain the presence of the witness, and an adjournment may be ordered for that purpose. The guiding principle is to admit only evidence that will aid in determining the truth.

10. *Charges. O V 8 (a); R 6.*—The charge consists of two parts; the charge itself (e. g., "Circulating without a permit during curfew in violation of Ordinance No. 1, Sec. 22) and the particulars (e. g., "On 30 Sept. at 2300 was found in the public square"). Any offense committed with intent to aid the enemy should be charged under Crimes and Offenses Ordinance No. 1, Sec. 20, in addition to any other appropriate section, in order to permit imposition of a sentence of death. If there is no room on the charge sheet for the names of all the defendants or for all the charges, additional pages may be annexed and incorporated by reference. In general, multiplicity of charges based on the same set of facts will be avoided.

11. *Failure to Answer Summons.*—If an accused or witness who has been summoned does not answer the call at the appointed time, the court should order that he be arrested and brought before it, and may issue a warrant of arrest. Unexcused failure to appear is punishable as a contempt of court or under Crimes and Offenses Ordinance No. 1, Sec. 21.

12. *Interrogation of and Testimony by Accused. R 10 (5).*—The interrogation of the accused by the court at the time of pleading is not known to British or American practice but is permitted at discretion because the process of pleading is unfamiliar to subjects of continental countries. The court should arrange to be provided prior to the trial with a dossier of the case against the accused, such dossier containing all documentary and written evidence and a summary of the testimony to be given by the witnesses for the prosecution. The dossier should be studied by the court prior to its examination of the accused; it should not be regarded as proof of the statements it contains, which will have to be established in evidence in the usual way, but should merely be used as a basis for examination of the accused. The court should enter the plea on the basis of the accused's statements, except that it should enter a plea of guilty, only if the accused expressly admits all elements of the offense, and it must enter a plea of not guilty when the statements by the accused so indicate (Rules 7 (6) and (7)). Notes should be made of the accused's replies and should form part of the record. Before concluding the interrogation, the court should bear in mind that the accused may choose not to give evidence at a later stage and there may be no further opportunity to examine him. The court may draw such inference as the circumstances justify from the refusal of the accused to answer or from his failure to take the stand in his own behalf. If the accused elects to take the stand in his own behalf, he is not permitted to take the oath (Rule 10 (5)). This provision represents a concession to continental practice where the accused is not sworn.

In further application of the continental practice A it is pointed out that it is neither necessary nor proper to warn the accused that he is not required to answer when questions are put to him. Since the Court may draw an unfavor-

able inference from refusal to answer, any statement to the effect that he need not answer is apt to be misleading. However, the accused may not be sentenced for contempt for refusing to answer.

WHERE THE ACCUSED IS A BRITISH OR AMERICAN SUBJECT HE SHOULD NOT BE INTERROGATED UNDER RULE 10 (5) BUT THE TRIAL SHOULD BE CONDUCTED IN ACCORDANCE WITH ANGLO-AMERICAN LEGAL PROCEDURE, THE ACCUSED BEING SWORN IF HE ELECTS TO TESTIFY.

13. *Mixed Pleas.*—If there is more than one defendant, and one or more, but not all, plead guilty, or if a single defendant pleads guilty to one or more, but not all of the charges, the court shall deter sentence on any of the charges until the trial of all is completed, in order to impose one sentence on each defendant with respect to all the charges of which he has pleaded or been found guilty (R 14 (1)).

14. *Making of Record.*—The making of the record is the responsibility of the court. The matters stated in Rule 23 (1), including minutes or summary of the essential evidence, are required to be included. Form No. 8 is the regular form of record. In lieu of using Form No. 8, a Summary Court may report more than one case of a very minor nature (e. g., involving sentence of imprisonment of 2 weeks or less or equivalent fine) in the form of an abstract of the court's register (Form No. IIa). In such cases, a single phrase may constitute an adequate summary of the evidence. The summary of evidence, if no official reporter is used, should be made by the judge in the course of the trial. It may be entered directly on the record in the course of the trial, or transcribed later from the judge's notes.

15. *Transmission of Records.* O VI (9) R 23.—Records of trial should be sent to the Legal Officer at the next higher M. G. echelon through normal channels for other official communications, which means that they will pass through the Legal Officer of the headquarters or detachment to which the court is attached. Certain powers may be delegated to Legal Officers of lower formations, so that it is important that the records go through channels. The same is true of records on report for reference to a higher court, and of petitions for review.

16. *Petitions for Review.* O V. (9) R 24 (2).—Courts should be available to the accused or his representative, upon request, a copy of Form No. 10, and should receive and transmit any such petitions filed. The court may forward together with the petition its own comments thereon where there is any matter or issue raised in the petition which calls for further explanation or information beyond what already appears on the face of the record. The filing of a petition for review should not be deemed an act of disrespect to the court. Petitions not on Form No. 10 may be accepted if there is sufficient reason why the form has not been used. The power to increase the sentence on review (O VI 10) should be confined to cases where the petition is not bona fide or is manifestly frivolous and the facts of the case warrant an increase.

17. *Sentences.*—The paramount consideration in the determination of sentences by a Military Government Court is the protection of the interests of the Allied Forces, by deterring further violations by the accused or by others. Where offenses which are of direct concern to the military are involved, such as interference with communications, sentences may properly be given which are much more severe than would otherwise be warranted. Additional considerations are whether the act was premeditated, the prevalence of the offense in the locality, the previous record, and the age and sex of the accused. The court should give the sentence which it considers proper and not assume that the reviewing authority will modify it.

18. *Suspension of Sentences.* R 14 (5).—Unless the court orders otherwise, a suspended sentence will be deemed suspended indefinitely to be put into effect at any time if good behavior is not maintained or upon breach of such other conditions as the court may impose. A sentence should be suspended only for a definite reason and not as a means of cutting down a sentence considered appropriate. If suspended sentences are imposed, it is important that the court's register be checked upon charging an accused, to detect previous offenses. It is a good alternative practice to file an abstract of all proceedings with the local judicial or police archives and to have those filed checked for previous record in all cases.

19. *Forfeiture of Property, etc.* R 14 (4) (a) (b).—Orders of forfeiture of property, closing of premises or suspension of business or license should be made only with knowledge of the severity of the financial burden which will result to the accused.

20. *Compulsory Residence.* R 14 (4) (c).—Orders restricting residence should be made only in exceptional situations. They should be considered

security measures rather than punishment, and should be based upon the recommendation of public safety or security officers.

21. *Imprisonment in Default of Payment of Fine.* O III 3 (d); R 14 (3).—
a. Where an order is made imposing a term of imprisonment in default of payment of a fine the rate of one day for each 5 shillings/\$1.00/50 frs. of the fine imposed shall be used as a guide. This rate will, of course, have to be modified in the case of large fines in order that the alternative sentence will not exceed the court's power. The power of a court to impose an alternative prison sentence is not affected by any sentence of imprisonment imposed in addition to the fine, but the alternative sentence may be the full sentence such court has power to impose, e. g., a Summary Military Court may impose a sentence of one year's imprisonment and a fine of 250/ 1,000.00/50,000 frs. In this case, the alternative prison sentence cannot be computed in accordance with the above scale, but must be limited to one year, the sentence and alternative sentence totaling two years.

b. Unless the entire fine is paid within the time fixed by the court, the full alternative prison sentence shall be put into effect and no credit shall be given for part payment. If, however, after the alternative prison sentence has been put into effect, the accused pays to the court which imposed the sentence (or, if unavailable, to the nearest court of similar jurisdiction) the entire amount of the fine or the balance due if a partial payment has been previously made, the court will issue an Order for Release (Legal Form No. 17) from such alternative sentence. No credit on the fine shall be given for time served in prison.

c. The power to impose an alternative prison sentence should be exercised solely for the purpose of collecting the fine imposed. It is improper for the court deliberately to impose a fine which the accused is probably unable to pay, as a device for imposing a term of imprisonment otherwise beyond the power of the court to impose. If the case seems to call for a term of imprisonment beyond the power of the court, it should be referred to a higher court.

22. *Disposition of Fines, other Funds and Property.*—Every M. G. Officer who collects fines or other monies pursuant to his legal duties will execute in triplicate a receipt voucher (form CA/Gf 3). The original receipt will be given to the person paying money and the triplicate retained for the files of the officer. Duplicates of such receipts will be delivered to the nearest M. G. Sub-Accountant together with the corresponding funds. The Sub-Accountant will give in exchange a single receipt form (the original) covering the duplicate receipts and the money turned over. Property ordered forfeited or confiscated by the court will be turned over to the nearest M. G. Property Control Officer (against receipt).

Upon an order of the Reviewing Authority to refund a fine, the M. G. Officer will apply to the nearest M. G. Finance Officer for the necessary funds.

23. *Numbering of cases; Disposition of Records.*—Cases will be numbered consecutively by each Summary, Intermediate and General Court in each area, and the record (Form 8) will show number, type of court, and area (town, city, or other locality and in addition the district or other next higher political subdivision). Records will in the first instance be filed at the Headquarters at which review is to be exercised. They will be filed at such Headquarters under courts of each type in each locality, and will be filed or indexed, with respect to the cases in each such court, alphabetically according to the names of the accused.

24. *Proceedings in Camera.* R 10 (6).—Any order for trial in camera will be noted on the record and a report attached stating the reasons therefor. If any Intelligence Branch requests for security reasons that a particular trial or part of it be held in camera but the court is not satisfied as to the reasonableness of the request, the court will postpone or adjourn the trial and submit the question for decision to or in accordance with the instructions issued by or under the authority of the Chief Legal Officer or an Army Group Commander.

II. CHECK LIST FOR TRIALS

A. Preliminary Matters

1. Personnel:

- a. Judge, O IV.
- b. Prosecutor, R 3 (1); C 7
- c. Adviser, if appointed, O IV 6; C 6.
- d. Interpreter; must be sworn, R 4; C 8. Oath Form No. 14.
- e. Reporter, if appointed; must be sworn. Oath Form No. 14.
- f. Clerk, if possible, R 4.
- g. Guards to escort prisoners.
- h. Attendants to keep order, R. 4.

2. Courtroom :
 - a. A regular local courtroom, if available.
 - b. Tables at same level for prosecutor and defense counsel. Suitable chairs or benches for personnel. Accused near defense counsel, but not too near. Interpreter not too near witness. Place for witnesses to wait outside courtroom until called. Accused and witnesses to stand during interrogation unless the Court gives special permission for them to be seated.
 - c. Flags of Great Britain, United States.
3. Transportation to bring prisoners and witnesses, if necessary.
4. Serving of charges on accused as soon as practicable before trial. O V 8 (2) ; R 6 ; C 10.
5. Summoning of witnesses or request to attend. R 16 ; C 11.
6. Copies of record, commitments, and receipt for fine on hand ; also the court register. R 23 (2).

