

*Descriptive Catalogue*  
**MALMEDY MASSACRE INVESTIGATION**

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**HEARINGS**

BEFORE A

*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

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**PART 2**

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(GERMANY)

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# MALMEDY MASSACRE INVESTIGATION

MONDAY, SEPTEMBER 5, 1949

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
*Munich, Germany.*

The subcommittee met, pursuant to notice, at 9:30 a. m., in the hearing room, Headquarters Building, Munich Military Post, Senator Raymond E. Baldwin (chairman) presiding.

Present: Senators Baldwin, Kefauver, and Hunt.

Also present: Mr. J. M. Chambers, on the staff of the committee.

Senator BALDWIN. The meeting will be in order.

For the record, I would like to make an opening statement:

Senators Hunt, Kefauver, and myself are members of a subcommittee of the Committee on Armed Services of the United States Senate. We have been directed to examine into the conduct of American military and civilian personnel who investigated and prosecuted, before an American military court, the German S. S. troops charged with violation of the rules of warfare at and about Malmedy during the Battle of the Bulge, when American soldiers who had surrendered, and civilians were shot down.

In a petition presented to the Supreme Court of the United States, Colonel Everett, chief defense counsel for these German S. S. troops alleged that American military and civilian personnel maltreated and abused these S. S. troops in order to secure statements and confessions from them. Our only duty here is to investigate those charges. We have already examined the petition of Colonel Everett and the affidavits of the German S. S. troops attached to the petition which alleged maltreatment and physical abuse. We have already questioned many witnesses now in the United States who took part in the investigation and prosecution, and the several reviews which the Army has already made. There are several witnesses whom we could not examine unless we came here. We intend to see the German counsel who represented these S. S. troops at the trial. We intend to question American personnel still in Europe who took part in the prosecution and the trial. We are having a medical examination made of the prisoners who were alleged permanent physical injuries which they claim were inflicted by American personnel during the time that their statements and confessions were being taken, to determine whether or not these charges are true. We expect also to go to Schwabisch Hall to see the prison where the S. S. troopers were confined during the time they were being questioned. We will make our report to the Armed Services Committee of the Senate when we return to the United States.

This committee is not a court of appeals. It has no authority to change the sentences imposed by the military court. The United

States Army and Secretary of the Army have sole jurisdiction over these sentences. This committee can, however, make recommendations for legislation concerning military courts. It can determine the facts concerning the charges of mistreatment made by the German S. S. troops but it will be entirely up to the Secretary of the Army to act upon them as they may affect the sentences or require disciplinary action. We hope to establish the truth concerning the charges and to determine whether there is need for legislation concerning military courts, their compositions and procedures.

We have no jurisdiction or authority concerning the war crimes trials held at Nuremberg or elsewhere by international courts. We have not come and we have no authority to retry any of these cases or any of the cases tried before American military courts.

Mr. Thon, will you stand up and hold up your right hand?

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, to the best of your knowledge, information and belief, so help you God?

Mr. THON. I do.

### TESTIMONY OF HARRY W. THON

Senator BALDWIN. What is your name?

Mr. THON. Harry W. Thon.

Senator BALDWIN. Where do you live, Mr. Thon?

Mr. THON. My present address is Frankfurt, Germany.

Senator BALDWIN. Colonel Chambers, will you examine the witness?

Mr. CHAMBERS. Mr. Thon, where were you born?

Mr. THON. I was born in Philadelphia, Pa.

Mr. CHAMBERS. Is your family still living there?

Mr. THON. No, sir. I have no more family there, except a mother who is living in Germany at present.

Mr. CHAMBERS. Was she a native-born German?

Mr. THON. My mother was; yes, sir.

Mr. CHAMBERS. Did you serve in the armed forces during the war?

Mr. THON. I did, sir.

Mr. CHAMBERS. What organization were you with?

Mr. THON. I was with the One Hundred and Fourth Infantry Division.

Mr. CHAMBERS. Did you participate in intelligence work generally, in particular in the interrogation of war prisoners?

Mr. THON. I did, sir.

Mr. CHAMBERS. Were you assigned to the interrogation of prisoners in the so-called Malmedy atrocity cases?

Mr. THON. I was, sir.

Mr. CHAMBERS. Well, now, Mr. Thon, would you care to make a general statement about the way that case was developed, and then we can go at particular questions?

Mr. THON. I joined the War Crimes, to the best of my knowledge, on November 17, 1945, when I was discharged from the Army. I was approximately 8 days at headquarters in Wiesbaden, and was then sent on an assignment down to Korn-Westheim, where the preliminary interrogations and weeding out of persons not connected with the Malmedy case took place.

I stayed there until about December 10, when the whole bulk of the division of people implicated in this matter was transferred to Schwabisch Hall. I also went to Schwabisch Hall and remained there for the entire investigation.

Mr. CHAMBERS. May I interrupt, Mr. Thon?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Originally, approximately how many accused did you bring in to Schwabisch Hall?

Mr. THON. Approximately 600, sir.

Mr. CHAMBERS. And then, were there others added to that number, from time to time?

Mr. THON. Very few, I would say. The only persons were those who were in confinement back in the United States, or elsewhere, such as Longwasser, or Nuremberg. I remember one case, and only very few—

Mr. CHAMBERS. Do you know why Schwabisch Hall was selected for this concentration of the accused?

Mr. THON. To the best of my knowledge, it was selected because it had the best facilities for this purpose.

Mr. CHAMBERS. Why did you feel it was necessary, or why was it felt that it was necessary to concentrate the prisoners at Schwabisch Hall?

Mr. THON. This was a matter where the crime was known, the persons were unknown. The bulk of the division was first at Korn-Westheim, where they had free access to each other, and as we then later found out, they conspired and had made up stories which had helped them, in order to conceal the crimes from us.

Mr. CHAMBERS. Did you bring them to Schwabisch Hall so that you could keep them separated from each other?

Mr. THON. That is right, in order to keep—for instance, persons from the First Company away from other persons of the First Company, in order to mix them up, as I explained to you once before, where we put in a cell three or four people, one from the First Company, one from the Second, one from the Third and the Fourth, and so on and they wouldn't be together and couldn't cook up anything among themselves.

Mr. CHAMBERS. Did you keep some of the prisoners in cells by themselves?

Mr. THON. At first, when we got to Schwabisch Hall, to the best of my knowledge I think, and I am not 100 percent positive, but I believe all officers were kept in solitary.

Mr. CHAMBERS. How about the enlisted personnel?

Mr. THON. Enlisted personnel—they were all in at least three or four in a cell.

Mr. CHAMBERS. Was this true while they were being interrogated?

Mr. THON. When they were interrogated, it was like this: A man was taken from the cell, brought over for interrogation and he never went back to the same cell, so he couldn't tell those people what was going on. He was brought into an entirely different cell and he was kept by himself until the interrogation was over.

Mr. CHAMBERS. And that might last for how long?

Mr. THON. Two or three days, maybe four days.

Mr. CHAMBERS. And it was during that time that the men were kept in so-called dark cells?

Mr. THON. I am sure there were no dark cells.

Mr. CHAMBERS. Well, I am referring to what they were called, and not to what they actually were. From time to time the record shows—

Mr. THON. Excuse me.

Mr. CHAMBERS. May I finish the question?

From time to time the record shows the reference to death cells, dark cells, and things of that type.

Now, as I understood the explanation that was given to me at the prison only the other day, the so-called death cells were 5 cells located on the second deck in the vicinity of the interrogation chambers.

Mr. THON. That is right, right across the hall, sir.

Mr. CHAMBERS. For a period of 2 or 3 days they were kept in those cells; is that correct?

Mr. THON. That happened, if there was no other cell vacant. Yes; those cells were mainly used on prisoners when they came in, in isolated cases and as I stated before that if nobody was around to take care of them, then the prison guards had instructions to use these cells in order to not make a mistake and bring them in with someone and find out what somebody said, ahead of time.

Mr. CHAMBERS. Mr. Thon, do you have any knowledge of anybody who might have been in a cell say for a week or something like that, by himself?

Mr. THON. No, sir, I don't, with the exception of the officers as I mentioned before.

Mr. CHAMBERS. Well, the officers were in the normal prison cells, but merely one to a cell; is that correct?

Mr. THON. That is right.

Mr. CHAMBERS. Well, now, coming back to these five cells that we were talking about, during the time that they were there, is it not correct that they were given different food and treated differently from the standpoint of rations?

Mr. THON. No, sir. All the food was alike for each and every person.

Mr. CHAMBERS. Did those people get a cigarette ration?

Mr. THON. I know they got a cigarette ration, they got Bull Durham tobacco, I know that.

Mr. CHAMBERS. That was true also of the people in the so-called dark cells?

Mr. THON. Yes, sir.

Mr. CHAMBERS. And they got the same amount of food and water?

Mr. THON. Yes, sir.

Mr. CHAMBERS. What arrangements did you all have for seeing that a man was given drinking water?

Mr. THON. Sir, that wasn't up to us. I only noticed what I saw from my own observation, what I stated on the food. However, the administrative forces who guarded the prison, they took care of the feeding matters.

Mr. CHAMBERS. Perhaps at this point I should ask you a question on that.

Actually then, there were two groups of American people at Schwabisch Hall?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. One was the administrative staff?

Mr. THON. That is right, sir.

Mr. CHAMBERS. That was responsible for the care and upkeep of the prison, and the prisoners; is that correct?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. To whom did they report, do you know?

Mr. THON. They reported to First Lieutenant Johnson for a time, until he was transferred to America, and then to Captain Evans.

Mr. CHAMBERS. Then, in addition to the staff set-up, there was a small group of people that belonged to the war crimes group?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. Is that the group of which you were a part?

Mr. THON. That is the group I belonged to.

Mr. CHAMBERS. How many were in that group?

Mr. THON. It varied, sir. I would say it varied from approximately seven or eight, as we started out, and it grew and grew and toward the end, I honestly don't remember how many there were.

Mr. CHAMBERS. Were there as many as 20?

Mr. THON. I don't believe it went that high; no, sir.

Mr. CHAMBERS. Well, did you ever hear any complaint from anybody, or did any of the prisoners ever tell you they were not getting enough to eat?

Mr. THON. No, sir. There was one man, I remember distinctly he came from France, I will tell you his name in a minute——

Mr. CHAMBERS. Was it Marcel Boltz?

Mr. THON. No, sir; it was the man who shot a prisoner of war on orders of Peiper. He is, I believe, now employed in a bakery in Landsberg, comes from Munich, if I'm not mistaken. He came in and was near starved when he came, from a prisoner-of-war camp in France, and asked me if he could get double rations, and I did so.

Mr. CHAMBERS. I interrupted your general statement considerably, but you had reached a point where you had brought the prisoners into Schwabisch Hall.

Will you go on from there?

Mr. THON. That is right.

In Schwabisch Hall, as I said, the prisoners were divided up and mixed up so they wouldn't know, and the interrogation proceeded then for about 4 weeks until we finally found someone who told us, and that boy was Werner Reicke.

Mr. CHAMBERS. Pardon?

Mr. THON. Werner Reicke.

Mr. CHAMBERS. Will you spell that?

Mr. THON. R-e-i-c-k-e. His first name is Werner, W-e-r-n-e-r. He belonged to the Seventh Company which was commanded by Klingelhoef. He was the first one to tell us where the shooting actually took place. He told us who was implicated in the shooting, and from there on naturally we had a little easier sailing and we then finally cracked the case open.

Mr. CHAMBERS. Would you care to go on from there?

Mr. THON. We stayed then in Schwabisch Hall until the 17th of April. I personally went, on the 17th of April, to Wiesbaden. There was one man there by the name of Stickel whom I interrogated in the presence of and at that time Captain Sloan. I can prove this because I still have my AGO card, which I didn't have all during the



time when I was in Schwabisch Hall. I didn't have time in Wiesbaden to secure one, so I had to go and get one.

He was actually the last prisoner to be interrogated, although when I got back to Schwabisch Hall the following day I found three more who had come in from the United States. With these four prisoners we proceeded to Dachau, and the trial commenced.

During the trial, I was there sitting at the table of the prosecution. Me not being a lawyer or knowing anything about law, I sat there as a witness to be called to identify statements to show the court how the confessions were obtained, and that was my participation in the trial.

Mr. CHAMBERS. Then how were the confessions obtained? I know that there has been much discussion of tricks and stratagems and psychological methods of getting confessions. Would you care now to take this man, what was it, Stickel?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Could you tell us for instance how you managed to get a confession from him?

Mr. THON. Well, you probably realize that by that time we knew each and every one of the persons. We also knew all of the persons who were riding with them in the armored cars. Therefore, when I walked into the cell, I asked Stickel to lift up his arm and pull back his shirt sleeve. Every S. S. man is tattooed underneath the arm, so I says, "You are the boy, Stickel, we are looking for." And I cited all of the names of his comrades in his armored car, and I said, "Now, these boys have told me all about you. We know all about it. You might as well tell us the truth."

Stickel said, "Yes, I shot one." That was from the time I entered, 2½ minutes. I remember Captain Sloan hardly had removed his raincoat, and I said, "Come on, let's go. He told me."

We returned to War Crimes and Captain Sloan told them at that time Lieutenant Colonel Crawford about this.

Mr. CHAMBERS. Mr. Thon, have you been following the record and the work of this committee through the newspapers?

Mr. THON. No, sir, I followed it; yes, I have seen for instance several clippings. In fact many clippings were sent from my family back home.

Mr. CHAMBERS. Have you been in touch, or have other members of the interrogation team, such as Major Fanton or Perl or Shumacker or any of these, have they written you?

Mr. THON. I never heard from Major Fanton. The only two I heard from were Colonel Ellis, who sent me some letters I could make available to the committee at any time, I have them, and one letter from Lieutenant Perl.

Mr. CHAMBERS. In those letters did they discuss some of the testimony that had been given before us?

Mr. THON. I was sent just one small part of the testimony and that was the testimony of Dr. Karan.

Mr. CHAMBERS. Did you have any knowledge of the fact that Captain Sloan, who you just mentioned, testified before our committee?

Mr. THON. I read it in the papers.

Mr. CHAMBERS. You read it in the paper?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Is that where you brought this particular case up?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Are you aware of the fact that Captain Sloan stated that he observed you, when you went through this procedure, I think in general substance what you said agrees with what Sloan says, but in detail, it varies considerably.

Mr. THON. And varies also in the place where it took place, sir.

Mr. CHAMBERS. I believe you said that he was—this man was interrogated up at Dachau.

Mr. THON. No, sir; it was in Wiesbaden.

Mr. CHAMBERS. Wiesbaden?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Where had this prisoner come from?

Mr. THON. According to this, the prisoner had come from the United States, sir.

Mr. CHAMBERS. And Sloan did, however, deliver him to you; is that correct?

Mr. THON. No, sir; he did not, sir. It happened like this:

When I was in Schwabisch Hall at this time, I found out in the morning of the 18th that a prisoner was there. Colonel Crawford at that time asked me to take Lieutenant Sloan along since he was a newcomer in War Crimes, he had only been around a few days and he had no experience in this line, to please take him along, which I did.

I am safe in saying that Captain Sloan during the investigation never was in Schwabisch Hall.

Mr. CHAMBERS. Well, now, Mr. Thon, I would like to refer to the official record of the committee, and to Sloan's testimony. It appears on page 897 of the printed record.

In his testimony—we won't go through it in complete detail.

Mr. THON. Very well, sir.

Mr. CHAMBERS. On page 897 Captain Sloan testified that they picked up some prisoners with instructions to take them to Wiesbaden. [Reading:]

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.

Mr. THON. That is not correct, sir.

Mr. CHAMBERS (continuing) :.

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.

Assuming that he had been to Schwabisch Hall, that would probably have been the five cells that we saw?

Mr. THON. That would be the ones, the so-called dark cells.

Mr. CHAMBERS. The so-called dark cells?

Mr. THON. Yes, sir. I remember distinctly, and you will probably see it from the original statement taken by Stickel, that his confession was signed on the 18th, at the latest on the 19th, sir; and I can prove—there is an AGO card—that I was in Wiesbaden on the 18th.

Mr. CHAMBERS. You can prove there were——

Mr. THON. Through my AGO card, that I was in Wiesbaden on the 18th.

Mr. CHAMBERS. Was it issued on that date?

Mr. THON. Right, sir [passing document to Mr. Chambers].

Mr. CHAMBERS. Mr. Thon has given us an AGO card which was marked as issued on April 18, 1946.

Senator KEFAUVER. At Wiesbaden?

Mr. THON. At Wiesbaden.

Mr. CHAMBERS. Now, insofar as Sloan's description of the way this interrogation took place, and if I recall his testimony completely, he said it was the only time he had been to Schwabisch Hall and that this was the only interrogation he saw in connection with the Malmedy matters. He said as follows:

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. SLOAN. He got hit.

Senator BALDWIN. In what way?

Mr. SLOAN. With his fist [demonstrating].

Senator BALDWIN. He was punched?

Mr. SLOAN. Yes, sir; he was punched.

Senator BALDWIN. In the face or body?

Mr. SLOAN. Right about here, I would say [indicating].

Senator BALDWIN. Did he have a blindfold on at the time?

Mr. SLOAN. 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.

And then he goes on elaborating on it just a little bit, and it would be rather hard to describe just exactly what he said, but the substance is, he was punched and his arm was knocked up and he said he helped take his shirt off by ripping it and pointed to the S.S. mark and said, "You are the man we are looking for," and "Did you shoot?" And he said, "Ja wohl," and that is about the end, and as far as your remark that the investigation took 2½ minutes, Captain Sloan said, and here's where your name comes into it:

\* \* \* 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 was all.

Then I asked:

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 just asking the question, "Did you shoot?"

Mr. SLOAN. He was just asked the question; that was all.

Mr. THON. Well, I can only point out one more thing, that as well as he is incorrect with his place where it is supposed to have taken place, he is incorrect with the method that was used. I might point out one more thing: In Wiesbaden they hold pretty good police records. Please check there and see whether you won't find the name of Stickel at that time in Wiesbaden.

Mr. CHAMBERS. I might say, Mr. Thon, that I have been handed the affidavit filed by Stickel, the statement signed by Stickel, and it shows that it was "Subscribed and sworn to before me this 18th day of April 1946, by Robert E. Byrne."

Mr. THON. That is correct, sir.

Mr. CHAMBERS. But, it does not show where it was executed. However, it was on the same day at which your AGO card was issued at Wiesbaden.

Mr. THON. Yes.

Mr. CHAMBERS. Mr. Thon, were you actually at Wiesbaden and had that card there, or was it one of those things where they were issued in Wiesbaden and the card sent to you?

Mr. THON. It was issued to me in Wiesbaden in the presence of now Major Byrne, and we traveled that same day back to Schwabisch Hall, and this affidavit itself was written in Schwabisch Hall by Stickel. The confession was obtained in Wiesbaden jail, and after that we traveled down to Schwabisch Hall by motor.

Mr. CHAMBERS. And you took Stickel with you?

Mr. THON. We took him with us. Colonel Ellis can prove that also.

Mr. CHAMBERS. Did Captain Sloane go with you?

Mr. THON. No, sir; he didn't.

Mr. CHAMBERS. As far as you know, was Captain Sloane ever at Schwabisch Hall?

Mr. THON. I have never seen Captain Sloane at Schwabisch Hall.

Mr. CHAMBERS. Did you ever see Captain Sloane again?

Mr. THON. I saw Captain Sloane over here while he was on duty on the—

Mr. CHAMBERS. You say that the prison records at Wiesbaden are complete and should show whether or not Stickel was actually present there?

Mr. THON. That is right.

Mr. CHAMBERS. At the time the confession was made?

Mr. THON. Yes.

Senator BALDWIN. Let me ask you, right there—

Mr. THON. Yes, sir.

Senator BALDWIN. Why did you take the confession at Wiesbaden?

Mr. THON. Why? We were pressed for time, sir, and we were to move to Dachau the following day, or the day after, and as I said, there were three more prisoners that came in, and there was nobody there any more. Mr. Perl had already gone on leave, and all the rest had already gone up to Dachau, so there was only myself and to handle three prisoners in 1 day was quite a big task and that is the reason we did it in Wiesbaden.

Senator BALDWIN. Did you have any directions to do it there?

Mr. THON. I couldn't say for sure any more how the wording was, but I am sure I had some sort of direction to do it.

Senator BALDWIN. I may be wrong in my understanding, but my recollection is that most all of the statements and confessions were

taken at Schwabisch Hall. I wondered why you took this one at Wiesbaden.

Mr. THON. As I said before, this confession was obtained in Wiesbaden. However, the statement was written in Schwabisch Hall.

Senator BALDWIN. In other words, what you are telling us now is that when the man first said that he did the shooting, he told you that at Wiesbaden?

Mr. THON. That is correct, sir.

Senator BALDWIN. When did you actually get a signed statement from him?

Mr. THON. On the 19th.

Senator BALDWIN. 19th of April?

Mr. THON. 19th of April 1946.

Senator BALDWIN. 1946?

Mr. THON. 1946; that is right.

Mr. CHAMBERS. Mr. Thon, I think possibly I see where Sloane could have been confused. Was Sloane present when you interviewed—

Mr. THON. Stickel?

Mr. CHAMBERS. Stickel.

Mr. THON. Yes, sir; he was—in Wiesbaden.

Mr. CHAMBERS. In Wiesbaden?

Mr. THON. Yes.

Mr. CHAMBERS. So that he is confused as to the location?

Mr. THON. Absolutely, sir.

Mr. CHAMBERS. Well, now, let's read it again, here.

Mr. Sloane said he was punched like that [gesturing], and he threw his right fist—here it is:

He was punched like that [throwing right fist] and words then something to the effect, "Bursche gehorsa hmkeet." Bursche is, in rough translation, "tough guy." It means "obedience" or "obedience is meant 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.

So, he knocked it up like this [gesturing] and he helped jerk his shirt off and pointed to the SS mark and said, "You are the man we are looking for."

Mr. THON. No, sir.

Mr. CHAMBERS. How does that approach vary from what you told us?

Mr. THON. I asked the prisoner to raise his arm and push up his sleeve so I could see the mark, which is right here, usually [indicating].

Mr. CHAMBERS. You wouldn't be adverse to helping him, if he were slow?

Mr. THON. It was not necessary.

Mr. CHAMBERS. Did he promptly raise the arm?

Mr. THON. Absolutely, sir; and then I explained to him that all his comrades in the armored vehicle in which he was riding had given us confessions, and so on, and that is how I got it.

Mr. CHAMBERS. Did you have to help him off with his shirt?

Mr. THON. No, sir; I did not. He never took the shirt off.

Mr. CHAMBERS. How can you see the SS mark, or how could you?

Mr. THON. All you had to do was roll up the sleeve; he was standing.

Mr. CHAMBERS. In his trousers and shirt, and in his stocking feet?

Mr. THON. That is right.

Mr. CHAMBERS. He had just been brought in?

Mr. THON. No, sir; he was in the cell already for 1 day, I believe.

Mr. CHAMBERS. Sloane testified that you brought these prisoners down.

Mr. THON. Sir, Mr. Sloane is wrong. The prisoner was in Wiesbaden for the length of time—I don't know, but I believe it was 1 day, and he was there quartered and was waiting to be shipped down to Schwabisch Hall.

Mr. CHAMBERS. When did you and Byrne go up to Wiesbaden?

Mr. THON. The 17th.

Mr. CHAMBERS. And the prisoner was there then?

Mr. THON. Yes, sir.

Mr. CHAMBERS. If you were in such a hurry with your work, why did you wait until the next day to get the confession?

Mr. THON. I got there and had to make arrangements to get my AGO card, and several other things to take care of, and went there in the morning.

Mr. CHAMBERS. Did Sloane deliver Stickel to the prison?

Mr. THON. That I couldn't tell you who delivered him to the prison.

Mr. CHAMBERS. Do you know what Sloane was doing there at the time?

Mr. THON. Sloane had just gotten to War Crimes. I believe he was hired as an investigator or interrogator. I couldn't tell you.

Mr. CHAMBERS. Sloane testified before us that he received this order to proceed from Frankfurt to Wiesbaden and pick up four or five prisoners who had been in American prisoner-of-war camps and that this prisoner, Stickel, was one of them. That is not your memory of this thing?

Mr. THON. I am sure my memory is correct when I say that Stickel was in Wiesbaden when we got there. He was interrogated there by me. He confessed there and wrote and signed his affidavit in Schwabisch Hall.

Mr. CHAMBERS. Now, Mr. Thon, do you recall a lad by the name of Kurt Tiel?

Mr. THON. I do recall him.

Mr. CHAMBERS. Have you received any information as to his testimony before our committee?

Mr. THON. Yes, I have.

Mr. CHAMBERS. For the record, let me state that this Tiel got in touch with Senator McCarthy and stated that he had certain information on this matter and we promptly asked him to appear before our committee, and he stated that he had, on occasion, delivered prisoners to Schwabisch Hall. Is that correct?

Mr. THON. I do not recall ever seeing Tiel either in Schwabisch Hall.

Senator BALDWIN. Do you know Tiel personally?

Mr. THON. I know him from seeing him, and possibly saying a word or two to him. I never was on a friendly basis with him, nor did I have any connection in War Crimes with him.

Senator BALDWIN. Go ahead.

Mr. CHAMBERS. Well, now, Tiel testified before us that he brought some prisoners down to Schwabisch Hall and he stated that you asked him if he would like to take a look around, and he said "yes," that he would, and that they went down—I'm looking for the specific place in the record, where it appears in the printed report of our committee. Here it is on page 546.

Mr. Tiel said that he brought some prisoners down to Schwabisch Hall and was taken on a tour of the hall by Mr. Thon, and he said it was in January or February 1946, and this is the question and answer proposition. It don't want to read it all into the record, but he said you all went into the jail and Mr. Thon said that these are what we call the death cells.

Mr. THON. I honestly only can say that he—I do not remember, cannot remember, seeing Tiel ever in Schwabisch Hall.

Mr. CHAMBERS. Do you remember calling these the death cells?

Mr. THON. Death cells they were never really called.

Mr. CHAMBERS. In your group, whether it be facetiously or just passing the time of day, did you all call those particular cells the death cells?

Mr. THON. They were never in general called death cells.

Mr. CHAMBERS. In general; but did you ever hear them referred to as death cells?

Mr. THON. It could be, Mr. Chambers.

Mr. CHAMBERS. Did you in your own mind?

Mr. THON. I personally never did, I am sure.

Mr. CHAMBERS. You are testifying you didn't call them dark cells?

Mr. THON. No; they were not.

Mr. CHAMBERS. What did you call them?

Mr. THON. Just regular cells.

Mr. CHAMBERS. They were special cells of a different type. What did you call them? Were they numbered or did you say, "Take this man down to —"?

Mr. THON. We called the number of the cell, because they were marked down on numbers and—death cells, no.

Mr. CHAMBERS. Well, he went further and said that you then said that "these are the people that will probably hang." And that you did look into some of the cells, and that he looked into a number, three or four as I recall, and there are—there are five of the cells?

Mr. THON. That is right.

Mr. CHAMBERS. And he didn't notice anything unusual, and he just—here it is, the exact words:

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."

Did you know him well enough to call him by his first name?

Mr. THON. I never called that man by his first name.

Mr. CHAMBERS. Did you know what his first name was?

Mr. THON. I knew what his first name was.

Mr. CHAMBERS. The way the picture was painted to us, Tiel was looking into one cell, and you went down several cells away, which took

you out of the so-called death cell section, which took you into the general interrogation area.

Mr. THON. Five cells would bring you to the second last cell which was an interrogation cell.

Mr. CHAMBERS. So probably the cell that Mr. Tiel was referring to, if these facts are as stated, was not one of the death cells but one of the interrogation cells?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Now, he said at that time that he looked in through a peep-hole and he stated that as far as he knows there was no window in the cell.

Now, do you know of any cells in this prison in which there was not a window?

Mr. THON. No, sir; there is no such cell there.

Mr. CHAMBERS. You have recently, in conjunction with the prison authorities, taken me through the entire prison, from the standpoint of pointing out all physical locations; is that correct?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. Did we see all the cells?

Mr. THON. You saw all the cells, sir, with the exception of the large group of cells which we omitted when I told you I would show you all.

Mr. CHAMBERS. There were windows in all those cells?

Mr. THON. All; yes, sir.

Mr. CHAMBERS. He said there was no window in the cell, but he looked in through a peep-hole and there was a prisoner lying on the floor on his side, with a hood on his head and sort of crumpled up, and he observed him for approximately 30 seconds, and during that time the man didn't move, and he turned around and said, "Harry, what is the matter with this man?" And you said that "he just got out of interrogation and probably got roughed up a bit."

Now, at this point I would like to say that Tiel in his testimony has made a very positive statement on these points. He gave the appearance of great sincerity and was trying apparently to tell us the truth.

Now, he may be mistaken. His memory may be faulty, but the general lay-out of the cells coincides with my knowledge of the prison lay-out, but it does not—there not being a window in the cell does not agree, but on the other hand, you did take Tiel down there; didn't you?

Mr. THON. No, sir; I did not.

Mr. CHAMBERS. You didn't take him through on a tour?

Mr. THON. No, sir.

Mr. CHAMBERS. You never called him over and talked to him there?

Mr. THON. No, sir; I never did.

Another thing, sir, if you look through a peephole into a dark cell, where there is no window, I doubt very much whether you can see anything.

Mr. CHAMBERS. But are there any such cells at Schwabisch Hall?

Mr. THON. There are no such cells.

Mr. CHAMBERS. So, possibly, there was enough light, which meant there was a window, and he could have seen the figure? I am sure you could look through a peephole in any cell and see a man.

Mr. THON. That is right.

Mr. CHAMBERS. Why would a man be lying on the floor with a hood on his head?



Mr. THON. I am certain, if a man was lying in there, he had no hood on his head, and I also can tell you——

Mr. CHAMBERS. How can you be certain of that?

Mr. THON. Because, when a man was put into a cell, the hood was taken off.

Mr. CHAMBERS. Did they occasionally miss up on that or——

Mr. THON. I have never seen it, sir, because, when they were in the cell, there was no need for their having a hood on. Another thing is, that cell at that time, to the best of my recollection, was occupied by a staff sergeant who was living in there.

Mr. CHAMBERS. Well, now, you said, "that cell," you have got it pinned down to a single cell.

Mr. THON. That would be that second last cell I mentioned before.

Mr. CHAMBERS. There is some possibility of a discrepancy there. Tiel, in his testimony, said two or three cells, so it is impossible to tell just exactly the cell he was talking about.

Well, now, to come back to this thing again, you say then that you never took Tiel through that prison on a tour?

Mr. THON. I never did; I am sure I did not.

Mr. CHAMBERS. Well, Tiel says he knows you, and that you did. You say you know Tiel and that you didn't.

Mr. THON. That is right. I am certain; that is all I can say. I mean, I saw Tiel when he first was hired by War Crimes, the first time he was assistant to a Lieutenant Hatcher, and I did not see Tiel again until when I was in Dachau, I am quite certain, or possibly later than that. I'm sure I didn't.

Mr. CHAMBERS. Well, now, I guess the time has about come to ask you some direct questions, Mr. Thon, of a general nature.

We have before us many affidavits alleging many types of physical jurists, as well as many other types of jurists, if you separate them out. There are a great many people in here who have charged physical brutality; that they were beaten for the purpose of getting confessions; that in some cases they were punched in the face, punched in the abdomen, beaten in the genitals, they were kept in solitary confinement, and things of that kind.

Now, you people screened out some six or seven hundred accused——

Mr. THON. That is right.

Mr. CHAMBERS. From which you ultimately charged 74.

Mr. THON. That is correct, sir.

Mr. CHAMBERS. Have you ever seen anyone struck or kicked or shoved by either the guard or any of the interrogation staff?

Mr. THON. No, sir; I have not.

Mr. CHAMBERS. Never anybody laid a hand on anybody?

Mr. THON. Never laid a hand on anybody, I am certain.

Mr. CHAMBERS. Did you personally ever lay a hand on a man?

Mr. THON. I did not, sir.

Mr. CHAMBERS. You mean that you have not taken a prisoner, maybe, and pushed him back up against a wall? I don't mean slapped or slugged him; I mean that you haven't shoved him around to get him to go along with you?

Mr. THON. That could have been possible; but, as a general habit, never; and I am sure I have never beaten, kicked, or hurt anybody—I am certain of that.

Mr. CHAMBERS. Did any of the prisoners ever say, or did you ever hear any rumors of the fact that the prisoners were saying that they had been beaten?

Mr. THON. No, sir. I know of one case where a prisoner was going to beat up somebody.

Mr. CHAMBERS. What is that?

Mr. THON. I know of one case where a prisoner said he was going to beat up somebody.

Mr. CHAMBERS. The prisoner said he was going to beat up somebody?

Mr. THON. Yes.

Mr. CHAMBERS. Why is that; who?

Mr. THON. That was Sprenger.

Mr. CHAMBERS. Why?

Mr. THON. His company commander, for giving him orders to shoot somebody.

Mr. CHAMBERS. Who was his company commander?

Mr. THON. Sievers.

Mr. CHAMBERS. Now, Thon, are you aware of the fact that since the trials—and it appears in our record in several places—that there was a general reputation that the boys down at Schwabisch Hall were pretty rough in their interrogation methods?

Mr. THON. No, sir. They were not rough. I was there, sir.

Mr. CHAMBERS. I understand that when the Polish guards came in, after the American guards were relieved—were you still there at that time?

Mr. THON. I was still there; yes, sir.

Mr. CHAMBERS. I understand they handled the prisoners a little rougher than the American guards; is that correct?

Mr. THON. I have never seen them handled rough. The only time I saw them was when they took them away from the interrogation cells and took them downstairs, the way I showed you; and that was the final thing I saw. I have never seen them handled rough, not during that short time that I saw them.

Mr. CHAMBERS. Now, have you threatened prisoners, told them that "If you don't confess, you are going to be hanged?"

Mr. THON. No, sir; that was not done.

Mr. CHAMBERS. You never said to a man who, when he came in, you took his personal belongings away, and one thing was a picture of a mother and you said, "I might just as well take this; you are not going to see her again anyway."

Mr. THON. No, sir; we didn't take the personal belongings away. That was the job of the administration section downstairs. Belongings were kept in a room which I pointed out to you.

Mr. CHAMBERS. Well, let's see if we can find a couple of direct charges where you are concerned.

Can you give me the names of two or three people that you interrogated?

Mr. THON. Rehagel.

Mr. CHAMBERS. Rehagel?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Heinz Rehagel?

Mr. THON. That's right, sir.

Mr. CHAMBERS. Well, now, do you recall the circumstances of Rehagel?

Mr. THON. I confronted him with one of his machine gunners, I believe he was, I'm not certain, a fellow by the name of Paeper; and, by confronting him, Rehagel broke down and confessed.

Mr. CHAMBERS. Did you handle the entire interrogation of Rehagel? Did anybody else there do any of it at all?

Mr. THON. Could be; I couldn't say.

Mr. CHAMBERS. At Schwabisch Hall?

Mr. THON. It could be; I'm not certain of that.

Mr. CHAMBERS. Now, he said that when he came to Schwabisch Hall he was driven into a cell by being beaten and kicked, and he asked for a doctor because of pain in his kidneys and a high temperature, and a doctor came and he said he couldn't help him, and then Rehagel further says, and he mentions you by name here:

On my first interrogation, I came to know Mr. Perl as well as Harry Thon—who he describes, incidentally, as a German emigrant.

Thon called himself a major and chief prosecutor, and Thon said, "Are you Rehagel?" And I said, "Yes." And then Thon slapped me in the face and swore at me.

And so on down. There are other charges that Rehagel made, and he said that he heard other people crying out with pain.

Now, did you, after working—did you have to work on Rehagel very long in order to get his confession?

Mr. THON. No, sir; we didn't.

Mr. CHAMBERS. How long was he in the prison; do you recall?

Mr. THON. I don't remember. I wasn't there and wasn't present when he got there, because we had nothing to do with the transportation or assigning of them to cells. That was all administrative work that was done, and they all were in there; got into the right cells.

Mr. CHAMBERS. Was that man you confronted him with named Burk, B-u-r-k?

Mr. THON. No, sir; it was Paeper.

Mr. CHAMBERS. He says here a man by the name of Burk was brought in and that you asked him whether he had given the order, and he said, "And I collapsed in an unconscious condition." When he came to, you held him in your arms and stuck a cigarette in his mouth, after which he broke down and started crying, and that he then asked for a priest and you denied it.

Mr. THON. Sir, I have never seen Rehagel faint. I never held him in my arms, I am sure, and I have never known a person by the name of Burk to be confronted—

Senator BALDWIN. Spell that.

Mr. CHAMBERS. B-u-r-k.

Mr. THON. No, sir; it was Paeper, I am sure. He appears also as a witness against him in the trial.

Mr. CHAMBERS. How about another name?

Mr. THON. Schaefer?

Mr. CHAMBERS. How about Rolf Reiser? Did you interview him?

Mr. THON. I believe I took part in his interrogation.

Mr. CHAMBERS. Did Perl work with you on him?

Mr. THON. I am quite sure he did.

Mr. CHAMBERS. Right here it says, "Lieutenant Perl and Harry Thon were the heaviest beaters," and that "Strong men were beaten so strongly that they bellowed with pain."

Mr. THON. I am quite sure that that did not take place, certain of it.

Mr. CHAMBERS. Well, now, we have an affidavit here, Thon, from the German dentist by the name of Dr. Knorr.

Mr. THON. Yes, sir.

Mr. CHAMBERS. And, in that, Dr. Knorr makes reference to the fact that there were several of the Malmedy prisoners—now, he treated both the internees and the Malmedy prisoners; didn't he?

Mr. THON. No, sir; he did not.

Mr. CHAMBERS. Didn't he treat the Malmedy prisoners?

Mr. THON. No, sir.

Mr. CHAMBERS. Now, Thon, literally everybody we have talked to down there, and I might say that our medical personnel testified that he treated Malmedy prisoners on occasion for dental services, and, if it was serious, he took them to another place.

Mr. THON. I have spoken to Germans who were attendants in the prison, and they told me he never treated any Malmedy prisoners.

Mr. CHAMBERS. Well, I believe that Sergeant Unterseher—

Mr. THON. I remember him; yes, sir.

Mr. CHAMBERS. And he would have known who treated them; would he not?

Mr. THON. I am certain he would have known; yes, sir.

Mr. CHAMBERS. Unterseher was stationed there as part of the medical treatment; wasn't that it?

Mr. THON. That is correct; he was a tech sergeant.

Mr. CHAMBERS. He was asked if the Malmedy prisoners were ever taken to a German dispensary by guards, other than himself. In other words, Unterseher testified that he, the medical man, on occasions of emergency, had taken Malmedy prisoners over to the dispensary, and he said Dr. Knorr's office was in the German dispensary and that the same procedure was followed when the patient was taken to Dr. Knorr. He said that was correct, and that the more serious cases would be taken to the American hospital at Stuttgart, and apparently there has been—

Let's go back a little further in his testimony here.

Talking about Dr. Knorr, we asked him if Dr. Knorr had treated people for dental complaints—this is on page 643 of the printed record—and Unterseher said:

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.

Then, I asked a question as to whether or not Dr. Knorr treated them for teeth that had been knocked out, and Unterseher said "No"; and I asked him, "They were just normal dental complaints?" And Unterseher said "Yes."

Then I asked about a ruptured jaw which appears in the affidavit of Dr. Knorr, and Unterseher said the only knowledge he had of that was an article he saw in Time magazine, and Unterseher said he had no knowledge of that whatsoever.

Now, it would appear from this testimony some of the Malmedy prisoners were treated by Dr. Knorr.

Mr. THON. That is right.

Mr. CHAMBERS. And you just testified a minute ago that they were not. You agree that the record shows they were?

Mr. THON. That is right, but according to the Germans who were there, they claimed they were not treated by him.

Mr. CHAMBERS. I would be more inclined to take, in this particular case, the medical sergeant's word, wouldn't you?

Mr. THON. Definitely.

Senator BALDWIN. May I interrupt?

Mr. CHAMBERS. Surely, sir.

Senator BALDWIN. This Unterseher says this, categorically, Mr. Thon; he says, after Mr. Chambers asked this question:

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 record a while ago. I have been trying to think of that name for weeks. That is right.

Then Mr. Chambers asked this question:

Did he treat the Malmedy prisoners?

Mr. UNTERSEHER. That is right.

Mr. CHAMBERS. For normal dental cares?

Mr. UNTERSEHER. Yes.

That is on page 643, in the middle.

Then the question:

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.

On the other hand, Unterseher did say, categorically, that Knorr did treat the Malmedy prisoners.

What do you have to say to that?

Mr. THON. As I said before, sir, when I was told about Dr. Knorr, I did not know anything about it, I have never seen him at the prison, and when I went to Schwabisch Hall, it was on behalf of Colonel Ellis, to find Dr. Knorr. I could not find him because he was at that time in the hospital, so I said to myself, "You had better find some of the people who were in the prison during your stay there."

I did find some, and I asked them, and as I said before, they told me, and again I must emphasize they said that Dr. Knorr only treated political prisoners.

Mr. CHAMBERS. Who were the German people you talked to?

Mr. THON. Offhand, I don't know the names, but I can give them to you.

Mr. CHAMBERS. Did you make any effort to find out if he had any dental assistant or helpers?

Mr. THON. Yes, sir, there was an assistant there.

Mr. CHAMBERS. Do you recall what his name was?

Mr. THON. No, his name I do not know, but there would be people in Schwabisch Hall, Mr. —, I don't know his name right now.

Mr. CHAMBERS. You mean in the city of Schwabisch Hall?

Mr. THON. In the city of Schwabisch Hall, yes.

Mr. CHAMBERS. Didn't you feel that you should try to find his technical assistant and talk to him?

Mr. THON. He wasn't in town at that date, I am certain.

Mr. CHAMBERS. Do you recall what his name was?

Mr. THON. The technical assistant, no, sir, but I know this man's name who appears in that affidavit, incidentally.

Mr. CHAMBERS. Did you know that the technical assistant was in the city of Schwabisch Hall?

Mr. THON. He was not there that day, sir.

Mr. CHAMBERS. Did you make inquiry to find out?

Mr. THON. No, sir, I did not that day, because I wanted to proceed to Goepingen.

Mr. CHAMBERS. Who told you that he was not in town?

Mr. THON. At the place where he lives I was told.

Mr. CHAMBERS. You went where he lived?

Mr. THON. And his wife told us he was not in town.

Mr. CHAMBERS. His wife told you he wasn't in town?

Mr. THON. No, sir.

Mr. CHAMBERS. Are you aware of the fact that there may have been two dental assistants, but the one who was with Dr. Knorr all but one month of the time that he worked at Schwabisch Hall was a woman?

Mr. THON. I am certain that woman never was in the prison.

Mr. CHAMBERS. Well, now, there was a Miss Gieger, the local authorities at the city of Schwabisch Hall advised me, when I went down there, that there was a dental assistant, and we located her and we had already learned through another source that there was a period of time when she had not been at Schwabisch Hall, in January 1946, she was ill, and she had no knowledge or no way of knowing that we had made any inquiry about her and when she was interrogated she stated that she had gone with Dr. Knorr in all his visits except for the period of time when she couldn't and we asked why not and she said she was sick at the time, and she said she had typhus early in the year and earlier in the interrogation she stated categorically to us that she had been there with Knorr and all when all these prisoners were being treated. She said that she didn't know the prisoners' names because they were not permitted to ask the name. She admitted, on a couple of occasions she slipped the question to them "How is it going" or something like that, and got a fast answer, but now you say that you are certain that she never went with Dr. Knorr, and yet a minute ago, Thon, you said you didn't know that Dr. Knorr was treating Malmedy prisoners.

Mr. THON. I never saw her in the jail. The only one man I saw was a secretary, who was administrative secretary to Captain Edwards.

Mr. CHAMBERS. Didn't you say that you didn't even know who Dr. Knorr was until Colonel Ellis wrote you?

Mr. THON. That is correct.

Mr. CHAMBERS. Now you are telling us that you know definitely that Dr. Knorr never had a technical assistant with him, or a woman.

Mr. THON. To my knowledge, sir, I have never seen them in the prison, never seen another woman except this one girl.

Mr. CHAMBERS. Have you ever seen Dr. Knorr?

Mr. THON. No, sir, I don't know him.

Mr. CHAMBERS. Tell me more about this house you went to at Schwabisch Hall recently where they told you that the technical—that is, the technical assistant's wife told you that he was out of town.

Mr. THON. That is correct. Mr. Gert was present when I talked there.

Mr. CHAMBERS. May we have just a moment, sir?

Senator BALDWIN. Senator Hunt, do you have any questions you want to ask of Mr. Thon at this time?

Senator HUNT. I want to ask him some questions before he gets off the stand, but I don't believe I want to ask right now, Senator.

Senator BALDWIN. I would like to ask one or two questions.

Mr. THON. Yes, sir.

Senator BALDWIN. Are you employed by the United States Government now?

Mr. THON. Am I employed by whom, sir?

Senator BALDWIN. The United States Government.

Mr. THON. Yes, sir.

Senator BALDWIN. In what capacity?

Mr. THON. Chief of the Evaluation Section of CAD, OMGUS.

Senator BALDWIN. And where are you located?

Mr. THON. In Frankfurt.

Senator BALDWIN. While you were in the Army, did you have a commission?

Mr. THON. No, sir, I did not.

Senator BALDWIN. What was your rating?

Mr. THON. I was a master sergeant, sir.

Senator BALDWIN. It has been testified here that you called yourself a major.

Mr. THON. No, sir. I was a civilian at that time. I could not have done it.

Senator BALDWIN. At the time you conducted these investigations, your status was the status of a civilian?

Mr. THON. Yes, sir.

Senator BALDWIN. You say you were born in Pennsylvania?

Mr. THON. That is correct, sir.

Senator BALDWIN. How long did you live in Pennsylvania?

Mr. THON. I lived in Pennsylvania for 4 years, and I lived then in Germany for 14 years, and then in New York.

Senator BALDWIN. That is, from the time you were 4 until you were 18 years old you lived in Germany?

Mr. THON. That is correct.

Senator BALDWIN. And after that, in the United States.

Mr. THON. Yes, sir.

Senator BALDWIN. And you are a citizen of the United States?

Mr. THON. By birth, sir.

Mr. CHAMBERS. Mr. Thon, I have here an interrogation which I made of Mr. Gert at Frankfurt on the 29th of August.

Mr. THON. Yes, sir.

Mr. CHAMBERS. At that time, of course, I had no knowledge of the dental technician situation, so I didn't ask the specific question of him, but I asked him to tell us about this trip he made with you, and

in general, he coincides with what you say, but here is his description of what you did at Schwabisch Hall:

Where did you go on this trip?

We went to Schwabisch Hall, the residence of Dr. Knorr.

Was Dr. Knorr at Schwabisch Hall at that time?

We went first to the military government in Schwabisch Hall to inquire whether we could get Dr. Knorr to come to military government and talk to us. We were informed he was in the hospital. He had one leg amputated and was suffering from hardening of the arteries, and so we went to Goepingen to the hospital where he was.

Now, he makes no mention, and I had no knowledge for forming the basis for the interrogation at that time, but he makes no mention of your doing anything other than going to military government and asking about Knorr and proceeding to Geoppingen.

Mr. THON. On the affidavit signed by Mr. Gert you can see we went to several places and interrogated several people.

Mr. CHAMBERS. Yes, I believe that is correct.

Let me nail this down tight, and we can go on to something else.

You say that in Schwabisch Hall you and Mr. Gert went to the home of a person who was a dental technician who worked with Dr. Knorr?

Mr. THON. Yes, sir.

Mr. CHAMBERS. That dental technician was a man, and you say that his wife said that he was not at home.

Mr. THON. Sir, whether he was a dental technician or medical attendant I couldn't say.

Mr. CHAMBERS. In any event he was the man that helped Dr. Knorr?

Mr. THON. He was—

Mr. CHAMBERS. At no time have you been in touch—

Mr. THON. With him any more? No, sir.

Mr. CHAMBERS. I think it might be of interest to you to know that this dental technician has at least in part corroborated the statements made by Dr. Knorr. Of course, she helped him to prepare the original affidavit, so she would naturally know what Dr. Knorr said.

Mr. THON. Sir, I do not know this person. I cannot say.

Mr. CHAMBERS. Did you ever hear of any teeth being knocked out by any people?

Mr. THON. No, sir.

Mr. CHAMBERS. Did you ever hear of a prisoner hitting another man and knocking teeth out?

Mr. THON. No.

Mr. CHAMBERS. Or hear of a man falling down steps when he had a hood or something like that on, and he stumbled and fell and knocked his teeth out?

Mr. THON. No, sir.

Mr. CHAMBERS. Did you ever see anybody fall or stumble when they were walking along with their hoods on?

Mr. THON. No, sir, I didn't because the method we used when they marched with them on, it was hardly possible that way.

Mr. CHAMBERS. How about going up and down steps?

Mr. THON. Going up and down steps, they had their arms extended and laid on the top of the shoulders of the men ahead of them.

Mr. CHAMBERS. Not to be facetious, but who did the first man lay his hands on?

Mr. THON. He was led by a guard.



Senator BALDWIN. If I may interrupt, when you were bringing a man up for interrogation, he wasn't in a line. He was brought along on that occasion—how?

Mr. THON. He was guided by a guard, if he came alone. You see, we had nothing to do with bringing the prisoners up.

Mr. CHAMBERS. Did you call for them by name or number?

Mr. THON. We would say that the person out of such and such a cell was to go to such and such a cell, and whoever would be the guard would go over and get him and bring him in.

Mr. CHAMBERS. Wouldn't it have been possible, Mr. Thon, for the guards, for instance, to shove these people around a little bit if they didn't move fast enough? You wouldn't know?

Mr. THON. That could be possible.

Mr. CHAMBERS. Certainly it would have been possible for Perl to perhaps slap a prisoner around and you not know about it.

Mr. THON. It would have been possible.

Mr. CHAMBERS. The only one you can be actually certain of is yourself?

Mr. THON. That is right.

Mr. CHAMBERS. Did you take part in interrogations with Perl?

Mr. THON. At times; yes, sir.

Mr. CHAMBERS. And during that time, did you ever see Perl shout or hear Perl shout at a man or see him push the man?

Mr. THON. I heard him shout, but never heard or saw him or have seen him slap anybody.

Mr. CHAMBERS. Perl testified that he didn't shout, if I remember correctly. We questioned him at some length on that.

Mr. THON. For someone to raise their voice up, that is hardly avoidable.

Mr. CHAMBERS. You mean at times you had to raise your voice?

Mr. THON. Yes, sir, I did, absolutely.

Mr. CHAMBERS. And at the time, possibly perhaps justifiably lose your temper and swore at them or something like that?

Mr. THON. No, sir; I did not.

Mr. CHAMBERS. Did you ever call a man a liar?

Mr. THON. I did, sir; that I did.

Mr. CHAMBERS. You say that Perl raised his voice. Did Perl swear at times, too?

Mr. THON. No, sir; not in my presence.

Mr. CHAMBERS. In your presence?

Mr. THON. Not in my presence.

Mr. CHAMBERS. That is a matter of degree—what is swearing?

Mr. THON. Well, I don't know. That is a definition for a lawyer to decide, not for me.

Mr. CHAMBERS. Mr. Thon, in the process of interrogation, what was your normal working day, what was your normal working arrangement?

Mr. THON. The normal working day was from 8 until 5, I believe were the hours. However, we were all there a little earlier and later.

Mr. CHAMBERS. Did you carry on interrogations at night?

Mr. THON. I personally conducted one interrogation at night, that lasted about 5 or 10 minutes.

Mr. CHAMBERS. Did anybody else carry on any interrogations at night?

Mr. THON. Not to my knowledge, sir.

Mr. CHAMBERS. But it would have been possible for them to have done so without your knowing, would it not?

Mr. THON. Yes and no, sir; because there were two sets of keys available to us, with the exception of the keys that the guards had, and if anybody would have gone down, they would have had to ask Colonel Ellis or me for the keys.

Mr. CHAMBERS. They could go down, however, and the guards wouldn't hesitate for a moment to allow them to come in, would they?

Mr. THON. I don't believe so, but I don't think—

Mr. CHAMBERS. Did you ever hear of any interrogations being made at night by Shumacker?

Mr. THON. Shumacker and I made one interrogation at night, in the presence of Colonel Ellis.

Mr. CHAMBERS. The one you just referred to?

Mr. THON. The one I just referred to.

Senator BALDWIN. Who was that?

Mr. CHAMBERS. Colonel Ellis.

Did Perl ever make any night interrogations?

Mr. THON. Not in my presence, sir.

Mr. CHAMBERS. Not in your presence, but what I am asking you is, do you know whether he did or not?

Mr. THON. I don't know whether he did or not, sir; honestly I don't. You see, Perl lived in a different house than we did, and what he did in the evenings I do not know.

Mr. CHAMBERS. I am going to ask you a question which will be a little obscure in the record at the moment, but when the committee makes its trip to Schwabisch Hall, I think the question will clear itself up because it concerns the physical location of certain rooms at Schwabisch Hall and I would like for the record to get your explanation of it.

You are familiar with the location of the dispensary?

Mr. THON. Yes, sir.

Mr. CHAMBERS. As a part of that, there was a large room in which certain of the internees and workers lived, is that correct?

Mr. THON. Whether or not they lived there, I couldn't tell you.

Mr. CHAMBERS. At least this man, who was one of the internees, lived in the room?

Mr. THON. I don't know.

Mr. CHAMBERS. Didn't you, the other day, during our trip to Schwabisch Hall, say he did, in that big room beyond the doctor's office?

Mr. THON. I didn't say he lived there.

Mr. CHAMBERS. I say "lived," he had a bunk there, that is what you said.

Mr. THON. I don't know Schnell.

Mr. CHAMBERS. Do you know whether people lived there or not?

Mr. THON. I can't say whether they permanently lived there or whether they were sick there, because that was a dispensary.

Mr. CHAMBERS. All right. Immediately across the court at a distance of approximately 75 yards there are two windows into which you can see fairly well from this large room which we have described?

Mr. THON. Yes.

Mr. CHAMBERS. Now, that is the first room on your left as you come into that particular cell block?

Mr. THON. Yes.

Mr. CHAMBERS. A large double room?

Mr. THON. Yes.

Mr. CHAMBERS. What was the purpose of that room, how was it used?

Mr. THON. That was the administrative room, sir.

Mr. CHAMBERS. You are absolutely certain?

Mr. THON. Positive of that, sir.

Mr. CHAMBERS. What type of equipment did you have in there?

Mr. THON. In there were, to my knowledge, three tables about two-thirds the size of this [indicating].

Mr. CHAMBERS. The tables would be roughly 4 or 5 feet long?

Mr. THON. That is correct, sir, and there were two typewriter desks, small ones, those small typewriter tables; there were filing cabinets and that is all, sir.

Mr. CHAMBERS. Well, now——

Mr. THON. And of course chairs.

Mr. CHAMBERS. Chairs?

Mr. THON. Yes.

Mr. CHAMBERS. To your knowledge were there any interrogations carried on in that room?

Mr. THON. Never, sir.

Mr. CHAMBERS. Well, now, let's go a little slow on these positive statements. To your knowledge there were not?

Mr. THON. That is right.

Mr. CHAMBERS. But it would have been possible for interrogations to have been carried on there without your knowing about it; is that correct?

Mr. THON. Sir, by going back and forth from one cell to the other, and going into that room to get paper and stuff, I would have come across it.

Mr. CHAMBERS. But, have the interrogations been carried on at night——

Mr. THON. Then I couldn't have known, sir, because I was not there.

Mr. CHAMBERS. So that if an interrogation was carried on at night, with lights on in that room, it might have been possible for someone in this big room, in the dispensary, to have observed what went on in that room?

Mr. THON. That could have been possible.

Mr. CHAMBERS. And I believe, from the distances involved, and particularly at night, it would have been possible for any loud voices that were raised to have been heard over in the dispensary?

Mr. THON. It could have been.

Mr. CHAMBERS. Did you ever call a man a lying dog?

Mr. THON. No, sir; that is an expression I don't use.

Mr. CHAMBERS. Did Perl use it?

Mr. THON. I never heard him use it, sir.

Mr. CHAMBERS. A lying pig?

Mr. THON. No.

Mr. CHAMBERS. Did you hear Perl use it?

Mr. THON. I never heard him use it. I heard him use "liar" I am sure.

Mr. CHAMBERS. On this administrative room—did Perl ever make any mention that he occasionally worked in there?

Mr. THON. No, sir; he never did.

Mr. CHAMBERS. Shumacker?

Mr. THON. Shumacker never did. Shumacker used the room right across the hall where Colonel Ellis used to sit.

Mr. CHAMBERS. The other day when you were sent down from Frankfurt for the purpose of taking us through the prison—

Mr. THON. Yes?

Mr. CHAMBERS. You had no knowledge that I had previously been through the prison; is that correct?

Mr. THON. No, sir; I had no knowledge whatsoever. I didn't know why I was being called down there.

Mr. CHAMBERS. And you then toured us through the prison to show us, or give us your memory as to those various cells and how they were used?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Do you recall I asked you the question, as you crossed the courtyard—what was the lay-out at the time the prisoners were there?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Do you recall it was part of the courtyard which you said contained a small garden?

Mr. THON. That is correct.

Mr. CHAMBERS. Do you recall that I asked you at that time to tax your memory, wasn't there a pile of material there under a canvas?

Mr. THON. That is right.

Mr. CHAMBERS. And at that time, for a moment or two, you said no, there was nothing there; and then, you said, "Well, now, there was some mention as to some gallows," which was the first time "gallows" had been mentioned by anybody in our party. Have you refreshed your memory as to that part?

Mr. THON. I tried hard, Mr. Chambers, but can't fix the time.

Mr. CHAMBERS. For the purpose of the record, would you mind repeating the conversation with me as you recall it?

Mr. THON. Yes, sir.

I told you there were gardens there, and that all of a sudden, after you pressed me more, it wasn't pressing, then I recalled that I saw something there but I cannot fix the time element, and I am under the impression it was the gallows that was used in Nuremberg, that were afterward shipped to Schwabisch Hall. To fix the time element—I am unable to do it. I have tried hard. I have asked all the others and they don't recall either.

Mr. CHAMBERS. If they were shipped down to Schwabisch Hall, would that be while the Malmedy prisoners were still there?

Mr. THON. If I could fix the time element, I could say. I can't fix the time element.

Senator KEFAUVER. Wasn't Nuremberg afterward?

Mr. THON. It was afterward.

Mr. CHAMBERS. If they were sent down from Nuremberg, if his memory is correct on that point, it would have been impossible for them to have been there while the Malmedy prisoners were there.

The point of issue here, I think I should put in the record at this point, is that Mr. Schnell, who also conducted me through the prison that morning, and I might say that his story disagrees in very significant detail from that you have given me, and since his knowledge, of necessity, could not have been as complete as the people who were working there, and had frequent access to all parts, I am more inclined to accept your physical description than his; but Schnell, when we were going through the courtyard, was asked substantially the same question because this building of a gallows at Schwabisch Hall has crept up in several of the affidavits and it is rather significant because no one was ever executed at Schwabisch Hall and I have been trying to pin it down because naturally it would appear to me, if there was a gallows out there, it would have a very discouraging effect on everybody.

Schnell volunteered information "That is where they had the gallows. That is in that part."

I believe I have correctly quoted him.

Subsequently there was some disbelief growing around that because there was a German guard who had been stationed in the kitchen, by the name of Kuppermann, if I remember correctly, we have his name and will put it in the record, who had worked in around that area all the time the Malmedy prisoners were there, and he said there had been no gallows at that point, so I then went back to Mr. Schnell and pressed him a little on it, and he said, "Well, the gallows were there, but they had not been erected."

That was the first impression he gave me, but that they had been broken down and covered with a tarpaulin or canvas. That is why I was pushing you, Mr. Thon, to find out what you knew about that particular thing, and the fact that you mentioned a gallows in connection with the plot sort of corroborates the thing, and yet Kuppermann denies anything was there.

MR. THON. If I could only fix the time element, I would be very happy. I know I saw them, but whether it was on one of our subsequent trips down to Schwabisch Hall, or whether it was during that time I honestly cannot say.

MR. CHAMBERS. Do you know Schnell?

MR. THON. I do not know him.

MR. CHAMBERS. Do you recall him at all?

MR. THON. No.

MR. CHAMBERS. When you saw these gallows, were they erected?

MR. THON. No, sir; at no time.

MR. CHAMBERS. How do you know, or did you know these were gallows, if they were lying under canvas?

MR. THON. Someone told us that they were gallows. I mean I never examined the thing or anything, so to say honestly they were gallows, I don't know from my own examination. I know what I was told about them.

MR. CHAMBERS. Do you recall seeing a man who would have delivered food or cleaned up around the place, with one arm off, the left arm?

MR. THON. No, sir. I never have seen a one-armed man delivering food.

MR. CHAMBERS. When did you first hear of Schnell?

Mr. THON. When Colonel Ellis asked me to find out about him; what he does and what he is.

Mr. CHAMBERS. Well, Perl wrote you from State-side. What did he tell you about this matter?

Mr. THON. He told me that I was to be questioned and that he had been questioned three or four times and that all the other boys had been interrogated and also there was an accusation made by someone that I was a refugee from Germany and not even a citizen of the United States, and such things, everything very general.

Mr. CHAMBERS. But you in fact were born in Philadelphia?

Mr. THON. 327 Church Lane, Germantown, Pa.

Senator BALDWIN. May I ask?

Mr. THON. Yes, sir.

Senator BALDWIN. Did Perl in his letter to you tell you anything about any questions that had been asked of him, or what he had been interrogated about?

Mr. THON. No, sir; he did not.

Mr. CHAMBERS. Do you have Perl's letter?

Mr. THON. I have it in my hotel.

Mr. CHAMBERS. Would you care to submit that for examination and possible inclusion in the record?

Mr. THON. Absolutely. Also Colonel Ellis'.

Mr. CHAMBERS. Bring them all. I am very anxious to know what they told you.

Mr. THON. Yes, sir.

Mr. CHAMBERS. And, there is a wide area of criticism, in a way, of them sending advance information over, but—

Mr. THON. No, sir.

Mr. CHAMBERS. What?

Mr. THON. As I said, the only thing I have is a very small excerpt of Dr. Karan's testimony.

Mr. CHAMBERS. I think the record should show clearly what their letters contained, because it might be the same factor but not the same force that requires you to take the German prisoners to Schwabisch Hall. In other words, I think this committee is anxious to know that there is no one that has been interested in getting together, I am sure that that is what those letters will show, but I think the record should show that.

Mr. THON. I have stated before that I am only too happy to submit all the letters I have.

Mr. CHAMBERS. That is fine. If you will let us have them during the afternoon session.

Senator KEFAUVER. Are they in Frankfurt?

Mr. THON. No, sir; I brought them with me.

Mr. CHAMBERS. Now, while you were at Schwabisch Hall and this interrogation was going on—

Mr. THON. Yes, sir.

Mr. CHAMBERS. Do you recall the incident when some of the prisoners were apparently trying to pass messages back and forth amongst themselves by marking the bottoms of these mess kits?

Mr. THON. Yes.

Mr. CHAMBERS. What disciplinary action was taken at that time?

Mr. THON. That I could not tell you, sir. I don't know what disciplinary action was taken. Mr. Steiner possibly knows more. He was the one who translated all these messages into English.

Mr. CHAMBERS. Well, now, in fact, Thon, don't you recall that there was a period, a brief period of 2 or 3 days of bread and water?

Mr. THON. No, sir; that was not possible, sir.

Mr. CHAMBERS. Why wasn't it possible?

Mr. THON. Because, if I remember correctly, it was always that if a person was put on bread and water for some offense after, I think a half day, I'm not sure as to the time, but anyway after a very short time he had to get a warm meal.

Senator BALDWIN. My recollection of that testimony was that they were put on bread and water, and the explanation was that it required all that time in order to repolish the plates or kits, or get new ones or scrape the message off. That is my recollection of it.

Mr. THON. I couldn't tell you, sir.

Mr. CHAMBERS. There has been considerable different testimony on it, but I would like to refer to the testimony of Dr. Karan.

Senator HUNT. Mr. Chambers, if I might interpolate here. You were not charged with disciplinary control?

Mr. THON. No, sir; I had nothing to do with it.

Mr. CHAMBERS. That was the responsibility of the group you previously described; you described them as the administrative group?

Mr. THON. Yes, sir.

Mr. CHAMBERS. And it was in their charge—

Mr. THON. Yes, sir.

Mr. CHAMBERS. Under Captain Edwards?

Mr. THON. That is right.

Mr. CHAMBERS. So if they were placed on bread and water you had nothing to do with it?

Mr. THON. We had nothing to do with it.

Mr. CHAMBERS. You know of no bread and water being given out?

Mr. THON. I don't know from my own knowledge, or was not told anything like that.

Mr. CHAMBERS. Suppose the prisoners were being put in the so-called dark cells. There have been many charges made in these affidavits that they didn't get enough to eat, didn't get anything, some said, and others said they didn't get drinking water except with meals and some said, "We didn't get any drinking water" and some said, "So, we had to use the water from the toilets."

I think maybe I can give you a typical example of that. What would be your comment on such a statement?

Mr. THON. What? All I can say is that I observed that they got drinking water and got ample food and better food than the civilian population of Germany on the outside was getting.

Mr. CHAMBERS. Now, how would they get drinking water?

Mr. THON. They brought it around in buckets and they had cups.

Mr. CHAMBERS. That was at mealtime, wasn't it?

Mr. THON. I observed it in the morning at 9 o'clock.

Mr. CHAMBERS. Beg pardon?

Mr. THON. I observed it in the morning at 9 o'clock. I remember distinctly one case.

Mr. CHAMBERS. What you are saying is the statement that the man was not getting drinking water and was forced to drink from the toilet—that is untrue?

Mr. THON. That is untrue, I am certain.

Mr. CHAMBERS. Well, for the record, and to complete this line of questioning, although Mr. Thon has stated clearly that he did not know of any bread-and-water punishment that had been given out, and in any event it would not have been the responsibility of the interrogation staff, I would like to refer to the testimony of Dr. Karan, appearing in the printed record of the committee, in which he states that the only time bread and water was permitted, or that it took place, was in connection with the time when the prisoners had been trying to pass this information, and that it lasted just two rations, and I asked him to define the rations, because to my understanding a ration is a day's food, so that would mean 2 days; and he said "No," they just missed two meals and that he then, Dr. Karan, required them to be taken off the bread-and-water punishment.

Now, that is the only medical testimony that we have on bread and water, and apparently, as far as the doctors were concerned, these prisoners were being properly fed. They said they were inspected; they inspected them and all that sort of thing regularly, and they gained weight while in prison and seemed to be getting good treatment, but I would like to nail down one fact again with you: You don't know of any time when they were deprived of rations?

Mr. THON. No, sir.

Mr. CHAMBERS. And to repeat again, they were fed, all the prisoners were fed the same way, irrespective of whether they were in general cells or so-called dark cells?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. Now, Thon, let us ask you a couple of questions here about the mock trials, or so-called Schnell procedures.

Was that a pretty general method of interrogation?

Mr. THON. No, sir. To my estimate I would say about 10 of those Schnell procedures were performed.

Mr. CHAMBERS. Were they successful?

Mr. THON. Very, very little.

Mr. CHAMBERS. How did this thing start, what was the background?

Senator KEFAUVER. What did you say; they were or were not?

Mr. THON. Very little, sir.

Senator KEFAUVER. Very little?

Mr. THON. Yes, sir.

How it started any more, I cannot tell you, but it was more a show than anything else. I mean I personally took part in one. I can describe that one, and that is the only one.

Mr. CHAMBERS. Now, you say you took part in one Schnell proceeding?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Which one was that?

Mr. THON. Hennecke's.

Mr. CHAMBERS. Who?

Mr. THON. Hennecke.

Mr. CHAMBERS. What part did you play in that schnell procedure?

Mr. THON. I was the counterpart to Perl.



Mr. CHAMBERS. What was Perl?

Mr. THON. Well, we had no actual names for anybody. We just went in and shouted at each other and then we—

Mr. CHAMBERS. What do you mean you shouted at each other?

Mr. THON. That is exactly what we did, sir.

Mr. CHAMBERS. Did you shout at each other, or one shout at the prisoner?

Mr. THON. No, sir. It was like this: I called Perl a liar and he called me a liar, so we shouted back and forth and we said to each other, "Well, he's not going to tell the truth."

Mr. CHAMBERS. Off the record.

(There was discussion off the record.)

Mr. CHAMBERS. Look, Thon, let's get the record perfectly clear on this. Isn't it a fact that the whole plan of the schnell procedure was to work one or the other of you into the confidence of the man who was witnessing the show, if you want to call it that? In other words, one of you would be the hard interrogator and the other would be the soft interrogator?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. After the mock trial was over, the schnell procedure was over, the soft interrogator would go around and say, "Well, look, maybe I can get this thing eased up for you," and try to ingratiate yourself to him, trying to get him to make a statement to you?

Mr. THON. Try to get him to make a statement, true.

Mr. CHAMBERS. Didn't you go at that thing pretty hard, to this extent: First of all, the ceremony was set up, as I understand, with a table and black cloth over it.

Mr. THON. Yes, sir.

Mr. CHAMBERS. And they used a crucifix over here instead of a Bible for swearing in?

Mr. THON. I'm not certain whether they were sworn in or not.

Mr. CHAMBERS. I think the record shows that they were not sworn in but you had a crucifix on the table.

Mr. THON. That is correct.

Mr. CHAMBERS. Why did you have that crucifix there? What impression were you trying to give them?

Mr. THON. Well, if you know the German mind, the more formal you perform something, the more responsive a German will be.

Mr. CHAMBERS. Why did you have the candles there?

Mr. THON. For the same purpose.

Mr. CHAMBERS. Now, in formal German civilian proceedings, do they have candles at the interrogations, where they have an interrogating judge? Does he have a candle or crucifix there?

Mr. THON. I couldn't say. I have never been before a German court.

Mr. CHAMBERS. In the case of Hennecke, was that schnell procedure effective?

Mr. THON. No, sir, to the best of my knowledge, it was not.

Mr. CHAMBERS. How did you get that confession from him?

Mr. THON. I didn't get it.

Mr. CHAMBERS. Who got it?

Mr. THON. Perl.

Mr. CHAMBERS. How did he get it?

Mr. THON. I couldn't tell you.

Mr. CHAMBERS. Look, Thon, it stands to reason that you managed to get a crack at one particular case, then at lunch or perhaps at dinner that night, with your associates, you would say——

Mr. THON. We would talk it over, yes.

Mr. CHAMBERS. Didn't you talk over Hennecke?

Mr. THON. To the best of my knowldege no, sir. I cannot remember each and every conversation. Honestly, we talked shop day and night.

Mr. CHAMBERS. Wasn't Hennecke the man who took the stand, and there was considerable discussion back and forth——

Mr. THON. He took the stand?

Mr. CHAMBERS. And there was considerable discussion as to whether or not Perl would be the defense counsel, or had been the defense counsel?

Mr. THON. That is correct, I remember that.

Mr. CHAMBERS. And Perl did a lot of fast talking as to—no, he wasn't defense counsel, he impressed himself as a friend, a good boy I believe he described it.

Mr. THON. I believe that is the way he testified.

Mr. CHAMBERS. You believe that. Do you remember it pretty well?

Mr. THON. I remember that part, yes.

Mr. CHAMBERS. Is there any significance to the fact that Perl later got his confession? I mean, wouldn't it show that maybe the mock trial had had its effect and Perl had gotten into the confidence of Hennecke in some way?

Mr. THON. Well, that may be so, Mr. Chambers, I don't know how he got it because it was just not the thing that you talked over, how you got it—the main thing was that you got it.

Mr. CHAMBERS. Didn't you all actually sit down on a plan, which is quite proper, I have no quarrel on this at all, but didn't you all plan something, if something was successful, and you would say, "Look, this is successful here, maybe you can work it on so-and-so?"

Mr. THON. No, sir, because when I went in for an interrogation, you never knew the man at first so you had to sort of feel him out at first and then sometimes it worked right away like I remember one procedure that worked wonderfully, it sounds simple and naive, but it worked wonderfully.

Mr. CHAMBERS. What?

Mr. THON. The procedure was the plus-and-minus business.

Senator HUNT. Say that again?

Mr. THON. Plus-and-minus.

Mr. CHAMBERS. What is that? Tell us about that.

Mr. THON. We were sitting down one morning, I don't remember the time, but Perl and I were in the same cell interrogating a prisoner, and we knew from the previous confessions and testimony that we had that the man was implicated, so our so-called court stengrapher or reporter, his stenographer, I personally don't take shorthand, so I was making figures on the paper and I sort of got tired of doing it and I said, "Bill, now do it this way: When a man tells us a truth, we give him a plus; if he gives us a negative answer, we give him a minus, and we give him six pluses and six minuses. Now, if he gives us the truth and the pluses are full, it's all right, but if he gives the minuses, we walk out of the cell and won't even talk to him any more."

And, it worked. That is the German mind that one has to know. Senator BALDWIN. Was that Hans Hennecke?

Mr. THON. The former person, sir?

Senator BALDWIN. As I recollect what you said now, I haven't followed what you just said because I was looking at this affidavit here, but as I recall it, you said it was Hennecke who was the man that was examined in this so-called mock trial proceeding.

Mr. THON. That is correct.

Senator BALDWIN. Was that Hans Hennecke?

Mr. THON. Yes, sir.

Senator BALDWIN. H-e-n-n-e-c-k-e?

Mr. THON. That is correct, sir.

Senator BALDWIN. Do you want to read Hennecke's affidavit and his description of the trial procedure, and then you can ask Mr. Thon about it?

Mr. CHAMBERS. Well, now, in Hennecke's mock trial, I believe you said that that is the only one you took part in.

Mr. THON. Yes, sir.

Mr. CHAMBERS. Did any—go ahead.

Mr. THON. To the best of my recollection, that was the only one I took part in, where I took an active part.

Mr. CHAMBERS. An active part?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Did you observe others?

Mr. THON. I saw many, sir.

Mr. CHAMBERS. Now, in the case of Hennecke, how many times did he come before a mock trial?

Mr. THON. Once.

Mr. CHAMBERS. Only once?

Mr. THON. Only once that I know of—absolutely.

Mr. CHAMBERS. Well, I am not playing on words, but let's see if your answer is clear in the record. You say you know of only one, absolutely.

Mr. THON. That is correct.

Mr. CHAMBERS. You are certain he was in one. You have no knowledge that he was in others?

Mr. THON. I have no knowledge of others.

Mr. CHAMBERS. Well, now, I think for the record it would be well to read this particular part of an affidavit executed by Hans Hennecke, on the 11th of February 1948 at Stuttgart. This was approximately 2 years after the trial was completed, or a year and a half.

In this affidavit he says in part:

Four times I saw with my own eyes how the hearse of the town of Schwabisch Hall came to call for corpses. That was the end of those whose will power they had not been capable of breaking.

Now, before going any further, I would ask—and I think possibly we can find proof and records on this point—did any of these prisoners, Malmédy prisoners, die outside of Freimuth, who committed suicide?

Mr. THON. No, sir.

Mr. CHAMBERS. You are certain on that?

Mr. THON. Positive—certain.

Mr. CHAMBERS. Do you recall any of the other prisoners, there was a large group of internees who would have no connection with the Malmédy matters—do you recall or have any knowledge of any of those dying?

Mr. THON. I have no knowledge of any one of them dying.

Mr. CHAMBERS. Did you ever see a hearse come into the prison?

Mr. THON. No, sir; I have never seen one.

Mr. CHAMBERS. How about Freimuth; how was he taken out?

Mr. THON. I don't know how he was taken out. I didn't see it.

Mr. CHAMBERS (reading):

On March 2, 1946, a small first lieutenant came to my cell, introduced himself as being William A. Pearl.

The word "Perl" is misspelled, being spelled "P-e-a-r-l" in the affidavit.

And said that he was the defense counsel in the summary trial which would soon take place against me. He talked of trials, witnesses, statements, and my hopes and make a good impression on me. On March 8, 1946—

six days later—

I was called for and when I lifted the hood I found myself before a court. I was convinced that it was a regular court for in spite of all my bitter experiences I could not conceive of anything so base being done. Mr. Thon was the prosecutor, the driver of Lieutenant Colonel Ellis (disguised as a colonel) was judge and law member, the two interpreters were disguised as a major and captain, respectively. Who they were I heard only at Dachau. A flood of accusations was thrown at me. Witness after witness appeared.

Did they bring in any witnesses at Hennecke's mock trial?

Mr. THON. Two fellows came in—two came in and just told him that he was there and he shot in, I believe the town was Stoumont.

Mr. CHAMBERS (continuing):

To all this I could only say that it was not true, that I knew nothing about it. Lieutenant Pearl defended me skillfully and the ruse went over completely with me. The trial adjourned and I was told that my execution would take place within 48 hours.

Now, it is very important, Mr. Thon, that you get the correct answer on this: Did the court members go through a process of apparently finding the man guilty, and then pass sentence?

Mr. THON. No, sir; nothing whatever. We stopped this thing very abruptly and we all walked out.

Mr. CHAMBERS. You observed other mock trials?

Mr. THON. I have observed others.

Mr. CHAMBERS. In the other trials did the court pass any sentence?

Mr. THON. At no time, sir.

Mr. CHAMBERS. In other words, after you all had gone through this show, you would cut it off and walk out?

Mr. THON. That is correct, sir.

Mr. CHAMBERS (reading):

I now walked off into the death cell.

This death cell is one of these five cells that we have been talking about?

Mr. THON. Yes, sir.

Mr. CHAMBERS. I think again it would bear repetition in the record, that during the investigation at Schwabisch Hall Prison, these cells were the same size as the general cells in the prison, there were windows in them, and there was nothing that suggested dark cells, which I understand they were called by the prisoners, and if they were called death cells, that was merely a means of identification, and Mr.

Thon has testified that he didn't know whether they called them death cells or not.

Mr. CHAMBERS (reading):

Lieutenant Perl again asked me to confess and in the presence of a Lieutenant Rumpf and Reiser—

Who was that?

Mr. THON. Pardon?

Mr. CHAMBERS. Lieutenant Rumpf, who was he?

Mr. THON. Rumpf, he was the company commander of the Ninth Panzer Pioneer Company.

Mr. CHAMBERS. And Reiser—R-a-s-e-r?

Mr. THON. Reiser, R-e-i-s-e-r was the adjutant to Diefenthal.

Mr. CHAMBERS. Now—

Mr. THON. Please let me say one thing. I am not sure whether he was the adjutant to him or somebody else, that I am not positive of any more.

Mr. CHAMBERS. Now, these two lieutenants that he refers to, Rumpf and Reiser, both of them are spelled slightly different from the way you gave them in the record, but I think that is the correct identification. Were they people who appeared at the mock trial against him, or do you recall?

Mr. THON. I don't recall positively, but I believe there were enlisted men who appeared.

Mr. CHAMBERS. Enlisted?

Senator BALDWIN. Then the two men were both officers?

Mr. THON. They were both officers, one was a first lieutenant and the other one, I'm quite sure, was second lieutenant.

Mr. CHAMBERS. Why would they have gone in with Lieutenant Perl on a thing of that kind? Was either one of these two prisoners turning state's evidence?

Mr. THON. Sir, I could not give you the reason why they entered with him. I can't see the connection, personally.

Mr. CHAMBERS. Well, to go further with the affidavit—

Senator BALDWIN. Just a minute there.

You said two enlisted men. Do you mean German enlisted men?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. To repeat:

And in the presence of a Lieutenant Rumpf and Reser gave his word of honor—

Lieutenant Perl 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 to write a false "confession" once more. I said to Mr. Perl; I know of nothing, I can only say the truth, that which the witnesses say is false. I returned to my cell, wrote a letter to my parents and waited for my death. But it did not come.

Instead of that by reason of newly acquired proof, as Lieutenant Perl said, a new trial took place with the same result on March 12, 1946.

Mr. THON. If a trial took place I have no knowledge of it, and I cannot say.

Mr. CHAMBERS. Well, now, Thon, you have previously testified here that nobody was kept in these death cells beyond 2 or 3 days.

Mr. THON. That is correct.

Mr. CHAMBERS. Adding these days together, it would appear that he was in there at least 4 days or longer.

Mr. THON. No, sir—

Mr. CHAMBERS. On the other hand, you wouldn't know how long Hennecke was in the death cell, because he wasn't your man?

Mr. THON. He was not my man, but it was not the practice, definitely not, sir.

Mr. CHAMBERS. To go on with the affidavit:

On 13 March—

the day following the second trial—

my will power had broken down. I wrote down a new "confession." Mr. Perl dictated and made introductory statements. "Only this way, Hennecke, if you write this way is it possible to save you from the rope." Those were Mr. Perl's words whenever I refused to keep on writing this nonsense which was dictated to me.

I know you can't testify to what Perl said to Hennecke, but how about this business, when you are getting ready to get the confession reduced down to written form, did you tell them what to write?

Mr. THON. We didn't tell them what to write. We told them how to write, after they told us what the facts were; then naturally we told them how to write it down so it would be in proper form.

Mr. CHAMBERS. When you say "how to write it down," did you do it by getting the form changed, changing the entire meaning of it?

Mr. THON. No, sir, it was not meant like that. For instance, the location of a place where they said "at the crossroads," well, we would tell them "Where at the crossroads?" And coach them so that they would put the exact location down, but beyond that, nothing—just their own words.

Mr. CHAMBERS. After you told them how to write it down, and they wrote it down—

Mr. THON. Yes, sir.

Mr. CHAMBERS. Didn't it have to be translated into English?

Mr. THON. That is correct.

Mr. CHAMBERS. Was there a possibility of—due to just the translation from one language to another—of getting a little wrong emphasis on it?

Mr. THON. That would hardly be possible because each and every translation was checked in the court by the defense, and they agreed on each and every translation.

Mr. CHAMBERS. So, there was no question but what the translations were what the men said in German?

Mr. THON. Absolutely.

Mr. CHAMBERS. Did he, before he signed these confessions, have an opportunity to go over them and see if he agreed with them?

Mr. THON. He read them and made corrections as he pleased, sir.

Mr. CHAMBERS. Made corrections as he pleased?

Mr. THON. Yes, sir.

Mr. CHAMBERS. You mean, if you had in there that he had previously said that "I shot five men" and you then said, "No, it was three men," would you let him change it from five to three?

Mr. THON. Yes, sir.

Mr. CHAMBERS. The original confessions were in their own handwriting, in the handwriting of the accused, is that correct?

Mr. THON. Yes, sir.

Mr. CHAMBERS. And they were signed by him?

Mr. THON. Yes, sir.

Mr. CHAMBERS. And they are a matter of record in the proceedings of trial?

Mr. THON. Yes, sir.

Mr. CHAMBERS. In the preparation of this final draft of the confession—

Mr. THON. Yes, sir.

Mr. CHAMBERS. And before it was signed, he might change a word here, or change a word there—

Mr. THON. That is right, sir.

Mr. CHAMBERS. In his own handwriting—

Mr. THON. That is right.

Mr. CHAMBERS. But the one that was finally signed, was that a clean copy, did he have to write it over again or did you have some with changes already made?

Mr. THON. I am quite sure there are any number which have corrections in them.

Mr. CHAMBERS. They were in the men's own handwriting?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. To keep on with the affidavit here, it is very short from here on out:

I kept on writing and took another oath, for these oaths are only a matter of form since they do not count before court, because there one has to take a new oath. I was instructed thus by Mr. Perl. During the night of 24 to 25 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 those of his tormentors were: "You, swine, did fire, admit then you will be left alone." A voice ordered "the swine" to be thrown into his cell. The voice was that of Mr. Thon.

Mr. THON. I am certain that I never entered the cell in the evening, sir. I have only once entered the Schwabisch Hall personally in the evening. That was in the company of Mr. Shumacker and Colonel Ellis.

Mr. CHAMBERS. Did the guards at Schwabisch Hall or interrogators use a club for taking the people along?

Mr. THON. The guards had clubs, none of the investigators or interrogators had anything—nothing.

Mr. CHAMBERS. Were you armed?

Mr. THON. No, sir.

Mr. CHAMBERS. You were not armed?

Mr. THON. No, sir.

Mr. CHAMBERS. Were these clubs just like a regular policeman's billy?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. Now, you are certain that the guards didn't have anything—any larger clubs, or anything that they would use for prodding the prisoners along?

Mr. THON. I have never seen them use anything except those regular policemen's clubs.

Mr. CHAMBERS. Did you ever see any of the guards take them and poke a prisoner in the back to push or hurry him along?

Mr. THON. No, sir.

Mr. CHAMBERS. Like a policeman will do when he wants people to hurry along?

Mr. THON. I have never seen that.

Mr. CHAMBERS. Did you see them strike a prisoner to subdue him or make him get up and move along?

Mr. THON. No, sir.

Mr. CHAMBERS. Not to the slightest degree?

Mr. THON. I have not seen it, not the slightest.

Mr. CHAMBERS. Well now, when they were bringing these prisoners in from the cells for interrogation, or perhaps taking them back, and they had three or four, would they tie them together or use a rope to take them from spot to spot?

Mr. THON. No, sir. As I testified before, the prisoners extended their arms and laid them on top of the shoulders of the man ahead of them, and that is how they got along.

Mr. CHAMBERS. There has been some testimony that ropes were used for leading prisoners around.

Mr. THON. No, sir; I have never seen a rope in the prison of Schwabisch Hall.

Mr. CHAMBERS. Well now, while the best witness on this would be Mr. Steiner, we will query him on it at a later time, I would like to ask you to explain then how the testimony of Mr. Bailey, which appears on page 154 of the printed record, in describing a mock trial, discusses the use of a rope.

First of all, did you see a mock trial or take part in the mock trial of a man by the name of Neve?

Mr. THON. Sir, as far as I can remember, Neve was not subjected to this sort of an interrogation.

Mr. CHAMBERS. Now, let me check and make sure I have the right man, because over a period of time your memory gets a little cloudy.

Mr. THON. He is the boy who fainted.

Mr. CHAMBERS. My memory was correct, in that Bailey testified at the time that the man's name was Gustav Neve, and that he did go through a mock trial and that Captain Shumacker conducted it, or was the man who took Bailey to it.

Neve, in his affidavit, makes some mention of a mock trial also, and those two things could be said to corroborate each other.

Bailey says this: That a guard came in with the prisoner and he had a wrapper around him, mostly of all colors—sounds like it was a camouflage jacket of some kind—did any prisoners still have their camouflage jackets on?

Mr. THON. Most of them had overcoats, those long overcoats. Whether or not one had a camouflage jacket, I don't know.

Mr. CHAMBERS. There was no regulation prison garb or uniform?

Mr. THON. No, sir; there was not. They had their clothes on with which they were soldiers.

Mr. CHAMBERS. Bailey said that one of the MP's brought the prisoners in, I will quote him:

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 eye holes in it at all. That was the regular garb that they brought every prisoner in the cell with.

Mr. THON. That is correct.

Mr. CHAMBERS. The hood was used for moving them from spot to spot so their identity would be unknown to the other prisoners?

Mr. THON. That is correct.

Mr. CHAMBERS. Then it goes on:

Senator BALDWIN. Then, you mentioned a rope about 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?

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.

Now, the question: Did you see guards moving prisoners around Schwabisch Hall using a rope?

Mr. THON. At no time.

Mr. CHAMBERS. Could it have happened that they used ropes and you didn't know about it?

Mr. THON. I would have come across it one time or another. I am certain; but, I have never seen a rope in the prison at Schwabisch Hall.

Mr. CHAMBERS. Well, did you hear mention made of the time that Perl and Steiner are alleged to have taken one of the prisoners up some steps and put a rope around his neck and said, "This is it" and gave him a few minutes reprieve and started over—

Mr. THON. I read about that somewhere in one of the letters, or in the paper. I am not certain which it was, but that is the first time in my life I heard of it.

Mr. CHAMBERS. You heard no mention of any conversation like that with Perl or Steiner?

Mr. THON. No, sir.

Mr. CHAMBERS. Now, Thon, the interrogation staff there sort of grew—I believe you said—

Mr. THON. Yes, sir.

Mr. CHAMBERS. It started with a small number and continued to expand?

Mr. THON. Yes, sir.

Mr. CHAMBERS. What instructions were you all given concerning the manner in which prisoners should be treated, both during interrogation and under normal routine?

Mr. THON. Regular instructions which we were given already during the war—no duress, no threats, no coercion should be used, and no physical violence, and again we were questioned just before the trial

of the Malmedy case by Colonel Ellis, who said, "Now, boys, if there is anything that smells, now is the last time you can talk. Please tell me if there was anything."

Mr. CHAMBERS. Was there?

Mr. THON. There was not.

Mr. CHAMBERS. Nobody even mentioned one little shove?

Mr. THON. That is not considered, is it?

Mr. CHAMBERS. This is a purely gratuitous statement that I am making, but in interrogating that many people, who were being processed and what not, you are saying that the worst of it was that voices were raised, and they were called a liar?

Mr. THON. Well, sir, you see it boiled down to a few outfits, where it happened, and there wasn't so many people there any more.

Mr. CHAMBERS. All right.

Mr. THON. All the administrative—

Mr. CHAMBERS. One person or 50, it doesn't make any difference. You all had an extremely difficult task.

Mr. THON. That is correct, sir.

Mr. CHAMBERS. You were trying very hard to build up the case, so it would stand up in trial?

Mr. THON. That is right, sir.

Mr. CHAMBERS. You have testified here that it was very difficult.

Mr. THON. It was.

Mr. CHAMBERS. You testified it was hard to crack these people.

Mr. THON. That is right.

Mr. CHAMBERS. And yet, during all this time no one ever did anything other than treat these boys with a great deal of kindness and consideration?

Mr. THON. I did never say that they were dealt with a great deal of kindness. They were treated like prisoners, PW's should be treated. We didn't go out of our way to do favors for them, although there were some for whom we did do favors. They were treated regularly. That is all.

Mr. CHAMBERS. You say you were given instructions, the same as all in the armed services, concerning PW's?

Mr. THON. That is correct.

Mr. CHAMBERS. Any special written instructions put out at Schwabisch Hall as to how prisoners were to be treated and how interrogations were to be handled?

Mr. THON. I never saw any written instructions; no, sir.

Mr. CHAMBERS. Do you mean that you did not see SOP No. 4?

Mr. THON. To the best of my knowledge I did not. I may have seen it, sir.

Mr. CHAMBERS. If Perl apparently had memorized the thing, how did it happen that Perl could memorize it and you couldn't? You have a good memory.

Mr. THON. When I started out, I was not an interrogator, I was not concerned with SOP's, but was an interpreter for Major Fanton.

Mr. CHAMBERS. Major Fanton put out the SOP's?

Mr. THON. He wrote quite a few, that was his specialty.

Mr. CHAMBERS. SOP No. 4 is in the record in great detail. There are sections in it going into all of the details, it is a very specific detailed thing, but I am amazed that a member of the interrogation staff, or even an interpreter to Major Fanton not knowing about it.

Mr. THON. I knew of the SOP's, I am sure; but what was in them in detail I do not know.

Mr. CHAMBERS. Let me ask you something—in your interrogation of a prisoner, if you found a man willing to play ball—

Mr. THON. Yes, sir.

Mr. CHAMBERS. Under the regulations that you had there, would you have been able to promise immunity or something of the kind, if he would turn State's evidence?

Mr. THON. Definitely not.

Mr. CHAMBERS. What would have prevented you from doing that?

Mr. THON. What would have prevented me? First of all, my lack of knowledge of law.

Mr. CHAMBERS. Well, could you go to a man and say, "Look, you were in this company, and you know these other fellows. You are guilty, we know, and these others are. If you are willing to give us the dope on these other fellows, we will let you off?"

Mr. THON. That was not done by me, I know. I had no power to.

Mr. CHAMBERS. What kept you from doing it? It's quite a common thing to try to get a man to turn State's evidence in normal procedure. What kept you from doing it at Schwabisch Hall?

Mr. THON. What kept me from doing it? That, I can't answer, because I don't know, but I know that we never did it.

Mr. CHAMBERS. Now, you did get some of these people to serve as witnesses.

Mr. THON. That is right, sir.

Mr. CHAMBERS. And they probably were people who had been mixed up in some of these things.

Mr. THON. To the best of our knowledge, they were not mixed up in the thing.

Mr. CHAMBERS. In other words, you used the ones as witnesses whom you felt you could have taken and convicted, is that correct?

Mr. THON. That is correct, sir. I can cite one example whom Colonel Ellis wanted to use as a witness first, but then decided no, and that was Sprenger.

Mr. CHAMBERS. Why did you change your mind on Sprenger?

Mr. THON. I didn't change my mind.

Mr. CHAMBERS. Why did Colonel Ellis change his mind, do you know?

Mr. THON. I couldn't tell you.

Mr. CHAMBERS. Had Sprenger previously confessed or given you information?

Mr. THON. Yes, sir, lots of it.

Mr. CHAMBERS. And after you all had gotten a confession from him, you decided to try him anyway?

Mr. THON. That is correct, sir.

Mr. CHAMBERS. That is really putting him through.

Did anybody make him any promises when he made his original statements?

Mr. THON. Not in front of me, sir. I did not interrogate him.

Mr. CHAMBERS. Well, the reason I was inquiring as to why you did not do it is because SOP No. 4 had an instruction in there that you could not give promises of immunity, but it established a procedure which I understood was never used, or at least that is the testimony

before our committee, which would have permitted you, under certain circumstances, with the approval of a higher authority, to have done it.

Mr. THON. Well, sir, that SOP, I don't know, it's not for me.

Senator BALDWIN. There was a procedure in that SOP, as I recall it, something to the effect that if it developed that a prisoner could be used as a witness, that it was to be reported to the commanding officer, or something of that kind.

Mr. THON. Senator, I am sure that SOP was meant for the attorneys who were there, and not—

Senator BALDWIN. You went there as an interpreter only?

Mr. THON. An interpreter, and was promoted to interrogator.

Senator BALDWIN. How long were you there before you were promoted from interpreter to interrogator?

Mr. THON. I think it was about 4 or 5 weeks later, I couldn't say specifically.

Senator BALDWIN. When did you first go to Schwabisch Hall, what was the date?

Mr. THON. The first date, sir—

Senator BALDWIN. Do you recall, was it sometime in December?

Mr. THON. Early in December.

Senator BALDWIN. And you left there in April?

Mr. THON. In April, yes, sir.

Senator BALDWIN. So you were there all the time?

Mr. THON. I was there all the time.

Mr. CHAMBERS. I want to ask one other set of questions which requires a conclusion on your part, Thon: You were at the trial, is that correct;

Mr. THON. Yes, sir.

Mr. CHAMBERS. At the trial, only nine, if I remember correctly, of the accused took the stand in their own behalf.

Mr. THON. I believe it was eight.

Mr. CHAMBERS. Eight or nine.

Senator HUNT. Nine, exactly.

Mr. CHAMBERS. Only three of that group alleged any physical brutality?

Mr. THON. Yes, sir.

Mr. CHAMBERS. For the purpose of securing confessions. How do you account for the fact that about a year and a half we have just any number of affidavits that have come in claiming brutality in considerable detail?

Mr. THON. The only thing I can say is that Colonel Everett, for some reason or other, has engineered this. This is my belief and please, gentlemen, don't hold me to it because it is my own personal belief, it is not an accusation or anything. I think the man's pride was hurt.

Mr. CHAMBERS. Pardon?

Mr. THON. His pride was hurt during the trial, and he lost the trial and his pride was hurt. I don't think anything else was the reason.

Now, this is my own personal opinion.

Senator HUNT. Was he a well man during the trial?

Mr. THON. Pardon?

Senator HUNT. Was he a well man during the trial?

Mr. THON. I observed him to be so, sir.

Mr. CHAMBERS. Of course you would fully expect, if there was anything to these charges, that the accused either before or after conviction, would try to get that story across to somebody.

Mr. THON. I would personally believe that if anything like that would have occurred, they would have taken the stand in their own defense and would have submitted this evidence which they now bring to the court, at that time.

Senator KEFAUVER. Were they given the opportunity?

Mr. THON. Yes, sir. Eight took the stand, the others could have taken it too, I am certain. Of course that is a question for possibly the court to answer, or the defense attorneys.

Senator BALDWIN. Did you testify at the trial?

Mr. THON. Yes, sir, I did.

Senator BALDWIN. In what connection?

Mr. THON. Identifying statements, sir, which I had taken.

Senator BALDWIN. Is that the only testimony you were called upon to give?

Mr. THON. Well, as to the method, and everything else, sir; and, I was cross-examined by the defense.

Senator BALDWIN. Do you have any further questions, Mr. Chambers?

Mr. CHAMBERS. Thon, one of the charges that have been made, concerning our interrogators, was to the effect that certain of them fraternized with families of the accused. I know this matter has been gone into by Colonel Raymond and his Board of Administration. I think the record here should show clearly what it is.

Do you recall the incident?

Mr. THON. Yes, sir, I do.

Mr. CHAMBERS. Was it after the trial or during the trial?

Mr. THON. It was after the trial.

Mr. CHAMBERS. After the trial?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Had the sentences been handed down?

Mr. THON. They were to be handed down the next thing, all the testimony had been taken, everything had gone in, sir.

Mr. CHAMBERS. Now, did you and some other members of the prosecuting staff, or the former Malmedy interrogating staff—

Mr. THON. Yes, sir.

Mr. CHAMBERS. Take some of the wives and relatives of the accused to some officers' club?

Mr. THON. Yes, sir.

Mr. CHAMBERS. How many times did it occur?

Mr. THON. Once.

Mr. CHAMBERS. Once?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Who was with you, besides yourself?

Mr. THON. To the club was only one man, and if I would be permitted not to mention his name—

Mr. CHAMBERS. Well, was he a member of the prosecuting staff?

Mr. THON. A clerk.

Mr. CHAMBERS. On the prosecuting or interrogating staff?

Mr. THON. Interrogation staff.

Mr. CHAMBERS. Interrogation staff?

Senator BALDWIN. What were his duties as a clerk? Did he have anything to do with the questioning?

Mr. THON. Just the filing and typing.

Senator BALDWIN. He was not an interrogator or translator?

Mr. THON. No, sir.

Senator BALDWIN. He was a clerk?

Mr. THON. A clerk, definitely.

Mr. CHAMBERS. How did this come out? Who brought it out the first time?

Mr. THON. Colonel Raymond.

Mr. CHAMBERS. Colonel Raymond brought it out?

Mr. THON. Yes, sir.

Mr. CHAMBERS. You mean——

Mr. THON. I'm sorry, it was Friederick who was on the team.

Mr. CHAMBERS. Up until the time this matter was brought out by the Raymond board, no one had any knowledge of it, and no administrative action had been taken?

Mr. THON. Colonel Straight knew about it; yes, sir.

Mr. CHAMBERS. What did Colonel Straight do about it?

Mr. THON. One man was sent home and I was permitted to stay here.

Mr. CHAMBERS. The man sent home was the clerk?

Mr. THON. Yes, sir.

Mr. CHAMBERS. For the interrogation team?

Mr. THON. Yes, sir.

Mr. CHAMBERS. You were permitted to stay?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Was there any disciplinary action, or reprimand or anything like that?

Mr. THON. No, sir; not to my knowledge.

Mr. CHAMBERS. Where you are concerned?

Mr. THON. To my knowledge, no, sir.

Mr. CHAMBERS. Didn't they say they were giving you another chance, or something like that?

Mr. THON. I was permitted to stay here and told to report to work for Colonel Carpenter, and I did.

Mr. CHAMBERS. That was the only time that a thing like that occurred?

Mr. THON. That is right, sir.

Mr. CHAMBERS. It was after the trial?

Mr. THON. Yes, sir.

Mr. CHAMBERS. It would appear to be very poor judgment.

Mr. THON. It sure was.

Mr. CHAMBERS. I believe you so testified in the record before Colonel Raymond.

Senator BALDWIN. What happened? How did you happen to do it?

Mr. THON. It resulted from drinking, sir.

Senator BALDWIN. What?

Mr. THON. It resulted from drinking.

Mr. CHAMBERS. What did you do, go to them and——

Mr. THON. No, sir, they came to us. They wanted some favors. One lady was expelled from the courtroom for some reason, I don't

recall what the reason was, and she came with a bunch of others, in order to seek permission to get back into the courtroom.

Mr. CHAMBERS. How many came to you, how many ladies?

Mr. THON. I think four or five, sir.

Mr. CHAMBERS. You took four or five up there?

Mr. THON. Yes, sir.

Mr. CHAMBERS. Two men took four or five women in there?

Mr. THON. The exact number of which went along, at least three, I am sure—three or four.

Mr. CHAMBERS. There were more women than men on the party?

Mr. THON. That is right, sir.

Mr. CHAMBERS. All you did was go to the club and do a little drinking?

Mr. THON. That is right, and we were there for approximately a half hour or three-quarters of an hour, and then Colonel Benson asked us to leave, and we left at once.

Senator BALDWIN. Did you say "Colonel"?

Mr. THON. Benson.

Senator BALDWIN. Asked you to leave?

Mr. THON. That is right, sir.

Mr. CHAMBERS. Where did you go then?

Mr. THON. The clerk and I went on home, and where the girls went, I don't know.

Mr. CHAMBERS. Was that part of the testimony brought out before the Raymond board?

Mr. THON. That was part of it; yes, sir.

Mr. CHAMBERS. Did they go into as much detail as we have done here?

Mr. THON. No, sir.

Mr. CHAMBERS. Let's recapitulate this thing a little bit.

You are absolutely certain that it was on one occasion only—

Mr. THON. That is correct, sir.

Mr. CHAMBERS. After the trial—

Mr. THON. That is right, sir.

Mr. CHAMBERS. Several wives of the accused came to you?

Mr. THON. That is right, sir.

Mr. CHAMBERS. Where were you when they came to you?

Mr. THON. At our billet.

Mr. CHAMBERS. At your billet?

Mr. THON. Yes, sir.

Mr. CHAMBERS. And they wanted certain favors from you?

Mr. THON. That is correct.

Mr. CHAMBERS. What were those favors?

Mr. THON. As I said, one lady was expelled from the court room—

Mr. CHAMBERS. What did she want you to do for her?

Mr. THON. Wanted us to go to Colonel Ellis and see what we could do.

Mr. CHAMBERS. To get her back in court?

Mr. THON. It happened during the trial—pardon the deviation—that Mrs. Rehagel wanted to see her husband very badly, and I was the one that arranged it with the security commander at the time, so she could see him for a few minutes.

Mr. CHAMBERS. You arranged with the security man for her to see Mr. Rehagel?

Mr. THON. That is right.

Mr. CHAMBERS. This is an earlier incident?

Mr. THON. Earlier.

Mr. CHAMBERS. Did you take her out?

Mr. THON. No, sir.

Mr. CHAMBERS. Did you buy her a drink?

Mr. THON. No, sir.

Mr. CHAMBERS. She came to you and asked for a favor—

Mr. THON. That happened during the trial, while I was in the courtroom.

Mr. CHAMBERS. So then, subsequent to that after the trial was over these three people came to your billet?

Mr. THON. Rehagel was not among them.

Mr. CHAMBERS. Who were they?

Mr. THON. I don't recall their names, sir.

Mr. CHAMBERS. The group wanted you to talk to Colonel Ellis about one of their husbands—

Mr. THON. That is right.

Mr. CHAMBERS. So she could get back in the courtroom?

Mr. THON. In the courtroom; that is correct.

Mr. CHAMBERS. Whose idea was it to go to the club and drink, yours or your friend's?

Mr. THON. At first we were a large group, there were four people there.

Mr. CHAMBERS. All right, let's get on with this.

Eventually you all decided it would be a good idea to go to the club and get some drinks?

Mr. THON. That is correct.

Mr. CHAMBERS. You got there and were asked to leave?

Mr. THON. That is correct.

Mr. CHAMBERS. Why were you asked to leave, because there was a restriction against Germans or enlisted men being there?

Mr. THON. The thing was, somebody was offended because the Germans were allowed in the club. I saw several there—

Mr. CHAMBERS. Did Colonel Benson know that these were wives of the accused?

Mr. THON. I am sure he did.

Mr. CHAMBERS. Did he call that to your attention?

Mr. THON. No, sir. What he did tell me that evening, I don't know, but I suddenly got a clear head and said to myself, "You had better quit."

Mr. CHAMBERS. After you left, you split up, the women went some place and you went to your billet?

Mr. THON. That is right.

Mr. CHAMBERS. And that is the only place you ever took them out?

Mr. THON. The only time.

Mr. CHAMBERS. The inferences that have been drawn from it are not completely in accord with the way you told it. That didn't go as far as some of the other inferences.

I know of no other questions at this time, sir.

Senator BALDWIN. Senator Hunt, do you have any questions?

Senator HUNT. I want to reemphasize some of the points that Mr. Chambers touched on just at the close of his questions.



You were present at the trial?

Mr. THON. Yes, sir.

Senator HUNT. The defense attorneys had the opportunity during these trials to ask the prisoners, for the benefit of the court, if they had been mistreated. Did they ask them those questions?

Mr. THON. Only eight took the stand, sir, and I believe they asked three or three testified that they were abused in some way.

Senator HUNT. That testimony is available to us, is it not?

Senator BALDWIN. Yes.

Senator HUNT. Of course, these affidavits postdate the trial, don't they?

Mr. THON. Pardon?

Senator HUNT. These affidavits postdate the trial.

Mr. CHAMBERS. They are approximately 18 months later; most of the affidavits were made in the early part of 1948.

Senator HUNT. Now, would it not have been most logical, would it not have been necessary, would not the attorneys have been very negligent in their duties as defense attorneys if they had not developed this mistreatment at great length during the trial?

Mr. THON. I think that would be the proper thing to do.

Senator HUNT. As I understand, before the trial questionnaires were submitted to each of the defendants and these questionnaires specifically asked the defendants if they had been mistreated.

Are those questionnaires available to this committee?

Mr. CHAMBERS. No, sir; and as far as I know they are no longer available. The defense attorneys, Colonel Dwinnell and Mr. Strong and Mr. Sutton, and one other who has testified before us, made reference to them.

The questionnaires essentially were prepared for the purpose of developing general information concerning the accused, and there was a series of questions in there that was aimed at developing duress, if it existed.

Now, according to our records, Colonel Carpenter was sent down to investigate the rumors of duress, and these questionnaires were turned over to him and he picked out what he considered the 28 worst cases. That was verified, as I recall, by another witness before us, and Colonel Everett agreed these were the 28 worst cases. Then, they questioned those 28 accused—this is before the trial.

Senator KEFAUVER. The 28 worst cases insofar as atrocities are concerned, or what?

Mr. CHAMBERS. No, sir; the 28 worst cases on charges of duress.

Senator HUNT. As far as the questionnaires showed.

Mr. CHAMBERS. That is correct.

Senator HUNT. Prior to the trial?

Mr. CHAMBERS. Yes.

Those 28 cases were interrogated by Colonel Carpenter and that is all that appears in the record; and, out of the 28, if my memory serves me correctly, there were only 4 who alleged any physical mistreatment, and those were cases where the accused stated that they had been slapped or shoved by guards and not for the purpose of getting confessions.

Senator Baldwin was there and Senator Hunt, and we pressed Colonel Carpenter and the others on that point, because that was the only thing that took place before the trial and was part of the res

gestae, it was going on at the time when the thing was still occurring, and Colonel Carpenter testified that he felt that the charges of duress to obtain confessions was not substantiated to the slightest degree.

It so happened that the interpreter, who was an Austrian, had fairly recently come to the United States. We found that he was available and Colonel Carpenter didn't even know he was there, and we subpoenaed him and he went on the stand and testified at great length and corroborated Colonel Carpenter's testimony in complete detail, and went further to this extent, that he said that Colonel Everett subsequently told him that these cases which they looked at were the worst cases, and that testimony to which I am referring to here appears in our record in detail, starting on page 883 of the printed report, which is Colonel Carpenter's testimony, and the subsequent testimony of his interrogator starts on 939, and is the testimony of Paul C. Guth.

Senator HUNT. I was present when Carpenter testified. I was not, when the other gentleman was there.

But, Colonel Chambers, if the question is answered and the testimony is in, there is no use going over it again.

Senator BALDWIN. I think on 886 of the record Colonel Carpenter covers the things we have under discussion here, as to the number of people alleging mistreatment before the actual trial.

Senator HUNT. Eight hundred and eighty-six?

Senator BALDWIN. Eight hundred and eighty-six, yes.

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—4 of these 20 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.

Then it goes on and Colonel Carpenter discusses it in detail.

Senator KEFAUVER. Where are the original statements?

Senator BALDWIN. The original statements?

Senator KEFAUVER. Signed by the prisoners themselves.

Senator BALDWIN. There were two sets.

Senator KEFAUVER. I mean the ones where there was any duress.

Senator BALDWIN. The statements you probably refer to, Senator, are the affidavits that are attached to Everett's petition in the Supreme Court. They are the ones that——

Senator KEFAUVER. I mean the ones before the trial, the questionnaires.

Mr. CHAMBERS. Those were working papers used by the defense attorneys. We requested the Department of the Army to make every effort to locate them, and as I recall the story that was given us by Colonel Dwinnell, associate defense counsel, they were not saved, only that he personally had one that he had kept as a souvenir, but apparently they were considered to be temporary working papers and were destroyed.

Senator HUNT. And we have nothing in our testimony directed to the record by the prisoners, to the effect that they were mistreated, any statements made prior to the trial?

Mr. CHAMBERS. Nothing in our record other than testimony that has been put in by the defense attorneys, that the prisoners told them that some of these things happened.

It was the prisoners telling them, of course, which resulted in an appeal being made through channels which resulted in Colonel Carpenter making this investigation.

Senator BALDWIN. That was prior to the actual trial?

Mr. CHAMBERS. That was prior to the actual trial, and at the trial three of the accused, three of the nine who took the stand in their own behalf, alleged physical brutality or duress. The balance, the other six, did not.

Senator KEFAUVER. Have any of the six been condemned to die?

Mr. CHAMBERS. Colonel Murphy, who worked on the case for the Secretary of the Army at some length, states that none of those three were in the group that are now under death sentence.

Senator BALDWIN. Do you have anything further, Senator Hunt?

Senator HUNT. Yes.

Do you know the doctors, the M. D.'s at Schwabisch Hall?

Mr. THON. Yes, sir; Dr. Karan.

Senator HUNT. How many were there?

Was there just one?

Mr. THON. Also Dr. Ricker.

Senator HUNT. You know both?

Mr. THON. I knew both.

Senator HUNT. Did you know them very intimately? Did you meet with them daily, did you ever mess with them?

Mr. THON. I saw them daily, sir; yes, sir.

Senator HUNT. Were you in conversation with them?

Mr. THON. I was in conversation with them.

Senator HUNT. Friendly terms with them?

Mr. THON. Yes, sir.

Senator HUNT. Talked shop as to what went on?

Mr. THON. We always talked shop.

Senator HUNT. Did they ever make any comment as to having been called in to examine any of these prisoners that had been mistreated?

Mr. THON. No, sir.

Senator HUNT. They would have been the first to have seen the prisoners if they they had had any mistreatment to the extent where

they had a fractured mandible, or where they had been kicked on the testicles to the extent where they had permanent injury—they would have been the first to have seen them?

Mr. THON. The first to have been called.

Senator HUNT. Yet you saw the doctors daily and never heard them make any mention or comment or refer to it in any way?

Mr. THON. No, sir.

Senator HUNT. Do you think that if such a thing had been taking place, these doctors had made an examination of such prisoners, that they would have commented on it?

Mr. THON. Certainly, sir, they certainly would have.

Senator HUNT. That is all.

Senator BALDWIN. Senator Kefauver?

Senator KEFAUVER. Mr. Thon, you said that the case really broke when you got the statement of Werner Reicke?

Mr. THON. Werner Reicke.

Senator KEFAUVER. Where did you get his statement?

Mr. THON. In Schwabisch Hall, sir. I believe it was cell 116.

Senator KEFAUVER. Was Werner Reicke one of the ones under death sentence?

Mr. THON. No, sir; he was a witness, sir, during the trial.

Senator KEFAUVER. Was he given an alleged so-called mock trial, or did he make this statement?

Mr. THON. No, sir; he made the statement straight.

Senator KEFAUVER. Was he part of this Panzer group?

Mr. THON. Yes, sir; he belonged to the Seventh Company.

Senator KEFAUVER. And from that time on, you knew who was involved?

Mr. THON. Yes, sir. We knew then that the Seventh Company had taken part in it, and we knew from testimony of our own survivors, which they had given right after the thing happened, that they had half-tracks lined up there, so we knew it must have been either the Third or Ninth Panzer Pioneer Company who was involved, and it was then just a matter of finding out which platoon it was.

Senator KEFAUVER. I asked, Mr. Chambers, whether it is alleged that Werner Reicke was subjected to any kind of duress in making his statement.

Mr. CHAMBERS. Spell his name.

Mr. THON. R-e-i-c-k-e.

Mr. CHAMBERS. I don't think we have an affidavit alleging duress.

Senator KEFAUVER. Was he given any kind of sentence?

Mr. THON. No, sir; he was used as a witness by the prosecution.

Senator KEFAUVER. Where is he now?

Mr. THON. Here in Germany, I couldn't tell you actually.

Senator KEFAUVER. He was there but he didn't actually participate in the shooting?

Mr. THON. That is right. He was a driver, to the best of my recollection.

Senator KEFAUVER. How many other eyewitnesses were there, aside from the ones you got confessions from—do you recall?

Mr. THON. I cannot recall that, sir.

Senator KEFAUVER. Were there a number, five or six?

Mr. THON. I cannot give you the number, sir. I am sure there were more.

Senator KEFAUVER. What are you doing now, Thon?

Mr. THON. Chief of the Evaluation Section of CAD, OMGUS.

Senator KEFAUVER. Chief—

Mr. THON. Evaluation Section.

Senator KEFAUVER. When did you go out of the service?

Mr. THON. Pardon?

Senator KEFAUVER. When did you go into the service of the United States?

Mr. THON. In 1942, on the 14th of August.

Senator KEFAUVER. Prior to that time, you lived in Philadelphia?

Mr. THON. No; I lived in New York.

Senator KEFAUVER. In New York?

Mr. THON. Yes, sir.

Senator KEFAUVER. What did you do in New York?

Mr. THON. First, I was in the grocery business, and then in the restaurant business.

Senator KEFAUVER. Did you have your own business?

Mr. THON. No, sir; I did not. I worked for Gristede Bros., and others.

Senator KEFAUVER. Have you ever been in trouble yourself, have you ever been convicted or anything?

Mr. THON. No, sir; I have not.

Senator KEFAUVER. How much education do you have?

Mr. THON. High school, sir.

Senator KEFAUVER. Are you married?

Mr. THON. I am married; yes, sir.

Senator KEFAUVER. Is your wife over here?

Mr. THON. At present she is in England because we had a death in the family this week.

Senator KEFAUVER. What?

Mr. THON. We had a death in the immediate family this week.

Senator KEFAUVER. Is she an American citizen?

Mr. THON. She is British, sir.

Senator KEFAUVER. How long have you been married?

Mr. THON. Since last Sunday.

Senator BALDWIN. Since last Sunday?

Mr. THON. That is right, sir.

Senator KEFAUVER. This has sort of disrupted your wedding.

Mr. THON. We got married on Sunday, and my mother-in-law died on Wednesday. I got the news on Wednesday between 9 and 10, and I was at Schwabisch Hall on Thursday at 2, so I have had a rather rough time this week.

Senator KEFAUVER. It is your impression that the defense counsel assigned to defend these men put up the best fight for them that they could? Is it?

Mr. THON. Well, me not being a lawyer, I shouldn't say anything.

Senator KEFAUVER. But they—

Mr. THON. I can only speak as a layman.

Senator KEFAUVER. They seemed to be conscientious in doing their job?

Mr. THON. Yes, sir.

Senator KEFAUVER. How many of them were there—defense counsel?

Mr. THON. Just a moment, let me recollect. I have to go over them by name.

Mr. CHAMBERS. Eight defense counsel were there?

Mr. THON. I believe there were about 10, sir.

(There was discussion off the record.)

Mr. CHAMBERS. For the record, there were six German defense counsel and seven United States defense counsel assigned for the Malmedy trials.

Senator KEFAUVER. I believe that is all, Mr. Chairman.

Senator HUNT. Nothing further.

Senator BALDWIN. I have just one or two questions.

You know, of course, Lieutenants Perl and Kirschbaum?

Mr. THON. I do, sir.

Senator BALDWIN. And you worked with them very closely?

Mr. THON. Yes, sir.

Senator BALDWIN. At any time did you ever see them use any physical violence or physical abuse?

Mr. THON. No, sir.

Senator BALDWIN. I want a very frank answer to this, Mr. Thon.

Mr. THON. I will give you the facts and answer that I never saw them use any physical abuse or violence.

Senator BALDWIN. Did you ever see them strike any prisoner?

Mr. THON. No, sir.

Senator BALDWIN. What did you do before the war?

Mr. THON. I was in the grocery business and restaurant business.

Senator BALDWIN. In New York?

Mr. THON. Yes, sir.

Senator BALDWIN. How did you come into these war crimes trials?

Mr. THON. When I came overseas, sir, I was picked out of the infantry and assigned to intelligence work due to my ability to speak German; and, after the war was over and civilians were being sought, I applied to War Crimes for a job as an interrogator, which is what I was during the war, and that is how I got in there, sir.

Senator BALDWIN. Did you see service here in Europe during the war?

Mr. THON. Yes, sir.

Senator BALDWIN. And in the Intelligence Department your job was to question prisoners?

Mr. THON. Civilians and prisoners both.

Senator BALDWIN. Civilians and prisoners both?

Mr. THON. Yes, sir.

Senator BALDWIN. And you speak German fluently?

Mr. THON. Yes, sir.

Senator BALDWIN. And you understand it?

Mr. THON. Yes, sir; I do, sir.

Senator BALDWIN. Did you know Dr. Knorr at all?

Mr. THON. No, sir; I did not—not at all.

Senator BALDWIN. Did you, or do you, recall seeing anybody who was called Dr. Knorr there at the prison?

Mr. THON. No, sir; I do not.

Senator BALDWIN. Well, my recollection of the testimony taken in the United States was that Dr. Knorr used to come to the prison twice a week to treat the prisoners for dental work, and do you say that you never saw him at any time?

Mr. THON. I never saw him, sir.

See, the dispensary is in a different building entirely from the building where we were working.

Senator BALDWIN. A different building?

Mr. THON. In a different building altogether.

Senator BALDWIN. Did you ever hear anybody discuss the fact that a Dr. Knorr was coming there?

Mr. THON. No, sir.

Senator BALDWIN. At any time, did you ever make a promise of immunity to any of these prisoners? Did you ever tell them that if they would sign a confession they would get a lighter sentence or be let off completely?

Mr. THON. No, sir.

Senator BALDWIN. In your work there, did you work with Mr. Kirschbaum or Lieutenant Perl, or any of the other men that took part?

Mr. THON. Occasionally, yes, sir. It was not a set rule that two people worked together. I mean, we consulted each other in what we were going to do, and it was more or less informal; there was no such thing as one person being assigned to another, except with a non-German-speaking personnel. They, of course, had an interpreter.

Senator BALDWIN. There is some testimony that we took in the United States to the effect that when these prisoners were brought into these mock trials, so-called, that they had a spotted robe of some kind on. Did you ever see anything like that?

Mr. THON. No, sir. I read that in the paper, and I was trying to figure out what it was, and I never have seen a spotted robe there. It is possible that they had camouflage jackets on, which was their equipment during the war, but that is all, sir.

Senator BALDWIN. When these men sat in the mock trials, did any of the men who were there take the part of judges and have robes on?

Mr. THON. Merely their uniforms, and on one occasion I remember they put insignia on, Army insignia.

Senator BALDWIN. Tell us briefly how the mock trials were set up, as you recall it.

Mr. THON. As I said before, we had a table set up in a U shape, and we had a black cloth over it, the same cloth out of which the hoods were made. We had a crucifix and burning candles on the table, and then we sat around the table and the prisoner came in and stood in front of us, and that is the way it was; and then the others, I am sure there were only three fellows sitting, one on one side, one on the other and one behind the table and they would ask questions, and that one I took part in, the prisoner was hardly asked a question. I mean, it was just shouting back and forth between me and Perl.

Senator BALDWIN. These hoods, will you describe them to us?

Mr. THON. It was a simple black hood made out of material which was available at the prison, just a plain hood which you slipped over, and it was yellow and silver or grayish inside.

Senator BALDWIN. Yellow, or—

Mr. THON. Yellow and grayish striped-like.

Senator BALDWIN. There is some testimony to the effect that these sometimes were bloody. Did you ever see anything like that?

Mr. THON. No, sir.

Senator BALDWIN. Can you tell us anything about that?

Mr. THON. I never saw a bloody hood.

Senator BALDWIN. Were they laundered frequently, do you know?

Mr. THON. That I couldn't tell you. That was under the jurisdiction of the administrative people. We had nothing to do with that.

Senator BALDWIN. Senator Hunt?

Senator HUNT. Were you ever in the dental office?

Mr. THON. I was in the dental office; yes, sir.

Senator HUNT. Did you notice any records of any kind around the dental office where, when patients came in for examination of the mouth, there was a chart prepared of the findings of the examination?

Mr. THON. Sir, I never examined anything like that there.

Senator HUNT. Did you see around the dental office any file cases that would indicate that there were case records in the file?

Mr. THON. I did not see any of those.

Mr. CHAMBERS. I have one more question.

Mr. THON. Yes, sir?

Mr. CHAMBERS. Did you take a part in the interrogation of Fritz Eckmann?

Mr. THON. At his interrogation, no, sir. The only thing I did on Fritz Eckmann, I knew he was supposed to be a witness, and I said to Mr. Ellowitz, "I'm going to play a dirty trick." He said, "Why?" I had to go up on the same floor where Hennecke was, and Eckmann, so I opened the cell door on Eckmann and said, "Eckmann, Mr. Ellowitz is very angry at you," And he said, "Why is he angry?" And I called Mr. Ellowitz over and said, "Eckmann wants to tell you something."

That is all.

Mr. CHAMBERS. Now, you stated originally Eckmann was supposed to be used as a witness.

Mr. THON. That is right.

Mr. CHAMBERS. And that Ellowitz had been handling him. Why did you think that Eckmann would make a better accused than a witness?

Mr. THON. I don't know what gave me the idea to do it, but that is the way it happened. I remember that.

Mr. CHAMBERS. Now, let me ask you about this: Eckmann has put in an affidavit dated January 21, 1948, and on about—well, he said this:

On about February (no date), Mr. Thon and Lieutenant 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. 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 to drink water, we had to drink out of the toilet. \* \* \*

That is a considerably different story than the one you told us.

Mr. THON. He was in the cell. I remember his cellmate, Posluschni; he is the one who should be able to testify to that. He was his cellmate.

Mr. CHAMBERS. Eckmann was not in one of the so-called solitary confinement cells?



Mr. THON. No, sir; he was together with this one person whom I just mentioned, and he was, I believe, an Austrian national

Mr. CHAMBERS. I can't pronounce the name, but Eckmann's cell-mate was not accused; is that right?

Mr. THON. No, sir.

Mr. CHAMBERS. Was he released, cleared of all charges?

Mr. THON. I couldn't tell you.

Mr. CHAMBERS. He was not one of the defendants?

Mr. THON. No, sir.

Mr. CHAMBERS. Not used as a witness?

Mr. THON. No, sir, but I think he made a statement though, sir.

Mr. CHAMBERS. You do?

Mr. THON. Yes, sir. It may not be among these records here, sir; it may be among the pretrial records.

Senator BALDWIN. Are there any further questions that anybody has to ask?

(No response.)

Senator BALDWIN. When you leave here, where are you going—to Frankfurt?

Mr. THON. Yes, sir. If I could, I would appreciate it, because I have to bring my son over. I acquired a son through my wife; and I have no billet here or anything; so, I am in rather a predicament.

Senator BALDWIN. After lunch, could you come back for about an hour?

Mr. THON. I can come back until this evening. My train doesn't leave until evening. I will be available all day.

(The following is the correspondence referred to between Harry W. Thon and others:)

APRIL 28, 1949.

DEAR HARRY AND MURIEL: Received your cable re Knorr and letter re Bailey. Am anxiously awaiting the stuff you are sending me on Knorr.

Dietrich Schnell, who was a medical student and worked in the prison dispensary at S. H., gave an affidavit that he treated many of the Malmedy prisoners for injuries. Can you get anything on him? Also, do you know whether the prison records are still at S. H. on when the Malmedy prisoners arrived and left? That is, can you find out if the prison records are still in existence there and how detailed they are? This is important.

We are making good progress, and Friday the twenty-second Sergeant Scalice testified and did us an immense amount of good. Moe was also on the stand. He was excellent, as was Aherns. We definitely made progress. They adjourned last Friday until tomorrow, when Judges Simpson and Van Roden take the stand. I am hoping Van Roden will be thoroughly depreciated; and, if so, we are in a breeze.

I feel pretty confident and have reason to feel so, as all the affidavits I have from Lieutenant Owens, Captains Evans and Johnson, Lieutenant Frank, Dr. Ricker, Sergeant King, and Sergeants Unterscher and Sykes all indicate that we were fair and square in our dealings with the SS. The committee expects to call all these people; and, if they do, they will make good witnesses for us.

If you can get anything on Schnell, please do so at once.

Regards to you both.

Yours in all the bonds,

The Boss.

APRIL 29, 1949.

DEAR HARRY: Am distressed after today's hearings, as Senator McCarthy produced a letter purportedly written by Kurt Thiel, stating that you took him into a cell where there was a man unconscious on the floor, covered with blood and a black hood on.

Do you remember this incident? Please cable me or answer at once. This is the worst blow yet.

Sincerely,

The Boss.

Could this have been Neve, whom I understand from Baileys' testimony fainted once when being interrogated by Ralph?

MAY 1, 1949.

DEAR HARRY: Received your affidavit on Knorr and it is fine. In the future, on such things, don't you witness them. The oath is enough. Just looks better without your name on them.

The news clippings you sent are far from the true facts. I never admitted "mock trials." I did say—and it was no admission—that we held "schnell procedures," just like I described them in my affidavit that I sent you last fall. The part you questioned in the newspaper article was not my language. It was what Senator McCarthy said. Not what I said. All papers carrying UP dispatches had the same thing, but it wasn't correct. I have the record of trial and know what I said.

Bailey was on the stand Friday but really didn't say much more than hearsay. He didn't do any good nor much harm.

However this did shock me was the letter Senator McCarthy pulled that Kurt Thiel had written him stating that he had been at S. H. and that I had told him not to beat prisoners. That thereafter you took him to a cell where an unconscious man was on the floor with a bloody hood on. I may have written you about it Saturday but since I have no copies of my letters, I just have to rely on my memory. Do you know anything about this incident? Was this Neve who has fainted?

Bailey said we led the prisoners around with a hangman's rope around his neck and a sleeveless multicolored robe on. Did you ever hear of such a thing?

He also said Steiner told him that he and Perl staged a mock hanging.

Please send the enclosed clipping to Colonel Rosenfeld.

Love to Muriel.

Sincerely

The Boss.

The committee will either go to Europe or bring you, Steiner and Joe here.

MAY 7, 1949.

DEAR HARRY: Things are moving along slowly. Captain Evans, Lieutenants Owns and Fitzgerald were called Friday and did all right by us. Dwight was on Thursday and will be back Monday for further testimony.

Received your wire re Teil. Also talked to Luke Rogers, for whom he was an interpreter at that time. Luke says he was at S. H. perhaps 1 not over 2 nights. That Teil was with him but he never told him about this unconscious man. Rogers doesn't believe it happened. Could there be any possible explanation to this tale? Teil had a good honest reputation.

All of Bailey's testimony was pretty well blasted. Dwight really took care of him.

We are being prosecuted by this Senator McCarthy and no one defends us but we are doing O. K. So it goes.

You will either be called back here to testify or the committee will come over there. I may come along if they go to Europe. Hope so.

Give my love to Muriel.

Sincerely,

COLONEL E.

MAY 19, 1949.

DEAR HARRY: The full Armed Services Committee ruled today that the lie detector would not be used.

Bill was on for 2 or 3 days and did real well. Could describe quite well how he took different statements. Ralph was on today and did equally well. Doc Ricker and Karan are due tomorrow. This thing may wind up soon. I hope so as I'm tired of being around here and listening to Senator McCarthy rave.

Stay in there and fight. The committee is fair-minded so we have nothing to worry about. It is entirely possible that the committee may not even call you and the others from Germany.

My love to Muriel,

The Boss.

MAY 25, 1949.

DEAR HARRY: The committee recessed until May 31 so I'm going back to California for a few days. Write me here, however.

Sloan testified and made a silly ass of himself. Enclosed is the newspaper account. He said he brought the PW's to S. H. and that you showed him how quick you could get a confession. Said you hit him in the chest and raised his left arm. Ask the guy if he had shot and he said "Ja wohl." Then both of you left the cell.

Am enclosing letter from Barney Crawford as he remembers the story. It may be some help to you. Please return the letter at once.

Colonel Carpenter did us a lot of good. Belittled the claims of brutality, saying there were only four who said they were punched and then they were so vague that he considered it unimportant. He really helped.

Stay in there and fight. We are doing all right.

Love to Muriel.

The Boss.

MAY 21, 1949.

DEAR HARRY: Received yours of the 18th with clippings today and as always I was glad to hear. I don't think that the testimony of Tiel's was particularly damaging. It really proved nothing but why in the world he wanted to put in an appearance is more than I can say. Guess he saw Bailey's picture in the paper and he wanted to get his there also regardless of the damage he might do to innocent people.

Sloan hasn't testified yet but I think that he will discredit himself before he is through. He is another fellow wants publicity, I fear.

You no doubt know by this time that Senator McCarthy walked out of the committee because they wouldn't use the lie detector. Well, my only comment is that we can do without him as he had a preconceived idea of our guilt and did not come in with any idea of hearing the facts before he made up his mind. We wanted a fair and impartial hearing and he was not disposed to give it to us. Now the hearing will be fair, thorough, and impartial. We have nothing to fear if our judges are impartial and I feel that they are.

The enclosed extracts of testimony are for your information. Karan is just talking about impressions. Wish to God he would have stuck to facts and not fancy but we cannot help that. Dr. Ricker was an excellent witness for us. Ralph was here and did excellently.

Things are going fine and I am confident that all will turn out well.

I moved out to Col. C. E. Straight's today and am no longer at the Raleigh Hotel so if you are brought back to testify you can get in touch with me at 612 South Twenty-eighth, Arlington, Va., telephone OTis 8766.

Write me at the above address until the hearing is over.

Don't worry, Harry, as this is O. K. Your one misstep is not being held against you as the committee knows that it did not affect the trial or investigation.

My love to Muriel.

Yours in all the bonds,

The Boss.

Chambers is attorney for the committee.

[Extracts of testimony]

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 sometimes, 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—

Those were just expressions of opinion, but he 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 use 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 were 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.

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 shouldn't communicate with each other.

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 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. We will take a recess now until 1:30 o'clock. You will please be here at that time.

(Whereupon, at 12:30 p. m., the subcommittee stood in recess until 1:30 p. m. 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.

Hold up your right hand, Mr. Kirschbaum.

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?

Mr. KIRSCHBAUM. I do.

#### TESTIMONY OF JOSEPH KIRSCHBAUM

Mr. CHAMBERS. Mr. Kirschbaum, for the record, will you give us your full name and age?

Mr. KIRSCHBAUM. Joseph Kirschbaum.

Mr. CHAMBERS. When and where were you born?

Mr. KIRSCHBAUM. I am 30 years of age, born in Vienna, Austria.

Mr. CHAMBERS. Born in Vienna?

Mr. KIRSCHBAUM. That is right.

Mr. CHAMBERS. You are a naturalized citizen of the United States?

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. When were you naturalized?

Mr. KIRSCHBAUM. In the first half of 1943.

Mr. CHAMBERS. Did you then go into the United States Army? When did you go to Schwabisch Hall?

Mr. KIRSCHBAUM. Around the 11th of February 1946.

Mr. CHAMBERS. So that the investigations at Schwabisch Hall had been going on for about 3 months when you got there?

Mr. KIRSCHBAUM. I believe so.

Mr. CHAMBERS. What were your duties at Schwabisch Hall?

Mr. KIRSCHBAUM. My duties in Schwabisch Hall consisted mainly of being interpreter and translator.

Mr. CHAMBERS. You did not do much interrogation work?

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. Did you do any interrogation work?

Mr. KIRSCHBAUM. Well, I participated once in the so-called mock trials.

Mr. CHAMBERS. Which mock trial was that, do you recall the name of the accused?

Mr. KIRSCHBAUM. I testified last year in front of the Military Justice Board, and right now I believe it was Koerner or Koern—I believe that was the name of the prisoner.

Mr. CHAMBERS. When you were being used as an interpreter, was that by an interrogator?

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. To which interrogator were you assigned?

Mr. KIRSCHBAUM. Most of the time I was assigned to Mr. Ellowitz.

Mr. CHAMBERS. Did you have work with Captain Shumacker?

Mr. KIRSCHBAUM. Occasionally I did.

Mr. CHAMBERS. Did you ever work with Thon or Perl?

Mr. KIRSCHBAUM. Well, both Mr. Thon and Lieutenant Perl have control of the German language and I never worked as interpreter for them, but I may have walked into the interrogation room at one time for them.

Mr. CHAMBERS. For the record, in your testimony before the Administration of Justice Review Board, you stated that you took part in a mock trial of Werner Kuhn.

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. Well, now, during these times when you were serving as interpreter, I presume of necessity you would have to be present at the cell at the time of the interrogation; is that correct?

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. Did you ever hear or observe any swearing or shouting at prisoners?

Mr. KIRSCHBAUM. Can I get the question repeated?

Mr. CHAMBERS. During the time you were in the cell, interrogation cells, did you ever hear Mr. Ellowitz or anyone else swear or shout at the prisoners?

Mr. KIRSCHBAUM. Well, Mr. Ellowitz may have raised his voice at one time or the other, but I was actually the one who spoke to the prisoner.

Mr. CHAMBERS. Did you raise your voice to the prisoner?

Mr. KIRSCHBAUM. That is possible. I tried to be as much of an interpreter as possible. I sent it back with the same tone of voice.

Mr. CHAMBERS. So that if Mr. Ellowitz perhaps was attempting to be forceful or scare the man into saying something, you would try to say it in the same voice; is that correct?

Mr. KIRSCHBAUM. I don't know whether this committee had a chance to listen to Mr. Ellowitz already, but anyone who had a chance to observe Mr. Ellowitz will, in my opinion, have noted that Mr. Ellowitz is not that sort of fellow who tried to scare someone into saying something.

Mr. CHAMBERS. Don't you think that Mr. Ellowitz—and he has appeared before our committee—don't you think Mr. Ellowitz, if he believed a man was lying to him, he might not be adverse to saying so, in a very firm manner?

Mr. KIRSCHBAUM. That, telling the suspect at that time that he was lying, no doubt Mr. Ellowitz did say so; yes, sir.

Mr. CHAMBERS. You say "no doubt." I know of no one who would have had better opportunity to observe, if he had accused him of lying—



Mr. KIRSCHBAUM. Most likely.

Mr. CHAMBERS. Did he, or—most likely?

Mr. KIRSCHBAUM. He did.

Mr. CHAMBERS. Now, did he ever tell you to threaten them by saying, "If you don't tell me the truth, you will be hung," or "If you don't tell me the truth, we will take the ration cards away from your family," or "If you don't tell me the truth, you will never see your family again," or things like that?

Mr. KIRSCHBAUM. No; he did not.

Mr. CHAMBERS. Did he ever push a prisoner around, or slap at him, or shove him or kick at him or anything of the kind?

Mr. KIRSCHBAUM. Not in my presence.

Mr. CHAMBERS. Did you ever hear of him doing it?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. Did you, yourself, ever do it?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. You mean you never laid your hand on a prisoner?

Mr. KIRSCHBAUM. I did not lay my hand—

Mr. CHAMBERS. You never touched a prisoner with your hand?

Mr. KIRSCHBAUM. I don't want to get technical now. Could you please rephrase the question?

Mr. CHAMBERS. Surely. Did you ever lay your hand on a prisoner?

Mr. KIRSCHBAUM. I might have gotten close to a prisoner at the time we wrote something, or something of that sort, but actually I never did place my hands on a prisoner.

Mr. CHAMBERS. And you never threatened to strike him or push him?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. Well, I asked Mr. Thon this, and I will ask you the same question:

You people screened, 400, 500, or maybe 600 different prisoners. Of course you were not there all the time, but you must have worked with a good many prisoners, and do you mean all the time that you people were there, I don't mean going around and beating a guy on the head with a club, or kicking a guy in the testicles, but do you mean that nobody ever shoved anybody around or pushed them along or hurried him, or something like that?

Mr. KIRSCHBAUM. I did not see it.

Mr. CHAMBERS. Did you hear of it?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. Did you hear of a man that stumbled down the stairs and hurt himself?

Mr. KIRSCHBAUM. Wait a second, I'm sorry—one second.

Mr. CHAMBERS. Yes?

Mr. KIRSCHBAUM. I did see, I don't know exactly how many times, but on several occasions a column of prisoners being returned to their cells from the interrogation rooms, or coming to the cells where they stayed, coming from those cells to the interrogation rooms, and they all carried hoods.

Mr. CHAMBERS. Carried what?

Mr. KIRSCHBAUM. Hoods.

Mr. CHAMBERS. You mean on their heads?

Mr. KIRSCHBAUM. That is right, and it is possible that they may have stumbled, but—one more thing.

Mr. CHAMBERS. Surely.

Mr. KIRSCHBAUM. At one time I came out, just came back to my mind—one time I came out of one of the rooms, I believe it was the room where Colonel Ellis' office or headquarters was—we should call it that maybe—Colonel Ellis was standing next to a man whose hood had been removed, and the fellow had blood on his face and Colonel Ellis did; I happen to know this fellow, and I know that is one time I saw some sign of blood on a fellow's face.

Mr. CHAMBERS. Did you know what caused that blood on his face?

Mr. KIRSCHBAUM. I did not. I did not know it at that time, and Colonel Ellis inquired at that time.

Mr. CHAMBERS. Well now, later on did you find out what caused it?

Mr. KIRSCHBAUM. I did not.

Mr. CHAMBERS. Did you hear anything further said about it?

Mr. KIRSCHBAUM. Well, I believe that Colonel Ellis inquired some more, but I don't know exactly who with.

Mr. CHAMBERS. You don't recall that prisoner's name now?

Mr. KIRSCHBAUM. I do not.

Mr. CHAMBERS. Is that the only time you saw any evidence of anybody that had been harmed or hurt—this last one?

Mr. KIRSCHBAUM. I would say the only time I saw evidence or just—evidence of blood on a fellow's face.

Mr. CHAMBERS. Did you ever hear that some of the boys lost a tooth?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. You never heard that?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. Has anybody been in touch with you about this case within the last 3 months? Did you get any letters from the United States?

Mr. KIRSCHBAUM. I have.

Mr. CHAMBERS. From whom?

Mr. KIRSCHBAUM. From Colonel Ellis and Lieutenant Perl.

Mr. CHAMBERS. What did they say?

Mr. KIRSCHBAUM. In connection with this, may I take the letters out?

Mr. CHAMBERS. Yes, certainly.

Incidentally, Kirschbaum, just relax. We are here to get the facts, so don't get tense about this thing.

Mr. KIRSCHBAUM. May I at this time read the letters into the record?

Mr. CHAMBERS. If you will—read them into the record.

Mr. KIRSCHBAUM. The letter to Colonel—from Colonel Ellis and my reply to it.

Mr. CHAMBERS. Certainly.

Mr. KIRSCHBAUM. "Dear Joe:"

Senator BALDWIN. What is the date of this?

Mr. KIRSCHBAUM. The date of the letter—it is dated the 3d of May 1949, at Washington, D. C.:

DEAR JOE: I haven't received an answer to any of my letters to you but inasmuch as I addressed them to the War Crimes Group, perhaps they may have gone astray.

This investigation is moving along rather slowly. Senator McCarthy is giving all of us plenty of hell but we are holding our own. I've received clippings

from the Stars and Stripes quoting my testimony about "mock trials." It is far from what I said. They are quoting McCarthy actually and not my testimony, so don't be alarmed by it.

This fellow Bailey who testified really knew nothing but some gossip. Said that maybe Perl had slapped—

There is a word here I can't read, one or two words.

Mr. CHAMBERS. Kicked?

Mr. KIRSCHBAUM. No.

Mr. CHAMBERS. Kneed?

Mr. KIRSCHBAUM. Kneed, yes—

kneed one or two. That's about all. Kurt Tiel wrote a letter to the committee that he was at Schwabisch Hall once and Harry Thon showed him a cell with an unconscious man on the floor with a bloody hood on. Do you know anything about this? I never knew that Kurt was ever in Schwabisch Hall. This will go on for several weeks and may either call you and others from Germany or go over there. Anyway, in one way or another you will appear before them.

Have read your testimony before the Raymond Committee and thought you were a good witness. Would like to hear from you, Joe.

Major Fanton and Captain Byrne will testify tomorrow. Let me hear from you.

Sincerely,

Colonel ELLIS.

Mr. CHAMBERS. And the reply?

Mr. KIRSCHBAUM (reading):

May 22, 1949.

DEAR COLONEL ELLIS: Due to the incorrect address, I received your letter a little late. Anyway I was glad to hear from you. I did not attempt to write to you in the past, since I thought, or at least did not exclude the possibility, that some of our "friends" may see an indication of conspiracy if I should be corresponding with you. On second thought, I do realize that whatever I do or did, I will not succeed in pleasing our mutual "friends," therefore it doesn't make any difference that I write to you.

According to the Stars and Stripes, I'm under the impression that the investigation has been picking up speed lately. The Herald-Tribune from Saturday, May 21 states that Senator McCarthy walked out, after his request of submitting certain member of the prosecution staff to the lie detector test had been turned down.

Of course I can't understand what has happened in Washington up to now, and I just hope that I'll be able to take the stand too. If I say I don't understand what is going on in Washington now, I mean I don't understand the proceedings and the purpose in connection with the Malmédy case, but I can see why certain people are picking on this case. Colonel Ellis, I believe, that in this case, they see the soft belly of the Dachau war crimes trial. It's true that the storm trooper killed Americans and so on, but on the other hand these Leibstandarte boys can always show a record of continuous fighting and the majority of them did not have previous services in concentration camps and other enterprises of that kind, contrary to the average concentration camp NCO, who served at many installations, no worse than the others. My assumption (soft belly) might be a bit far-fetched; nevertheless, I very much believe, that a certain group of people are trying to remove the guilt from these Nazis and the Malmédy case is just the beginning.

I don't know for sure whether Kurt Tiel was in Schwabisch Hall once, but I believe I saw him once, when he came there with the major (I forget his name) who went all over the countryside in a sedan to pick up some of the missing perpetrators. However, I remember Kurt Tiel as a bit conceited in those days and therefore I lack all details concerning his stay.

I do hope that this letter will reach you at the address given, and I do hope to be able to see you soon. In the meantime, all the best.

Yours,

JOSEPH KIRSCHBAUM.

Mr. CHAMBERS. I believe you said you received a letter from Perl?

Mr. KIRSCHBAUM. I only did receive a letter from Perl.

Mr. CHAMBERS. Is it long?

MR. KIRSCHBAUM. I have to find it first.

MR. CHAMBERS. Will you give us the date of this letter, please?

MR. KIRSCHBAUM. It is dated July 16, 1949.

DEAR JOE: It seems ages since we parted in Dachau, but through Colonel Ellis I occasionally heard about you.

You probably know that I have been back in civilian life since December 1946, and I am not sorry for it, although the years in the Army were not only an interesting, but all in all, a pleasant experience.

If you ever come back to the States, do give me a ring, it would be nice to exchange old memories.

I am writing you to find out whether you were already questioned by the Senate Investigation Committee. They intend to go to Germany towards the end of June.

You probably know, that dozens of witnesses were already heard, and that Van Rhoden, the man who started all the scandal, had to retract practically all of his accusations.

The committee heard not only members of the prosecution here (Ellis, Ralph Schuhmaker, Ellowitz, Major Byrns, etc.) but numbers of "disinterested" witnesses. Among the latter were the whole prison personnel, Major Evans (then captain), Lieutenant Fitzgerald, Sergeant Scalese, Sergeant King, etc. You certainly remember King and Scalese, the sergeants who brought the prisoners to the interrogations. Of course, they all denied to have ever seen or heard of any use of force.

The medical personnel was heard, too. Dr. Ricker, Dr. Karan, the medical enlisted personnel; they, too, testified that no force was used, that they never noticed any sign of force, that they looked at the prisoners at numerous occasions, etc., that each prisoner had complete medical care and that they thus would have known of any injuries suffered.

It is for the first time, that these witnesses and that "we, the prosecution" was heard, with the exception that some of you over there, I believe you and Harry were heard once before.

Here, in the States, is quite some movement on the way now, to have the Malmedy murderers executed. On July 8, 1949, a few days ago, Congressman Multer of New York heavily attacked the facts that they are still alive, defended the Army and the prosecution in particular and attacked the fact that a type like Van Rhoden was on the original investigation committee. The present committee (Senate committee) consists of Senator Baldwin, of Connecticut, Senator Kefauver, of Tennessee, and Senator Hunt, from Wyoming. There was a Senator McCarthy, not a member of the committee, who in the beginning came to the hearings, attacked the "1939'ers" and "refugees," but withdrew when he saw that the disinterested witnesses are testifying as to the invention of the Nazi claims. He also attacked the fact that Senator Baldwin was a law partner of Fantons and Senator Kefauver was well acquainted with Ralph Schumacher. (Fantons was the one, who fights hardest in this case. He was for many days in Washington and gave an excellent testimony.)

Probably, or certainly, you were heard by the time you get this letter. Do let me know, what went on, you, Harry Thon, and Steiner and maybe Jacobs are last ones to be heard. In addition they may hear Peiper, too. Possibly also Captain Narvid, who is still overseas. He was heard once before and his testimony was correct and thus confirmed that he does not know of any mistreatment on his own, and that none of the defendants had any injuries at the time of the trial. None of them claimed atrocities. Mr. Strong and Colonel Dwinell here testified in a similar way.

Do let me hear what went on, whom else they heard. This committee knows the trial record pretty well, which is of course to our advantage. I am certain they will find out the truth and that those murderers will finally be hung, at least the remaining rest of them. It might even be, that something about the others might be done, particularly regarding those who killed Belgians, too. Best regards,

Yours,

BILL PERL.

P. S.—Senator McCarthy claimed that the "1939'ers" hated the Germans and therefore tortured them. To prove that I do not hate Germans, I referred to things which I did for gentile Germans. I believe it would be good, if you would send to the committee affidavits of Germans, for whom you did something, or, in case you were not heard yet, would bring these affidavits to your hearing.

Mr. CHAMBERS. And those are the only letters—before I ask that question, Kirschbaum, have you replied to Perl?

Mr. KIRSCHBAUM. I did not.

Mr. CHAMBERS. Have there been any other letters?

Mr. KIRSCHBAUM. Yes.

Mr. CHAMBERS. From whom?

Mr. KIRSCHBAUM. From some organization in the States, Progressive—

Mr. CHAMBERS. National Council for the Prevention of War?

Mr. KIRSCHBAUM. Yes.

Mr. CHAMBERS. Or, was it a Society for the Prevention of World War Three?

Mr. KIRSCHBAUM. I believe it was some Society for the Prevention of World War Three.

Mr. CHAMBERS. What did they write you?

Mr. KIRSCHBAUM. Just the excerpts from the Congressional Record.

Mr. CHAMBERS. Which contained congressional speeches, that of Congressman Multer?

Mr. KIRSCHBAUM. That's correct.

Mr. CHAMBERS. Why would they send that to you, Kirschbaum?

Mr. KIRSCHBAUM. I don't know.

Senator KEFAUVER. Have you got it?

Mr. KIRSCHBAUM. As a matter of fact I tried to find out whether or not this organization happened to be on the subversive list, but I have had no chance to find out.

Mr. CHAMBERS. I think that has already appeared. I know we have it in our files and it won't be necessary to put it in the record at this point.

Have you had any other correspondence?

Mr. KIRSCHBAUM. Yes; I received something, the same thing in a yellow envelope with, in the left corner of the envelope, in a square, was written "The Malmedy case." It was official mail, it was all addressed to me.

Mr. CHAMBERS. Do you have the envelope that that came in?

Mr. KIRSCHBAUM. Yes; I have.

Mr. CHAMBERS. I am very interested in seeing the envelope that it came in, if you have it.

Mr. KIRSCHBAUM. I don't have it on me right now. I can't find it.

Mr. CHAMBERS. If you will let me have the envelope at a later time, Mr. Kirschbaum, it will be appreciated.

Mr. KIRSCHBAUM. All right.

Senator BALDWIN. Do you remember Valentin Bersin?

Mr. KIRSCHBAUM. I do, sir.

Senator BALDWIN. One of the prisoners there?

Mr. KIRSCHBAUM. Yes, sir.

Senator BALDWIN. Under date of the 20th of January 1948, in fact that is his affidavit attached to the petition filed by Colonel Everett in the Supreme Court, he has this to say:

I especially remember the interrogation of March 20, 1946, when I was very badly mistreated by Mr. Kirschbaum in the presence of Mr. Ellowitz. Thereafter I had to stand at attention out in the hallway for hours on end guarded by a guard who often beat my hands and arms.

What do you want to say about that?

Mr. KIRSCHBAUM. Of course, that is not correct, sir, but in this connection if I may, I believe that it is the same accusation I was confronted with last year at the investigation conducted by the Army—

Senator BALDWIN. The investigation conducted by the Raymond Board?

Mr. KIRSCHBAUM. That is correct, sir.

In that connection I would like to point out that at the original trial, none of these charges were brought forth against me.

No. 2, that I did not have access to the petition of review written by Colonel Everett at that time, but I have heard there were no charges made against me.

No. 3, I have in my possession a letter dated August 27, 1946, To Whom It May Concern, by Col. Willis M. Everett, Jr., as chief defense counsel in the Malmedy war crimes trials, where he has this to say:

As chief defense counsel in the Malmedy war crimes trials I have had the opportunity to observe Mr. Joseph Kirschbaum's work. For the 3 months during which he served, the aforementioned individual, I was very much impressed with the thoroughness and ability as an investigator-examiner. It is with pleasure that I recommend Mr. Joseph Kirschbaum for employment as an investigator-examiner.

Willis M. Everett, Jr., Colonel MI, chief counsel section, Dachau detachment, war crimes group.

I have now been reading from a certified copy of a letter which I attached to my 201 file.

Senator BALDWIN. What is the date of that letter?

Mr. KIRSCHBAUM. August 27, 1946.

Senator BALDWIN. Was that date after the war crimes trials?

Mr. KIRSCHBAUM. It was.

Senator BALDWIN. Is this Everett referred to in there the Colonel Everett that was defense counsel?

Mr. KIRSCHBAUM. It is the same Colonel Everett who was the chief defense counsel in the Malmedy war crimes trial.

Senator BALDWIN. How did it happen that you got that letter?

Mr. KIRSCHBAUM. After the finish of the Malmedy war crimes trial, I, for personal reasons, wanted to leave war crimes, which I have records to prove, too. It was at that time I was offered a job with military government. Unfortunately, there was a scarcity of qualified personnel and Colonel Straight made me stay. I was assigned to the trial section, to the counsel section, of which Colonel Everett was in charge at that time. My mission was to accelerate the investigation of approximately 4,000 Dachau suspects.

Having come off the Malmedy case, in which a lot of arguments were involved, among them American personnel working in Dachau, I was once either kidded or if the particular American was serious, and he taxed me and said that a man like me, who had worked on the Malmedy prosecution staff, should not be in charge of an investigation of that type and scale. I immediately went to Colonel Everett who actually was my chief at that time, and reported it to him and said I would like to be removed from that position. Furthermore, I was still classified as CAF-7, interpreter, at that time, and not an investigator, and Colonel Everett, that is the same very Colonel Everett who was the chief of the defense of the Malmedy case, promised to get me a promotion and he also did write that letter in his capacity as chief defense.

Senator BALDWIN. How was that letter given to you, after you had worked under Colonel Everett, or when you were beginning to work under him?

Mr. KIRSCHBAUM. I may have worked for Colonel Everett at that time approximately a week or something.

Senator BALDWIN. My point is, in his reference there to observing your work in the examining of prisoners, does he refer to your work while you were on the Malmedy cases, he said he had observed, or, was it your work under him?

Mr. KIRSCHBAUM. May I repeat the sentence, sir?

Senator BALDWIN. Yes.

Mr. KIRSCHBAUM. "I, Col. Willis M. Everett, Jr., as chief defense counsel in the Malmedy war crimes trial, have had the opportunity to observe Mr. Joseph Kirschbaum's work."

Mr. CHAMBERS. May I ask a question?

Senator BALDWIN. Go ahead.

Mr. CHAMBERS. Actually, of course Colonel Everett would have had no opportunity whatsoever to observe your work in connection with the interrogating of the prisoners, or any translation that you did up until the time the trial started, isn't that correct?

Mr. KIRSCHBAUM. That is correct. I would say up to the time when he was assigned chief defense counsel of the Malmedy case.

Mr. CHAMBERS. As a matter of fact, Mr. Kirschbaum, is it possible for any of the defense counsel to have observed any of you people at any of your interrogation or translation work up until the time they started preparing the cases for the defense?

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. For instance, Colonel Everett didn't come down to Schwabisch Hall and go through and observe the prisoners in advance of their being brought to Dachau, did he? Did Colonel Everett inspect the prisoners at Schwabisch Hall?

Mr. KIRSCHBAUM. That, I don't know.

Senator BALDWIN. Let me ask the question here. That letter, concerning which you knew nothing until right now—it strikes me has some significance to it. That letter was written after the war crimes trials were over.

Mr. KIRSCHBAUM. After the Malmedy war crimes trials.

Senator BALDWIN. The Malmedy case was tried.

Mr. KIRSCHBAUM. Right.

Senator BALDWIN. And do you know whether or not, of your own knowledge, that was after—it must have been after the time that Colonel Everett had these statements of the SS troopers in which they originally alleged brutalities of one kind or another?

Mr. KIRSCHBAUM. That is what I assume, sir.

Mr. CHAMBERS. Let's carry that point one step further. Then, if you had been charged by a specific accused of mistreatment in these questionnaires, Everett certainly should have had some knowledge of it.

Mr. KIRSCHBAUM. That is correct, sir. That is the point I was just trying to bring out.

Senator KEFAUVER. What was the date?

Mr. CHAMBERS. What was the date of your affidavit?

Mr. KIRSCHBAUM. The 27th of August 1946.

Mr. CHAMBERS. And the trial started in April 1946; isn't that correct?

Mr. KIRSCHBAUM. I believe in May.

Mr. CHAMBERS. In May 1946.