B. Trial or Hearing

INITIAL STEPS

1. Case called and charge sheet handed to court.
 2. Court satisfies itself that it has jurisdiction of the person accused (not a member of the Allied Forces or a person entitled to be treated as a prisoner of war) and of the offense. O II C 5.
 3. Accused and witnesses identified ; age and sex noted in record.
 4. Accused asked if he has counsel. Counsel identified.
 5. Reason for adjournment, if any, considered. R 7 (2).
 6. If accused under 18, court proceeds pursuant to Rule 22.
 7. Charges read to accused by court ; asked if "guilty" or "not guilty" after each charge. R 7.
 8. Court interrogates accused and records statement, but shall not require an answer, nor shall accused be sworn. R 10 (5) ; C 12.
 9. Pleas to charges noted in record. R 7 (3).
 10. Statement of case by prosecutor. R 10 (1) (a) ; C 4.
- N. B. At this stage, and at every later stage before sentence in case of a plea of guilty, otherwise before finding of guilty or not guilty, the court must satisfy itself that it has power to give an adequate sentence. If not, it will report the case for reference to a higher court, but may first hear and record evidence, either because witnesses may become unavailable, or to determine whether there is sufficient case to require accused to stand trial. R 8 (2) (3) ; R 9. Report for reference noted in record, and order made as to custody of accused or for release on or without bail. R 15.
11. Evidence of character, including prior convictions. R 8 (1).
 12. Statement by accused or defense counsel bearing on sentence. R 8 (1).
 13. Sentence announced in open court O VII ; R 14 ; C 17, 18, 19, 20.

PLEA OF NOT GUILTY

14. Examination, cross-examination and re-examination by prosecution witnesses. R 10 (1) (a) (b) (c). Both administered by Court. R 4.
 15. Acquittal of accused on any charge, if not sufficient evidence to sustain it. R 10 (2).
- N. B. If the court has not power to impose an adequate sentence in event of conviction, but there is not sufficient substance to the charges to justify a trial by any court, the court may dismiss the charges at this stage or at a later stage, but will not "acquit" because that word presupposes a trial. R 9 (1) (b) ; R 9 (2) (a). This power should be exercised only in a very clear case.
16. Statement by accused or defense counsel. R 10 (1) (d) ; C 12.
 17. Examination, cross-examination and re-examination of defense witnesses, including accused if he chooses to testify. R 10 (1) (d). The accused shall not be sworn. R 10 (5).
 18. Rebuttal testimony for prosecution. R 10 (1) (e).
 19. Summing-up by prosecutor. R 10 (1) (f).
 20. Summing-up by accused or defense counsel. R 10 (1) (f).
 21. Finding of guilty or not guilty on each charge, announced in open court. R 10 (1) (g).
 22. If acquittal, immediate discharge of accused. R 10 (1) (h).
 23. Statement, and evidence if desirable by prosecution bearing on sentence to be imposed, including evidence of prior convictions in any court. R 10 (1) (i).

24. Opportunity by defense to rebut any matters presented by prosecution bearing upon sentence. R 10 (1) (i).
25. One sentence announced in open court with respect to all charges on which accused found guilty. R 10 (j) ; R 14 ; C 17, 18, 19, 20.
26. Accused ordered removed in custody, or released as case may be.
27. Next case called.

AFFIDAVIT OF LT. COL. BURTON F. ELLIS

I, Lt. Col. Burton F. Ellis, O29033, JAGD, being duly sworn, depose and say :

That reference herein made to "the petitioner" refer to the chief defense counsel, former Colonel, Willis M. Everett, Jr.; that references to petitioner's writ of habeas corpus referred to herein is the unnumbered petition in the Supreme Court of the United States for a writ of habeas corpus entitled "Willis M. Everett, Jr., on behalf of *Valentin Bersin et al., Petitioner, v. Harry S. Truman, Commander in Chief of the Armed Forces of the United States,*" and other "Respondents," which was sworn to by the petitioner, Willis M. Everett, Jr., 11 May 1948.

That all the following statements, are, to the best of my knowledge and belief, true and correct, except as to the matters herein which are on information and belief, and as to those matters I believe them to be true.

1. That I reported for duty with War Crimes Branch, ETOUSA, 6 May 1945, in Paris, France, and was assigned to the Investigation Section as assistant to the Chief; that shortly thereafter Major Dwight Fanton (then Captain) was assigned to work on the Malmedy Case, File No. WCB 6-24; that I personally took a keen interest in the development of the case in my official capacity and carefully watched and aided in its development; that early in September 1945 I became Chief of the Investigation Section, and in that capacity I was charged with the gathering of the evidence for war crimes cases, which included the Malmedy Case; that I personally took more than ordinary interest in the development of this case and carefully selected the personnel that I assigned to it, that I inspected the detachment as often as conditions permitted and personally aided them in obtaining a suitable prison, living quarters, transportation, and in formulating plans for the investigation; that in late February 1946 I was relieved as Chief of the Investigation Section and assigned as Chief Prosecutor on the case, with instructions to bring it to trial by 25 March 1946; that on 5 March 1946 I was ordered to Schwabische Hall, Germany, where the investigation detachment was located that was developing the case, and personally took over and supervised the investigation, preparation of the case for trial and the apprehension of the accused; that when the trial date was postponed until 16 May 1946, I continued the development of the case; that on 16 April all but six of the accused and possible witnesses were moved to Dachau; that on 19 April 1946 I completed the movement of the prisoners and investigation staff to Dachau, Germany, where the trial was held.

2. That I was the Chief Prosecutor during the trial, which began 16 May 1946 and was concluded 16 July 1946; that I personally supervised and inspected the evidence adduced, including pretrial interrogation of the witnesses; that I personally conducted at least 50 percent of the trial work and was in court with the possible exception of not more than 3 or 4 hours during the entire trial; that I planned and directed the trial tactics and methods and saw to it that they were carried out.

3. That in the early stages of the investigation the personnel of the 1st SS Panzer Regiment were scattered throughout the prison camps, hospitals and labor detachments of Germany, Austria, the liberated countries and the United States; that whenever any of them were located, they were interrogated, but conditions in the prison camps were such that they were able to rejoin their comrades immediately after interrogation and soon they knew exactly what the investigators knew and by their exchange of information gleaned from the interrogations, they were able to effectively block the development of the case; that I believe that it was during this period it becomes known that prior to the beginning of the Ardennes offensive the SS troops were sworn to secrecy by their commanders not to divulge the orders to kill prisoners of war; that in November 1946 when all the known members of the 1st SS Panzer Regiment were assembled at the Internment Camp, Zuffenhausen, they were housed in a single barracks; that here it was impossible to maintain any security of communication between the accused; that while here the Regimental Commander Peiper, although in close confinement,

gave instructions to blame the Malmedy Massacre onto a Major Poetchke (Commanding Officer of the 1st Tank Battalion, who had fallen in Austria in the last days of the war), and that these orders were carried out by the accused; that from these experiences it became apparent that if the perpetrators of the Malmedy Massacre were to be brought to justice, a place where absolute security of communication could be maintained would have to be found; that after several conferences with the then Judge Advocate (Colonel Bard) and the then Provost Marshal of the Seventh Army, and the inspection of several prisons, the Internment Prison #2, Schwabische Hall, Germany was selected and made available to War Crimes Branch, USFET, by the Seventh Army for the purpose of investigating the Malmedy Case; that early in December 1945 approximately 500 of the suspects were moved there. (See Exhibit 1, undated, entitled "Investigation of the 'Malmedy Massacre' by War Crimes Branch, USFET" prepared by the affiant for and delivered to Col. C. B. Mickelwait, Theater Judge Advocate, prior to the conclusion of the trial 16 July 1946.)

3. That Internment Prison #2, was a large German penitentiary and consisted of several buildings—all of stone and concrete; that the Investigating Detachment maintained offices and interrogation rooms in the administration building; that part of the prisoners were kept in the administration building and the balance in other buildings of the prison; that the administration of the prison was under the 58th AFA Battalion, Seventh Army, and was separate and apart from the Investigation Detachment; that the Investigation Detachment had nothing to do with the administration of the prison or prisoners; that to the best of my recollection, sometime during March 1946, the 58th AFA Battalion was replaced by another organization, whose name I no longer remember; that the guards for a few weeks were American troops which were later supplanted by Poles.

4. That because of a shortage of American personnel, only two American enlisted men were available to move prisoners; that many of the accused had to be moved between buildings; that in order to move more than one accused at a time and still maintain absolute security of communication between prisoners, a hood was placed over their heads, thus preventing them from knowing who else from the regiment was also confined there or who was in the group being moved, and communicating with them (See picture marked Exhibit 2); that by this means it was also possible to keep them from learning the layout of the prison and finding out from one another how much was known about them individually; that when once interrogated they were kept in close confinement until it was decided that no more information could be obtained from them.

5. That throughout the the interrogation period at Schwabische Hall of approximately four and one half months, additional accused were being located, apprehended and brought in; that as a matter of fact, additional accused arrived within 24 hours of the time of the last movement to Dachau; that during the investigation period at Schwabische Hall approximately 700 accused were interrogated, many of them several times, and at no time were there more than four interrogators working, and then not continuously.

6. That the petitioner alleges in paragraph 8a of his petition for writ of habeas corpus that he had less than two weeks to prepare the defense; that I know of my own knowledge that Chief Defense Counsel Willis M. Everett, Jr., was appointed defense counsel some time prior to 11 April 1948, or at least five weeks prior to the trial; that this statement is based upon an entry in my diary dated 11 April 1948, which reads as follows:

"Got back to Schwabische Hall about 1930 hours and found Col. Everett of defense counsel here. Served 67 defendants tonight in Everett's presence. Got back to billets and found 3 more def. counsel—Lt. Col. Dwinell, Capt. Narvid, and 2nd Lt. Waller. Had to find them billets at transit hotel and it was 0100 before I retired."

7. That petitioner, in paragraph 8 of his petition for a writ of habeas corpus, generally alleges that he was not afforded sufficient time to prepare the defense; that the record of trial in the case discloses that defendants failed to ask for a continuance, and when asked on the opening day of the trial by the President, "Are you now ready for trial in this case?", defense counsel replied, "May it please the Court, on behalf of the accused they desire to answer in the affirmative except at the proper time a motion for severance will be made." (R-71).

8. That petitioner in paragraph 11 of his petition for writ of habeas corpus alleges that the accused were confined in Schwabische Hall for varying lengths of time but generally in excess of ten (10) months prior to being served on 11 April 1946; that this allegation by petitioner is not a true statement of fact; that the first accused, with other suspects in the Malmedy Massacre were trans-

ferred from IC No. 78 at Zuffenhausen, Germany, to IP No. 2, Schwabische Hall, Germany, on or about 5 December 1945, as evidenced by SOP No. 1 dated 5 December 1945 (See Exhibit No. 3); that from time to time thereafter additional accused were located or apprehended and transferred to Schwabische Hall; that my diary indicates the date of arrival of twenty-two of the accused at Schwabische Hall to be as follows:

Hillig-----	5 March 1946	Rauh-----	4 April 1946
Klingelhoefer-----	14 " "	Kraemer-----	5 " "
Kies-----	14 " "	Sickel-----	7 " "
Bruhle-----	15 " "	Bode-----	7 " "
Boltz-----	16 " "	Schaefer-----	7 " "
Von Chamier-----	20 " "	Weiss-----	12 " "
Dietrich-----	21 " "	Priess-----	12 " "
Briesemeister-----	1 April 1946	Braun-----	16 " "
Mickolaschek-----	2 " "	Richter-----	16 " "
Werner-----	2 " "	Bebauer-----	16 " "
Siegmund-----	2 " "	Wassenberger-----	16 " "

That to the best of my recollection the following three accused were transferred to Schwabische Hall from France on the dates as indicated: Schwambach, on or about 10 April; Hammerer, on or about 10 April; Stickel, on or about 18 April.