Mr. KIRSCHBAUM. And that is—

Mr. CHAMBERS. Pardon?

Mr. KIRSCHBAUM. May I continue?

Mr. CHAMBERS. Yes.

Mr. KIRSCHBAUM. That is exactly the point I was trying to make. If I did commit any of these things I have been accused of by the Germans, and I did them, at the time, in the Malmedy investigation, they must have been known to everyone concerned at the time of the trial, and certainly on the 27th of August 1946.

Senator BALDWIN. The trial was over by that time?

Mr. KIRSCHBAUM. That is correct, sir.

Senator BALDWIN. Go ahead, Senator.

Senator HUNT. From your work with the interrogators, and during the trial, did you at any time hear the doctors at Schwabisch Hall tell of treating any men for injuries that had been inflicted upon them by any of the interrogators?

Mr. KIRSCHBAUM. I didn't. I had contact with the American doctor and the medical personnel at Schwabisch Hall, and none of them ever mentioned that.

Senator HUNT. Were there any German doctors there?

Mr. KIRSCHBAUM. I have not seen them there.

Senator HUNT. You have a pretty high regard for the medical personnel that was at Schwabisch Hall?

Mr. KIRSCHBAUM. The same regard I have for any medical outfit of the United States Army, the same regard I have for any medicos.

Senator HUNT. Do you have any reason to believe that if the doctors observed any injuries to the men, that they would attempt to cover up and not allow the rest of the personnel around Schwabisch Hall to know about it?

Mr. KIRSCHBAUM. I don't think so, sir.

Senator HUNT. Were you ever in the dental office at Schwabisch Hall?

Mr. KIRSCHBAUM. No, sir; at least I don't remember—

Senator HUNT. What is it?

Mr. KIRSCHBAUM. I, myself, did not get any dental treatment at that time, and I don't believe that I was there—therefore, I don't believe that I was there.

Senator HUNT. Do you know who solicited these affidavits from the prisoners that they have submitted subsequent to the trial, telling of these atrocities?

Mr. KIRSCHBAUM. I know that bishop—from reading German newspapers—I have heard that Bishop Neuhaeusler had something to do with collecting statements from the Malmedy accused subsequent to the trial.

Senator HUNT. But you never did see them actually with the prisoners helping them to prepare these affidavits?

Mr. KIRSCHBAUM. No, sir.

Senator HUNT. The knowledge that you have is second-hand?

Mr. KIRSCHBAUM. That is correct, sir.



Senator HUNT. I have no more.

Mr. CHAMBERS. Mr. Kirschbaum, you have testified that you have seen no mistreatment, and at the same time that you had never taken part in it, and I believe Senator Baldwin asked you about Valentin Bersin.

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. We have several different cases in here in which you are mentioned, in one capacity or the other. For instance, in the case of Friederich Christ, did you, in interpreting for Mr. Ellowitz, tell him he was only an insignificant first lieutenant and that he would have to help him and if he didn't help him, one day his mother would hear about him being hanged, and I believe also he alleges that he asked for a priest and you all didn't let him have one?

Mr. KIRSCHBAUM. I did not get the last sentence.

(The preceding question was read by the reporter.)

Mr. CHAMBERS. Sorry, but I find that the last part was not correct, he did not ask for a priest. The balance is correct. In other words, you told him he was nothing but an insignificant first lieutenant, and that if he did not tell the truth, that his mother would hear about him being hanged, and that his relatives would lose their ration cards and their right to work.

Mr. KIRSCHBAUM. I remember SS First Lieutenant Christ pretty well, and that I did interpret it in a sense like he is an insignificant—and so it is quite true. They were phrases used by Mr. Ellowitz quite often to show the line of command and so on, but the other part of the statement or the allegations made by SS Lieutenant Christ is not correct.

(There was discussion off the record.)

Senator BALDWIN. Back on the record.

Mr. CHAMBERS. Kirschbaum, have you ever heard any rumors of any of the interrogators or anyone else impersonating a priest and going to some of the accused for the purpose of hearing their confessions and thereby getting evidence?

Mr. KIRSCHBAUM. I have not.

Mr. CHAMBERS. Have you heard of that charge being made?

Mr. KIRSCHBAUM. I have never heard of that charge before.

Mr. CHAMBERS. Do you recall a man by the name of Eble?

Mr. KIRSCHBAUM. Several months ago I received a telephone call at the place in Austria I am stationed, from Colonel Costello at Heidelberg, requesting my presence on the telephone and asking me, "Kirschbaum, have you ever heard of a fellow," and it is a distance of approximately 400 miles, and I asked Colonel Costello over the telephone to spell his name and he spelled it, and I believe it is the same man you just mentioned. That is the first time I heard of the man.

Mr. CHAMBERS. You took part in one mock trial, I believe you said.

Mr. KIRSCHBAUM. That is correct, sir.

Mr. CHAMBERS. Would you mind telling us, for the sake of the record, and keep it as brief as possible because there is very much in the record about mock trials already, but would you tell us your part in this particular thing?

Mr. KIRSCHBAUM. Well, in this connection, sir, I would like to either get a chance to refresh my memory from the testimony I gave last year, or the one I gave in Dachau on the original trial.

Mr. CHAMBERS. Well, it is perfectly proper to refresh your memory, but—

Mr. KIRSCHBAUM. The facts of course are the same, but every year at intervals of years, I am being called upon to testify about things which take place 3 years ago. My mind cannot be—

Mr. CHAMBERS. I think, this again is in the interest of brevity, that we certainly would not—we are not going to be critical of minor mistakes in fact, unless they are significant.

Mr. KIRSCHBAUM. Please, can I—

Mr. CHAMBERS. Shall we permit him to refresh his memory?

Suppose you tell us generally—did you operate as a defense counsel?

Mr. KIRSCHBAUM. I operated as the "good fellow." My job was to get evidence, confessions from Werner Kuhn.

Mr. CHAMBERS. Who was the "hard fellow" in this particular trial?

Mr. KIRSCHBAUM. I believe it was Lieutenant Perl.

Mr. CHAMBERS. Was this a successful schnell procedure? Did you manage to get Kuhn to confess as a result of it?

Mr. KIRSCHBAUM. From the statement, I don't know. I did obtain a statement from Werner Kuhn later on, but I don't consider it a successful statement. I just got a statement.

Mr. CHAMBERS. Well, now, this affidavit says that there was a lady present as a reporter. Did we have some lady reporter working for us there, or stenographer?

Mr. KIRSCHBAUM. As Schwabisch Hall?

Mr. CHAMBERS. Schwabisch Hall.

Mr. KIRSCHBAUM. Yes; we did.

Mr. CHAMBERS. And she took part in the mock trials?

Mr. KIRSCHBAUM. I don't know whether any of the lady reporters took the place at the mock trials at that time.

Mr. CHAMBERS. Did they take part in any of them that you know of, Mr. Kirschbaum?

Mr. KIRSCHBAUM. The others—it is possible.

Mr. CHAMBERS. Kuhn claimed that he wrote his statement under pressure from you, and said he was on bread and water for 8 days and that due to these combinations of things, he was under such pressure that he permitted you to dictate a statement to him.

Mr. KIRSCHBAUM. That is not correct.

Mr. CHAMBERS. Mr. Kirschbaum, he makes a further statement which has nothing to do with the mock trials, but says that during all the months at Schwabisch Hall he couldn't even change clothes once, and could not take a bath even once and he did not receive anything to read or smoke and was not once taken out in the fresh air and in order to quench his thirst he had to drink water out of the toilet.

There are many statements. You can take them one at a time, or just comment on the whole group.

Were they required, or were they not required to keep clean? Didn't they have to?

Mr. KIRSCHBAUM. I actually do not know the actual requirements of how often they had to change clothes, and so on, but I imagine, for self-preservation reasons, that we were very much interested that these accused keep clean, particularly when we were caring for their clothes. They must have stayed clean or we would not have been able to stay in the same interrogation room with them.

Mr. CHAMBERS. Do you know whether or not they were allowed smoking?

Mr. KIRSCHBAUM. We had the habit of offering them cigarettes. I don't know whether that was official or not.

Mr. CHAMBERS. Do you know whether or not they had any reading material?

Mr. KIRSCHBAUM. I don't know about the reading material. I know there was a library in the jail, and as a matter of fact I know of taking several of the accused to the library to give them a chance to exchange books.

Mr. CHAMBERS. Wait a minute, on that, you took the Malmedy accused down to the library for the purpose of exchanging books?

Mr. KIRSCHBAUM. Not all, but some I took over whenever I received an order to take them down there.

Mr. CHAMBERS. Did they have the hood on them when they went down there?

Mr. KIRSCHBAUM. No.

Mr. CHAMBERS. I don't quite understand you. Was it after you had completed the interrogation? In other words, was it when you were through with these particular people? Everybody heretofore has testified that these Malmedy prisoners were kept pretty well separated from each other until you were through with them, they had either been cleared, or you had all the information you needed on them.

Now, you say that you took some of them, on occasion, to the library?

Mr. KIRSCHBAUM. That's correct.

Mr. CHAMBERS. Can you tell me more about it? I don't quite understand this.

Mr. KIRSCHBAUM. Once I received an order to take one of the accused, I believe his name is Ritzer—

Mr. CHAMBERS. Is it Richter?

Mr. KIRSCHBAUM. It is not Richter, it's another one.

Mr. CHAMBERS. Rolf Reiser?

Mr. KIRSCHBAUM. Yes, sir, I took him to the library at least twice and I also took the fellow with the Polish sounding name to the library. In the case of Reiser, I assume that the investigation or interrogation had not been completed since he was still—the reason I assume that is because he was still working on the sketch that overlay one of the areas or places where American soldiers were killed.

Senator BALDWIN. Where was the library, Kirschbaum?

Mr. KIRSCHBAUM. It was in the same wing of the jail in Schwabisch Hall, I believe it is one step, one flight up or down, I don't remember.

Senator BALDWIN. You mean, from where these prisoners were taken?

Mr. KIRSCHBAUM. From the interrogation room, in relationship to the interrogation cells.

Senator BALDWIN. Where was it, with relation—you testified you took a prisoner over from some place to the library.

Mr. KIRSCHBAUM. From the interrogation room.

Senator BALDWIN. From the interrogation room?

Mr. KIRSCHBAUM. Yes, sir.

Senator BALDWIN. To the library?

Mr. KIRSCHBAUM. That is correct.

Senator BALDWIN. After he had been to the library, where did you take him?

Mr. KIRSCHBAUM. I returned him to the interrogation room.

Senator BALDWIN. Why was it that you would start off from the interrogation room? How did it happen that he would be there and he would go from there to exchange a book?

Mr. KIRSCHBAUM. Someone must have requested his presence in the interrogation room.

Mr. CHAMBERS. Do you recall who told you to take him? I know this is 3 years ago, and you have got to pull it out.

Mr. KIRSCHBAUM. I believe it was either Mr. Ellowitz or Captain Shumacker who told me to take him.

Senator BALDWIN. How many times did you do this?

Mr. KIRSCHBAUM. With Reiser, I would say at least—I would say for sure twice.

Senator BALDWIN. What kind of a book did he get, do you know, do you remember that?

Let me ask you this question: Was it in connection with his testimony in any way?

Mr. KIRSCHBAUM. No, sir. I know—I remember having discussed something about general education with Reiser, because—yet, at that, I remember that Reiser told me at that time that his father was either an engineer or an architect by profession, because I admired his ability to draw, and he wanted some books in connection with—he wanted a technical book, he was looking for a technical book at that time.

Mr. CHAMBERS. There is only one other thing I would like to ask you to comment on, because it is so general in some of the testimony, that is—in order to quench his thirst, he had to drink water out of a toilet. I believe in his affidavit he said that he had to drink water out of the toilet, but as a general thing, didn't they feed the people pretty well and give them water to drink?

Mr. KIRSCHBAUM. From the food I saw there, it was food which is typical of jails. They did not have a menu, but they got it in one plate, and they had an extra cup of coffee or tea or something.

Mr. CHAMBERS. Did they feed them?

Mr. KIRSCHBAUM. They did.

Mr. CHAMBERS. And gave them water to drink or something to drink?

Mr. KIRSCHBAUM. That is correct. I could only observe these people who happened to be, during lunch hours, in the interrogation section.

Mr. CHAMBERS. Let me ask you about a couple of more specific cases here now and see.

Do you remember Motzheim?

Mr. KIRSCHBAUM. Motzheim? Yes; I do.

Mr. CHAMBERS. He states in his affidavit that you asked him a question "Were you still beaten after you had written your confession?" And he contends that the fact that you asked that question shows that he was beaten. In other words, you had brought in a man, Sergeant Knoblock of the Tenth Company, and confronted Motzheim with him, and you asked him, "Were you still beaten after your confession," and that was evidence, according to Motzheim, that somebody had beaten this other man. Do you recall anything about that?

Mr. KIRSCHBAUM. I remember Motzheim very well, a fairly good looking, dark complected man who I had several types of conversa-

tions, carried several types of conversations on with him, because I just—I wanted to impress him that the Americans did not come here to look for revenge but just look for the guilty ones, and Motzheim, in my opinion, was one of the few, or one of the boys in the jail who, regardless of what they may have committed, would have grasped that point I was trying to get across to them at that particular time.

Mr. CHAMBERS. Do you remember Paul Ochmann?

Mr. KIRSCHBAUM. Ochmann, I remember.

Mr. CHAMBERS. Did you threaten him with beating?

Mr. KIRSCHBAUM. I never questioned Ochmann.

Mr. CHAMBERS. He says in his affidavit that you did.

Mr. KIRSCHBAUM. I remember Ochmann, one of the boys in the SS First Division who had had former concentration camp service.

Mr. CHAMBERS. Do you remember Hans Pletz?

Mr. KIRSCHBAUM. Yes, I do.

Mr. CHAMBERS. Did you have anything to do with his interrogation?

Mr. KIRSCHBAUM. I did, sir.

Mr. CHAMBERS. You are digging into your files there. Do you have something on Pletz?

Mr. KIRSCHBAUM. Yes; because I remember, it was one of the things in the case of Pletz, I may not have the facts quite straight, Pletz was either the driver or the machine gunner of that particular tank, and the question arose who should be charged and tried, the fellow maneuvered the tank in position to shoot at the Americans and kill them, or the fellow who actually pulled the gun, the trigger of the machine gun after the tank had been maneuvered around with great difficulty into that particular position; and, there was a close friend of Pletz', I have forgotten his name, also a former suspect who was not tried and who wrote me a letter later which I wanted to show to the committee, if I can ever find it—it was one of Pletz' best friends, a fellow—both of them had served in the same tank together for some time.

May I look for that particular letter?

Mr. CHAMBERS. We would be glad to receive that in the record.

Senator BALDWIN. Do you have it there?

Senator HUNT. Why not let him—

Senator BALDWIN. Can't you find it afterward? It may have some significance, but not an awful lot.

Mr. CHAMBERS. In his affidavit, Pletz alleges that:

Right away during the first few minutes I was called a mean liar and murderer by Mr. Kirschbaum, beaten in the face and abdomen by him, kicked with his knee into the genitals and spat into the face several times by him.

What do you have to say about that?

Mr. KIRSCHBAUM. That he was called a liar, it is possible that Mr. Ellowitz said something, as I translated, but he was not kicked and none of the things happened, none of the physical damage he claimed.

Mr. CHAMBERS. Did you ever spit in anybody's face?

Mr. KIRSCHBAUM. No, sir.

Mr. CHAMBERS. Well, then, speaking generally, you categorically deny that you personally ever physically abused any prisoners, is that correct?

Mr. KIRSCHBAUM. That is correct, sir.

Mr. CHAMBERS. And that you never mistreated them from the standpoint of swearing at them or spitting in their face or abusing them in any way, is that correct?

Mr. KIRSCHBAUM. I never spit in their face, I don't get the phrase—

Mr. CHAMBERS. Did you then—put it this way, if you swear at a man, or are raising Cain at them, a lot of these sensitive souls might think they are being abused.

Mr. KIRSCHBAUM. Again it is hard for me to go in line exactly with what takes place in a—

Mr. CHAMBERS. In a man's mind?

Mr. KIRSCHBAUM. At the time the interrogation takes place. When one fellow says a sentence, I interpret it, and the answer, and it goes back and forth.

Mr. CHAMBERS. Specifically, you say you may have called the man a liar, but did you ever swear at him, or damn him?

Mr. KIRSCHBAUM. I may have even said, "You killed Americans," sure.

Mr. CHAMBERS. Did you ever say, "You are a damn liar"?

Mr. KIRSCHBAUM. It is possible.

Mr. CHAMBERS. Did you ever get stronger—

Mr. KIRSCHBAUM. I most likely did say, even though I can't think what it means in German, I most likely did say it.

Mr. CHAMBERS. Did you ever call a man a lying pig, or a lying dog, or anything like that?

Mr. KIRSCHBAUM. No, sir.

Senator BALDWIN. Do you have any questions, Senator Hunt?

Senator HUNT. No, sir.

Senator BALDWIN. What is your present status now, Mr. Kirschbaum? You are in a civilian status now, not connected with the Army?

Mr. KIRSCHBAUM. I am connected with the Army.

Mr. CHAMBERS. You are still working for the Government, is that correct?

Mr. KIRSCHBAUM. That is correct.

Mr. CHAMBERS. And is it your intention to stay here in Germany, or are you coming back to the United States?

Mr. KIRSCHBAUM. Well—

Mr. CHAMBERS. Are you coming back to the United States or staying over here?

Mr. KIRSCHBAUM. Sure, I'm coming back.

Mr. CHAMBERS. You are one thirty-niner that is going to stay in America?

Mr. KIRSCHBAUM. Of course.

Senator BALDWIN. How much time have you lived in the United States?

Mr. KIRSCHBAUM. I have lived in the United States since 1939.

Senator BALDWIN. Since 1939?

Mr. KIRSCHBAUM. Yes.

Senator BALDWIN. You didn't live there before that?

Mr. KIRSCHBAUM. No; I did not.

Senator BALDWIN. What was your education?

Mr. KIRSCHBAUM. Well, I have an education about equal to 2 years of college.

Senator BALDWIN. Where did you get that, in Germany?

Mr. KIRSCHBAUM. In Europe, in Austria.

Senator BALDWIN. Austria?

Mr. KIRSCHBAUM. Yes, sir.

Senator BALDWIN. Do you have any further questions?

Senator HUNT. I have none.

Senator BALDWIN. Do you have any further questions, Mr. Chambers?

Mr. CHAMBERS. No, sir.

Senator BALDWIN. Could you wait around until the day is over, if you please? We may need you later, so at least wait out the day.

Mr. KIRSCHBAUM. Yes, sir.

(The witness then left the room.)

Mr. CHAMBERS. Is Mr. Thon outside?

#### TESTIMONY OF HARRY W. THON—Resumed

Mr. CHAMBERS. All right, Mr. Thon.

Mr. THON. That is what I have, there.

Mr. CHAMBERS. Mr. Thon has presented for the record several letters signed "The Boss" and I assume that is Colonel Ellis.

Mr. THON. That is right.

Mr. CHAMBERS. One is dated May 19; one is dated May 7; one is dated May 1; one is dated April 29; one is dated April 28; in addition to that, he has handed me four pages of what appears to be a copy of transcript of record of our committee covering part of the testimony of Dr. Karan.

Who sent that to you, Mr. Thon?

Mr. THON. Colonel Ellis, and there is an accompanying letter with it, I believe, either one or the other.

Mr. CHAMBERS. Did you mention that you had received any letters from Perl?

Mr. THON. I have one letter. I don't have it with me, but I will get it to you, sir, it is in the desk of my office.

Senator BALDWIN. Why not make them a part of the record here to avoid taking the time of reading them.

I believe we have already said that they would be inserted in the record as a part of Mr. Thon's testimony this morning.

(The letters referred to and the excerpt of testimony, appear at the end of Mr. Thon's testimony in the morning session before the subcommittee.)

Mr. CHAMBERS. Mr. Thon, before we finish with you, I wonder if you have any general statement you want to make about your reaction to these charges that have been made.

Mr. THON. Yes, sir, I would like to say only that I feel very badly about it. My name has been smeared in the papers, the way it was, I feel that I am innocent of all these charges, I know I am, and it is really a shame that my family ties have been disrupted through this.

I furthermore can only say that my colleagues, to the best of my knowledge and belief were always as clean as I was. I have no reason to hate the Germans. I had to fight the war and I fought it for my country, but I never did such a thing as what I am accused here.

Mr. CHAMBERS. Thank you, Mr. Thon.

That is all.

Senator KEFAUVER. May I ask him a question?

Mr. CHAMBERS. Excuse me, sir.

Senator KEFAUVER. Mr. Thon, how do you figure that since not very many of these accused said anything about these atrocities, I mean this improper influence and beatings and so forth until after the trial was over, how do you think this came about that they made all these affidavits?

Mr. THON. I have no idea how it came about, but maybe it was outside influence that did not, maybe not, I don't know.

Senator KEFAUVER. Do you have any information?

Mr. THON. No, I do not have any information. The only thing I can say is, I can point out the famous Skorzeny case that was tried, where I did all the interrogation; also got confessions where one man killed a GI, and admitted he fired five shots, starting at his head and going on down and killed him, and I got confessions from him. I got the confession from him and others, including Skorzeny, and they were asked whether they were mistreated and they said nothing. There was the Gurnsbach case that was tried by Mr. McClintock, and to the best of my knowledge he asked the defendants on the stand whether they were mistreated by me, and they had to answer "No."

In fact, they said they were treated better by me than by anybody.

That is all I can say in my defense.

Senator KEFAUVER. That is all, Mr. Chairman.

Mr. CHAMBERS. I would like to ask one more question along that line. It seems that most of these affidavits alleging mistreatment, brutality, and so forth, hinge around the Malmedy case.

Now, have you formed any opinion or have you, in talking it over with your friends who know about it, formed any opinion as to what might be the motivating force in back of it? Is there some reason why they are interested in these Malmedy prisoners?

Mr. THON. It could be because a lot of them were young fellows. I have asked myself that question numerous times, and I cannot come to any result. It could be the pride of some of the lawyers who were involved in it. I have no explanation for it.

Mr. CHAMBERS. Thank you very much, Mr. Thon.

Will it be proper for him to return to Frankfurt?

Senator BALDWIN. Could you wait for a few minutes? I would like to see if there is anything else before you leave, so if you will, you may wait outside.

(The witness left the room.)

Mr. CHAMBERS. Call Mr. Steiner next, please.

Come over here, please, Mr. Steiner.

Senator BALDWIN. Hold up your right hand, Mr. Steiner.

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, to the best of your knowledge, information and belief, so help you God?

Mr. STEINER. I do.

### TESTIMONY OF FRANK STEINER

Senator BALDWIN. Give us your full name and present address, please.



Mr. STEINER. Frank Steiner, Hanau Engineer Depot, APO 757.

Mr. CHAMBERS. Mr. Steiner, were you connected with the investigation of the Malmedy trials?

Mr. STEINER. For a very short while, yes.

Mr. CHAMBERS. In what capacity?

Mr. STEINER. As a translator.

Mr. CHAMBERS. You say you were a translator?

Mr. STEINER. Yes.

Mr. CHAMBERS. And with them for a very short time?

Mr. STEINER. Yes.

Mr. CHAMBERS. How long a period of time did that cover?

Mr. STEINER. If my recollection is right, I went to Schwabisch Hall in the early days of January 1946, and left, either in the beginning of February or the beginning of March. I couldn't tell you exactly, but it should be easy to find out.

Mr. CHAMBERS. Well—

Mr. STEINER. Thirty days, I guess about 30 days.

Mr. CHAMBERS. Thirty days?

Mr. STEINER. That is right.

Mr. CHAMBERS. At the time that you were at Schwabisch Hall, did you know a Mr. Bailey, James J.?

Mr. STEINER. Yes, sir.

Mr. CHAMBERS. Did you live with Mr. Bailey or room with him?

Mr. STEINER. No, sir, I don't think so. I lived downtown and the rest of the investigation team was stationed uphill in one house and I lived in the hotel downtown—

Mr. CHAMBERS. You say you don't think so. I mean, did you? You know whether or not you lived with Bailey, don't you?

Mr. STEINER. You didn't let me finish, sir.

Mr. CHAMBERS. Sorry.

Mr. STEINER. Later on, I moved up to the house. I could say I sometimes lived with him, sometimes I didn't.

Mr. CHAMBERS. Where were you born?

Mr. STEINER. I was born in Vienna, Austria.

Mr. CHAMBERS. Well, when did you come to the United States?

Mr. STEINER. December 8, 1941, the day after Pearl Harbor.

Mr. CHAMBERS. You came to the United States the day after Pearl Harbor. Did you serve with the United States Army?

Mr. STEINER. Yes, sir.

Mr. CHAMBERS. In what capacity?

Mr. STEINER. Three years.

Mr. CHAMBERS. Three years?

Mr. STEINER. In the Army, what now is the Department of the Army.

Mr. CHAMBERS. What organizations were you with in the Army?

Mr. STEINER. First with the infantry, and military intelligence and then with the engineers. I came overseas with the engineers.

Mr. CHAMBERS. How were you selected for this assignment, do you know, to the Malmedy investigations?

Mr. STEINER. I was sent down by the CO of the war crimes group in Wiesbaden.

Mr. CHAMBERS. You were a civilian then?

Mr. STEINER. I was a civilian.

Mr. CHAMBERS. And you were employed by them?

Mr. STEINER. Yes.

Mr. CHAMBERS. And as a translator, is that correct?

Mr. STEINER. That is correct.

Mr. CHAMBERS. Did you ever take part in any of the investigations other than as a translator? In other words, did you ever interrogate any of the prisoners?

Mr. STEINER. You mean, in the Malmedy case?

Mr. CHAMBERS. Yes.

Mr. STEINER. I only worked as a translator, and if I remember well, I was once sent down to the cell block, and you probably know where that was, to get certain information about the prisoners, to which company they belonged, and if you want to call that independent work, that is the only time I worked something independently.

Mr. CHAMBERS. Well, now, Mr. Steiner, I hate to bring up perhaps things that might be personally unpleasant, but was your mother killed by the Germans?

Mr. STEINER. Do I have to answer this?

Mr. CHAMBERS. I think it is important that we get the facts in the record, Mr. Steiner.

Mr. STEINER. My mother's death is somehow mysterious. She died 1 or 2 days after the Gestapo came to the hospital where she was hospitalized, and informed her that she had to be deported to Poland, so she was at this time in the hospital with one leg cut off, and she would never have made the transport to the station, most likely, and she died very conveniently the same night.

That is all I could get. I couldn't get any first-hand information on that.

Mr. CHAMBERS. Well, now, when you were living with Bailey, or anytime when you were talking to Bailey, did you indicate to him that for any reason at all you disliked or hated the Germans and that you were very anxious to see these convictions work out, and things of that type?

Mr. STEINER. No, whether I put it this way—this was not—I mean—

Mr. CHAMBERS. Let's forget the exact wording.

Mr. STEINER. No. The general feeling at that time, put it this way, was more or less that we didn't like them very much; let's put it that way.

Mr. CHAMBERS. Did you work with Perl any, on any of these matters?

Mr. STEINER. What did you say?

Mr. CHAMBERS. Did you help Mr. Perl, or Lieutenant Perl?

Mr. STEINER. No, I did not work very much with Mr. Perl. Mr. Perl was a master of the German language himself, and I was supposed to help people out who did not master the German language.

Mr. CHAMBERS. Did you, on one occasion, work with Perl in fooling Gustav Neve into believing that you all were going to hang him?

Mr. STEINER. What is that?

Mr. CHAMBERS. Did you and Perl work together in trying to fool Gustav Neve by putting a rope around his neck and walking him up some steps and making him think he was going to be hanged?

Senator BALDWIN. You have to speak up; we can't get it otherwise.

Mr. STEINER. Was this the fellow who had fainting spells?

Mr. CHAMBERS. That is the man.

Mr. STEINER. No, sir.

Mr. CHAMBERS. You knew Neve?

Mr. STEINER. I don't know whether I would recognize him now, but the name somewhere clicks with me.

Mr. CHAMBERS. Did you ever see anyone with a rope around their neck, and they were pretending that they were going to hang him?

Mr. STEINER. No, sir.

Mr. CHAMBERS. Did you help Perl put a trick over on Neve, try to make him think that you all were going to hang him?

Mr. STEINER. No. The whole thing—I can't remember this.

Mr. CHAMBERS. Let's see if we can start over again.

What I am trying to get at is simply this: It has been reported to us that you and Perl played a trick on—

Mr. STEINER. Neve?

Mr. CHAMBERS. Neve, and that you came back and described it to Bailey completely, in detail, and he said that you would have him walk a few steps up the stairs with a rope around his neck, and Perl would put that rope over a board and he didn't pull him off his feet, but you were trying to make him believe he was to be hanged.

Mr. STEINER. No, sir. I'm sorry, but I can't remember that. Mr Bailey must have misinterpreted something.

Mr. CHAMBERS. Mr. Steiner, you say you can't remember it. I submit to you that if you did that, if you did it you certainly would remember it, would you not?

Mr. STEINER. Yes, sir.

Mr. CHAMBERS. Did you or didn't you do it?

Mr. STEINER. I did not.

Mr. CHAMBERS. Why did you leave Schwabisch Hall?

Mr. STEINER. I was sent back to Wiesbaden by Major Fanton, and he gave me the reason that I did not master the English language sufficiently well to deal with prisoners who were sometimes very much unfriendly and went too fast.

Mr. CHAMBERS. Wasn't there one case where—I may be confused here.

Mr. STEINER. If I can straighten you out, I will be glad to.

Mr. CHAMBERS. Did, one time, you holler at a bunch of prisoners, just shout at them, not threatening, just shout at them for the purpose of threatening or scaring them a little bit, and either Major Fanton or Colonel Ellis talked to you about it?

Mr. STEINER. No; I don't think so. Major Ellis was not there at that time, or Major Fanton.

Mr. CHAMBERS. There again I am sure if a particular thing like that happened, did you ever shout at any of the prisoners—

Mr. STEINER. That is very possible. That is likely; put it that way.

Mr. CHAMBERS. And as a result of shouting at the prisoner or prisoners one day, did anyone ever talk to you about it and say you shouldn't do that, or "Don't ever do it again"?

Mr. STEINER. No, sir; I don't think so.

Mr. CHAMBERS. Did you ever threaten a prisoner; did you say, "If you don't do this, I'm going to slap you," or "If you don't do this, we are going to take the ration cards away from your parents"?

Mr. STEINER. I guess I testified to that one about the ration-card business; it was said in my presence.

Mr. CHAMBERS. What?

Mr. STEINER. It was said in my presence. I don't know who said it.

Mr. CHAMBERS. What was said in your presence?

Mr. STEINER. If the witness would not speak or say what he asked him, and the right answer, their family might be deprived of their ration cards.

Mr. CHAMBERS. You say that you do not know who that was?

Mr. STEINER. See, Mr. Chambers, I was the interpreter. It means I said it. I didn't say it on my own accord.

Mr. CHAMBERS. What I am trying to get at is, you say you did not know or do not know who said it.

Mr. STEINER. I don't remember.

Senator BALDWIN. Was it said more than once?

Mr. STEINER. I don't think so, Senator. It was such a silly, excuse the expression, silly remark, like I say to the boys, "If you don't eat your beans you don't get dessert." It was imparted in the same way.

Senator BALDWIN. Why was it silly?

Mr. STEINER. Because it couldn't be realized anyway.

Mr. CHAMBERS. Why not?

Mr. STEINER. Why not? We didn't have any power to do a thing like that.

Mr. CHAMBERS. But what you were trying to do was get confessions from prisoners.

Mr. STEINER. That was the job.

Mr. CHAMBERS. They had no way of knowing you could or could not. The chances are, if the witness—perhaps if the situation were reversed and the Gestapo said they would do it, they probably would say we will see to it and would see to it that the family ration cards were taken away.

Mr. STEINER. Maybe; that is possible.

Mr. CHAMBERS. I don't know, either; but let's say that maybe they had reason to believe that you had power to carry out that threat.

Mr. STEINER. That is right.

Mr. CHAMBERS. Now, you say you can't remember who said it.

Mr. STEINER. Frankly, I don't recall who it was. I only worked with two or three people.

Mr. CHAMBERS. I was coming to that. How many people?

Mr. STEINER. I worked for three or four people.

Mr. CHAMBERS. You were only there a month?

Mr. STEINER. I was there only approximately a month; that is right.

Mr. CHAMBERS. During this time, do you recall which of the people you worked with?

Mr. STEINER. Let me see. I worked a certain few times for Captain Shumacker. I worked many times with Mr. Ellowitz; and I guess that's all I remember I worked for.

Do you have anything else there to refresh my memory?

Mr. CHAMBERS. At that time neither Mr. Perl or Thon needed a translator—

Mr. STEINER. I never worked with them.

Mr. CHAMBERS. Ellowitz, Captain Shumacker, I presume Major Fanton, who I don't believe did any interrogating—

Mr. STEINER. Didn't do any interrogations.

Mr. CHAMBERS. It boils down to two or three, either Ellewitz or Shumacker?

Mr. STEINER. That's right.

Mr. CHAMBERS. Can you remember which one of the two it was?

Mr. STEINER. I don't think so. I don't think I can remember. At that time—all right, when I was interrogated some months ago, I guess—I can't remember.

Mr. CHAMBERS. This was, you testified before the Raymond Board—

Mr. STEINER. That's right, down in Frankfurt, and at that time I stated already that I am not in a position to determine who said that.

Mr. CHAMBERS. Have you heard from the States while this investigation has been going on?

Mr. STEINER. Yes, sir.

Mr. CHAMBERS. From whom?

Mr. STEINER. My brother and from a friend of mine.

Mr. CHAMBERS. Fanton?

Mr. STEINER. No; from friends of mine.

Mr. CHAMBERS. Have you heard from Colonel Ellis?

Mr. STEINER. No; only through Mr. Thon.

Mr. CHAMBERS. Have you heard from Major Fanton?

Mr. STEINER. No.

Mr. CHAMBERS. Lieutenant Perl?

Mr. STEINER. Also through Mr. Thon, who showed me a letter.

Mr. CHAMBERS. Showed you a letter and you talked it over?

Mr. STEINER. Talked the matter over several times with Mr. Thon, and I talked the matter over with Mr. Jacobs, I guess, who is here today too, when I was interrogated at the same time.

Mr. CHAMBERS. Now, were you down at Schwabisch Hall approximately a month? And you and Bailey talked these matters over from time to time about your day's work, and things of that kind?

Mr. STEINER. Yes, sir.

Mr. CHAMBERS. Did you, during the course of those conversations, discuss with Bailey anything that happened such as anybody that slapped a prisoner or abused a prisoner or twisted them or kicked them or hurt them?

Mr. STEINER. I don't think so, because I have thought this thing over very carefully in recent weeks. I don't remember ever having seen anybody being slapped.

Mr. CHAMBERS. You don't remember ever seeing anybody being slapped?

Mr. STEINER. That is right.

Mr. CHAMBERS. Do you ever remember anybody being pushed?

Mr. STEINER. I would say—yes.

Mr. CHAMBERS. By whom?

Let me make myself clear. The only thing we are interested in here is getting the facts.

Mr. STEINER. That is right.

Mr. CHAMBERS. These allegations run everything from the most fantastic types of torture down to slappings and possibly the same kind of treatment you would give your children at home, but so far no one has said a word that would even admit they got close to these people physically. I would like, if you can help us, and you can a

great deal, if you will tell us honestly, and give us the facts in this case.

Mr. STEINER. I never saw anybody being beaten, but I guess those fellows, when they didn't line up quickly, they were probably pushed around to get them in line.

Mr. CHAMBERS. Did you ever see that done?

Mr. STEINER. Yes, sir; I saw that done. They had their hoods on, and put them in line, and probably they didn't know where to stand, and they just pushed them around and would tell them to get in line, let's go.

Mr. CHAMBERS. The guards or what?

Mr. STEINER. I guess they were the guards.

Mr. CHAMBERS. You guess they were guards, or, were they interrogators?

Mr. STEINER. I am sure they were the guards.

Mr. CHAMBERS. Did they push them with their hand or a club, or say, "Shove off. March"?

Mr. STEINER. I haven't seen anybody with a club.

Mr. CHAMBERS. Did they use ropes to guide them? Did they hold onto a rope?

Mr. STEINER. No. They had their hands—because we had not enough persons to move from the interrogation cells to their location at noontime, and they had to have their hands on the next fellow's shoulders and go on down the line like that. I wouldn't know any home how to explain it. They just walked around and the first man was led by the guard and the other ones had to hold their hands on the shoulders.

Mr. CHAMBERS. And you and Mr. Thon talked this over. Did Thon tell you to refresh your memory or tell you what he remembered and what he was going to testify?

Mr. STEINER. Not in that sense. We talked the thing over but we didn't—he didn't try to influence us, if that's what you mean.

Mr. CHAMBERS. That is what I am asking.

Mr. STEINER. Definitely, he didn't try to influence me, or I him. We just talked the thing over like two humans will do in some kind of the same position.

Mr. CHAMBERS. Well, now, you say that you have seen these fellows slapped around getting them in line and moving along and so forth?

Mr. STEINER. That is right.

Mr. CHAMBERS. Did you ever see them fall down or stumble on the steps or anything like that?

Mr. STEINER. No; because I didn't have anything to do with the bringing of any of the prisoners up. As soon as they left the interrogation place, they walked off and that is all I know where they went to.

Mr. CHAMBERS. That is where you saw them pushed into line?

Mr. STEINER. That is right.

Mr. CHAMBERS. Did you ever see any evidence of any of the people being interrogated having marks on their face or anything of that kind?

Mr. STEINER. Certainly not; no.

Mr. CHAMBERS. Did you ever hear anybody asking questions about how a man got a particular bloody face? Did Colonel Ellis ask you any questions?

Mr. STEINER. Colonel Ellis never asked me questions, because he wasn't there at the time I was there.

Mr. CHAMBERS. Did anybody else ever talk about anybody getting hit in the face?

Mr. STEINER. No, sir; not that I recall.

Mr. CHAMBERS. Did you ever hear of a German dentist by the name of Dr. Knorr?

Mr. STEINER. No, sir—Knorr?

Mr. CHAMBERS. K-n-o-r-r.

Mr. STEINER. No.

Mr. CHAMBERS. Did you know that there was a dentist who came into the dispensary occasionally to whom the Malmedy prisoners were taken for treatment?

Mr. STEINER. No, sir.

Senator BALDWIN. Do you have any questions, Senator Hunt?

Senator HUNT. You were only there about a month?

Mr. STEINER. Yes, sir.

Senator HUNT. Did you become acquainted with a doctor?

Mr. STEINER. You mean the American doctors?

Senator HUNT. The doctors at Schwabisch Hall.

Mr. STEINER. There was one doctor who was a part of the team; I just couldn't remember his name. Mr. Thon told me it was Dr. Ricker.

Senator HUNT. In your daily work, you would pass by them as they would go and come with their work and you would see them, and I suppose say a word to them?

Mr. STEINER. The doctor was on the same dinner table with us.

Senator HUNT. Did you ever hear the doctor report any beatings or any mistreatment or kicking of the prisoners in the testicles, and, speaking of permanent injuries?

Mr. STEINER. No, sir.

Senator HUNT. Nor any hospitalizations from beatings, things of that kind?

Mr. STEINER. No, sir.

Senator HUNT. Did the doctors ever mention that?

Mr. STEINER. No, sir. I only know of about two people who were in the hospital permanently. One was Peiper, chief of his outfit, and then one fellow who had some epileptical fits. Those are the two men I remember in the hospital.

Mr. CHAMBERS. Peiper lived there?

Mr. STEINER. That is right.

Mr. CHAMBERS. They had a better cell for him?

Mr. STEINER. That is right. That is the only two people I saw in the hospital.

Senator HUNT. In your opinion, if the doctor had been taking care of such a patient, or patients daily, or once a week or even once a month, do you think they would have discussed it or mentioned it so that you would have heard them talk of it?

Mr. STEINER. I don't remember, sir, whether the doctors ever discussed any injury or anything of what you are driving at, sir.

Senator HUNT. Do you think if the doctor had come into the dinner table and said, "I just came from a prisoner who had been beaten up and had a fractured jaw——"

Mr. STEINER. I would remember that.

Senator HUNT. You would?

Mr. STEINER. Yes, sir.

Senator HUNT. You never heard of it?

Mr. STEINER. No, sir.

Senator HUNT. That is all.

Senator BALDWIN. Senator Kefauver?

Senator KEFAUVER. What did you do before you went in the service? What is your occupation?

Mr. STEINER. I am a transport man, transportation, customs broker, railroad official.

Mr. CHAMBERS. When were you naturalized?

Mr. STEINER. The 22d of May 1943, and at Camp Atterbury, Ind.

Senator KEFAUVER. That's all.

Senator BALDWIN. What education did you have before you started earning your living?

Mr. STEINER. Junior high; junior college.

Senator BALDWIN. Junior college?

Mr. STEINER. That is right.

Senator BALDWIN. Where was that?

Mr. STEINER. Vienna, Austria.

Senator BALDWIN. Vienna?

Mr. STEINER. I left Austria right after I finished school.

Senator BALDWIN. Where did you go after you left Austria?

Mr. STEINER. I lived in Belgium all the time.

Senator BALDWIN. How old are you now?

Mr. STEINER. Thirty-nine.

Senator BALDWIN. I think that is all.

Mr. CHAMBERS. Thank you.

Senator BALDWIN. Are there any further questions?

(No response.)

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

(The witness left the room.)

Mr. CHAMBERS. We will call Bruno Jacob as the next witness.

Come over here, Mr. Jacob, please.

Senator BALDWIN. Hold up your right hand, sir.

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. JACOB. Yes, sir.

#### TESTIMONY OF BRUNO F. JACOB

Mr. CHAMBERS. Mr. Jacob, will you give us your full name, age, and residence?

Mr. JACOB. Bruno F. Jacob, J-a-c-o-b, 40, and my address—here or in Frankfurt?

Mr. CHAMBERS. Your present address, where you live.

Mr. JACOB. The outfit I work for.

Mr. CHAMBERS. What is that?

Mr. JACOB. 7707 ECIC.

Mr. CHAMBERS. Are you an American citizen?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Naturalized?

Mr. JACOB. Yes, sir.



Mr. CHAMBERS. When were you in the United States?

Mr. JACOB. 1933, Youngstown, Ohio.

Mr. CHAMBERS. From where did you come?

Mr. JACOB. Sir?

Mr. CHAMBERS. Where were you born?

Mr. JACOB. Germany, sir.

Mr. CHAMBERS. Germany?

Mr. JACOB. Yes.

Mr. CHAMBERS. When did you come to America?

Mr. JACOB. 1928.

Mr. CHAMBERS. And naturalized in 1933?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Did you serve in the Army during the war?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. What branch?

Mr. JACOB. Air Corps.

Mr. CHAMBERS. Were you in combat service?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Overseas during combat?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. In what job?

Mr. JACOB. Regimental interrogation for the One Hundredth Division.

Mr. CHAMBERS. How did you happen to get into war crimes work, Mr. Jacob?

Mr. JACOB. A friend of mine happened to work for war crimes in 1945, November and December, in Wiesbaden, and I worked for Information Control Division at that time, so I happened to meet some lawyers from war crimes, and they needed investigators and since I wasn't exactly in the right job with film control, they asked me to come over and had me transferred to war crimes.

Mr. CHAMBERS. Who were these lawyers?

Mr. JACOB. First Lt. James T. Hatcher.

Mr. CHAMBERS. Now Lieutenant Colonel Hatcher?

Mr. JACOB. First lieutenant.

Mr. CHAMBERS. Was he a big heavy-set man?

Mr. JACOB. No, sir; he was very slender; tall and slender. I think he comes from Elizabeth, Ky.

Senator KEFAUVER. Is it Tennessee?

Mr. JACOB. I don't know the place; what is it that's on the border?

Senator KEFAUVER. Is it Bristol?

Mr. JACOB. I think it is Elizabethtown, I think it's Tennessee, either Elizabeth or Elizabethtown.

Mr. CHAMBERS. Mr. Jacob, when did you go down to Schwabisch Hall?

Mr. JACOB. Schwabisch Hall, I think the beginning of February 1946, and I was there for 30 days and I left for home, sir.

Mr. CHAMBERS. What was your background before the war? What had you been doing?

Mr. JACOB. I was a 5- and 10-cent-store manager, sir.

Mr. CHAMBERS. A 10-cent-store manager?

Mr. JACOB. Yes, sir.

Senator BALDWIN. Whereabouts?

Mr. JACOB. Altoona, Pa., Roanoke, Va., and Youngstown, Ohio.

- Senator BALDWIN. Woolworth's or Kresses?
- Mr. JACOB. S. H. Kress, not K-r-e-s-g-e.
- Mr. CHAMBERS. You spent approximately 1 month as translator?
- Mr. JACOB. I was investigator.
- Mr. CHAMBERS. Investigator?
- Mr. JACOB. Yes.
- Mr. CHAMBERS. Why did you leave at the end of 30 days?
- Mr. JACOB. Well, I had enough points to go home.
- Mr. CHAMBERS. You were down there while still in the service?
- Mr. JACOB. Yes.
- Mr. CHAMBERS. What was your rank?
- Mr. JACOB. First lieutenant.
- Mr. CHAMBERS. Can you tell us some of the cases that you worked on?
- Mr. JACOB. You mean in Schwabisch Hall?
- Mr. CHAMBERS. Schwabisch Hall on the Malmedy matters.
- Mr. JACOB. Well, another officer by the name of Wolff and myself, we worked on various SS companies, I think it was the Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth Companies; just routine interrogation.
- Mr. CHAMBERS. Do you recall any particular names?
- Mr. JACOB. A few I remember, sir. I remember interrogating a fellow by the name of Stock.
- Mr. CHAMBERS. S-t-o-c-k?
- Mr. JACOB. Yes, sir; and I remember he was from Heilbrun; a young fellow——
- Mr. CHAMBERS. Did you get a confession out of him?
- Mr. JACOB. Yes, sir; I did.
- Mr. CHAMBERS. Was he one of the people who were tried?
- Mr. JACOB. Yes, sir.
- Mr. CHAMBERS. Was he convicted?
- Mr. JACOB. I can't tell you that, sir. I wasn't over here during that trial.
- Mr. CHAMBERS. What would be another case?
- Mr. JACOB. I think a fellow by the name of Rau, R-a-u.
- Mr. CHAMBERS. Let's see what affidavits we have on these people. Did Mr. Thon also work on Rau with you?
- Mr. JACOB. I couldn't tell you that, sir.
- Mr. CHAMBERS. Rau?
- Mr. JACOB. R-a-u.
- Mr. CHAMBERS. Fritz Rau?
- Mr. JACOB. I remember the name of Rau and Stock. Those are all I remember. We interrogated so many; routine——
- Senator BALDWIN. Did Rau go through a mock trial?
- Mr. JACOB. I couldn't tell you that, sir.
- Mr. CHAMBERS. Did you take part in any of the mock trials?
- Mr. JACOB. No, sir. I heard of them but I never have actually seen one.
- Mr. CHAMBERS. Would you mind telling us how you got Rau's statement?
- Mr. JACOB. Well, I couldn't even tell you what he confessed to, couldn't even tell you for sure. I got a statement from Stock. I know I interrogated him, if I got a statement, I don't remember——

Mr. CHAMBERS. I think the record should show that Rau didn't allege any physical brutality of any kind.

Mr. JACOB. I think he did make a statement, maybe not to me, but I know he made a statement about participating in some shooting.

Mr. CHAMBERS. We apparently have no affidavit from Stock.

Colonel Murphy, have you seen any?

Colonel FENN. His sentence was disapproved.

Mr. CHAMBERS. Were there any other cases you handled, if you recall?

Mr. JACOB. I don't recall any names any more.

Mr. CHAMBERS. While you were, Mr. Jacob, did you have an opportunity to observe the prisoners moving from point to point within the prison?

Mr. JACOB. Yes.

Mr. CHAMBERS. They always moved with these hoods on; is that correct?

Mr. JACOB. Yes.

Mr. CHAMBERS. Did you ever see any of the guards, well—hurry them along, or shove them along, to get in line?

Mr. JACOB. No, sir.

Mr. CHAMBERS. When they were forming up, getting ready to move out, did you see them pushed in line, maybe, saying, "Hurry up, get a move on"?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Well, now, did you ever see—first of all did you ever threaten a prisoner?

Mr. JACOB. No, sir.

Mr. CHAMBERS. In other words, "If you don't tell me the truth, I am going to slap you," or something like that?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Did you ever tell a prisoner that if he didn't tell the truth, if he didn't come through with the statement you wanted, that his family's ration cards would be taken away from him, or them?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Did you ever hear of that being done?

Mr. JACOB. No, sir; I have not, sir.

Mr. CHAMBERS. Did you ever hear of threats being made such as "If you don't confess and tell us the truth here, you will surely hang," and things of that kind?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Well, you all ate together and messed together?

Mr. JACOB. Yes.

Mr. CHAMBERS. Did you talk over the day's business?

Mr. JACOB. Well—

Mr. CHAMBERS. Did you talk shop more or less?

Mr. JACOB. I didn't, personally; but usually, Lieutenant Perl is the one that did all the talking.

Mr. CHAMBERS. Perl was very keenly interested in this thing, wasn't he?

Mr. JACOB. Yes, sir; he was.

Mr. CHAMBERS. Did Perl indicate that he felt that you might make a little more time with these boys if you perhaps treated them as the Russians would have treated them, had they been caught?

Mr. JACOB. He never told me that, sir.

Mr. CHAMBERS. During the conversation—

Mr. JACOB. I couldn't say that I heard anything like that.

Mr. CHAMBERS. I might say that you will find in the record here some more or less unbiased testimony that while no one ever believed these things would be done, someone would advance an argument that if you would treat them rougher, or like the Germans would have treated them, or the Russians, that you might get confessions quicker?

Mr. JACOB. We didn't discuss that. I haven't heard anything like that over the dinner table. The only thing, it was general talk that all these fellows are guilty, that they are all murderers, general talk by some people.

Mr. CHAMBERS. Not by all?

Mr. JACOB. Not by all.

Mr. CHAMBERS. Did you believe that some were not murderers?

Mr. JACOB. Yes, I did. I mean we sorted out a lot of people; Lieutenant Wolff and I went down there for a month and we cleared quite a few SS men. They went back, relieved from Schwabisch Hall and not war criminals any more.

Mr. CHAMBERS. Not war-crimes suspects?

Mr. JACOB. We knew quite a few among them that were not criminals.

Mr. CHAMBERS. Did some of the people believe that all of them were guilty?

Mr. JACOB. Well, there are people today that think every SS man and every Gestapo man is guilty.

Mr. CHAMBERS. As a matter of fact you screened roughly some six or seven hundred people out of which you only accused 74; isn't that correct?

Mr. JACOB. I think there were 450 people at Schwabisch Hall and 67 to 70 were found guilty.

Mr. CHAMBERS. How about the food? Did they feed them well?

Mr. JACOB. Very good, because I happened to be in the habit of getting—they got the plates up at 11 o'clock in the morning with the prisoners' food and there was plenty of food as far as that was concerned.

Mr. CHAMBERS. Are you familiar with the five cells right alongside the interrogation chamber which they referred to as death cells?

Mr. JACOB. There were some cells, I don't know how many, five or six, and they were considered the death cells.

Mr. CHAMBERS. Who named them that?

Mr. JACOB. That was—when I came down they were referred to as death cells.

Mr. CHAMBERS. Pretty generally by everybody?

Mr. JACOB. As far as I know. I don't think there were any prisoners kept in there. I don't know whether they got a blanket or not. That is what I heard. I couldn't swear to it.

Mr. CHAMBERS. Where did you hear that?

Mr. JACOB. Well, it was general talk that these cells were death cells and supposed to be for the bad boys, for the real murderers, supposed to be the big perpetrators and I remember, I don't know, there was an officer in there, I don't know his name right now, who was supposed to be about the lowest kind, and I think Freimuth, or whoever

was in one of those cells, but I couldn't tell, you know, all the fellows in each cell, because I wasn't very much interested.

Mr. CHAMBERS. Were you ever in any of the so-called death cells?

Mr. JACOB. No, sir; but I could look into one of them.

Mr. CHAMBERS. You never actually went into one?

Mr. JACOB. I couldn't tell who was in there right now. I don't remember, but I know there was some kind of an elevator—what do you say—wooden floor, a little elevated, and I think there were some people in there that were not given blankets. They were not as good as those cells and others.

Mr. CHAMBERS. These were the five cells right alongside of the interrogation chamber?

Mr. JACOB. There were cells next to the interrogation rooms.

Mr. CHAMBERS. Were these the ones you are talking about?

Mr. JACOB. Yes; but I remember, I just heard that at the time, and I remember now that there were some people in there who were given blankets and I think it all depended on the interrogation, or the confession, if the fellow probably confessed, I imagine he got his blanket.

Mr. CHAMBERS. How long did they keep people in the same cells? Did they keep them long, the same men?

Mr. JACOB. I couldn't tell. I think they were changed, as far as I could get at that time, I think it was for the bad boys and if they did make confessions they transferred them out of those cells. I think they were there more or less to scare them.

Mr. CHAMBERS. Did you, yourself after failing to get a confession put one of your men in the death cells?

Mr. JACOB. No, sir.

Mr. CHAMBERS. It is your belief that those were generally punishment cells?

Mr. JACOB. I think so, sir.

Mr. CHAMBERS. You think so?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Well, now, can you pin that down a little closer? Did somebody tell you that that is where they put the bad boys, or did somebody say if a man doesn't do thus and so, "we put him in there"?

Mr. JACOB. I couldn't say that. I couldn't say a certain party told me it was this and that, that certain people go in. I couldn't tell you that, but it is generally known.

Mr. CHAMBERS. It was generally known—what?

Mr. JACOB. That those cells were for bad boys; but as far as I found out, they were fellows they couldn't get any confessions out of, and that they thought they were guilty.

Mr. CHAMBERS. What did they do, put them in there until they got confessions?

Mr. JACOB. I don't know how long the people were kept there. I was only there 4 weeks.

Mr. CHAMBERS. You mean some people were kept there as long as 4 weeks?

Mr. JACOB. I couldn't tell you.

Mr. CHAMBERS. Well—

Mr. JACOB. I think there were people kept there several weeks.

(There was discussion off the record.)

Mr. CHAMBERS. While you were down there, Mr. Jacob, did you have occasion to serve or work with any other interpreter or interrogator?

Mr. JACOB. Well, not very much, sir. The interrogators got into one room. I worked more or less with Lieutenant Wolff.

Mr. CHAMBERS. Is your command of German sufficient so that you didn't need an interpreter?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Well, now, as I get this picture, you have testified that you never had seen or heard of anything that approximated physical mistreatment?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Let's come back to see about some of these other matters we have been talking about, now.

Bear in mind you are under oath and we are trying hard to get the truth of this matter. Are you willing to sit here and tell us that people were kept in these so-called death cells, to your knowledge, for maybe a week or 10 days or something like that, or for longer and shorter periods of time?

Mr. JACOB. I think there were some people in there that could have been there maybe 2 weeks. I was there only 4 weeks altogether.

Mr. CHAMBERS. Let me pin you down. I would like to do this and see what we can find. You say you think that. Do you have any knowledge of it? Do you know that prisoners, or prisoner number so-and-so was in such-and-such a cell and that he stayed there for maybe 2 weeks? Would you have any knowledge to that effect?

Mr. JACOB. As far as I remember, I think Freimuth was in there, I think at least 1 or 2 weeks, but of the other prisoners, I do not know. There was an SS officer in one cell, considered a bad character. I don't know whether his name was Priess or something else.

Mr. CHAMBERS. There was an officer named Priess?

Mr. JACOB. There was an officer in one of those cells, he was there a length of time. He could have been there as long as I was in Schwabisch Hall, I am not sure. They were talking about the fellow being in there, and I was there 4 weeks. One fellow, I don't know whether it was Priess, or some other officer—was in there a few weeks, I am sure.

Senator HUNT. Did you go by that particular cell each day, and in passing the cell you were sure that that same person was in there, day after day?

Mr. JACOB. Sir, I passed by every day, but I didn't look into every cell. They only had the small little peepholes in the cell, I didn't look every time at who was in the cell. They could have taken some people out and put new ones in the cells because usually, I think it was Captain Shumacker, Lieutenant Perl, and Mr. Thon, they were more or less—and a civilian by the name of Ellowitz—they were more or less together on certain cases and I think they had the most important cases. We did more or less routine work, and if people were in other cases and they didn't have anything against them, we interrogated them.

Senator HUNT. Your statement is that they did keep men there, awhile ago you suggested 4 weeks, and you modified it to 2 weeks, and you suggested maybe 1 or 2 weeks. Is your knowledge second-hand, that you didn't see or look in each time and see each man?

Mr. JACOB. That is right, I didn't.

Senator HUNT. You are just telling us what your general idea is?

Mr. JACOB. Yes, sir; what is more or less hearsay.

Senator HUNT. Hearsay?

Mr. JACOB. Yes, sir.

Senator KEFAUVER. Mr. Jacob, when you were to take a confession from some accused, how would you approach him? What would you say to him?

Mr. JACOB. We usually would start out and ask the fellow when the time was and where the place was that he participated in the shooting. We usually asked that question, or we would say, "How many shots did you fire at a certain time?" Because we knew from past interrogation we got certain information and we knew there was a certain shooting going on at a certain place, and so we would ask "How many shots did you fire and how many people did you shoot," and sometimes a fellow would say he fired two shots and we knew he was guilty and we would take a statement.

Senator KEFAUVER. What if he said that he didn't fire any shots?

Mr. JACOB. We would then go into a lengthy interrogation. He would have to give us a pretty good idea of whom the fellows were with him, whether on an armored truck, or who else was on the truck, and we tried to interrogate everyone in Schwabisch Hall, we tried to get something on each man. Sometimes we were lucky.

Senator KEFAUVER. In other words, the fellows you interrogated were hesitant about giving you answers.

Mr. JACOB. They certainly were. My impression was that everybody lied at first. You couldn't get anything out of these men because they had previously, before that, they had all met I think at Zuffenhausen, had been collected from France, Belgium, and Germany, and all the PW camps, and they all got together before they came to Schwabisch Hall and I think there was an understanding that nobody was to do any talking because they were together with officers and it was very hard to get any information out of these PW's.

Naturally, if I would ask a fellow "You didn't help shoot any?" He would naturally say, "No."

We had to approach in a certain manner, so that we would get something out of them. As far as I am concerned, we never used any physical force, but it took a long time to get anything out of those fellows and sometimes they wouldn't talk, no matter how long you interrogated them, but through some other PW's who had confessed, and would pull the other fellows into it, and we would take the other fellow and put him in front of the others, and he had to confess, so we had a lot of cases like that. After you probe one case, one man, you get a lot of others.

Mr. CHAMBERS. You said you didn't take part in any mock trials.

Mr. JACOB. No, sir. The only thing I heard about mock trials, I have seen a room at one time that had a black covered table and had a cross on it, and that was supposed to be a mock trial being held in there, and I remember this Mr. Ellowitz in there and he put on a major's leaf, and I believe they called him commissaire, or something. That is all I know. I know it was supposed to be a mock trial, and I also know that after being around there for about a week and not getting results, Major Fanton mentioned one time that we should try some of the methods others used. He didn't say what methods, but

we figured that they were probably trying the mock trials to scare them. As far as mock trials are concerned, I heard that they held them, but I have never seen one.

Mr. CHAMBERS. Now, Mr. Jacob, didn't you tell me a while ago that you took the statement of Stock?

Mr. JACOB. I took a statement from Stock, sir.

Mr. CHAMBERS. He was in what company?

Mr. JACOB. I don't remember, sir.

Mr. CHAMBERS. However, one of the companies you worked on was the Eleventh Panzer Grenadiers?

Mr. JACOB. The Tenth, Eleventh, Thirteenth, and Fourteenth, I know for sure.

Mr. CHAMBERS. The record of trial shows that Stock's statement was taken by Captain Shumacker.

Mr. JACOB. Was it just sworn to by Shumacker?

Mr. CHAMBERS. Sworn to.

Mr. JACOB. I took one statement. Maybe he made other statements after I left, but I know I took one.

Mr. CHAMBERS. You would have him write it out in longhand?

Mr. JACOB. They would confess some participation in a shooting, and he told me that he was ordered by his sergeant or somebody to participate in that shooting, so I told him to go ahead and write down the story; and I even told him, reminded him, that if he got the order from somebody, to make sure that he knew, in the statement; that we wanted to find out who is responsible because I felt if a soldier had been given an order by an officer or a sergeant, he would have to carry it out during combat. I gave him a fair chance and told him if he didn't do that on his own, he should put in the statement that such-and-such a person told him to participate in that; and I don't know exactly what shooting he participated in, but I know it was shooting.

Mr. CHAMBERS. He apparently alleged that a man named Witwer told him if he didn't shoot these two prisoners he was going to shoot him.

Mr. JACOB. It was something like that, sir.

Mr. CHAMBERS. An administrative point I would like to clear up is the fact that this was sworn to in front of Captain Shumacker. That didn't necessarily mean that Shumacker took the statement? You took the statement?

Mr. JACOB. I took the statement.

Mr. CHAMBERS. And later on he swore to it in front of Captain Shumacker?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Jacob, you are pretty well aware of all that went on in connection with the charges that were made. Have you discussed this with anybody in the last 4 or 5 months?

Mr. JACOB. No, sir. The last time was a year ago, under Colonel Harper.

Mr. CHAMBERS. Colonel who?

Mr. JACOB. I think it was Colonel Harper.

Mr. CHAMBERS. Harbaugh?

Mr. JACOB. And another colonel in General Clay's office; and they interrogated us.



Mr. CHAMBERS. Has Harry Thon or any of the other boys talked to you recently?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Have you had any mail from the States on it?

Mr. JACOB. No, sir; I have had no contact with anybody in War Crimes.

Mr. CHAMBERS. Have you heard from Colonel Ellis or Mr. Perl?

Mr. JACOB. No.

Mr. CHAMBERS. While you were only there a short time, what about the other boys? Do you believe they might have been a little rougher on some of the prisoners than you were?

Mr. JACOB. I have heard, I think it was a guard one time, when Mr. Berg was our office man or stenographer, when we first came in February 1946, several fellows—he heard them talking, and one night he says, “By golly, I can’t see this. I don’t stand for anything like that.” And I think they were talking about mistreatment, probably somebody hit some prisoner, I don’t know, but he heard them talking about it, and I know that Berg was very much against Perl, especially Perl. I can’t say anything about anybody else, but I know he didn’t like Perl. Maybe it was personal, I don’t know, but he always seemed to pick on Perl. Perl was kind of a bad boy, as if he mishandled or mistreated them. I don’t think Captain Shumacker or any of the other boys did and I haven’t seen Perl mistreat anybody.

Mr. CHAMBERS. Now, can you draw on your memory there a little more about that matter that Berg was talking about? I mean did he say that Perl did so-and-so last night, or yesterday, or something?

Mr. JACOB. No, I couldn’t say. I only heard that he was supposed to have hit some fellows with the hood on and while they had the hood on, kicked them.

Senator BALDWIN. Who was that?

Mr. JACOB. Perl. But I haven’t seen it; I just heard.

Senator BALDWIN. Who said it?

Mr. JACOB. Berg.

Senator BALDWIN. Who is Berg?

Mr. CHAMBERS. I don’t know him.

Mr. JACOB. I think Berg was a mental case afterward, and was sent home, so I don’t know whether—

Mr. CHAMBERS. You say Berg was a mental case afterward?

Mr. JACOB. Yes. I think he did quite a bit of drinking and first thing they told me that Berg was a mental case, but I saw Berg one time, I think it was, I don’t know whether it was before I left for the States, in the spring of 1946, or after I came back in the fall of 1946, he left for the States then, and he was all right.

Senator BALDWIN. Did you observe Berg?

Mr. JACOB. Yes, sir.

Senator BALDWIN. Was he a drinking man?

Mr. JACOB. He was a drinking man.

Senator BALDWIN. Did he drink to excess?

Mr. JACOB. Everybody drinks to excess sometimes.

Senator BALDWIN. Well, did Berg?

Mr. JACOB. That is pretty hard to say, sir. We had some parties down there, now and then amongst us fellows.

Senator BALDWIN. You are under oath now.

Mr. JACOB. I know.

Senator BALDWIN. And this is an important point. Was he a man who habitually drank to excess, occasionally drank to excess, or seldom?

Mr. JACOB. I several times noticed that he drank quite a lot, sir.

Senator BALDWIN. You did?

Mr. JACOB. But I couldn't say he was that way all the time, because he was on the job during the day.

Senator BALDWIN. You heard he was a mental case?

Mr. JACOB. I left Schwabisch Hall and then somebody said that Berg was a mental case.

Senator BALDWIN. What was his job there?

Mr. JACOB. He was an administrative man.

Senator BALDWIN. Did he ever interview any prisoners?

Mr. JACOB. No, sir.

Senator BALDWIN. Or interrogate them?

Mr. JACOB. No, sir.

Senator BALDWIN. Did he deal with them in any way?

Mr. JACOB. He may have been in the cell while they were interrogating people, or something.

Senator BALDWIN. Did you ever hear of his abusing any of them?

Mr. JACOB. No, sir.

Senator BALDWIN. But you say that he said Perl did?

Mr. JACOB. Yes, sir. I mean Perl was just about the only man that you heard people say that he—you know—he didn't treat the people fair.

Mr. CHAMBERS. Could I pinpoint that? You say that Perl is about the only man that you heard the people—

Mr. JACOB. I heard people.

Mr. CHAMBERS. That is more than one person who said that about Perl?

Mr. JACOB. Well, I have heard Berg say that. I have heard a soldier, a sergeant—I think he was a sergeant of the guard, I couldn't tell you, his name was—

Mr. CHAMBERS. Was it Scalise?

Mr. JACOB. I couldn't tell you his name.

Mr. CHAMBERS. A sergeant of the guard; there were only one or two sergeants there, as I recall.

Mr. JACOB. No, sir; I was there 1 month and I don't know his name. I never bothered to find out his name.

Mr. CHAMBERS. What did he say?

Mr. JACOB. Well, I have heard him make some statements and also Berg, in the office.

Mr. CHAMBERS. You heard Berg and this other chap talking about Perl?

Mr. JACOB. They were talking about him, say that somebody was mistreated in a cell. Whether they saw it, being in the cell, or looked through this little hole in the door, I don't know, but I have heard something, but I couldn't give you any other definite information about it. I am just telling you; this is hearsay.

Mr. CHAMBERS. I understand you are telling it as hearsay. So much of this testimony we have received is hearsay. When they were talking, you were new down there?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. I imagine you were quite interested?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Did they say, "Well, So-and-So slapped this fellow or hit him with a club," or "He had a hood on and they beat him" or "He kicked him in the genitals" or what did he say?

Mr. JACOB. Well, all I remember is, I think that Perl kicked somebody while he had his hood on. I never heard of him using any club or anything.

Mr. CHAMBERS. The man with the hood on was supposed to be in the cell at the time Perl kicked him?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. That is two people that said that. Apparently that was the same conversation.

On any other occasion did you hear the same people or anybody else talking about Perl—other people?

Mr. JACOB. No, sir.

Mr. CHAMBERS. So what we have here is on one occasion you heard these two people talking?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. You are certain about that?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. When you say it is common or general knowledge, it is based pretty much on one incident; is that correct?

Mr. JACOB. Yes, sir.

Mr. CHAMBERS. Did you ever hear anything about Mr. Thon?

Mr. JACOB. No, sir. I know that Perl was disliked. I don't know why, but he was very much disliked.

Senator BALDWIN. You say Perl was disliked?

Mr. JACOB. Yes, sir.

Senator BALDWIN. By whom?

Mr. JACOB. By "in general" I mean—

Senator BALDWIN. What was Perl's attitude? Did you ever have an opportunity to observe that?

Mr. JACOB. Well, I know Perl was an eager beaver. He tried to get as many criminals convicted as possible. I know that. He was very much interested in the case, more so than anybody else.

Mr. CHAMBERS. I would like to ask one more question, Mr. Jacob. You say Perl was an eager beaver. I thought you all were a bunch of eager beavers down there.

Mr. JACOB. It was just a job to me, interrogating people.

Mr. CHAMBERS. What hours did you work?

Mr. JACOB. I worked from around 9:30 in the morning until 5:30 at night.

Mr. CHAMBERS. And you lived down at Schwabisch Hall?

Mr. JACOB. Yes.

Mr. CHAMBERS. Did Perl work longer hours, come back at night and work, for instance?

Mr. JACOB. I don't think so.

Mr. CHAMBERS. Did you ever hear of anybody interrogating at night?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Was it against the union rules or something?

Mr. JACOB. I think they probably worked overtime. I know that we were supposed to work some Saturdays and Captain Shumacker was there after Major Fenton left. I think that was because he tried to rush them.

Mr. CHAMBERS. You know of no one coming down at 10 or 11 or 12 o'clock at night to try and interrogate?

Mr. JACOB. No, sir.

Mr. CHAMBERS. Nothing more, sir.

Senator BALDWIN. You mentioned something a while ago about the four cells known as death cells. Who was it that called them that; do you know?

Mr. JACOB. I couldn't tell you that. I know they were known to everybody somehow as death cells, but I couldn't tell you who told me they were considered death cells.

Senator BALDWIN. Why were they known, do you know that?

Mr. JACOB. I assume they were cells that were not as—it could be that the fellows who were put into the cells were told that it was the death cell to scare them, make them think they were going to be hanged or something. That is my assumption. I think it was to scare them. I never put anybody into those cells.

Senator BALDWIN. Just another question or two, Jacob.

To your knowledge were any instructions ever given to you as an investigator by anybody to withhold ration tickets or to withhold blankets or anything of that kind, if a man didn't respond to a questioning?

Mr. JACOB. No, sir; never.

Mr. CHAMBERS. Was the prison pretty cold?

Mr. JACOB. It was, down there in February, I think it was rather cold.

Mr. CHAMBERS. However, it was a steam-heated prison; wasn't it?

Mr. JACOB. I think it was heated, sir—I think it was heated.

Mr. CHAMBERS. Well, I think the record should show that it is steam heated, but the best evidence on that will be our visit to Schwabisch Hall.

Senator BALDWIN. Do you have any further questions?

Senator HUNT. No.

Senator KEFAUVER. I have nothing.

Senator BALDWIN. Just one more time, give us the date that you came and the date you left. I think you said it was in January?

Mr. JACOB. In February, sir.

Senator BALDWIN. February?

Mr. JACOB. It was the month of February, 30 days, and then I left, but I couldn't tell whether I arrived the 1st or 2d, or left the 30th.

Senator BALDWIN. But you were there during the month of February and stayed 30 days.

Mr. JACOB. Yes, sir.

Senator BALDWIN. So, it must have run over until March, if you came before the 1st of February?

Mr. JACOB. I think I stayed 30 days, or Captain Shumacker wanted us to stay, and we were on temporary duty for 30 days, and I was ready to go home and took off. We stayed about 4 weeks.

Senator BALDWIN. I think that is all.

Thank you very much.

(The witness left the room.)

Senator BALDWIN. The hearings will be recessed until tomorrow morning at 9 o'clock.

(Whereupon, at 4:25 p. m., the subcommittee stood in recess until 9 a. m., Tuesday, September 6, 1949.)

# MALMEDY MASSACRE INVESTIGATION

TUESDAY, SEPTEMBER 6, 1949

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
*Munich, Germany.*

The subcommittee met pursuant to adjournment at 9 a.m., in the hearing room, Munich Military Post Headquarters Building, Senator Raymond E. Baldwin (chairman), presiding.

Present: Senators Baldwin and Kefauver.

Also present: Col. C. C. Fenn; Lt. Col. E. J. Murphy, Jr.; and J. M. Chambers, on the staff of the committee.

Senator BALDWIN. The meeting will come to order.

This morning Senator Hunt is not here, because he has gone down to Landsberg Prison to look the prison over, there, and to confer with the medical men that are down there examining the prisoners. He expects to be back here this afternoon, right after lunch, so Senator Kefauver and I will go forward with the hearing here.

Mr. Koessler, will you 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, to the best of your knowledge, information and belief, so help you God?

Mr. KOESSLER. I so swear.

## TESTIMONY OF MAXMILIAN KOESSLER

Mr. CHAMBERS. For the record, will you give us your name, age, and present position?

Mr. KOESSLER. Maxmilian Koessler. I was born September 23, 1889, in Austria, and am an American citizen, a member of the bar of New York. I am at the present time a member of the legal division OMGB—Office of Military Government for Bavaria—in Munich, in the capacity as an attorney.

Mr. CHAMBERS. Mr. Koessler, I believe that you have written several letters to Senator Baldwin and to the subcommittee, which we have, and which will be placed in the files of the committee reports.

Mr. KOESSLER. May I ask you, sir, off the record.

(There was discussion off the record.)

Mr. CHAMBERS. We have several letters from Mr. Koessler which will be included in the record.

Senator BALDWIN. All right, they may be included. Do you want them printed or what?

Mr. CHAMBERS. Made a part of the record only.

Senator BALDWIN. All right.

Mr. CHAMBERS. Mr. Koessler, I believe that you functioned in a capacity as review attorney in the Malmedy matter.

Mr. KOESSLER. May I answer that question?

Mr. CHAMBERS. Yes.

Mr. KOESSLER. Well, I was the first one who was charged with the drafting of the review. If you want me to give you the details I will do it with pleasure.

Mr. CHAMBERS. Suppose you tell us, in your own words, keeping it as short as possible, your part in the Malmedy matter.

Mr. KOESSLER. I have nothing to do with the investigation, nothing with the trial, even though I happened to be present in Dachau doing some other work, sir, for the war crimes group while the trial was going on, and I may later on, if you want me to do so also give some personal impressions which I gathered on this occasion, but I repeat, I had nothing to do with the case until the—

Mr. CHAMBERS. Suppose you give us the matter on which you have direct connection, and then perhaps we will come back to your personal observation on the trial.

Mr. KOESSLER. I was from Dachau transferred to Wiesbaden, and in the capacity of post-trial reviewer. I had first to do on other cases. One day the Malmedy file came in and I was then—there was there, as chief of the review section, Mr. Samuel Sonenfield. I can't give you his full address. He is a lawyer in Pittsburgh, but I must look it up.

Anyhow, he called me in and showed me this impressive bulk of material and told me "Look, this, Koessler, this is your assignment. You will have to write a review on this case."

So, I told him "Sir, how long may I work on it?" Well, he said, "This should be rather fast. Let's say, this is not an order, but to be desired if you could finish it in three or four months."

At that time I had no secretary—

Mr. CHAMBERS. May I interrupt, Mr. Koessler. Approximately when was this file received by the review branch?

Mr. KOESSLER. I cannot give you the exact date, but it must have been shortly after the decision was handed down, after the judgment was given out.

Senator BALDWIN. What month and what year was that?

Mr. KOESSLER. I guess, but I can't take an oath on that, that it was either July or August 1946, but I would have to reconstruct that.

Mr. CHAMBERS. I believe that the record shows that July 16 was when the trial ended.

Mr. KOESSLER. Well, it was not immediately, because you know the stenographer still had a lot of work to do until the file went out. If the trial was ended on the 16th of July, it might have been the end of July or the beginning of August, I'm not sure.

Senator BALDWIN. At that time were you in the Judge Advocate General's Department?

Mr. KOESSLER. Yes, sir, if you want, but more specifically I was an attorney with the war crimes group of the Army, which was a special branch of the Judge Advocate's, true.

So, at that time I had not even a secretary specially assigned to me, we were short of personnel. I used just one of Mr. Sonenfield's secretaries on the work, but he promised me, and kept his promise, that

he will immediately assign me one secretary, and later on we have two, and he will, in the course of time, also give me an assistant; but first I was supposed to do this work alone.

Shortly thereupon, an American attorney who was, I believe, captain, or lieutenant with the Army, but was also in the war crimes group, but who was slated to go home, Mr.—may I use, for recollection, my notes?

Senator BALDWIN. Surely.

Mr. KOESSLER. Yes, Mr. Calopy, who was already slated to go home, but had happened to spend several weeks in Wiesbaden for processing of going home, was assigned to me to help me on the work. However, he didn't proceed farther than reading part of the file, and then he makes me the chart of the American organization of the Malmedy organization—of the accused. Mr. Calopy was one of the lawyers I learned to esteem during the time together and impressed me that even after reading part of the record he expressed dissatisfaction about certain things which he read in the record.

I must frankly say it is the only one among my colleagues who in this part I shall mention later, agreed with me.

Senator BALDWIN. For the record, Mr. Koessler, to get the record straight on this, the records you were examining was the testimony and records of the trial before the War Crimes Court?

Mr. KOESSLER. Yes, sir. It was the whole file which came from the war-crimes group, including all of the affidavits, all the whole records of the testimony and certain material which is not mentioned in the review, which I read in the printed review. For instance, this record included the so-called bill of particulars. No, excuse me Senator, that was incorrect. The record did not include what is referred to as a bill of particulars of the prosecution, because the theory was—this was not a part of the record. However, I felt it my duty to procure, privately, this bill of particulars and when I finished in the files it was in the files, so it must be in the file which you have; but it was not an original part of the file; was added to by me. I procured it from one of defense counsel.

Senator BALDWIN. You considered it?

Mr. KOESSLER. I considered it, yes; and there was also at least one interesting material in the file, as I remember, in an issue of one of your semi-official, or official Army journals, or one or two. One, I believe, was the one which contained the article by Colonel McGown on his treatment by Peiper. I believe this was also in the file. And then it occurred to me that there was also another Army publication written, an American colonel reported about retaliation which the Americans had taken against SS people. That I believe was also in the file. Whether it was an official part of the file, or just was slipped in, I couldn't find out because it was not mentioned and is not named in the review, but I remember that I saw it also in the file.