That the policy for handling prisoners was to keep them confined separately only while they were being worked with; that as soon as they had confessed they were confined together, for company and as a precaution against suicides; that to the best of my knowledge and belief, none of the accused were confined alone after they had confessed; that while being interrogated they were usually confined alone for security of communication purposes, but the food and accommodations were the same as for all other prisoners.

9. That to the best of my knowledge and belief none of the accused or other prisoners were ever abused or mistreated in any manner; that the only incidents of maltreatment of prisoners ever reported to me were several days after the completion of the interrogation of Dietrich—either he told me this, or one of the staff told me that Dietrich had told them that he was kicked in the rear by a guard, and I heard also that Peiper was kicked by a guard, but whether I first heard of it before the trial or during the trial I am no longer able to recall; that I never witnessed any maltreatment of prisoners; that the procedure for interrogation did not permit or countenance any threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment; that this was always the standard operating procedure in the investigation of the Malmedy Massacre and it was reduced to writing by Major Dwight F. Fanton (see paragraph 4, SOP No. 4, War Crimes Branch, USFET, Detachment at IP No. 2, 7 February 1946, Exhibit 4) and was never revoked.

10. That the principal defense of the accused was to attack their own confessions; that in preparing the defense each accused filled out a questionnaire (See Exhibit 5), prepared by petitioner or his staff, which was directed primarily against the confessions. See particularly Questions Nos. 19, 20, 21, 22, 23, 31, 32, 33, 34, 35, 36, 37 and 38 of Exhibit 5; that a few days after the accused arrived at Dachau the petitioner officially complained about the alleged improprieties in the manner in which the confessions were obtained; that on or about 24 April 1946 the then Deputy Theater Judge Advocate for War Crimes ordered an investigation made of the matter by Lt. Col. (then Colonel) Edward J. Carpenter (now Judge Advocate of 1st Cavalry Division in Japan); that he came to Dachau on or about 24 April 1946 and made such investigation and talked with several of the accused; that on Sunday 28 April 1946 I was in Wiesbaden and was called into conference with Lt. Col. (then Colonel) C. E. Straight, the petitioner, Col. Willis M. Everett, Jr., and Lt. Col. (then Col.) Edward J. Carpenter; that I was ordered to return to Dachau and inquire of my staff if any such alleged improprieties had taken place; that I returned to Dachau on 29 April 1946 and held the conference with my staff as directed, and upon informing them of the allegations of Colonel Everett I was assured that none of the alleged improprieties had taken place; that I have subsequently discussed the matter with Colonel Carpenter and he told me that four of the accused had admitted to him that their accusations of violence and beatings were only made "to get out from under" their confessions and were not true; that on 30 April the petitioner, Willis M. Everett, Jr., stated to me that Sprenger, Neve, Hoffmann, J., and Jaekel admitted fabrication of their story of beatings; that in connection with the above my diary recites the following:

WIESBADEN, 28 April 1946.

2-hour conference today with Col. Straight, Col. Carpenter, and Col. Everett (Def. Counsel). Defendants claim they were beaten. Ordered to make inquiry of my staff and to withdraw all statements gotten under compulsion.

DACHAU, 29 April 1946.

Flew back to Dachau today. Had immediate conference of staff and they assured me none of the defendants were beaten. I so advised Straight, Corbin, and Everett. * * *

DACHAU, 30 April 1946.

Col. Everett said today that Sprenger, Neve, Hoffman, J., and Jaekel admit fabrication of story of beating. * * *;

that as further evidence that the allegations of maltreatment are without foundation and were probably born in the minds of the defense counsel, there is attached hereto the affidavit of Lt. Col. Charles J. Perry dated March 1947 (Exhibit 6), covering his conversation on 6 February 1947 with the accused 1st Lt. Junker and Col. Peiper, both of whom received death sentences.

11. That petitioner, in paragraph 13 of his petition for a writ of habeas corpus, describes a so-called mock trial used in the investigation of this case, which is erroneous and misleading and not based upon fact; that an accurate description of the so-called mock trial (which is based upon knowledge gained from once as an unnoticed observer and not as a participant, once as a known observer, and from discussions with investigators) is as follows:

The regular interrogation cells were used. They were about 8 feet square, with a full normal-sized window and in one corner was a toilet bowl. The furniture consisted of 3 or 4 chairs and a small table. The table was covered with black-out cloth and held two lighted candles and a crucifix. (The crucifix was nearly always used when taking sworn statements, as it was my understanding that it was continental practice to use the crucifix instead of the Bible for this purpose.) Two or three members of the staff were usually seated behind the table, posing as officers, and two German-speaking interrogators were present. This was known as the "schnell procedure" by the staff. The accused was brought in and told that this was the "schnell procedure." Witnesses would be brought in and the accused was confronted by them. To the best of my recollection only bona fide ones were used and they were sworn. This was all done very rapidly, with considerable lack of decorum and noise. Everything was in German, and I do not understand it, but I was told that one investigator kept telling the various crimes the accused had committed and the other investigator kept insisting that the other investigator let the accused tell his story and called the witnesses liars. By the time the witnesses finished telling about the shootings the accused had participated in, the accused was whispering to the investigator. About that time the whole thing dissolved, the witnesses being taken away and the staff departing to other duties. No announcement of any kind was made. I do not recall that the people sitting behind the table ever said anything. The instructions given to all concerned were to scrupulously avoid stating that a trial was being conducted, that no one should hold himself out as being the defense counsel, and that no findings or sentences would be pronounced; that it would be referred to as the "schnell procedure"; that I only have personal knowledge of two of these ceremonies being held, but I have been told that there were as many as six or seven, all of which were not successful; that the accused Hennecke, one of the two whom I saw undergo the "schnell procedure", was 23 years of age at the time of the trial; that my diary indicates that his "schnell procedure" was held 8 March 1946 and that the date of his sworn statement taken subsequent thereto and used at the trial is 13 March 1948; that the other "schnell procedure" which I witnessed was in the case of Von Chamier, and occurred on the night of 20 March 1946; this accused arrived from the United States by plane and was delivered to the prison at Schwabische Hall, Germany, at about 2100 hours on the 20th of March; that about 2300 hours that evening he was interrogated in my presence; that I sat behind a table in semidarkness—due to the fact that there was no ceiling light, a wall light was used; as far as I can recall I never spoke a word; that Corporal Cain brought the accused into the room; that Captain Shumaker and Mr. Thon did the interrogating; that no witnesses were used; that after about ten minutes of Von Chamier stating "Nein, nein," he admitted his participation in the "Malmedy Massacre"; that the statement he made and which was used in the

trial was sworn to on 21 March 1946; that at the time of the trial Von Chamier was 30 years of age.

12. That I do not know of an occasion, even for disciplinary reasons, where any of the accused were ever deprived of their food for as much as even one day, nor were any blankets withdrawn in winter or in spring that I ever heard about; that I do recall asking the officer in charge of the prison for the 58th AFA to give Peiper more blankets, as he complained to me of sleeping cold; that the so-called death cells which were on the same floor and opposite the interrogation cells, were used as a matter of convenience to hold prisoners while they were being interrogated; that they were never held there more than a few days at a time; that these cells were approximately the same as the others except that the window was higher and it had an additional door; the bed may have been closer to the floor, but as to this I am no longer certain; that if there were beatings or any corporal punishments administered to either the accused or witnesses, I did not hear of them, and I cannot believe this would have happened without my knowing of it; that the only tricks and ruses and so-called stratagems employed which I know about were those the prosecution told to the court during the presentation of the evidence; that I know of no instance where promises of immunity or light sentences were ever made to any of the accused or where any hopes of reward were ever held out to them.

13. That petitioner, in paragraph 16 of his petition for writ of habeas corpus, gives a completely incorrect account of the suicide of Freimuth; that my knowledge of this event is as follows: That Freimuth committed suicide the night of 6-7 March 1946; that at the time he was confined alone in a cell in the building used exclusively for accused and witnesses of the "Malmedy Massacre" case; that if Freimuth was ever given the "schnell procedure" it never came to my attention, and if it had happened I'm sure I would have known of it; that the entries in my diary in connection with this event are as follows:

6 MAR. 1946.

Harry Tone got Hans Hillig's confession today. Perl took Freimuth's confession. * * * Perl went with Capt. —, M. D., to Stuttgart to get his car. * * *

7 MAR. 1946.

* * * Arvied Freimuth hung himself last night (had lined American PW's up at La Glaise and engaged in target practice on them). * * *

that my recollection is not clear on all the details, but it is my belief that Perl and the Medical Corps Captain left rather early in the afternoon of 6 March for Stuttgart and left Freimuth to finish writing his confession without supervision and that he was given paper, pen and ink to take to his cell to finish the job and that the confession was found in the cell the next morning by myself as I was called as soon as the body was found by the guards; that I have no reason to believe that Freimuth was ever mistreated in any way by any of the personnel under my command and supervision, nor by any of the guards or other administrative personnel of IP No. 2, at Schwabische Hall.

14. That I never was apprised of any occasion where forged confessions were ever used in an effort to persuade accused to sign confessions; that the "death chamber" with bullet holes in the wall in which human flesh was imbedded was pure imagination and was a subject of ridicule even among the accused themselves. (See Exhibit 7—a limerick which was sent to me during the trial by the accused Junker); that to the best of my knowledge and belief no accused was ever taken to the so-called hangman's room and there unhooded, placed on a high stool and a hangman's rope placed around his neck; nor did the prosecution team suggest and allow the accused to write farewell letters to their parents before they would be hanged; nor did members of the prosecution team offer the accused the privilege of seeing a priest before death; nor were any threats of violence and torture ever directed toward the mothers, fathers, sisters, wives, and children of the accused unless they signed confessions.

15. That to the best of my knowledge and belief "stool pigeons" were not used as described by petitioner in paragraph 18 of his petition for a writ of habeas corpus.

16. That Exhibit "C" referred to by petitioner in paragraph 19 of his petition for a writ of habeas corpus does not correctly recite the testimony of the record of trial, which it purports to do; that said Exhibit "C" purports to be testimony which was elicited in chronological order, whereas as a matter of fact it is excerpts taken from over 25 pages of record, beginning on page 675 and ending on page 701.

17. That Exhibit "D" referred to by petitioner in paragraph 21 of his petition for a writ of habeas corpus is not the correct and true order appointing the court, as he alleges; that I, the affiant, was the appointed Trial Judge Advocate and did try the case, whereas Exhibit "D" referred to by petitioner shows a Lt. Col. Granger G. Sutton as the Trial Judge Advocate.

18. That I do not know to what the petitioner refers in paragraph 22 of his petition for a writ of habeas corpus, by the statement "questionable actions of the Chief Prosecutor and his staff"; that I do know that the petitioner was appointed chief defense counsel prior to 11 April 1946; that on that date he and members of his staff arrived at Schwabisch Hall; that he did not make a request to interview a single accused while he was there but shortly left for Dachau; that on 15 April 1946 I went to Dachau to make arrangements for the arrival of the accused and witnesses, secure office space and billets for my staff, and to complete other arrangements for the trial; that I found the petitioner in Dachau had made no arrangements for billets, office space, transportation, nor any other necessary arrangements for his staff; that I personally secured billets for his staff, as well as office space, typewriters, etc., and on 20 April 1946 turned over to him half the transportation I had assigned to me for the use of my staff; that I repeatedly urged him to get busy on the preparation of his defense, as we were anxious to get started, as my staff were looking forward to early redeployment.