Anyhow, so Mr. Calopy left very soon and then meanwhile I had gotten one Miss Fala and shortly thereupon the one who really became my secretary, Dorothy Ackerman, and all what I did in the case I did with the assistance of Sergeant Ackerman, WAC and, since I was under pressure, I dictated right away to the typewriter. I didn't dictate in shorthand; all the material I have was dictated into the typewriter, all with the idea of finishing the job quickly, but with the



idea it would be only a first draft and then to be re-edited and then also shortened.

After Mr. Calopy left, I received as an assistant, first, and then his capacity was changed and then he was to coordinate, Mr. Chiles.

Senator BALDWIN. Chiles?

Mr. KOESSLER. A lawyer from Missouri, I believe a personal friend of President Truman's; and he is now, I believe, with the Judge Advocate in Nuremberg. This was last position he held when I last met him in Nuremberg.

Mr. Chiles had been a full colonel in the Army, and he started also to study the record. It was not yet determined what part he would take. I wanted first, frankly, to use him as my assistant, but he preferred that it was not consistent with his dignity and, anyhow, so I decided to do work alone, rather than to have an issue as to who would be in charge, and let Mr. Chiles first study the file.

I must frankly say he studied the file rather thoroughly and knew a lot of details.

Without looking into the file he could find out things afterward. However, he studied the file so thoroughly that almost at the end of our work he had yet come to writing something down until I charged him, "Mr. Chiles, you maybe write up the summary of the clemency petition."

That, he did.

Mr. CHAMBERS. May I ask a question to keep the dates straight. You probably got the files sometime in August.

Mr. KOESSLER. Or end of July, sir.

Mr. CHAMBERS. Sometime along in there. When did Mr. Chiles join you?

Mr. KOESSLER. That is very difficult. As I told you, he joined me only after Calopy was with me, maybe in the last days of Calopy's being with me. This is difficult because I have no notes.

Mr. CHAMBERS. The last days of Calopy? I don't believe that gives me what I want.

Did he leave you in August, September, or October?

Mr. KOESSLER. I believe in August. That could be easily established. He left Germany, went home, he was only there on the last stages, he was already I believe at that time at Heidelberg or some other post and, in order to process, he had to go to Wiesbaden and wait there several weeks and during that time is the time his time was utilized by helping me.

Mr. CHAMBERS. Approximately when did Mr. Chiles finish his study of the files?

Mr. KOESSLER. As I tell you, sir, he was there in the, either in the last days when Calopy was there, or that is all difficult for me to say, it is dim recollection, my recollection would rather be that he joined me sometime after Calopy already had left me.

Mr. CHAMBERS. I have that.

Mr. KOESSLER. It is rather dim, my recollection in that respect.

Mr. CHAMBERS. I have that, but you mentioned the fact that he studied the trials very thoroughly.

Mr. KOESSLER. Quite so.

Mr. CHAMBERS. How long did it take him?

Mr. KOESSLER. Almost all the time. We had to do with the file only in the last time, when I saw the pressure of time very hard, and

there were coming in a lot of petitions for clemency, and I have the feeling that I will not be able to do everything in the short time, so I asked him to take this up and from that moment on he started to do dictating work. Miss Fala, incidentally, was exclusively assigned to the work, and later on he dictated to her a survey of the petitions for clemency and did his work in a very fine sort of way.

Mr. CHAMBERS. I don't want to press you on the point, but I want to get the continuity of this thing.

Chiles studied the files for a long time, and that did take him into September or October or November, did it, or did he come into 1947?

Mr. KOESSLER. It took him, he was as long with the files as I.

Mr. CHAMBERS. How long was that?

Mr. KOESSLER. Until either January or February 1947 because I was transferred to Nuremberg in February 1947, but in between I sometime stayed in Augsburg where we were sometimes at that time with work to do. So it would have been January probably.

Anyway, he studied the files as long as I.

After Chiles I had another assistant, Dadanio, Ronald. Mr. Dadanio was a young lawyer from New York, and he was at that time a first lieutenant in the Army and he is now one of the prosecutors here in the American Government System in Munich.

I must say while Mr. Chiles up to the end did not utter any opinion on the case, at the end of it he did it in a way very disagreeable to me about which I will talk, but he belonged to those people apparently who is always right. He didn't make any statement to give me his opinion because I considered him an old lawyer and I would have been very much relieved in my responsibility not to base it on my own opinion, but to have someone else helping me to do that. Mr. Chiles was very silent concerning his opinion. He was very helpful when a fact was at issue to say where is the file of this, and this place, and this occurrence, but he held back with his opinion. I never knew his opinion on the case. However, at the last moment under circumstances very disagreeable he expressed that my conclusions were not his, and that was at the end. I never knew Mr. Chiles' opinion.

However, Mr. Dadanio, he was a very temperamental man and I must say he was very strongly prosecution-minded, so to say. I was strongly defense-minded, so to say.

On real discussions and conversations I had with Dadanio, we tried to clarify our own minds in certain cases by giving our different views. We were on best personal terms. Dadanio is, I feel, an intimate friend of mine, but were were at extreme ends. He is extreme prosecution-minded and I the extreme defense-minded.

Maybe out of this, I asked him to summarize the defense evidence. It may sound a bit malicious, but I thought that just because he stood at this extreme approach to the case, the best assignment to the case would be to write up the defense evidence.

Dadanio started to study the file and Dadanio very soon started to dictate his summary of the defense evidence. I believe he almost finished it. Anyhow, I had not the chance of reading it. I believe he was not terminated when we had to turn in the file, but he was very, very zealously writing that defense summation.

What did I? I also first studied the file. I studied it twice and then I had the feeling this was a lot of unorganized material and

first thing I had to do was organize this material and in the first place to organize those affidavits.

So I first dictated a digest of the case, especially a digest of each affidavit, etcetera, etcetera, a digest of the material relating to the—first not relating to the individual accused, but the digest of the material as a whole.

When I was through with it, thereby getting a clearer view of the facts, I started another thing. I started to dictate a draft of a discussion of several general questions which were very important in this case, including the propriety or impropriety of the investigation methods used in Schwabisch Hall and certain other questions of law, which I saw, or which I thought are important, before any definite position as to specific cases.

Thereupon, after having finished this, which I did in a rather elaborate form, I started to take up the individual accused, in a double form, guilty and sentence. I started now to reconstrue the facts with regard to each individual accused, draw the conclusions in how far or not the findings of the court were justified, in view of these facts; and then, I wrote up, separately, a statement concerning the sentence with regard to those accused whom I recommended, whose conviction I recommended be confirmed. In other words, if I reached the conclusions that the defendant should be acquitted, I didn't write a discussion of the question of the sentence. However, if I reached the conclusion that the conviction of the defendant should be confirmed, than I wrote a separate discussion concerning the question of the same. It was very elaborate, not by way of a rubber stamp, but really weighing the evidence.

I must insert here, if you allow me, the position of the reviewer in these cases.

At variance with the Nuremberg cases, where the courts make a finding, but are supposed to write an opinion on the finding, these courts acted under the court-martial rules. They only announced "guilty" or "not guilty," and did not add a single word on the grounds on which they found the man guilty.

Mr. CHAMBERS. May I interrupt there, Mr. Koessler?

That has been one of the very debatable points. There is much objection from within Germany to the fact there was no reason given for the findings.

Now, it is correct, is it not, that the court-martial procedure simply provides for a finding of guilty or not guilty? The courts are not required to support that by any discussion or argument; whereas, at Nuremberg, they did support their sentences by a discussion as to why they made those findings.

Senator BALDWIN. Wait a minute.

Mr. KOESSLER. That is correct.

Senator BALDWIN. Wait a minute. I might say, for the record here, that one of the legal questions involved, as I see it, is right on this particular point: What should be the nature of the findings of a military court, such as this court?

Mr. KOESSLER. I come to this, Senator, but let me first make the point which I wanted. I completely agree with you, sir, but that is only for the point, and to make the point I make now; whereas therefore there is no review of the findings in Nuremberg, the findings of Nuremberg

are not subject to review, only reviewing concerning being in favor of the accused, we had here in this procedure, so to say, a safety valve against the fact that the court didn't make a reason. The fact that our reviews were very elaborately written, and they gave this opinion which the court had not given, in other words, the task of the reviewer was to reconstrue the facts from the record and show in the review why the court was justified in, or not justified in, reaching its conclusion.

Senator BALDWIN. Let me ask you two questions right there. It is not your claim, it is not your point either, that the military court that tries these cases violated the rules in any way? In other words, all they could find under their procedure was as to the question of guilty or not guilty. Is that your point?

Mr. KOESSLER. Senator, let me come back to that—

Senator BALDWIN. Now, just a minute—

Mr. KOESSLER. In this connection, Senator, I don't claim that they violated any rules in this connection, I only state that their rule was such and therefore the review had to supplement the decision. However, at a later part of my testimony, if you will allow me, Senator, I will tell you.

Senator BALDWIN. Go ahead.

Mr. KOESSLER. In my feeling the Malmedy Court might have violated the law, or the rules even, taking for granted that they had only to make a finding of guilty, I tell you later on the point, but I believe it would only confuse it now if you use it in this discussion.

Senator BALDWIN. The only reason I asked the question, Mr. Koessler, I wanted to get it clear in my own mind what point you were making. There is still a question of whether or not that was the right kind of a procedure.

Mr. KOESSLER. It was the right kind of a procedure, subject to some clarification I make later which I believe are important to have an appraisal of the court action here, but I believe it would be confusing to introduce here; subject to certain qualifications, the procedure was right.

Senator BALDWIN. Go ahead and explain in your way.

Mr. KOESSLER. However, because the procedure was right, it was also necessary that the review, so to say, supplement the finding of the court. This is part of the activity of every reviewer, or the essential part of the activity of every reviewer under court-martial rules which, in this respect, applied, even though we didn't have the court-martial rules, but this system was just the Army system, but the reviewer gives the opinion which the court didn't give. The reviewer, so to say, rewrites the decision by stating on the record in how far the court was justified in its finding, and in how far not. In other words, the reviewer does more than the court of appeals in the States. Also, certain parts of the case which could not be examined by the court of appeals, because it goes to the weight of the evidence, are the responsibility of the reviewer to examine, while the court of appeals in the States—most of the States—doesn't examine the weight of the evidence, unless there is violation of due process of law, or something like that; but, unless there is some form of violation, the court of appeals has no right to examine the weight of the evidence. The reviewer in this court has a duty to examine the sufficiency

of the evidence. The sufficiency of the evidence is an important part of the review. Moreover, the reviewer is obliged also to examine the adequacy of the sentence, not only where the sentence was guilty—in other words, whether it was within the frame of the sentence available to the court—but also whether it was adequate—again a difference from the court of appeals practice in the United States, and the reviewer was only in favor of the defense.

Therefore, I can say, and pride myself; that I approached it in the defense-minded spirit. The purpose of the review in the court-martial system in the Army, and also our system, was only to help the defendant, and also there have been substantial justice. In other words, if the reviewer was to find if a man was wrongly acquitted or given a too light sentence, nothing could be done: only if a reviewer found a man unjustly convicted or given too severe sentence, the reviewer could act.

In other words, the reviewer is supposed to approach the case in a defense-minded way, to examine the record, and point out has injustice been done to the defendant. He is not supposed to examine how far injustice has been done from the standpoint of the prosecution.

As I said, I was writing then up these individual defendants and reached about twelve, I believe. However, I had in mind my conclusions regarding all of them, only the dictation took me some time. At this stage, I was, under circumstances which I will describe later, ordered to turn in the file.

Senator BALDWIN. How much time had transpired then, Mr. Koessler? Can you tell us?

Mr. KOESSLER. That was in January 1947.

Now, I would like now to come back to certain questions regarding which I said I will separately cover them, if you will allow me, Senator.

For instance, this question in how far the court was within the rule of procedure applicable to it when it just announced the finding of guilty or not guilty.

Senator BALDWIN. Before you get to that, when you say they asked you to turn in the file, I assume that was the Judge Advocate General's Office. Who asked you to turn in the file?

Mr. KOESSLER. Lastly, Colonel Rosenfeld, but there was before some dramatic development which I would like to describe later, if you are interested, as this is not a simple matter.

Senator BALDWIN. My only point there is, you wrote me under date of May 8, 1949, explaining what conclusions you had come to at that particular time, and you list certain cases here.

Remember that letter?

Mr. KOESSLER. Yes, sir.

Senator BALDWIN. And I was wondering if this wasn't a good place to put that letter in the record.

Mr. KOESSLER. I may take it back, Senator, if you prefer.

Senator BALDWIN. I don't care. It's entirely up to you. You are testifying. I don't want to correct your testimony or influence it in any way.

There were 73 cases, and 43 death sentences meted out which have been as the result of a good many reviews cut down very substantially so that there are now only 6 death sentences pending.

Don't let me influence you or correct your testimony. I would rather have you testify in the order in which you have it in your mind. My only thought was, here is this letter in which you mentioned that you came to certain conclusions.

Mr. KOESSLER. I will mention that, Senator.

Senator BALDWIN. Go ahead.

Mr. KOESSLER. I come back to the question you raised, while I made the other point concerning the purpose of the review.

It is true that normally a charge sheet in a war-crimes case was very simple, but quite a few were so-called "flyer cases" where the question whether or not a man had not killed a surrendered or emergency landed American flyer, and the charge was simple and the finding could be guilty or not guilty.

In this case, as you will notice, the charge was also very simple. It charged each and any of the defendants with having committed all the atrocities which have been committed during the whole campaign. The charge was, in my feeling, not proper in this way, because there are quite a few defendants who are indicted and could have been indicted only in an individual incident, who have nothing to do at all with all the other atrocities. Take for example, for instance, such a man like Wichmann, who only in the last stages of the campaign on order of Peiper, if my recollection is correct, killed a man. In other words, I felt it was not proper to charge each and any of the defendants of all the atrocities committed during the campaign even though the record showed with regard to certain defendants that they were only linked with one individual incident. However, insofar as the charge sheet went, that could still be defended, that the charge was a frame within which the court found the real guilt.

However, I was shocked, I must say, and I am still shocked by the fact that nevertheless also a finding of the court was only that the court found 73 defendants guilty, which means all 73 of the record have been found guilty of having committed all the atrocities, which was on the charge sheet, even though it was obvious that the court didn't mean it, that the court meant only to find each defendant guilty of those atrocities with which he had to do or was accused of doing. In other words, I feel that, in view of the charge sheet which merged all the defendants into one general charge of including all the atrocities committed from the beginning to the end of the campaign, it was not proper in this case to announce just a finding of guilty, without qualifying this finding by saying, "This defendant is guilty of having committed that part of the charged atrocities. This defendant is guilty of having done this and that."

In my review draft, I wrote in each with regard to each of the defendants which I completed. I wrote in cases where I recommend confirming the findings to confirm the finding of the court. However, there was a qualification that the defendant stand only convicted of having done this and this.

Unfortunately this review, this printed review, as I said, didn't mention this qualification. It just recommended to confirm the finding of the court, to which in my feeling is not proper, because a man who has committed only one isolated incident cannot be found guilty, properly, of having committed all the atrocities which occurred. So, I believe that, if this doesn't go to the matter of substantial justice, I believe it is a bad mistake, at least in form.

Senator BALDWIN. Let me ask you, you mentioned there was not, as a part of the file, a bill of particulars, or whatever you call it.

Mr. KOESSLER. I come to that now.

Senator BALDWIN. All right, go ahead.

Mr. KOESSLER. Moreover, since the charge sheet was so general, not pointing out the role of each individual defendant but just charging each and every of them of having committed everything, the defense made a motion for a bill of particulars, as they called it. The court denied this motion on two grounds: One ground was reference to the majority opinion, one point was a reference to the majority opinion of the Supreme Court of the United States in the Yamashita case. As you gentlemen will remember, the Supreme Court there said an indictment in a war-crimes case need not be drafted with the accurateness of a common-law indictment.

Now, I believe, with all due respect, that there is a far cry from the indictment in the Yamashita case, as represented in the majority opinion of the Supreme Court of the United States, and this charge sheet, so I believe this citation was not quite covering this charge sheet.

Moreover, the court said the prosecution has anyhow volunteered to give the defendants a kind of bill of particulars; and, therefore, the defendants anyhow know of what each one is accused. However, to that, the defense counsel also made two objections: The so-called bill of particulars contains the express reservation that the prosecution was not bound by it but was free to prove also other things. Second, this bill of particulars, so-called, was not particulars to quite a few defendants, so that the defense counsel, as I remember, made a second motion to have a bill of particulars, at least with regard to those defendants regarding which the bill of particulars was not particular enough.

Anyhow, it was all denied.

Mr. CHAMBERS. May I interrupt just for a moment?

Is it not a fact that one of the Malmedy trials was one of the first war-crimes trials and that at Nuremberg they had already started that business of charging rather large numbers of people under a common charge, and that the Malmedy defendants were charged pretty much on the same pattern? You had 73 people being tried under a common charge or charges and, as time went on, they began to ease down on the number that would be tried under one charge. They would get down to where maybe it would be 10 or 20, but never again did they try to have 70 or 80 people under the same charge? Is that correct, or have I been misinformed?

Mr. KOESSLER. Sorry, sir. I believe it is not correct. I believe that from that, drawing the charge sheet in the war-crimes cases had nothing to do with the practice in drawing the indictment as it was there called in the Nuremberg trials. The indictments in Nuremberg, even though they were drawn so vague that here the Supreme Court of the United States could say those indictments are not wrong and need not be as accurate as a common-law indictment, but nevertheless they charged each defendant specifically at least with conspiracy. The charge sheets in the war-crimes trials were not supposed to be indictments. They should not have been. They were charge sheets, as the Army knew it in the court-martial proceedings. There, analogous

they were not, the Nuremberg indictments, with the charge sheets in the Army, only in my feeling the charge sheets in the Army court martials are normally drawn with much more accurateness than this charge sheet was drawn. Moreover, the Army has always to do mostly with cases of a single crime, even with several accomplices, or maybe in one or two cases where the drawing of a charge sheet in one formula is still not confusing or contrary to the truth. However, here was a unique case, a first case, a case where 74 accused, because originally there were 74, were charged with crimes which partly were committed by them together in one group—I am referring, for instance, to the crossroad incident, but partly elsewhere, isolated crimes as, for instance, the killing of these wounded Americans, of this stabbed American prisoner. I don't know who the man was, Wichmann, who did it upon orders, so here, I believe this lumping of all the accused into one generally framed charge sheet had no precedent either in Nuremberg or in the normal charge sheets of the Army, even of our war-crimes trial.

Mr. CHAMBERS. And your point is, then, that it made it extremely difficult for the defense attorneys to properly prepare a defense, because they didn't know what a particular man was being charged with, what they were going to try to prove on him; and, furthermore, that the review, when it was finally printed, did not discuss the particular thing of which a particular man was convicted. Is that your objection?

Mr. KOESSLER. No; I'm sorry. The first one is not correct. I don't claim that it was difficult for the defense to perform their task in view of these facts. The court was right when it says the defendants anyhow know what they are charged with.

Senator BALDWIN. For the benefit of the record here, because what you are saying, Mr. Koessler, is most interesting and, I think to the point of the legal questions involved here, I am glad you are discussing it so we might have all of it in the same place in the record; it makes it easier to find when we work on this thing. So I would like to make reference here to page 409 of the hearings, and at that particular time Colonel Dwinnell, one of the defense staff, was on the stand, and it appeared from an examination of Colonel Dwinnell that about 2 weeks before the trial the defense was furnished with what they called a dossier which contained a summation of the charges against—let me put it in Colonel Ellis' own words:

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 say "2 weeks before trial" I would have to go along with him, because I just don't recall when we delivered it to him; but it was some time before the trial.

And then Colonel Dwinnell said:

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.

Did you know that?

Mr. KOESSLER. I knew that.

Senator BALDWIN. I wanted to insert that there and be certain of it.



Senator KEFAUVER. Mr. Koessler, at this point I think it should also be pointed out that under the practice in State criminal courts, in all the States I know of, in the first place I know of no State court where they are required to make a finding of fact. When you try a case before a jury, and the jury returns a verdict of guilty or not guilty, they do not make a finding of fact. In the second place, under the practice in those State courts, the only particulars that are required to be set forth in the bill of complaint or indictment is that John Smith on a certain day, at or near a certain place, killed Jean Doe. I mean, you don't have to set out the motive; you don't have to set out the time of day, and you don't have to set out who was with him, what the circumstances are. You allege—the only thing you are required to do is to specify the time as near as possible and the place, so as to at least let a fellow know what day and at what place he was supposed to have done something, and I assume in this case the bill of complaint averred that during this campaign they killed certain people.

The campaign was of fairly short duration; was it not?

Mr. CHAMBERS. Approximately 1 month.

Senator KEFAUVER. Of course, in the beginning, when they first brought forth the bill of complaint, I suppose it would be rather difficult to have it averred as to who killed who, when several people were being killed at the same time, but I think they should have; and I remember they did furnish some information about just what they expected to prove.

Now, the question is—did the proof follow the dossiers that were given?

Mr. KOESSLER. Yes, sir.

Senator KEFAUVER. It did?

Mr. KOESSLER. Yes, sir.

Senator KEFAUVER. Don't you think the defense attorneys had sufficient information about that?

Mr. KOESSLER. That is what I said, Senator. Therefore, I objected to the first statement by Mr. Chambers, that I believe or did believe the defense counsel had no opportunity and I said no. The defense counsel had opportunity because they knew from the bill of particulars and from the affidavit what was charged against the defendant. My point is another one. My point is not that the defense counsel were by this generally drawn charge prevented in their defense. I believe on that score they had all the opportunity of defending that they needed. However, my point goes to the findings. My point is that the finding of guilty or not guilty is not proper with regard to a charge sheet which includes certain things which, as the proof shows, as even the case of the prosecution showed, were not committed by all of the defendants. If that is the case, if you have such a general lump charge sheet, I believe, in spite of the general rules of the Army, as to guilty or not guilty in this particular case, each guilty should have been qualified. For instance, with regard to one of the defendants who only killed one man in one town, wherever it was, the finding should have been guilty, but with the qualification that having taken a prisoner of war on that day, and at that place, and so forth. Otherwise, you place in the record the fact that a man was a mass murderer, who was only indicted of having committed a single murder.

Senator BALDWIN. Your point is this, as I understand it: With the number of defendants such as this, the court should have found that John Doe was guilty of having shot Richard Jones at such and such a place; is that it?

Mr. KOESSLER. Yes, sir; because otherwise, take now the record, this man will forever be burdened with having killed I don't know how many people and he was really charged with nothing else but having on a particular occasion at a particular place killed one man and that even by superior orders of Mr. Peiper who was present, so there was a question of whether he should have been convicted because he has nothing done except by order of Colonel Peiper, taking the man out and shooting him in this one individual case, shot this man, and he stands convicted of having, say during the month of December, having killed so many thousands or hundreds or prisoners of war. I don't believe that does substantial justice because if that man were guilty, he should have been found guilty irrespective of what. I believe it is a defect in the record. You can't just have a man stand convicted of a charge sheet if the charge sheet is such a charge sheet as that when the facts show that he didn't.

In other words, Senator, to come back to your illustration, if you have in the States one man, Mr. Doe, who is accused of having killed Mr. Black; and one man, Rowe who is supposed to have killed Mr. White, but without any conspiracy between them, without connection between them, two independent murders, and if these two men are indicted, I believe, Senator, you will agree with me that it would be an improper charge to say Doe and Rowe are accused of having murdered Black and White. The charge would be Doe is accused of murdering Black and Rowe is accused of having murdered White, unless there was a conspiracy or another connection between the two, but I suppose, here, that they independently committed the two murders.

Senator KEFAUVER. That is right.

Senator BALDWIN. I get your point.

Mr. CHAMBERS. May I ask as to one point about the charge in this particular case? Didn't they charge these people as acting in conjunction, they put them in conspiracy, or put them together doing all these things as a part of one over-all pattern? I see your point completely, and I agree that it is certainly a valid position to argue, from a technical standpoint, but these people were charged, and it mentioned all these different accused by name, and then said:

Did, in conjunction with other persons not herein charged or named, in the vicinity of \* \* \*

And then they named all the places:

\* \* \* at sundry times, wilfully, deliberately, and wrongfully permit, encourage, aid, et cetera

the killing of certain people.

Now, my only point with you is this: You say that it is wrong to let a man stand convicted of one murder and technically he might be guilty of a lot of murders. I think the important point is—was he or was he not guilty of murder, and then when you come along under a normal military procedure, I would like to have your opinion on this, the record of review becomes a part of the total record in the case and then the record of review discusses each man individually and

the charge that is placed against that man individually, in other words, what part did he play in this total charge of acting in conjunction with others, so that the record of review, plus the official record of trial, it seems to me, would accomplish just what you are arguing for.

Again, am I wrong there?

Mr. KOESSLER. No, you are right.

Senator BALDWIN. I think Mr. Koessler's point is that it puts upon the reviewing officer the duty of examining the whole record to find out what John Doe was guilty of.

Mr. CHAMBERS. That is right.

Mr. KOESSLER. And also it puts a duty on him to express it in his recommendations. In other words, it may be arguable whether the court should have made such a qualification, but to my feeling, the reviewer is definitely bound to make the qualification: "I recommend the finding of the court, that the accused is guilty, with this qualification, however, that this finding should be limited to this and this fact."

Mr. CHAMBERS. I agree with you completely, Mr. Koessler.

My only question is, Wasn't that done?

Mr. KOESSLER. I agree and don't agree with you.

Let me explain how I agree and how I disagree.

I agree with you that the man who has available the full record of the reviews will not be induced into the belief that Mr. X, who is guilty only of having committed a single murder, has been found guilty of having committed a mass murder; but, who has the record available? Let me say the notification goes out to the prison, let's start here—do you think the prison in Landsberg has records—when they get a judgment that John Doe has been found guilty of killing maybe so many thousands of prisoners of war, do you believe that they will go and ask for the review board record to find out?

Mr. CHAMBERS. May I interrupt? You understand what we are trying to get, your point of view in the record, and it is a very interesting legal point of view, and probably is one of the most constructive things that can come out of the investigation, but let us come back to the Landsberg matter.

The warden gets prisoner No. 1, sees that the man is sentenced to hard labor for 20 years. It doesn't make any difference to that warden whether he is sentenced because he killed a thousand people or one person. He is merely an agent in carrying out the sentence of the court.

Mr. KOESSLER. Right.

Mr. CHAMBERS. So I don't believe that has any bearing on the point here.

Senator BALDWIN. I think we understand Mr. Koessler's point on that, and it is very constructive.

Mr. KOESSLER. I wish to point out that this is no challenge of any substantial injustice. How far that I feel that substantial has not been done in certain cases, I point out later this does not go to the question of whether substantial justice has been done or not. It is more what you call an aesthetic defect; it doesn't look nice.

Senator BALDWIN. I think we understand it.

Do you want to go on to your next point?

Mr. KOESSLER. Now, concerning the substantial justice in the case, I was concerned mainly with the following:

Apart from certain legal questions which I may shortly touch upon, but which I studied to solve in the usual way, superior orders—I found that, as you know, unless in mitigation, and this is not mentioned in the printed review, but which is a defense, first comes superior orders, next, necessity for the preservation of one's life and I also concluded that no necessity, as you know in the States, the question has never been squarely decided, necessity for the preservation of one's life in an absolute defense. We have two famous cases, British and American. I concluded that irrespective to the general answer in this case, there were soldiers who were supposed to face these necessities and that soldiers could never apologize for killing prisoners of war by necessity. I also——

Mr. CHAMBERS. May I interrupt there? Is there any doctrine of law anywhere which we have in our books that says military necessity permits you to kill prisoners of war?

Mr. KOESSLER. Excuse me to interrupt you. I distinguished—what I referred to before was a necessity as a general term of American law, the necessity for the preservation of one's life. In that connection there was the famous Holmes case. However, might I come to that as another thing? I also dismiss the idea of American necessity which doesn't fit into the frame of any of the defenses allowed in America, or any other law, but just with the German phrase "Kriegsraison geht vor Kriegsbrauch." That means war purposes primarily, the war custom, to give a little translation.

I dismissed that. I had more difficulty, I must say, with the motion for severance, and I would like to touch upon that because if you spoke before upon constructive things, this might be a point I could give some solution.

I had the feeling, and here I come back to my impression gathered in Dachau, I had very much to do in Dachau on other things and I just looked once into this courtroom, and I must say I was not too favorably impressed by the idea of sitting there in the dock, 74 accused, later on it was but 73 accused, each bearing a number sign, No. 1, and so forth, to No. 74, and it occurred to me how difficult a task it must be for the court to keep their impressions of the trial so straight as not to confuse one with the other, even only in certain details, but the details of which the picture is composed.

I had also the feeling, even though I never arrived at a definite conclusion on that, whether this idea of the defendants bearing numbers was not something in the way of prejudice. I later on read in one of the papers a report about the British trials where this was made even the subject of a defense motion and where the British court rejected it.

I say, up to this moment, I didn't form a definite conclusion on that. However, even though I have the feeling it is definitely wrong, this idea of mass trials, I believe that when a certain number of defendants are grouped in a case, it does harm to the possibility of finding substantial justice. I believe that it is not proper to have the number of defendants exceed such a figure which is within the reach of normal men to overlook. It may be different in a case of a riot, let's say of one single act where 74 men were caught red-handed and all of them are just tried for the same single issue—did they participate in this riot or not.

However, in such a case, together with the Malmedy case where really various and numerous incidents are tried, and where the defendants are partly interlocking, being partly charged with completely separate crimes, it is now my feeling, I didn't have it quite so at the time when I wrote my review, but it is not good policy—I don't want to say more—but it is not good policy and shouldn't be done in the future, to lump so many accused together in one case.

Now, the defense, however, didn't base the motion on this argument. If the defense would have based the motion for severance on this argument, I probably would have reached the conclusion, in my review draft, that the defense was right and that the court was wrong in denying this motion, even though I might have reached a different conclusion, but I would have seriously considered it, and if I would have reached the conclusion that the defense motion was justified, I would have recommended to declare a mistrial.

The defense motion for severance was not based on these general grounds. The pooling together of so many defendants impairs the possibility of the court following the proceedings. It was based on the following grounds: The defense said here are part of the defendants who were perpetrators, the actual killers, and here are other defendants who were or are accused of having been those who gave the orders. There is a natural conflict between them because the first group will be likely to accuse the others, even wrongly, in order to make their case easier; and the others, on the other hand, the other group will be likely to deny these orders, not to burden themselves with the responsibility.

Therefore, the defense said it is not natural that these defendants should be tried in one group. Let's make a difference, let's have a severance between the defendants as to who gave the orders practically amounting to the officers and the defendants who executed the orders.

I reached the conclusion, and I still believe it is right that such a severance is not justified. All the people who are involved in a single crime, whether as accessories to the crime or as perpetrators or as accessories after the crime should, I believe, reasonably be tried together. Therefore, my recommendation concerning this motion was that it was not justified.

Another legal point which arose was the question of jurisdiction. Part of these crimes were committed in Belgium. That is outside, not only of the United States, but also outside of that part of Germany which is occupied by the United States. The claim was made by the defendant that regarding those crimes that were crimes committed in Belgium, the court had no jurisdiction. I recommended to reject this objection, and this is still my opinion.

I don't quite agree with those who claim that each country is unlimited in jurisdiction over war crimes. The so-called principle of universality of jurisdiction, I believe this goes too far. However, I believe that each country is justified in trying war crimes committed wheresoever, if this country has a national interest in these war crimes and I believe in this case the United States had a national interest to try these war crimes, even if they were committed in Belgium, because they were part of a drive which was supposed to break through the American position in Germany, and I believe that violations of war

committed in the course of such an occasion, even if they were committed on non-American soil, are still crimes, war crimes committed against the United States, and I believe that insofar as the principle of universality of jurisdiction applies, in other words, insofar as the national interest of the United States exists, the United States is justified in trying a war crime committed wheresoever it may be.

I don't want to go into other legal problems which I had to discuss in my general part of my review. The more difficult problem was the problem which is I believe your main concern, these investigation methods in Schwabisch Hall.

I must frankly say I have, during all my activities in the war crimes group, prior to my reading the Malmedy case, gained the best impression from the spirit of doing justice, of giving the defendant a fair trial which prevailed in the war crimes trials. I was during part of my activity a defense counsel, officially assigned defense counsel, and I still remember with gratitude a commendation which I received from the colonel who presided at one of the courts in which I defended an accused—the commendation which he made me after he found this accused guilty, for the zeal which I had devoted to the defense.

And, in private conversations with the members of the tribunal, they always, in a way whose frankness I could not doubt, expressed the feeling that they wanted the defendant to have a fair trial, and they appreciated any defense counsel who takes his task seriously, that nobody should believe that this was just a normal civil procedure, that they wanted the defendants, whatever they may have done, to get a fair trial and therefore a fair defense.

There were certain incidents which I must say were exceptions to the rule, and only as every exception confirms the rule, but that was the whole, as a picture, or total picture.

I had the feeling, in the Malmedy case, that this was not revenge or anything to accomplish such a thing, this was a serious attempt of the authorities involved to do substantial justice in spite of the atrocity of most of the crimes involved.

I was, however, shocked, I must say, when I read this Malmedy record and saw what the investigators in this case were charged with and even admittedly charged with having done. I had a lot of discussions on this point. I was not the one who was afraid of saying what I felt. I was never a "yes man." That is maybe bad, so I openly uttered my belief. I must say, except from Mr. Calopy, who didn't have a definite conclusion, because he could not, but who volunteered more or less the same feeling as I later on acquired upon reperusal of the record, most of my colleagues were of a contrary opinion. They all thought that I misunderstood, that ruses and tricks are allowed in the investigation of the crimes.

It is true that there is some bare authority in the books on that. However, in my feeling it is explainable if by the fact that in the States, this division between judge and jury is very important in this question, and what concerns the court in the States is—may this case go to the jury or may it not go to the jury. It is less concerned with the substantive effect of the ruling or of this incident. It is more interested in the question—can I send this case to the jury or not, and one easily understands that even under these circumstances, the conclusion to be reached may be different from the conclusion to be

reached by a court, and when you have jury and judge in the same personnel, and which has not to decide merely the mechanical issue—can or shall the case go to the jury—but has to decide “Shall I give weight to this evidence—

Mr. CHAMBERS. Now, Mr. Koessler, you have mentioned ruses and tricks, and you were a little shocked that some were used. Would you mind telling us very briefly, because I believe we know the substance of what you are going to say, which ruses and tricks you are talking about?

Mr. KOESSLER. Well, in my feeling, there is no doubt about it that those mock trials were not fair.

Mr. CHAMBERS. Do you recall how many cases mock trials were used in?

Mr. KOESSLER. Pardon?

Mr. CHAMBERS. Do you recall in how many times the mock trials were used by the investigators?

Mr. KOESSLER. I don't know, and I believe the record doesn't show; but, my approach was different, if you will allow me. My approach was, at saying that certain methods were not fair, to have a general distrust against the results of these investigations, so that in a border-line case, only in a border-line case where there was some doubt, I would rather decide in favor of the defendant than against him if, in any way the result of this investigation was involved. For instance, if there was an affidavit, and he would say “No, these words were induced, dictated by the interrogator.” Then my approach was such that in another case otherwise I might believe the interrogator, especially if he was a witness that here I would not rather believe. You see my feeling was, if improper methods of the investigators were approved, then that shouldn't go only to the individual case with regard to which the methods were used—that should imbue me with a general distrust of the investigator, and should make me cautious in cases where there was a doubt. I gave you that specific instance where I applied this principle. They are probably identical with cases in which anyhow General Clay dismissed the charge. Partly they are identical at least with one or two cases where those defendants regarding whom the convictions stand, which may normally have been rightly convicted, but where I recommended to dismiss the charge on the base of my general distrust of the investigators.

Senator BALDWIN. Which defendants were those?

Mr. KOESSLER. I shall, if you allow me, I shall later come to this.

So, to answer your question, Mr. Chambers, I considered the mock trial unfair. I considered them also improper, however, going to the question of duress rather than tricks, I considered improper the use of the hoods.

Senator BALDWIN. What?

Mr. KOESSLER. Of the hoods. The investigators justified that, or attempted to justify it by saying they want to prevent collusion among the defendants. I first of all doubt the correctness of this reasoning, and if it were correct, I believe it is not conclusive.

Mr. CHAMBERS. May I interrupt you, and not to argue particularly with you, but to point out my understanding of your approach to this problem.

If certain things happened there which might have only happened in one or two cases, it would throw a doubt in your mind as to whether or not you should not lean over backward, where all the cases are concerned?

Mr. KOESSLER. Not quite so, sir; only where there were also specific doubts. You see I called these border-line cases. There were certain cases where anyhow there were some doubts, but where you might nevertheless have been inclined to confirm the findings, because the doubts normally would not have weighed sufficiently, because even though the material is not—the theory is not preponderance, but evidence beyond reasonable doubt, it is still beyond reasonable doubt—where you would normally have said “This doubt is not a reasonable doubt, it is a doubt, but not a reasonable doubt.” However, in such a border-line case, where there was a doubt which I normally would not have considered a reasonable doubt, I was inclined to say “Well, something may have been wrong because this investigator—let me give you a concrete illustration later. I will give you the illustration of the case of Motzheim, who, incidentally was acquitted, but it is a very good illustration of what I mean, so these hoods I considered improper. I considered also as improper the facing of the defendants with non-bona fide witnesses, the confronting with non-bona fide witnesses.

I consider improper the fact that their so-called statements were dictated by the investigator in such a way that if you compare some of the statements, they are almost literally identical. It is for every experienced lawyer, I believe, a reason to be skeptical about statements under oath of several defendants having exactly the same wording. It may be said “Well, the investigator only formulated—”

Mr. CHAMBERS. When you say “exactly the same wording,” you don’t mean the entire affidavit?

Mr. KOESSLER. No, certain features.

Mr. CHAMBERS. But, certain expressions they used?

Mr. KOESSLER. No, certain features. For instance, it would have been difficult for me to describe it altogether. I would have to study again the record. But certain features, the description of an incident in which several defendants were involved, each of them, or at least more than one of them giving exactly or almost exactly the same description.

Now, that would not be bad in itself, and could be explained by the fact that they all told the same story and that the investigator formulated their story, but again in view of this general distrust with the other methods of the investigators, which they created, it gave me to think, gave me also to think that some of these affidavits contained strong self-incrimination and it is not natural, apart from the privilege against self-incrimination.

I am not going now to the technical phase, but it is not natural that a defendant, if he acts freely, goes to such extent of self-incrimination as to have—as some of the defendants went into, in their own affidavits and statements.

Mr. CHAMBERS. May I interrupt and ask this: These defendants signed these confessions and later on they had the opportunity to go on the stand—did they do that?

Mr. KOESSLER. Yes. I tell you about that, but here I am speaking partly, not on the basis of my official activities—partly on the basis of what I heard from defense counsel—



Mr. CHAMBERS. What I am trying to get at, at this point in the record, is this: That you say that you questioned, because of the general—we say aroma of the investigations, that is, as you heard of them, and as you found in the record, you questioned these affidavits. Now, I am asking you is it not a fact that the accused in this case signed these affidavits. Then, they went before a court and where, had they chosen, they each could have gone on the stand and told the court just exactly how these affidavits or statements were obtained, whether or not these statements were obtained through duress, whether or not they were abused, physically, mentally, morally, or in any other way.

Now, it is a fact they could have done that, isn't that correct?

Mr. KOESSLER. It is.

Mr. CHAMBERS. The next question is, did they go on the stand and allege duress? Did they go on the stand and deny the affidavits? There were 74 accused. How many of the accused took the stand in their own behalf?

Mr. KOESSLER. Very few.

Mr. CHAMBERS. How many?

Mr. KOESSLER. Very few.

Mr. CHAMBERS. The record shows that nine did.

Mr. KOESSLER. Here is what I am trying to—

Mr. CHAMBERS. It is a most important part of this thing. The defense attorneys who have appeared before us in Washington testified at great length, and much of their testimony coincides exactly with yours. The defense attorneys also said they were convinced that there was a lot of duress on this thing.

Now, I can quote, if you will accept my quotes, it won't be verbatim, but will be in substance, Colonel Dwinnell who was associate defense counsel. We asked Dwinnell what I just asked you "Why didn't you put all these people on the stand? Why didn't you let them tell the court—"

Mr. KOESSLER. May I give you an answer?

Mr. CHAMBERS. May I give you what is in the record, and then you may give us your answer.

The question we asked Colonel Dwinnell was, "Why didn't you put these people on the stand?" And there were many reasons offered on different days of testimony. One was that they felt that the court was prejudiced and they couldn't get any reasonable assistance from the court, but the reason which appears here significant to me is that Dwinnell testified, and this is all under oath, the reason they didn't put the balance of the defendants on the stand was, the nine who had taken the stand were lying to such an extent that they were implicating the others, and they were afraid to put the balance on, because they were being tried jointly and they were all lying, trying to protect themselves and therefore they were afraid to take a chance.

I am quoting from what the defense counsel have told us.

You say that you, months later, in reading the record of trial, plus the knowledge that you have picked up from other sources, you have suspicions of everything that went on there, but the thing that is most—

Mr. KOESSLER. That is not exactly what I said.

Mr. CHAMBERS. I am not putting words in your mouth. Perhaps I misinterpreted your remarks, but that is one of the things around this whole case which seems to prevail in our country and in Ger-

many—so many people seem to believe that everything was wrong down there, and I am frank to confess there seems to be reason why they should be questioned closely about what happened.

On the other hand, no one can come out and give us valid whys and wheres that they were afraid to put the other defendants on, but they tell us the very things which you reviewed in this case. If those things had been in the record, there would have been no doubt in your mind, no doubt in General Clay's mind, but since they didn't take the stand, then a reasonable man just asks a simple question—why? I'm asking you what you think about it.

Mr. KOESSLER. May I answer?

Your question is composed of several items.

Mr. CHAMBERS. Lots of them.

Mr. KOESSLER. I give them to you separately.

First of all, quite a few took the stand——

Mr. CHAMBERS. Nine.

Mr. KOESSLER. And made very substantial testimony to this effect; and partly the testimony even which was in was then corroborated by the investigators. For instance, when Hennecke claimed he was physically mistreated, it wasn't in the same way confirmed by Mr. Thon, by something what is admitted by Mr. Thon——

Mr. CHAMBERS. May I interrupt? Mr. Thon has never admitted, in the record, or before us, that he physically abused anybody.

Mr. KOESSLER. Does it not appear in the record that he pushed back somebody, or something like that?

Mr. CHAMBERS. Yes. Our only contact with Mr. Thon was sitting in the chair yesterday, and under persistent questioning he repeatedly denied ever laying a hand on anybody, touching or pushing them, or patting them on the back.

Mr. KOESSLER. I may be mistaken on that. I only remember dimly that the record was practically bare of any proof of physical mistreatment, but——

Mr. CHAMBERS. Was there any proof of physical mistreatment in that record?

Mr. KOESSLER. No, but something close to it, and my recollection was that it was an admission by Mr. Thon, which, however, he explained in——

Senator KEFAUVER. Mr. Thon said he wanted to see the SS mark on one boy, and he told him to hold up his hands, and he may have helped him get his hand or arm up.

Mr. KOESSLER. If you allow me, Mr. Chambers, I will in the recess look up that part of my review which I refer to, which I have in mind. I concluded, in my review, and this is still my opinion, that this record is bare of any substantial showing of physical mistreatment. All what I found in the record goes to the point of moral duress and tricks, but I found, and I will give you then my conclusions, and you will see that my conclusion was that the record was practically bare of any showing of physical mistreatment.

However, my remembrance will, and I may be mistaken, I will check that, that one investigator with a defendant, I believe it was Hennecke who was on the stand, he said something about mistreatment, made an admission which was not just an admission of mistreatment, but came close to who pushed him, but I will check and give it to you later.

Mr. CHAMBERS. May I at this point ask you a question? You have apparently a very thorough knowledge of the record, and have been intensely interested in the case for some time. Have you found any evidence anywhere of this exaggerated physical mistreatment which has been alleged by various and sundry people, specifically such things as the breaking of jaws and the knocking out of teeth, the damage to the genitals, the sticking of matches under fingernails, and all that sort of thing—have you found any evidence of that?

Mr. KOESSLER. No. It is even now, even after I heard all these, it is now my impression that if anything of this occurred at all, it was not in the plan of the investigation. Maybe that one Polish guard there, with such mistreatment—

Mr. CHAMBERS. What makes you bring that in, Mr. Koessler? What makes you think the Polish guards would do these things?

Mr. KOESSLER. I mean maybe the defendants claimed, one definitely, I believe, Peiper, I don't know who, but my bringing it in is that even taking the testimony of the defendant for granted, I don't believe that any real physical mistreatment by those in charge is proven.

Mr. CHAMBERS. Don't you also feel, Mr. Koessler, that if those things had occurred, that the defense counsel and the defendants themselves would have insisted, each and every one of them, in getting up and telling the court, "Look at my fingers, they are still calloused from burns"?

Mr. KOESSLER. Yes. My firm conviction, I said it in my written draft, I will repeat it now, that I believe that this case, whatever decision is made regarding it, should be decided on the assumption that no physical mistreatment of any relevance has been committed against the defendants say perhaps if you consider as physical mistreatment the fact that they had to march, to come to the investigation rooms, with the hoods on.

In my feeling, I was shocked, I must frankly say, I was shocked by the investigation methods. I was shocked by an article which appeared under the name of Judge Van Roden in a periodical—

Mr. CHAMBERS. Did you testify before the Simpson Commission?

Mr. KOESSLER. No; I was shocked, I must say, about this article, even more than about that investigation method, because I had the feeling that this article was a gross misstatement of what could be said by anybody responsible for certain knowledge of the facts.

So, let us keep it straight, all my suggestions I make as to the question of duress and tricks, not to the question of physical mistreatment. Now, answering your question, Mr. Chambers, I can't answer this question on the record, because in the record as I recollect it, nothing shows the reason why some of the defendants didn't take the stand. I can give you only my guess.

This guess is a double one. One of the reasons might have been what was told to you, that some of the defendants would have charged others. That may have been one of the reasons.

I believe, however, the main reason was a tactical one, the same tactical reason for which the defense in the Krupp case didn't have the defendant take the stand, to their great detriment I believe, but it is easy to say it afterward.

I believe also it was to the great detriment of the defendants in the Malmedy case; but again I say it is easy to say it afterward.

The defense was obviously, and remember it is a guess, but as a defense counsel, my professional guess, the defense counsel were faced with the following alternatives:

Either to try to shake these affidavits and if they are successful, to have the case dismissed because there was practically, in many cases, no other evidence than these affidavits, so they had the tremendous advantage of, if the defendants didn't take the stand that if their challenge of the affidavits, of the admissibility of the affidavits was successful, the case against most of the defendants would be no case.

The other alternative was the risk that if those affidavits were admitted, they would stand under challenge by testimony of the affiant.

Now, it is my guess, and maybe more guess, but I don't, I couldn't tell why I believe it is more than a guess. It is anyhow my guess that this question of tactics—tactics of the defense was one of those strongly in the minds of the defense counsel, that they had to make up their mind as to whether they could or should advise those defendants who were willing to follow them, to take the stand or not, because there were certain of the defendants who made up their minds themselves, one group to take the stand, these were the nine defendants who took the stand, another group which was anyhow decided not to take it.

Senator BALDWIN. Let me ask you a question there. You say that was decided by—

Mr. KOESSLER. I say, and it is all my guess, there must have been several defendants who were adamant in their desire to take the stand. I don't know whether all these nine were, but at least part of the nine, is my guess, wanted to take the stand irrespective of the advice of their defense counsel.

Mr. CHAMBERS. I think that some place in our record you are borne out that they put eight on and then they had considerable discussion and argument as to whether or not anybody else would take the stand, and one man insisted, and they put him on and that was the end of it.

Mr. KOESSLER. I didn't know that. My guess was based on something in the record.

Mr. CHAMBERS. I mean, the record of our committee.

Mr. KOESSLER. Oh, so anyhow it is based, my feeling, that part of the defendants made themselves independent from the advice of defense counsel. However, insofar as the advice of defense counsel was concerned, I believe that this advice was substantially, if not exclusively also due to this tactical consideration as to whether or not it would not be more advantageous for the defendants not to take the stand than to take the stand.

I believe that answers your question, sir, concerning why the defendants didn't take the stand.

Mr. CHAMBERS. Proceed.

Mr. KOESSLER. Now, as I said, I reached my conclusions concerning certain defendants before I was ordered—I must say, when you compare my findings with the final findings by General Clay, you will find, as I find that in some cases—in some cases in which he recommended the confirmation of the death sentence, the man was really given a more lenient sentence.

Mr. CHAMBERS. That is correct.

Mr. KOESSLER. I find—

Senator KEFAUVER. Are his findings a part of the record?

Senator BALDWIN. I was going to ask—you referred your recommendations, the recommendations of your findings as a draft?

Mr. KOESSLER. Yes, sir; I have it here.

Senator BALDWIN. Do you have that draft available?

Mr. KOESSLER. Yes, sir?

Senator BALDWIN. This is the draft. Have you discussed those things that you discussed with us here today?

Mr. KOESSLER. Yes, sir.

Senator BALDWIN. I wonder if you would leave a copy of that, because I think it would be helpful to us.

Mr. KOESSLER. Only, sir, I must make the following reservation. It is only part of my complete draft. My complete draft I sent at some time with a lot of other material to New York, just to place it in a warehouse where I have material I can keep at home. However, I kept for certain purposes this part, but I believe it will be sufficient for you because it contains the discussion of the general problems, and it contains a discussion of guilt and sentence concerning those sentences regarding which I reached a conclusion.

It is not bound together. It is only supposed to be a first draft.

Senator BALDWIN. Do you have two copies?

Mr. KOESSLER. I have a copy at home, but I have here one! but since I have a complete one at home, I can easily spare it.

Now, this is the part discussing the general problems, but it is not all; and if I may, I will leave it then in this envelope.

This contains discussion of jurisdiction problems, general discussion on the required sufficiency of the evidence, and that is recommendations concerning possible action on sentences regarding only part of the accused.

In this envelope, a second envelope, you have matters concerning Valentin Bersin, a write-up concerning the sufficiency of the evidence, since he is the one whom I recommended to find guilty. That is also here, a write-up upon him concerning the sentence.

Now, in some cases where I reached the conclusion that the man should be acquitted, there is no corresponding write-up on the sentences.

Senator KEFAUVER. Did General Clay have the benefit of your report and recommendations?

Mr. KOESSLER. I believe; I don't know what happened. I had to turn in my review.

Senator BALDWIN. You did turn it in?

Mr. KOESSLER. I turned it in to Colonel Rosenfeld, and as I understand, it was sent to Dachau to the gentleman who was supposed to write a new review. I believe it was Colonel Benson.

Mr. CHAMBERS. Benson?

Mr. KOESSLER. Yes, sir. What finally happened to the reviews I don't know. I wonder where the sentences are, because I want to give them to you.

Excuse me, sir; this is not it.

May I have that back again; I believe the sentences are also there.

Senator BALDWIN. Instead of taking your time now, after you get through testifying, why don't you look over your papers?

Senator KEFAUVER. Go over them with Mr. Chambers.

Mr. CHAMBERS. I am going over them.

Mr. KOESSLER. This is complete, contains also the recommendations concerning the sentences.

Mr. CHAMBERS. Thank you.

Mr. KOESSLER. However, the other part, if you want to have it, was what I called a digest of the affidavits, where I wrote with regard—that is not in coherent form, not in any form to read easily, it is just dry, a digest of all the affidavits.

Senator BALDWIN. I think what you have got here in the way of recommendations is what would be most helpful to us.

That need not be printed, but we want it as a part of the file.

Mr. KOESSLER. I wanted to say, in general, and then I will come back to certain specific accused—where you believe it might be of interest for you gentlemen, in general by comparing my recommendations in this matter with the 12 or so cases—with those reached regarding the defendants in the formal final review by General Clay, I found that there was, in certain instances—they were more severe than General Clay. In other words, I recommended the death sentence, I give the details, general details, the death sentence where General Clay recommended a more lenient result.

Senator KEFAUVER. How many did you recommend the death sentence on?

Mr. KOESSLER. I show you immediately.

Senator BALDWIN. We have that right here.

Mr. CHAMBERS. Six.

Mr. KOESSLER. May I see that one a moment?

I had written up, at that time, my recommendations concerning 15 defendants at that time. I recommended the confirmation of the finding of guilty regarding 12 of them. However, in each case, with the qualification that they should only be found guilty of the individual incident proved against them. This qualification I made in each case in my recommendation.

I recommended three for acquittal.

Among those 12 which I recommended for confirmation of their conviction, I recommended to confirm the death sentence in six cases.

Mr. CHAMBERS. Would you let me have those six?

Mr. KOESSLER. Yes—a moment.

Mr. CHAMBERS. Give me the names.

Mr. KOESSLER. Yes. I recommended in the case of George Fleps—

Mr. CHAMBERS. Take them slowly. I want to write them down. Fleps?

Mr. KOESSLER. Huber.

Mr. CHAMBERS. Yes.

Mr. KOESSLER. Kuhn.

Mr. CHAMBERS. Yes.

Mr. KOESSLER. Sickel.

Mr. CHAMBERS. Yes.

Mr. KOESSLER. Sprenger.

Mr. CHAMBERS. Yes.

Mr. KOESSLER. And Zwigart.

Mr. CHAMBERS. Very well.

Mr. KOESSLER. I wish to mention here that Sickel is among those whose death sentence has been commuted by General Clay. Frankly, I believe that Sickel should have been given the death sentence. His crime is a very atrocious one but anyhow I want to show that even though I was defense-minded in the reviews, not just reaching always a lenient result on a blank form, say, that I considered each case on its individual merits and where I found that there was no doubt in the evidence and that the atrocity or the crime was a very grave one, I had no hesitation to recommend the death sentence, and I will probably have, upon finishing my reviews much more confirmation of death sentences than were heard by—

Senator KEFAUVER. At the time you wrote the letter, you had only reviewed 25 cases?

Mr. KOESSLER. Only 15. I had reviewed only 15 but I had already mentally reviewed all of them, but after going over them and reaching a tentative conclusion, I started dictating one after the other, so the review would not have taken much time because it was then a question of dictation rather than working with the mind. However, it took a long time, I must say, to make up my mind, because I was aware of the responsibility of even a recommendation in such case. Anyhow, does it satisfy you or shall I give you some other details concerning my recommendation?

Mr. CHAMBERS. That is all right.

I would just like to say for the record that in these 6 cases in which you recommend the death sentences, the case of 6 of them, all but two of those particular cases where you recommended death, the final sentence approved by General Clay was lighter?

Mr. KOESSLER. Correct.

Now, one of the cases on which I did not write my recommendation, but which is illustrative of what I before said about boundary line cases and weight to be given to my feeling as to the propriety of the investigation making it a borderline, is the case of Motzheim which I may more easily discuss, as Motzheim is among those regarding whom Colonel Clay dismissed the charge. I wanted to reach the same conclusion.

Now, I wanted to reach it mainly on the basis of the testimony of Mr. Perl himself, concerning how he got the statement from Motzheim, and if you will be kind enough to read—no, you don't have it.

Senator BALDWIN. Couldn't you find it after the recess? We have a number of witnesses today, Mr. Koessler, that have come from a long way, and we want to hear them as promptly as possible. We don't want to keep them over here unnecessarily, so if you could do that out of hours, so to speak—

Mr. KOESSLER. Now, there are two cases among those confirmed by General Clay which are identical with two of the three regarding which I recommended acquittal. They are the cases of Pletz—

Yes, there are three cases, all of three cases in which I had already written up my recommendation for acquittal, merely on the basis of insufficiency of the evidence, and they are identical with part of the defendants regarding whom the finding of guilty has been confirmed. They are the cases of August Tonk, Hans Pletz, and George Kotzur.

If you read my recommendation concerning these three accused, you will find an elaboration of the reason why I reached this con-

clusion. You will see there, from that, I never had the belief that these accused were guilty—were free of very serious suspicion of having committed a crime—but I had the feeling that there the evidence had some doubts, they were boundary line cases and a review of the general investigation methods—I should assume a reasonable doubt where I might otherwise have assumed only a slight doubt.

Of course it may be that also in other cases I might have reached a different conclusion from that reached by General Clay, but on the whole I must say I had the feeling that the conclusions reached by General Clay were subject to specific exceptions which I made, now, regarding the three accused, and which were very moderate in view of what most of these defendants were supposed to have—were proved to have done, even if one gives a great allowance for doubts caused by the investigation methods, as I said before.

For instance, Sickel was one of those defendants who, in my feeling, definitely deserved a death sentence. I see his death sentence was commuted to life by General Clay.

I believe it also strongly that Sprenger deserved the death sentence, in spite of the recommendation by the prosecutor Ellis, the prosecutor on the grounds, with which I didn't agree because he was in a way helpful to the prosecution, by charging other defendants—I believed that Sprenger deserved the death sentence. However, I see that his death sentence was commuted to life.

Senator BALDWIN. Mr. Koessler, Colonel Ellis testified that he put in a recommendation for clemency in some of the cases.

Mr. KOESSLER. Yes, sir.

Senator BALDWIN. Did you see them?

Mr. KOESSLER. Yes, sir. They are part of the record here, recommended for clemency.

Senator BALDWIN. When did that come in?

Mr. KOESSLER. We got two kinds of recommendations: One recommendation by the court as a whole, recommending that the petition of the defendants for changing their method of execution from hang to shooting by musketry should be granted.

The court said—I was quite startled by the wording of the recommendation, that this recommendation alleged that all the defendants had made a very good impression upon the court. That remains in my mind. The whole tribunal recommended them for death by shooting rather than by hanging because all the defendants had made a very good impression upon the court and therefore they deserved a soldier's death, something like that.

At the same time, we got a short interval, I can't tell you the details now, we got recommendations by Colonel Ellis, as I remember there was one recommendation for Sprenger, and this Colonel Ellis—

Senator BALDWIN. I don't know that we need to go into that, Mr. Koessler. It is going to be a test of your recollection, and we have Ellis?—

Mr. CHAMBERS. We have a copy of his recommendation.

Mr. KOESSLER. It is true, the recommendations were in the record.

Senator BALDWIN. I just wondered, Mr. Chambers, whether or not you had seen that and wanted to confirm it.

Mr. KOESSLER. They are in the record.

Now, frankly, I don't know whether I should talk about that.



Mr. CHAMBERS. What happened to those recommendations? What happened to them?

Mr. KOESSLER. They were in the record and insofar as I took up an individual defendant, I considered them, for instance, in the case of Sprenger, I decided against the recommendation. I had the feeling that this was not the ground—

Mr. CHAMBERS. You turned your files over to Benson. Did you turn your recommendations over with the files?

Mr. KOESSLER. I turned over the copy of the whole write-up. More than that, everything I had, with the whole file.

Now comes the point, at that moment when I turned it in Mr. Chiles said—well, in a rather sharp way, I should express that he don't agree with, or that the conclusions were reached by me alone, without his concurrence, or something like that.

Now, it was true to the fact, because he didn't take any part in the write-up, let me never know his opinion. However, I still found it a bit funny that he wanted an express statement. However, since he desired it, I turned in my draft with the express statement that all the recommendations and conclusions reached were my independent work and that I alone assumed the responsibility for it.

When Mr. Chiles had made the reservation, Mr. Dadanio wanted a similar reservation, so I satisfied him too.

I was a bit astonished at that time about these reservations, because the way I was continuing my work on the file, it looked like a disciplinary measure against me. It was probably not, but it looked like a disciplinary measure, and I had at that time the feeling that my coworkers wanted to disassociate themselves from me at the moment and I was being disciplined for my work.

Senator BALDWIN. I don't think you need to explain your position with reference to this particular thing, because you evidently have given very deep thought to this whole case and you have been most constructive in your criticism and your appraisal of it.

Have you anything further that you want to say with reference to your impressions of the case? I mean, do you have any specific knowledge of the physical abuse or improper methods used in taking affidavits?

Mr. KOESSLER. No, sir.

Senator BALDWIN. And, you know, things of that kind that we are particularly interested in.

Mr. KOESSLER. No, sir. I must frankly say, neither did I obtain anything of that kind from the record, say for certain unimportant things which I mentioned. When you will read it, you will find there isn't a scintilla, I will say, of such a thing—there isn't a scintilla in the record.

Senator BALDWIN. One of the things that was plain was that in securing these confessions and statements, men postured as priests to impress these men.

Did you find any evidence of that?

Mr. KOESSLER. What?

Senator BALDWIN. Postured or made believe that they were priests. Did you find any evidence of that in your examination of the record?

Mr. KOESSLER. No. They postured as judges or defense counsel, but not as priests.

Senator BALDWIN. There is some evidence about that.

Mr. KOESSLER. However, I am not speaking about the defense testimony. In the defense testimony there is enough allegation of the mistreatment. The defendants themselves stated—

Senator BALDWIN. Of course we have Colonel Everett's petition and the sworn affidavits of all the men convicted, many of which allege physical abuse.

Mr. KOESSLER. I didn't see that, but even the testimony which they gave before the court, those defendants who took the stand, quite a few, at least three made specific allegations, but that doesn't say I believe them, and frankly I didn't them. My feeling was that these are not true, or strongly exaggerated. My feeling was that the investigators were very careful in not giving the defendants opportunity of complaining to have been mistreated. However, they went too far in other methods used.

Senator BALDWIN. But you have no way of checking that out of your own knowledge?

Mr. KOESSLER. No—no; even though I must say I have been on good personal terms with some of the investigators, I have always confidence in talking with them, which I might not be entitled to disclose if anything contrary to them had been disclosed in the confidential talks, but I must say that even in the confidential talks, where they didn't speak for the record but to a friend, they adamantly denied any charge of mistreatment. They admitted the charge of tricks. However, they claimed that that was proper.

Senator BALDWIN. That is what you are critical of?

Mr. KOESSLER. That is what I was critical of.

Senator BALDWIN. May I ask you some questions with reference, just for the benefit of the record, to your own experience and training, because you have made some very constructive criticism here of this whole procedure.

You say you were born in 1889. Where did you go to school, Mr. Koessler?

Mr. KOESSLER. First, school in Austria. I had 4 years in what you call public school, then 8 years of gymnasium which was a combination of college and high school. Then I took the doctor's degree at an Austrian university, passed the bar examination in Austria and was admitted to the bar, as a member of the bar in Austria. I practiced law, was a member of the bar in Vienna for about 20 years, from 1918 to 1938. Meanwhile, during the First World War I was a member of the judge advocate of the Austrian Army in the capacity of first lieutenant and served during the First World War from 1915 to 1918, and during part of this time, I would say most of the time, I was a first lieutenant attached to the judge advocate's staff of the Austrian Army, or, as it was called then, oberleutnant, first lieutenant, and then auditor.

After the anschluss in 1938, I had to leave Austria. After a stay in France I came to the States and I studied first at Columbia University, political science, and graduated as master of arts and public law, and then took some courses for Ph. D., but was not and am not a Ph. D., because I didn't publish my paper; and then I went to Columbia Law School and graduated as bachelor of law.

Columbia Law School, I must say I was honor graduate at, I was a Kent scholar, and then I took and practiced, after passing the New York bar examination, and was admitted as a member of the bar

in the beginning of 1946, the bar of New York. But I didn't practice in New York, say, for a few months when I was practicing as a law clerk because shortly before my admission to the bar I had gotten this appointment by the Army as an attorney to the War Crimes staff and then the first year was with the War Crimes Group of the Army and from February 1946 until 1947.

Then, I was transferred to Nuremberg and was on the prosecution staff at a couple of trials, and at the end of the Krupp trials I did 2 or 3 months' work on the just finishing so-called Wilhelmstrasse case. I wrote the final briefs of the prosecution on three defendants and Meizner, Stembrock, and Bricker, and then I was transferred to the Legal Division of OMGB, Office Military Government of Bavaria, which I have been since December 1948, or January 1949, rather.

Senator BALDWIN. You have written a number of articles?

Mr. KOESSLER. I have written a number of articles. Of course in the States I didn't deal with matters of criminal law, but I published in Vienna monographs on problems of law.

I have practiced in Vienna—criminal law, in addition to civil law.

Senator BALDWIN. I think that is all. Do you have anything further to say?

Mr. KOESSLER. If I may make one further remark, Senator, this goes to a question as to whether at the present time any death sentences should be executed or not.

Senator BALDWIN. What is that?

Mr. KOESSLER. If I may make an observation, may I volunteer an observation that goes to the question of whether any death sentences in this case should be executed at the present time or not?

If you wish to hear my opinion on that, it would not be an opinion, going back to the time when I made my recommendations; it would be an opinion as of the present moment.

Senator BALDWIN. If you want to express your opinion, I see no reason why not, but perhaps you had better wait until Mr. Chambers—

(There was discussion off the record.)

Senator BALDWIN. Mr. Koessler has completed his testimony but said he would like to express an opinion as to whether or not the death sentences now pending should be executed.

Mr. CHAMBERS. Well, sir—I mean, if you wish. I don't know how far it is of interest.

Senator BALDWIN. Let me say here that, as I said at the very opening of the trial, we have no jurisdiction over the sentences. I mean, we are a legislative body. The sentences are entirely up to the Department of the Army and entirely up to the Secretary of the Army; that is, whether or not these executions shall take place.

Our task is purely one of determining facts concerning the conduct of this whole investigation and trial, both from the standpoint of recommendations for possible legislation in connection with military courts, and our findings with reference to the conduct of the Army, insofar as they may affect the question of discipline and that sort of thing.

So I don't know that your observations with reference to the sentences would be helpful to us. On the other hand, if you want to make them, I see no reason why you should not.

Senator KEFAUVER. Are they included in his report, and haven't you discussed each sentence in your report that you have given us?

Mr. KOESSLER. Not all of them. You see, that is why I was interested to make this statement, but I might better make it in a letter to the Army, as you more or less intimate, Senator, than here.

Why I am interested in making such a statement, because not all of those regarding whom the death sentence is pending are identical with those regarding whom I wrote up my recommendation. There are some cases regarding which I did not write up my recommendation.

Senator KEFAUVER. If you are going to write up a recommendation as to the others, give us a copy of the letter and that might be well to have in the record, but I agree that we cannot go into a detailed discussion about each case.

Mr. KOESSLER. It is up to you gentlemen. If you want, I make a statement here, if you prefer; and I see the reasons why you should prefer; and then I could make it upon request in a letter to the Army, which might have jurisdiction.

Senator BALDWIN. Senator Kefauver, how do you feel about that?

Senator KEFAUVER. Had you planned to make a recommendation to the Army in a short time?

Mr. KOESSLER. No. It just occurred to me now, when the Senator intimated that this is not properly before this committee. It just occurred to me that I might perhaps write a letter to this effect to the Army.

Senator KEFAUVER. If you would do that and give us a copy, we could put that in the files of the committee.

Senator BALDWIN. We are not an appeals court, you understand.

Mr. KOESSLER. May I make one conclusive remark which refers to your subject? I have the definite feeling from the study of the record that the trial was a fair one. There may be disagreement, and I think strong disagreement concerning certain technical details.

For instance, I strongly disagree with the form of the findings, especially of the findings, and as affirmed by the review, namely, that it has no qualifications, and I believe that reasonable men can be fair about the appropriateness of such mass trials and there are other things where, on technical grounds I would say, as a lawyer, as a matter rather offhand, others might have a different opinion, but my difficulty, my feeling is that the trial was fair, that it was a bona fide trial, and even though we reached results a great part of which I disagree with, as General Clay also disagreed by setting aside so many findings, I still believe that the findings were reached in good faith and on the basis of a fair trial.

I have not the same feeling concerning the pretrial investigation, but it is my feeling also concerning this pretrial investigation that what was done there was not done upon a scheme issued from the top, but were individual excesses due to the great faith and belief of the investigators that they were properly performing their duties. Unfortunately they were ill-advised, but it is my feeling that even the investigators, when they did these things which are shocking to me, acted in the belief that this was right.

Senator BALDWIN. Thank you very much.

Senator KEFAUVER. I wanted to ask off the record.

(There was discussion off the record.)

Senator KEFAUVER. In your reference to the way the trial was conducted, you meant also to include the good faith of the defense attorneys in trying to give the best defense that they could?

Mr. KOESSLER. Yes, sir; I believe that the defense team was an extraordinarily good one, and Colonel Everett, who was the chief, and then Colonel Dwinnell, who was, I believe, his deputy, went to an extreme length in their intention to give the defendants a very energetic defense and I have the feeling at least this part of the defense team, whom I knew personally—for instance, I knew Mr. Walter R. Waters, I don't know how it is spelled, who is a member of the bar of California, who spent—yes, he went very far in his selfless efforts to give these accused a fair trial.

Senator BALDWIN. Walters, did you say?

Mr. KOESSLER. Waters, W-a-t-e-r-s, a member of the bar of California. There were two Waters.

Senator BALDWIN. He is in the United States and we can probably reach him there.

Mr. KOESSLER. I mean the one who was in California, because I have known him in person at the time I was defense counsel in Ludwigsburg. He acted as prosecutor in Ludwigsburg and later on Colonel Everett chose him as one of the defense counsel. I know that Mr. Waters really is faithful at heart because I had often the opportunity of talking to him. Also off the record, in private conversations I talked to him when he came to visit us in Ludwigsburg and I had the feeling that during the case—I had a similar feeling regarding another colleague of mine, Mr. Strong, a former European. However, he is a member of the bar of New York and he was defense counsel in Ludwigsburg.

Senator BALDWIN. He already testified.

Mr. KOESSLER. At the same time, when he was defense counsel in Ludwigsburg, I had the feeling that Mr. Strong was very much concerned about giving the defendants a very good defense.

So, I feel that whatever may be substantially unjust in the outcome of the case, there is no safeguard against that. The best court may make a mistake and we know that happens even in the best judicial framework, so that we know there are miscarriages of justice. The weighing of evidence is something you can't measure by yards, which is a matter of feeling to a large extent, but I believe that the defendants were given a fair trial and they were given an excellent defense, an extraordinarily good and selfless defense, especially by the American defense counsel.

All right, and thank you, sir.

Senator BALDWIN. Thank you very much for appearing as a witness. (The witness left the room.)

Mr. CHAMBERS. Call Colonel Rosenfeld next.

Senator BALDWIN. Colonel, 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 ROSENFELD. I do.

**TESTIMONY OF COL. A. H. ROSENFELD, STAFF JUDGE ADVOCATE,  
MUNICH MILITARY POST, DEPARTMENT OF THE ARMY**

Mr. CHAMBERS. Colonel Rosenfeld, will you give us your full name and present position?

Colonel ROSENFELD. Col. A. H. Rosenfeld, Jr. I am colonel, Infantry, O212685, staff judge advocate, Munich military post.

Mr. CHAMBERS. Colonel, I am going to ask as to some specific points I would like to have cleared up and then if you have any general statement you would care to make, or comments, the committee will be more than glad to have them.

What is your connection with the Malmedy trials, or what was?

Colonel ROSENFELD. I was the law member of the court.

Mr. CHAMBERS. Now, as law member of the court, when did you first assume those duties; when did the court organize?

Colonel ROSENFELD. The court organized 1 day prior to the trial, which I believe was the 16th of May 1946. The court therefore organized the 15th of May 1946.

Mr. CHAMBERS. As I understand the procedure, in the early days of the trial, the defendants made several motions as to jurisdiction, severance, and things of that type, on which the court made a general ruling which thereafter governed the same type of questions as they came up?

Colonel ROSENFELD. Prior to the opening of the court, and based upon experience in the preceding case, the Mauthausen Concentration Camp case, it was determined motions would be submitted in writing first by the defense counsel, because Colonel Everett advised me he had several motions to make as to the jurisdiction, another motion, I believe as to severance, and I said that would be a very good idea—for him to submit it in writing and we would give the prosecution a chance to answer the motions and the court would submit its findings in writing.

In doing that we saved approximately one full day's time.

The decisions were given at the opening of the case, when the motion and the answer were read into the record.

Mr. CHAMBERS. Now, it was your responsibility, as law member of the court, to advise the other members of the court on legal matters; is that correct?

Colonel ROSENFELD. Yes; it was.

Mr. CHAMBERS. And on this particular motion you considered and advised the court, and they made their ruling on them?

Colonel ROSENFELD. The motion was actually taken up in the court chambers.

Mr. CHAMBERS. Was Colonel Everett present at the time?

Colonel ROSENFELD. No; neither Colonel Ellis or Everett were. They had submitted them in writing, similar to the manner in which we submit motion in the United States.

Mr. CHAMBERS. Did the defendants continue throughout the trial to offer objections and refer back to these original rulings and take exceptions?

Colonel ROSENFELD. Not those rulings. As I recall, one of the objections taken early in the trial, during the testimony of Von Kramm, was to the cross-examination. Questions were asked on cross-

examination which were not covered in the scope of the direct examination—

MR. CHAMBERS. May I interrupt just one second? The ruling in the Kramm case has been a very big point before this committee. It has come up repeatedly, and the record is replete as to it.

Could you give us a little detail and the basis for your ruling?

Colonel ROSENFELD. On the Von Kramm case?

MR. CHAMBERS. Kramm, or Von Kramm; yes.

Colonel ROSENFELD. Yes. I believe somewhere in the testimony, and I refreshed my memory from the record, a question was asked of Von Kramm on cross-examination with respect to his activities on the Russian front, which was not taken up on direct examination, and objection was made. I sustained the objection—and, by the way, the law member at that time actually ruled on all legal objections—I sustained the objection and I believe I said, in so many words, "Not cross-examination."

Now, there was nothing further said by the examining attorney as to who was Mr. Strong, and he continued with his questions; two or three or maybe four questions later the same situation arose, the same objection was made and I sustained the objection.

The court recessed for the morning. We recessed at approximately 10 o'clock. At 10:30, when the court returned, before the questioning was resumed, one of the counsel for the defense—I don't know which one, and I don't think the record states which one—asked for an amplification of the court's ruling with respect to cross-examination, and at that time—may I quote my exact words? I have them here. I made the following decision, and this is the question:

DEFENSE COUNSEL: May it please the Court, on behalf of the defense and in view of the fact that the witness will return to the witness stand at a later time during this trial, no further questions will be asked of the witness at this time, but we as defense counsel would like at this time an amplification of the Court's ruling on the objection by the prosecution to our line of questions on cross-examination. Do we understand that in the future we will be limited to the line of questioning on direct examination of the witness, or will we be permitted to ask of the witness questions designed primarily to attack the credibility and veracity and bias of the witness?

Colonel ROSENFELD. Both the prosecution and the defense will be permitted to cross-examine witness 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.

If the accused or any of the accused take the stand, cross-examination will be permitted in accordance with the rules of evidence whereby the accused may be cross-examined on any matter in connection with the case.

Von Kramm was not an accused, and from then on we made a rule that a witness taking the stand other than the accused could be cross-examined only on matters taken up in the direct examination. I don't recall, and I know that Mr. Strong, in the Von Kramm case, did not tell me on any of the objections, and any of the rulings, that he wished to impeach the credibility of Von Kramm or the witness. Had he said so, we would have permitted the question. That is the reason I made the ruling on page 221 of the testimony.

Senator BALDWIN. One of the things that was dwelt upon at great length in our investigation in the United States, and the question came up in connection with putting the accused on the stand to testify to the effect that their statements and confessions had been secured

as the result of physical abuse and duress and tricks—in other words, to impeach the credibility of the statements—one of the defense counsel, if not two of them, testified in the States and complained of the fact that under your ruling they could not put an accused on the stand to attack the credibility of his statement without opening his testimony up to the whole broad field of the charge itself.

Colonel ROSENFELD. Is that statement in the record of trial?

Senator BALDWIN. That is my recollection. I tried to find it here, and I tried—

Colonel ROSENFELD. No; I mean is it in the actual record of trial? Unfortunately, I haven't seen any of the reviews, nor have I consulted your records of hearings.

Senator BALDWIN. That is, to the best of my recollection, that was the claim that was made.

Colonel ROSENFELD. Well, it certainly wasn't made during the trial, to the best of my recollection, because Von Kramm was apparently a very early witness; and on page 221 of the record I said they might be examined according to the laws of evidence.

Now, evidence, as we were using it at that time, was the ordinary Anglo evidence, with the exception of hearsay evidence, which was admissible.

I would like to know who made the statement, and whether or not the statement was made in open court.

Mr. CHAMBERS. While the Senator is asking you questions, I will go ahead and see if we cannot find it. As I recall it, and it was brought out several times, Senator McCarthy, I suspect on the advice of Dwinnell, because Dwinnell was very familiar with the thing, has made quite a point of the fact that it was apparently impossible to get, on cross-examination of these witnesses, not the accused now, but the witnesses—it was very difficult to get anything in the record which would show that the witnesses themselves might have been subject to duress.

Colonel ROSENFELD. Let's look at Von Kramm.

On page 216 of the record, Kramm was asked this question by Mr. Strong:

Kramm, isn't it a fact that you, during the time you were in Schwabisch Hall, signed a statement for prosecution in question and answer form, consisting of approximately 20 pages?

The prosecution objected, and I said:

That is not cross examination. It is the last time the court will notify you.

The reason for the past phrase was this: Mr. Strong admitted, during the course of the trial, and I think it is in the record that he wasn't very familiar with the rules of evidence, and the tone of his examination here certainly brings that out, and on several of these occasions, when he made his objections, and when you see him physically, and the manner in which he made his objections, caused some of the members of the court to comment, and they advised me if there was some manner in which I could have him informed of the nature in which to make his objections.

Now, never once did he say, "I want to ask this," or "I am objecting, I am asking this question for the reason of impeaching the witness," or "For the reason of showing that the witness was threatened, or promised immunity."



Now, so far as examining the statements are concerned, when Mr. Thon took the stand, when any of the investigators took the stand for the introduction of a statement, they were permitted wide latitude in examination to go behind the method of taking the statement.

Now, going further, after the eighth accused had taken the stand, Colonel Everett asked for a short recess to poll the remainder of the accused, to see whether or not they should go on with the trial, or stop right there. They came in—we came in, oh, maybe a half an hour later, I don't want to say the exact time, and they opened and one more accused took the stand. Apparently one wanted to take the stand, and that was the end; but, as far as giving them an opportunity to explain about duress, they had an opportunity right up to the very last minute, which you will find in the file. Those that did not take the stand filed statements in mitigation, and some of those statements were rather astounding.

Mr. CHAMBERS. Colonel Rosenfeld, here is one of the examples that we would like to meet head-on, and see what meat there is to it.

It is on page 187 of the hearings before our subcommittee.

Colonel ROSENFELD. Go ahead.

Mr. CHAMBERS. Senator McCarthy asked a question of a man by the name of Bailey, as follows:

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 that 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—

That is another point that gets into the business of refugees.

For the record, I would like to take the responsibility of saying this: There are many, many statements of this kind which are statements and conclusions made by some of the interrogators, or people asking questions at the meetings, which were his conclusions only, and which were not necessarily substantiated by the facts in this particular case, when we were in the early days of the hearing, and the facts had not been very clearly established. I don't think that some of these conclusions expressed by Senator McCarthy, expressed anything that was based in the record, but merely his own opinion—

Colonel ROSENFELD. May I ask for pages 64 and 65 of the record?

Mr. CHAMBERS. I think they refer to the record of trial.

Colonel ROSENFELD. It is the record of trial he is probably referring to?

Mr. CHAMBERS. I have an idea he is.

It is the first Everett petition, in which they refer to page 220 and 221 of the record of trial, I believe.

Colonel ROSENFELD. That is the question and answer I just placed on record, from the Von Kramm case. It has nothing to do with the accused at all.

I said, in so many words, when they asked about opening the scope of cross-examination, "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."

And, of course, that was based on Wharton's Evidence, which is the standard work used by the Army in all its courts martial, and it was section 1300, one of the low 1300 sections, I can almost quote the page—on page 2218 and thereafter.

Then I said, "If the accused or any of the accused take the stand, cross-examination will be permitted in accordance with the rules of evidence whereby the accused may be cross-examined on any matter in connection with the case." That is almost word for word in the document.

Now, at no time did anyone ask me if an accused could be put on the stand just for the purpose of going into the facts surrounding his statement. We do that every day. We do it in courts martial.

Mr. CHAMBERS. Then, Kramm was not an accused?

Colonel ROSENFELD. Kramm was not an accused.

Mr. CHAMBERS. Kramm was a witness?

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. So that insofar as the questions concerning Kramm were concerned, your ruling was made solely to a witness and you held that unless they had gone into a matter on direct examination—

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. That it was not subject to cross-examination.

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. Now, had they raised the point with you, or asked for a ruling on the point as to whether or not the facts surrounding the way in which Kramm's statement, which apparently was put into evidence, was secured, would your ruling have been the same?

Colonel ROSENFELD. Will you repeat the last question?

(The pending question was read by the reporter.)

Colonel ROSENFELD. Now, if they had said that they wanted the question for the purpose of showing how the statement had been obtained, or whether Kramm had been promised immunity, I believe my ruling would have been different. That is one time I would have closed the court for this reason: We had built up a certain idea of continuity in the trial. It would have been very easy, and all the counsel knew that they could call Von Kramm as their witness. We did it constantly in the trial afterward.

Mr. CHAMBERS. In other words, the defense had the opportunity to call Kramm as a witness?

Colonel ROSENFELD. Absolutely.

Mr. CHAMBERS. If they wanted to.

Colonel ROSENFELD. Absolutely. We did it time and time again.

Mr. CHAMBERS. Is there anything in the record that shows that?

Colonel ROSENFELD. I don't think the question was even asked. That was one of the obvious things. I don't want to say "Yes," and I don't want to say "No"; but I did it so many times myself, when I was special prosecutor, there was not question about following again the rules of evidence, that you call a witness as your own.

Mr. CHAMBERS. Well, then, may I ask you to return to your earlier testimony here, and I believe when the defense came in again and asked for an elaboration on your ruling, you pointed out at that time to them, that since Kramm would probably appear at a later time, they—repeat that.

Colonel ROSENFELD. All right. [Reading:]

Defense COUNSEL. May it please the Court, on behalf of the defense and in view of the fact that the witness will return to the witness stand at a later time during this trial, \* \* \*

I don't know what the defense meant, but they may have intended to use him as a witness.

Mr. CHAMBERS. The defense said that?

Colonel ROSENFELD. That is the defense statement coming from them, quite contrary to the fact that they were not going to be permitted to question him.

Mr. CHAMBERS. What page is that on?

Colonel ROSENFELD. Page 220 of the record.

The court reopened at 10:30 in the morning. The court came to order with the usual announcement that everybody was present with the exception of Dr. Rau and Dr. Pfister and then said:

Will you call the witness Kramm?

You are reminded you are still under oath.

Kurt Kramm, called as a witness for the prosecution, resumed the stand and testified further through an interpreter as follows:

Dr. LELING. I have no further questions.

Then the defense counsel, I don't know which one it was, they don't say, said, "Now, since Kramm is coming on later in the trial. I don't know what it meant, but it was certainly obvious to me that they were going to use him.

Senator BALDWIN. Kramm was on the witness stand at the time the first colloquy occurred, as a witness for the prosecution?

Colonel ROSENFELD. Yes, sir. Earlier in the trial, on page 220—it probably was the second day of the trial, but I don't want to be held to that statement—Kramm was one of the first witnesses called. I do recall that Kramm, having been one of these same SS men, was highly nervous when he came on the stand, and, as a matter of fact, I think there is one place in the record, although I asked them to strike it from the record, where Mr. Everett had to tell the accused to stop making underhand comments while Kramm was on the stand. They sort of gave him a raspberry when he walked in the courtroom. That was obvious, and the Court didn't take very kindly to that.

Mr. CHAMBERS. Kramm had been a member of the organization and in effect was turning State's evidence?

Colonel ROSENFELD. One of the adjutants who had turned State's evidence, and he apparently was not promised any immunity for the simple reason that over 1 year later, I used him myself as a witness in another case, and I had to get him out of the same camp he had been

at, Darmstadt, and he was brought in as a prisoner. That was in the Skorzeny case.

Senator BALDWIN. In order to get it in the record so we may consider it when we review the record, when we review the printed testimony, on page 185, Senator McCarthy, in questioning Mr. Bailey, said this:

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:

Now according to the excerpt from the record, the man who is being questioned, and from whose testimony and record the quotes apparently came—you say he was not a defendant?

Colonel ROSENFELD. No; and I will give you the page. This is taken directly from page—

Senator BALDWIN. 65?

Colonel ROSENFELD. No, I mean the page in the exact record of trial.

Now, on page 218 of the original record of trial, Kurt Kramm is on cross-examination—

Senator BALDWIN. Just a moment. In order to make that comply with our page number, 186, the question was—

Colonel ROSENFELD. It is the second question from the top of the page, on 216:

Question: Now, how often would you say you were approximately interrogated at Schwabisch Hall?

Senator BALDWIN. That is the first question. That was read by Senator McCarthy.

Colonel ROSENFELD. That is correct.

Senator BALDWIN. And then:

PROSECUTION. I object.

Colonel ROSENFELD. Objection sustained.

Mr. SPRONG. 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 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.

Now, then, Senator McCarthy goes on and makes some comment with reference to his opinion about that particular ruling.

In order to complete the record there—

Colonel ROSENFELD. May I make one correction in your record?

On page 186, where a question comes in, they have the word "Kramm" in capital letters indicating that Kramm asked the question, it says so in parenthesis on page 186 of the record. Actually, it is "Kramm, did you do that?"

Senator BALDWIN. I took that parenthesis to indicate that Kramm was on the stand.

Colonel ROSENFELD. Kramm was on the witness stand, but the question is "Kramm, isn't it a fact?"

Senator BALDWIN. "Kramm, isn't it a fact?" In other words, they addressed Kramm by name so he was on the witness stand?

Colonel ROSENFELD. That is right.

Senator BALDWIN. Well, let me ask you this question, Colonel——

Colonel ROSENFELD. Yes, sir.

Senator BALDWIN. When the questioner in our hearings read from this petition of Colonel Everett's, which is page 65, he stopped with the statement, your statement on page 216.

Colonel ROSENFELD. That is correct.

Senator BALDWIN. And then there followed some discussion and then finally on page 220 of the record, and 221 of the record appears the statement:

DEFENSE COUNSEL. May it please the court, on behalf of the defense and in view of the fact that the witness will return to the witness stand at a later time during this trial, no further questions will be asked of the witness at this time, but we as defense counsel would like at this time an amplification of the court's ruling on the objection by the prosecution to our line of questions on cross-examination. Do we understand that in the future we will be limited to the line of questioning on direct examination of the witness, or will we be permitted to ask of the witness questions designed primarily to attack the credibility and veracity and bias of the witness?

Colonel ROSENFELD. 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.

If the accused or any of the accused take the stand, cross-examination will be permitted in accordance with the rules of evidence whereby the accused may be cross-examined on any matter in connection with the case.

My question is this: Is it your understanding of the law, or is it not your understanding of the law that whenever a witness is on the witness stand, and has been questioned on direct examination, that his credibility is always subject to attack? In other words, if the witness has given a statement at any particular time, even though nothing may have been said in the direct examination about the statement, is it not a fact that the cross-examiner can press him with his statement and say "Did you or did you not sign that statement?" And then can question him on the basis of it?

Colonel ROSENFELD. There is no question about that in my mind, and anytime, in questioning, if Mr. Strong had said anything about these objections, he just said, when the prosecution objected, he never gave any basis for his questioning, and he said to me, "I am asking this question for the purpose of testing his credibility; I am asking this question for the purpose of testing his veracity;" I certainly would have permitted it. I can do nothing else. That is basic.

Now, had he pressed him, presented him with a statement and had he said, "Look at this statement," I don't recall that he did that, I don't have the testimony here, I don't recall that he did——

Senator BALDWIN. Wait a minute, because I think this is an important point here that we ought to go into fully.

Mr. Strong's question was:

Now, how often would you say you were approximately interrogated at Schwabisch Hall?

The prosecution objected, and you sustained the objection, and then Mr. Strong said:

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 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 prosecution, in question-and-answer form, consisting of approximately 20 pages?

PROSECUTION. I object again.

Colonel ROSENFELD. That is not cross-examination. It is the last time the court will notify you.

QUESTION. Is it a fact, Kramm, that during—

Mr. STRONG. I don't know—I want to ask a question—

Colonel ROSENFELD. And then he goes on again.

Senator BALDWIN. Was it you that asked that question, "Is it a fact, Kramm, that during—"

Colonel ROSENFELD. No; I didn't; and Strong, I remember—

Senator BALDWIN. Who did ask that question?

Colonel ROSENFELD. That I wouldn't know.

Senator BALDWIN. Because Mr. Strong then said:

I don't know—I want to ask a question—

Colonel ROSENFELD. You will not refer to anything except the matters on which he was examined in his direct examination.

Mr. STRONG. No further questions.

And then Dr. Leiling questioned him.

Colonel ROSENFELD. No, had Strong, when he asked about the statement, and the objection was made, there was nothing about a statement on direct examination. Had he at that time given the reason for his question, there is no doubt that he would have been heard.

Senator BALDWIN. Then the defense counsel goes on; go over to page 220 of the record, where the defense counsel makes that statement that you have read—

Colonel ROSENFELD. Yes.

Senator BALDWIN. And you say:

Colonel ROSENFELD. 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.

If the accused or any of the accused take the stand, cross-examination will be permitted in accordance with the rules of evidence whereby the accused may be cross-examined on any matter in connection with the case.

Colonel ROSENFELD. That is correct.

Now, the normal way, had Mr. Strong said this, and I have done it any number of times, a number of other lawyers have done it, had he said, after the objection had been ruled on "I am asking the question for the purpose of testing his credibility," or, of course, "to find out whether or not he had been forced into testifying," I would have permitted it. I would have to, but he never said it.

For instance, I do not remember in what part of the trial it was that he admitted he was very familiar with the rules of evidence, not only that, but, the form of his questions, I know it was no fault of his, and I don't comment or criticize it, but it was difficult to understand what he was saying. For instance, let's go back a few pages in Von Kramm's own testimony, if I may, toward the bottom of page 216.

Senator BALDWIN. Pardon?

Colonel ROSENFELD. If I may help, turn to the bottom of page 216, I believe the question was probably asked by Mr. Strong, and then he went off on another tangent, he did that several times. He would start a question and then he would stop, and he would start a question and then he would stop, and that happened quite often.

Now, on objections, I would like to refer to page 218 of the record of trial, where there was a discussion with respect to the transmission of an order:

QUESTION. However, you didn't do anything to prevent the transmission of the order about which you knew?

PROSECUTION. I object as being irrelevant and immaterial. This witness is not one of the defendants.

PRESIDENT. Objection overruled.

Now, because it was relevant and material—"was it?" says the president. In some of these objections, the president himself before we could actually make the ruling, said "Objection overruled" or he did it by turning his head toward me. That procedure was used in the Mauthausen case. In other words, the president would make this ruling, and he would turn to me as law member and I would tell him "Overruled" or not, and he would overrule it, and if a discussion followed, I would take care of the discussion.

But, you will notice, I want to call particular attention to that—

Senator BALDWIN. Well, is it your point now, assume for example that Mr. Strong had said, "Now I desire to question his credibility," or indicated what the purpose of his inquiry was, in your opinion would that statement then—

Colonel ROSENFELD. Definitely.

Senator BALDWIN. Make his available for cross-examination, and could that field of cross-examination have been opened up?

Colonel ROSENFELD. For the purpose of attacking his credibility, of course. If he had gone into any type of discussion, I would have listened to him. In some of those early motions, we went out of our way to listen to counsel sometimes three, four, and five times. Now, it is not easy to control the procedure of court when you are sitting with approximately six Germans and six American counsel, and each one to get on his feet and say something, and we were very lenient in listening to those objections.

Senator BALDWIN. Was Kramm ever called again during the course of the trial?

Colonel ROSENFELD. Sir, I can't make the statement, because I have not seen the statement for 3½ years, and I don't recall.

Senator BALDWIN. You don't recall?

Colonel ROSENFELD. No, I do not recall. If you want to refresh my memory, I will be glad to make the statement.

You see, I have never seen this record of trial, or any of the reviews at all since the last day of the trial.

Mr. CHAMBERS. I have here, Senator Baldwin, an index which shows the break-down of the entire record of trial, and Kramm only testified, he started on page 186, page 200, page 214, and 221, which would indicate that he did not testify again.

Colonel ROSENFELD. I would like to call attention—of course this is looking at it several years later, but it is rather obvious to me that the

defense had intended calling him, from their statement on page 220 of the record.

Senator BALDWIN. That they had?

Colonel ROSENFELD. No question about it, because they said, defense counsel says:

May it please the court, on behalf of the defense, and in view of the fact that the witness will return to the witness stand at a later time during this trial—

That would certainly be obvious to me, even now, that they intended to recall him to the stand, which they had a perfect right to do.

Senator BALDWIN. Do you have any further questions along that line?

Senator KEFAUVER. Colonel Rosenfeld, did any other witnesses, in a similar position to Kramm, testify, and did the defense undertake to start to ask them about duress, or try to attack their credibility? Did this occurrence come up again?

Colonel ROSENFELD. Through the trial, there were objections taken, I think along a similar line, on several witnesses; but, I don't think any of those objections, and I don't want to make the statement without looking at the record—I don't think that any of those objections emphasized or informed the court, should I say, of the purpose of the questions. If they had, they would have gotten the very same ruling.

Now, I think there was a familiar phrase Colonel Dwinnell used all through the trial. The question was given by one of the prosecution, an objection was made, a ruling was made, and then Colonel Dwinnell would say, "Objection on the same grounds as heretofore," and that runs all through the trial.

Senator KEFAUVER. Was the purpose in asking questions of Kramm to try to show that duress was used in securing this 20-page statement that he had signed?

Colonel ROSENFELD. I don't know anything except what I saw in the record. Not a single word was ever uttered. If so, it would have been in the record, and I don't see it.

Senator KEFAUVER. Did he bring out some matter of alleged duress, did some few of the accused themselves talk about their treatment?

Colonel ROSENFELD. I think a couple of the accused said something about their treatment.

Now, I remember Colonel Peiper saying, on the stand, very clearly, at one time that he was kicked in the groin, but he made sure to say it was by a Polish guard. That was on the stand.

Senator KEFAUVER. Was any objection made by the prosecution to the asking of any of those questions about how the accused were treated in Schwabisch Hall?

Colonel ROSENFELD. Schwabisch Hall?

Senator KEFAUVER. Yes.

Colonel ROSENFELD. I would have to refresh my memory. I don't think that issue—

Senator KEFAUVER. If any were made, they would have been overruled?

What interests me is, I think your statement of the rule of evidence is eminently correct, but what interests me is that they had six American attorneys there—

Colonel ROSENFELD. That is right.



Senator KEFAUVER. And they must have known what Mr. Strong was driving at.

Colonel ROSENFELD. Well, suppose I give you an idea——

Senator KEFAUVER. Did they have a conference about it, or why didn't the American attorneys take up the question and state to the court the reason they were asking this question?

Colonel ROSENFELD. Well, I assume, sir, that they did have a conference between 10 and 10:30 on this day, because they made their statement and asked for a ruling from me when the court came back from its recess. I do know, as a matter of fact—because I was informed that the defense had a huddle overnight, all the defense attorneys, American attorneys and the German attorneys, not only on procedure, but on their next step. They must have had a huddle. That is the only conclusion I can make, to come out immediately after a recess and ask for a clarification of the point.

Senator KEFAUVER. Mr. Chambers, you had studied the record recently: What was the allegation or the purpose of the line of testimony that they were trying to get out of Kramm, which was cut off here?

Mr. CHAMBERS. The inference in our record was that the court was making rules which was making it impossible for the defense to show duress, or improper influence in any type of case. I think the quotations that have already been read into the record from page 187 shows inferences being drawn by the defense counsel, by Everett's petition, and by the questions before the committee.

Colonel ROSENFELD. May I point out one other thing?

Mr. CHAMBERS. Does that answer your question?

Senator KEFAUVER. Were they trying to throw out Kramm's testimony on the ground that his statement had been secured through duress?

Mr. CHAMBERS. Well, sir, there is nothing in the record of trial which shows what they were trying to do. I concur with Colonel Rosenfeld on that.

I do believe that later in our own hearing, with Colonel Dwinnell, when he was testifying, he discussed this matter a little bit, and indicated that they were trying to show duress, which of course would have resulted probably in some impeachment of his testimony.

Colonel ROSENFELD. May I clarify that?

Senator KEFAUVER. The other purpose may have been that they wanted to find out how his affidavit was secured—I mean, to allege it was secured through duress, and then try to show, through him, that the same thing was done on other of the accused.

Mr. CHAMBERS. That might well have been, sir. As a matter of fact, I believe three of the accused that took the stand in their own behalf did allege that their statements were secured through duress—at least three of them.

Senator KEFAUVER. Of course ordinarily in a State criminal court, I think when you want to make an objection to the testimony of a witness on the ground that it was secured by duress, you make your objection when the first question is asked.

Colonel ROSENFELD. That is right.

Senator KEFAUVER. And that would go into any matter that might have been covered by the statement.

Colonel ROSENFELD. I have always done this: I have said, "The next questions are going to be asked for the purpose of testing the credi-

bility of the accused, or the witness in this case."

In this particular case, I would have said: "The next questions are going to be asked for the purpose of showing that duress was used on this witness to obtain his statement."

On the other hand, there is something else you have to look into with respect to Von Kramm, and your record of hearing is incorrect insofar as Senator McCarthy's statement is concerned where, at the top of 186, Senator McCarthy says: "One of the defendants is being examined."

Von Kramm was not a defendant.

Senator KEFAUVER. You say you have a different rule of law on evidence relative to defendants, than a person not a defendant?

Colonel ROSENFELD. Under the general rules of evidence, where an accused takes the stand, a greater leeway is given on cross-examination than if it were an ordinary witness, and the weight of the authorities, I think you will find, is that he can be cross-examined on any matter in connection with the case, not necessarily with regard to that matter then introduced. I think you will find that Wharton's Criminal Evidence states that is true. At least that is the basis for the ruling.

Senator KEFAUVER. But as to a witness not an accused—

Colonel ROSENFELD. The weight of authority there, both in the Federal courts and in the majority of the State courts, is to the effect that a witness cannot be cross-examined on matters other than those taken up on direct examination.

Senator KEFAUVER. Unless you are doing it to test his credibility?

Colonel ROSENFELD. That is correct.

Senator KEFAUVER. What if you were doing it for the purpose of laying the groundwork or foundation to test the credibility of an affidavit secured from other witnesses?

Colonel ROSENFELD. That is questionable. That has been discussed at great length. Some States permit it, others do not. There again is the age-old—

Senator KEFAUVER. What is your opinion?

Colonel ROSENFELD. In this particular case I would have let them go in, if I had my say, put it that way. The law member made rulings, but they were subject to objection by any member of the court. There were several occasions where I asked that the court be closed so the members could be apprised of the ruling. I did that because in a situation such as you now put up to me, you use the timeless expression "within the purview of the court," and there are some jurisdictions which do not permit it, there are others which will. I am sure that I would have, in this particular case, because of the type of the case, because of the issue involved, I think everything which could be admitted should have been admitted, certainly since we permitted hearsay testimony, there should be no objection to it.

Senator KEFAUVER. Are the rules of evidence in the court-martial proceedings stricter, or less strict than the rules of evidence in regular civilian and criminal proceedings?

Colonel ROSENFELD. I think the rules of evidence in court-martial cases gives you more leeway. They certainly do with respect to an accused. We could put one on the stand now just for the purpose of showing that this statement had been obtained prior to the trial and

was obtained through duress. There was a case in this jurisdiction a few months ago that had that very same thing brought up.

Senator KEFAUVER. I suppose that the defense attorneys—suppose they had said, “We would like to put a number of the accused on the stand to show their confessions were secured by duress, but not for the purpose of any other examination”?

Colonel ROSENFELD. That is one of the times when I would have closed the court. I would have advised the court at that time that we should permit it—going there on the basis of the ruling in courts martial.

Senator KEFAUVER. What if then, following that testimony, you had decided that the statement was not secured by duress, then would you have permitted the prosecution to cross-examine the accused?

Colonel ROSENFELD. Oh, no. The examination would have taken place in open court.

Senator KEFAUVER. I mean, in open court.

Colonel ROSENFELD. Certainly it would have taken place in the open court, and what the court would have deducted is another question.

Senator KEFAUVER. You would have permitted them to put any of the accused on the stand for the limited purpose of ascertaining whether the confession had been secured by duress?

Colonel ROSENFELD. I personally would have permitted it, but remember, there was at one time seven other members of the court, and later, six.

Senator KEFAUVER. Mr. Chairman, I think at this point we ought to find out something about the experience and background of Colonel Rosenfeld, as to whether he has—

Colonel ROSENFELD. I am very willing to submit.

Senator KEFAUVER. Where did you attend—

Colonel ROSENFELD. I will give you my background—Mount Holly High School, Mount Holly, N. J.; Lafayette College; Yale University Law School.

Senator KEFAUVER. Did you graduate, or just go—

Colonel ROSENFELD. I graduated at Lafayette, and finished Yale Law School in 1927.

Senator KEFAUVER. Up in Senator Baldwin’s home section?

Colonel ROSENFELD. Yes. I was admitted to the bar of the State of New Jersey, after taking my required clerkship, in the year 1930 and practiced law in the State of New Jersey from 1930 until October 1940, when I was ordered to active duty as a captain.

Senator BALDWIN. May I interrupt, Colonel? In that period of time, were you in the National Guard?

Colonel ROSENFELD. No; I was a Reserve officer all that period of time, sir; and in October 1940, all of us who were single, and combat officers, were ordered on active duty, received 48 hours’ notice to get up to Fort Dix, that is how quick it came. I went on active duty October 20, 1940. Immediately thereafter I became, in addition to my other duties, the trial judge advocate of the general court martial at Fort Dix, and the defense counsel of the special court martial at Fort Dix.

In that period of time we tried approximately 200 cases, both in the general court martial and in the special court martial.

The following 8 or 9 months I was not active in anything in connection with the law, because I was with a combat unit, was made

commander of a combat team and went into Algiers in 1943. Approximately 1 month after that, when the combat team was dissolved, I was ordered to AFHQ as the executive officer of special troops headquarters, and in addition to those duties I had the following positions in line: Member, law member, president and law member of the general court for AFHQ; then SHEAF Hq., and USFET Hq., headquarters, of course, until I was ordered down to Dachau in March of 1946 for the trial of the Mauthausen case, and 48 hours after that concluded, I was law member of the Malmedy case. I was permitted to go home for 30 days and come back and organized the first of the so-called subproceedings court at Dachau. They were to try all the offenders of the Dachau concentration camp who were not tried in the parent Dachau case, approximately 1 year before.

At that time, as president and law member of my own court, in approximately 2½ months we tried 30 cases involving over 200 accused.

In the late days of 1946, the very day Colonel Everett filed that petition in Augsburg, I was transferred to Augsburg as Chief of the Trials Branch, 7708 War Crimes Group, responsible for preparation of prosecution for all the cases to be tried, and responsible for review of all cases, divided into two branches, or sections, the Prosecution Section and the Review Section.

The Review Section operation naturally was under the control of Colonel Straight, as the commanding officer of the group. I remained in this position until we had concluded preparations of all the cases to be tried by that group. By the end of 1947—it was in May 1947—I went back to Dachau as special prosecutor in the Skorzeny case, the Commando 99, and so on until the conclusion of the trial in December of 1947. I then came to Munich as post judge advocate on this post on May 1, 1948. Upon assumption of the general court-martial jurisdiction by the post, I became staff judge advocate, in which position I remain.

Senator KEFAUVER. Did you practice criminal law?

Colonel ROSENFELD. I practiced all types of law. As a matter of fact, most of my experience was in trial work. I was fortunate in that respect in that I was a junior member in a law firm in which the two senior members were both of advanced age and couldn't try cases.

The last case in which I appeared before being ordered on active duty was the appeal of the Ellis Parker case, which arose out of the Lindbergh case, before the Circuit Court of Appeals, Third Circuit, Pennsylvania. I prepared most of the briefs in that case, which were presented to the United States Supreme Court.

Senator BALDWIN. From 1928 until called to active duty—

Colonel ROSENFELD. No, sir; from 1930 there was a period of over a year when I was law clerk. New Jersey requires a year's clerkship. It depends on when the examination was taken—

Senator BALDWIN. You were admitted in 1930?

Colonel ROSENFELD. Yes, sir.

Senator BALDWIN. From that time, until you were called to active duty, you were in active practice as a member of the bar in the State of New Jersey?

Colonel ROSENFELD. Constantly.

Mr. CHAMBERS. Reference was made a moment ago, by Senator Kefauver, as to what the inferences were, as a result of the rulings,

and I refer to testimony by Colonel Dwinnell, who was associate counsel for the defense, referring to page 468 of our record of proceedings, where in response to a question by Senator McCarthy, the following testimony was introduced :

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 DWINNELL. 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 DWINNELL. 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 DWINNELL. 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 DWINNELL. 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 with 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.

Now, that rather answers Senator Kefauver's question, I believe, and goes much further in that Dwinnell charged here that, even though they had the ability to call prosecution witnesses to testify for the defense, that they couldn't do it because somebody on the prosecution side told them "If you testify for the defense, you are going to show up as a defendant in one of the subsequent trials."

Colonel ROSENFELD. Well of course, I wouldn't be in a position to know anything about that. I wouldn't know what went on between the prosecution or witnesses, and/or defense; but I do know that, as an attorney, I am rather astonished at Colonel Dwinnell's statement, because he was, in my opinion, the most capable attorney on that de-

fense, and Colonel Dwinnell was the officer I discussed matters with at all time during the trial, relying on his ability, and at that time Colonel Dwinnell never raised any such issue, such as this, with me, and he could have, because he certainly raised an issue insisting in writing that appeal in December 1946.

Whether he talked to any other member of the court, I don't know. Apparently they are discussing me in the matter, but I certainly would be in no position to know whether the prosecution threatened a witness. That court kept as far away from any connection with witnesses as it could at that time.

Mr. CHAMBERS. I think it is also important to put in the record a very brief extract—

Senator KEFAUVER. Before you pass on to that, I think it is generally the law, if John Jones testifies as a witness in a case, and if he doesn't raise his constitutional rights, or refuse to answer on the grounds that his testimony might impeach him—

Colonel ROSENFELD. That is correct.

Senator KEFAUVER. That his statement in that case can be used in a case against him.

Colonel ROSENFELD. That is correct.

Senator KEFAUVER. So, if the prosecution did tell the defendant, or tell some witness—if the prosecution told the defense attorneys that, if they put a witness on, the testimony that is given would be used or might be used against them, that would be a proper thing to do; would it not?

Colonel ROSENFELD. That is absolutely correct, and at one time in the trial the matter was raised with respect to the rights of a witness as he took the stand.

Now, I don't recall which witness it was. I am thinking, I am going from memory now, but I recall it was clearly pointed out, and the court was asked to tell him his rights. However, I don't recall which witness it was.

Senator KEFAUVER. This would be the case here: Suppose Colonel Dwinnell had called John Jones, who is not an accused, to testify as a defense witness. Of course, any question that Mr. Dwinnell asked John Jones, and if John Jones answered it, then his statement could be used in making a case against John Jones, or in attacking John Jones' credibility in event he later went into some other case.

Colonel ROSENFELD. There is no question about it. The statement was made under oath, and, of course, it could be used, and rightfully, and the right to testify was treated as a personal privilege which he himself had to raise, just as it is done now.

Mr. CHAMBERS. Of course, this is asking you to judge something which perhaps we should not ask you, but do you feel that these witnesses were in such a mental frame—not talking about just those who took the stand; I mean the other witnesses were in such a frame of mind—that they would refuse to testify for fear of being charged with some other crime and tried?

Colonel ROSENFELD. I would never say that about the witnesses who appeared in the Malmedy case. When those witnesses came in, they clicked their heels and acted as if they were still in the service, particularly those who had been in the service. When they testified, their words came out of their mouths in no uncertain terms. When they

looked at us, we knew they were testifying. I don't think anybody could have taken a man, a one of those witnesses who was called, and say to him, "If you testify for the defense, we will get you."

They were not that type of witness. These were army-trained men; and, when they came in and they looked you in the eye and took the oath, there was no question about the fact that nobody was going to tell them what to say. That was my impression, and I think that was the court's impression.

Mr. CHAMBERS. I am much more interested in knowing if the members of the prosecution staff were of such a type that they would make that threat for the purpose of cutting off—threats of that kind for the purpose of cutting off testimony—

Colonel ROSENFELD. You are asking me to give an impression, not as a member of the court, now, but as an individual. I will give it to you in that sense:

As far as Colonel Ellis is concerned, he would never do it; he would never do it—never. He would certainly not do that sort of thing. I would be the first one to say so, if it were otherwise.

Colonel Crawford was certainly not the type.

Captain Byrne, then Lieutenant Byrne, was certainly not the type.

I don't know what Perl would have said, but I don't know that he said anything.

Now, as far as Harry Thon is concerned, and as far as Joe Kirschbaum was concerned, they were not lawyers; they were investigators, but here is what I thought of them: I thought enough of them to use Thon as my chief investigator in the Skorzeny trial a year later. I thought enough of Kirschbaum to use him in a trial and investigation of Commando 99 arising out of Buchenwald a year and a half later, and I know this much: when they were acting as chief investigators for a person, there were no threats, promises, or anything—no beatings. That is true even when they went into the cages of Dachau, and I wanted that statement to get on the record, and clearly.

I know the pressure they have been under for the last year, with criticism being heaped at them. I know this, because Mr. Thon consulted me about it, and was worried sick about it a week ago. His family completely divorced themselves from him, because of statements in the papers. He hasn't heard from them in months.

Mr. Kirschbaum is the same way. That is a bad feeling to have, particularly when you did the type of job they were asked to do, and, when I say "job," I mean an investigation in a case of that nature.

Mr. CHAMBERS. I understand that you are answering categorically, with the possible exception of Perl, that you feel in your own mind that they were not the type of men to have made such threats; they would not have made threats to prospective witnesses for the defense for the purpose of keeping them from testifying?

Colonel ROSENFELD. That is definitely correct; and, as far as Lieutenant Perl is concerned, the reason I mitigated my statement there was that Perl's mannerisms at times were such that he might not have meant anything, and it is merely conjecture on my part, and may have been influenced later by some of the things I have read in the paper, but certainly I have nothing and I know of nothing, no discussion upon which to say that Mr. Perl would, other than what I have read. So far as the others are concerned, I would be glad to have them as members of my office today.

Mr. CHAMBERS. There is one other point which I think it would be pertinent to this discussion, all leading back to the ruling on the Kramm case.

Colonel Dwinnell, in the matter in testimony we just inserted in the record, and this was discussed at length on the preceding days, and there had been considerable discussion about it, but at that time Colonel Dwinnell was making quite a point of the fact that in its findings the board of review said that the record reveals a number of erroneous rulings of the court.

Colonel ROSENFELD. Did the board of review say that?

Mr. CHAMBERS. Yes, the Frankfurt Board of Review did say, and this is in the record:

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.

I will admit to that, except for this particular point, where he mentioned specifically:

For instance, the court refused to permit "the defense to test credibility of witnesses on cross-examination."

Colonel ROSENFELD. May I make a statement there—

Mr. CHAMBERS. I think I know what you are going to say, but let me finish.

Colonel ROSENFELD. Go ahead.

Mr. CHAMBERS. Dwinnell then said that the board of review—his whole point was that the board of review felt that the court had erred, and you had erred in your ruling.

I think it is significant to point out that he was then asked a question as to whether or not he, Colonel Dwinnell, had had any part to play in that board of review, and the record shows that he said that he did, and we asked further if he had anything to do with the preparation of the report he was just reading into the record before us. He said he did not have anything to do with the writing, to this extent, that the report was written in the main by Colonel Scarborough, that every day he and I discussed the language therein, "And where I could speak for the defense, I did so."

That particular point should be borne in mind in considering Dwinnell's testimony because he had strong feelings on it, and it is important that we try to get an objective point of view on it, so the way the thing stands on the Kramm case, the record which our committee has built up so far apparently was limited because we didn't have the full quotes that appeared in Everett's petition.

On the other hand, your position is that if the defense had prepared—

Colonel ROSENFELD. Their case?

Mr. CHAMBERS. Their objections in such a case, in such a way as to show that they were trying to attack the credibility of the witness, or what information was to be obtained, you probably would have ruled in a different manner?

Colonel ROSENFELD. No doubt about it. It couldn't be otherwise, there couldn't be any other issue.

Mr. CHAMBERS. I think that is enough for the Kramm case.



Colonel ROSENFELD. May I ask one other thing? Did Colonel Dwinell say he had been a member of the Frankfurt Board?

Mr. CHAMBERS. Sir, he was not a member of the Frankfurt Board. He was assigned to the Frankfurt Board of Review, as a member, I think initially—there was a mistake.

Colonel ROSENFELD. He was definitely a member.

Mr. CHAMBERS. At his own request he was removed as a member, but it is a fact that he stayed there and sat in with the board of review when the Malmedy case was up for review.

Colonel ROSENFELD. What did the Raymond Review have to say about the rulings?

Mr. CHAMBERS. Perhaps I should have to ask you about that.

Colonel ROSENFELD. I never saw it. I knew, I had been given an indication—

Colonel MURPHY. It didn't go into the legal questions at all.

Mr. CHAMBERS. It didn't go into the legal questions at all, so Colonel Murphy says.

Colonel ROSENFELD. I thought that.

Senator KEFAUVER. Did Van Roden and Simpson—did they discuss the case with you?

Colonel ROSENFELD. Oh, yes; they discussed the case with me at length. They asked me for my impressions of the trial; asked me whether I thought a fair trial had been conducted; they asked me, of course, about Dachau in general, in view of the fact that I had been there, and rather in an official capacity from start to finish, asked me about my impressions of certain lawyers, impressions of the conduct of certain trials other than the Malmedy trial.

Senator KEFAUVER. Excuse me for interrupting.

Colonel ROSENFELD. That finished it, sir.

Senator KEFAUVER. Apparently they did not talk to the people that had interviewed these witnesses and secured their confessions. Do you know why they didn't?

Colonel ROSENFELD. No, sir; but I do know that they didn't know who to call, and when they talked to me, they asked if I would give them the names of all the people who were still over here, connected with Dachau, and I gave them the names of all the people here who had been there from the start, and were still here. When I thought of other names, I called them and gave them those names. I don't know actually, sir, who they examined and who they didn't.

Senator KEFAUVER. I think the record shows that they didn't interview the lawyers.

Colonel ROSENFELD. They didn't interview any of the lawyers. I know they interviewed Kirschbaum—

Senator KEFAUVER. Was this the unanimous verdict of the court?

Colonel ROSENFELD. Yes, sir.

Senator KEFAUVER. How long did it take to deliberate, after the testimony was in?

Colonel ROSENFELD. Now, do you mean for the findings of guilty or for the sentences?

Senator KEFAUVER. Well, there were—

Colonel ROSENFELD. There were two times.

Senator KEFAUVER. First for the finding of guilty.

Colonel ROSENFELD. For the finding of guilty the court retired Monday morning and returned about 2:30 or 2:45 in the afternoon.

Senator KEFAUVER. Then, for the sentences.

Colonel ROSENFELD. The sentences took a period of several days.

Senator KEFAUVER. When you got down to the sentences, was each case gone over in detail?

Colonel ROSENFELD. May I ask this question? I will be glad to answer it, but does the committee wish me to go into the details of the deliberations—

Senator KEFAUVER. No.

Colonel ROSENFELD. The answer there is yes, of course.

Mr. CHAMBERS. There were no original acquittals by the court, but on subsequent reviews several of the sentences were set aside.

Senator BALDWIN. The committee will take a recess now until 1:30.

(Whereupon, at 12:35 p. m., the subcommittee stood in recess until 1:55 p. m. that same day.)

#### AFTERNOON SESSION

(Following the taking of the usual luncheon recess, the subcommittee resumed hearings in the above-entitled matter at 1:55 p. m.)

Mr. CHAMBERS. Colonel Rosenfeld, we will continue with your interrogation.

#### TESTIMONY OF COL. A. H. ROSENFELD—Resumed

Mr. CHAMBERS. Are you aware of the reports that have been made to our committee, and which later appeared in the Congressional Record, which included reference to the fact that certain courts over here could be referred to as "hangman courts" and instructions had been given by, I believe, yourself, or a person holding your position, to disregard principles of American justice, and things of that type?

Colonel ROSENFELD. I am very familiar with it.

Mr. CHAMBERS. Have you had an opportunity to read the comments that were made in the Congressional Record?

Colonel ROSENFELD. I have studied the comments which were made. I am familiar with it because I just heard it in the month of June over here and I heard it from a special messenger from Washington.

Mr. CHAMBERS. Why was he over here?

Colonel ROSENFELD. He came over with an original of a letter written by Benjamin Reich, one of the attorneys who had been with the 7,708 war crimes group at Dachau. He read the entire letter to me. Colonel Heiser is the name, and he read the entire letter to me and asked me about it, paragraph by paragraph. The paragraphs which involved any names were the ones I discussed at length with him, and the ones to which you have referred in your question was somewhat as follows: That in the month of either November or December, don't hold me to the month, of 1946, Colonel Straight held a meeting of the counsel and, when I say "counsel" I mean the lawyers and the court members of Dachau, and in the letter he simply says—at which I was present and during which time Colonel Straight made the statement about hanging them all, and to disregard the rules of Anglo-American evidence and just get on with the cases. In other words,

they are not the exact words which were used in the letter, but that is the substance of it.

I will say, in answer to that, that at no time was I present at Dachau at a meeting of the lawyers and the court members when such a statement was made. As a matter of fact, I don't recall ever being present at Dachau with Colonel Straight at a meeting in the fall of 1946. If it were November 1946, Colonel Straight could not have been there because his war crimes group was still in Wiesbaden, and did not begin to function at Augsburg until late in November 1946.

Mr. CHAMBERS. When did Colonel Straight take over this job?

Colonel ROSENFELD. Colonel Straight took over the job with the 7,708 war crimes group, in the late spring or early summer of 1946, when Colonel Mickelwaite, who had been the deputy judge advocate in charge of War Crimes, became theater judge advocate, upon the death of General Betts.

Mr. CHAMBERS. Well, now, are you aware of any meetings that were held of both lawyers for the prosecution and the defense?

Colonel ROSENFELD. Yes.

Mr. CHAMBERS. Who held it, or them?

Colonel ROSENFELD. I know what Mr. Reich was referring to.

I personally called a meeting of all lawyers at Dachau on Saturday morning, in either November or early December of 1946, for this reason:

At that time, I was sitting as president and law member of my own court, the court to which I referred to in my earlier testimony. So many of the lawyers who appeared before that court made such obvious legal errors, for instance, I made the statement, and I may be off one or two, that the first 10 lawyers that appeared before me in the court didn't know the proper manner of introducing a statement into evidence.

Now, they made such obvious errors, some apparently were trying their first cases—they made such obvious errors that in the court chamber, you had your court members looking at the lawyers instead of trying to divorce their feelings for the lawyers from the testimony as presented, and as a result, I went to Mr. Leo Goodman, who was then the administrative officer in charge of the Dachau detachment, I think Colonel Everett was present at that time, but Colonel Everett was—I don't think Colonel Everett was at the meeting, but I told Mr. Goodman about it and said, "As a matter of professional pride, we ought to get the lawyers together and determine—well, wash our linen in private and correct some of these mistakes, in other words, have a little rehashing of court procedure."

Now, that is precisely what happened. I held the meeting. Colonel Straight was not present. I was in charge of the meeting. At that time I brought up the issues of introducing a statement in evidence, how it should be done, how it should be marked first and I then asked for suggestions. I said, "This is informal. Let's have some discussions. Let's get together."

Mr. Benson was present at the time. Mr. Benson had tried the Mauthausen and Buchenwald cases—that was the next year—and he had also tried the first Dachau case. Several other attorneys rose to their feet and spoke their piece. The meeting ended very friendly.

Now, at no time during that meeting was anything said, either by way of jest or seriousness, about hanging them all, or about completely disregarding Anglo-American rules and regulations.

Mr. CHAMBERS. Where did that come from?

Colonel ROSENFELD. That comes from me. I was going into that.

I do know definitely. I said something to the following effect: That we are working under a peculiar set of rules, not principally Anglo-American, but a combination of Anglo-American and European rules of procedure. For instance, the accused was not allowed to be sworn. Hearsay evidence, the big bone of contention, was admissible. That is European. Under Anglo-American rules and regulations, they were permitted counsel who would do the questioning from the floor. That is for the convenience of the court, because in the European system, had the court asked all the questions we might still be trying some of those cases, obviously.

On the question of the normal procedure of a case, where possible the rules of the Manual for Courts Martial, and ordinary rules of evidence, of Anglo-American procedure were used. As a matter of fact, several of the rules had to be made up as we went along, and the little book on procedure was revised almost up to the last two or three months, so that I was responsible for making a statement of the nature of which I have just talked.

Mr. CHAMBERS. Is this the one [exhibiting document]?

Colonel ROSENFELD. No; it is a paper bound pamphlet.

Now, also in that letter, I am referring to that part of the letter in which my name was mentioned, there was a paragraph to the following effect: That Colonel Ellis and Colonel Rosenfeld named their Boxer dogs after two of the principals in the Malmedy case, and made great sport of it in front of their wives and other persons.

Now, the Boxer dog which I have is named Bruce. I haven't the slightest idea if anybody in the Malmedy case was named Bruce, but certainly there would be no intention of harming anyone. The other Boxer dog was named Sepp, in honor of Sepp Dietrich, and Sepp Dietrich knew that fact and he never objected to it.

Mr. CHAMBERS. Colonel Ellis so stated in his testimony.

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. Then, this business of the hangman's court—

Colonel ROSENFELD. Yes; let me go into that for a moment. It wasn't until August the 18 or 19, 1947, on the opening day of the Skorzeny trial that I heard the expression of "hanging court," not "hangman's court" but "hanging court."

That expression was used by Lieutenant Colonel Durst, who was defense counsel, chief defense counsel in the Skorzeny case. He referred to Colonel Gardener and Colonel Gardener's court as a hanging court, and he said it was a common expression down there that Colonel Gardener was known as the hanging judge.

Now, I was around pretty much of the time. I was in Augsburg in the spring of 1947, but I never heard such an expression—

Mr. CHAMBERS. May I interrupt, Colonel Rosenfeld?

This court that was referred to as a hanging court—what does the record show? Did they hang more than others?

Colonel ROSENFELD. I wouldn't be able to tell you, but the person who would is still in Munich, Leo Goodman, chief judge of the dis-

strict court here, and I believe that his records do indicate just how many people were hung by that court.

I might say this, that that court sitting in the Skorzeny case, acquitted every one of those accused, and there were nine of them.

Mr. CHAMBERS. The man that brought the charge up before our committee worked for you for a while, Benjamin Reich?

Colonel ROSENFELD. Mr. Reich never worked directly for me, that I can recall, unless he was in a part of the trial branch, when I first took over. I met and knew Mr. Reich at Dachau. He appeared before—I don't know how many trials he appeared in—

Mr. CHAMBERS. Did you have an opportunity to observe his work and professional qualifications?

Colonel ROSENFELD. Yes, he is one of the attorneys whom I referred to, when I said they didn't know how to introduce into evidence.

Mr. Reich, as far as I am concerned, may be classed at the very bottom of the trial attorneys we had at Dachau, and referring to the statement in the Congressional Record, Senator McCarthy says, "One of the prosecuting attorneys," he had no connection at all with the Malmedy trial. He was not involved in the Malmedy trial.

Mr. Reich, as a matter of fact, was one of those who was released by war crimes group and then was employed by military government as a magistrate. That is the lowest court here in Munich. He apparently was transferred from that magistracy when they set up the new court system last fall, to the northern part of Bavaria, and I know now of course that he went home. I didn't even know that he had gone.

Mr. CHAMBERS. Now, Colonel, you were intimately connected with the Malmedy trial. Were you aware of any rumors or charges or gossip or anything else that would put you on notice that there was a possibility of duress in connection with the defendants in this case?

Colonel ROSENFELD. Prior to the trial, I heard nothing because I was sitting on the Mauthausen case up to within 48 hours of the commencement of the Malmedy case. I didn't even know the names of the attorneys involved until Colonel Ellis and Mr. Everett, then Colonel Everett, appeared before me with the proposition of making these motions in advance.

After the trial I heard not a single word until I returned from the United States in September of 1946. I reported for duty at Dachau, and found that Colonel Everett was in command. It was then that Colonel Everett started to tell me how as going to file an appeal in the Malmedy case.

During the course of the trial the issue was actually raised in the testimony so little I still don't understand. I still cannot understand where were all of the so-called affidavits they now allegedly have poured into the committee files, that they didn't at least say something. For instance, Colonel Everett during the entire course of the trial took no part in an examination. Colonel Everett made a brief introduction, and from then on he would simply get up on his feet and say something as follows:

"The next witness to be presented by the defense will be so-and-so, and the interrogation will be conducted by so-and-so," and he would sit down.

He took very, very little active part in the conduct of the trial. I know he supervised the attorneys, his attorneys, but as far as any questioning was concerned, or raising any issue, he took no part; after the trial was on in Dachau approximately 3 days, he never said anything to me about it, no one else did.

Mr. CHAMBERS. Colonel, you covered, you said, up until the time of the trial and said that you knew nothing, and after the trial you knew nothing but how about during the trial?

Colonel ROSENFELD. I thought I said that during the trial the issue was raised in so few cases that I couldn't understand it.

Mr. CHAMBERS. Didn't you have knowledge of the investigation that Colonel Carpenter made?

Colonel ROSENFELD. I didn't even know Colonel Carpenter at that time, and I only know him now by name.

Mr. CHAMBERS. Did you have any knowledge that an investigation had been ordered, to try to develop the facts?

Colonel ROSENFELD. No, sir; I did not.

Mr. CHAMBERS. This perhaps is a very broad question which may be improper, but if the facts were anywhere near as alleged in all the affidavits that have come in, and you had had any knowledge of it, or if they began taking the stand and testifying, would you have had any responsibility as law member to advise the court, "Now wait, maybe we had better stop this thing and have an investigation, before going further?"

Colonel ROSENFELD. I would have done this, then, definitely: I would have held up the court, and would have taken the matter up with higher authorities. After all, I was a member, still a member at that time, of USFET HQ.

Mr. CHAMBERS. You did not feel that the statements made by the three defendants who alleged physical duress or brutality were of such a nature as to warrant taking that action?

Colonel ROSENFELD. Well, as a matter of fact I treated that as testimony, and as mitigating circumstances. There was no big issue made of it during the trial. Had there been, we would have been forced to stop that case, at least temporarily, and ask the theater judge advocate for advice. I would have done it as the law member of the court. I think I would have been entitled to do it. I would have done it individually.

But certainly, to me, that came in by way of mitigation. It was testimony and no great issue was made of it during the course of the trial.

Mr. CHAMBERS. Well, subsequent to the trial, after you came back from State-side, Everett told you he was beginning to work on this matter?

Colonel ROSENFELD. He not only told me, I knew he was. As a matter of fact the day he finished his appeal, I went with him to Augsburg. That is the day I reported for duty, and that is the day he filed his petition with Colonel Straight.

Mr. CHAMBERS. Did you have an opportunity, or not an opportunity but, as time went on and these matters were being removed, were you ever in a position where you had anything to do with the review, itself?

Colonel ROSENFELD. No. Here are the circumstances: I became the head of the trial, not the trial branch, I called it by a special name, and want to use the same name throughout—chief of the prosecution and review sections of the 7708 war crimes group. Now, the review section was responsible for all of the reviews. The Malmedy review was then being worked on by Mr. Koessler. Mr. Koessler came into my office about 10 or 12 days after I took over, and at that time said he wanted to discuss the Malmedy trials. He had in front of him about a 6-inch stack of papers. I said to him, and I can't quote my words now, but I remember saying to him, and I know he will verify it, that I couldn't discuss the Malmedy case with him because I had been on that case as the law member.

He then told me that they were his preparatory notes and he wanted to discuss the theory of the law, even going so far as the laws of war which governed this particular type of action.

I let him discuss them with me. He discussed them, doing most of the talking, I would say for approximately 2 hours. I then told him bluntly that I could go into it no further than that, and I excused him.

I then asked—and by the way, it wasn't called the trial branch, that is the expression I used before—I then suggested to Colonel Straight that Mr. Koessler be changed to another type of job, not because of what he was doing in the Malmedy case, but, because I didn't know, but by the type of work he was doing, I knew perfectly well that he would be about 5 years trying to get that review finished.

Mr. CHAMBERS. Well, now, let me see if I have the picture correct: Colonel Straight was in charge?

Colonel ROSENFELD. Colonel Straight was commanding officer of 7708 war crimes group.

Mr. CHAMBERS. That had two branches—

Colonel ROSENFELD. That had several branches. That group had an evidence branch, and the investigation branch; it had a trial branch which had the prosecution section charged with the preparation of cases, not the trial; and then, it had post trial branch, it was called at that time, which was charged with reviews of cases and they were at Augsburg.

Mr. CHAMBERS. Where did you fit into the picture?

Colonel ROSENFELD. In the trial branch.

Mr. CHAMBERS. Trials?

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. So there was no way that you could have, or would be in a position to pass upon or influence the reviews?

Colonel ROSENFELD. No, and I will tell you why. The review section was part of that section, but only for administration. The personnel, all the reviews were written under the direct supervision and operational control of Colonel Straight.

Mr. CHAMBERS. Well, now, Colonel, I have extracts from the testimony of Tomhardt, who was one of the—

Colonel ROSENFELD. Who?

Mr. CHAMBERS. Heinz Tomhardt, and in his direct testimony, in response to a question:

Will you explain to the court why you signed this statement which, as you just said, contains certain inaccuracies?

He replied:

Before my interrogation in Schwabisch Hall, which has been and was the first interrogation in my life, I had been in solitary for one-quarter of a year. In this one-quarter of a year I saw nothing else but the four walls of my cell, and only left the cell once for 10 minutes. I could not speak to anyone, not even a single word, and I had no mental work of any type. I was rather depressed by the fact I was alone for so long, and I had been waiting for so long.

On March 2 I was called for interrogation. Before my interrogation, while I was standing in the hall with the hood over my head, I was beaten in the face and in my stomach.

Who hit you?

ANSWER. I don't know. This beating at that time I considered as an intimidation beating. When I later saw the red faces of my men, who were confronted with me, I saw that that was the purpose of the interrogation which had not been used with me alone. These beatings in the face impressed me so much more because I saw a hood on the same morning, the inside of which was full of blood.

There is testimony, at least the statement has been made by an accused, of course he had not been sworn under the rules you have here—and you didn't feel that that, and as I say, other similar statements by Tomhardt, Sievers, and Hennecke—you didn't believe there was enough there to make you halt and take a look at the facts?

Colonel ROSENFELD. Well, at that time I was sitting as a member of the court listening to evidence. Don't forget, for every bit of evidence like that which came before the court, that there was 10 times as much contrary evidence. We were sitting weighing facts, then. I didn't, of course, know at that time, I didn't even give a thought to it, we were listening to testimony.

Mr. CHAMBERS. You were the law member, as I believe the record shows, the only one that had much if any knowledge of the law?

Colonel ROSENFELD. That is correct.

Mr. CHAMBERS. And out of your experience would it not have been a reasonable thing to so quote here, we have three people alleging this. Perhaps we should stop any further trial proceedings until we have investigated this matter and see what the story is?

Colonel ROSENFELD. No; and for this reason: That trial, by the time Tomhardt came in, had run for several weeks. If you will give me the page, I will tell you about how long—

Mr. CHAMBERS. It was quite late, page 2229.

Colonel ROSENFELD. It was quite late in the trial, and it had run for several weeks. You must remember that just before that I sat through seven straight weeks of statements by at least 50 accused on the stand, and other statements which said the very same thing, and yet on cross-examination they would be cross-examined and it might not be true. You heard that every day. You heard it far less—let me put it this way—you heard it far less in the Malmedy case than in any other case I know of down there. You have heard of it far more since the case, but during the trial of the case, as you yourself said, I think it came up in three instances, and there were 74 accused in the case, 73 after the case had gone up to the last 5 minutes.

Mr. CHAMBERS. Will you bear with us a minute here.

Now, you say that at the Mauthausen trial there were many claims of the same kind made, by the accused?



Colonel ROSENFELD. In the Mauthausen case, there used to be a very common expression, which I can almost quote verbatim. They used to say, about one of the investigators, just like this:

He stood me up in the corner. He smacked my face and he spat in my face.

They used the word "spat." That was the translation anyhow.

I imagine that was used in the Mauthausen case in about 20 or 25 instances. In all the cases where they were caught, and I say "caught," they got an idea that they could bring that in, and they could also bring it in—don't forget the Mauthausen case was prior to the Malmedy case, and Colonel Everett and counsel in the Malmedy case sat through the last few days of the Mauthausen case to get acquainted with the procedure and see what was going on and they could have heard those things, because the defense was the last testimony.

Senator BALDWIN. May I just interject there?

Colonel ROSENFELD. Yes, sir.

Senator BALDWIN. Were you aware of the fact, Colonel, that before the trial began there were claims made that some of the statements had been obtained by duress and physical force?

Colonel ROSENFELD. No, sir; because if I had been made aware of this, I would have asked to be relieved from the court.

In those cases, they were considered very, very important cases—

Senator BALDWIN. As a matter of fact, the Army had already made a preliminary investigation of the thing before the trial actually began?

Colonel ROSENFELD. You mean, into the question of duress? I know it now, but didn't know anything about it, didn't even know Colonel Carpenter at the time, and don't know him now. I have never met him. If I did, it would be so cursorily I wouldn't even know who he was.

Mr. CHAMBERS. Only one other point I would like to ask you about, and that deals with this matter of the failure of the accused to take the stand in their own defense.

We have had several different stories. Even Mr. Koessler today attempted to explain why they didn't take the stand. Their reasons vary from "Well, we didn't feel we could get a square break out of this court and we were discouraged so we gave up."

That is one.

Another was that those who had taken the stand were attempting to implicate their codefendants to such a degree, by lying, so that they were afraid to put the rest on.

Then, there is testimony in the record which says the accused themselves were divided in their opinion as to whether or not they should continue to take the stand.

Have you ever had any conversation with Everett or anybody else which would throw light on this particular subject?

Colonel ROSENFELD. Yes, sir; but let me relate first an incident which took place during the trial.

You know, of course, that a motion for severance was made, and within the court's discretion, it was denied, so that you had the enlisted men and the officers both being tried in the same dock.

I don't have to tell you of the complete line of demarcation between officers and enlisted men in the German Army, even the SS. I recall one day, I must preface that by a short statement, saying I know per-

fectly well various attorneys were trying to see just how far they could get with the law member, I mean, the court, because on several occasions other members of the court passed their questions to me when something would come up.

Now, on this particular occasion Dr. Leer was examining, and was examining into a statement. The statement had been made by one of the enlisted men implicating either Peiper or one of the other gentlemen, I believe implicating Peiper, and the gist of the statement was something like this:

When there was an objection to some of the questions, Dr. Leer's statement was something like this—he asked first: "Now, this enlisted man who made the statement was a butcher boy?"

"Yes, I was a butcher boy, all right."

"How dare a butcher boy make a statement against this great officer?"

I stopped him just as fast as I could, and I told him in no uncertain terms at that time, that that is not the way we played ball in American courts. One man was just as good as another, and that the statement of the—and it is in the record—that the statement of the lowliest private was just as important to us as the statement of Sepp Dietrich, or Joachim Peiper.

I will say that Dr. Leer explained that he did not understand that, and apologized to the court and it never happened again, but that was my first indication that there might be some conflict between the enlisted men and the attorneys that represented them, and the officers.

Mr. CHAMBERS. May I interrupt?

Colonel ROSENFELD. Yes.

Mr. CHAMBERS. I gathered from that, that these German attorneys were hired by the particular individuals?

Colonel ROSENFELD. Yes.

Mr. CHAMBERS. In other words, they were not just hired to defend the whole group?

Colonel ROSENFELD. No, sir. At that time the German attorneys were permitted to appear in those cases when they were requested. In other words, the United States counsel for the accused were furnished, and they could then have counsel of their own choosing, if they so desired. Dr. Leer, I think, represented four or five and Dr. Wurttemberg, Dr. Rau, Dr. Pfister, and some were not represented by German counsel, although they quickly joined in.

Now, you have six German counsel and an equal number or more usually of American counsel. I don't know the nature of any other arguments. There were some arguments between counsel, about how to proceed, or what to do, but the only hint I had before the trial was completed that there might be an argument among the accused themselves was that one incident, and which is related in the record. I might say now that it was certainly obvious from the statements which were introduced, that some of the accused were most glad to implicate others, that some of the accused were most reluctant to implicate others, but there were statements which were presented to the court, and they were all taken into consideration, and in some of those cases, just before I finished, before I complete my statement today I want to make a statement with respect to what I did after the trial was over.

Mr. CHAMBERS. Well, did you ever have any conversation with Everett, well, I believe you talked with Dwinnell, as to this business of why they decided to rest their case and not allow the rest of the accused to take the stand?

Colonel ROSENFELD. I know what Dwinnell said, but unfortunately that comes third-hand, and I don't think I should give it unless you want it as hearsay.

Mr. CHAMBERS. Suppose it is hearsay, put it in and we will evaluate it as such.

Colonel ROSENFELD. Dwinnell was afraid his witnesses would lie so much that he didn't want to put them on.

Mr. CHAMBERS. Where do you think that Dwinnell got that statement that they were so discouraged by the rulings of the court that they felt it was useless to keep putting them on?

Colonel ROSENFELD. I wouldn't know.

Mr. CHAMBERS. Did you ever discuss that angle of it?

Colonel ROSENFELD. After the trial?

Mr. CHAMBERS. Yes.

Colonel ROSENFELD. I never knew, until this morning, that Dwinnell had taken the attitude he had taken, because in December of 1946, when Colonel Everett was preparing this petition, Dwinnell came to me on more than one occasion, when he was preparing the so-called superior orders case, and asked me if I could do something about keeping him from being bothered all the time by Colonel Everett to get the appeal out.

The first 45 or 50 pages which contain pure statements was written by Everett. The background and facts were gotten together by Colonel Dwinnell, and on more than one occasion Colonel Dwinnell came and asked me, because he was a very close friend of mine, that is why I am rather surprised at the statement you read from the record this morning—

Mr. CHAMBERS. Now, Colonel Rosenfeld, was the responsibility of defense counsel appointed by the service to carry these cases right on through to use the procedure, and then on?

Colonel ROSENFELD. Excuse me?

Mr. CHAMBERS. I was going to say, perhaps on to the Supreme Court?

Colonel ROSENFELD. I can't speak for the commanding officer, Colonel Straight, but it was my impression that once a case was concluded, that attorney was through because he might be assigned to another case the very next day, and he would have to go through that case. I don't think there was any thought after the Malmedy trial was completed that that case was to be appealed and taken to the Supreme Court.

Mr. CHAMBERS. When Colonel Everett was preparing his appeal, was he still an Army officer?

Colonel ROSENFELD. He was still, and had been relieved of his duties as chief of the Dachau Branch, 7708 War Crimes Group. As a matter of fact, Colonel Everett was ordered back to the United States in December 1946, and the orders were delayed until the end of December so he would get in his appeal. He then had some 6 months in which it could be done, but most of the work was done in the last few days.

Mr. CHAMBERS. I am quite familiar with the system of appointing

counsel for military courts, and it was my understanding, certainly in the Marine Corps, that once we ceased activities as defense counsel, we were through. I am sure most marines get stuck with that kind of duty occasionally.

Colonel ROSENFELD. I will say this, Mr. Chambers: It was certainly my impression, and I think it was the impression of every lawyer there, that I knew rather well, that once they finished with that case, they were through.

Let me put it this way: That when I was trying the Dachau subproceedings, I might have Delatala and Greenhill on one side, and perhaps one on the other and the next day, I might have their positions reversed. They were trying cases every day. I don't think they had the slightest thought that there was any intention that they had an obligation to carry that case on through.

Mr. CHAMBERS. Then, carrying this one step further, it appears there was an unusual procedure there, for Colonel Everett to have been doing that while he was still in the service, even though he had been relieved of his duties in the war crimes group?

Colonel ROSENFELD. When I say "relieved of his duties," his name may still have been on the records, but Mr. Leo Goodman was taking his place. He was in no official capacity there.

Mr. CHAMBERS. That perhaps accounts for the continuity in his preparation of the appeal to the Supreme Court shortly after returning to civilian life.

Colonel ROSENFELD. Let me say this, that Colonel Everett did tell me, whether it was in the early fall or late fall—of course, I knew him in the late fall—but he did tell me in the late fall of 1946 that he would take this case to the Supreme Court. He and I were very good friends; there was never any question of unfriendly relations. It was the same as attorneys, where you and I would be opposite each other in a case and in the morning we might fight our heads off over the case and go out to lunch together. It was strictly professional relationship then.

Mr. CHAMBERS. If they had continued those old cases, the defense cases might have continued into the years thereafter; is that not so?

Colonel ROSENFELD. I remember the Piekowski case. He was one of the commanders at Dachau, and was sentenced to death. He was represented by the then Major Boysen who became a member of my staff at Munich military post here. Major Boysen carried his writ to the Supreme Court.

I civilianized him in April of 1948, April last year, and until last fall he carried that matter himself and actually telephoned the President the night before Piekowski was hung. He did it on the phone, and I let him do it, because he felt that was his particular duty. There may have been other reasons for it. I do not know, but that was the only other case I know of like that.

Mr. CHAMBERS. Well, now, this is a little twist to the same question, but do you know of any other attorneys who might have continued defending an accused over here after they were deployed—didn't do any more work on the matter, or go beyond the trial procedures, but after they went back to civilian life they picked up the case and since have been active in it?

Colonel ROSENFELD. I don't know which cases have been picked up, Mr. Chambers. We have very little information over here.

If you can tell me which case, I will say "Yes" or "No," but I don't know offhand.

Mr. CHAMBERS. I have no special case in mind.

Colonel ROSENFELD. I have no special knowledge, because the Piekowski was the only one I knew of.

Senator BALDWIN. Do you have any questions, Senator Kefauver?

Senator KEFAUVER. Colonel Rosenfeld, did the Supreme Court just refuse to consider the appeal on jurisdictional grounds?

Colonel ROSENFELD. Senator, again I say I am limited to the knowledge I have obtained from the newspapers, and I understand they refused to accept it on jurisdictional grounds. That is only what I read.

Senator KEFAUVER. I believe it was a four-to-four vote.

Colonel ROSENFELD. And Justice Jackson did not vote.

As I say, unfortunately, we have not been able to see any of the entries. I have never even seen the petition. I know how thick it was. We had to spare three or four typists to finish it up and get it out of the way in time and that was all done by United States personnel in the war crimes group, and not privately.

Senator KEFAUVER. That is the petition for review?

Colonel ROSENFELD. Certainly.

Senator KEFAUVER. In connection with the matter of duress, I think it is important to point out, and I would ask Colonel Rosenfeld if this is true, beginning in the record on page 113, Lieutenant Dwinnell—was that his name?

Colonel ROSENFELD. Yes, sir.

Senator KEFAUVER. Consumed about 5 pages of objections to the introduction of these affidavits, based largely on the theory that one confession could not be used to implicate a codefendant and/or another person, and there was quite an argument about what the code provided, the technical manual; also he objected to the affidavits on the general ground that they were not admissible, irrelevant, and what not, and it didn't appear until later in the discussion, and is only mentioned one time, that there was any feeling that any of the confessions had been secured by duress.

Is that correct?

Colonel ROSENFELD. That is my opinion, because it was very, very late in the trial that the issue was first raised. I still say that I don't understand, I just can't understand it.

Senator KEFAUVER. The record does show that.

Colonel ROSENFELD. Yes, sir.

Senator KEFAUVER. And, I notice that in the introduction of the affidavits, that the prosecuting attorney asked several of the witnesses who had taken the confessions, if there was any duress, and defense counsel didn't even cross-examine them.

Colonel ROSENFELD. I recall that very well, on several—in the introduction of several of the statements—after it first had been introduced, Mr. Thon would be called to the stand, there would be the statement and there would be no objection. They didn't go into any discussion.

I might say this also, in making my remarks about Mr. Thon. I want to add one other thing that is important right here. On lots of these statements—all of them were written of course, in the handwriting of the individual concerned—no one in the courtroom could read them, and there were occasions when the defense had to call Mr. Thon from behind his own prosecution table and ask him if he would read those statements in German, and he did it.

Senator KEFAUVER. Colonel Rosenfeld, it has been stated that one of the objections I think—what was his name?

Mr. CHAMBERS. Mr. Koessler.

Senator KEFAUVER. Mr. Koessler this morning stated that in his opinion the court should have made a particular or specialized finding of guilty, or whatever the situation might be, in regard to each particular defendant or accused, and he said that was true particularly because the bill of complaint or the indictment alleged that all of them together had committed these atrocities and these crimes.

In your experience, did the bill of complaint or indictment in this case follow the usual form?

Colonel ROSENFELD. It was the usual form in war crimes procedures. In the war crimes procedures, sir, it was an unusual form because of the lengthy names and allegations, but it was in exactly the same form as in the preceding case on which I sat, exactly the same form at Dachau. I studied them in the preparation before going on the bench in the Mauthausen case, and that was the form used in hundreds of cases after that.

Senator KEFAUVER. Have you ever heard of a general court specifying, or making any finding of fact?

Colonel ROSENFELD. You mean in the war crimes cases? We never did.

Senator KEFAUVER. I mean, any court martial.

Colonel ROSENFELD. Of course not. Our procedure under the manual for procedure had the wording in there, taken practically from the court-martial manual: "We find you, on all of the offenses, guilty."

Senator KEFAUVER. Insofar as the indictment, also the verdict, was concerned, there was nothing unusual about the findings, was there?

Colonel ROSENFELD. Not a thing, not a thing; no, sir.

Mr. CHAMBERS. May I interrupt here a second?

General court-martial procedure, or, for that matter, special courts are so set up that it is very seldom that you fail to have specifications in which each thing is charged with a great deal of particularity so that you have to prove that point. However, failure to prove one specification out of say three in the charge does not acquit the man of the charge.

Colonel ROSENFELD. That is the exception. The general rule is when a case is on trial and which there are approximately eight specifications to the first charge and the man was found not guilty of about six, but found guilty of the balance of the charges, that is perfectly possible.

Mr. CHAMBERS. Whereas, under general court-martial procedure, we do break down the items so the defense can respond to a particular item. We didn't do that in the war crimes, did we?

Colonel ROSENFELD. No. There was a general paragraph which said they were guilty of—and it named what they were guilty of, all in one paragraph.

Senator KEFAUVER. Colonel Rosenfeld, you do know that the defense counsel about 2 weeks before the trial were supplied with a general statement of about what they expected to prove?

Colonel ROSENFELD. What the prosecution expected to prove?

Senator KEFAUVER. Yes.

Colonel ROSENFELD. I found out after the trial; yes, sir.

Senator KEFAUVER. I notice in the beginning of the hearing, that the prosecution specified in some detail what they expected to prove as to each of the defendants.

Colonel ROSENFELD. As a matter of fact, he had this manual we used and the prosecution had gone to a great amount of trouble to give us each a manual in which there was a separate page devoted to each accused, and his picture was on the page, his name, rank, organization, his home; and then they said:

*The prosecution expects to prove that—*

No. 1, he was at the crossroads at 3 o'clock on the afternoon of the 18th of December 1946, or 1945.

That is roughly how it was set up. They went through the whole manual, and we had three or four blank pages after each one of those. We all fixed them up with tabs—I know I did, and I know the president did—and when a certain accused man was put on the stand, we grabbed the book and turned the tab, and we had everything that had been brought against him, because on those blank pages we had scribbled our notes as we went along, so that it was very easy to correlate your testimony at the end of the trial. You knew what had happened all the time. All you did was turn to your book and there it was. It was a very valuable book and showed what they expected to prove against each and every defendant.

Senator KEFAUVER. Do you still, by any chance, have a copy?

Colonel ROSENFELD. Yes, sir; but it is in the United States. I'm sorry, you can have it pretty soon when I get back there. I will be glad to give it to you.

Senator KEFAUVER. Of course, not very many cases are appealed to the Supreme Court of the United States, but all court-martial verdicts are reviewed by the Judge Advocate General, and then by the Secretary of War?

Colonel ROSENFELD. By the Secretary of the Army.

Senator KEFAUVER. Of the Army; yes.

Did they have the usual review here, or was there a special appeal to the Judge Advocate General?

Mr. CHAMBERS. I think that answer is technically incorrect.

Senator KEFAUVER. All courts have—

Colonel ROSENFELD. No; no; general courts martial, involving officers and certain types of offenses, go up, and it depends—

Senator BALDWIN. They have to be reviewed?

Colonel ROSENFELD. Have to go all the way to the Secretary of the Army, all cases involving officers.

Senator KEFAUVER. And all cases involving death sentences must be confirmed by the President?

Colonel ROSENFELD. The Secretary of the Army can do that, in some cases, but those involving dismissal of an officer from the service are confirmed by the President.

Senator KEFAUVER. I believe the procedure is that first the general court is held, and then if it involves a heavy penalty, or conviction—

Colonel ROSENFELD. Or death.

Senator KEFAUVER. Calling for the death sentence—

Colonel ROSENFELD. That is right.

Senator KEFAUVER. The first appeal is to the Judge Advocate General?

Colonel ROSENFELD. The first review is by the staff judge advocate.

Senator KEFAUVER. Staff judge advocate?

Colonel ROSENFELD. That is right.

Senator KEFAUVER. From there, it goes to the Judge Advocate General?

Colonel ROSENFELD. That is right.

Senator KEFAUVER. And from the Judge Advocate General—

Colonel ROSENFELD. To the Secretary of the Army.

Colonel MURPHY. Under the new procedure, to the Judicial Council.

Senator KEFAUVER. From the Judicial Council, to the Secretary of the Army, and in each case any one of these people, or these groups—the Judicial Council or the staff judge advocate, or the Judge Advocate General, or the Secretary of the Army—can reduce the sentence but they can never increase it?

Colonel ROSENFELD. That is right. That is true.

Senator KEFAUVER. Was this case reviewed in the usual way, or was there a special appeal?

Colonel ROSENFELD. Sir, this court, and I say this court, the Malmedy court was a military government court. It was not a military court martial. It had certain rules and regulations under which it operated, and the review of the case was accomplished by the review section of the 7,708 war crimes group. The unusual feature of the Malmedy case is that I don't believe the first review was finished until almost 2 years after the case was tried, because of the various preliminary reviews. That was the unusual feature of the review, then after that there were many others, even your reviews, some ordered by the theater commander, the man who had the last word over here with respect to death penalties, and in that case it was the theater commander, first General McInerney, and then General Clay, and as you know in the appeal to the Supreme Court, that was taken out of the ordinary course, it was completely separate, and I think it was based on the appeal taken in the Yamashita case.

Mr. CHAMBERS. It was only after the Simpson committee—

Colonel ROSENFELD. What?

Mr. CHAMBERS. Only after the Simpson committee investigation that the Department of the Army began to hold up further executions pending—

Colonel ROSENFELD. There again I have to give you hearsay because I was no longer connected with the war crimes group, but from what I saw in the papers, that is what happened.

Senator KEFAUVER. Colonel Rosenfeld, it has been averred—I don't know whether it is in the record or in speeches I heard—that you dominated the court and that you were really the sole judge of the guilt or innocence of these people.



Did any of the other members of the court require persuading as to what verdict you should reach?

Colonel ROSENFELD. I have heard those statements for some time. I refused on my part to make a statement with respect to that. As a matter of fact, I was first interviewed by that same Simpson committee and to me it is utterly ridiculous, for this reason: Although I was law member of the court, the president of the court was a brigadier general, and at first there were seven and then six other officers, all senior to me. I was by far the junior officer on that court and when I got into this—this is no secret—when I got into chambers I was a very, very minor functionary when it came to persuading people, or talking about the evidence.

Now, when it came to the law, that was a different story.

Senator KEFAUVER. That is all I have.

Senator BALDWIN. I noticed from an examination of the first volume of this record of trial, Colonel, that the objections presented here to the cross-examination of Kramm, which you sustained, was the first objection of that particular kind that concerned the cross-examination of a particular witness, and before that, there were objections to the admission of the statement themselves, and the basis of the objections were stated; and, the claim has been made in the hearings that we had in the United States that the reason—the result of that ruling was that they never attempted to question that again. Of course, you fully explained that Kramm situation, and we already have that in the record, but at any time after that did any of the defense counsel talk with you about it at all? I mean outside the court?

Colonel ROSENFELD. You mean the Kramm decision?

Senator BALDWIN. Yes.

Colonel ROSENFELD. Oh, no.

Now, we talked, as I say, it was strictly a professional group, and we talked at the recesses, we would get together and talk about all the aspects, and usually Dr. Leiling or the prosecution or defense—

Senator BALDWIN. The thing that strikes me as very strange is that that point was never pursued, particularly in the light of the statement that you made with reference to it and I wondered why defense counsel didn't ever pursue it again? Maybe they did. What is your recollection?

Colonel ROSENFELD. No, sir, they didn't and I am just as surprised as you are, because it would have been so simple for them. I used to talk to Dwinell daily; talk to Ellis daily. We did that for the purpose of keeping some continuity in the trial, because as I said this morning, with all that battery of counsel, there were times when four or five different counsel wanted to cross-examine one witness and we had to be careful how we did it in a matter of procedure like that that involved the introduction of testimony; matters concerning the introduction of testimony like that; they were all determined upon in a very informal but friendly way, on a friendly basis.

I still cannot see why Dwinell or Walters, as far as that is concerned, Walters tried to beat me once on the most foolish question you ever saw. He objected to a leading question on cross-examination, and I said to him, from the bench, almost in these words:

Mr. Walters, you mean you object to a leading question on cross-examination?

He said:

I just wanted the court to make a ruling.

And he got his ruling quick.

They could have picked—I don't understand why, 3 years later or 2½ years later they suddenly pick a line of questioning like that and make it an issue when they never raised it prior to that time. No one ever discussed it with me, for instance, after the trial, or I don't think with any other member of the court; no one ever discussed those rulings or that they objected to them, I don't think.

I will make this a statement of fact: I never knew about the big objection taken to that particular ruling, and those rulings on the Von Kramm case until after your hearings had commenced, and it came out in the hearings.

Senator BALDWIN. One point that came up in the investigation in the States was this question of the time that the court took to render its decision of guilty.

I will read you from Colonel Dwinnell's testimony:

Mr. CHAMBERS. Colonel Dwinnell, 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.

What can you say to that?