19. That the reference by petitioner, in paragraph 23 of his petition for a writ of habeas corpus, to a woman allegedly murdered in Wanne, Belgium, is false and misleading, as there is no reference in the record of trial to any woman being killed at this place; that there was an unknown woman murdered in Bullingen, and to rebut this the petitioner produced a statement by a man whose wife had been killed by artillery fire, not sworn to before a priest, as the petitioner alleges, but before one of the petitioner's own investigators, Miles W. Rulien, P-5.

20. That the alleged tampering with witnesses of the defense by the prosecution, as stated by petitioner in paragraph 24 in his petition for a writ of habeas corpus, is not true; that the facts are that at that time many war criminals in other cases, from other places of confinement throughout Europe, were being brought to Dachau; some of these were coming as a result of TWX's sent out in the fall of 1945 for all members of the 1st SS Panzer Regiment to be sent to Zuffenhausen; others from this Regiment were being sent by France; that it was the policy of the prosecution to interrogate all members of the 1st SS Panzer Regiment when they arrived; that the defense did not notify the prosecution who their witnesses were, and it did happen that the prosecution interrogated some defense witnesses before the defense had an opportunity to do so; that I have no personal knowledge of any tampering with defense witnesses by the prosecution; that if there was any tampering with witnesses it was on the part of the defense and not the prosecution. See R-2966, where accused Georg Preuss tried to influence the testimony of prosecution witness Kehles.

21. That the incident recited by petitioner in the 1st paragraph of paragraph 26 of his petition for a writ of habeas corpus is incorrect in that it is a complete distortion of the facts; that what actually happened was that the accused had been searched by the black guards and all prohibited writings and communications taken from them; that these writings were turned over to Lt. Perl by the block commander of the guard and I instructed Lt. Perl to translate them for me.

That as to the allegations in the second paragraph of paragraph 26, it should be said that the wives of the accused were permitted to and did attend the trial; that members of the prosecution staff were sitting at the prosecution table and could be easily identified as the prosecution; that in many instances wives of the accused came to the prosecution staff requesting special privileges, but that to my knowledge no one on the prosecution staff ever represented himself to be defense counsel of the accused.

22. That the allegations of petitioner in paragraph 28 of his petition for a writ of habeas corpus may represent the petitioner's state of mind when he made the announcement in court about "the fear of the Prosecutors lingers on"; that, however, a day or so before this fateful announcement he asked to see me privately, either one morning before court started or at recess; that at that time he evidenced concern about the unfavorable showing and impression the accused were making on the court and asked my advice as a friend and fellow attorney as to whether or not he should continue putting them on the stand; that to this I replied in substance and effect: "Willis, as far as I know, none of the defense counsel in previous cases have kept the accused off the witness stand. It seems to me that if I were defending one of these cases and felt my accused were guilty, they would only take the witness stand over my dead body, for the reason most of them get mixed up in their attempts at explanations

and wind up giving credence to their confessions"; that following this conversation, three more of the accused took the witness stand, all with disastrous results; that then followed the petitioner's announcement that he was not putting any more of the accused on the stand.

23. That petitioner in paragraph 23 of his petition for a writ of habeas corpus states that when the prosecution rested, only a few days were allowed the defense staff to interview witnesses and plan the defense for their 74 defendants; that the record of trial on page 1579 recites the following:

PRESIDENT: The German counsel have requested a lapse of five working days before the defense opens its case, which request is endorsed by chief counsel for the defense. In order to fully serve the interests of justice, this request is granted by the Court. Accordingly, the Court is now adjourned to meet again at 0830 hours, Monday, June 17th.

That the prosecution rested its case at 1555 hours 7 June 1946; that it is pointed out that the petitioner as chief defense counsel did not ask in open court for more than the five working days requested by German counsel; that as an actual fact the defense had nine days between the time the prosecution rested on Friday 7 June 1946 and the time the trial commenced again on Monday 17 June 1946.

24. That the aspersions cast by the petitioner upon the character, integrity, uprightness and professional ethics of my subordinates in the investigation and trial of the Malmedy Massacre is a matter of grave concern to me; that with the exception of one War Department civilian investigator, Harry Thon, all the principal investigators and counsel were members of the Bar of some State or Austria; that I personally hold them in high esteem and am proud of them for their accomplishments in this case; that they participated throughout with a strong sense of responsibility and an exhibition of devotion to duty, loyalty and sincerity of purpose never before nor since witnessed by me; that without the great spirit, enthusiasm, diligence, industry, thoroughness, intelligence and team play exhibited by each and every one of the detachment, including officers, enlisted men, United States and Allied civilian employees, male and female, the announcement made by the War Department early in 1945 "that the perpetrators of the Malmedy Massacre would be brought to justice" in my opinion never would have been accomplished.

Dated at the Presidio of San Francisco, California, this — of October 1948.

BURTON F. ELLIS,

Lt. Colonel, JAGD, Asst. Army Judge Advocate.

Subscribed and sworn to before me this — day of October 1948.

[SEAL]

EXHIBIT 1

INVESTIGATION OF THE "MALMEDY MASSACRE" BY WAR CRIMES BRANCH, USFET

The investigation of this case by War Crimes Branch began while War Crimes Headquarters were still located in Paris. Lieutenant Colonel Martin H. Otto, who was Chief of the Investigation Section, some time in June 1945 assigned Major Dwight Fanton (then Captain) to start working on the files of the case. The files consisted of the 1st Army I. G. report, the SHAEF Court of Inquiry Report and a few miscellaneous affidavits of survivors. This material contained only the facts of the massacre, names and statements of the survivors, and that the atrocity was probably committed by elements of the 1st SS Panzer Regiment. The names of some of the personnel of this Regiment were in the file but the name of even one single perpetrator was unknown.

Wanted Reports on the known members of the 1st SS Panzer Regiment were prepared and filed in June 1945 but no results were obtained. It was rumored that the C. O. of the regiment was in captivity and his name, Colonel Joachim Peiper, was known. By late July, no results having been obtained, special TWX's were sent to the Commanders of both the 3rd and 7th Armies and to USEA, requesting information on the whereabouts of Colonel Peiper. About the same time it was discovered that General Josef (Sepp) Dietrich, Commander of the 6th SS Panzer Army, of which the 1st SS Panzer Regiment was a component part, was confined in Wiesbaden. He was first interrogated by Lieutenant Colonel Otto and a few days later by Lieutenant Colonel Burton F. Ellis (then Major) but little information of real value was elicited from him, other than to confirm reports that Peiper was still alive. At almost the same time, the place of detention of Skorzeny (C. O. of Operation Greif—Germans speaking English and dressed in American uniforms who were committed during the Eifel Offensive)

was found to be at the Intelligence Center in Ober Ursal. He was interrogated by Lieutenant Colonel Ellis early in August 1945 but with negative results.

About the middle of August 1945, Stars & Stripes published an article stating that Colonel Peiper was in a Prisoner of War Camp at Freising. It was then decided by Lieutenant Colonel Otto, Chief of the Investigation Section of War Crimes Branch, to have Colonel Peiper interrogated immediately, and Lieutenant Colonel Otto, with two other officers of the Section, Major Dwight Fanton (then Captain) and 2nd Lieutenant William E. Binder, left immediately for Munich on about a ten-day trip. Major Fanton interrogated Colonel Peiper at Freising on 25 and 26 August 1945 and from him elicited a detailed story of the Eifel Offensive as far as the 1st SS Panzer Regiment was concerned. This story was in the nature of a recital of the strategy of the offensive and the tactics employed, but was negative on the subject of the prisoners they shot. Other Prisoner of War Camps were visited in the area around Munich and a few of the members of the 1st SS Panzer Regiment were located.

Sometime around the 1st of September there appeared an article in "B Bag" of Stars & Stripes, signed by a Lieutenant Higgenbotham, stating he had been a captive of Colonel Peiper's at La Glaise, Belgium, during the offensive. It was decided then to place this officer on thirty days TDY with War Crimes Branch and send another group of investigators to the PW Camps in Austria and the Munich area to see if Lieutenant Higgenbotham could identify any of the members of the 1st SS Panzer Regiment. At this time Lieutenant Colonel Ellis (then Major) was Chief of the Investigation Section of War Crimes Branch, and a party headed by Major Fanton and Captain Shumacker (then Lieutenant) left on an extended trip to this area. Higgenbotham was unable to identify anyone, but several officers of the Regiment were located and interrogated. Little was obtained from them other than to verify Peiper's historical account. Some of these suspects were then moved to Dachau for confinement, as it was apparent that after a suspect had once been interrogated and was allowed to rejoin his former comrades, the truth of the massacre would never be known.

Again through Stars & Stripes, the whereabouts of fifteen of the survivors of the massacre was found out to be at Buschein. This was in October and by this time Colonel Peiper was in Ober Ursal at the Intelligence Center. Lieutenant Colonel Ellis and Lieutenant Colonel H. B. Crawford took Colonel Peiper to Beuschein to see if he could be identified by the survivors but this was unsuccessful. A few days later, Lieutenant Colonel Crawford flew with the fifteen survivors to Dachau to see if the members of the Regiment held there could be identified. Again this proved to be unsuccessful.

During all this time Major Fanton and Captain Shumacker were scouring the PW Camps of Austria and 3rd Army Area for possible suspects. During this trip many PW Camps, Internment Camps, PW Hospitals and other such installations were visited. On these visits it was learned that the Wanted Report-Detention Report method of apprehending suspects could not be counted on as an effective aid in this case. Most commanders of the installations visited had never even heard of such reports. They returned in the latter days of October and made the recommendation that if the case was to be broken, all the members of the Regiment would have to be brought together at one place where they could be confronted with one another and at the same time kept separated in order that they might not tell one another what they had learned. Because of their findings in respect to Wanted Reports and Detention Reports, they recommended that a command TWX be sent out to all the commands in the ETO and request to the Allied Governments to send all PW members of the 1st SS Panzer Regiment at once to I. C. # 78, the War Crimes enclosure at Zuffenhausen.

When this plan was proposed to Colonel C. E. Mickelwait, Chief of the War Crimes Branch, he readily adopted it and the command TWX was sent out.

By the middle of November, over nine hundred and ninety PW's had arrived at Zuffenhausen but facilities there were such that all of them had to be put together in one barracks. With this situation it was impossible to make a successful investigation.

By this time the investigation team was composed of Major Fanton, Captain Shumacker, 1st Lieutenant William R. Perl, Mr. Morris Elowitz, and Mr. Harry Thon. At this time it was discovered that Colonel Peiper, who was alone in one of the eight or nine individual cells at No. 78, had sent out the word to the members of his command that they should say that "Poetschke (one of his battalion commanders) gave the orders for the massacre of PW's at the cross-roads south of Malmedy" because Poetschke was known to be dead. There was no opportunity to keep the suspects from communicating with one another and therefore, Major Fanton, Captain Shumacker, and Lieutenant Perl conceived the

idea that if the investigation was to be successful, the suspects must be placed in single cells without any means of communicating with one another.