Colonel ROSENFELD. Let me say, Colonel Everett came to Dachau about 3 weeks before the trial started. I don't know about the other people, but the prosecution took approximately 3 to 4 weeks. There was a break in there of almost 4 weeks for the defense at that time. At the end of the prosecution's case, that is, in which to prepare motions, and prepare its case further, in going through the defense case. There were breaks one time due to a period when some of the people were at Garmisch and Berchtesgaden, a break of 4 days. At the conclusion of the trial, there was a break to give both sides an opportunity to draw up their final summaries and present them to the court. There certainly was sufficient time, in my mind, particularly for the type of defense they placed before the court.

Senator KEFAUVER. Was any additional time asked for?

Colonel ROSENFELD. They received all the time they asked for. The first time I think they asked for 2 weeks, if I am not mistaken. I may be wrong about that; they didn't get 2 weeks, but I believe they got one full week, including week ends. Of course, we sat on Saturday mornings, on that case.

Senator BALDWIN (reading):

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.

In other words, from what Colonel Dwinnell said here, there was a 10-day period between the time that the prosecution rested its case, and the time that the defense went on.

Colonel ROSENFELD. In other words, 4 weeks before that, and 3 weeks before that.

As far as field investigations are concerned, they had use of all the facilities of the war crimes group which entailed field teams over all of Europe, hundreds of people for their field investigations, but most of them were people who were right in the cages at Dachau, there, during the course of that trial. There were over 20,000 SS men in the cages at Dachau, suspects, witnesses, and what have you, people were still being screened.

Senator BALDWIN. That isn't quite the point of my question. The point of my question is this: For example, at Malmedy and Stoumont and Bullingen, all the places where these incidents occurred, were they given any opportunity, was the defense given any opportunity or facilities for going to those particular places and checking up on the ground?

Colonel ROSENFELD. Now, I don't know what happened up to the time of trial, as I told you, because I wasn't involved in it and should not have been, naturally.

During the course of the trial, they never asked for an opportunity to go up to those places. I, for one, would have given it to them, if they had asked for it.

Senator BALDWIN. But they never asked for it?

Colonel ROSENFELD. They never asked for it. They asked for time to prepare their case, but at no time do I recall them saying, "We want to go up to Malmedy," or "We want to go to Stoumont or La Gleize" or any of those places—or, they didn't ask to go to Bullingen, or say "We want to pick up some witnesses there."

Of course there was another system being used, too. The evidence branch of the war crimes group was responsible for all testimony whether it was defense testimony or prosecution testimony, and all they had to do was ask for an investigator. They had investigators besides themselves and they could get as many as they wanted in a case like that; they could ask for an investigator who would go from one group or team to another, perhaps over in the British zone, or in the French zone, or one of the teams in France, those things were all set up in the field.

Senator BALDWIN. Of course the point was made, back in the States, that there was a great shortage of personnel.

Colonel ROSENFELD. Not at that time.

Senator BALDWIN. There wasn't?

Colonel ROSENFELD. No, sir. I can't see where there was an shortage of personnel. They had teams available all over Europe to do what they wanted.

Senator BALDWIN. Your recollection is that no request of that kind was made during the trial?

Colonel ROSENFELD. So far as I can remember, I don't recall a single request for us to take a recess while they went to a certain town to look for witnesses.

Senator BALDWIN. I think it appears from your testimony this morning, and it appears from the testimony that we took in the States, that the court spent only 2 hours and 20 minutes of deliberation between the time that it retired, and the time that it brought in the finding of guilty.

What can you tell us about that? It seems to be a very short time.

Colonel ROSENFELD. Yes, sir, it does; and I think it might have even

been shorter if the noon recess had not intervened, although we sat during the noon.

As I explained a few minutes ago, everything we wanted in every man's case was in front of us at one time. We sat there through 8 weeks of trial and we had before us our complete notes, very, very complete, regarding each man. I think I took 175 pages of notes, in addition to my book.

Senator BALDWIN. The book was only what the prosecution—

Colonel ROSENFELD. The book, as I said before, contained a blank page—blank pages in which we placed our notes opposite that man's name so the members of the court were able to make notes, for example, opposite the man's name. If the man was there, or if he wasn't—they each had their own system, so you can almost go right straight through your book—you see what I mean, and you had your mind made up about quite a few, by then. You certainly hadn't a chance to miss out on anything there. I know I did nothing myself, and so did the president of the court, but study the testimony and read the testimony. We would get a day's take, about 2 hours, after we were through in the afternoon, and we had everything available for us and we studied that testimony as we went along and compared it there with certain people which, in your own mind, you had definitely placed in your mind, and as to the question of guilty or not, it was obvious if I had not arrived at some conclusion by then, I certainly hadn't been very attentive during the trial.

Senator BALDWIN. How long a time intervened between the finding of guilty and the pronouncement of sentences?

Colonel ROSENFELD. You see, after the finding of guilty of course quite a few of the accused took the stand for approximately 2 minutes each and made statements in mitigation. For instance, they would get up and say, "I am so many years old. I have a wife and three children. My grandfather is very, very sick. I am the sole support of the family."

Some of them said "I was very young. I didn't know what I was doing."

Others said "I followed my commanding officer's orders and I couldn't do anything else or I would have been shot in the back."

One said, I don't remember which one said it, but the record will show: "I did what I did because I wanted to do it and I would do it again."

At the end, after those statements, the court retired and I think the court retired for 3 or 4 days.

Senator BALDWIN. How did you consider those cases in executive session?

Colonel ROSENFELD. In closed session, each individual.

Senator BALDWIN. Each case?

Colonel ROSENFELD. Yes; and they were voted on by secret ballot.

Senator KEFAUVER. Was the original verdict by secret ballot?

Colonel ROSENFELD. Yes, sir; that was done quickly, just the same as in a court martial, but the deliberation was much more protracted.

Senator BALDWIN. A majority was all that was required to convict?

Colonel ROSENFELD. That is all that is required.

Senator BALDWIN. In this case, in the early stages of it, there was a motion made for a—

Colonel ROSENFELD. Wait a minute. Did you say "majority?" It is a two-thirds majority, excuse me.

Senator BALDWIN. Two-thirds?

Colonel ROSENFELD. Yes, sir.

Senator BALDWIN. In the early stages of this case, there was a motion made for a bill of particulars, so-called, or a more specific statement of the charges, and that motion was denied as I recall it.

Colonel ROSENFELD. That was one of the motions made in writing, and well, could I have volume No. 1?

Senator BALDWIN. Yes.

Colonel ROSENFELD. I believe my answer in writing is there, and at that time the prosecution I believe said something to the effect that they had already been informed of the authorities and under such—

Senator BALDWIN. As I recall from the previous testimony taken in the case, the motions were filed and then the court considered them before announcing the decision, is that correct?

Colonel ROSENFELD. Yes, sir.

Senator BALDWIN. I mean, there was something, the court considered them but there was some time intervening between the time the motion was argued and the time the actual decision was rendered.

Colonel ROSENFELD. Motions were presented about 48 hours in advance, I think, just at the close of the Mauthausen case was when I received the motions, and the decision was read in open court and was considered in the court the morning the court opened.

Now, they were prepared in advance, similar to the ones in the United States procedures.

Senator KEFAUVER. About page 60, I think.

Colonel ROSENFELD. This is a motion to dismiss part of the bill of particulars.

Can you refresh my memory as to which motion you mean, because there are motions for jurisdiction—

Mr. CHAMBERS. For severance?

Senator BALDWIN. No. There was a motion for severance, but there was a motion for a more specific statement, or a bill of particulars.

Colonel ROSENFELD. To strike a portion of the particulars. Let's look at that.

This is to strike certain portions as to certain individuals.

Senator BALDWIN. My recollection is that Colonel Dwinnell said that he made objections and asked for more specific statement of the allegations contained in the indictment, so-called.

Mr. CHAMBERS. I think that is correct.

Colonel ROSENFELD. I don't see it.

Mr. CHAMBERS. Look in the record on page 79:

Among other things, the defense moved that the dossiers be made more definite \* \* \*.

And, on page 90:

This motion was properly overruled by the court.

Colonel ROSENFELD. I made the ruling of the court. Do you wish me to read it into your record now?

Mr. CHAMBERS. Yes.

Senator BALDWIN. Read it.

Colonel ROSENFELD (reading) :

The following ruling was made by the court :

Colonel ROSENFELD—

This is page 90 of the record.

Senator BALDWIN. The record of the trials?

Colonel ROSENFELD. Of trial [reading] :

There being no objection by the court, the law member will make the ruling on behalf of the president.

An offense must be stated in as definite a nature as circumstances permit. In the instant case an allegation of the violation of the laws and usages of war is charged by the prosecution. Violations of the laws and usages of war are rather broad but these must necessarily be so because of the offense committed. The bill of particulars or the charge, I should say, as presented to the Defense by the prosecution lists a variety of crimes committed over a period of 29 days. The burden of proving those crimes is upon the prosecution. The prosecution has submitted to the defense what the defense calls a bill a particulars which, in effect, is additional information which was available in the hands of the defense. The submission of this additional information does not at this stage limit the prosecution under the charge as filed. The court is mindful of the Yamashita case where the Supreme Court of the United States held that charges of violations of the laws of war, before a military tribunal, need not be stated with the precision of a common law indictment. The court is further guided by a decision as to a similar motion in the Mauthausen case—

And by the way, I made that decision in the Mauthausen case— where the same issue was argued and the motion denied. If the proof is not produced on the part of the prosecution which is covered by the charges and allegations, the defense has as its privilege a motion to strike.

The motion to make the bill of particulars more certain is denied.

Senator BALDWIN. You don't want to add anything further to that?

Colonel ROSENFELD. There is nothing more I can add, because I have gone through the entire testimony to refresh my memory.

Senator BALDWIN. There was also a motion made for a severance, Colonel. What can you tell us about that?

Colonel ROSENFELD. On the motion for severance, I can state that, without going to the record, there is no doubt that 74 people were a large group to try, but we had just come from two very large trials at Dachau, one the principal Dachau case in the fall of 1945, and the second the Mauthausen case in the spring of 1946, immediately preceding the Malmedy case.

In the Mauthausen case, we tried 61 accused. There wasn't any difficulty. It was not overly difficult to present the testimony, and it would have been difficult in the matter of time and additional personnel, stenographic help in particular, to have severed those accused, and to hear the same testimony.

Now, based on the experience we had had in the Mauthausen case, where, by the way, the prosecution was presented in only 12 trial days, and based upon the fact it was possible to try large numbers, and based again on the fact that these accused were all members of the unit which was charged with the particular crimes involved in the so-called bill of particulars, what you might call the indictments, I advised the court that it might not be a good idea to sever.

I could only advise. That was done in closed session, if I recall correctly, and the court was unanimous, I believe, in saying that we would not.

Senator BALDWIN. On an occasion of that kind, on that motion for a severance, and on a motion for this more specific statement in the bill of particulars, what was the procedure used by the court?

Colonel ROSENFELD. We were in closed session, and as far as we could in discussion of the legal issue involved, I gave them my opinion. General Dalbey, who was presiding officer, was then asked if there was any further discussion, and there always was, on each particular point. When I say "discussion," I don't mean argument. I mean those officers who sat on that court took their jobs very, very seriously.

In the, I should say, hundreds of courts martial that I've either read of, witnessed, or of which I have been a part, I have never seen a group of officers who were more vitally and keenly interested in the proceedings of a case than those in the Malmedy case.

Senator BALDWIN. Of course this was the only war-crimes case that involved American personnel.

Colonel ROSENFELD. We had other cases that involved American fliers, where American fliers were shot down, and they were tried of course.

Senator BALDWIN. This was the only one——

Colonel ROSENFELD. This was the only so-called mass atrocity case.

Senator BALDWIN. Was there a vote taken on it, on the question of what you were to do, or how was that handled?

Colonel ROSENFELD. Sir, I cannot recall whether an actual vote was taken in that instance, because I think they agreed on it unanimously and it wasn't necessary to take a secret ballot on the motion.

Senator BALDWIN. I would like to have your opinion on this question, based on your experience in this work, which appears to me to have been quite extensive.

There was a case where officer personnel and enlisted personnel were tried together. Would it be your opinion that that made it difficult or created a possibility of injustice or anything of the kind?

Colonel ROSENFELD. No, as a matter of fact I think it was fair for this reason:

I can see very well that had we granted the motion for a severance, and tried the officers in one group and the enlisted men and noncoms and privates in another one, I could foresee, and you had to be present and watch these people, day after day, to watch their nature and how they thought and see how they could turn on you just as quickly as anything and I think it would have been to the disadvantage of one side or the other, I don't know which, officers or enlisted men, had they been severed, because I think had the officers for instance been tried first, the enlisted men might have been inclined to act as witnesses against them, and, of course, vice versa.

I am sure with the exception of one man, Peiper, I don't think he would have, but I am sure it was to their advantage to have tried them together, and not sever them.

I will tell you why we found that true. We found it true a month later, but it more than justified our decision at the time.

When we tried some of those accused in subsequent proceedings, we could try John Smith one day for a certain offense, and he would say that he didn't do it, but that Joe Doakes of such-and-such company did it, and the next day, if we happened to try Joe Doakes, he

would swing right back again and say that he didn't do it, but the first man did it and they would continually lie, they were continually doing that back and forth.

I was able to observe that further, because I sat in the subsequent case of those subproceedings, where we tried almost a case a day and had 9 to 10 men in each case.

Mr. CHAMBERS. I would like to ask a question on that point.

Colonel ROSENFELD. Sure.

Mr. CHAMBERS. It would appear that if you had a group of witnesses varying in ranks, and perhaps the offenses were committed under the superior's orders, you would definitely have a conflict between the way the defenses could be presented?

Colonel ROSENFELD. I know that was discussed after the trial, but actually it wasn't discussed very seriously before the trial. When Colonel Everett and Colonel Dwinnell came to me with the motions, they were discussing it and either Colonel Everett or Colonel Dwinnell said to me at that time "We know that you probably won't take this one very seriously."

Mr. CHAMBERS. Well, now, Colonel, may we forget for just a second the Malmedy case, and discuss a hypothetical case?

Colonel ROSENFELD. Sure.

Mr. CHAMBERS. Of the experience you have had here, and all that has gone before, first of all 74 accused are a pretty large number to handle, particularly where there is one indictment and there would be a large number of incidents, and the same man not necessarily involved in all the incidents. From the standpoint of giving the defense every possible break, which under our way of doing, we would normally try to do, do you feel that it might have been a better system even at the expense of more help and more time and more effort, to handle these people separately so that a private, for instance, could defend himself vigorously, if necessary, through counsel, perhaps saying "I did that because my superior said if I didn't, he was going to shoot me," and similarly when the sergeant who gave the order defended himself, he got all the best possible defense as an individual in his case.

I don't know, I am merely asking your opinion.

Colonel ROSENFELD. Well, now, let's say that my opinion is limited to an accused on this side of the ocean. On this side of the ocean definitely not, because that is giving them a chance to alibi and work up a case against the other fellow. It happened, don't you see? I saw it happen time after time.

Now, in the United States, you might be inclined to do that. They were all, of course, in this dock, they were all considered war criminals and never called by title, but all considered as of the same rank, war criminals, not prisoners of war. Had they been prisoners of war, it might have been different.

Mr. CHAMBERS. Even as war criminals, in their own minds—

Colonel ROSENFELD. In their own minds, just as Dr. Leer said, "How dare the butcher boy accuse a colonel?"

I think that was the worst, and that would have been done—

Mr. CHAMBERS. That goes for the colonel, but how about the butcher boy?



Colonel ROSENFELD. The butcher boy had opportunity, and lots of opportunity, to say that they couldn't do anything else or else they would have been shot.

I asked later, and I am going to produce a copy in a document, I asked for the mitigation of several sentences after the trial was over.

Mr. CHAMBERS. I'm glad you brought that up.

Colonel ROSENFELD. Based, I believe, on my thought, that there might have been some little thing connected with that theory of superior orders.

Now, Colonel Dwinnell also was the prosecutor in the so-called superior orders case and he got convictions down the line, and they threw the theory of superior orders out the window in the spring of 1947, so on this side of the waters, I am certain that the more we could have tried in one mass trial, the better break they would have gotten.

Mr. CHAMBERS. You couldn't get the butcher boy you referred to there—they would have been extremely reluctant and perhaps even afraid to present a vigorous defense of their own particular case and say "This is the colonel," with the colonel sitting there as part of the same group and with the attorneys working as a team to get the whole group off.

Colonel ROSENFELD. They said it.

Mr. CHAMBERS. That is why they stopped putting the rest on the stand, wasn't it?

Colonel ROSENFELD. I told you I thought they stopped it because they were lying.

Senator BALDWIN. Right at that point, in the record, I want to read what Colonel Dwinnell said:

\* \* \* 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 2 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 have 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 one 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, clatching 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?

What is your comment on that?

Colonel ROSENFELD. That more or less verifies the statement I made to Mr. Chambers before, as to how I believe they were ratting on each other, if I may use that term.

Now, if there had been individual trials, or even trials of groups, it would have been more so, and that was my experience in the subsequent cases. We had smaller trials—

Senator BALDWIN. In other words, it is your opinion that whether you tried them together or whether you tried them separately, they would attempt to excuse themselves and pass the buck on?

Colonel ROSENFELD. They did it in hundreds of other cases. They did it in the case preceding, the Mauthausen case, and in the subsequent Mauthausen case when we tried the Mauthausen perpetrators not included in the principal case.

They did it all the time, and that is why they couldn't get on the stand, because they would take the stand and talk themselves deaf, dumb, and blind if you would let them, and suddenly they would be reversing themselves and admitting things that they had previously said they didn't know anything about, in the beginning of their testimony, and you have it all through this case.

There were prosecution witnesses who were of the same nature. That was all taken into consideration.

There was one other officer on the Malmedy case who sat on the Mauthausen case, Colonel Conrad, and he and Colonel Ellis made comparisons between the nature of the testimony, and the nature of these human beings who took the stand and thought they could get off by so naively making conflicting statements. It was awfully easy to pick it up after you heard a few of them, and they all did it—they all did it.

I admire Colonel Dwinnell for having come out and made that statement.

Senator BALDWIN. Any further questions, Senator?

Senator KEFAUVER. Nothing.

Senator BALDWIN. Mr. Chambers?

Mr. CHAMBERS. I have one or two questions I would like to ask, and then I am through.

Was there any member of the court that was relieved, or went home while the trial was in progress?

Colonel ROSENFELD. While the trial was in progress, one of the officers on orders to go home, received his orders.

Mr. CHAMBERS. To your knowledge, was that just a normal routine transfer, or was it for any other reason?

Colonel ROSENFELD. So far as I am concerned and so far as I know, I say so far as I personally know, they were normal routine orders, and came from Heidelberg.

Mr. CHAMBERS. I would like to quote from a statement made by Colonel Dwinnell, in response to a line of questioning designed to bring out the pressure that was built around this Malmedy trial, and I asked whether the defense staff had been pressured to hurry up and get the trial order. Dwinnell said:

I think it was the psychology at the time. It was right after the war ended, and this thing was a shocking thing, the cross-roads 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 DWINNELL. They did not take any oath.

Mr. CHAMBERS. Do you not feel that he disqualified himself?

Colonel DWINNELL. He did; he got off the court.

Mr. CHAMBERS. Well, did you bring it about or did he disqualify himself?

Colonel DWINNELL. 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 DWINNELL. He went home, and I never did exactly know why.

Senator BALDWIN. That is, he did not participate in the final judgment?

Colonel DWINNELL. No, sir.

Mr. CHAMBERS. What do you have to say about that particular language?

Colonel ROSENFELD. There is no question in my mind but if any court member did talk about a case during the trial, he would have been asked, or he would ask to be relieved, but I have the same idea about Dwinnell—if Dwinnell knew that, and knew some member of the court had talked about that and given his opinion, it was his right to come before the court and ask that he be relieved.

Mr. CHAMBERS. Did he fix it up—

Colonel ROSENFELD. I don't know how Everett could have gotten the officer relieved, except that I know the officer was ordered back to the United States. You can relieve an officer and transfer him somewhere else, but this officer received his orders to go back to the United States.

Mr. CHAMBERS. You mentioned a moment ago, colonel, that you had some statement to make concerning a recommendation for clemency?

Colonel ROSENFELD. Yes.

In April 1947, Mr. Denson was then preparing probably the first real review of the Malmedy case—Mr. William Denson. When he did that, Colonel Ellis and I had talked for months about asking for the mitigation of certain of the sentences. Now, just as you do in an Army court martial, the court must call the shot as it sees it, and there is no question about that. I was only one member of the court, but I, individually, in connection with Colonel Ellis, both of us signed the document and asked for the mitigation, or made recommendations and asked for mitigation in 26 of the cases.

Senator BALDWIN. Did any of those affect a death sentence?

Colonel ROSENFELD. Yes, sir, nine.

Senator BALDWIN. May I ask if that document is one that has already been offered?

Mr. CHAMBERS. That document has already been placed in the record by Colonel Ellis.

Colonel ROSENFELD. Fine.

Mr. CHAMBERS. The question is, do you know what happened to that recommendation?

Colonel ROSENFELD. This recommendation was presented by Colonel Ellis, I believe, to Colonel Straight, because that is where it should have been presented. Now, I do know that Mr. Denson knew of it, because the original of it was, together with the record and both of us kept copies. I have my copy here.

Mr. CHAMBERS. Did the original go with the record?

Colonel ROSENFELD. That I would not be able to tell you. I never saw the record, never saw the Malmedy record. I understand it is lost. I never saw it.

Mr. CHAMBERS. Koessler testified that he had that recommendation when he was making his preliminary studies on it, and turned it over to Mr. Denson when he turned the whole matter over to him.

Colonel ROSENFELD. I hate to disagree with Mr. Koessler, but Koessler had nothing to do with the case on the 4th of April 1947, and that is the date of the document.

Senator KEFAUVER. He was still interested in the case.

Colonel ROSENFELD. I don't know, sir.

Did he say—

Senator KEFAUVER. He had the notion—

Colonel ROSENFELD. Did he say what date it left war crimes?

Senator KEFAUVER. January 1947.

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. The reason he was rather specific on it was, he quoted one case in which he disagreed with Colonel Ellis' recommendation.

One of the mysteries is—what happened to the original?

Colonel ROSENFELD. I don't know. I know Mr. Denson knew about it, because Mr. Denson told me, and at that time I had no interest in it, so he could tell me that he agreed with all of these.

Mr. CHAMBERS. Did he incorporate those in his recommendations?

Colonel ROSENFELD. I don't think I—I don't know whether he ever submitted a final review. I don't know, I have never seen it.

Mr. CHAMBERS. It was prepared at Colonel Straight's recommendation—the first final review, according to Colonel Straight, was his review—

Colonel ROSENFELD. That is right.

Mr. CHAMBERS. And, it would have been up to Colonel Straight to have made or taken those into consideration.

Colonel ROSENFELD. Now, he certainly knew about it, and I know Mr. Denson knew about it, and from then on out I don't know what happened.

Senator KEFAUVER. Were they acted upon?

Colonel ROSENFELD. Mr. Denson told me he was acting on those, "according to your recommendations," but Mr. Denson's review was not the final review. I am certain, as far as these death sentences were concerned, I am certain, all those were acted on but I can't tell you about the others because I don't know the final results.

Mr. CHAMBERS. I have one final question that involves the matter of personnel.

It has been pretty obvious, and one thing that caused difficulty in war crimes, like every other branch of the military service in wartime, that some of the personnel we had in some cases was not qualified professionally for the job they had to perform. That is, investigating and on the legal level and it appears to us to be a pressing problem that we have to solve in event we do get mixed up in such a thing again.

Did you form any conclusions along that line, or do you have any comments or suggestions that you would care to offer?

Colonel ROSENFELD. Oh, yes. Your statement is correct, and it is exemplified by the statement I already put on record that I personally, because of, should I say professional pride, called a meeting of the lawyers in the fall of 1946. That is when the large group came in at Dachau, to try to straighten out and clean up our own linen. I know that from then on those meetings were held regularly and were attended by prosecution and defense attorneys, where they held weekly discussions on current problems. I used to come down from Augsburg to them. There is no doubt in my mind that some of those attorneys were trying their first case, and no doubt some had no experience in any trial work, except perhaps before a police judge or a justice of peace. But, as you say, they did the best they could and one of the reasons I will say it is this:

When Colonel Ellis and I were in Munich together, after the Malmedy case, we were invited to a meeting of the selection board which was sitting in Washington to select attorneys to come over for the war crimes program, and on that occasion I saw numerous attorneys who were obviously wanting to go to Europe for their own personal reasons, where they might benefit. I am sure that any group as large as we had, we had attorneys over here who personally benefited, both among the civilians and among the officers, and I might say in that connection, out of a clear sky, just 2 weeks ago yesterday, I saw Mr. Strong here in Munich in civilian clothes. There was no particular reason why he should be here. I didn't ask. I thought maybe he was anticipating your visit.

I have known—I can't lay my hand on it now, I have tried—of some of the attorneys getting in touch with relatives of the accused. That wasn't good, as far as I was concerned, and I am trying to look into that.

So far as the trial personnel of the Malmedy case was concerned, Colonel Dwinell was certainly a well-qualified lawyer and he proved it in later cases, and also sitting as president and law member of a court.

I think now, for instance, Mr. Walters had probably had 20 or 25 years of experience. I don't know what type of experience, and he certainly did all he could, as a matter of fact he antagonized us a few times, but he was in there punching.

I often wondered what Mr. Walters' connection might be with the program later, but that, I don't want to say.

Mr. CHAMBERS. What?

Colonel ROSENFELD. What he might be doing with the war crimes program later after the Malmedy case was in—what other cases, that is a matter I am looking into at the present time.

Mr. Strong had not had much experience. Mr. Strong admitted that. Mr. Strong, however, was continually guided by Colonel Dwinell. Once at my request, Mr. Strong had a language defect or difficulty, but here is the thing, they had six very, very eminent German counsel. There is no getting away from that, and the German counsel were really looking out for their interests, as were the American counsel. The thing with which I was impressed in those early trials was, when you would talk to the Germans, they would say, "How did it happen that the Americans are giving their own people to represent these accused?" I have had that come up to me lots of

times. People said to me, "An accused represented by an American?" I said, "Sure, and they can have Germans also, if they want."

Now, as to the quality, certainly, of some of the lawyers coming in later, I am not one to condemn anybody, I certainly feel a little professional pride, but I am forced to say that some of the lawyers that came in later were not the very highest type of professional men. Probably through no fault of their own, but through lack of experience, and I don't know whether we could have done anything about it, certainly in the early days, we did the best we could.

Senator BALDWIN. Any further questions, Senator?

Senator KEFAUVER. I think the chief thing that should be observed is, it is not the fault particularly of the selection board, but at the salaries paid, it was impossible to get lawyers such as you or I might want.

Colonel ROSENFELD. I didn't want to touch on that, but—off the record.

(There was discussion off the record.)

Senator BALDWIN. Are there any further questions of Colonel Rosenfeld?

(No response.)

Senator BALDWIN. Thank you for your time and testimony, Colonel.

We will now go into executive session and reconvene tomorrow morning at 9 o'clock.

(Whereupon, at 3:30 p. m., the open hearing stood recessed until 9 o'clock the following morning, Wednesday, September 7, 1949.)

# MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, SEPTEMBER 7, 1949

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
*Munich, Germany.*

The subcommittee met, pursuant to adjournment, at 9 a. m., in the hearing room, Headquarters Building, Munich Military Post, Senator Raymond E. Baldwin (chairman) presiding.

Present: Senators Baldwin, Kefauver, and Hunt.

Also present: Col. C. C. Fenn, Lt. Col. E. J. Murphy, Jr.; and Mr. J. M. Chambers, on the staff of the committee.

Senator BALDWIN. The meeting will be in order.

Senator Kefauver had a question or two he would like to ask you, Colonel Rosenfeld.

Colonel ROSENFELD. Yes.

## TESTIMONY OF COL. A. H. ROSENFELD—Resumed

Senator KEFAUVER. Colonel Rosenfeld, yesterday I intended to ask you one question that I neglected to ask, and that is, in considering this case, assuming for the purpose of argument or discussion, that all of the testimony and the evidence at the hearing in court-martial proceedings which developed from, or was a part of it, was that derived from the so-called mock trials had been excluded; that is, assuming that proper objection had been made to the introduction of any of that testimony or evidence, and that it had been sustained, in your opinion was there not sufficient evidence to convict these people, aside from this evidence?

Colonel ROSENFELD. Sir, I will have to make my answer rather lengthy, in this manner:

As a direct answer, I would say "Yes, definitely."

Now, I say for this reason, sir: on several occasions, and even 1 year subsequent to the trial, and I refer now to 1 year subsequent to the trial, I interviewed approximately 40 of the Malmedy accused at Landsberg, when I was preparing the trial of another case, the Skorzeny case. I interviewed Peiper. Peiper said to me, in so many words, in front of three or four witnesses—no one could have beaten him into saying what he did. I believe it. That man was a soldier. I am not thinking about his philosophy. I am not thinking about his Nazi ideals. I am thinking about the man as a soldier. He was a soldier and when he said that to me, he looked me right straight in the eye and said, "No one could ever beat me not to say what I wanted to say." It was a question of psychology.

Senator KEFAUVER. He made no complaint that they had?

Colonel ROSENFELD. No; and the others, I have yet to see one of the forty-some accused that I talked to 1 year after the trial, approximately June or July of 1947, who said to me that the mock trials or the beatings caused them to make their statements.

Now, I will refer to Benoni Junker. Junker came from one of the old-line German families. Junker had a terrific sense of humor. He was the one who, during the course of the trial was writing little poems and sending them, by way of messengers, to Colonel Ellis, the prosecutor in the case. Junker said no one could have ever beaten him or forced him to make a statement. It was just the psychology of the matter. It wasn't tried.

I am saying that as a conclusion, based on what I saw in the trial.

For instance, I will make it stronger in this respect: the question of the so-called mock trials, I don't think they were mock trials, I know that lots of people have said they were mock trials, but the question of the so-called mock trials was brought before the court by the prosecution itself. The defense did not bring it in in mitigation. The prosecution itself introduced every method it used, before the court, introduced every method it used in obtaining the so-called confessions. We never called them "confessions," we called them statements, of course.

Now, I can remember, again referring to Benoni Junker, talking about the hood, and I can remember very definitely Dr. Leer trying to ask if the hood had a red lining, as if it were bloody. I believe that very statement is in the testimony.

These are things I recall now, from memory, and not from reading the testimony, but he did say that, very seriously, he was just trying to get something before the court.

The only man in the group who was positively identified on the stand, Fleps, who was identified by Lieutenant Lary, as being the man who directed the first firing, and actually fired the first shot at the crossroads incident. Fleps, himself, told me that no one could have forced him, by beating him, to talk. Fleps told me that, 1 year afterward.

Now, knowing that I had been on that court, and knowing that I was going to try to use some of his own men as witnesses in another case against one of their very, very great heroes, he had no reason to tell me that, if he didn't mean it.

I conclude this, that those men actually were soldiers. There is no doubt in my mind about that, because he would have to be, to be in the First LSSAH.

Now, when a man is a soldier, it is going to take more than an ordinary mock court and a good beating, and I am not saying there were beatings, but it will take more than a mock court and a beating to force him to talk, if he doesn't want to.

Senator KEFAUVER. Colonel Rosenfeld, I haven't read over all of the record of hearings as yet, but I read certain parts and glanced at other parts.

There were a number of witnesses who testified, as I recall, for the prosecution, who identified the parties involved in this matter, who were not prisoners, who worked there, some did, and some were brought in from whom no statements had been procured, or had not been subjected to any—



Colonel ROSENFELD. Do you mean the witnesses for the prosecution?  
Senator KEFAUVER. Yes.

Colonel ROSENFELD. Well, there were witnesses for the prosecution who were not members of the First LSSAH, but the principal witnesses obviously had to be. This one unit was there. Certainly there were Belgian witnesses who talked about the incident, but the principal witnesses obviously had to be from the same unit, since this unit took part in the various offenses alleged, and, of course, the six survivors of the crossroads incident.

Senator KEFAUVER. And some of the witnesses who were not involved to as great an extent as others, turned State's evidence, didn't they?

Colonel ROSENFELD. Yes, sir; I think Von Kramm can be put in that category. Von Kramm was a so-called adjutant. They called him an ordnance officer. There is quite a different meaning there as to ordnance officer, because an ordnance officer to us, of course, is an officer who handles machines, but an ordnance officer in the German Army was an officer who was an adjutant, as we know it. That was Von Kramm.

Von Kramm and Fischer—well, those two particularly I knew, were, as we called them, adjutants. I think that, when I remember talking to Fischer, I remember talking to Fischer a year after the trial, I think Fischer would have been very glad at that time to have been a state's witness.

Senator KEFAUVER. In the review by General Clay, and the extension of clemency in a great many cases by him, do you know whether or not all of these matters pertaining to the alleged mock trials, or alleged beatings and what not, were taken into consideration in the reduction or modification of sentences by General Clay?

Colonel ROSENFELD. Sir, in that connection I must state that not knowing about any of the reviews, my connection with the Malmedy case ended at the end of the trial, with the exception of one little conference with Mr. Koessler to which I referred yesterday.

Senator KEFAUVER. Well, as the matter now stands, there are only six upon whom the death sentence has been imposed?

Colonel ROSENFELD. Yes, sir. I know from newspaper articles and so forth that those matters must have been brought to his attention, because the entire record of trial shows the method used, and that was introduced by the prosecution. That is the astounding thing to me. It is the first case I have ever seen in the hundreds of cases in which I have taken part, both in civilian life and my official Army capacity, where the prosecution itself showed the methods by which they had obtained the so-called confessions. It is the only case I know, and they did that from the very start.

They didn't hesitate a minute. That is one of the things, I might say, that impressed me very much—that the prosecution just came out and said, "Sure we put the hoods on these men. We put hoods on them so they couldn't see who else was in prison"

To me, that was a very, very clever way of doing it.

When they said, "Sure we took them into a room where there were men sitting behind a table, and we talked to them and we had the so-called schnell method."

And then, on cross-examination one time—I am recalling this from memory, but I recall it clearly—when Mr. Schumaker was on the stand—Captain Schumaker then, by the way—a question was asked him: “What the schnell method, or plus or minus system?”

Schumaker said, and I think the record will back me up almost word for word:

Oh well, there were just so many pluses and so many minuses.

And I looked—it was very interesting to study the faces of the accused—I looked at the accused when Schumaker was making the statement, and saw some very, very foolish expressions on some of the faces, from which I would deduct, from my own experience, that they had been just outsmarted—put it that way.

Senator KEFAUVER. What is the derivation of the word “schnell”?

Colonel ROSENFELD. That means quick. That is why we asked him, Schumaker, what did the “schnell” mean, and he said:

I don't know; we just call it the schnell proceeding. When we are using the plus-and minus system, when a man is obviously lying, we put a minus down on this side of a piece of paper, and when he was obviously telling the truth, we put a plus over here, on this side. When we had more minuses than we had pluses down, the man seemed to feel worse.

That was all brought out in open court and they had a chance to study it there, and I might say that the court studied that particular phase of the case very, very carefully.

I would say that hours and hours in the evening would be devoted to the study of that, because it came out early in the case, when the first statement was introduced.

Senator KEFAUVER. Colonel Rosenfeld, are these nine men who testified—did any of them receive the death penalty?

Colonel ROSENFELD. Sir?

Senator KEFAUVER. Are any of the six that are now under death penalty—did any of them testify?

Colonel ROSENFELD. I must recall from memory, otherwise I would have to have the names. Of course, Peiper testified, and he received the death penalty.

If I could see the other names; I could tell you in a minute.

Mr. CHAMBERS. I will supply that in just a minute.

The ones marked with “D” are the ones with the death penalty [passing the document to the witness].

Colonel ROSENFELD. Of course I know that Peiper testified, and Peiper received the death penalty.

Diefenthal testified—

Mr. CHAMBERS. No; he did not testify.

Colonel ROSENFELD. Then strike that, please.

Bode did not testify. Diefenthal did not testify. Huber did not testify. Peiper testified. Zwigert did not, so that of those who now still are under the death penalty, or have the death penalty over their heads, only one testified, and that was Peiper.

I might say, by way of conversation and general conversation, because all of us lived together during the course of the trial, it was made rather clear to me, and I now think it was made purposely clear to me that when Peiper took the stand, Peiper was going to take the entire blame, in order to save his men. Actually his testimony didn't go that far.

Senator KEFAUVER. That is all, Mr. Chairman.

Senator BALDWIN. Any questions?

Mr. CHAMBERS. Colonel Rosenfeld, going back to this matter of the study that the court made of the mock trials, I believe you testified yesterday that you were not aware of the fact that Colonel Carpenter had made an investigation of these alleged matters of duress.

Colonel ROSENFELD. That is correct.

Mr. CHAMBERS. Colonel Carpenter, when he appeared before us, testified that some of the things that he had established in his investigation was this admitted matter of the use of the so-called schnell procedure, or mock trials, or whatever you want to call them, and that when he went back to making the report to Colonel Mickelwaite, and Colonel Everett was present at the conference, they agreed that the mock trials had been used and the hoods had been used, and matters of that kind, but in order that the court would know completely that these things had been used, it was incumbent upon the prosecution to come in and report to the court and explain it to them.

Colonel ROSENFELD. Then, that answers the question that I raised here a few minutes ago, of my surprise that the prosecution introduced all of that evidence, because normally in any type of lawsuit the defense would have introduced it either in mitigation or to show, of course, bias, pressure, or anything else you may want.

It was astounding to me, definitely astounding to me, as an attorney, to hear the prosecution bring in all of this type of evidence and lay it right before the court and I thought, and I was sure at the time, that this was one of those cases where the prosecution was just going to lay everything in, and that is exactly what they did.

The court was most impressed. There is no question about it. The court was most impressed with the manner in which the prosecution held nothing back from it.

Mr. CHAMBERS. Was it your opinion, or the opinion of the court, that that matter of the schnell procedure was not of sufficient nature as to require you to throw out all the testimony secured through it?

Colonel ROSENFELD. It was unanimous, and I say that, I can't back it up for every member of the court, but, saying it from memory, it was unanimous that it had very, very little impression on the court, in its opinion of the guilt of innocence of those particular men, because I must repeat once more what I said a few minutes ago, when you look at the men in the dock, day after day, and watch the expressions on their faces, and see their characters just as clearly as if you had studied it, that didn't make a bit of impression on them, I am definitely certain, and I would like to say this, just as strong as I can, for the record and for whoever wishes to attack it:

I am definitely certain that any mock trial or any alleged mock trial, or any other procedure used by the prosecution to obtain those statements prior to the trial, had no influence on the actual making of those statements.

Now, I cannot say that too strongly, and I base that principally on watching those accused on the stand and during the course of the trial. I just cannot make that statement too forcefully.

Had there not been a schnell——

Mr. CHAMBERS. Pardon?

Colonel ROSENFELD. Had there not been a so-called schnell method, had there not been a so-called mock trial, I don't care how the state-

ments were obtained, of course we have certain rules and regulations for obtaining statements, but with this type of man, this was the very highest type of Nazi soldiers the Germans had. To me, and to the other colonel who sat on the previous case, it was most obvious, because we saw the destruction of the German Army just shortly before that, and in the Mauthausen case, the comparison was like night and day. There was no possible comparison to those men who were in the Malmedy dock and those men who were in the Mauthausen dock. They were soldiers. You must remember that Peiper's attack, in the so-called Eiffel offensive, what we called the Ardennes, when he went there he knew what he was doing. Most of these men had been with him on the Russian front. They were not cringing SS concentration guards—that is what I want to try to bring out, and put over.

Mr. CHAMBERS. Well, recognizing that, Colonel, but looking at it strictly from the standpoint of the eyes that have been looking at that case, in other words we are looking at that several years removed from the war, we haven't had the opportunity of seeing the prisoners themselves in the dock, and on the surface it looks as though here were a procedure which admittedly was only used in about 10 of the four or five hundred cases screened. Frankly, I don't know if the record shows anywhere how many individuals, who were accused, went through a schnell procedure. It has been testified that more than 10 of the total interviewed and screened went through a schnell proceeding, but looking at it from a perspective as far away as we have, it would appear that here is a procedure that is a little unusual.

I would like to ask you, out of your experience, if you know of a jurisdiction back in the States where a procedure of that kind would be accepted, if we were operating under Anglo-American laws of evidence?

Colonel ROSENFELD. I know of several States in the United States where the third degree is still used.

Mr. CHAMBERS. I was speaking of mock trial procedure.

Colonel ROSENFELD. Let me put it this way: I do not know of any case where our local police back home were clever enough to have thought of that.

Mr. CHAMBERS. Coming along a little further, you say "Not clever enough to have thought of that." I was wondering how it got started among our own investigators. Did you probe into that at all?

Colonel ROSENFELD. No, sir; I didn't look into it. The only thing I can deduct is—and, believe me, when I say it is a personal deduction, it is—my deduction was that some of the boys who had been born or lived in Europe had seen that type of method before, because I had never heard of it.

Mr. CHAMBERS. That is the point I was leading up to, to ask you whether or not, in your knowledge, it is a fact that in Austria and certain parts of Germany they have a pretrial procedure known as the investigating judge procedure?

Colonel ROSENFELD. I know that. For that reason, in the case of the one man who was withdrawn from the Malmedy case—

Mr. CHAMBERS. Marcel—

Colonel ROSENFELD. Marcel Boltz was his name, was it?

Mr. CHAMBERS. Correct.

Colonel ROSENFELD. Marcel Boltz was withdrawn about 5 minutes before the court retired, at the request of the French Government, and

it came to us by way of a cable and then telephone calls through diplomatic channels. Marcel Boltz was withdrawn and taken down to Mulhouse, which is just on the Swiss border, down in the Komar pocket area.

In the first week of February 1947, I went down there with Mr. Thon, and a French interpreter to testify before, I suppose they call it, a committing magistrate, I don't know the term, in a pretrial investigation with respect to Boltz. Now, that was February 1947, so that would be 8 or 9 months after the Malmedy trial.

That judge went through all of the facts and all of the circumstances he had in connection with the Boltz incident in the Malmedy case. He took sworn statements from myself, Mr. Thon, and one or two other witnesses who were present that day. That was a complete pretrial investigation, and went much further than even our 46-B's now go in court martial.

Mr. CHAMBERS. What is that?

Colonel ROSENFELD. The old AW-70, a preliminary investigation by an unbiased officer in a possible general court martial.

Mr. CHAMBERS. It has been testified to before our committee, and I don't know whether you have direct knowledge on this point or not, that these investigating judges in Austria, and some of your interrogators were of Austrian derivation, would go through a formal proceeding in which witnesses were brought in to introduce practically any type of evidence, hearsay or otherwise, and it was the responsibility of the investigating judge to determine whether or not the facts warranted taking the case on to trial.

Colonel ROSENFELD. No, sir. Now, I don't know about the Austrian system, but I have just told you about the French system, and I do know that when Marcel Boltz was brought in, he was brought in in chains, the first time I saw a prisoner brought in in chains—hand and feet. He thought, at that time, I am sure, that he was having a trial, because that is just the way the committing magistrate, and I am calling him "committing magistrate"—that might not be the term—acted.

Mr. CHAMBERS. You did not ever ask Ellis, or any of the other people who were on the interrogation staff, where this idea of the schnell procedure came from?

Colonel ROSENFELD. No, sir; I did not. As a matter of fact at the time of that trial I personally, because of the people who were watching the trial, the interest of the trial and the importance of the trial, stayed as far away from Colonel Ellis and the other officers of the prosecution as I could possibly could, until the conclusion of the trial. In other words, none of us wanted anyone to say there had been conversation, informal conversation in the presence of others.

Mr. CHAMBERS. How about subsequent to the trial?

Colonel ROSENFELD. Subsequent to the trial, you know I have already told you that Colonel Ellis and I were very, very close, we were very close friends because we were working together all the time, he in his evidence branch and I in my trial branch and I am certain I never asked Colonel Ellis about the so-called schnell method. I will say it this way: I wasn't interested in it, it didn't impress me.

Mr. CHAMBERS. Didn't impress you?

Colonel ROSENFELD. It didn't impress me.

Mr. CHAMBERS. May I ask you about some of the other things which have been mentioned? It was said that the pretrial interrogators used ruses and stratagems for the purpose of tricking and getting confessions out of suspects. Isn't that nearly the normal procedure for any detective or police officer, or any prosecuting attorney, to try to build up his case and follow it?

Colonel ROSENFELD. I would say that is definitely the rule and not the exception.

Mr. CHAMBERS. As a matter of fact, isn't it within any legal limit, isn't it the responsibility of the responsible police officer or investigator, or prosecuting attorney, to get the facts?

Colonel ROSENFELD. Yes, sir; and let me give you a background on that, as far as I am concerned. That is why the so-called schnell method didn't impress me.

A very, very famous case, a world-famous case was the case of Ellis Parker, who lived in my home town. Ellis Parker solved cases for nations throughout the world, including Austria and Greece, that I know of. Ellis Parker continually used ruses. I knew that, and that is why I told you yesterday that the last case in which I appeared was the Ellis Parker case before the Supreme Court in connection with the Lindbergh case. I knew that that man, who was a very, very world-famous detective, used ruses all the time. I knew that from the time I was born. I know that the detectives in New Jersey, in my home State, used ruses. I know that police methods in Pennsylvania, and particularly Philadelphia, because I am acquainted with it, since I practiced law in the city just next to Philadelphia, Camden, N. J., they used ruses all the time. It is the accepted method.

Mr. CHAMBERS. By ruses, you mean such things as perhaps the use of stool pigeons, dictaphones, bringing in people to—

Colonel ROSENFELD. Trickery.

Mr. CHAMBERS. Through trickery, trying to bring in people who would say, "We have told-so-and-so—"

Colonel ROSENFELD. Yes.

Mr. CHAMBERS. Or tells the man being questioned that "Your confederate, right over here, has confessed"?

Colonel ROSENFELD. To me, it means this: the common term known as "third degree" less the beating. I will not countenance that. I will not go along with so-called beatings, and I don't think those methods are used. I never heard of them being used recently in my area.

Senator KEFAUVER. Colonel Rosenfeld, the usual procedure is this, and as a lawyer with much experience, correct me if this is not true—that if a person is suspected, under our procedure in the United States, in our criminal courts, if he is suspected of having committed an offense, an officer usually interviews the accused and talks with them at length in an effort to secure a confession, or an affidavit or a statement about what happened; and then, at the trial of the accused this is admissible in evidence.

In other words, the officers securing the statement or the confession, they testify what he did and what the accused said, and then if the defendant wants to take exception to it on the grounds that it was obtained by duress, then there is a special consideration of the facts and circumstances at that time, under which it was obtained.

If the court finds that it was not duress, then the evidence is admitted. If the court finds there was duress, it is stricken from the record.

Colonel ROSENFELD. That is perfectly correct, sir.

Senator KEFAUVER. And ordinarily, the jury is excused during the time of the discussion and consideration.

Colonel ROSENFELD. That is perfectly correct, and I might say, let's bring it back to the Army right now, because the Army was involved in the Malmedy case.

Under our rules of court martial, and that has happened in some of my cases right here in Munich, in recent cases, an accused can always set forth the manner in which a so-called statement or confession, or whatever you want to call it, was obtained from him. In a very, very recent case, an accused took the stand to testify only with respect to the obtaining of his statement by the criminal investigation department, or detachment here in Munich. He apparently convinced the court that he was put under pressure, as a result of which the court excluded the statement and the man was acquitted.

We go very, very far along this line, much farther than they do in civilian courts.

I want to say that because sometimes people lose sight of the fact that the Malmedy case was conducted by an Army board. It was a military government court, but they were Army officers who, when not under the special rules and regulations as set forth for the trial of those particular war criminals, were under the rules and regulations as set forth by the Manual for Court Martial.

Senator BALDWIN. You mentioned, Colonel Rosenfeld, the Skorzeny case.

Colonel ROSENFELD. Yes, sir.

Senator BALDWIN. Which you say you investigated?

Colonel ROSENFELD. I tried that, I was prosecutor in that case.

Senator BALDWIN. Prosecutor?

Colonel ROSENFELD. Yes.

Senator BALDWIN. And that was right after the Malmedy case?

Colonel ROSENFELD. No, sir; a year afterward.

Senator BALDWIN. A year?

Colonel ROSENFELD. Yes.

Senator BALDWIN. So that we may know what the Skorzeny case was, and what relation that had to the Malmedy accused, would you tell us what the Skorzeny case was?

Colonel ROSENFELD. Yes, sir.

At the time of the Eiffel offensive, I am using the German term there, we knew it as the Battle of the Bulge, at the time of the Eiffel offensive there was a plan whereby soldiers in American uniforms, German soldiers in American uniforms and speaking English, American-speaking soldiers were to fan out in advance of the Eiffel offensive and to cause a so-called wave of terror and desperation among the American troops, to make it easier for the German advancing column to take those bridges across the Maas River which had to be taken. Those men were then—they were the ones who were organized in the so-called One Hundred and Fiftieth Panzer Brigade by Otto Skorzeny. Otto Skorzeny was a personal representative of Adolf Hitler, who had had the previous task of rescuing Mussolini and also

of rescuing Admiral Horthy, which he had accomplished successfully.

He was one of the most colorful figures in the German Army, a strict soldier of fortune, Hungarian, not a German, and he organized the One Hundred and Fiftieth Panzer Brigade from specialists drawn from the German army, navy, and most of them, by the way, were from the navy, I presume they could speak English better because they had probably been in the United States or England, and as I said they were drawn from the army, the navy, and the luftwaffe. They were trained and they were put in American uniforms, with German uniforms underneath, and they actually went out ahead of the advancing, should I say, Peiper forces.

Senator BALDWIN. In other words, I don't think you need to go into more detail, but they were concerned with the same offensive?

Colonel ROSENFELD. In the same offensive and at the same place, and that is the reason we continually tried to tie his name in, because I heard immediately after the case, after the Malmedy case, that Skorzeny would have been included, he himself would have been included as an accused in the Malmedy case, had he been available at the time, but they didn't have him available.

Senator BALDWIN. I think that is all.

Are there any further questions of Colonel Rosenfeld?

Mr. CHAMBERS. I have two that I would like to ask. I will expedite them as much as possible.

One question is this, Colonel Rosenfeld: You have said that these matters were discussed by the court.

In his petition to the Supreme Court—

Colonel ROSENFELD. Which matters?

Mr. CHAMBERS. The matters of duress and the use of mock trials and hoods and things of that kind.

Colonel ROSENFELD. Yes.

Mr. CHAMBERS. In his petition before the Supreme Court, petitioner said:

All of the foregoing illustrations are 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.

The point I would like to ask you is this: Were these matters brought out and discussed so you knew what the picture was before they started examining witnesses, or from time to time as a witness was examined, and one of these points came up—did these matters come up piecemeal?

Colonel ROSENFELD. These matters came up as they should have done, at the beginning of the trial, and right straight through.

I will never forget Ralph Schumaker, then Captain Schumaker, taking the stand and going through a detailed conversation, should I say, or detailed testimony with respect to the so-called schnell method, and there was no joking about that, because these witnesses testified and I, in particular because of my professional training, would continually study the accused and there was no joking about bringing out the testimony with respect to the schnell method or any other method in obtaining the so-called confessions. There was never any joking about that. It was too serious a matter and it was taken that way.

The only joking I ever saw, and it really wasn't joking, it was just a little sense of humor, was a little byplay between Colonel Ellis and



Benoni Junker, and I told you about that, but that was just because Benoni Junker had a curious sense of humor.

Mr. CHAMBERS. May I ask directly—was there any time when these matters were described by the members of the prosecuting team in a laughing or joking manner?

Colonel ROSENFELD. Definitely not.

Mr. CHAMBERS. All right. Now, one other question—

Colonel ROSENFELD. It was too serious.

Mr. CHAMBERS. Do you recall testimony—the testimony of Colonel McGown?

Colonel ROSENFELD. I sure do.

Mr. CHAMBERS. I would like to ask you a couple of questions about the case of a reputable American Army officer who at least testified as a defense witness, and it would appear from the record of the trial that he threw some doubt at least from the defense point of view as to whether or not at La Gleize some of these incidents actually took place.

From your memory of it, please, what was the value of McGown's testimony?

Colonel ROSENFELD. I did not like McGown's testimony. That wasn't a question of a lawyer sitting on a bench evaluating his testimony. That was a question of one soldier who had been in combat evaluating another soldier who had been in combat. I just didn't like the manner in which he presented his testimony. I didn't like the manner in which he took the stand. I didn't like the manner, his manner on the stand, and no other member of the court—I should say this—strike that—all the other members of the court agreed with me, unanimously. McGown—I don't know; I don't know whether McGown was telling the truth or not. I can't go behind it, but—and I am glad to say for the record—after 3½ years, I personally doubt the veracity of his testimony.

I know this: That the day that Colonel Ellis tried to get permission to recall McGown that McGown had already started his flight to the United States.

After the trial was over, I saw a statement which, to me, might have implicated McGown in a matter of treason. I feel that way, and I am glad to be able to say it this way publicly, because I saw the statement.

Now, McGown and Peiper were entirely too friendly those nights they spent together. Peiper, with 600 of his men, were able to escape the trap when he was completely surrounded, and when he escaped McGown was with him; and then McGown simply said—and I think I am almost stating the exact words he said—it is in the record that, when they got to a certain stage in their march out of La Gleize, McGown simply walked off and Peiper went in another direction with his some 600 men.

I have no faith—and I am glad to say it at this time I didn't have one bit of faith in the testimony as given by the then Major McGown.

Mr. CHAMBERS. Does a prisoner of war, in our services, have the right to give any information to his captors other than his name, his rank, and serial number?

Colonel ROSENFELD. It is a standard rule, and we drummed it into the heads of our men from the time we started over here, from the original African invasion, that you give your name, rank, and serial

number; not your organization, but your name, your rank, and serial number, and that is all.

Mr. CHAMBERS. Do you think, however, after having been interrogated for political information, that, in accordance with our regulations, an American officer would spend a couple of nights with the commanding officer of the unit which captured him and discussed the things like that with him that night?

Colonel ROSENFELD. That is what McGown said happened that night, and that is why I think that McGown's testimony isn't worth a tinker's dam, if I may use an expression used before in this case, before Congress, because I cannot conceive of an American major spending two whole nights with Colonel Peiper discussing political affairs, or discussing affairs in the United States, discussing affairs in Germany, and permitting that to—let me strike that—and saying that such conversation is permissible by a prisoner of war, irrespective of the fact he may have been an officer.

Mr. CHAMBERS. On the other hand, as a senior officer, it would have been entirely proper and within our regulations for him to have attempted to negotiate with Peiper for the care of his personnel.

Colonel ROSENFELD. Now, that is a different story.

Mr. CHAMBERS. And didn't he testify that that is what he did?

Colonel ROSENFELD. That is what he testified to, but here is what still puzzles me: If I can recall the testimony correctly, McGown and only about 8 or 10 men went out with Peiper, not all those 200 or 250 men who had been captured and who were there with him; and those other men remained back. That is the thing that puzzles me. If he had so much interest in his men, and in a deal with Peiper to free his men, I don't understand why he only walked out with 8 or 10 of them.

Mr. CHAMBERS. I have nothing further.

Senator BALDWIN. Any further questions?

Senator HUNT. I have just one.

Senator BALDWIN. All right, sir.

Senator HUNT. Colonel, after the defense had placed approximately three of the men on the stand, they, for reasons of their own, decided not to have other take the stand.

Senator KEFAUVER. I think it was nine.

Senator HUNT. I think it was understood that the reason the balance of the defendants were not placed on the stand was that those who had been on the stand had made rather poor witnesses in their own behalf; is that a fact?

Colonel ROSENFELD. Senator Hunt, I answered a similar question yesterday. Actually, there were nine placed on the stand. Eight were placed on the stand and then Colonel—

Senator HUNT. Colonel Everett?

Colonel ROSENFELD. Colonel Everett asked if the court would recess while he polled the remainder to see if they wanted to take the stand.

They recessed for approximately half an hour and came back in, and one more took the stand.

Now, if I may say this to you, it is common among German witnesses, and particularly those army witnesses who take the stand, they talk rather verbosely; and, when they start to talk, they, most of the time can talk themselves, if I may put it this way, into a conviction, because they will tell about these circumstances.

Now, I don't want to say that they made poor witnesses. I think one of the finest witnesses I ever heard in my life was Joachim Peiper. I want to say this in his behalf, so I put it in the record—Joachim Peiper was on the stand approximately one full day, in his direct testimony, and he wasn't interrupted with respect to his attack, which was his one-hundredth attack—his first fight, his 3 days and nights without sleep, his moving from one tank to another, his advance, his stoppages, and things like that—that was one of the finest dissertations of a regimental commander that I ever heard, and one of the finest bits of testimony. Of course, he skipped over these little incidents that happened.

Senator HUNT. Colonel, to save time, if you will let me get to the main point of my question—

Colonel ROSENFELD. Yes, sir.

Senator HUNT. Realizing that possibly after the testimony of those who had been witnesses, that the trial was not going exactly to the liking of the defense attorneys, they did have this conduct at Schwabisch Hall, so to speak, this supposed mistreatment of these prisoners, if they had that information at that time, and the mistreatment would have taken place before that time, and under those circumstances would not the defense have been very derelict in their duty if they hadn't used that very extensively throughout the trial and in their final pleading?

Colonel ROSENFELD. Senator Hunt, I said it yesterday and I will repeat—I, myself, as a lawyer, cannot understand, if they had that type of information, I cannot understand why they didn't bring it in from the very first minute, because they had an opportunity, as each one of the investigators took the stand and introduced a statement, Mr. Thon, Mr. Perl, any of the others—Lieutenant Perl, excuse me—they took the stand, they had an opportunity to be cross-examined on the method by which that statement was taken.

I will never be able to understand why, if they had it, and I say "If they had that testimony at that time" why they didn't introduce it.

The only conclusion I can reach at the present time is that the testimony was not there at that time, or they would have done it.

Senator HUNT. One more question.

Colonel ROSENFELD. Yes, sir.

Senator HUNT. Prior to the trial, as working papers, the defense referred to it; they submitted an interrogation blank to each of the prisoners and one question on this interrogation blank was, in effect, "Have you been mistreated in attempting to secure a confession by the interrogators?"

This review board, and to the best of my knowledge, any other review boards have not been able to ascertain the whereabouts, or what happened to those preliminary statements.

Now, could you offer any suggestion to this committee as to how we can get at those particular interrogation sheets?

Colonel ROSENFELD. No, sir, Senator Hunt; because yesterday I made it very clear that I knew nothing about this case right up to the very time of trial, or 48 hours before trial. I was then engaged in the trial of the Mauthausen Concentration Camp case. The Malmedy case was tried 48 hours later. I didn't even know the names of the attorneys involved, except that I had met Colonel Everett, and you

are telling me for the first time, although I heard rumors that there were such statements prior to the trial, I knew nothing of what went on prior to the trial.

I have not familiarized myself with your hearing.

Senator BALDWIN. Are there any further questions of Colonel Rosenfeld?

(No response.)

Senator BALDWIN. Thank you very much, Colonel.

Now, we will hear from Dr. Leer. Mr. Chambers, will you call Dr. Leer, and we will want the interpreter.

Will you hold up your right hand, please?

Do you solemnly swear that you will make a true interpretation to the witness of the questions that are propounded to him, and likewise a true interpretation of his answers to us, in a language which he can understand and speak, to the best of your knowledge and information, so help you God?

Mr. ERNEST J. GUNTHER (interpreter). I do, sir.

Mr. CHAMBERS. Ask Dr. Leer to be sworn.

(The following language, in whole, was translated from English into German, by the translator, Mr. Gunther, and the witness' replies thereto into the English language by the translator, Mr. Gunther. Unless otherwise indicated, all answers by the witness were through the medium of the translator:)

Senator BALDWIN. Do you solemnly swear that the testimony and information 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 information, so help you God?

Dr. LEER. Yes.

#### TESTIMONY OF DR. EUGEN LEER

Mr. CHAMBERS. Dr. Leer, please give us your name and your profession and your present address.

Dr. LEER. Dr. Eugen Leer; lawyer; age 42; Munich, Einmiller Strasse 33.

Senator BALDWIN. I think, for the record, Dr. Leer, that the committee ought to tell you what its function is.

Dr. LEER. Yes?

Senator BALDWIN. This committee is not a court of appeals. It has no authority to change the sentences imposed by the military court. The United States Army and the Secretary of the Army have the sole jurisdiction over these sentences.

This committee can, however, make recommendations for legislation concerning military courts. It can determine the facts concerning the charges of mistreatments; but it will be entirely up to the Secretary of the Army to act upon them, as they may affect the sentences or require disciplinary action.

In other words, this committee is a part of the legislative branch of the American Government, as distinguished from the executive or judiciary.

Dr. LEER. Thank you, sir.

Mr. CHAMBERS. Will you please ask Dr. Leer to tell us who he represents? I believe he is speaking for a number; and, if we could have some idea who he is speaking for, I would appreciate it.

Mr. GUNTHER. He speaks in his own behalf for Peiper, whom he also represented in court.

Senator BALDWIN. We can save your time and the committee's time if he would leave a list of those men, and we can put it in the record and give him back his original.

Mr. GUNTHER. He also speaks for the great part of the remaining accused, the ones that are marked. He is representing himself, the remaining, he is representing for Dr. Aschenauer.

Mr. CHAMBERS. How was it decided that you, Dr. Leer, would speak for all of the attorneys?

Dr. LEER. Through a conference with the other lawyers, based on the letter of the commission that only one lawyer should appear.

Mr. CHAMBERS. Dr. Leer, would you care to make a prepared statement, to tell us anything you care to tell us without our interrupting to ask questions until it is necessary?

Dr. LEER. I am ready as well to make statements as in this manner, as also answering questions.

Mr. CHAMBERS. Proceed.

Dr. LEER. During the trial of defendant accused Peiper, Peiper was accused because of the responsibility for the actions which have also been committed by other accused. Thus I had to be interested for almost the entire material of the trial.

After the sentence in summer 1946 of the court in Dachau, I received until 1947 letters from accused witnesses and relatives of the accused. I have collected those letters and appeals and I have also collected those new names which have been accumulated.

I was much interested in those new witnesses. Because it was difficult to bring those many new witnesses from the Ardennes affair before courts, the members of those who have carried out the Ardennes offensive were either all under automatic arrest or as PW's in camps. The conditions at that time had not allowed to have all these witnesses appear.

During the process of the trial, we have tried very hard to find witnesses who especially could make statements to the matter of Schwabisch Hall. This wasn't possible. Apparently, these people were interned and we did not know the addresses. Partly did the accused not know the family names or last names of their comrades.

Therefore, I have collected the statements of those witnesses after trial, and therefore I have submitted my first appeal in February 1948 for recommencement of the trial.

To this appeal I have attached a great number of new statements.

After I have submitted this appeal, I have written to the relatives of the accused, and also before, and have asked these people to name all new witnesses or to send me those sworn statements which the accused have received. These statements I have then submitted in four volumes, starting with the 1st of February 1948; also from the 1st of April 1948; from the 16th of June 1948; and 24th of August 1948; also have represented, in small volumes, new appeals.

With a letter from 1st of May 1948 I have taken the liberty to present to the Senate of the United States all these copies of evidence and the applications. For these new evidence materials a great number just take reference merely to Schwabisch Hall and method used there.

I will give a list of the evidence material submitted by me.

Senator BALDWIN. May I ask a question right there?

Dr. Leer, you have given us the dates of the different groups of letters that you have submitted.

Do you understand English at all?

Mr. GUNTHER. He just understands a few words, Senator.

Senator BALDWIN. Not enough to converse?

Mr. GUNTHER. Not enough to converse.

Senator BALDWIN. I just wanted to have Dr. Leer know, and have it appear for the record here that we already have copies of February 1; I wanted to make sure we have everything he mentioned here.

April 12.

Dr. LEER. Yes.

Senator BALDWIN. June 16.

Dr. LEER. Yes.

Mr. CHAMBERS. I think there is one more we are looking for.

Senator BALDWIN. I think we have one more, I don't have it right here.

Dr. LEER. Dated August 24.

Mr. CHAMBERS. We are looking for that, I think we have it.

Dr. LEER. Seventeenth of June 1949, and 1st of May 1948.

Senator BALDWIN. I am sure the committee would like to have in its records all of the letters and petitions referred to here so that we have a complete file of what you have to offer.

Dr. LEER. I have sent it twice to America, and I have no more copies here.

Mr. CHAMBERS. To whom did you send it in America?

Dr. LEER. This is the copy. With this copy I have presented all evidence and appeals.

Senator BALDWIN. This letter of the 1st of May 1949 was sent to the Senate Armed Services Committee, but addressed to Clyde Hoey, Joseph McCarthy, and James O. Eastland, who are not on the subcommittee of the Armed Services Committee, they are on another subcommittee, so I don't believe we have this.

Dr. LEER. I took the address only from the newspaper, and I assumed that it would be passed on.

Senator BALDWIN. Well, I will tell you what we will do, in order that we may have in our files all of the letters and petitions that you have referred to: In order to save time now, we will ask Mr. Atkinson to check with you and Dr. Leer so that we will make sure we will have these letters and petitions referred to.

Dr. LEER. If they are not available, I will give you another copy.

Mr. CHAMBERS. You said you sent two to America. Who did you send the other one to?

Dr. LEER. I have sent it to the defense counsel, Mr. Strong, to be given to the Senate.

Senator BALDWIN. I don't believe we have ever seen that either.

Mr. CHAMBERS. He appeared before us.

Well, I think, sir, we can again repeat that we will take it upon ourselves to locate that copy to the Senate, and—

Senator BALDWIN. The point of the committee is that we would like to have available all of these documents that you have referred to, Dr. Leer, because they are a part of your statement, and we can check on that.

All right, Doctor, proceed.

Dr. LEER. After the close of the trial, the new witnesses that have been found, according to my conviction, have brought proof for the fact that—what the accused have told us during the trials, but we could not prove at that time. The proof of new witnesses does not only take reference to Schwabisch Hall but also to activities during the Ardennes which led to the accusation. These new witnesses give statements that their statements which were given in the Schwabisch Hall brought out statements of charges for the interns which actually have not taken place and I believe that on hand are these appeals which I have mentioned, and through the newly submitted evidence material I can prove that the accusations can be revoked.

Senator BALDWIN. Can be what?

Mr. CHAMBERS. That sounds a little bit garbled.

Can you check that?

Dr. LEER. That the charges were not correct, and chiefly for Schwabisch Hall I have collected the individual material of evidence which I have collected.

Senator BALDWIN. Wait a minute. I don't just understand that. I don't think that was a correct translation of what he said. I don't understand what he said in German.

Dr. LEER. I have listed the names of the new witnesses about the activities in Schwabisch Hall. They are the lists which I have submitted on Monday.

Mr. CHAMBERS. Are these the people from whom you have taken new affidavits and are they in addition to the affidavits you have previously submitted?

Dr. LEER. Yes. In addition will be put the witnesses Reiser and Vollsprecht. Both can immediately appear in Munich.

Mr. CHAMBERS. May I ask you a question here? I notice that on this list you have affidavits from Schnell and Knorr.

Dr. LEER. Yes.

Mr. CHAMBERS. Are these the same affidavits which were executed some 18 months ago, or are they new affidavits?

Dr. LEER. I believe they are old ones, the ones which I have submitted in the appeal, but I will check.

Deitrich Schnell gave his statement on the 10th of January 1948. I have submitted it with my appeal dated 1st of February 1948.

Dr. Knorr gave his declaration on the 29th of May 1948, and are submitted in my appeal of June 16, 1948.

Senator BALDWIN. I am sure what the committee would like to have is all of these affidavits that have been prepared, and the two witnesses that have not yet submitted the affidavits. The staff of the committee will take their depositions so we will have their statements so that will make it complete—all the witnesses' affidavits that you want to offer.

Dr. LEER. I am afraid I don't have the English copies in this great number, but I shall look for them.

Mr. CHAMBERS. Well, we will make a check with you today, to make certain that we have all these affidavits. If we don't have them, then we will find some way to get copies made.

In addition to that I, tomorrow, will take depositions from Vollsprecht and Reiser.

Dr. LEER. Thank you.

Mr. CHAMBERS. If we do that, will we have a complete presentation, insofar as affidavits and testimony is concerned?

Dr. LEER. Thank you.

Mr. CHAMBERS. Will we have a complete presentation?

Dr. LEER. Yes.

Senator BALDWIN. All right.

Dr. LEER. I could not receive a technical decision on the basis of these appeals. I received the statement that those appeals were received. Therefore my work was made a bit more difficult because there did not exist a written statement in this trial, because only in winter 1948-49 I received a report of the review board, not received but seen; only after I have seen these reports I could decide why the individual accused were sentenced and convicted.

I am just about to determine which material or proof which I have submitted has not been worked over during the trial. It is a great number of new proof material, evidence material which I have not seen discussed in these reports, review reports.

Senator BALDWIN. Let me ask you a question there, so I can get clearly in mind what you mean.

Do I understand you to say you didn't see copies of the report of the review boards, so you don't know whether or not the material that you submitted was ever considered by the review boards, or didn't until just recently?

Dr. LEER. Yes. Only in winter 1948-49 have I received the permission to see these reports, and at this occasion I have seen that the important new evidence material which I have presented has not been worked over.

It is similar with the court.

The report of spring 1948 of the Judge Advocate where the confirmation of six death sentences are confirmed, or recommended. I am just about to work over this matter connected with the case Peiper, why this sentence is wrong.

This is my conviction. It is my conviction and I am convinced that the recommendation has faults and that each of my material has not been worked over and considered.

Senator KEFAUVER. Has not been considered by a review board, is that who you refer to?

Dr. LEER. I cannot say whether this is so, only in those reports that I have seen lots of evidence material has not been used and discussed. The reason for that I do not know.

Senator KEFAUVER. Has all of the evidence been submitted to the review board?

Dr. LEER. Yes. I inquired repeatedly whether or not it is there.

Senator KEFAUVER. Does that include the two witnesses whose testimony Mr. Chambers is going to take tomorrow?

Dr. LEER. I cannot say this in detail because the material is so vast, but I have put this together in a new appeal which will appear in English day after tomorrow, for the case Peiper. The other cases will further be worked on.

Where the matter of Schwabisch Hall is concerned, so I have seen from statements which have been sent to me by new witnesses, that they have all given about the same facts in their statements.



I have also received statements from the accused about Schwabisch Hall.

I did not actually want to submit these statements of the accused because it was clear in my mind that the statements of the accused have little strength as proof.

After I read through them, I have seen that they are so identical with those statements that have been given by the witnesses, so that I have submitted them. The confirmation can be found between the statements of the accused, the statements of the dismissed, and the statements of the nonaccused witnesses.

Senator KEFAUVER. Do you mean corroboration?

Mr. GUNTHER. I didn't get that—confirmation of the statements given in writing—

Senator KEFAUVER. Corroboration.

Mr. GUNTHER. I want to repeat this once more because I could not understand the translation properly. [Translating.] It is a confirmation of information in statements of the accused, the dismissed, as well as those that have been interned. It is not a collaboration of witnesses and accused.

Senator BALDWIN. This friend of Dr. Leer's understands English?

Dr. RUPPRECHT GERNGOSS (accompanying Dr. Leer). Yes.

Senator BALDWIN. And you understand what Dr. Leer is saying?

Off the record.

(There was discussion off the record.)

Senator BALDWIN. We will put it on the record.

Let's have your full name, Doctor.

Dr. GERNGOSS. Dr. Rupprecht Gerngoss, G-e-r-n-g-o-s-s.

Senator BALDWIN. As I understand, what Dr. Leer is saying is this: He understands that the affidavits of the accused ordinarily, in a law court, don't have much weight.

Dr. GERNGOSS. Right.

Senator BALDWIN. But he is saying that the affidavits of the accused are corroborated by the statements of other witnesses, not convicted, and other statements that he submitted.

Dr. GERNGOSS. Yes.

Senator BALDWIN. You understand, I am not critical of the transaction, because you have to give a literal translation of what he is saying.

Mr. GUNTHER. Very true, sir.

Senator BALDWIN. Go ahead, Doctor.

(The following answers of the witness, Dr. Leer, were through the translator, Mr. Gunther, unless otherwise indicated.)

Dr. LEER. I have taken from these statements of witnesses, as well as from the statements of the accused, the following: As I am receiving always the same reports, it can only be assumed that it is a question of method of interrogation or investigation or an order. This opinion is based on the following facts—

Mr. CHAMBERS. May I interrupt? Could I go back to your last statement, the last part of that translation "or an order."

What do you mean by that?

Dr. GERNGOSS. This whole method of investigation has come by conspiracy on what method should be applied in questioning prisoners.

Mr. CHAMBERS. The proposition is that you had three things here, it was either a method, and then you ended up by saying "or an order."

Dr. GERNGOSS. Either a method has been ordered, or has been agreed upon by those that applied the method.

Mr. CHAMBERS. In other words, the defendants that you have been, or should I say the testimony that you have been getting from these various sources is so much alike that either it is a habit that has grown up, and that the interrogation team worked out themselves.

Dr. GERNGOSS. Or a plan.

Mr. CHAMBERS. Or it was ordered?

Dr. GERNGOSS. Or ordered, either agreed upon or by order.

Mr. CHAMBERS. All right.

Dr. LEER. (Through Mr. Gunther.) In testifying, but as to the arrival of the declarations, I would like to say the following: In summer, 1946 upon the completion of the trial, after the end of the process in summer 1946, I have visited accused of the Malmedy trial only twice in the Landsburgh. I have only seen very few and spoken to very few other witnesses who live in other zones than the U. S. The sworn statements of witnesses with whom I have spoken showed that I personally, as lawyer, have taken the sworn statements and have confirmed the signature of these people.

I assume from the circumstances known to me that the accused had no connection with the witnesses, for it is a great number of accused and is a great number of witnesses. It would be impossible that each of these accused or even one of these accused, would have spoken to each of the witnesses. Most of these statements were sent to me based on the press information, through German or American newspapers.

I have discussed this point therefore because I have found from the reports of the newspapers that they—these things are already being discussed in America.

Mr. CHAMBERS. Have any statements come to you from America?

Dr. LEER. No.

Mr. CHAMBERS. On this list, did you get these statements yourself, personally, or did they come in voluntarily?

Dr. LEER. I said that most of the declarations were sent to me by postal-mail system or brought to me through relatives of the accused. However, I cannot say any more which one of these statements were brought to me through mail or by relatives. My files about the Malmedy trials have in the meantime turned out to be a library.

Senator KEFAUVER. What?

Dr. LEER. A library.

Senator KEFAUVER. All right.

Dr. LEER. Every week a great pile of mail.

Mr. CHAMBERS. I would like to ask about one or two more questions.

Do you recall whether you took Diebitsch, got the statement from Diebitsch?

Dr. LEER. I am sure that I have not seen him or talked to him, but I know that I have submitted that statement. I can approximately say who have.

Mr. CHAMBERS. From this list?

Dr. LEER. On the first list, none.

Mr. CHAMBERS. On the first list none?

Dr. LEER. No. The other day on the telephone Schnell told me that I should report here because the Commission is here.

From the second list of the sentenced in Landsburgh, I spoke in July 1948, General Kramer, Peiper, Gruhle, Schaeffer, Hans Hoffmann, all together in one visit, ending May 1949, Peiper and Diefenthal, separately.

Mr. CHAMBERS. Do you represent Diefenthal?

Dr. LEER. Yes. Actually now, through Dr. Aschenauer, but Aschenauer has turned that over to me.

Mr. CHAMBERS. What date do you have on the affidavit of Miss Geiger?

Dr. LEER. I cannot say at this moment. Apparently this declaration was not passed on with these appeals but with others. I could not say at this moment.

Mr. CHAMBERS. Go ahead.

Dr. LEER. Of the fourth list, the next one, I spoke to Trodt—

Mr. CHAMBERS. Very well, that's enough.

Dr. LEER. And Reiser and Vollsprecht who have supported me in my work.

Mr. CHAMBERS. Very well.

Dr. LEER. To assort letters and also answer letters and through correspondence.

Mr. CHAMBERS. Go ahead.

Dr. LEER. At this moment I cannot say what the individual witnesses have collectively said about Schwabisch Hall. Shall I make statements about this, then I have to do this on the basis of my written statements.

Senator BALDWIN. The committee thinks there is no need of your going into detail on these statements. We already have them and will study them.

Now, if you have any comment that you want to make, I think we will be glad to hear that, will we not, Senator?

Senator KEFAUVER. Yes.

Senator HUNT. Yes.

Dr. LEER. The material of the trial is so enormously vast that it is very difficult to say shortly which points should be extracted and which points should be projected.

Senator BALDWIN. We are not interested in the trial, this is not an appeals board. What we are primarily interested in is anything you want to say with reference to the way that the confessions and statements were obtained. I mean these prisoners have all claimed that these statements and confessions were taken from them as a result of duress and physical force and beatings.

Now, anything that you want to say on that, we would be glad to hear from you.

Dr. LEER. We found out, through the accused at the beginning of the trials in Dachau, that during the first investigations in Schwabisch Hall, as the accused said, the permitted frame for investigations—rules was not observed. They declared to us that they were forced to make confessions by all various means. The individual methods which have been used and so stated by the accused have already been mentioned in the declarations of the individual accused.

The defense was therefore in accord about the fact that we would have to find evidence for the method that have allegedly taken place during the investigation since Schwabisch Hall. Therefore at that time we looked for witnesses. We did not find any witnesses. There were only very few people who could only be interrogated in a cross-examination whereby only then in the cross-examination something could be determined when it was already revealed in a direct interrogation. Therefore there was a lot of objection on the part of the prosecuting attorney, and we did not get very far with the witnesses during the prosecution.

Senator HUNT. Dr. Leer, did you review, or have you had in your possession at any time the original questionnaires presented to the defendants by the defendants' counsel, in which was included, as one of the questions, "Were you mistreated in any way in an attempt to get your confession?"

Further, do you know where those worksheets are today?

Dr. LEER. The accused were represented by several United States defendants. The American defendants had divided the accused. Colonel Dwinell has the officers. Walters, the noncoms; and so on, and the German defense was only ordered, or requested for some of the officers.

The accusation of the individual accused was very voluminous so that of the German defendants had enough work under discussion of his defense. It is correct that the German and the American defense had discussed the matters together, but that is hardly possible that each of the accused was discussed with individually. The defendants have always asked the accused whether they have proved to give evidence to the method used during the investigation at Schwabisch Hall. I have just found out that I have misunderstood the questions and therefore I will now answer your question.

Dr. GERNGOSS. He explained that he misunderstood.

Senator BALDWIN. I thought he misunderstood it.

Dr. LEER. Those accused who were in the witness stand have been asked and have also revoked their statement, have not repeated their statement which they made about Schwabisch Hall.

Mr. CHAMBERS. I think you still misunderstand the question.

Colonel Everett and his defense counsel had a questionnaire, or form, filled out, and among other things they asked, Was there any duress or brutality? What happened to those forms? Do you know where they are?

Dr. LEER. I have no such questionnaire, and it was not interesting to me because I had only one accused, and that was Peiper. I believe I did not have one of these questionnaires ever in my hands for evidently these questionnaires were given to the accused directly. There was so little time in the preparation for these trials so that one could do very little but the most necessary for the defense of the individual charged.

Have I answered the question?

Senator KEFAUVER. Did Peiper have one of these questionnaires and did you see his?

Dr. LEER. I don't know. I have not had such questionnaire in my hand and I could not remember to have seen such.

Senator HUNT. That answers my question.

Senator BALDWIN. Do you desire to make any further statement? We have some questions to ask, but do you desire to make a further statement before the questions are asked?

Senator KEFAUVER. What did he say?

Dr. LEER. I am ready to answer your questions.

Senator BALDWIN. Let me just summarize this, for a moment.

As I understand what your claim is—it is that it was impossible for them to obtain witnesses as to the way interrogations were conducted at Schwabisch Hall in time to present them at the trial.

Dr. LEER. I have found one witness, I believe it is Traat or Taut, T-r-a-a-t or T-a-u-t, and it was impossible for us to find other witnesses.

Senator BALDWIN. Then we understand that claim, because they were spread in different concentration camps or prisoner-of-war camps and things of that kind.

Dr. LEER. Yes.

Senator BALDWIN. Then you also claim that you submitted these affidavits to the different reviewing boards, but from an examination of the reports of the review boards when they did come to you, there wasn't any evidence in there that they had examined these affidavits.

Dr. LEER. Thank you.

Senator BALDWIN. And then there was no discussion of the sentences, and there was no discussion of the evidence upon which the sentences were based.

Dr. LEER. Yes.

Senator BALDWIN. And that no report of the reviews was made available directly to you?

Dr. LEER. Yes.

Senator BALDWIN. I think the committee would like to know whether or not you have submitted, in behalf of your client, for the consideration of the subcommittee, all of these affidavits that you want to submit.

Dr. LEER. We have.

Senator BALDWIN. Well, up to now, subject, of course, to the check that we are going to make, to make sure that we have them all—

Dr. LEER. Yes. Whatever I have submitted I will check later on, and new material I do not have at this moment.

Senator BALDWIN. What do you mean, new material?

Dr. LEER. New material of evidence.

Yes, I have turned in all material and it will be checked later.

Senator BALDWIN. Very well.

Now, Mr. Chambers, do you have some questions?

Mr. CHAMBERS. In connection with these affidavits that you have submitted, have you attempted to verify the facts, and confirm them in your own mind so you are convinced they are truthful and accurate?

Dr. LEER. I am convinced that this new evidence material which I have presented is correct.

Mr. CHAMBERS. What is the new evidence material? Is that the stuff contained in this group [indicating]?

Dr. LEER. All these are on these lists.

Mr. CHAMBERS. I understand.

Dr. LEER. And these here [indicating].

Mr. CHAMBERS. Then, it is not just new evidence, it is all the evidence.

Dr. LEER. New material, I call that material which has accumulated since the finish of the trial.

Mr. CHAMBERS. In other words, this evidence which you have submitted to the subcommittee for its consideration, in your opinion you think is accurate and truthful?

Dr. LEER. So I am convinced.

Mr. CHAMBERS. Now, a minute ago, Dr. Leer, you mentioned that they had difficulty in the trial cross-examining and getting testimony out of the witnesses concerning these matters which are contained in the affidavits.

Dr. GERNGOSS. May I translate that to him?

Mr. CHAMBERS. Yes.

(Dr. Gerngoss translated the pending question to the witness.)

Dr. LEER. For us the method of the American procedure was rather new. We have repeatedly tried to obtain material of evidence for Schwabisch Hall during the cross-examination. Our attempts were not very successful. Partly objections of the prosecuting attorney were interfering and kept up by the court. Whether, according to the rules of the United States court, this was all right, partly right, or not right, I cannot pass judgment as a German. I saw considerable excitement among my American colleagues several times during the intermissions.

Mr. CHAMBERS. Now, Dr. Leer, why didn't you put these accused on the stand, who had told you they had been accused, and let them tell the court their own story?

(The following statements, unless otherwise indicated, were translated by Mr. Gunther.)

Dr. LEER. I believe that I remember with certainty that Colonel Everett has recommended to the accused not to go into the witness stand and make statements. Colonel Everett had the intention not to begin the defense at all after the prosecution rested. At that time we discussed the strategy of the defense repeatedly. We started to make the findings from that point that we had hardly witnesses at our disposal and that we had hardly had the time to prepare a proper defense.

Mr. CHAMBERS. I understand that point, but, Dr. Leer, it would appear to me that if these charges of brutality had been made, any lawyer, German or American or anybody else, would have wanted that man to tell the court, so that it would affect the findings of the court.

Dr. LEER. I believe that the record will tell that Colonel Everett and Colonel Dwinell has repeatedly told the court, stressed to the court, not to accept the statements from Schwabisch Hall, if the court would accept these statements, as I recall, that the mishap has already happened.

Mr. CHAMBERS. Even if the counsel failed to get the court to disregard those statements, I still do not understand why you didn't follow what are the normal rules and put the defendants on to tell the court, in their own words—that is admissible.

Dr. LEER. I know the following: We did not find any witnesses for the statements of the accused, of the accused themselves—

Mr. CHAMBERS. May I interrupt? But the accused had a perfect right to go on the stand and tell his own story to the court. The court would have had to have taken notice of it and the record would now be complete, but it was not done. Why?

Dr. LEER. I had only to defend Peiper. I know that repeated conferences have taken place whether the accused should be taken into the defense witness stand in order to make statements about the matters pertaining to Schwabisch Hall. We depended chiefly on the American colleagues who we esteemed greatly, because we had only a very short lesson of the way American courts are proceeding, but I remember very exactly that Colonel Everett has recommended to the accused not to go into the witness stand. I do not know very exactly, but I believe that it is just—that Colonel Everett has declared to me, through an interpreter, he does not want to call the accused to the stand for this matter because he did not want to have them tell these methods before the public.

Mr. CHAMBERS. Dr. Leer, you had already put certain witnesses on the stand who had talked about physical brutalities.

Dr. LEER. Yes.

Mr. CHAMBERS. Hennecke, Tomhardt, they for instance had already told the physical brutalities.

Dr. LEER. Yes.

Mr. CHAMBERS. The prosecution had told the court of the Schnell procedure.

Dr. LEER. Yes.

Mr. CHAMBERS. The hoods.

Dr. LEER. Yes.

Mr. CHAMBERS. So why do you think Colonel Everett was afraid to let the American public know about it?

Dr. LEER. As I mentioned before, my conviction, out of conversations with American colleague, was the following:

According to my opinion, Colonel Everett wanted to avoid at that time in a public court procedure, to have mentioned or put before the public these individual methods of investigation. Whether this was the final reason of Colonel Everett not have these accused take the stand I cannot say. I know, however, that Colonel Everett has recommended to these people not to take the stand.

Senator BALDWIN. Senator Hunt, would you like to ask any questions?

Senator HUNT. In view of the position taken by Colonel Everett, Dr. Leer, didn't you have the privilege and the right to appeal to the court directly to bring this evidence before the court?

Dr. LEER. I said that we were only superficially acquainted with the American procedure, as German lawyers. We had, therefore, followed the guidance of Colonel Everett.

Senator HUNT. Then your position, Dr. Leer, is that had you been able to follow your own inclination and desire and wishes, you would have gotten this evidence before the court, but you were prevented from doing so by Colonel Everett?

Dr. LEER. I could not say what I would have done. I was not the sole defense, and I was, as German defense, absolutely ready to accept the guidance and advice of Colonel Everett, since we all of the German defense did not have any doubt about the integrity of Colonel Everett.

Mr. CHAMBERS. Did Colonel Dwinnell also advise this?

Dr. LEER. Sure, there were repeated conferences with all defense counsel. So far as I know also Colonel Dwinnell has followed the rec-

ommendations of Colonel Everett. Immediately after the work of the prosecution—also to finish the work of the defense.

Senator HUNT. One more question: Is there any place in the trial records to show that you, Dr. Leer, requested this evidence be presented and Colonel Everett refused to allow it to be presented?

Dr. LEER. I don't know. The volume is rather big. I believe that in the petition for review there is a place where Colonel Everett says such, or Colonel Dwinnell.

Mr. CHAMBERS. I think that for the record—I wish you would show that Colonel Dwinnell in his testimony before our subcommittee said that there was a lot of big kicks on this point and that the German attorneys did want to go ahead and put all the accused on the stand.

Dr. LEER. I remember also that American defendant, I believe with Mr. Walters, and some German ones, but this was all during the conference of the German and American defense, and one agreed upon a middle center road in this matter, so that some defendants—defense attorneys have called a few accused to the witness stand.

Mr. CHAMBERS. Well, Colonel Dwinnell has said, Dr. Leer, and I would like to have you comment on this, that the reason why he felt, and the others felt that it was wrong to put the rest of the accused on the stand was that those who had taken the stand were so turning on each other and perjuring themselves that it was hurting the entire case.

(The pending question was read by the reporter.)

Dr. LEER. My recollection is that this conference, how the defense should be guided or carried on, was before the trials started, but Colonel Dwinnell has sought at that time I do not know what.

Mr. CHAMBERS. Dr. Leer, it has been testified that after eight witnesses testified, eight defendants testified, that the defense counsel asked for a recess and they polled the accused and discussed the matter and decided that they would put only one more defendant on the stand, and it was at this point that Colonel Dwinnell had made up his mind that those who had taken the stand were so perjuring themselves that they were hurting all of the case.

Dr. LEER. I cannot say this any more. I know only that there was once much disagreement between the individual defense attorneys. The lieutenant, or Mr. Walters said that he is basing his findings on the statement from him, any statement, the statement from Schwabisch Hall because he believed that through these statements we could only charge the officers and would have his accused to be going free.

Mr. CHAMBERS. Did he find some information there?

Dr. LEER. A moment.

Mr. CHAMBERS. Surely.

Dr. LEER. I see there is something said about this out of the writing from Colonel Everett to the Supreme Court.

Mr. CHAMBERS. Well, Dr. Leer, did you believe that these accused who had taken the stand in their own defense were telling the truth?

Dr. LEER. I was partly not present for these witnesses, because in that meantime I was on the lookout for witnesses for Peiper, so I did not have the time.

Mr. CHAMBERS. Were you there when Christ testified?

Dr. LEER. I believe, but I could not say it any more.

Mr. CHAMBERS. I would like to call your attention to the fact, Dr. Leer, that Christ, in his testimony, did not allege physical mistreat-



ment—in his record of trial, and his testimony at the trial, did not allege physical mistreatment.

Dr. LEER. That is possible. I do not know.

Mr. CHAMBERS. It is not only possible, but it is a fact that he did not allege physical mistreatment at the trial, itself.

Dr. LEER. Yes?

Mr. CHAMBERS. Now, in his posttrial statement, which was attached to your petition, Christ alleged very serious physical—severe physical mistreatment. Which time was he telling the truth?

Dr. LEER. Just Colonel Everett has repeatedly told the court, and also in the final argument, that the outcome of the treatment of the accused in Schwabisch Hall were absolutely still noticed at the discussions with the accused in Dachau. Most of the accused were very reserved and timed. Everywhere they still saw some tricks or and possible traps.

Mr. CHAMBERS. Well, I would like to point out to you, Dr. Leer, that Christ took the stand in his own defense, and that on the stand he did testify that he was yelled at and called a liar and that he was accused of perjury; that he was threatened that if he didn't tell the truth he would be hanged and that his mother could not get any work and therefore she would starve.

Now, all of these statements indicate that Christ was not upset or timid or frightened on the stand, but after conviction and about 18 months later, he put in an affidavit that describes, in addition to those things, that he was beaten and so on.

Those two items, the affidavit and the statements at the trial are in conflict and I am asking you, since you were at that trial and also secured the affidavits for your petition, as to what you think about when he was telling the truth? Obviously he could not be telling the truth both times.

Dr. LEER. Facts about such single cases I cannot tell. My opinion is the following: I am convinced that Christ, in his statement of January 1948, had said the truth because of the following reasons: He was at that time sentenced to death, was put into a single cell, incomunicado, and could not have communicated with other persons—

Mr. CHAMBERS. May I interrupt?

But didn't he communicate with you? He gave you an affidavit.

Dr. LEER. He has written to me. I don't know whether he had sent this affidavit to me or to his parents. I don't know that. That I have not found out through the correspondence.

Mr. CHAMBERS. Dr. Leer, I am not trying to prove anything at all except one thing: Christ, at one point, either to the court or to you, Dr. Leer, did not tell the truth.

Dr. LEER. He has not told everything, at the first time, as I see it, he has not said everything but only just a part.

Mr. CHAMBERS. If he did not tell everything the first time, I come back to my first question—why didn't he?

Dr. LEER. Obviously because of the reason that the defense did not ask him.

Mr. CHAMBERS. That a conclusion.

Dr. LEER. Anything else I do not know about this case.

Mr. CHAMBERS. I understand, and you were not defending Christ, but obviously they knew of the other man, the threat to hang, and so on.

Dr. LEER. Yes.

Mr. CHAMBERS. Now, since in the eyes of an American court, this beating by Mr. Sonne would be much more serious, it would appear entirely reasonable that they certainly would have asked about physical brutality, particularly since they did it in the case of Hennecke and others.

Now, doctor, you have stated a conclusion, and I state this as a conjecture or a guess: It could also be possible that Christ didn't tell of these physical brutalities because he perhaps didn't have them and didn't think of them until he prepared his affidavit.

Dr. LEER. I have not spoken with Christ about it and I don't know what he has told his defense about this. I am therefore only dependent on the conclusions. I only know one thing myself, that the accused in Dachau still has a lot of fear, for also the witnesses have very reluctantly spoken about this matter of Schwabisch Hall.

Mr. CHAMBERS. You will admit, Doctor, that he did testify to some types of duress.

Dr. LEER. I hear it.

Mr. CHAMBERS. Well, it is in the record of trial.

Dr. LEER. Yes.

Mr. CHAMBERS. And if you will accept this record of trial as accurate, you will admit there is a wide difference between the type of duress that was alleged at the trial, then, and later in his affidavit.

Dr. LEER. I can only acknowledge what I just hear, because I do not know the record of Christ, but I know something else, what else witnesses have told me: So long as these people were in Dachau, not necessarily in the witness barracks, but in any of the barracks, the people did not want to have—know anything about the witnesses, statements about Schwabisch Hall. They wanted to be dismissed first and then wanted to get witnesses at their disposal. Some witnesses told me that in the years of 1947 and 1948, they have told me, all, that Schwabisch Hall and Dachau was something new for them and that they never knew what uncertainty they would run in next. Those who were in Schwabisch Hall at a later date could not be reached for declaration.

For this purpose I have not even written to these people at all because I do not want to bring them into the situation of a disagreeable nature, and I was contented with those declarations that have been sent to me or brought to me.

I am convinced that there will be still very many witnesses.

Mr. CHAMBERS. Well, do you have any evidence at this time, Dr. Leer, that will specifically support the charges that Christ made in his affidavit?

Dr. LEER. I don't know by heart, but I know that in these books, also statements were made where the case of Christ is concerned and it is possible, I don't know it by heart, I would have to look it up first, that also Christ's statements in Schwabisch Hall is not true.

Mr. CHAMBERS. Since you cannot answer at this time, Dr. Leer, I will go through all the things that we have and pull out all the material on Christ.

Dr. LEER. Yes. For this purpose this list will be helpful which I will give you later. I will give it to you later in translation.

Mr. CHAMBERS. We will take your testimony here, and compare it with all the things about Christ and we will try to decide in which case Christ was telling the truth.

Dr. LEER. Surely.

Mr. CHAMBERS. I have no more questions.

Senator BALDWIN. Dr. Leer, you stated in answer to the question of "Why did not the accused take the stand?" you said that Colonel Everett did not want to have the public know how the Americans had treated the SS prisoners, the German prisoners.

Dr. LEER. Yes.

Senator BALDWIN. Do you understand that?

Dr. LEER. Yes.

Senator BALDWIN. You have also said that there was a conference of the defense counsel after the prosecution had ended its evidence, closed its case, and the question was there discussed, whether or not the defendants were to go on the stand.

Dr. LEER. Yes. This was before the beginning of the defense.

Senator BALDWIN. Before the beginning of the defense?

Dr. LEER. Yes.

Senator BALDWIN. Now, was it at that time that Colonel Everett made the statement about his not wanting the American public to know?

Dr. LEER. I believe, as I said—I believe that I remember out of a conversation with Colonel Everett at this time, before beginning of the defense.

Senator BALDWIN. Then how do you explain, Dr. Leer, that several of the defense witnesses did go on the stand, several of the defendants did go on the stand and did testify to the manner in which the interrogator secured their statements?

For example, Anton Motzheim testified concerning the manner in which his statement was obtained; Franz Sievers also testified in relation to the manner in which his statement was secured; Heinz Tomhardt did also.

Dr. LEER. I said, at the beginning, that some German and American defense attorneys, at this meeting, wanted to get through their opinion that they wanted to have the accused appear at the witness stand. I cannot say at the moment who has defended, and I said already, of one American colleague, that he believed that it was of advantage if he could charge the officers too. Therefore unanimous agreement was not reached. I believe, however, that most have followed the recommendation of Colonel Everett.

We have also discussed this with the accused who we have all called together. Also here were various voices against this, so it happened that the most—of the majority did not go and take the witness stand, and that few accused and few defendants have taken the stand.

Senator BALDWIN. Was it your recommendation that they take the witness stand in their own defense?

Dr. LEER. I have followed the recommendation of Colonel Everett and have told this also to all the other accused.

Senator BALDWIN. Do you believe, Dr. Leer, that the American officers who acted as attorneys for the accused—do you believe that they worked vigorously and hard to put up a good defense?

Dr. LEER. I know that Colonel Dwinnell worked many nights until after midnight; I know that also the other American colleagues have worked all they could. I know also that it was impossible to estimate the material until the beginning of the trial. I believe I can say this

now, after I have continued to work on this, after 1946, and I know that this immense trial material can hardly be estimated.

Senator BALDWIN. I think the subcommittee can agree with you on that.

You mentioned in the earlier part of your statement the difficulty of obtaining witnesses. Did you bring that to the attention of the court?

Dr. LEER. That motions that the defense has discussed among themselves has been submitted by Colonel Everett and also carried out. Colonel Everett was officially in charge and leading the defense so that we had to and did discuss all plans before with Colonel Everett, and I believe that Colonel Everett has repeatedly discussed with the court that we could not possibly be ready with the work of the defense in such a short time. Therefore he had, at the beginning, requested to divide this trial into various single trials, and not, from the general, Sepp Dietrich, to the last SS man, all to be discussed and proceeded in one big trial.

Senator BALDWIN. Dr. Leer, for the benefit of the record I would like to know, we would like to know, something about your training and experience.

Where did you go to college? Tell us about your education, will you, doctor?

Dr. LEER. I had 9 years of the gymnasium, equivalent of high school and junior college. I then studied law in university, eight semesters; made then the first State exam; worked 3 years in the preparatory service at courts, with lawyers, as notary public, and in administration. In 1933 I made the last State exam. Shortly before that, I made my doctorate.

Senator BALDWIN. You have to take two exams in Germany to practice?

Dr. GERNGOSS. Yes, if I may state—one after the university and one after practicing law 3 years at various stations, administration, notary public, and with another lawyer and at court.

Senator BALDWIN. Then you have practiced law since that time?

Dr. LEER (through Mr. Gunther, interpreter). With the exception of the wartime from 1940 to 1945.

Senator BALDWIN. Were you in the German Army during the war? (Mr. Gunther translating, unless otherwise indicated.)

Dr. LEER. Yes.

Senator BALDWIN. And you are now practicing law here in Munich?

Dr. LEER. Yes.

Senator KEFAUVER. How old are you?

Dr. LEER. Forty-two.

Senator BALDWIN. Do you have any questions, Senator Hunt?

Senator HUNT. Not right now.

Senator BALDWIN. Do you have any questions, Senator Kefauver?

Senator KEFAUVER. Dr. Leer, under the practice of law in Germany, under the rules of evidence in Germany, can a confession or an affidavit signed by an accused be introduced in evidence?

Dr. LEER. It is different. Every document can be taken as evidence. Every sworn statement may be taken as evidence. In a civil lawsuit, it will be necessary to have witnesses. The same is also the case in a trial, but when a trial has been closed, then there is the German law, as well as many other laws, the possibility of retrial, reopen-

ing the trial, and for an application of retrial it is necessary to prove to the court that the court received evidence which the court can take and gather themselves. For this purpose sworn statements from new witnesses are presented, and the court will check whether a new sentence would come out if the witnesses who have submitted testimony would be heard before the court.

Senator KEFAUVER. In a criminal case is a confession admissible in evidence—a confession of the accused?

Dr. LEER. No.

Senator BALDWIN. In the German law do you have a pretrial procedure?

Dr. LEER. This is called—it is a pretrial procedure.

Senator BALDWIN. Before an examining magistrate?

Dr. LEER. No; it is the prosecuting attorney and the police that does that.

Senator BALDWIN. And at that time do they examine the accused?

Dr. LEER. Yes. He will be interrogated.

Senator BALDWIN. Are the statements that the accused make, in these preexaminations, admitted in evidence at the trial?

Dr. LEER. These statements of the accused in the pretrial are to be submitted to the court at the trial.

Senator BALDWIN. And the court decides whether to accept them or not?

Dr. LEER. Yes.

Senator BALDWIN. So that a statement made by accused in a pretrial can be admitted in evidence?

Dr. LEER. If he admits, before court, and exactly, word for word repeats before court; however, if there is the slightest doubt in his confession, then it would not be used as evidence.

Senator BALDWIN. Could it be put in evidence for such weight, such probative value, or probative weight as the court wants to give it?

Dr. LEER. Only that is valid which is presented before the court in trial, not what has been said before by anybody, even by the accused himself.

Senator BALDWIN. Well, as I understand it, under the German law the accused is not sworn, he does not take the oath when he testifies?

Dr. LEER. No.

Senator BALDWIN. Yes.

Dr. GERNGOSS. He is warned before trial that he is to say the truth, and he will have to swear after he has testified, and testifies; after he says what he did, he will be sworn in after testifying so that everything he said will be covered by his oath.

Senator BALDWIN. Will you describe to us what the pretrial procedure is like, before the police?

(All translations hereinafter, unless otherwise identified, were by Mr. Gunther.)

Dr. LEER. The report is made to the police or to the State's attorney. When the State's attorney receives it, he gives it to the authorized police department with a request to make investigation in the case. State's attorney and court are two divided institutions. The police interrogate either the accused or the person accusing or the witness, and if he has cleared the case so far that he believes that he can turn the case over to the State attorney, that means he has inter-

rogated various witnesses and he has found the various—the evidence necessary for the case, he will turn it over to the State attorney. The State attorney will decide whether he can present charges against the accused in the trial or not, and he will therefore make his decision or drop the case.

On the charge he will list all the witnesses and evidence which he would like to have presented before the court.

Senator BALDWIN. In this pretrial procedure do they have any more formality—do they administer an oath?

Dr. LEER. No, no, the oath is taken but it may be that a judge is charged with taking an oath.

Senator BALDWIN. Well, is this pretrial procedure before a judge?

Dr. LEER. No. It can come to a different administration and that is in investigative court.

Senator BALDWIN. That is what I mean, the investigative court, like—

Dr. LEER. If somebody is supposed to be arrested, he can only be arrested if the State attorney makes the request for an arrest. He would then be brought before the investigative judge and he will decide then whether the man should be arrested, accused, or set free.

Dr. GERNGOSS. He has to give out the formal arrest warrant. Nobody else can do that.

Senator BALDWIN. What I am trying to get at is this: Before this investigating judge, does the accused come in and testify?

(The following was interpreted by Mr. Gunther, unless otherwise indicated.)

Dr. LEER. Yes, yes. When he has been arrested, or when the case is very big, he will then listen to the accused and to the witnesses. It is not usual.

Senator BALDWIN. Does the accused take an oath then?

Dr. LEER. Never.

Senator BALDWIN. Is the prosecuting attorney there at that hearing?

Dr. LEER. No.

Senator BALDWIN. Just the accused and the investigating judge?

Dr. LEER. Yes.

Senator BALDWIN. Any questions now, Senator?

Senator HUNT. No questions.

Senator KEFAUVER. No questions.

Mr. CHAMBERS. No questions.

Senator BALDWIN. Do you have anything further you want to say, Dr. Leer?

Dr. LEER. Maybe I could say the following, yes:

The discussion was about the procedure with the Dachau, the German defendants who were looked up by the American colleagues were nominated by the intermediate court. These German defendants had only a small idea but just a small idea of the United States procedures.

Senator BALDWIN. When you say the "defendants"—

Dr. GERNGOSS. Counsel.

(The following was translated by Mr. Gunther, unless otherwise indicated.)

Dr. LEER. I still don't know today, although I have made effort to find out according to which procedure the court in Dachau went on.

I believe this is no mistake because I have asked many American lawyers and they do not know it either.

Those accused who did take the stand, and about who discussion was carried on at first, were not sworn. I believe the attention was not also drawn to the fact that they could be sworn.

For the general situation, may I make the following statement?

In these, my appeals, I have repeatedly requested to take consideration of the situation which existed in 1945 and 1946 in Germany. Today, in 1949, it is easy to investigate these matters logically. It is also easier for me today than it was in 1946 and I can put myself easily into the psychic situation of the accused who, in 1945, were brought in to Schwabisch Hall. They saw and noticed that they were not treated as PW's, or prisoners of war, and many witnesses and some accused had told me the following over and over again—they did not know how to act and what attitude to take because they did not know what was sought to be found out at Schwabisch Hall.

I do not know all accused. I know that some accused are absolutely young, unexperienced men, who have been sent into the war, who just said anything in 1945 to get out of a disagreeable situation, and it is not only after this trial in Dachau the opinion, but that the point of charges are not correct, and that they only developed in the entire affair of Schwabisch Hall; but in order to say this with certainty, we are missing the evidence through witnesses.

I am convinced that many accused do not know today any more what 1944 and 1945 was at Malmedy cross roads. I believe that there is hardly a commission or committee which can weigh all the details that have to be taken from the witnesses and the evidence and the accused.

As, since 1946, nobody cared much more about this people, our American colleagues have left, I have further continued to take care of this matter and just only because I would like to avert the death sentences which I believe to be unjustified.

I can assure that political influences on the part of the defense have been turned back completely, especially as I am also on a different side than the side of the accused that I am representing now.

I believe otherwise we would not have found Dr. Gerngoss, the leader of the former resistance movement in Munich, to help us.

Senator BALDWIN. Any further questions?

Senator KEFAUVER. What branch of the service were you in, Dr. Leer? Combat, or what?

Dr. LEER. First in the infantry and then in the Luftwaffe, or Air Corps.

Senator BALDWIN. As I understand you, you were not a member of the Nazi Party?

Dr. LEER. I was not a member of the NSDAP.

Senator KEFAUVER. That is all I have.

Senator BALDWIN. May I say this, off the record?

(There was a discussion off the record.)

Senator BALDWIN. Have you anything to say, any further statement to make?

Dr. LEER. No; I have no further statement.

Senator BALDWIN. We would like it if you would check your statements to make sure that we have them all.

(Whereupon, at 12:30 p. m., the hearing stood in recess until 1:45 p. m.)

## AFTERNOON SESSION

(Following the taking of the luncheon recess, the hearing was resumed at 1:45 p. m.)

Senator BALDWIN. I believe you had something to add, Mr. Koessler?

Mr. KOESSLER. Yes, sir.

Senator BALDWIN. Very well. You may proceed.

## TESTIMONY OF MAXMILIAN KOESSLER—Resumed

Mr. KOESSLER. I wish to make a short clarification of yesterday's statement.

I said yesterday that I dimly remember to have read in the record some kind of admission by Mr. Thon concerning this incident of pushing somebody to the wall. Mr. Chambers was kind enough to challenge the correctness of that, and I said I would check the material so far as it is available to me, and I wish to state that I may now definitely state that it was wrong recollection on my part, insofar as I now definitely recollect Mr. Thon didn't do anything of this kind.

No. 2: I said yesterday that apart from testimony of defendants themselves, I do not recollect having read in the record anything concerning physical mistreatment of defendants. Yesterday it occurred to me, when I still pondered the matter and tried to refresh my recollection, that there was I believe only one, maybe more than one witnesses of the defense who was or were not defendants, but had also been at the critical time in the prison at Schwabisch Hall, who made such testimony alleging the beating.

As I said, I believe it was at least one, maybe more than one. I believe one had a name similar to Tratt or Taut or something like that. Insofar I must, of course, rectify my statement of yesterday that only testimonies of defendants alleging these, there are also defense witnesses or at least one of the defense witnesses.

No. 3: I spoke yesterday, as it is generally spoken of, of physical mistreatments. Now, since this term is maybe equivocal, subject to different meanings, I wish to make precise in which sense I understand the term "physical mistreatment" which I said that, according to my recollection, there was no evidence, with the just mentioned qualification, with the physical mistreatment, and that I didn't believe any physical mistreatments occurred in any substantial way, and I meant by that, what is called mistreatments in the sense of the American law, physical mistreatment in either beatings of the person or in any way involving personal physical contact with the person to be mistreated.

I do not want thereby to exclude other things which I don't consider physical mistreatment, but as more duress but which others might consider are physical mistreatments.

For instance, the fact that the accused, some of them, had to wear hoods at certain times, or stay in the so-called death cells, that is not physical mistreatment but more duress. However should the term "physical mistreatment" be included in that, then of course my yesterday's testimony would not have meant to exclude these things because these things as I said yesterday appear from the record and were just the things I didn't like wherefore I criticized them.



Senator BALDWIN. All right, thank you very much.

(Mr. Koessler left the room.)

Senator BALDWIN. The interpreter has already been sworn. I don't understand that you need a separate oath for each time, Mr. Gunther.

Mr. CHAMBERS. Will you swear Dr. Aschenauer as a witness?

Senator BALDWIN. Raise your right hand, Doctor Aschenauer.

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 information, so help you God?

(The following questions and answers were, unless otherwise indicated, translated from English into German, and German into English by Mr. Gunther, previously sworn as an interpreter.)

Dr. ASCHENAUER. I swear.

### TESTIMONY OF DR. RUDOLF ASCHENAUER, ATTORNEY, MUNICH, GERMANY

Mr. CHAMBERS. Give your name, age, address, and occupation.

Dr. ASCHENAUER. Rudolf Aschenauer, lawyer, 35 years of age, Munich, Auen Strasse 86.

Mr. CHAMBERS. Who are you representing, Dr. Aschenauer?

Dr. ASCHENAUER. On the one hand I am legal adviser in the war crimes matters to His Excellency Neuhaeusler; since approximately December, I also advise the Protestant Land Council for Bavaria. In the Malmedy proceedings, I did not represent anybody.

In the last month I have taken over the work on questions for revision, so for instance for Diefenthal, Bersin, Junkers, and so on.

My knowledge about the happenings is based on the reports of oath, sworn statements which were submitted to the two churches.

Mr. CHAMBERS. Have you made any effort to verify or corroborate the accuracy of these statements?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. Are you convinced that these statements are accurate and truthful?

Dr. ASCHENAUER. In general, I would say yes.

As I have received a report about the interpreter of the prisoners at Schwaebisch Hall, I have taken it upon me to turn to the chief of the doctor's diocese in Cologne, Dr. David—not doctor's diocese, but arch diocese in Cologne, and this interpreter, by the name of Erna Wunerlich, is giving considerable proof for the trials in the Malmedy proceedings.

Mr. CHAMBERS. Has she submitted an affidavit?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. Is that included in the affidavit Dr. Leer gave us today?

Dr. ASCHENAUER. A copy of these statements I have seen among the papers of Dr. Leer.

Mr. CHAMBERS. Do you have a prepared statement that you wish to make in this matter?

Dr. ASCHENAUER. I can give you the sworn statements to your record.

Mr. CHAMBERS. What sworn statements are you talking about?

Dr. ASCHENAUER. In the first place, it is part of the statements where the persons—the person who has given this statement had seen with her own eyes where, in a room where interrogations took place, a crucifix was on a black-clothed table.

Mr. CHAMBERS. Are these the affidavits that you just referred to that the translator made out?

Dr. ASCHENAUER. Yes; that the interpreter has given.

Mr. CHAMBERS. We probably already have these, but if you have some statement you think we did not have, we will be glad to receive it or them in the record.

Dr. ASCHENAUER. One statement which you do not have is probably a statement of a man who speaks about the entire Dachau proceedings, but this would probably not be of interest to you.

Mr. CHAMBERS. It goes beyond the scope of our inquiry, and for that reason we probably should not receive it.

Dr. ASCHENAUER. I was only asked if I haven't taken steps to check whether the statements were correct, and here I have informed myself through various sources and persons, and I have come to the conclusion that these mistreatments were not single incidents in Schwaebisch Hall, but that the confirmation of the various facts sum up to the conclusions, if one wants to express it sharply—represent a system.

I have also accepted visitors from Landsberg out of the Malmedy case who had three upper teeth knocked out in Schwabisch Hall.

Mr. CHAMBERS. What was his name?

Dr. ASCHENAUER. Bersin.

Mr. CHAMBERS. Do you know that we now have, at Landsberg Prison, both doctors and dentists who are studying the physical condition of those people?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. And that if Bersin has three missing teeth, that certainly will be noted?

Dr. ASCHENAUER. Yes. Artificial teeth were put back.

Mr. CHAMBERS. I am informed that in the event the teeth were knocked out, that it will be possible for us to tell that by the condition of the bony structure around the teeth, and that therefore we should be able to prove this particular thing by an examination of Bersin.

Dr. ASCHENAUER. Then as the man is still in Landsberg, the examination will show whether the statement of the man Bersin is correct.

Mr. CHAMBERS. That is correct.

Dr. ASCHENAUER. Then, from an outsider, formerly a legal member of the Reichgericht who, just because he was a member of the Reichgericht, the court of the Reich, was turned into an internment camp, received sent to him a sworn statement which also gives information about the mistreatments. This sworn statement should be in your record.

Mr. CHAMBERS. What is that man's name?

Dr. ASCHENAUER. Dr. Paul Klose.

Mr. CHAMBERS. We have Dr. Klose's affidavit from Dr. Leer.

Dr. ASCHENAUER. I would like to say that from our side everything has been done that we do not become victims of a fairy tale. Further and above this, we have continued and have procured ourselves about the same material from other camps, for instance, Oberursel.

Mr. CHAMBERS. Do these—

Dr. ASCHENAUER. A moment. This camp is not to debate or at discussion, but I would like only to prove thus that we have checked thoroughly.

Mr. CHAMBERS. Do I understand you to say that you represent both the Catholic and Protestant Church people in war crimes matters?

Dr. ASCHENAUER. So far as it concerns His Excellency Neuhaeusler, and the Protestant Church Council in Bavaria, it is correct.

Mr. CHAMBERS. We have received considerable correspondence from Bishop Wurms of Stuttgart. Do you also represent him?

Dr. ASCHENAUER. Wurms is represented by church counsel Dr. Weber in Stuttgart, but it is natural that we also have our connection there.

Mr. CHAMBERS. Well, now, does Bishop Neuhaeusler take the position that all of these allegations that have been made concerning the Malmedy investigation are true?

Dr. ASCHENAUER. His Excellency Neuhaeusler is convinced that basically the stated happenings have happened.

Mr. CHAMBERS. Dr. Aschenauer, as you are well aware, there have been many, many charges made.

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. Do you remember reading in the newspapers here in December, an article that appeared in the local papers that had apparently been written by a man by the name of Finucane?

Dr. ASCHENAUER. Finucane—

Mr. CHAMBERS. And this was a news article which reported a speech by Judge Van Roden.

Dr. ASCHENAUER. I know that in this article a speech of Judge Van Roden is contained.

Mr. CHAMBERS. Do you believe that all the things that Judge Van Roden quoted in his speech are correct?

Dr. ASCHENAUER. If I think it over today, that Van Roden, who about the Dachau trials in general, not only about the Malmedy case, has carried out, that I can prove through new persons who were even members at the American war crimes, confirmed—but this is not at discussion because it leaves the confined discussion here.

Mr. CHAMBERS. That is correct, except that Van Roden's testimony has been received insofar as the work of the Simpson-Van Roden Commission is concerned.

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. I notice one thing in particular in that article which I wanted to ask you about.

He charges that people postured as priests for the purpose of securing confessions. Do you have any evidence—do you have any real evidence, direct evidence, that that happened?

Dr. ASCHENAUER. I do not know of the Malmedy proceedings, but I have a person who has done that. This is the former chief witness, an internee of concentration camp, who came up during the Dachau trials, Herr Frobes. His Excellency Neuhaeusler also requested that Frobes visit him. We have also received reports from prison priests.

Mr. CHAMBERS. Now, what prison or camp? At which prison or camp is this supposed to have taken place?

Dr. ASCHENAUER. If I am not mistaken here, I have to narrow down my explanation. It was also the case at visits in Landsburg, but there have also been other statements about it.

Mr. CHAMBERS. Well, does he have any statement that pertains to Malmedy?

Dr. ASCHENAUER. This question I cannot answer without the necessary files.

Mr. CHAMBERS. This article also charged that there were beatings, and brutal kicks, torture with burning splinters. Does he believe, or does he have any direct evidence that these things occurred at Malmedy?

Dr. ASCHENAUER. Yes. I beg to question Sepp Dietrich.

Mr. CHAMBERS. Does Sepp Dietrich allege that these things happened to him?

Dr. ASCHENAUER. I have visited Sepp Dietrich myself 28 or 29 of August 1949, and at this occasion he has proven to me by marks on his abdomen and blow on his sex organs that this happened.

Senator BALDWIN. Is Sepp Dietrich at Landsburg?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. How did Dietrich say that this happened?

Dr. ASCHENAUER. How this happened I cannot explain in detail because I have conversed with him in general about his case and thus he has added it to the conversation.

Then I have, as we are at this matter of mistreatment, made a list of very outstanding mistreatments.

Mr. CHAMBERS. May I interrupt? Before we leave Sepp Dietrich, has he prepared an affidavit?

Dr. ASCHENAUER. No; his statement about this has not been included into the files.

Mr. CHAMBERS. Well, then, let's see if I have this correct. Sepp Dietrich told you on the 28th or 29th of August that he had been kicked so badly in the abdomen that he was badly injured and he still has a mark to show for it?

Dr. ASCHENAUER. He has told me that he has—he is still feeling the aftermath of these mistreatments today.

Mr. CHAMBERS. In the shins?

Dr. ASCHENAUER. In the shins; in the abdomen.

Mr. CHAMBERS. Did he tell the court about this at the time he was tried?

Dr. ASCHENAUER. I remember faintly some press statements, and in these press statements about these mistreatments was spoken. I remember the mention in the press, which came out during the time of the proceedings, where the mistreatments of Sepp Dietrich were mentioned. Naturally I have not read the record because I was not participating in the proceeding.

Mr. CHAMBERS. Dr. Aschenauer, Senator Hunt yesterday went to Landsburg Prison and interrogated quite a few of the prisoners; and one of them was Sepp Dietrich.

Senator HUNT. Shall I give it to the stenographer, or shall I read it?

Mr. CHAMBERS. Senator Hunt will read to you the statement that he got yesterday from Sepp Dietrich.

Senator HUNT (reading) :

I am a member of the United States Senate, and members of the subcommittee of the Armed Services Committee of the Senate. The subcommittee was directed, by resolution passed by the Senate, to investigate the claims of mistreatment contained in affidavits made by certain prisoners convicted of the slayings at Malmedy Crossing, and to ascertain if the statements or confessions were obtained by violence or force on the part of the interrogation team.

The subcommittee of which I am a member have no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trial.

I have before me a statement made by you in which you allege mistreatment at Schwaebisch Hall, and I am ready now to receive, if you wish to make, an additional statement.

DIETRICH. Yes.

Senator HUNT. Ask him if he was kicked.

INTERPRETER. He was.

Senator HUNT. Why by?

DIETRICH. I don't know. I had a black hood over my head.

Senator HUNT. Were you knocked down?

DIETRICH. No.

Senator HUNT. Were you knocked out?

DIETRICH. No.

Senator HUNT. Did this treatment leave you any permanent injury?

DIETRICH. A little bit. On the shins, and the right testicle hurt under pressure.

Senator HUNT. Have you been examined by the doctors?

DIETRICH. Yes.

Mr. CHAMBERS. The testimony on that point, which was taken yesterday, bears out in general, but does not agree in detail with what Dr. Aschenauer has said.

Is this the only evidence you have? Is this the only evidence you have which leads you to believe there were brutalities at Malmedy?

Dr. ASCHENAUER. No. I believe that you have also interrogated Josef Diefenthal.

Mr. CHAMBERS. How do you know that we have interrogated Josef Diefenthal?

Dr. ASCHENAUER. I assume, as it is one who has not received clemency yet, that he would have been interrogated.

I can also answer the next question: I did neither go to Landsburg, nor have I made a phone call to Landsburg.

Mr. CHAMBERS. Do you represent Diefenthal?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. Do you get from Diefenthal, from time to time, letters and information about himself, or have you been down to talk to him?

Dr. ASCHENAUER. Until the commission or the committee arrived here I received currently information from Diefenthal and also visited him in that time where I could visit him.

Mr. CHAMBERS. Tell me, Dr. Aschenauer, these prisoners all know about this commission; don't they?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. They are very interested in our work?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. Have you been keeping them advised as to what the committee is doing, and what people say to us and what the evidence is, that has been given to us?

Dr. ASCHENAUER. I have not informed them about what they should tell to the committee, but only about the purpose of the committee.

Mr. CHAMBERS. Have you told them what the witnesses have been saying here, as reported in the press, or America, or anything like that?

Dr. ASCHENAUER. I have solely spoken to Diefenthal about a statement made by Ellis. Otherwise, I have not discussed anything with him.

Mr. CHAMBERS. Did Diefenthal agree with what Ellis said?

Dr. ASCHENAUER. I have explained to him the discussion between Senator McCarthy and Ellis. If I am not mistaken, Ellis is the tax adviser in America.

Mr. CHAMBERS. I understand where that came from, because before Ellis came in the Army, he had done tax work, but he is not tax adviser for America.

Dr. ASCHENAUER. My remarks should only assure myself whether or not we are meaning the same person.

Mr. CHAMBERS. That is correct.

Is Ellis the one you have talked to Diefenthal about?

Dr. ASCHENAUER. I do not believe that I have informed him about any other matter connected with the committee.

Mr. CHAMBERS. Has anyone else in the prison been interested in other cases?

Dr. ASCHENAUER. Which case does Colonel Chambers mean, here?

Mr. CHAMBERS. That was a very poor question, to have it worded that way.

Have you talked to other prisoners about Ellis' testimony, or about anybody else's testimony?

Dr. ASCHENAUER. No; because at that time, I believe I had, as a personal representative, only had Diefenthal to my charge. Then I had received another number of people who I could speak to after the 26th of August, and there, I did not mention a statement about, or from the committee, because my purpose at that time was to speak about a collective job.

Mr. CHAMBERS. Where did you read about Ellis claiming to be the tax adviser to the United States Government?

Dr. ASCHENAUER. I do not mean him to be a tax adviser, but a tax lawyer in America.

Mr. CHAMBERS. Was that in the newspapers?

Dr. ASCHENAUER. I believe it was in the newspapers, or was it, as I also receive congressional reports, and one of the Congress reports in the conversation with Senator McCarthy.

Mr. CHAMBERS. Do you get copies of the Congressional Record?

Dr. ASCHENAUER. It is an exceptional thing that I have received an extract of this particular file or protocol concerning this matter. The reason that I need that is, one, that just there now, about war-crimes questions, there is a matter in print which I have given to be printed.

Mr. CHAMBERS. Did Bishop Neuhaeusler give you this, or did somebody in America send it to you, this particular thing about Ellis?

Dr. ASCHENAUER. I based my chief source on Bishop Neuhaeusler.

Senator BALDWIN. Just a moment. You said there is a matter in print which you have given to the printer, is that what you said?

Dr. ASCHENAUER. Yes; and this is work for several accused.

Senator BALDWIN. What is this matter that is in print?

Dr. ASCHENAUER. It is actually the legal application which I am submitting for the accused, such and such, to take or make such and such changes.

Senator BALDWIN. Where are you submitting the affidavits?

Dr. ASCHENAUER. I have not submitted it yet, but I shall.

Senator BALDWIN. Where do you intend to submit it?

Dr. ASCHENAUER. For instance, to the Senate commission.

Senator BALDWIN. To this committee, you mean?

Dr. ASCHENAUER. Also to this committee.

Senator BALDWIN. What other committee?

Dr. ASCHENAUER. For example, to McCarthy, and then I think also to McCloy.

Mr. CHAMBERS. Well, as I understand it, let me make sure I have it correctly, through some source that you attribute to His Excellency Neuhaeusler, you got some information about Ellis, and Ellis is the only case that you talked to Diefenthal about, insofar as testimony before this committee is concerned?

Dr. ASCHENAUER. Yes; about Ellis. He has spoken only once, and that was Diefenthal.

Mr. CHAMBERS. Dr. Aschenauer, if that is correct, let us take this slow and get it all.

I have here a letter which was addressed to the National Council for Prevention of War, written by yourself, dated May 17, 1949, which I would like to show you at this time.

Is this your letter?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. Now, as I understand, this letter was written to you about Diefenthal, is that correct?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. And you transmitted it to the National Council for Prevention of War; is that correct?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. And in this letter Diefenthal lists in some detail, I might say in considerable detail, the evidence of Ellis, the evidence of Ahrens, the evidence of Hall, the evidence of Byrne, the evidence of Perl, the evidence of Simpson, the evidence of Unterseher. You just testified that you haven't discussed with Diefenthal any case except Ellis?

Dr. ASCHENAUER. That is correct. Then if I had spoken with him about other cases, he could not have written to me the letter in which he informed me also about others.

Mr. CHAMBERS. Well, Dr. Aschenauer, I have been trying here for about 5 or 10 minutes to find out if you had discussed with Diefenthal, or any other prisoners, any other cases, and you said no. I have no quarrel with you talking to Diefenthal about any of these cases, but I am very interested in whether or not you are telling me completely the truth in this matter.

Dr. ASCHENAUER. I have no interest not to tell the truth.

Mr. CHAMBERS. Then why did you lead me to believe that Diefenthal was the only person you had talked to and then only about Ellis?

Dr. ASCHENAUER. The question of Mr. Chambers was such that as whether or not I have informed Diefenthal about the discussions,

about the statements of Mr. Ellis only, and alone about Mr. Ellis have I discussed with Mr. Diefenthal concerning what happened within the Senate. When the Diefenthal sends me a letter where he takes a stand also about other cases, then these are Diefenthal's sources, but not mine.

Senator BALDWIN. Just a moment, right there.

Mr. CHAMBERS. Why did he send this letter? Why did Diefenthal send this letter to you, Dr. Aschenauer, to be transmitted to Senator McCarthy?

Dr. ASCHENAUER. So that Senator McCarthy is informed about the various statements that had been made.

Senator BALDWIN. Right there, the question I wanted to ask was this: As I understand your statement, Dr. Aschenauer, you had only discussed Mr. Ellis' case with Mr. Diefenthal, is that correct?

Dr. ASCHENAUER. I have said that over. Of Ellis, I am the source that has informed Diefenthal, but about other information that Diefenthal has submitted, I am not the source.

Senator BALDWIN. Wait a minute. If that is the case, why is it that Mr. Diefenthal discusses in a lengthy paragraph Mr. Ellis with you in this letter?

Dr. ASCHENAUER. Diefenthal has declared to me that he has also—is also reading United States newspapers and he is taking a stand on those matters that appear in United States newspapers and informed me so that he can submit them.

Mr. CHAMBERS. Where does he get the newspapers?

Dr. ASCHENAUER. This question I cannot answer.

Mr. CHAMBERS. Why did you send this to Mr. Finucane, instead of to Senator McCarthy, as requested by Diefenthal?

Dr. ASCHENAUER. Because I am in easier correspondence with the National—

Mr. CHAMBERS. National Council for Prevention of War?

Dr. ASCHENAUER. Council for Prevention of War, than I am with Senator McCarthy.

Mr. CHAMBERS. Have you, in fact, been maintaining a considerable correspondence with the National Council for the Prevention of War?

Dr. ASCHENAUER. What does it mean, "considerable correspondence"? I correspond currently.

Mr. CHAMBERS. What?

Dr. ASCHENAUER. I said—what does it mean, "considerable correspondence"? I correspond currently.

Mr. CHAMBERS. Do you exchange a good many letters with them?

Dr. ASCHENAUER. Maybe one, two, or three a month.

Mr. CHAMBERS. One, two, or three a month?

Dr. ASCHENAUER. Yes.

Mr. CHAMBERS. How did you first get in contact with the National Council for the Prevention of War?

Dr. ASCHENAUER. National Council for Prevention of War is sending reports to the churches.

Mr. CHAMBERS. Do they also correspond with you?

Dr. ASCHENAUER. Partly, yes.

Mr. CHAMBERS. Have they discussed in their letters the Malmedy case?



Dr. ASCHENAUER. I believe; yes.

Mr. CHAMBERS. Have they discussed, have they asked you to get certain information for them?

Dr. ASCHENAUER. No; but I have in the interest of my people taken all the aid that was offered to me.

Mr. CHAMBERS. What do you mean by "your people"?

Dr. ASCHENAUER. In the interest of the people that I represent in the Malmedy proceedings.

Mr. CHAMBERS. Well, now, I believe you have testified that up until August, you only represented Diefenthal?

Dr. ASCHENAUER. Yes; I have only on the first represented Diefenthal, but I have naturally also the entire interest of these people in mind.

Mr. CHAMBERS. Has the National Council for the Prevention of War sent you any information about the work of our subcommittee?

Dr. ASCHENAUER. I have read several reports about that which have gone directly to His Excellency Neuhaeusler.

Mr. CHAMBERS. Has Mr. Finucane or the National Council for the Prevention of War written you directly about any matter pertaining to the Malmedy trials?

Dr. ASCHENAUER. I think, yes.

Mr. CHAMBERS. Well, what did they say?

Dr. ASCHENAUER. I believe they have sent to me the continuation of the individual proceedings. Then I have also received the individual speeches.

Mr. CHAMBERS. Well, didn't you a few moments ago testify that the only knowledge you had had of these, was from the newspapers?

Dr. ASCHENAUER. No; that I have not said.

Mr. CHAMBERS. Did you say that you had received the information on Ellis from the newspapers or from other sources?

Dr. ASCHENAUER. I left that open.

Mr. CHAMBERS. All right. Where did you get the information on Ellis?

Dr. ASCHENAUER. This question I cannot answer specifically because I have read too many, and I can only answer either from the National Council for Prevention of War or from the newspapers.

Mr. CHAMBERS. Then, based on that information about Ellis, Doctor, you talked to Diefenthal; is that correct?

Dr. ASCHENAUER. I have spoken to Diefenthal about Ellis; that is correct.

Mr. CHAMBERS. Then, Diefenthal, in his letter, discussed Ellis, from information which possibly came to you through the National Council for Prevention of War, and included that in a letter which you say the other information came from other sources, and then you transmitted the whole answer to the National Council for Prevention of War.

(The pending question was read by the reporter.)

Dr. ASCHENAUER. I have to make the following statement:

It is a pretty clear story. Mr. Chambers asked for what I am the source, and I answered, I informed Diefenthal about the statement of Ellis. Diefenthal was also informed about other statements. Now, Diefenthal has his viewpoint from this information and other sources put together, and sent to me. Then I have submitted this informa-

tion to the National Council for Prevention of War so that the Senate is informed about other statements that have been made.

Senator BALDWIN. You have corresponded with the National Council for Prevention of War in Washington, have you not?

Dr. ASCHENAUER. Yes.

Senator BALDWIN. When did you first start to correspond with them?

Dr. ASCHENAUER. If I could remember correctly, it must have been Christmas, 1948-1949.

Senator BALDWIN. Christmas 1948?

Dr. ASCHENAUER. Yes; or beginning of 1949.

Senator BALDWIN. And since that time you have had, as you said, two or three letters a month?

Dr. ASCHENAUER. I estimate that this has been that way, even though sometimes a greater time may have been elapsed.

Senator BALDWIN. Did that correspondence come directly to you, Dr. Aschenauer?

Dr. ASCHENAUER. Sometime I have received it in duplicate, because it was addressed to Excellency Neuhaeusler and was also addressed to me; sometimes I have received it a third copy because Bishop Wurm or Bishop Meiser had received another copy.

Senator BALDWIN. In other words, when the National Council for Prevention of War wrote to Bishop Neuhaeusler or Bishop Wurm, they also sent a copy to you, Dr. Aschenauer?

Dr. ASCHENAUER. That is also not exactly that way, because some letters I have acted on independently, and I have also received letters in return to requests.

Senator BALDWIN. Now you have talked with Diefenthal, up at Landsberg, haven't you?

Dr. ASCHENAUER. Yes.

Senator BALDWIN. Does he get any letters from the National Council for Prevention of War?

Dr. ASCHENAUER. I believe that I can answer that question with certainty "No."

Senator BALDWIN. He has not?

Dr. ASCHENAUER. He has not.

Senator BALDWIN. Do you know whether or not he has written any letters to the National Council?

Dr. ASCHENAUER. Also this question I can with moderate certainty answer with "No," because his members are only in connection with the bunch, maybe also he—

Senator BALDWIN. You said a moment ago that Diefenthal used to write you reports on the information that he got?

Dr. ASCHENAUER. Yes; that is correct.

Senator BALDWIN. Where did he get that information from?

Dr. ASCHENAUER. Yes; this question I have not asked him.

Senator BALDWIN. You said a little while ago that he used to get newspapers and congressional reports.

Dr. ASCHENAUER. No; about congressional reports I have not mentioned.

Senator BALDWIN. He used to get newspapers?

Dr. ASCHENAUER. Yes, naturally.

Senator BALDWIN. And used to get letters about what was going on?

Dr. ASCHENAUER. Also I did not say, but I suspect it is newspapers that he has received, where he received his information.

Senator BALDWIN. When he received the information.

Dr. ASCHENAUER. I suppose so.

Senator BALDWIN. Where did he get these newspapers from—that is, that is what we are trying to find out.

Dr. ASCHENAUER. This question I cannot answer.

Senator BALDWIN. You don't know?

Dr. ASCHENAUER. No.

Senator BALDWIN. But he got very complete information, didn't he?

Dr. ASCHENAUER. Yes.

Senator BALDWIN. He wrote you a lengthy letter here; he wrote you a lengthy letter in which he reported on these hearings in the United States; he reported concerning what Ellis said, concerning what Ahrens said, what Von Hall said, concerning what Byrne said, concerning what Perl said, concerning the statement of Judge Simpson, concerning the statement of the Medical Corpsman Unterseher. Where did he get that information?

Dr. ASCHENAUER. This question I have to answer as I did before. I suspect that he got it from the newspaper.

Senator BALDWIN. From the newspaper? That is your answer to that question, got it from the newspapers?

Dr. ASCHENAUER. Yes.

Senator BALDWIN. Well, this letter of the 17th of May 1949 you have said was a report from Diefenthal to you concerning the testimony of these witnesses.

Dr. ASCHENAUER. Yes.

Senator BALDWIN. Did he ever write any other reports to you?

Dr. ASCHENAUER. Yes; he has reports submitted.

Senator BALDWIN. How often?

Dr. ASCHENAUER. About various law problems.

Senator BALDWIN. How many reports did he submit to you; do you know?

Dr. ASCHENAUER. In regard to law problems, I believe he has sent me three.

Senator BALDWIN. How many reports on what the witnesses have said?

Dr. ASCHENAUER. This is the only one.

Senator BALDWIN. All this time, however, you were getting letters from the National Council for Prevention of War; is that correct?

Dr. ASCHENAUER. I have, since the time as I have indicated, received letters.

Senator BALDWIN. But Diefenthal was furnishing you reports on what the testimony was?

Dr. ASCHENAUER. Correct. That is this letter.

Senator BALDWIN. These letters that you got from the National Council for Prevention of War, what did they contain?

Dr. ASCHENAUER. If I could now only remember out of this correspondence, usually it was such that we have submitted it to the place where it was to be addressed to.

Senator BALDWIN. I don't understand what you mean.

Dr. ASCHENAUER. I believe the question was thus: What was the answer to this letter of mine of the 17th of May? Then I answered; in my vast correspondence I cannot remember what the National

Council of Prevention of War has answered; but usually, when I have sent material about Malmedy process across, it was said that it was submitted to the Senate committee or to one of the individual Senators, and for me it was easier to send this to the National Council for Prevention of War than send it to a Senator.

Senator BALDWIN. Did you think that the National Council for Prevention of War was a public agency of the Government?

Dr. ASCHENAUER. No; but I imagine like this, that it is an organization which steps in for the rights of men. On this basis I have sent them the matter, and after this organization has taken—made contact with the Senate.

Senator BALDWIN. Did the National Council for Prevention of War write you the first letter, or did you write to them?

Dr. ASCHENAUER. I must say I haven't known them before December 1948 yet.

Senator BALDWIN. How did you come to know them?

Dr. ASCHENAUER. Out of the work in the trial questions; the letters in the case of Malmedy were certainly written by the National Council for Prevention of War.

Senator BALDWIN. Do you know who sent Diefenthal the newspaper that you say he got this information from?

Dr. ASCHENAUER. I suppose that he has received newspapers, but I don't know from whom.

Senator BALDWIN. Don't know who he got them from?

Dr. ASCHENAUER. No.

Mr. CHAMBERS. Dr. Aschenauer, you were stating awhile ago—you had a file in which you said some of the matters of brutality—

Dr. ASCHENAUER. Yes; I have put together a few cases. I would like to extract out of this the case of Diefenthal.

Senator BALDWIN. Just a moment. Do you have a written statement there, Doctor?

Dr. ASCHENAUER. Not in the file, but I could give you the entire list to be included into your record.

Senator BALDWIN. You mean the entire list of your records?

Dr. ASCHENAUER. I have tried to extract shortly the pertinent cases.

Senator BALDWIN. Is that written in German?

Dr. ASCHENAUER. In Deutsche.

Senator BALDWIN. You wouldn't write it in English?

Dr. ASCHENAUER. I understand a little English, but to speak it is too much.

Senator BALDWIN. Could you submit that to us, your statement?

Dr. ASCHENAUER. I shall sign, so that it is clear from whom it comes.

Senator BALDWIN. Just one further question about this statement. The information that you have here is based upon statements that people have made to you?

Dr. ASCHENAUER. Yes.

Senator BALDWIN. It is not yours—

Dr. ASCHENAUER. Just a second.

Senator BALDWIN. All right; go ahead, go ahead.

Dr. ASCHENAUER. Yes; if you say just in front to me, my activities in the Malmedy proceedings is relatively very short. Therefore I have this composed of reports that were sent to me so to save from central offices.

Senator BALDWIN. Very well. We understand that. Are there any questions?

Senator HUNT. I want to ask just one.

Do you represent Mr. Josef Unrecht?

Dr. ASCHENAUER. I have so far no full power, and I cannot recollect that name. I must add that I am working on a collective chart, and therefore I get full power from several other people from the Malmedy case, but I can naturally not say now whether he is one of them. So far I have not received any material from him.

Senator HUNT. And have had no contact with him?

Dr. ASCHENAUER. No. The name I hear for the first time.

Senator HUNT. That is all.

Senator BALDWIN. Now, what did Bishop Neuhaeusler want you to say to us—anything in particular?

Dr. ASCHENAUER. It is the following: That he is convinced that in the investigations and for the purpose of investigations unfair methods were used on the basis of which also the sentences were built, and that it would be in the sense of justice if the sentences would be revised, based on the examinations.

Senator BALDWIN. Do you have anything further to say?

Dr. ASCHENAUER. No.

Mr. CHAMBERS. I have nothing else.

Senator BALDWIN. Have you been the only one representing his excellency the bishop throughout this matter, Dr. Aschenauer?

Dr. ASCHENAUER. I must say in the technical work of the individual war-crimes cases for him, yes; although also other lawyers were there who have made requests to the bishop.

Senator BALDWIN. You don't mean lawyers that took part in the trials?

Dr. ASCHENAUER. Yes; also those have visited Neuhaeusler, but the technical work for him I have taken over.

Senator BALDWIN. You have done all of the technical work?

Dr. ASCHENAUER. Yes.

Senator BALDWIN. So the information concerning the trials that the Bishop has is what you prepared for him; is that what we are to understand?

Dr. ASCHENAUER. For the larger part, yes; he is also sometimes working independently.

Senator BALDWIN. Thank you very much.

Dr. ASCHENAUER. I understand that we have a group of medical men at Landsburg physically examining the prisoners. We have dentists and doctors making a physical examination.

Dr. ASCHENAUER. Yes?

Senator BALDWIN. And their report will be considered by the committee and made a part of the record.

Mr. CHAMBERS. Senator, this gentleman is here to make a statement for the Lutheran division, represents one of the councils out of town.

Senator BALDWIN. Have you any objection to taking an oath? We have sworn all the witnesses, but you are really not a witness.

(The following, as were the previous statements, was translated into the German language by Mr. Gunther, the interpreter, and from the German language into the English language, unless otherwise indicated:)

Mr. RUSAM. I cannot make any witness statement here and want to only say a general word as a representative of the church.

Senator BALDWIN. I think, in view of the fact that he is not testifying about the trial but merely desires to enter a statement for his church, I do not think we need to administer the oath.

### STATEMENT OF ADOLF RUSAM

Senator BALDWIN. Give us your full name.

Mr. RUSAM. Adolf Rusam, age 46.

Senator BALDWIN. You are a preacher of what denomination?

Mr. RUSAM. I am a priest and member of the church council, secretary from Bishop Meiser.

Senator BALDWIN. And he is the bishop of the Lutheran Church?

Mr. RUSAM. Bishop, Lutheran Church, in Bavaria.

Senator BALDWIN. Where is your home; what is your address?

Mr. RUSAM. Here in Munich, Himmelreich Strasse 2.

Senator BALDWIN. All right, sir. Do you want to make your statement now?

Mr. RUSAM. I thank the committee that I, as a representative of the church, have the chance to a short word.

I am only here to make known the interest of the Protestant church on the Malmedy case and the war-crimes cases.

I regret that the learned bishop, Dr. Meiser, is traveling presently. Otherwise he would also have liked to have spoken to the committee. Also the Reverend Technical Adviser Oberkirchenrat Dr. Ranke, of the church council, is presently not there. Otherwise he would have liked to have spoken to the committee.

Only briefly would I like to explain why the Protestant Church is interested in this question.

Since 1948 the bishops of our church have received reports from various sides. These reports come from priests, lawyers, and family members of the interned prisoners. These reports spoke of unorthodox methods and rule methods during the investigations of the Malmedy case. They pointed also to great inequities and unequities within the church—unrest, it is.

In the communities it was feared that, based on these investigations, also wrong sentences may have been given. It was feared that, aside also of guilty, also some innocent have been sentenced.

Therefore our bishops have requested the American authorities for new investigation. Also a stop for the executions in Landsburg was requested.

Bishop Wurms spoke for the entire Protestant Church in Germany. It was not the purpose to take the guilty from under their deserved punishment. It should only be rigid in every case that justice should rule. The Protestant Church was therefore glad to see that the American Senate sent an investigating committee.

In the name of the Protestant Church I want to express the thanks that the commission or committee has charged itself with this very difficult task.

The Protestant Church hopes that the work of the committee will serve for justice.

In specific, I cannot make any statements or witness statements.

I ask, however, whether the committee is ready to take over some of the material or statements, et cetera.

Senator BALDWIN. Do you have statements there—affidavits of witnesses?

Mr. RUSAM. New affidavits and no originals—no affidavits and no originals are here, only reports and lists.

Senator BALDWIN. Reports and lists? What is the nature of the report?

Mr. RUSAM. One report has the title "What the Senatorial Committee Should Know in Connection With These Questions on the War Crimes Trials."

Senator BALDWIN. The committee will be very glad to accept that.

Mr. RUSAM. They have also many names of witnesses mentioned, also other matters.

May I present them?

(Certain documents were passed to Mr. Chambers.)

Mr. RUSAM. May I present two short requests?

Senator BALDWIN. Certainly.

Mr. RUSAM. In Landsburg are a number of incurable prisoners. I have a list of 10 of those who are most ill.

Senator BALDWIN. Are they from the Malmedy prisoners, or among the Malmedy prisoners?

Mr. RUSAM. It could be that there are Malmedy prisoners among them, but there are also others.

Senator BALDWIN. That is a matter that is entirely under the authority of the area commander.

Senator KEFAUVER. Reverend Rusam, you would be interested in knowing that we brought over a staff of doctors who are examining all the Malmedy prisoners.

Senator BALDWIN. The Inspector General's Department of the United States Army is going to make an investigation and study of that prison.

What is your request in connection with these incurables?

Mr. RUSAM. I would have asked the committee to check the condition of the individuals and if there is a possibility, to recommend the dismissal of these ill people.

Senator BALDWIN. I will tell you what the committee will be glad to do for them.

We will accept this list and we will place it in the hands of General Seebree, who is the area commander, for his action, with our recommendation that he give it his attention.

Mr. RUSAM. Thank you.

Senator BALDWIN. I think the matter is entirely one under his charge.

You had another request?

Mr. RUSAM. Could the committee, upon their return to the United States, submit a request that an investigative committee is also sent for the other trials of war criminals in Germany?

Senator BALDWIN. We will submit that request. Of course, that is a matter that is entirely one of high policy decision on the part of the Government, and there is nothing we can do about that, but we would be glad to pass along that request.

Mr. RUSAM. Thank you, sir.

Senator BALDWIN. May I ask you a question or two?

In this statement that you have made, you intend that to apply not only to the Malmedy cases, but also to all of the other war-crimes trials, is that correct?

Mr. RUSAM. Yes, sir.

Senator BALDWIN. You understand that this subcommittee is only concerned with the Malmedy cases?

Mr. RUSAM. Yes, sir.

Senator BALDWIN. Are there any questions to ask, Senator Hunt?

Senator HUNT. No questions.

Senator BALDWIN. Thank you.

The members of the subcommittee are scheduled, at the direction of the Senate, to go from here to Stockholm, to attend the International Interparliamentary Union Conference, and we will adjourn the meeting now until 10 o'clock in the morning, on Tuesday, September 13, at Schwabisch Hall.

(Whereupon, at 4:15 p. m., the body of the subcommittee was adjourned until Tuesday, September 13, 1949, at Schwabisch Hall; certain witnesses were to be heard, however, in the absence of the subcommittee, by the staff of the subcommittee the following morning, Thursday, September 8, 1949, at 9:30 a. m.)



# MALMEDY MASSACRE INVESTIGATION

THURSDAY, SEPTEMBER 8, 1949

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
*Munich, Germany.*

The subcommittee being absent from Munich, Germany, on official business, deputed J. M. Chambers, on the staff of the committee, to proceed with the investigation in the above-entitled matter, as though they were present in person, during the testimony of such witnesses as were previously scheduled, and as hereinafter appear.

Present and presiding: J. M. Chambers, on the staff of the committee.

Also present: Lt. Col. E. J. Murphy, Jr., and Ernest J. Gunther, interpreter.

(Unless otherwise indicated, all questions asked in English by Mr. Chambers were translated into the German language by Mr. Gunther, and the answers of the various witnesses in the German language were repeated in the English language by Mr. Gunther.)

Mr. CHAMBERS. Raise your right hand, please.

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. REISER. I swear.

## TESTIMONY OF ROLF ROLAND REISER

Mr. CHAMBERS. What is your name?

Mr. REISER. Reiser, Rolf Roland.

Mr. CHAMBERS. How old are you?

Mr. REISER. Twenty-nine.

Mr. CHAMBERS. What is your address?

Mr. REISER. Augsburg, Wertach Strasse 27, third floor.

Mr. CHAMBERS. What do you do for a living?

Mr. REISER. At the present time I am employed in Augsburg as an optician in an optical firm. The firm is named Braun, on Bahnhof Strasse 14.

Mr. CHAMBERS. Before we start taking any testimony, I think you should know that Dr. Leer asked that you appear as a witness.

Mr. REISER. Yes.

Mr. CHAMBERS. The Senators were directed to go to Stockholm for the Interparliamentary Congress. They directed me to stay here and take the depositions of yourself, and hear Vollprecht, who had also been requested to testify by Dr. Leer.

The testimony that you will give here will be given to the Senators and they will study it just as though they were here when you testified.

I believe that you desire to make a statement in connection with the Malmedy matters?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. Suppose you go ahead and tell us what you have to say, and after you are through I may ask you some questions to complete the story.

Mr. REISER. Good.

So far, I have taken from the press, the committee which is presently here from America is interested in the investigations prior to the trial only, and not actually the basis for the trial.

Mr. CHAMBERS. Well, that is not exactly correct. We are interested in the matters that pertain to the way evidence was collected.

Mr. REISER. Yes.

Mr. CHAMBERS. And the way the trial itself was conducted; and the various reviews that have been made of the case.

We are not, however, attempting to judge the evidence that was given to the court, because that would mean that a congressional committee was taking over functions that are charged directly to the executive department of our Government, and in this case, the Department of the Army.

Suppose you tell us of your connection with the Malmedy matter, before you begin to give us your statement.

Mr. REISER. Yes, sir.

During the war—during the Malmedy offensive, I was adjutant in the regiment of Colonel Peiper, and as such adjutant of the First Regiment, and First Battalion, I was put under accusation for this trial.

Approximately during the second part of October 1945, I was brought from the PW camp, Camp Kreiburg, in Bavaria, over to the former concentration camp at Dachau, to the internment camp, Zuffenhausen. In this internment camp, Zuffenhausen, I stayed until the 4th or 5th of December 1945. While I was approximately 4 or 5 weeks in this internment camp, in the one part of this camp, a great part of the unit of Peiper was collected in that particular part of this camp.

Mr. CHAMBERS. Where was this, now?

Mr. REISER. Zuffenhausen.

Mr. CHAMBERS. You were there 4 or 5 or 45—

Mr. REISER. Approximately 5 to 6 weeks.

Mr. CHAMBERS. All right.

Mr. REISER. During the month of November 1945, groups of 40 to 50 men of the barracks D were daily taken out. With such transport I was also brought away on the 4th or 5th of December. At that time I did not know where this trip was leading me. Also arrived at the destination, I could not determine, because we arrived there after darkness.

I was much surprised at that time when we were taken to a prison or penitentiary. The reception at this penitentiary was not only surprising but shocking as up to this point I was not used to it from the United States Army, to be treated otherwise than this was agreed upon in the Convention of Geneva.

We leaving the truck which was going one after the other, the baggage was taken away from me. Thereupon, an American soldier made a sign with his hand, told me to move up to the next floor. Approximately every 5 to 10 meters there was an American soldier standing, who received me with much shouting. Each one had in his hand

a wooden stick, made gestures with this stick in the air, respectively wanted me to get up there quickly.

Mr. CHAMBERS. Did any of them strike you with the sticks?

Mr. REISER. If I do not run fast enough, I was hurried up with this stick and beaten over the back. In this manner I had to climb two flights in the prison and had to run along the hall until I was shown into a cell. In this cell was an American officer who took my name and other data.

Then I was taken from this cell to another cell which was about three to four cells away from the original one. I must say I was glad, after I was finally alone in this cell, for at least I was alone and I could think about this chase I had gone through and relax.

From this cell I could hear how it happened to other comrades of mine who also were brought up there, for the shouting which was carried out by the guards, was still keeping up.

After about 5 minutes another comrade entered into my cell, and approximately 5 minutes later, another two comrades entered the cell so that we were about four altogether.

Where the other men were concerned, they were young soldiers who were younger than I was, and from my conversations which I had with them, and the impressions that I have gained, I could draw the conclusion that they were much impressed by the manner with which they were treated.

Mr. CHAMBERS. May I interrupt you here now?

At this time you were 24 years old?

Mr. REISER. No, I was already 25.

Mr. CHAMBERS. How old were these younger soldiers?

Mr. REISER. Between 18 and 20. One was very young, I do not exactly know his age.

Mr. CHAMBERS. What do you mean by "very young," about 18?

Mr. REISER. Hardly 18, could have been, because he told me that he became soldier right after his membership with the Hitler Youth in 1944.

Mr. CHAMBERS. How old were the other three, do you know?

Mr. REISER. I cannot say it exactly, but approximately at the age of 19, 20 years.

Mr. CHAMBERS. Did you know these comrades?

Mr. REISER. One was of the regiment Peiper, of the Second Company. His name was Kuehn. The other two were not of the Regiment Peiper but of the combat team which at that time was under his orders—Peiper's. One certainly belonged to the Third Armored Battalion which Major Diefenthal commanded.

Mr. CHAMBERS. Then you had known these people long enough to recognize them and know that they were in your regiment or combat team?

Mr. REISER. It is this way: The regiment Peiper was approximately 1,500 men strong, and as adjutant of the battalion I could not know all the men of the regiment by name or sight.

Mr. CHAMBERS. Did you say adjutant of this battalion, or adjutant of this regiment?

Mr. REISER. I was adjutant of the battalion, within the regiment Peiper.

Mr. CHAMBERS. You were not the regimental adjutant?

Mr. REISER. No.

Mr. CHAMBERS. Which battalion?

Mr. REISER. The First Battalion.

Mr. CHAMBERS. Who was your commanding officer?

Mr. REISER. Major Poetchke.

Mr. CHAMBERS. I have been a battalion and regimental adjutant, so you couldn't be expected to know everybody by name in your outfit.

Mr. REISER. Yes. The man counsel previously mentioned was in my memory because of the fact that he was of the second company, of which I previously was a member.

Mr. CHAMBERS. I see. Well, these people, you had known some of these people for 6 months or a year—or, how long had you known some of them?

Mr. REISER. Of these four, or of these three?

Mr. CHAMBERS. Well, you were one, you were one, and there were three others.

Mr. REISER. Of these three?

Mr. CHAMBERS. Yes.

Mr. REISER. Two I have certainly not known but Kuehn I could have possibly known as a member of the regiment.

Mr. CHAMBERS. Did these boys tell you how long they had been in the regiment or combat team?

Mr. REISER. During the days which I was together with them in Schwabisch Hall in one cell, we have discussed matters of our time of service, as well as the various attacks, also the Ardennes attack, in that cell?

Mr. CHAMBERS. And had these boys been with you on the eastern front?

Mr. REISER. That I cannot say any more.

Mr. CHAMBERS. As a matter of fact these boys had seen some action, they had been in the service for quite a few months, or longer, had they not?

Mr. REISER. Yes, that I know for sure that they were soldiers for several months.

Mr. GUNTHER. Shall he continue?

Mr. CHAMBERS. Yes.

I want to tell why I was asking these questions, because I think it is important.

I was not a soldier, I was a marine, but I was interested in talking about these very young soldiers, because actually the ages of your comrades are just about what we always had in the Marine Corps, 18 up to about 21 and 22.

Now, proceed with your statement.

Mr. REISER. In this cell which at normal times probably only used by one man, we were four; and after nobody cared further for us, and in the meantime it was already midnight. We prepared ourselves to stay there overnight, all four of us.

Mr. CHAMBERS. Were there bunks in the room?

Mr. REISER. There was one bed in the cell.

Mr. CHAMBERS. Was there a toilet?

Mr. REISER. There was a water toilet.

Mr. CHAMBERS. Were these cells in a different wing of the prison from the cells in which you were later interrogated?

Mr. REISER. Yes. They were in another wing in the so-called former penitentiary building.

Mr. CHAMBERS. So that when you later were taken for interrogation, you had to go back and forth across a court?

Mr. REISER. It could be that I went through the courtyard, because I was taken down the stairs with a black hood over my head, and I felt that I walked over gravel for a short while.

Mr. CHAMBERS. I know. As a matter of fact when they finally took the prisoners to Dachau, didn't you have a chance to see the court, and something about the prison because you were no longer under a hood?

Mr. REISER. When I was brought to Dachau, the truck was immediately in front of the gate from which we were taken without a hood.

Mr. CHAMBERS. Very well. I wanted to get that clear, because as I remember, most of the prisoners were over here [indicating], and they came down through a court and up into the interrogation section, is that correct?