In the last few days of November, this plan was presented to Colonel Mickelwait, who gave his approval. Several prisons were inspected and finally, the prison at I. P. No. 2, Schwaebisch Hall, was selected. This was a former peacetime penitentiary and had approximately two hundred eighty individual cells, with adequate space for several hundred more prisoners. Absolute security of communications between prisoners could be maintained and they were unable to find out who else was also in the prison.

In the meantime, the prisoners at Zuffenhausen were screened and about five hundred likely suspects were moved to Schwaebisch Hall during the first few days of December.

Here it was that the real investigation took place and the case was developed. The interrogations were conducted by Captain Shumacker, Lieutenant Perl, Mr. Thon, and Mr. Elowitz. Major Fanton was in command and took care of the administrative work. In February Major Fanton was redeployed and Captain Shumacker took command. Early in March, Lieutenant Colonel Ellis was selected as the Trial Judge Advocate and he went to Schwaebisch Hall and took over command and work of the final preparation of the case for trial.

The first few weeks of the interrogation at Schwaebisch Hall were devoted mainly to securing information from the suspects at hand relative to the component elements of all units involved, the names of the officers, platoon leaders, group leaders, squad leaders, types of vehicles and weapons, the membership of each unit, the names of the crews of each vehicle, and as much information about the personal background of each individual as could be obtained. This information was essential to the interrogators who had to appear perfectly informed when they interrogated a suspect because of the absence of any eyewitnesses to the atrocities being investigated.

In the initial stages of the interrogation, the interrogators concentrated their efforts on the massacre that took place on 17 December 1944 at the crossroads south of Malmedy, commonly known as the "Malmedy Massacre." As a matter of fact, this atrocity was the only one known with any assurance to have been committed by the 1st SS Panzer Regiment.

After the aforementioned background material had been obtained, assimilated and correlated, interrogations were begun with emphasis on the atrocity under investigation. It became quickly apparent from these interrogations that not only were approximately 100 American prisoners of war murdered at the crossroads south of Malmedy, but others, usually smaller groups, were killed by members of the 1st SS Panzer Regiment all along their route of march during the period of the offensive and even during and after the retreat from La Glaise on the night of 23-24 December 1944. These "satellite cases" were gone into thoroughly, even though at that time it had not been determined to try such cases along with the case of the "Malmedy Massacre" so that the incriminating evidence obtained as to these incidents could be used as a wedge and lever to elicit information on the main case under investigation.

So far as was possible, all suspects were kept alone in individual cells and when brought to the rooms for interrogation, were kept *incommunicado*. In this manner, a suspect once interrogated, was unable to inform those not yet interrogated as to the method or subject of his interrogation, nor was he able to inform his comrades the story he had given so that their stories might conform to it.

Various tricks, ruses, ceremonies, etc., were employed by the interrogators. Stool pigeons were used and false witnesses were occasionally used to confront suspects, identifying them as having perpetrated a crime at a certain place on a certain date in a certain manner. One ceremony occasionally used on suspects not considered too intelligent was a sort of mock trial. Once a single perpetrator in a company saw fit to confess his own crime he quickly named those who participated in the crime with him and gave the names of others who had perpetrated similar crimes elsewhere during the offensive. When it was learned that the soldiers of the 1st SS Panzer Regiment had perpetrated their crimes on orders received from their company commanders prior to the offensive, this fact was held out to them as an "excuse" and the suspect found it easier to admit to having killed prisoners of war or noncombatant civilians because the interrogators appeared to understand such conduct engaged in pursuant to superior orders.

In no single instance did a suspect assert that he was a prisoner of war and was only required to give his name, rank and serial number. Such lack of discipline in this respect was a great aid to the interrogators. Once the suspect

began to talk, he usually became so involved in his initial falsehoods that he had to talk even more to cover such falsehoods and once he was proven to be lying, he more often than not told what crimes he had participated in or knew about.

Comrade was played against comrade, officers against their men and men against their officers, and in this way, substantial truth was finally elicited.

The basic plan was to start with the soldier and work up through his group leader and platoon leader to his company commander, then to battalion commander level then to regimental level, and finally, to the chief of staff and commanding general of the 6th SS Panzer Army themselves.

All forms of physical force, threats, and promises were strictly prohibited and were not employed by the interrogators. The industry, ingenuity, enthusiasm, and intelligence of the interrogators employed in this investigation cannot be over-emphasized or praised too highly.

In January 1943 Captain Robert E. Byrne (then Lieutenant) was assigned to work on the case. On a lead furnished by the French Government he went to Alsace and interrogated a witness who later became a suspect and was then delivered to the American Government for trial. In February 1946 Captain Byrne went to Belgium and spent six weeks in the various villages along the route of advance of the Germans interrogating witnesses. From his efforts alone, approximately thirty Belgian civilian witnesses were found and many of them were eye witnesses to the atrocities. Two were able to identify a perpetrator.

Six of the survivors of the Malmedy Massacre arrived in the latter part of March 1946 and 9 April 1946 in the company of Lieutenant Colonel Ellis, Captain Shumacker, and Captain Byrne, they returned to the scene of the massacre. The entire route of march of the Germans was completely covered on this trip.

Although the directive to send all prisoners of war to the component units of the 1st SS Panzer Regiment had wide circulation, a large number of its members were never sent either to IC #78 at Zuffenhausen or to I. P. #2 at Schwaebisch Hall. Therefore, as the investigation progressed, both suspects and witnesses gave the investigators leads as to the whereabouts of many suspects. In order to get these suspects definitely located, Major Luke P. Rogers was sent to the PW enclosures and additional suspects were apprehended in this manner and through Major Rogers' efforts.

For about three weeks in March and April, three War Crimes investigating teams from the Seventh Army were loaned to this detachment for the purpose of developing leads and apprehending suspects known to have committed atrocities, who were not yet in custody. One of these teams was sent to Paris to check PWI records; one was sent to the British Zone; and the other team was sent to Austria. Through their efforts, more suspects were apprehended and were ultimately made accused in the case. Six such suspects were found to be in the ZI and they were brought to the European Theater and were among the accused tried.

The interrogators themselves, when they learned that a suspect might be found within a radius of a couple of hundred kilometers of Schwaebisch Hall, made short trips to apprehend such suspects and some of these trips were completely successful.

Statements taken from suspects and witnesses were written in longhand by the suspect or witnesses himself and sworn to before an officer. Then the statement was translated and an affidavit of the translator attached thereto. Several copies of the translation were made so that a copy of the statement could be placed in the 201 file, not only of the affiant himself, but of every other person incriminated by the statement.

In preparing the material for trial, photostatic copies were made of the statements and especially of the sketches and maps which formed a part of the statements for use by each member of the Court as this material was offered in evidence.

The investigation was completed on 18 April 1946 (as a matter of fact, the last confession obtained was signed about midnight of that date) and all witnesses and accused were moved to Dachau on 19 April 1946.

The following important observations and decisions were highly significant as affecting the successful results of this investigation:

1. The fact that members of a regiment, scattered throughout Europe and the ZI, could not be effectively located or interrogated by the detachment assigned to the task.

2. The fact that locating or apprehending suspects through the means of Wanted Reports and Detention Reports was most unsatisfactory and was negative in results obtained.

3. The fact that all suspects (every member of the 1st SS Panzer Regiment was at first a suspect) had to be brought to one central enclosure for screening and interrogation.

4. The fact that effective interrogation demands complete isolation for each man interrogated and absolute security of communication between him and other suspects.

5. The employment of well trained, industrious, conscientious, intelligent and where possible, German speaking interrogators, preferably with legal training and certainly, with a lawyer in command.

6. The decision to gather all suspects at I. C. #78 at Zuffenhausen—this was accomplished by the Command TWX hereinafter mentioned.

7. The decision to provide a facility adequate to the requirements of effective interrogation—this facility was obtained, same being I. P. #2 at Schwaebisch Hall.

EXHIBIT No. 2



EXHIBIT 3

SOP #1:

5 DECEMBER 1945.

1. This SOP will govern the transfer of prisoners involved in the Malmedy case from IC #78 and IP #1 to IP #2.

2. This transfer will be known by the code name, Project "X."

3. A copy of the form letter which will accompany these shipments is attached as Exhibit "A." This transfer letter will be prepared in original and five copies in the case of prisoners being transferred from IC #78. When a shipment is composed of prisoners from IP #1, the original and six copies of the transfer letter should be prepared. When there is a mixed shipment, an original and seven copies will be prepared. The original and two of these copies will be placed in a sealed envelope and handed to the noncom in charge of the shipment covered by the transfer letter. Of the remaining copies two will be withdrawn at the USFET War Crimes Detachment office, one for the office files of the team working on this case and the other to be forwarded to Apprehension and Detention Sub-Section of the War Crimes Branch in Wiesbaden. The copies that are left will be delivered to the Administrative office at IC #78 or IP #1 as the case may be for its use. These copies which are to be delivered to the Administrative office will be so delivered the day prior to shipment so that the men shipping may be properly prepared and so that shipment schedules may be met.

4. The 788th FA Battalion has been designated as the unit to make this movement. All drivers and noncoms assigned to this detail will be briefed regard-

ing the importance of maintaining strictest security concerning their mission. Six trucks will be furnished daily by this organization for the transfer, operating on the following schedule: (Times of Departure from IC #78 0900-1000-1130-1300-1400-1500. The personnel assigned to this detail will not be changed throughout the transfer except in cases of emergency. All new personnel assigned to the detail will be carefully briefed on security precautions by a representative of the War Crimes Team investigating this case or the Commanding Officer of the 788th FA Battalion.

5. Upon arrival at IP #2, the prisoners being transferred will be processed in such a way as to prevent the disclosure of their arrival and identity to any but authorized American personnel. They will be assigned to cells in accordance with the code designation appearing opposite their names on the transfer letter in the column headed "Conf. Status." Men having the same letters or combinations of letters opposite their names in this column will be assigned cells together. Others having the letters Sol. after their names will be assigned to cells in solitary confinement. Where the letters Sol. (A) appear after a man's name, it indicates that he is a cooperative prisoner and should be assigned to a special cell offering him additional comforts as soon as such cells are prepared.

6. Administrative personnel at IP #2 in charge of processing incoming prisoners will indicate the number of the cells to which they are assigned opposite their names in the left hand margin of the original of the transfer letter. The file containing these letters will be made available to the War Crimes team investigating this case so that the cell numbers to which these prisoners are assigned may be transferred to locator and index cards being maintained by this team.

Distribution:

- 1 cpy—War Crimes Branch, USFET Investigation Sub-Section.
- 1 cpy—War Crimes Branch, USFET Apprehension and Detention Sub-Section.
- 1 cpy—USFET War Crimes Team (Malmedy Case).
- 1 cpy—IP #2.
- 1 cpy—Commanding Officer, 788th FA Battalion.
- 1 cpy—Commanding Officer, 34th AAA Group.

EXHIBIT A

WAR CRIMES BRANCH,
DETACHMENT AT IC #78,
USFET, 5 December 1945.
RS/jjr.

Subject: Project X.

To: Prison Commander, 7th U. S. Army Internee Prison #2.

Thru: Camp Commander, IC #78.

1. The following prisoners are being evacuated from IC #78 to 7th U. S. Army Internee Prison #2 in accordance with SOP #1:

Name	Place now det.	Priority	Conf. status	Orgn.
Reichert, Wilhelm	78	1	Sol.	3rd Pi. Co.
Buntins, Edward C.	78	3	P.	Stabs Co. 1 PR.
Ochmann, Paul	78	2	U.	Stabs Co. I Bn. 1 PR.
Bergmann, Lothar	78	2	V.	Stabs Co. III Bn. 2 PGR.
Hoffmeister, Hans	78	2	T.	1st Co. 1 PR.
Frohlich, Ewald	78	3	V.	Stabs Co. 1 PR.
Aichberger, Ferdinand	78	5C	U.	1st Co. 1 PR.
Holle, Wilfried	78	5	T.	2d Co. 1 PR.
Meding, Otto	78	3	V.	6th Co. 1 PR.
Kowitz, Ernst	78	3	U.	7th Co. 1 PR.
Czogalla, Herbert	78	4	T.	Do.
Post, Robert	78	3	Sol.	11th Co. III Bn. 2 PGR.
Motzheim, Anton	78	2	U.	12th Co. III Bn. 2 PGR.
Jensen, Friedrich	78	1	Sol.	9th Pz. Pi. Co.
Niemeier, Wilhelm	78	4	V.	11th Co. III Bn. 2 PGR.

2. These prisoners will leave IC #78 at 0900 on 5 December 1945.

RAPHAEL SHUMACHER,
Captain, CMP, USFET, WCB.

EXHIBIT 4

WAR CRIMES BRANCH, USFET,
DETACHMENT AT I. P. #2, 7 February 1946.

SOP No. 4:

1. *Scope.*—This SOP will govern the manner in which interrogations are conducted in this investigation.

2. *Interrogation register.*—A register will be maintained showing all prisoners interrogated, the date they were interrogated, their full name, name of the person conducting the interrogation, number of the cell in which they are being interrogated and the number of the cell to which they are taken following the interrogation. The person conducting the interrogation will be responsible for seeing that the foregoing information is correctly entered in the appropriate columns of this register. The name of the prisoner being interrogated will be printed. The interrogator will be responsible for making any changes in the register necessary to show the location of the prisoners during the interrogation. Where the prisoner is taken to a cell different from that in which he was originally located, proper adjusting entries will be made by the interrogator in the personality card index file and the locator file, to reflect this change (See Paragraphs 5a and 5b of SOP #3). When these files are properly adjusted, a pencil check mark will be placed by the interrogator alongside the cell number appearing in the disposition column of the register. When the interrogator pulls a locator card on a prisoner whom he has been interrogating, to adjust the locator file for a cell change, and the file indicates that the cell in which the prisoner was originally located is vacant as a result of this change, the interrogator will withdraw the cell separator card and place it in the section of the locator file marked "Vacant Cells."

3. *Preinterrogation preparation.*—a. Prior to interrogating a prisoner, the interrogator will examine his personal effects for photographs, addresses, diaries, wallets, and pens with American names or indicating American manufacture, American invasion currency, etc.

b. Next, the interrogator will examine the personality card of the prisoner being interrogated and any other cards in the personality card index cross referenced on the prisoner's card.

c. The interrogator will then examine the appropriate organization file for additional information regarding other personalities in the organization and information regarding operations of the organization of which the prisoner was a member.

d. Interrogator will also inspect the locator file to determine the identify of the prisoner's cellmates so that he may learn what exchange of information has occurred among the inmates of this cell.

e. The final pre-interrogation step will be a conference with the Commanding Officer so that the plan of the interrogation may be outlined for his approval in order that interrogation activities may be properly coordinated.

4. *Rules governing interrogation.*—a. Any ruse or deception may be used in the course of the interrogation, but threats, duress in any form, physical violence, or promises of immunity or mitigation of punishment, should be scrupulously avoided.

b. Where a prisoner being interrogated in a crime is implicated in that crime, it is permissible to tell him that he will be recommended as a witness, if such statement to the prisoner will cause him to tell a full or more complete story so that he will be of more value to the case as a witness than as a defendant. However, before any such statements are made to a prisoner, the matter must be cleared with the Commanding Officer.

c. Stool pigeons may be employed, but prior to their selection or preparation, the matter of their employment must be cleared with the Commanding Officer.

5. *Statements.*—a. Before a statement is taken from a prisoner, the matter will be cleared with the Commanding Officer in order to determine the necessity or desirability for taking such statement and in order to review the points which should be covered in the statement. In taking a statement, the interrogator should dictate the statement, or where an intelligent prisoner is making a statement and is going to write the statement himself, take the necessary measures to make sure that all important points are adequately covered and the picture to be presented is painted in all its details. Whether the statement is dictated or whether the prisoner writes it himself, the actual writing will be done by the prisoner himself so that the statement is in his own handwriting.

b. In dictating or supervising the preparation of the statement, all possible defenses should be anticipated and answered by the statement. For instance, it should be made clear that the soldiers who were killed were Americans, not merely because the person making the statement says they were Americans, but because they wore American uniforms, spoke English and were armed with American weapons, or because an examination of their personal effects disclosed that they were Americans. It should also be established in the statement that they were prisoners of war, that they had discarded their arms and surrendered, raising their hands over their heads or indicating their surrender in some other manner. Another possible defense that should be anticipated in the statement is the familiar "attempt to escape" defense. It should be shown in the statement that the prisoners who were shot gave no provocation for the shooting. Another very important point that is very often overlooked in the statements, are the details necessary to establish that the soldiers were dead. All possible details regarding the nature of the bullet wound, the number of shots fired into the bodies, the reaction of the bodies following the shooting and the distance of the bodies from the person doing the shooting, should be established. The disposition of the bodies should also be covered. The statement should also indicate other witnesses to the shooting.

c. In order to conserve the time of the office personnel working on the statements, as well as the trial personnel reviewing them, it is desired that all statements be as brief as possible. Necessary steps should be taken to insure that all irrelevancies are excluded from the statements.

d. Each statement should be carefully checked by the interrogator for completeness and accuracy of identification information, such as, the name, rank, complete organization designation, dates and geographical names appearing in the statement.

e. When a statement is completed it will be placed in the file basket marked "Statements for Translation."

f. Upon completion of the translation, which will be prepared in triplicate, the translator will initial the translation in the lower left-hand corner of the last page of the original, to indicate that he has proofread it for typographical and other errors. He will then accomplish one copy of the translator's affidavit and attach it to the original of the translation, which will in turn be attached together with its copies to the statement. The statement, together with its translation, will then be referred to the interrogator for final check. The interrogator will then examine the statement and its translation for completeness and accuracy, and after making all necessary corrections, will place his initials in the upper right-hand corner of the first page of the original of the translation. He will then place the statement together with the translation in the file basket marked "Information for Personality Card." Until the statement is placed in this file basket, it is the interrogator's responsibility to see that it is complete in every respect and that it is processed as speedily as possible.

g. In making his translation, the translator will take all necessary steps to insure that it is absolutely correct. Where confronted with a word or phrase which he does not clearly understand, he will discuss the matter with other German-speaking personnel in this Detachment and consult a dictionary or other appropriate reference.

h. Since many of these statements will undoubtedly have to be introduced in court to prove a particular phase of the case, it is imperative that they be legally sufficient in all respects to prove the necessary facts. It will be the Commanding Officer's responsibility to insure that the statements are adequate in this respect. In the case of an interrogator who is not a lawyer, the advice of the Commanding Officer should be sought prior to the taking of the statement in all cases where the interrogator is in doubt regarding the proof necessary to establish a material fact.

i. The Commanding Officer will review the statement and determine what information should be extracted from the statement and entered on the personality cards. Upon the completion of this operation, the statement will be placed in the file basket marked "Statements for File." Translations of the statements in this basket will then be typed in final form. The translator will then accomplish and attach the translator's affidavit and return the translation and statement to this file basket for filing.

j. The interrogators will supervise the prisoners while they write their statements and draw sketches to be attached to their statements to insure that an

ample margin is left at the top of each page of the statement so that perforations may be made for filing.

6. *Postinterrogation procedure.*—a. Any material facts for the proof of this case or any information of immediate value in conducting the investigation of the case, established by the testimony of the prisoner will be communicated to the Commanding Officer by the interrogator immediately following the interrogation, so that such facts or information may be entered on all appropriate personality cards.

b. At the conclusion of each interrogation, the interrogator will have a conference with the Commanding Officer to discuss the results of the interrogation and formulate future plans.

c. The following rules will govern disposition of a prisoner upon completion of his interrogation:

1. If a prisoner is occupying a cell with other prisoners he will not be returned to that cell.

2. If it is determined that a prisoner is a cooperative witness he will be assigned to one of the cells reserved for cooperative witnesses, D-101 through D-117 or A-32 through A-45 for important witnesses, B-39 for less important witnesses. In no case will an officer occupy a cell with an enlisted man except in special cases after receiving clearance from the Commanding Officer. Members of the same units should not occupy the same cell, unless they are the same grade.

3. Where it is determined that a prisoner was not a member of an implicated unit, or it is believed that he is of no value as a witness or suspect, he will be transferred to C-050, C-029, A-049, or A-053 for eventual evacuation.

4. Where difficulty is encountered in exploiting a prisoner and it is desirable to permanently transfer him to a convenient location for reference during subsequent interrogations, he will be transferred to one of the cells in the D-75 through D-83 block.

5. All cell changes will be cleared through the Commanding Officer. Before any such changes are made the locator file should be consulted for availability of cells.

d. War Crimes Clearance Sheet: If it is determined upon completion of the interrogation of a prisoner that he is of no further interest in this case, a War Crimes Clearance Sheet will be accomplished for him on the form supplied for that purpose. In preparing this form, the CROWCASS wanted list together with all of its supplements will be carefully checked and appropriate reference entered on the clearance Sheet in accordance with current directives.

e. Retention of Prisoner Form: As soon as it is determined that a prisoner is to be used in the trial of this case, either as a witness or a suspect, a Retention of Prisoner Form will be accomplished on him, using the mimeographed form provided for this purpose. The interrogator will prepare this form, being careful to insure that all information written into the form is completely legible. This form will be made up in original only. When there is a sufficient accumulation of these completed forms, the 7th Army War Crimes Detachment at IC #78 will be contacted so that they can send for the completed forms.

f. Crowcass Report.—At the completion of the interrogation the prisoner's personality index card will be examined to determine whether or not he is wanted by Crowcass. If a check mark appears in the upper left-hand corner of his card he is listed in the latest Crowcass list, and this fact should be reported to the Commanding Officer. If a zero appears in the upper left-hand corner of the card it indicates that the prisoner is not listed in any of the crowcass lists. If no marking appears in the upper left-hand corner of the personality card, the interrogator will make a search of the latest crowcass list together with all of its supplements to determine whether or not the prisoner could possibly be the same as the persons listed in the crowcass lists having the same or similar names.

If there is a possibility of identity between the prisoner and a person listed in the crowcass lists, his personality index card will be marked with a check mark in the upper left-hand corner of the card. If not, his card will be marked in the upper left-hand corner with a zero. Wherever the possibility of identity is established, the name of the prisoner will be given the Commanding Officer, together with a note stating whether the identification is positive or possible, so that the proper report may be made through channels in accordance with current 7th Army directives.

(S) DWIGHT F. FANTON,
Major, QMC, Commanding Officer.

EXHIBIT 5

PERSONAL DATA OF ACCUSED FOR INFORMATION OF DEFENSE COUNSEL

To accused: This information is necessary to enable your counsel to initiate his preparation of your defense. It is to your interest to be accurate. With respect to the charges you will be personally interrogated at a later date.

If there is insufficient space to answer any question continue on the reverse side of the sheet listing the No. of the question.

1. Full name:
2. Rank:
3. Serial No.:
4. Branch of Service (Infantry, Artillery etc.):
5. Date of capture or apprehension:
6. Name your organizations from December 1st, 1944 to date of capture or apprehension, giving dates served in each organization:
7. Your age:
8. Place of birth:
9. Religion:
10. Legal residence:
11. Married or single:
12. List all your dependents:
13. Education prior to entering military service:
14. What was your occupation in civilian life?
15. Military education and training (list military school attended and type of basic training):
16. What instruction, if any, have you received during your military career relating to the "Geneva Conventions" and the treatment of prisoners of war?
17. Prior to the date of your capture or apprehension in what major military or naval engagements did you participate in this or any other War?
18. Where, by whom and under what circumstances were you captured or apprehended?
19. State what treatment you received at the time of capture or apprehension:
20. When and at what places were you imprisoned (give dates and locations of imprisonment)?
21. State any circumstances relating to your treatment, denial of good or loss of privileges at any of the above places:
22. Have you been in solitary confinement during your imprisonment?
23. If so, how long and where?
24. What part did you play in the "Eifel Offensive" during the months of December 1944 and January 1945 (list organizations and duties assigned):
25. During these engagements were you a member of any unit which captured American Prisoners?
26. Name of such unit:
27. Who was your immediate commanding officer of this unit?
28. What knowledge have you regarding the shooting or mistreatment of American Prisoners during the above engagements? (State fully):
29. Did you participate in any mistreatment or shooting of American Prisoners or Belgian Civilians during these engagements?
30. If so, state times, places, and circumstances (give detailed statements):
31. After capture, when, where, and by whom were you first interrogated?
32. Did you make a full statement then?
33. If so, was it made voluntarily?
34. How long a period of time did this first interrogation last?
35. State at what places, times, and by whom you were interrogated afterwards:
36. Approximately how long did each interrogation last?
37. Did you at any time make a statement or confession *not* voluntarily?
38. If so, state the time, place and to whom it was made and all circumstances:
39. When you were served with Charges on the 11 April were you informed that you had a right to be represented by a German Civilian Council of your own choice, in addition to the assigned military counsel. Do you desire such counsel?
40. If so, state his name and address:
41. Do you desire to call any witnesses in behalf of your defense?
42. If so, give names and addresses:
43. Have you any other comments to make?

EXHIBIT 6

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE

7708 WAR CRIMES GROUP

UNITED STATES FORCES, EUROPEAN THEATER

APO 178

STATEMENT OF CHARLES J. PERRY, O240597, LT. COL, AGD

On 6 February 1947 I visited Landsberg Prison for the purpose of being present during the interrogation of former SS personnel who were awaiting execution for their part in commission of atrocities committed in vicinity of Malmédy, Belgium, and for which they were found guilty by a military court and given the death sentence. While at Landsberg Prison I interrogated Joachim Peiper and Benoni Junker, in connection with their interrogation and treatment prior to their trial before the Military Court which heard their case.

Junker, who spoke excellent English, informed me that during the development of the Malmédy Case at Swabish Halle, Germany, he, at no time, was struck by anyone connected with the investigation of the case. He stated that the treatment he received during his confinement at Swabish Halle was better than the treatment he received at Dachau and the physical conditions at Swabish Halle were much better than those at Landsberg. I again asked specifically whether he had at any time before or during his trial been struck or threatened with bodily harm by any interrogator. He answered specifically that he had never at any time been struck or threatened with bodily harm by any American captor, interrogator or jailor. I asked whether he had been treated in any manner which might tend to humiliate him or degrade him in the eyes of his former subordinates or superiors. He stated that he was intensely interrogated at Swabish Halle and that frequently his answers to direct questions were distorted and colored to suit the ideas of his interrogators in an effort to elicit further information, but that such methods were not unusual and were probably a great deal milder than the methods which would have been used by German interrogators had the circumstances been reversed.

He further stated that the interrogation was not believed by him to be an effort to degrade him before his German comrades and actually did not so degrade him. I asked whether he had at any time seen or had been placed in cells which contained bullet holes or pieces of flesh, human or other. He answered that the story about pieces of flesh was the figment of someone's imagination and without basis in fact, also, that since the prison at Swabish Halle was an old prison there may have been holes in the cell walls but he was certain that if there were such holes he had not seen them. He further stated that the story reference pieces of flesh and bullet holes in the walls was so fantastic to him that he wrote a humorous limerick about that subject and addressed the limerick to the Chief of the Prosecution Staff during the trial at Dachau. Junker volunteers the information that he held no malice towards any individual connected with the prosecution of his case, and that he particularly esteemed and respected the Chief of the Prosecution Staff, Lt. Col. Burton Ellis, JAGD. I asked whether he had heard stories of mistreatment of prisoners at Swabish Halle during the development of the Malmédy Case. Junker replied that he had heard such stories from many of the defendants in that case but that he believed none of them to be true. He further volunteered the statement that the origin of these stories was based on a desire to "wiggle out of" damaging testimony voluntarily given by some of the defendants; that when they realized that such testimony was to their disadvantage they attempted to negative such testimony with the false claim that it was beaten out of them. He regretted that such realization was too late to help them and was fully aware that the claims of mistreatment was a weak and futile defense. I asked whether this weak and futile defense was known to or fostered by the defense staff of these individuals. Junker was emphatic in his assertion that this attempt to discredit the prosecution was not only sponsored by the defense staff but was of the opinion that it originated with them. I asked whether the defense staff or any person on that staff had advised him not to answer questions for American interrogators after the trial. Junker stated that after trial and sentences and subsequent to his initial confinement in Landsberg he had been advised by Lt. Col. Sutton and by Col. Everett of the Defense Staff to answer no more questions for any Ameri-

can and to submit to no further interrogation by American investigators or interrogators. When asked by whether he desired me to convey any word from him to any member of the prosecution he stated that he particularly wanted his thanks conveyed to Col. Ellis and his kindly feelings conveyed to the other members of the investigation team who developed the Malmedy case. He particularly wanted all members of the prosecution to know that he held no malice or unkind feelings toward them, fully realizing that as members of an Armed Force they were performing an assigned mission to the best of their ability.

I then interviewed Joachin Peiper, who also spoke excellent English. Peiper was asked by me whether he was at any time struck or threatened with bodily harm during his confinement at Swabish Halle. He exhibited surprise at the question and was emphatic in expressing a negative answer. He was then asked whether he had heard of any case of beatings or physical force against the person of any defendant in the Malmedy Case. Peiper's answer was at first hesitant and then he stated clearly that he had heard of beatings and physical force from the majority of the defendants who were former members of his command. When asked where and at what time this information came to his attention he stated that it was given to him by the defendants concerned at Dachau just prior to and at the time of the trial. He was then asked whether he had personal knowledge of or had himself seen any such beatings or mistreatment. His answer was in the negative. I asked Peiper whether these reports of mistreatment came to him sporadically over a long period of time or were closely related in point of time. His answer was that the reports came to him closely in point of time; that during a conference with his Chief Defense Counsel, Col. Everett, he was told that as a regimental commander he must keep the best interests of his men ever present in his mind and should encourage his men to confide in that; that the defense staff had been informed of mistreatment of these men during their confinement at Swabish Halle and that he (Peiper) should encourage his men to talk to him and among themselves of such occurrences. I asked whether it was possible that this might be a plan of defense to which Peiper immediately retorted that such a suggestion was impossible and that no American officer would resort to such unsportsmanlike tactics even in the defense of individuals being charged with murder. He further stated that he had, at Swabish Halle and at Dachau, expressed his disgust toward his men for their lack of soldierly attributes in divulging vital information to American interrogators, and, that it was possible that the stories of beatings and mistreatments were an effort to regain his friendly feeling toward them. Peiper was then asked whether he had been advised by any member of the defense staff to refuse to answer questions for or submit to interrogations by Americans not connected with the defense of his case.

He stated that he had been advised by his Chief Defense Counsel (Col. Everett) to answer questions for no one who was not connected with the defense staff. He was then asked when he had been advised and answered that the advice had been given to him at Dachau before, during and after trial. I asked whether this advice had been repeated at any time subsequent to trial and announcement of sentence to which Peiper answered that Col. Everett had visited him at Landsberg Prison subsequent to his initial confinement there and had said that he (Everett) was dissatisfied with the outcome of the trial and that Peiper should refrain from discussing the trial, or the testimony brought out therein, with any person not actively connected with the defense and should refuse to submit to further interrogations by any American except in the presence of Everett. He volunteered that since that time he had opportunity to reflect on the matters upon which his trial was based, that Col. Everett had now returned to the United States and that Peiper saw no cogent reason for maintaining continued silence. I again asked Peiper whether he had personal knowledge of mistreatment at Swabish Halle and he again answered in the negative. I asked whether he had at any time in Swabish Halle been submitted to actions which might tend to humiliate him or degrade him in the opinion of his superiors or subordinates. He again answered in the negative. I asked for his opinion as to the nature of his treatment in Swabish Halle as compared to treatment received while at Dachau or at Landsberg Prison to which he replied that his treatment at Swabish Halle was far superior to that of either Dachau or Landsberg. When asked whether he had been mistreated, humiliated, or degraded at either Dachau or Landsberg he replied emphatically in the negative and amplified his immediately prior answer with the statement that his treatment at the hands of his American captors was not inconsistent with the treatment he would expect of soldiers and gentlemen toward a prisoner of war. I then asked whether he desired me to transmit

for him any remark or statement to any member of the prosecution staff which prosecuted the Malmedy Case. Peiper asked that I convey to Lt. Col. Ellis, Chief Prosecution Counsel his (Peiper's) best wishes and kindest regards, that he entertained neither resentment nor malice toward any member of the Prosecution staff and considered the trial of the Malmedy Case fair and considerate toward the defendants and to have been conducted by soldiers and gentlemen as a military mission and without personal animosity or prejudices.

(S) CHARLES J. PERRY, *Lt. Col., AGD.*

Sworn to and subscribed before me this 5th day of March 1947.

[SEAL]

(S) C. A. HILEMAN, *Lt. Col., AGD,*
Adjutant.

WRITTEN STATEMENT

Sir, do you know Schwabisch-Hall?
With bullet-holes in the wall
With pieces of flesh
The latter still fresh
O, yes; you were on the ball!

The author of this humbly begs not to introduce the Limerick in evidence.
Thank you.

JUNKER.

CARSTENS & PICKETT,
Beatrice, Nebr., May 24, 1949.

HON. RAYMOND C. BALDWIN,
United States Senate, Washington, D. C.

DEAR SENATOR BALDWIN: I was very much interested recently in an associated Press dispatch which I read in our local paper concerning the investigation which is being made of the members of the United States Army who conducted the investigation of the members of the Germany Army who are reported to have committed atrocities in the Malmedy massacre which occurred during the Battle of the Bulge.

The reason that I was particularly interested was because of the fact that one of the persons who conducted this investigation was William R. Perl who was at that time a lieutenant in the United States Army. In 1945, immediately after the war, I was assigned to the Investigation Section of the War Crimes Branch. In the course of my assignment, I became acquainted with Lieutenant Perl and subsequently he was on my investigation team in various parts of France and Germany and we in the course of our duties conducted a great many investigations and interrogations of persons who were charged with having committed atrocities against American Armed Force personnel. I had opportunity over the course of 4 months to observe Lieutenant Perl in action and I do not believe that he ever conducted any interrogation or investigation while a member of my team which was out of either my sight or hearing. We operated in villages and cities in Germany and in prisoner of war camps in France. In the course of our operation, we came in contact with the innocent and the guilty, with the mildest of criminals to the most depraved and degenerated specimens of humanity imaginable. We met those who were willing to confess and often times eager to do so and we came in contact with persons who had been heads of concentration camps and who had been responsible for committing great atrocities whose stories and denials could not be broken under days of interrogation. We discovered members of the German Army in these concentration camps who had been members of the units which operated in and around Malmedy at the time that these murders were committed.

I can say without any reservations or qualification that I never observed Lieutenant Perl ever committing any acts of violence to obtain confessions from any of the accused parties, nor did he ever attempt to gain any confessions by fraud, intimidation, brutality or violence or in any manner which was illegal. I consider Lieutenant Perl to be one of the finest interrogators or investigators that I have ever seen in action and he was extremely skillful in interrogating those accused parties. I do not say, nor do I wish to infer, that we treated these people like children—we conducted our investigations in a hard and businesslike manner because hardened criminals respond to no other treatment. To do any less would result only in gaining their contempt, but I wish to emphasize, however, that I never observed any tendency or inclination of brutality

or use of force on the part of Lieutenant Perl. I thoroughly believe that his character is far above such conduct.

Please let it be understood that I have not had any contact with Lieutenant Perl for around 2 years and this letter is written with the sole intention in doing whatever I can to help a man who I believe to be wrongly accused of a very serious offense. This letter is not solicited nor requested by Lieutenant Perl, but is absolutely voluntary on my part. Immediately upon reading this newspaper account, I sent a telegram to Lieutenant Perl offering my assistance such as it might be and he told me by a letter that if I wished to do anything for him, to write to the Senator.

In the event that anyone wishes to look at my record, they may do so by requesting it from the Adjutant General, United States Army.

Very truly yours,

F. W. CARSTENS,
Lieutenant Colonel FA Reserve, Serial No. O370381.

GENERAL AMERICAN OIL CO. OF TEXAS,
Dallas, Tex., March 29, 1949.

Lt. Col. BURTON F. ELLIS,
*Assistant Army Judge Advocate, Headquarters Sixth Army,
Presidio of San Francisco, Calif.*

DEAR COLONEL ELLIS: Yours of the 23d instant is acknowledged.

During the progress of this war crimes investigation it was not practicable for us to have the benefit of your views for which I was very sorry. However, we were able to get a right accurate picture of the situation.

I had a great deal of sympathy for Mr. Everett who appeared to me to be prompted only by a desire to represent his clients conscientiously and well. He may have been overzealous but I can forgive this in a lawyer when I think he is sincere. You might be interested to know I had information lately that Colonel Everett had a severe heart attack and is in a serious condition.

Judge van Roden and I got to be very good friends indeed and I felt greatly disappointed when I read in newspapers and periodicals the very extreme statements he had been making, statements which were based upon allegations rather than proof. He was certainly not being helpful nor constructive in any sense and I repeat that in my opinion he does us all a disservice.

Sincerely yours,

(S) GORDON SIMPSON.

Senator RAYMOND EARL BALDWIN,
*Armed Services Committee,
United States Senate, Washington, D. C.*

PARIS, 21 June 1949.

DEAR SIR: I wish to transmit to you herewith an affidavit signed by me concerning the matter of alleged mistreatments of German SS by members of the War Crimes Prosecution Staff in the Malmédy case, presently under investigation by the United States Senate Armed Services Committee.

I also wish to state that both as a lawyer and as a French national I would never have approved of physical mistreatment of prisoners—even though they were members of the SS—the more so, since any such brutalities would have reminded me of the horrors we witnessed during four years of German occupation.

Hoping my statement will prove of some use to you, I am, dear Sir

Sincerely yours,

LOUBA SCHIRMAN.

AFFIDAVIT OF LOUBA SCHIRMAN

To the Chairman of the United States Senate Armed Services Committee:

I, the undersigned, Louba Schirman of 7 Rond Point Mirabeau, Paris, France, a member of the Paris Bar, do hereby depose and state as follows:

I was assigned by the Legal Department of the French Military Government as executive officer of the French War Crimes Liaison Detachment to Headquarters USFET on duty with the Deputy Theater Judge Advocate for War Crimes from October 1945 to January 1947.

In the early spring 1946 I was ordered to proceed to Schwäbisch Hall and to report on the investigation carried out by the American War Crimes Prosecution Staff in view of the trial of members of the Leibstandarte Adolf Hitler charged with murdering of unarmed American Prisoners of War and of Belgium Civilians during the Battle of the Bulge. One of the suspects held in American custody was a French national of Alsatian origins, named Marcel Boltz, and my Headquarters wanted a full report on his case.

I went several times to Schwäbisch Hall and during my stays there I was allowed to enter the premises of the prison, to attend interrogations, to visit the cells and to see the meals served to the prisoners.

I attended the interrogation of Marcel Boltz by Army investigator Harry Thon. By reason of my knowledge of German language I interpreted once or twice during my presence on the premises for Lieutenant Colonel Burton F. Ellis and for Captain Ralph Shoemaker in order to help them in the course of their interrogations during the absence of one of the interpreters. I heard Marcel Boltz admit after a very short interrogation and after being confronted with Gustav Sprenger that he participated in the killing. I heard three or four of the men interrogated by Lieutenant Colonel Ellis and Captain Shoemaker admit that they had made their written confessions without duress and that these confessions were the expression of the truth. I was impressed by the polite and even friendly manner in which Lieutenant Colonel Ellis and Captain Shoemaker carried out their interrogations. I felt shocked by what appeared to a French national as an excessive friendliness towards an SS chief when I heard Lt. Col. Ellis order that one of his blankets be given to Colonel Peiper who complained he was not warm enough.

The prisoners looked healthy and well fed. I reported to my General that their food which I tasted myself was better than the food most French families could afford at that time. The cells were clean. The prison was heated. Many homes in France had no heat in the winter of 1945/1946.

I sincerely believe that I got a fairly complete picture of the treatment given to the German suspects and of the general attitude of the American Prosecution Staff. It is my opinion that they were treated far better than are usually treated ordinary prisoners. I wish to state furthermore that having had myself the experience of a German prison and of German interrogations, I can ascertain that it takes a lot more than being merely submitted to pressure to obtain from prisoners confessions of crimes they did not commit; however, I never witnessed any kind of mistreatment and I never noticed the slightest bruise or any other sign of beatings or physical mistreatments on the many suspects whom I saw during my visits to the prison. Their looks could by no means be compared with the looks of French prisoners of war returning from German PW camps.

It is my definite opinion, such as I reported it to my Headquarters, that after getting confused by numerous interrogations, breaking down and confessing the truth, the German suspects entered into a general conspiracy organized by their chiefs who were held in the same prison and unanimously claimed that their confessions had been obtained under duress. Such a claim was made by Marcel Boltz to the French investigating magistrate in spite of the fact that his confession had been made to the American Investigator in my own presence, without the slightest attempt to duress against which I would not have failed to protest immediately.

I was profoundly shocked and grieved when learning that American personnel on duty with the Judge Advocate General's Department were under public investigation on charges of mishandling SS suspects held in Schwäbisch Hall and my feelings are shared by my former chiefs and the former members of my mission. These charges appear to us as an outrageous and unjustified slander made for the benefit of German and international Nazi propoganda against the reputation of members of American Occupation Forces whose conscientious hard work, perfect dignity and moral standards fully deserved the high consideration paid to them by the French Government when awarding the Legion of Honor to all the leading members of the American War Crimes Group.

PARIS, 21 June 1949.

LOUBA SCHIRMAN.

Subscribed and sworn to before me this 21st day of June 1949 by Louba Schirman.

[SEAL]

JEAN V. SMITH,

Vice Consul of the United States of America.

PHILADELPHIA, Pa., August 1, 1949.

ARMED SERVICES COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: I read the press release dated July 29, 1949, concerning charges made by one Benjamin Reich, a Cleveland attorney, in connection with the conduct of the American military tribunal of the War Crimes Branch of the Army. I was a civilian lawyer connected with the same branch of the Army for a period of 6 months following the end of hostilities, and was actively engaged, as a civilian prosecutor, in the actual preparation and trial of cases in the same area as Mr. Reich and came in frequent contact with him.

Mr. Reich's charges are untrue, unwarranted, unjustified, and unfair. I knew Colonel Straight personally and other officers in charge of the American war crimes trials. Mr. Reich's participation and experiences in the trials were decidedly limited and of little consequence. There is not the slightest basis for the charges against Colonel Straight. The allegations and complaint of Mr. Reich, coming at this late date, are shocking and baseless.

I am prepared to furnish information of vital interest in the subject matter to your subcommittee and to the Army Inspector General. I am also prepared to appear before your committee to refute the charges in justice to the officers and men who served their country well and loyally as members of the War Crimes Branch of the Army.

Appreciating your immediate reply, I am,
Very respectfully yours,

MORRIS W. KOLANDER.

CITY OF SOUTH BEND,
DEPARTMENT OF LAW,
South Bend, Ind., August 3, 1949.

ARMED SERVICES COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: My attention has been called to a press release dated July 29, 1949, referring to charges made by Benjamin Reich concerning the conduct of the war crimes trials in Germany.

I was in Germany during the latter part of 1945 and 1946, and for a number of months participated as prosecutor in the trials to which Mr. Reich refers. I would like your committee to know that at no time did I receive instructions from Colonel Straight or any other member of the administrative branch of the War Crimes Division such as were reported in the press release. On the contrary, our instructions always were to give the defendants every opportunity to present their defense in an orderly manner.

In handling the trials which I conducted, I personally saw to it that every defendant was represented by American defense counsel and, in most cases, additional and capable German counsel was also employed. German defense counsel received their pay, transportation, housing, and food through United States sources and they did their best in interposing such defenses as were available to them on behalf of their clients. I wish to repeat that the German attorneys who participated in these trials were most competent.

In addition to the employment of counsel for the defendants, we also gave every defendant an opportunity to present witnesses on his own behalf. In most cases, weeks before the trial would commence, the defendant would let us know which witnesses he wished to appear on his behalf. Thereafter, we went to extremes in attempting to obtain these witnesses, furnishing transportation, housing, and food. I do not recall if these witnesses were paid for their time. Further, my recollection is that the members comprising the courts were very liberal in their interpretation of the rules of evidence and permitted the defendants every opportunity to express themselves fully.

It is my personal opinion that the defendants had greater leeway in presenting their evidence before the military courts than they would have had in courts in this country.

If you wish any further information on this subject, please advise me.

Very truly yours,

FREDERICK K. BAER, Corporation Counsel.

×