Mr. REISER. That is correct, without any doubt. I could not see it for the first time, but later on, I saw it after I was in the room where the interrogations were taking place, where you would look out of the window.

Mr. CHAMBERS. Very well, go ahead.

Mr. REISER. And on the first night, when two rested on the bed, another two on the floor, and thus we changed during those 4 or 5 days that we were all in the cell. Ones would sleep on the bed and ones on the other.

Mr. CHAMBERS. They never put any more beds in the cell?

Mr. REISER. So long as I was in the cell, and this was until after Christmas, no other bed was brought into the cell.

Mr. CHAMBERS. Did they feed you?

Mr. REISER. Yes. We had been fed not on the very evening that we arrived, but on the beginning of the next day we received our food.

Mr. CHAMBERS. What did they do, give you two meals a day or one, or three, or how many?

Mr. REISER. Usually there was three meals, once in the morning, once at noon, and once in the evening; but there were also days when there were only twice meals, respectively, instead of the normal food, water, and bread. However, I can say this only out of my own experience.

Mr. CHAMBERS. On how many occasions did you get only bread and water?

Mr. REISER. Five days.

Mr. CHAMBERS. Do you recall approximately when that was?

Mr. REISER. That was in January.

Mr. CHAMBERS. And you mean for 5 days you had nothing but bread and water?

Mr. REISER. Yes.

Mr. CHAMBERS. Did they tell you why you got nothing but bread and water?

Mr. REISER. One day the cell was opened and a printed slip was passed in, upon which was written that the prisoners are punished with water and bread because on several mess gears the names of internees was engraved.

Mr. CHAMBERS. Was that against the regulations?

Mr. REISER. Prison regulations have never been made known to me.

Mr. CHAMBERS. Did they tell you not to try to communicate with other prisoners?

Mr. REISER. At that time, not yet; merely at the second interrogation I was told that I had no authorization to speak to other prisoners or to talk to them.

Mr. CHAMBERS. I know what you are telling me about the bread and water is true, because I have already found out about that.

There is, however, testimony on that by our doctors and they said that when they found, on their inspection, that the prisoners were on bread and water, that they directed, that they told the investigating staff this should no longer be done, that they were responsible for the medical care of the prisoners, and that thereafter you went back on full rations.

Mr. REISER. That may be correct. Anyway I had 4 days and 2 meals of the day had with water and bread.

Mr. CHAMBERS. I think I also in fairness to our doctors should say that there were only two rations, only missed two rations. In the Marine Corps, that means two full days, but there, you people in your cells were put on bread and water, and you said it lasted 4 days, and two meals?

Mr. REISER. No, at that time in January 1946, I was already alone in the cell.

Mr. CHAMBERS. I see. Proceed.

Mr. REISER. The next day when we were fed, we were still all four in the cell.

Mr. CHAMBERS. Excuse me. You say "the next day."

This bread and water thing happened after you were alone in the cell—please get the continuity straight.

Mr. REISER. On the next day after my arrival—

Mr. CHAMBERS. I see.

Mr. REISER. We were fed, we received water for washing and a razor, and in the late evening an American officer and a sergeant ordered us to undress completely, to put our clothes and the contents of the pockets in one pile, and undressed to face the wall. Thereupon, our clothes were checked, the contents of the pocket was completely emptied, shoelaces, suspenders, scarves, and so forth were taken away from us and with the items of value which were contained in the pockets, thrown on the floor in front of the cell.

Mr. CHAMBERS. Well, now, when you say "thrown on the floor," do you mean laid outside, or thrown down or how?

Mr. REISER. This went about very quickly, and first everything was put on the floor within the cell, and thereafter the entire stuff was then thrown outside of the cell.

Mr. CHAMBERS. Did they then give you a prison uniform, or did they give you back your own clothing?

Mr. REISER. No, no uniform was given to us, but just our ordinary—our underwear and our uniforms back, with the exception of the matters that I have mentioned before.

Mr. CHAMBERS. Well, in other words they didn't have prison uniforms for you. They searched you, took away your valuables, your scarves, and your shoelaces and took your valuables away and gave you back your clothing and thereafter that is what you wore in prison, is that correct?

Mr. REISER. That is correct.

Mr. CHAMBERS. One thing also, how long were you at Schwabisch Hall, about 4 or 5 months?

Mr. REISER. Approximately 5 months.

Mr. CHAMBERS. During that time did they ever change your uniforms or give you any other underwear or give you any clothing at all?

Mr. REISER. Yes; on the next day after we had been deprived of our valuables, we received prisoners' underwear and prisoners' clothing, with the exception of the overcoats and the shoes. Those matters we could keep. If I remember well, during our stay in Schwabisch Hall our underwear was changed either every week or every 2 weeks.

Mr. CHAMBERS. I understand.

Did I understand you correctly a minute ago, you said they gave you a razor and water to wash with?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. Proceed, thank you.

Mr. REISER. Approximately on the fourth day that I was in Schwabisch Hall, in the forenoon the door of the cell was opened and an American soldier appeared, had a piece of paper in his hand on which a name was written and asked who this man was. This was the afore-mentioned Kuehn. After that Kuehn had received a black hood and was led away. After approximately a half an hour, this American soldier appeared again, took the overcoat and blankets and toilet articles of Kuehn and disappeared with it.

During the next 2 weeks nothing else happened in the routine course of the day. We received our food in the morning, noon, and evenings; received our wash water which, however, was measured very shortly, and otherwise we were left alone.

After Christmas, approximately 27th or 28th of December an American soldier again appeared in our cell, asked for my name and asked me to follow. Like Kuehn, I also received a black hood over my head and I was taken away by an American soldier. He accompanied me in such a manner that he held me on the right or left upper arm, led me along the hall and down the stairs. Then I heard him speak to somebody. A door was opened. Then apparently we went across the court. Again a door was opened. Up the stairs, along a few halls—anyway such that I could not orient myself, and then again I was led into a room and I was let stand there with the hood over my head. After a while somebody entered the cell.

Mr. CHAMBERS. May I interrupt?

About what time of day was this when this soldier came for you?

Mr. REISER. Morning, approximately 9 o'clock.

Mr. CHAMBERS. Thank you.

Mr. REISER. Then somebody entered the cell and the hood was taken off my face. As I was in a so-called interrogation cell. There was one small table, two chairs and built-in water toilet. The man who also came to the cell outside of the guard was a United States member of the Army. At that time I didn't know who he was, only during the next weeks and months I was acquainted with the fact that he was Major or Mr. Thon.

Mr. CHAMBERS. Did you learn who he was until you went up to Dachau, to the trial?

Mr. REISER. I knew only that he was only addressed with the name of "Harry" and assumed that this was his first name.

Mr. CHAMBERS. Then you found out he was Harry Thon at a later time?

Mr. REISER. Yes. During the trial we found out he was Harry Thon. This gentleman took his seat at the table and asked me whether my name was Clotten. I said no, and told him that my name was Reiser. He was surprised and asked the guard something in English, got up and left the room.

After approximately 2 minutes he returned. "It is correct" he said; "I was wrong."

Mr. CHAMBERS. What happened, Reiser? Had the guard gotten the wrong man?

Mr. REISER. That I do not believe, but I think that Mr. Thon went into the wrong cell.

Mr. CHAMBERS. All right.

Mr. REISER. After approximately 5 minutes an American captain entered. This was Captain Shumacker. At that time I didn't know the name as yet, but only a few weeks later I found out about his name. He told me that he was going to interrogate me, that an interpreter would interpret all his questions and that I should answer them. He warned me to tell the truth, not to keep anything away, because I would make myself punishable.

After finding out about my personal datas, he asked me why I was here. I told him that nobody told me, but I could imagine why I was here, for during the time as PW, which I have passed since the capitulation of Germany, I had been interrogated several times, and this on account of the happenings during the Ardennes offensive. Besides, a great number of the regiment Peiper were assembled at Zuffenhausen, and after I had been questioned there, with these men, I could imagine that this interrogation was in connection with this.

Mr. CHAMBERS. Well, as a matter of fact, at Zuffenhausen during the interrogation, all of you were together and you had a chance to talk it over, and anybody could have known what was up, what they were after, isn't that correct?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. I don't suppose you want to answer this. If you don't, it's perfectly all right with me.

It is natural to expect that at Zuffenhausen all you people talked it over and wanted to know what they were trying to find out, and I expect if I had been there I would have tried to figure out what I would have to say in advance.

Mr. REISER. It is natural that the happenings in Malmedy incident have been discussed.

Mr. CHAMBERS. That is right. So that, as I understand it from what had happened, at the interrogations at Zuffenhausen, the boys had a chance to talk it over, and they figured out pretty well that they were going to be investigated on the Malmedy matters when they came to Schwabisch Hall.

Mr. REISER. I personally figured that I was brought to Schwabisch Hall for that reason.

Mr. CHAMBERS. Go ahead.



Mr. REISER. Because the various movements from one camp to another, and the interrogations were in connection with the primary interrogations about Malmedy.

Mr. CHAMBERS. Very well.

Mr. REISER. Moreover, we have read American newspapers while PW, the Stars and Stripes, and Life, where we found articles and pictures about the so-called Malmedy massacre, and the activities in there.

Mr. CHAMBERS. So that there was no doubt in your mind that the Malmedy massacres had happened, and you all were at that time under the gun, they were checking you to see if you did it, is that correct?

Mr. REISER. I do not want to say that. These things were brought by the press and pictured as something that happened.

Mr. CHAMBERS. That was an unfair question. I do not want to try to get at anything that looks like evidence about the massacres. I think they have been well established and that is not why we are talking here today.

I'm sorry.

Mr. REISER. Very well.

Mr. CHAMBERS. Proceed with Captain Shumacker.

Mr. REISER. Captain Shumacker, to the beginning Captain Shumacker let me tell, more than asking me questions, about the time which I have had in the Army. He wanted to know when I was assigned to the regiment Peiper, and what type of functions I had there; when and in which functions I participated in the offensive, and then I had to say in detail how my route was carried out on the 17th of December 1944. For this purpose he brought some maps on which I checked exactly which routes and places I moved upon. I had told him about the route on the 17th of November, very detailed—arrived in the sector south of Malmedy and the so-called road crossing. He asked then very many questions which I answered correctly and after that he asked me to write a declaration about the Malmedy statement, or about the statements made.

Mr. CHAMBERS. At this time, I would like to go off the record.

(There was discussion off the record.)

Mr. CHAMBERS. Proceed with your discussion. Go ahead.

Mr. REISER. He brought me then 20 to 30 sheets of paper and pencil and told me to write down what I had said before. This was shortly before noon dinner. I have started immediately and have made my declaration in written form, interrupted by the mealtime, continued in the afternoon with writing and against 5 o'clock in the afternoon, I was brought, through the American soldier who functioned as interpreter, to another cell. The written statements I should take with me and continue in the other cell.

This cell was on the same floor, however a few corners further, and I could not exactly say where I was because the route to that cell I had to take with the hood on my face.

I finished this declaration yet in the same evening; waited for it to be called for, but beside the personnel which gave me food and wash water nobody appeared.

Mr. CHAMBERS. You were in a cell by yourself now, did they bring your toilet articles to you?

Mr. REISER. Yes.

Mr. CHAMBERS. You understand a little English?

Mr. REISER. Very little.

Mr. CHAMBERS. Did you study it?

Mr. REISER. No—no.

Mr. CHAMBERS. Go ahead.

Mr. REISER. On the 2d or 3d of January Mr. Thon appeared, and later Captain Shumacker took my statement, left with it and returned a half hour later and took my oath for this declaration.

Mr. CHAMBERS. Now, this was the first declaration and was taken in January, is that correct?

Mr. REISER. Yes.

Mr. CHAMBERS. All right.

Mr. REISER. I was taken from this cell two or three days later, a flight above exactly into those cells which were located above the so-called interrogation cells. I could not see this either, but during the next days, weeks, and months during which I was in this cell, I had been convinced that I was above the interrogation cells.

Mr. CHAMBERS. Now, this cell they took you to at this time, did it have a bunk in it, and toilet, window and so on?

Mr. REISER. In this cell were two beds, table and chair and a toilet.

Mr. CHAMBERS. Was there anybody in there with you?

Mr. REISER. No, I was alone.

Mr. CHAMBERS. But there were two beds and a table, in other words after your interrogation up to this point you had always had a bed, the cells you were in had been average prison cells?

Mr. REISER. Yes, this was a regular prison cell.

Mr. CHAMBERS. They were still feeding you all right?

Mr. REISER. Yes.

Mr. CHAMBERS. Excuse me. Was there ever any time you didn't get enough water to drink, Reiser?

Mr. REISER. Drinking water there was none at all.

Mr. CHAMBERS. Well, you got water to drink with the meals, though, didn't you?

Mr. REISER. No. In the mornings the cells were opened and a small bowl with wash water was passed in.

Mr. CHAMBERS. Wait a minute. This doesn't make sense to me. Let's see if we can get it. They were feeding you and bringing you water but you were not given water to drink?

Mr. REISER. No. During the entire time in Schwabisch Hall I have not received a drinking water once. We received also a tooth brush and tooth paste but there was nothing else left to me but to take the water out of the bowl for that purpose before I had washed myself.

Mr. CHAMBERS. Let's get at this. I have heard this before. I want to pin it down a little bit. Did they give you coffee to drink?

Mr. REISER. Yes.

Mr. CHAMBERS. Did they give you anything else to drink other than water, milk or anything like that?

Mr. REISER. There was no milk.

Mr. CHAMBERS. Coffee?

Mr. REISER. Coffee once in a while.

Mr. CHAMBERS. Wait. Coffee once in a while, or coffee once a day?

Mr. REISER. Not regularly. It was usually like this, that in the morning there was either soup or coffee and bread, but there was never in the morning soup and coffee and bread.

Mr. CHAMBERS. All right.

Mr. REISER. Here and there and maybe in the week once there was fruit juice to drink.

Mr. CHAMBERS. Well, to me, Reiser, it just doesn't make sense that they would give you food, they would give you wash water, they would give you toilet articles and a razor and they would give you clean underwear once a week, and not give you water to drink, if you wanted it.

Did you ever ask them for water?

Mr. REISER. Yes, I have asked for it.

Mr. CHAMBERS. And you didn't get it?

Mr. REISER. No, because the personnel that brought us these things were not allowed to talk to us. When I talked to them they only shook their heads, and I had to gain the impression that they were not allowed to speak to me and therefore did not go into my questions.

Mr. CHAMBERS. Go back to the drinking. You said they gave you very little water for washing.

Mr. REISER. Yes.

Mr. CHAMBERS. Why didn't you drink that and wash out of the toilet, instead of drinking out of the toilet?

Mr. REISER. It was such that we received the wash water in the morning, and in the morning at half past six or seven, I did not have the thirst to drink water; and on the other hand, we had to wash ourselves immediately because later on the bowl was taken away again.

Mr. CHAMBERS. I can understand that. I'm not trying to say you are not telling the truth, but I cannot understand how there is any consistency in these people if they were trying to be mean, not to take away your food and take away your toilet articles, and your wash water and everything else, if they took away your drinking water.

Mr. REISER. It is a fact that I have been wondering about, like I have been wondering about many other facts in Schwabisch Hall.

For instance I received once also a pack of tobacco, cigarette paper, but no matches although I have asked for them.

Mr. CHAMBERS. Go ahead with the rest of your story.

Mr. REISER. Yes.

In this new cell I was located above the interrogation cells. I was staying about 2½ months. Nobody cared for me until end of February or beginning of March.

Mr. CHAMBERS. When you said nobody cared for you, that means nobody came to you and questioned you or anything of that kind?

Mr. REISER. I couldn't—yes. That means nobody of the interrogation personnel appeared in my cell, but merely the personnel which took care of the feeding and care approached me when the time came around.

During this time, I tried twice to speak to an American officer. I have submitted this request verbally as well as in written form to the guard.

Mr. CHAMBERS. What?

Mr. REISER. To speak to an American.

Mr. CHAMBERS. Go ahead.

Mr. REISER. But nobody appeared nor was my request granted.

Approximately during the second half of January, one evening, I was—my attention was drawn to several noises. I had opened the window, and heard thus very loud voices. I approached the opened window and tried to determine where the voices came from and what was being discussed. Hereby I determined that the voices came from the flight below me. I heard only German voices, very loud and thus the words were said, "You pig. You lie. You have shot——"

This was not a continuing sentence which I could understand, but only parts that I could absorb. From this time on I was certain that I was located above the interrogation cells.

MR. CHAMBERS. Now, if I may interrupt, this is the courtyard [indicating a drawing]?

MR. REISER. Yes.

MR. CHAMBERS. This is where you were originally, as I understand it.

MR. REISER. Here is the street.

MR. CHAMBERS. This was the dispensary?

MR. REISER. Dispensary, and hospital here, not——

MR. CHAMBERS. Here or here?

MR. REISER. Dispensary and kitchen.

MR. CHAMBERS. Dispensary, on the second floor, kitchen on the first deck?

MR. REISER. Yes.

MR. CHAMBERS. Where were you?

MR. REISER. I cannot tell you exactly because this area I could not see from here. Anyway, from my window it looked as follows—may I give a sketch?

The building in which I was located, I could see from my window from here [sketching on a piece of paper], and I could determine that it was shaped like this, in a part. Down below was the garden and former winter garden.

MR. CHAMBERS. I think I know, now. This was a garden?

MR. REISER. It was a garden. Here the personnel played volley ball and so forth and table tennis.

MR. CHAMBERS. The dispensary is over here?

MR. REISER. No; the dispensary must have been here somewhere. Here was a big chimney.

MR. CHAMBERS. Could you see into the dispensary from your window?

MR. REISER. No, sir. No; I could not see from here into the dispensary.

MR. CHAMBERS. Then, I am confused. I have been down there and I think I know where these places are.

If you were in this wing——

MR. REISER. Here is the church. From my window I could see the church and could see the private houses. Here was a high wall in front of the private houses. Here was some administrative building and from my window to the right I could just see a part of the street and the creek, and then further up to the right it went up, and there were houses.

MR. CHAMBERS. I have got the picture now. I want to ask you one thing: Could you see the garden?

MR. REISER. Yes.

MR. CHAMBERS. Was there anything in that garden, was there a pile, some canvas or tarpaulins over a pile of material?

Mr. REISER. Here there was some sort of a garage, and here was a big tank about 8 to 10 meters long.

Mr. CHAMBERS. You could see the garden all right?

Mr. REISER. Yes. There was the winter garden and here was a small sports area for it.

Mr. CHAMBERS. What were they growing in the garden?

Mr. REISER. Yes. In spring they had some vegetables there. Besides there were about three or four fruit trees in the garden.

Mr. CHAMBERS. You didn't see any big pile of lumber with canvas over it in the garden?

Mr. REISER. From this window I have not seen it.

Mr. CHAMBERS. But you could see all the garden?

Mr. REISER. This garden, yes. However, I know that in front of the dispensary there is also a garden.

Mr. CHAMBERS. All right, go ahead.

Mr. REISER. Based on the parts of conversations which I could catch on the window, I came to the decision that below me the interrogation cells were located, and when I was led to the next interrogation, my assumption was confirmed because I could, out of the window, within the interrogation room, see the same things as I have seen above.

Mr. CHAMBERS. May I clarify one thing. When you went next to the interrogation cells, did you go downstairs?

Mr. REISER. Yes; one flight.

Mr. CHAMBERS. Were you on the first deck or second deck then?

Mr. REISER. I don't know what this gentleman would assume to be the first floor, being an American.

Mr. CHAMBERS. Was it the ground floor?

Mr. REISER. Second floor in American, and I was—the interrogation room was, according to our standards, in the second floor and my room was above on the third floor.

Mr. CHAMBERS. Very well. Go ahead.

Mr. REISER. The fact that I was located above the interrogation cells was very agreeable to me, as I was left in the dark about the investigations and so forth, it was natural that I was trying to—from a humane viewpoint, to find out something about the activities.

Mr. CHAMBERS. Let's see. You went into this cell right after Christmas, is that correct?

Mr. REISER. After New Year's, right after I make the first declaration.

Mr. CHAMBERS. When did you hear this, "You pig. You swine. You shot ——"?

Mr. REISER. Approximately the 15th or middle of January.

Mr. CHAMBERS. Up until that time you had heard nothing?

Mr. REISER. I didn't hear—I haven't heard it.

Mr. CHAMBERS. All right, go ahead.

Mr. REISER. It was natural that I paid attention to what was spoken down below, and either I had the window opened or I listened to the central heating. The central heating was not installed as in the first manner, as it was in the first block where I was first interned, where the heating bodies were in the cells; but in this block, one tube came up in the room which went down again in about 15 centimeters distance, 8 to 10 centimeters in diameter.

Mr. CHAMBERS. So that you could hear what went on in one room by listening over here, is that right?

Mr. REISER. I could not always hear, because if there was spoken sensibly, as one speaker here now, one could not overhear the conversation; but, if it was spoken very loudly and shouted, then I would be able to understand.

Mr. CHAMBERS. Then, it is reasonable to assume that from the time you went in the cell, until you heard the first shouts, that you had heard no one shouting or raising their voice or no one hollering or calling for help?

Mr. REISER. Yes.

Mr. CHAMBERS. Go ahead.

Mr. REISER. From this time I tried to listen to all conversations that were carried on in a loud manner down below. I was not able to get a continuity of the matter spoken.

For instance, I did never know who was interrogated down below, but I knew, for instance, who was the interrogator.

Mr. CHAMBERS. All right. Let's go ahead here, now.

Mr. REISER. I did not know who was interrogated, but I could determine from the voice of the interrogator who was the interrogator. At this point and at this time I was only acquainted with the voices of Captain Shumacker and Mr. Thon.

Mr. CHAMBERS. Well, now, Captain Shumacker did not speak German; so, it wouldn't be Shumacker, and it wasn't Thon. So that cuts those two out.

Mr. REISER. Captain Shumacker—I did not recognize Captain Shumacker's voice, but I heard the voice of Mr. Thon, and chiefly very often another voice of which I did not know whom it belonged to.

Mr. CHAMBERS. Chiefly other voices; do you mean at some other time?

Mr. REISER. No; during that time.

Mr. CHAMBERS. This same time?

Mr. REISER. Yes.

Mr. CHAMBERS. All right.

Mr. REISER. It was often such that I have heard two voices at the same time.

Mr. CHAMBERS. I am afraid I am not getting my questions across. What I am trying to find out is—did you hear more than one voice at this time, at this particular interrogation, or were you talking about other voices at subsequent interrogations?

Mr. REISER. You mean, on the first evening when I heard the voices?

Mr. CHAMBERS. Yes.

Mr. REISER. On the first evening, I heard only one voice, and this was not Captain Shumacker, and not Thon; but afterward, in the following days, I also heard the voice of Mr. Thon; almost daily, in February, I heard very loud voices and yelling. I did not only hear voices of the interrogators, but also often heard yells.

Mr. CHAMBERS. Now, up until nearly the end of January, you did not hear yells or loud voices except that one time, around January 15; is that correct?

Mr. REISER. No; until the 15th of January.

Mr. CHAMBERS. But, along in February, you began to hear a lot of yells and loud voices with Mr. Thon's voice and other voices?

Mr. REISER. Yes.

Mr. CHAMBERS. Very well. Go ahead.

MR. REISER. I at that time, I have certainly naturally thought about this, how I can bring the loud voices and yells into connection; and, out of the contents of the parts of words that I received, I became convinced that, in the interrogation cells down below, it was attempted through the interrogation personnel to bring the PW's that were interrogated to a statement, because, if one says, "You lied. You have shot. You are a pig," I must assume that the other man says "No, I have not shot."

MR. CHAMBERS. Well, I accept that. I can see your logic.

On the other hand, I would like to ask this: Could you hear any of the answers that were being given?

MR. REISER. Yes.

MR. CHAMBERS. You could?

MR. REISER. One evening—it could have been half past 5—I heard some very loud voices. I tried to catch what was being discussed below. I heard, as Mr. Perl called loudly, "Christ has given you the order."

Thereupon, I heard another voice, "Such an order I have not received from Christ."

MR. CHAMBERS. Well now, Mr. Reiser, if I may interrupt you. You, up until now, haven't been able to identify Mr. Perl by voice or sight. How did you know that was Mr. Perl?

MR. REISER. At that time I did not know that voice, which was unknown to me. I did not know that the voice was the one of First Lieutenant Perl, but afterward I had very much to do with First Lieutenant Perl.

MR. CHAMBERS. I see. In other words, you recognized—later on you came to know Perl's voice; and, therefore, you knew that it was Mr. Perl you heard this night?

MR. REISER. Yes.

MR. CHAMBERS. I understand. Go ahead.

First, these voices of course they were loud?

MR. REISER. Yes.

MR. CHAMBERS. This was daytime, and I guess at nighttime you could hear them much better, so that you could hear what they said even when they talked reasonably, like we are doing here.

MR. REISER. This was approximately in the evening at half past 5.

MR. CHAMBERS. How about 8 or 9 o'clock in the night; could you hear them better?

MR. REISER. I could hear better, only I was kept from doing so.

MR. CHAMBERS. At night?

MR. REISER. Yes. It was because of the guards who were walking up and down the hall, and looked into the peepholes.

MR. CHAMBERS. Did the guards let you listen in the daytime? And didn't let you listen at night; is that the story?

MR. REISER. Also, not that, but at night I could not get out of bed and stand on the window or at the radiator, because that would have been obvious to the guards; while during the day I could pass by the window, or pass by the radiator, and stay there for a while without the guard noticing anything suspicious.

MR. CHAMBERS. Were there lights in the cell at night?

MR. REISER. The light was turned out—off from the outside. Very often it burned, very often; and when the guard was checking he

either turned out the light, looked and turned it out, or he looked into the dark cell.

Mr. CHAMBERS. Well, as a matter of fact, did they do much work at night?

Mr. REISER. Without any doubt.

Mr. CHAMBERS. They did work at night?

Mr. REISER. Down below, the interrogations.

Mr. CHAMBERS. All right; go ahead.

Mr. REISER. I have tried many times to listen, and twice or three times I had been warned by the guards to get away from the radiator while I was listening. It was such that the radiator was located immediately at the left side of the cell when entering through the door, and when I was located there standing he could not see me, looking through his peephole.

Mr. CHAMBERS. I accept what you said without question. Let's go ahead.

Mr. REISER. Approximately at the end of February or beginning of March, I was finally taken to an interrogation again; in the usual manner, with the hood, I was led down one flight and brought into—taken into a cell. There was the United States first lieutenant, First Lieutenant Perl, and a former coleader, Lieutenant Hennecke.

First Lieutenant Perl declared that Lieutenant Hennecke has mentioned my name as a witness. Hennecke at that time had a so-called schnell process, schnell trial, and he has requested that I appear as a witness, and after he, Lieutenant Perl was his defendant, so he asked me to come.

I told him that I would like to know what this was all about, whereupon Perl answered, "You know that in La Gleize Hennecke has shot American PW's, and he pretends to have received an order for that by Colonel Peiper or Major Poetsche."

I told First Lieutenant Perl that I know nothing about it, and I must find out details about the circumstances. Whereupon he told Lieutenant Hennecke, "Tell Reiser."

Hennecke appeared to me completely changed. I had him approximately 3 months before this Zuffenhausen, I had seen him and had to determine that he had changed very much, disregarding the fact that he had also prison clothes. He was also otherwise changed. He looked very bad, was pale, thin, very nervous, smoked constantly, and started immediately to talk and said, "You have to help me."

Mr. CHAMBERS. Not to be facetious, but apparently they gave Hennecke not only cigarettes but also gave him matches?

Mr. REISER. Without any doubt.

Besides, Lieutenant Perl was very liberal and offered him, as well as me, cigarettes. Lieutenant Perl left for approximately 2 minutes, but I was very surprised about it because he left us two alone. During this time Hennecke told me, "I am completely finished, almost no longer normal, and I don't know any more what is true, what I have done or seen myself, and what is here present as fact and truth."

Mr. CHAMBERS. Why do you think Lieutenant Perl left you alone with Hennecke?

Mr. REISER. I have thought this over already at that time. Naturally, not the same moment during which I spoke to Hennecke but afterward when I again was in my cell; and I thought that, if Lieu-



tenant Perl wants to give us a chance to discuss something or to refresh our memories, 2 minutes weren't much to talk, for the happenings which were at debate at that time, with 2 years back; they were 2 years back at that time; and though I thought much about it at that time, and the others may have, too, so there were still, oh, many impressions of combat left in one's mind from 1945, so that small details about the presence of various persons at various times and places could not be answered immediately with "Yes" or "No."

Perl returned very soon, and Hennecke told me then, in the presence of Lieutenant Perl, that I should recall how Major Poetsche or Colonel Peiper—

MR. CHAMBERS. Will you read that part of the answer over again, please.

(The incomplete answer of the witness was read by the reporter.)

MR. REISER (continuing). At the CP of Poetsche, he received the order to order a firing squad.

MR. CHAMBERS. To offer or order?

MR. REISER. To order a firing squad, to deploy a firing squad.

I told Hennecke that I remember exactly the date and the situation at that time and told the same to Lieutenant Perl, that I can remember the situation exactly. However, this order given to Hennecke was meant to be for a German soldier who had deserted. Lieutenant Perl waved his hands and said, "This is a different affair which we know, too, but on the same day Hennecke has also received another order to shoot American soldiers."

At that time I said immediately that this is not possible, because I was the adjutant all the time at the CP of Poetsche, have listened to the orders that were given, and have received all written reports. Lieutenant Perl said then to Hennecke, "Hennecke, I regret it appears that Reiser does not want to help you."

Whereupon I said, "It is not a question of not wanting to help, but Hennecke is stating here something which has never taken place."

Whereupon Lieutenant Perl said, "If you do not believe me or Hennecke, I can bring you also another witness."

He called for an American soldier and he appeared, and very shortly after he brought First Lieutenant Rumpf. Rumpf said, in a sense, about the same as Hennecke, and he stated that Hennecke came to him and told him, by orders of Peiper or Poetsche, he, too, should order a firing squad.

I replied to Rumpf, "Naturally, on this day an order was given, which was brought to you, Hennecke, that you should order a firing squad for the deserter of the company."

Also here Lieutenant Perl waved his hand. "This is to us a known fact which is not in connection with the case, Hennecke."

The conversation was thus finished for me. Rumpf was led away, and to me Lieutenant Perl said, "I will call you again."

The next day he called me again, again into one of those interrogation cells, and told me that it is again about the case Hennecke, that I should help him, Hennecke, because he has a schnell trial, because of shooting of American soldiers, and that I was the only witness who could help him. I told him there should be other former members of the regiment present who could tell about the facts of that day, and told him several names—for instance, Lieutenant Teininger, who was

ordnance officer, which is administrator; then Lieutenant Buchheim; and specially the regimental commander, Colonel Peiper.

Lieutenant Perl replied that Teininger and Buchheim were not there; and, pertaining to Peiper, he said, "You cannot name that person who has given the order, who should now speak on behalf of Hennecke, because it is clear that Hennecke has ordered the firing squad and that the American soldiers were shot."

I declared that this was impossible, for the prisoners who were with us in La Gleize were all left behind in La Gleize, and only one Major McGown is go with us from La Gleize. He told me he knew something about that, too, but in spite of that not only soldiers were left behind in La Gleize and returned to the Americans but have also been shot through by firing squad. I said "No" to that possibility again, and told him merely about the battle on the 21st, 22d, and 23d of December, where it came to a closed battle around the place called La Gleize, and at that time American troops were already near the first houses of La Gleize and American PW's, during this shooting, have tried to flee.

Mr. CHAMBERS. Let me ask a question there. This is going a little beyond what I should be doing.

These American soldiers that were shot while they were trying to flee or escape, were these those who had been on working parties, carrying ammunition and things like that?

Mr. REISER. I cannot say exactly whether these specific men were at that time used for that detail.

Mr. CHAMBERS. The point I was trying to get at, I heard some place that there were some American soldiers who had been used on working details to carry ammunition and things of that type, and I wondered if these were the ones.

Mr. REISER. Yes; that was also discussed during the proceedings.

Mr. CHAMBERS. It is true that there were some working parties; isn't that correct?

Mr. REISER. Once or twice American soldiers were used at the time when the combat team Peiper, which was surrounded, has received ammunition and supplies through the air. They were used for the transportation of munitions.

Mr. CHAMBERS. All right; go ahead.

Mr. REISER. Lieutenant Perl told me that we have several witnesses and we also have the noncoms who was present at this command, and on the facts nothing can be changed.

I told him that I knew nothing about this matter, nor through my own presence or hearsay, and as adjutant I should have found out about this.

Lieutenant Perl told me that things were very bad for Hennecke, as he has nobody, his trial is running tomorrow, has another proceeding, and if he cannot bring a witness who speaks for him, and state that Hennecke has acted upon orders, then one cannot help him any more because he would be condemned to death because he took it upon himself to have American soldiers shot.

Lieutenant Perl told me that is the testimony of Hennecke; he has done everything which is humanly possible. He has again and again tried to interrupt the proceedings and postponed them in order to get witnesses, but now the court will not go into that any more.

I should think over the matter well, as I should not be able to be responsible if I would not help Hennecke by not making a statement and he would have to leave his life because of my fault; I should think this matter over very well, and I had still time that evening, and the following day he would let me come again.

The following afternoon, approximately 3 o'clock, I was again called but not brought into the usual interrogation room, but after my hood was taken from my face I found myself in a larger room, approximately 15 to 20 square meters. In this room the court was seated who was handling the accused Hennecke. Up to this time I have never been present at court proceedings.

Mr. CHAMBERS. May I interrupt?

As a battalion adjutant in a German battalion—I don't know anything about German military discipline, but were you not from time to time required to serve on or with military courts?

Mr. REISER. I was only adjutant of a battalion for a very short time.

Mr. CHAMBERS. As a German officer, don't you have the same court-martial system we have, which requires some officers to serve on courts?

Mr. REISER. Yes; but these military courts, they are only on division level, stationed on the division level.

Mr. CHAMBERS. Very well.

Mr. REISER. Therefore, I was present at a Court proceeding for the first time; and, inasmuch as I could imagine what one of these proceedings would be like—and certain imagination I had for this—I was a bit astonished, although Lieutenant Perl told me that this was a schnell trial, which would only try to determine the facts so far as there are witnesses that can be heard, and then it would judge, and then the court would make a decision on the sentence.

In the center of the room there was a large table at which several officers were seated. The table was dressed with a black cloth. In the center of the table was a cross, and to the left and to the right of the cross were burning candles. Seen from my point, to the right, was Lieutenant Perl as the defendant and on the left side was Mr. Thon as the prosecutor. Next to Mr. Thon was a secretary. In the center between the prosecutor, and defendant, and attorney was Mr. Hennecke.

Mr. CHAMBERS. May I interrupt? See if I have this clearly. Hennecke had already been through a schnell procedure; isn't that correct?

Mr. REISER. I was told that he had proceedings before that. I was not present.

Mr. CHAMBERS. Yes. Then this would appear to be at least a second that he had had?

Mr. REISER. Yes; the second proceeding.

Mr. CHAMBERS. And Mr. Perl told you that this was a schnell procedure, a schnell procedure which would hear witnesses and then the court would decide on the sentence; is that correct?

Mr. REISER. Yes.

Mr. CHAMBERS. Go ahead.

Mr. REISER. Lieutenant Perl introduced me to the present members and officers of the court as the witness Reiser, and after that I was sworn. I had to take the oath.

Mr. CHAMBERS. Did you take the oath in front of the crucifix or just raise your hand, or how?

Mr. REISER. That table on which the cross and candles were located was directly in front of me. That meant I was not this close in front, but it was about 3 meters away from me. The oath was taken, and after that Mr. Perl asked me questions about the Hennecke case. He asked me first about my personal data, determining then since when I know Hennecke, whether or not I have participated in the Ardennes offensive, where I had been on the 21st or 22d of December 1944, and afterward he asked me whether I was present at the CP on the 21st and 22d of December 1944 when Hennecke received the order by Colonel Peiper or Major Poetsche to order a firing squad for United States PW's. Hennecke was seated to the right of me, observed me all the time with a desperate look, and waited anxiously for my answers.

Naturally, I answered again that such an order to Hennecke is not known to me, and that I merely know about the shooting and the order for a firing squad for a German deserter.

At this occasion Mr. Thon started in as the prosecuting attorney. He pointed to Hennecke and said, "Have I not told you that you have given the order yourself?" Whereupon, Hennecke said, "No; I have received the order."

Lieutenant Perl asked me, "Are you sure that he has not received that order?" I told him that I was present at the CP and that no such order has not been given to Hennecke. Mr. Thon said, "But Hennecke admits he has shot some." I changed this, not "He has shot, himself," but "He has ordered a firing squad."

Mr. CHAMBERS. Go ahead.

Mr. REISER. Hennecke was then again asked by Thon about the details of the entire case, and gave information about it and I could determine that all the answers of Hennecke were correct without any doubt, with the exception of the important point that Hennecke has received the orders for a firing squad for the men of Ninth Engineers Company, for me it was at this time completely clear that Hennecke has brought in connections the order of the shooting of a German soldier with the shooting, with an American soldier.

No further questions were asked. I was dismissed, received my hood, and was brought to another cell.

Lieutenant Perl followed me immediately, gave me paper and pencil and told me to write down what I have just stated. He left me and I stayed alone.

What I said before I had written down and about an hour later I gave this to Lieutenant Perl. Later I was again led into my cell. The next day I was called again, again by Lieutenant Perl, and he told me, "You have not helped Hennecke."

Whereupon, I asked, "Has he been sentenced?"

He said, "No; he has not been sentenced yet, but nobody will be able to help him any more."

He asked me to give detailed information about the case again, and he tried again to obtain from me a confirmation of Hennecke's statements. I told him that this was impossible because it did not happen that way, but was turned such—

Mr. CHAMBERS. I don't understand that.

Mr. REISER. The actual fact was turned differently than it happened, twisted.

At this time of the interrogation it was clear to me that Hennecke was completely down with his nerves and that he, influenced by other witnesses and means, has been moved to make such statements.

It was not clear to me whether Mr. Thon, as alleged prosecuting attorney, had also interrogated Hennecke before this, and whether he succeeded through moral or physical means to bring him to such a statement. It was not clear to me which role Lieutenant Perl played as Hennecke's defendant. I thought if Mr. Perl is a defense attorney of Hennecke's, and has me as a witness, Hennecke could never have received such an order. The role of Lieutenant Perl as defense attorney was not clear to me.

At that time I could not understand Lieutenant Perl's position as the defense attorney for Hennecke. In his function the lieutenant looked for a witness for Hennecke. As such a witness in behalf of Hennecke, I appeared and stated that Hennecke did not receive an order to shoot American soldiers. As Perl said, I was the only witness that was considered for Hennecke. At that time I asked myself why Mr. Perl did not believe my statements, and that he built up his defense for Hennecke on the statements and witnesses against Hennecke.

I asked also Lieutenant Perl why he is doing that.

With this question I have also received an answer to all other questions and happenings, for Lieutenant Perl told me, "Now, it is over with the defense. Now, it is your turn."

Thereupon, I posed the question, "Then this was no proceeding in which you functioned as a defense attorney for Hennecke? And Lieutenant Perl told me that I was right."

Mr. CHAMBERS. As a matter of fact, who did tell you that he was a defense attorney and Thon was the prosecuting attorney?

(The pending question was read by the reporter.)

Mr. REISER. When I appeared for the first time before Lieutenant Perl, and Hennecke was present in the interrogation room, Lieutenant Perl told me, "I am defending Hennecke." At the court I noticed it again because he said, "I bring for the defense a witness Reiser," and at a later conversation he admitted then that it is over with the defense and that it was my turn.

Mr. CHAMBERS. As a matter of fact, Reiser, you probably remember at the trial when Perl admitted that he led Hennecke to believe he was "handling his case?"

Mr. REISER. Not "handling" but came clear to the expression that he was handling the case as his defense attorney.

Mr. CHAMBERS. At the real trial in Dachau, the point I am trying to get at is, I am corroborating the testimony here to that degree.

(A short recess was taken.)

Mr. CHAMBERS. So Perl told you that the defense was over and now it is your turn?

Mr. REISER. Yes.

Mr. CHAMBERS. All right. May I ask—I'm not going to cut you off at all, but how long do you think it will take to tell your story?

Mr. REISER. It depends on the questions in between. If I can tell it free, maybe in an hour.

Mr. CHAMBERS. Cut it as short as you can, and let's go ahead.

Mr. REISER. Now, my case comes to discussion, which is no longer important now. That means for me no longer, as my sentence has been lifted through General Clay on the 20th of March.

"Now, it is your turn. You have given orders that Hennecke orders a firing squad."

His former friendly tone changed from this moment on. He asked me to admit that, "You have given orders. All lies do not help. I can bring you so many witnesses who will make statements against you as witnesses."

I told very quietly to Mr. Perl that I know exactly what orders I have given, and I have given—if I have given such an order, I would remember this after 80 years yet. It would have been a unique matter to have given such an order, and such an order one does not give easily.

Mr. Perl maintained that he has witnesses and that they can make statements accordingly. I told Mr. Perl that I do not believe his witnesses, but I believe only in what I know. He told me, "You admitted that you have seen dead American soldiers in La Gleize, so they must have been shot, too."

I admitted that I have seen dead American soldiers, but not American soldiers who have been shot by a firing squad. He wanted to know exactly where I have seen them. I told it to him. He wanted to know whether they were in one file, how many.

My question, thereupon, "You want to know whether they were in one file because they were shot by a firing squad?" Then I said, "They did not lie in one file. They were lying dispersed. Whether or not they still had helmets and weapons, exactly I could not say that."

I described to him our position, a small village with about 30 houses in which over 1,500 German soldiers were in positions like cellars and trenches, and so forth. In addition to that, approximately 150 American PW's, and the entire village is surrounded by United States troops. We for days relentlessly have shot with artillery and other heavy weapons. In such a military position it was naturally clear that one could not move around outside of the cellars, and when this was done it was connected with the greatest dangers and for very short distances one needed at times hours. This situation was of absolutely no interest to Lieutenant Perl, and out of his questioning I came to the conclusion more and more that he would not be interested in the true facts, but that he just merely wanted a confirmation for those statements which fitted in his story which he needed for the trials.

He tried to convince me over and over again that I had given such an order. As this did not make any impression on me, he said, "We don't want anything from you; a small lieutenant such as you is not of interest to us. We are interested in your commanders, your division commanders and your Army generals. You know very well that before this offensive, this attack, the order was given out by Sepp Dietrich that during this offensive no PW's shall be made, and that everything which comes before your muzzles would have to be turned over."

I made him understand that this order was completely new to me, that I only arrived on the 17th in the morning with a mission to the Regiment Peiper, to report to the CP of Major Poetsche, and had not read the divisional orders which were given out for this particular

unit; but after I was ordered to be the adjutant for Major Poetsche, and after I had been oriented about the military situation by him, so in this case something about a so-called order for the shooting of PW's would have been made known to me.

Besides, I explained to him that on my way to the CP Poetsche, I saw some groups of American PW's who were led back to the rear—that even in La Gleize I saw a great number of PW's and that none of these soldiers have been shot but that these men were left back when we left La Gleize.

These conversations extended over hours. In the meantime sometimes Mr. Thon or Shumacker entered, listened to it shortly, made some remarks here and there, some for instance said—said Mr. Thon, "We will soften you up, too. We have been able to manage with others already."

Also Mr. Perl made me understand that if I make a statement and if I work with him, and with the interrogation personnel my position would improve. He told me not to be stubborn and to work with him. I could only improve my position. I replied that I would say the truth.

On the other hand, I would think it not decent if I would make statements which are not true, and which would charge others.

He told me then, "You see, I can name officers of your unit who worked together with you. Come with me."

This time, for the first time without a hood, he led me out of the interrogation room, across the hall, and moved to the door of the cell which was located in front of ours. He opened the little window, peephole, looked into it first, himself, and let me see thereafter. I could not recognize very much because the cell was rather dark.

Mr. CHAMBERS. Was there a window in it?

Mr. REISER. Only from above, through a very small window some light was falling into it.

Mr. CHAMBERS. What do you mean "above"? Just a small window way up high?

Mr. REISER. A very small window which was almost on the ceiling of the room. Besides, I saw that within the cell there was a compartment closed with a gate.

Mr. CHAMBERS. It is a steel grille?

Mr. REISER. A steel grille, yes; and I found that this cell was different from the one I had been in.

Mr. CHAMBERS. Pin it down. Is it not a fact that that window is about 4 or 5 feet off the floor, and it is a fairly good-sized window, not as big as these, or those in the other cells, but it is a pretty good window?

Mr. REISER. I only once looked in through the little peephole into the room. I have seen on this occasion that the cell was a little—very dark.

Mr. CHAMBERS. What time of day was it?

Mr. REISER. Afternoon, at 5.

Mr. CHAMBERS. Go ahead.

Mr. REISER. He let me look into it and told me, "See there is somebody in there who does not want to make statements. He is lying for a long time in there. He will also think it over and speak some day."

And then he led me to another cell which was located across the hall, which means alongside the cell which men go to for interrogation, let me peep through the peephole, and there I saw two prisoners, Lieutenant Kramm and another prisoner. He asked me whether I know them and I told him "Yes; I do know them." He told me then, "You see, Lieutenant Kramm's working together with us."

Mr. CHAMBERS. Who is Lieutenant Kramm?

Mr. REISER. He was administrative officer.

Mr. CHAMBERS. In your battalion?

Mr. REISER. In my battalion.

Mr. CHAMBERS. Where is he now?

Mr. REISER. I cannot say exactly.

In the year before last, when I was in Landsberg, he was in Berlin.

Mr. CHAMBERS. Have you seen him, have you seen Kramm?

Mr. REISER. Since my dismissal; no, sir.

Mr. CHAMBERS. Go ahead.

Mr. REISER. He told me, "You see Lieutenant Kramm works with us."

After that we were brought back to our cell. I was brought back to my cell. I asked Lieutenant Perl, "What do you mean by 'working together'?" He said, "You see, Lieutenant Kramm has made his statement. He cannot keep any more back and now he has it fine."

Mr. CHAMBERS. Did he mean by that that Kramm had turned state's evidence? Is that what he meant?

Mr. REISER. It was to be understood such that Kramm has made a satisfactory statement.

Mr. CHAMBERS. All right; proceed.

Mr. REISER (continuing). "He is no longer locked up. He is free. He works with us. People who want to make statements, he helps them. He can take shorthand and writes on paper what they say."

Mr. CHAMBERS. Go ahead.

Mr. REISER. I told him, "I can also give you a true statement, and that is what I have told you already several times."

Thereupon, he told me again, "Detach yourself from that and do not cover your superiors."

These conversations were always going on for a very long time. I have been interrogated daily from 6 to 8 hours, often even in the evening.

Mr. CHAMBERS. In the evening or at night?

Mr. REISER. Evening and night. Twice I had been already in bed, after 10, I had been called by Lieutenant Perl again.

Mr. CHAMBERS. May I interrupt you? I want to pin this down a little bit.

We have had testimony from various people, including Dietrich Schnell that they saw lights in the interrogation rooms on one or two occasions, and they saw Perl in the interrogation room on a couple of occasions, but that, generally speaking, everybody went home at night.

Mr. REISER. I can only tell what happened to me. Twice I had been taken out of bed and brought up there.

Mr. CHAMBERS. All right, go ahead.



Mr. REISER. With more and more stress, Lieutenant Perl tried to convince me that I should make a statement that I have given such orders. After I was sent first, he probably tried it with a compromise, not "You have given this order as your own idea," but "You probably passed it on from Poetsche or somebody else. You were only a middle person who has carried out something."

Also, he has said that this was not correct.

During one of these interrogations he brought to me a written statement. This was made by Hennecke. Hennecke stated, in this written statement, that I have given him an order which come from Poetsche or Peiper, that he, Hennecke, ordered a shoot squad, rifle squad to shoot American soldiers.

I told him that approximately 10 days before that Hennecke did not make the same statement but merely stated that Poetsche or Peiper gave him the order. Whereupon, he said, "But you see how he remembered very well," and he gave me the explanation and permitted me to read the paragraph.

I must say I was a little surprised, after I have read the phraseology, and the entire shape of the matter, as he has described the entire phase with such exactness and clearness that he even remembered in his statement the exact phraseology in which I gave him the order.

Mr. CHAMBERS. May I interrupt? Was Hennecke a pretty intelligent man?

Mr. REISER. Doubtlessly he can be considered as an intelligent man.

Mr. CHAMBERS. This affidavit of Hennecke was given about a year after the incidents were supposed to have happened; isn't that correct?

Mr. REISER. One year and two or three months.

Mr. CHAMBERS. I just wanted to point out to you, Reiser, and I am saying in all kindness, I have been marveling at your memory. You have sat here and talked several hours, in complete detail and quoted conversations in times of great stress, and I am wondering why you think Hennecke couldn't have done the same thing I year later?

Mr. REISER. Without any doubt, I have presented to you here things that are details. At that time the entire trial procedure was new for me. After, this matter was not touched on or discussed for 1 year, and since December 1945, this matter is a lively affair to me.

Mr. CHAMBERS. I suppose you had a chance to refresh your memory and look at things like that.

Mr. REISER. Naturally I have, during the proceedings and also afterward, discussed and refreshed my memory with the real facts of the case.

Mr. CHAMBERS. When is the last time you had a chance to look at some of these things?

Mr. REISER. Sunday.

I would like to explain some things.

Mr. CHAMBERS. I would like to have you explain that too, but go ahead.

Mr. REISER. After I was dismissed from Landsberg, it was a moral obligation to me that I care more about this trial, for I have left behind me so many comrades of war with whom I was together in the field, of whom I am convinced today that they were sentenced innocently, and after I was dismissed, I have tried to help them with whatever power I had.

Mr. CHAMBERS. Reiser, this has nothing to do with your interrogation. One of the things, however, which is a little inconsistent with this whole position is this: In your case, on review, it was decided that you were innocent and the sentence was disapproved. Now, that same review board which in your case and in the case of a good many others, commuted a great many of the sentences and disapproved others, decided that certain of the prisoners were guilty.

You believe, however, that this same review board thought that some were guilty who, in fact, are innocent; is that correct? (The pending question was read by the reporter.)

Mr. REISER. Yes.

Mr. CHAMBERS. That's all right.

Mr. REISER. It is so that the review board by which I was dismissed has spoken out 12 death sentences. A revision of this review board has given—lifted six death sentences.

Mr. CHAMBERS. Now, we are going far beyond this investigation, but I would like to point out that when they lifted those other six death sentences, General Clay said that in his opinion the men were guilty but that he would approve no sentence unless he was absolutely certain that the method of establishing that guilt was proper.

Why did you start studying this thing Sunday, when we didn't ask you to come here until yesterday?

Mr. REISER. All the time that I have been dismissed I have been in very close contact with Dr. Leer. Therefore, I have not given him any sworn statement on my part, and about my experience in Schwabisch Hall. I didn't know and I didn't want to create the impression with the revision authorities that my declaration might have been dictated to me by Dr. Leer. Therefore, I say, if I have the occasion, I shall speak without influence.

Perl showed me the statements of another interrogation, and I maintained that I am going to remain saying what I said before.

During the course of interrogations, I told him that it was completely useless to call any more interrogations as I am not going to write what he wants me to.

Sometimes I started, during these interrogations, to write the thing down until he started to dictate to me things that were not as they were thought of by me. In cases where I refused to continue to write, Mr. Perl got very angry. He shouted at me and called me names and said, "I'll make you soft this way or this way. Now I shall try a different measure, but I will be able to get you soft."

I told him then, very openly that he would not be able to accomplish anything with eventual possible beatings.

Mr. CHAMBERS. Why did you think he was going to beat you?

Mr. REISER. While I was interrogated in the interrogation room downstairs, I have often heard interrogations which were carried on next door to both sides of this room in which I was, and I heard people yell.

Mr. CHAMBERS. You heard them yell, but how did you know they were being beaten?

Mr. REISER. Out of the yell one can always deduct whether or not it is out of pain or beating or whatever it may be.

Mr. CHAMBERS. But up until January the 15th, or thereabouts, you had heard no one yell, or in any way—you had heard no yelling at all?

Mr. REISER. No.

Mr. CHAMBERS. And it was only after you were being taken down stairs to the interrogation rooms that you heard them yelling next door to you?

Mr. REISER. During these interrogations, it was that I heard yells, and these were yells that were because of pain.

Mr. CHAMBERS. I wonder why they were not yelling before January 15.

Mr. REISER. My personal opinion is that in Schwabisch Hall the interrogation personnel have also worked according to a particular scheme.

Mr. CHAMBERS. Well, the affidavits that we have from other prisoners who allege brutalities go as far back as early December.

Mr. REISER. That is possible, for so far as I was able to follow this trial, the various affidavits, the most of them were written in February, March, and April.

Mr. CHAMBERS. I am referring to the affidavits that were turned in in 1947, alleging brutalities, and not the affidavits referred to at the trial.

Mr. REISER. The most of the statements date from January, February, and March of 1945.

Mr. CHAMBERS. 1946.

Mr. REISER. Those were introduced—1946—as evidence material by the attorneys.

Mr. CHAMBERS. All right; let's go ahead.

Mr. REISER. Then some day he showed me declarations of the regimental adjutant, Captain Gruhle, by the company commander of this battalion, Hennecke, Christ, Klingelhoef, besides a declaration made by General Dietrich, from General Kraemer, and a declaration made by Colonel Peiper.

He showed them all to me, leafed through them, showed me the signatures and asked me are these their signatures, which I had to acknowledge.

He said:

See these statements have all been given under oath. Thus, they are true statements of the individuals, and the contents of these statements are all accusations, ones against themselves and also against others.

And he said they were connected with the crimes which were committed by their unit.

I was naturally very much surprised about that and told him that I could not believe it.

He faced me some other day, again with Hennecke, also with Colonel Peiper and he asked Hennecke, "Have you written this declaration?" And to Colonel Peiper, he said, "You see, even in your presence he admits that he has written it." Whereupon, Peiper replied, "I feel like in a crazy house, a madhouse."

In this style the interrogation is continued. He threatened me in saying that I have played my life in this manner, anyway, and I should not imagine that with me, and with others, a big show trial would be conducted, but that we would just be liquidated in a cold manner.

The entire time of interrogations lasted approximately 14 days. Naturally, my nerves were very tense. In addition to that, I had hardly rest and was constantly under interrogations. Also, in the

night I did not get to sleep because I was, for instance, just during this time of interrogations, bothered during the night. The guard appeared approximately every 5 to 10 minutes, turned on the light if it was not burning, knocked at the door with his stick and asked me, "Are you sleeping?" And he asked so long until I said, "No," and he said, "Continue to sleep."

Some other day I was led downstairs again and I was left standing in the hall with my hood on. I heard several voices, known voices to me of former officers of the regiment, and then also my hood was taken off. There were approximately four or five officers of the regiment in the hall, and Lieutenant Perl arrived with Colonel Peiper, who greeted us all. He didn't say anything further to us. He just shook hands and was then led into an interrogation cell.

We stayed back in the hall and was standing there for approximately a half an hour. We could not converse with each other, but alone the expression on the faces of my comrades told me that their nerves were at the end of their resistance.

Considering the condition under which I was here in Schwabisch Hall, and considering the fact of the interrogations and system applied to us that not the real truth would be found, besides I was also convinced that a public trial about the case would never take place because I told myself that such the play which was carried out with us would get into the public. I also got ahold of a thought, in order to get to rest again, to let Lieutenant Perl have his will and to write down what he would dictate to me.

At the next interrogation I also told Lieutenant Perl that I shall not continue this way because I am tired of constantly hearing that I will be hanged or shot, "I will write now everything that you want me to, but see that this thing will be gotten over with quickly, and if you want to, hang me tomorrow."

This way my so-called confession has been made, which has been produced as evidence against me by the attorneys, prosecuting attorneys.

This evidence was accepted by the court and led to the sentence, however, also to my dismissal, for the court or the revision board, review board will have recognized that the accusations which I wrote down there against myself and against others were not the truth.

You may not be able to understand that I, as an officer, could let myself be carried into giving such an untrue statement. Personally, I have not been beaten by interrogation personnel, as far as I could determine.

Mr. CHAMBERS. Were you beaten by anybody?

Mr. REISER. Yes.

Mr. CHAMBERS. When?

Mr. REISER. By the guard.

Mr. CHAMBERS. Where?

Mr. REISER. Once when I was listening to the radiator, after the guard has told me twice to move out of that corner.

Mr. CHAMBERS. You were not beaten, from the standpoint of getting your confession, but some guard did beat you, or hit you after telling you a couple of times to get away from the radiator, is that correct?

Mr. REISER. That is correct.

Mr. CHAMBERS. I believe you did say you were first brought into the prison, when you first came into the prison that the guards helped you along with clubs, is that right?

Mr. REISER. Yes.

Mr. CHAMBERS. You were saying, I believe, that you had not been beaten, that I might have trouble understanding why you would make such a statement.

Go on from there.

Mr. REISER. The questions will arise, why an officer would write such a statement, although he was not forced to it physically. However, the moral obligation to which I was exposed—

Mr. CHAMBERS. I certainly will not judge what makes a man do anything, and the testimony that you have given so far has been, I believe, frankly given, frankly and fully.

Now, may I summarize this thing slowly, get it on the record, just to see if I understand what you have told me.

You were brought to Schwabisch Hall sometime early in December, and for a while you were in a cell with three other prisoners?

Mr. REISER. Yes.

Mr. CHAMBERS. That the average age of these prisoners was about 22, one was 18, and you were 25, is that correct?

Mr. REISER. Between 18 and 22.

Mr. CHAMBERS. That they gave you food, they gave you toilet articles, they gave you underwear, smoking tobacco without matches?

Mr. REISER. Yes.

Mr. CHAMBERS. And then generally speaking, they were taking pretty good care of you, as far as your physical being was concerned?

Mr. REISER. Yes.

Mr. CHAMBERS. Up until—

Mr. REISER. Yes; we could have been bathed once in the fifth month, and we could have been taken out into the fresh air, for 1 minute during the 5 months.

Mr. CHAMBERS. There were windows in the room?

Mr. REISER. Yes.

Mr. CHAMBERS. And they did give you wash water?

Mr. REISER. Yes.

Mr. CHAMBERS. And they did give you clean underwear each week?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. Then, along toward the end of December you were taken up for your first interrogation?

Mr. REISER. Yes.

Mr. CHAMBERS. And at that time Captain Shumacker—interrogated you and you gave him a statement?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. And thereafter you were placed in a cell which you say was on the third floor immediately above the interrogation cells?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. And that in those cells you could hear any loud voices or loud talking in the interrogation cells?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. And that up until about January 15 you heard nothing in the way of loud voices or shouts from the cells?

Mr. REISER. At that time, for the first time my attention was drawn to it.

Mr. CHAMBERS. But that during February and March you heard considerable in the way of loud voices and shouting?

Mr. REISER. Yes.

Mr. CHAMBERS. And the next time you were interrogated, it was in connection with Hennecke and they were trying to use you in connection with Hennecke's interrogation?

Mr. REISER. Yes.

Mr. CHAMBERS. And that you testified as a witness in a schnell procedure for Hennecke?

Mr. REISER. Yes.

Mr. CHAMBERS. And you persistently denied, through all this period of time, that any order was given which would have led Hennecke to kill prisoners of war?

Mr. REISER. Yes.

Mr. CHAMBERS. And eventually they said, "O. K., it's your turn."

Mr. REISER. Yes.

Mr. CHAMBERS. And they interrogated you persistently over a period of time, which you say went into the night on occasion; that you got little sleep and eventually, through just sheer moral suasion, you executed this affidavit which you now say was wrong?

Mr. REISER. Yes.

Mr. CHAMBERS. You say at no time did they give you drinking water while you were in the prison?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. But you also say that there, for 4 days and two meals you were on bread and water?

Mr. REISER. Yes.

Mr. CHAMBERS. There is a slight inconsistency there.

You did get water there during those days.

Mr. REISER. That is right, naturally, bread and water.

Mr. CHAMBERS. So, for 4½ days all of the time in prison, they gave you water?

Mr. REISER. Water to drink; yes, sir.

Mr. CHAMBERS. And that you did get liquids of some kind each day with your meals?

Mr. REISER. Soup, coffee, either soup or coffee, I don't know whether there was tea, but fruit juices—something to drink was usually there.

Mr. CHAMBERS. One other question: You mentioned the radiators—

Mr. REISER. Yes.

Mr. CHAMBERS. This prison was centrally heated, is that correct?

Mr. REISER. Yes.

Mr. CHAMBERS. This part of the prison?

Mr. REISER. Yes.

Mr. CHAMBERS. So that it was reasonably warm?

Mr. REISER. This part where I used to listen to the radiator was very warm. Down below, the interrogation rooms were, too. I believe that the American officers would not have liked to have worked in the cold.

Anyway, in the first part of the cells, when I arrived it was cold there.

Mr. CHAMBERS. Cold, but they weren't freezing, or anything of the kind?

Mr. REISER. I have not any frost.

Mr. CHAMBERS. It was not so cold that you couldn't sleep, for instance?

Mr. REISER. No.

Mr. CHAMBERS. This chart, this was your window and you could look out and see the church and street?

Mr. REISER. Yes, sir.

Mr. CHAMBERS. Now, do you have anything to add that you would like to say, Reiser?

Mr. REISER. No; if you have no more questions.

Mr. CHAMBERS. Thank you very much for coming, and I think we have a very complete record.

I appreciate it very much.

(Whereupon, at 2 p. m., the hearing stood in recess until 3 p. m. that same day.)

#### AFTERNOON SESSION

(Following the taking of a luncheon recess, the hearing in the above-entitled matter was resumed at 3 p. m.)

Mr. CHAMBERS. We will proceed with the hearing.

Mr. Vollprecht, hold up your right hand and be sworn.

Do you solemnly swear that the testimony you shall give is true to the best of your knowledge and belief, in accordance with the information that you have, so help you God?

(As hereinbefore noted, translations from English to German, and German to English were through Mr. Gunther, the translator, unless otherwise indicated.)

Mr. VOLLPRECHT. I do.

#### TESTIMONY OF HORST VOLLPRECHT

Mr. CHAMBERS. Will you give us your name?

Mr. VOLLPRECHT. My name is Horst Vollprecht.

Mr. CHAMBERS. Give us your address, age, and what you do for a living.

Mr. VOLLPRECHT. 25; address, Munich 23, Ostenwald Strasse 48, second floor.

Mr. CHAMBERS. When were you born?

Mr. VOLLPRECHT. On the 3rd of March 1924.

Mr. CHAMBERS. 3rd or 8th?

Mr. VOLLPRECHT. March 8, 19—

Mr. CHAMBERS. March 8, 1924?

Mr. VOLLPRECHT. Yes, sir.

Mr. CHAMBERS. You testified at the Malmedy trials?

Mr. VOLLPRECHT. Yes, as witness.

Mr. CHAMBERS. Do you wish to make a statement at this time concerning the Malmedy matters?

Mr. VOLLPRECHT. For the individual man?

Mr. CHAMBERS. What do you mean to do here, what is the object of your testimony?

Mr. VOLLPRECHT. That what I have experienced in Schwabisch Hall, and in Zuffenhausen.

Mr. CHAMBERS. For the purposes of this investigation, unless the Zuffenhausen material is of main importance, I would prefer you confine yourself to Schwabisch Hall, and the matters at the trial.

Mr. VOLLPRECHT. It is one thing which very shortly described with a few sentences which would be important.

Mr. CHAMBERS. Very well. We will hear that short statement about Zuffenhausen, and in the meantime, were you in the First SS Panzer Regiment?

Mr. VOLLPRECHT. Yes. I was member of the panzer regiment, and of the Second Panzer Company, as panzer driver.

Mr. CHAMBERS. How old were you at the time?

Mr. VOLLPRECHT. I was 20.

Mr. CHAMBERS. How old were you when you went in the SS?

Mr. VOLLPRECHT. I was 19.

Mr. CHAMBERS. Did you serve on the eastern front?

Mr. VOLLPRECHT. Yes.

Mr. CHAMBERS. So that at the time of the Ardennes offensive, you had had considerable combat?

Mr. VOLLPRECHT. 1943-44 I had participated in the Russian campaign, and the campaign in Normandy; and, the third campaign was the Eiffel offensive which means Malmedy.

Mr. CHAMBERS. Tell us, suppose you tell us in your own way about what you want to say now.

Mr. VOLLPRECHT. It is good.

As a wounded man I got into PW in 1945, came from Austria to Germany, to Badenhausen; there members of the First SS Panzer Division were selected, among these was I.

From there, with approximately other 30 comrades, I was brought to Zuffenhausen. At my arrival there, all my private belongings were taken from me; was there approximately 3 weeks without interrogation; was then taken to interrogation. I was interrogated by two Americans, their rank I have not noticed.

Mr. CHAMBERS. May I interrupt? Were the other members of your organization being interrogated at Zuffenhausen?

Mr. VOLLPRECHT. All those who may have been interrogated before me had after that been taken away from this camp so that I could not talk to them.

Mr. CHAMBERS. Were you in the same camp that Reiser was?

Mr. VOLLPRECHT. Yes.

Mr. CHAMBERS. Did you know Reiser?

Mr. VOLLPRECHT. Before—at that time I did not.

Mr. CHAMBERS. When did you come to know Reiser?

Mr. VOLLPRECHT. Actually, personally, after his dismissal.

Mr. CHAMBERS. I see—go ahead.

Mr. VOLLPRECHT. In Zuffenhausen, I should give statements about the matter at crossroads in Malmedy affair. I was to say who of the comrades who have shot Americans, as I was away from there for hours at that time, I could not make any statements.

The two interrogating Americans did not want to believe that. One American pulled his pistol, showed me the filled cartridges and held it in front of me. He asked me the same questions again and told me he will count to three, if I do not give a satisfactory answer, he will shoot.



I could not, in spite of that, make any statement. He held the pistol for 5 minutes and then I was taken out.

Mr. CHAMBERS. What do you mean—

Mr. VOLLPRECHT. I was told I should get out of here and should not expect any improvement of my position for the next coming month.

After my interrogation I was taken to Kronwestheim, into an internment camp; stayed there until the beginning of 1946 without interrogation or other—

Mr. CHAMBERS. Until 1946?

Mr. VOLLPRECHT. Yes.

From there, approximately 6th of February 1946, I was taken with approximately 25 other comrades to Schwabisch Hall. There we were all put into one mass cell. On the 15th of March, I was for the first time taken for interrogation. A black hood was put over my head.

Mr. CHAMBERS. May I ask a question there?

You say there were about 20 in one room or cell?

Mr. VOLLPRECHT. Yes, in one cell, and I was the first one who was taken for interrogation.

Mr. CHAMBERS. How long were you in that cell before you were taken for interrogation?

Mr. VOLLPRECHT. From the 6th of February until the 15th of March I have been in this common cell.

Mr. CHAMBERS. I thought you said you were taken to Schwabisch Hall on the 15th of March? Maybe I am confused on this thing.

Mr. VOLLPRECHT. On the 6th of February, I was taken to Schwabisch Hall.

Mr. CHAMBERS. And, until the 15th of March, you were in a common cell with about 20 other prisoners?

Mr. VOLLPRECHT. Until 15th of March, I was with approximately 25 in that cell.

Mr. CHAMBERS. During this time, how were you fed?

Mr. VOLLPRECHT. We received food—it was not extremely much, but for me it was sufficient.

Mr. CHAMBERS. Did they feed you three meals a day or two?

Mr. VOLLPRECHT. No; we received three.

Mr. CHAMBERS. Did they give you each morning water with which to wash?

Mr. VOLLPRECHT. In our cells, there was a place where we could wash, so we did not need any water from outside.

Mr. CHAMBERS. Could they also drink that water?

Mr. VOLLPRECHT. That water could be drunk.

Mr. CHAMBERS. Did they give you clean underwear and things of that kind about once a week?

Mr. VOLLPRECHT. No; every 2 weeks.

Mr. CHAMBERS. Very well, go ahead.

Mr. VOLLPRECHT. The American who took me out of the cell, took me by my arm and told me to run through the hall by taking quick steps, although I had a wound on my right leg which was not cured as yet.

Mr. CHAMBERS. And a hood on your head?

Mr. VOLLPRECHT. Yes, with a black hood on my head.

Mr. CHAMBERS. Go ahead.

Mr. VOLLPRECHT. The soldier had pushed me forward, and when we got to the stairs I stumbled and fell down the stairs.

Mr. CHAMBERS. Go ahead.

Mr. VOLLPRECHT. I was then led up and down the various stairs and brought into a cell.

Mr. CHAMBERS. Can you remember now whether you were taken downstairs, were taken out of doors before you went upstairs again?

Mr. VOLLPRECHT. I don't believe so. I couldn't see anything myself, but I was—I came down the stairs and was brought up another stair again and then around corners through the hall.

Mr. CHAMBERS. All right, go ahead.

Mr. VOLLPRECHT. After I was led into the cell, the black hood was taken from me, and I saw myself faced with an American whom I recognized later during the trial as Mr. Ellowitz.

Mr. Ellowitz introduced himself as chief prosecuting attorney. Mr. Ellowitz wanted me to stick to the truth and told me that many comrades had already given statements as that they are here. He told me names like Christ, Hoffman, Mikolaschek, and a few others.

Mr. Ellowitz told me that I am about the last who has not submitted his confession as yet. He led me to the window, opened it and said to me if I make a confession I would be free in about 4 weeks; if I would not do that, he said, I could experience very unpleasant things.

He told me then about all the violations which I should allegedly have committed and also those of my comrades. These were all new things to me. However, the cases where we had thought were correct, but nothing wrong has happened there.

I was much surprised but could not confirm what was desired.

Mr. Ellowitz has spoken to me very fatherly and told me that I should make a confession because this would be a way of getting off easiest. I could not tell him anything, and then he said that his method of interrogation is probably not the proper one with me; that he intends to have his interpreter continue interrogating me.

Mr. CHAMBERS. Who was his interpreter?

Mr. VOLLPRECHT. I did not know him at that time yet. He only arrived later, for Mr. Ellowitz was alone in the cell.

Upon this, Mr. Ellowitz left the cell. I was a few minutes alone. Then later on somebody else entered whom I later on occasion recognized as Mr. Kirschbaum. Mr. Kirschbaum entered, looked at me sharply, told me I am a liar, and that crime was written on my forehead.

He approached me slowly and then beat me in my face, left and right, with his fist. Mr. Kirschbaum told me that it would be useless if I would try to avoid making a statement. He told me that he has softened quite other fellows than I. Shortly before me, he claims one has been carried out on a stretcher, and that same thing would happen to me if I would not make a confession.

He wanted to give me a small example and show me that he could soften me up, too.

He ordered me that I should say that I am a gypsy. I have not done that. Thereupon, Mr. Kirschbaum beat me with his fist in my face, stomach, and sex organs. It lasted approximately 5 minutes, and then he asked me the same questions again.

Again I could not carry out his orders.

After this, he strangled me and pushed my head against the wall. He spat at me and told me that I am a German pig. Upon this, Mr. Ellowitz returned to the cell.

He talked to me nicely again and told me that I should confess what I have done and what my comrades had done, and he told me that, if I would not make a confession, he would leave again, and I would be alone with Mr. Kirschbaum again, and I would know what that means.

I could again not say anything, because it did not correspond with the fact. Upon this, Mr. Ellowitz has left the room again.

Upon this, Mr. Kirschbaum told me, as we were alone again, that I was in his hands; that he could do with me everything he wanted to. I should confirm the matters with which he has presented me. He wanted only to get after the officers; the ordinary men and noncoms he was not interested in; if I would confess, I would see liberty; if not, I would be hanged with Peiper and Dietrich.

He told me then, and stressed, that if I had not done anything myself, I should make statements which charged my comrades. I would improve my position upon this. I would get something to eat, could write to my parents, and so forth.

I turned over down, because it would not have been according to the facts.

Upon this, Mr. Kirschbaum beat me again, and pushed me with his knee against my thigh, and I twitched because it hit at the vicinity of the open wound.

He said, "You pig. Now; finally, I have the place where I can soften you up."

He mishandled me for about 10 minutes in this manner, and asked me always the questions for which I should make a confession.

Mr. Ellowitz entered into the cell again. The two gentlemen talked for a short while together. Mr. Kirschbaum told me that I shall be brought into the death cell. The black hood was put over my head. As far as I can remember, I was led for just a short stretch across the hall. The door was opened, and I was kicked in my back. While I was falling forward toward the front, the hood was taken off my head.

I was then in a cell with gates; and at the inside of the cell, in front of the door, there was another gate, so that I could not reach the door.

Mr. CHAMBERS. May I interrupt there? I would like to get a little description of that cell. Tell me, was there a window in it?

Mr. VOLLPRECHT. Yes; there was a window, but to the right and up high, and fairly small, and then there—

Mr. CHAMBERS. What do you mean by "high"?

Mr. VOLLPRECHT. Fairly far up toward the ceiling, so that I could not reach it. There was wiring and a gate in front of the windows where I could not approach it.

Mr. CHAMBERS. Was there a cot in the cell?

Mr. VOLLPRECHT. No; there was only a wooden bench, which was 10 to 15 centimeters above the floor.

Mr. CHAMBERS. Was there a toilet in the room?

Mr. VOLLPRECHT. Yes; there was a water toilet therein.

Mr. CHAMBERS. How long were you in this cell?

Mr. VOLLPRECHT. All the other 7 days.

Mr. CHAMBERS. Did they feed you while you were in there?

Mr. VOLLPRECHT. Yes; I have received to eat.

Mr. CHAMBERS. Did they give you water to drink?

Mr. VOLLPRECHT. Very little.

Mr. CHAMBERS. But some.

Mr. VOLLPRECHT. Yes, some; but it was too little.

Mr. CHAMBERS. Did the guard bring in the food?

Mr. VOLLPRECHT. No; it was a German who pushed it through a small hole in the lower part of the door.

Mr. CHAMBERS. Which side of the door?

Mr. VOLLPRECHT. Left.

Mr. CHAMBERS. All right.

Mr. VOLLPRECHT. There were no mattresses but just two thin old blankets. The window was partly opened and could only be opened from the outside, because I could not reach it. The heat was turned off. After I was a few hours in the cell, Mr. Kirschbaum entered. He asked me whether I have a sweater or warm underwear, but I only had "long johns," shirt, and a fatigue suit.

Mr. Kirschbaum convinces himself that I have no warm clothing like sweater, or so. He told me that I will remain therein until I have signed my confession.

It was in winter and pretty cold and I was chilled.

Mr. CHAMBERS. This cell was on the same floor with the interrogation cells?

Mr. VOLLPRECHT. Yes. I was led about 8 or 10 meters and I was already in that cell.

Mr. CHAMBERS. Was it pretty warm in the prison?

Mr. VOLLPRECHT. No. It was a stone floor.

Mr. CHAMBERS. Wasn't there a central heating system in that part of the prison?

Mr. VOLLPRECHT. There was central heating in this building, but it was not turned on.

Mr. CHAMBERS. Do you know Reiser, now?

Mr. VOLLPRECHT. Yes; I know him well.

Mr. CHAMBERS. He told us today that he was in that same place and the central heating was turned on, and it was warm.

Mr. VOLLPRECHT. Then it was different with Reiser than it was with me.

Mr. CHAMBERS. He was there at the same time; this was in March.

Mr. VOLLPRECHT. He could have been there earlier or later. I don't know whether the heating could be turned off for the individual rooms. In any case, in my room it was turned off.

Mr. CHAMBERS. Wasn't there a heating plant?

Mr. VOLLPRECHT. I don't know. There were two or three heating radiators there, but they were cold.

Mr. CHAMBERS. All right—one question:

As you came in through the iron doors, where was the toilet?

Mr. VOLLPRECHT. Left.

Mr. CHAMBERS. I thought that is where they put the food through.

Mr. VOLLPRECHT. Yes.

Mr. CHAMBERS. O. K., proceed.

Mr. VOLLPRECHT. I drew the attention to Mr. Kirschbaum to the fact that I have an injury of the lung, and that I could not stand this cold for very long. Mr. Kirschbaum laughed and told me that in this way I would soften up much quicker than otherwise.

After 2 days, I was called for interrogation again; was faced with two comrades of my company. These two comrades entered without

head covers, without hoods. These two had decent clothes, they were Ritzer and Szyperski. Szyperski smoked, and Ritzer was eating chocolate. I had for weeks not seen anything of both.

Mr. CHAMBERS. Did they give you any tobacco while you were in prison?

Mr. VOLLPRECHT. After I got out of this cell and have again been in a community cell I have received it twice or three times. That was after this time.

Mr. CHAMBERS. Go ahead.

Mr. VOLLPRECHT. Mr. Kirschbaum told the two they should tell me what was the matter with them. Ritzer told me that he had shot, at the railroad station of Stoumont, six American soldiers. Szyperski said the same thing; that he had shot some American PW's.

Mr. Kirschbaum asked Ritzer then how he was feeling now after he has made his confession.

Ritzer replied, after he had made his confession he is feeling as if he was even receiving a praise by the Americans for this.

Mr. CHAMBERS. That isn't quite clear, Gunther. Can you straighten that out a little bit?

(There was discussion between the interpreter and the witness.)

Mr. VOLLPRECHT. After he had made his confession, Ritzer said he feels as if the Americans are giving him a reward for the fact that he has shot the soldiers.

Mr. CHAMBERS. I got that. They were not giving him a reward for the fact that he had shot the soldiers, but giving him a reward for confessing that he had shot the soldiers, is that right?

Mr. VOLLPRECHT. Both.

Mr. CHAMBERS. You say that Ritzer said that they were giving him a reward for having shot the soldiers?

Mr. VOLLPRECHT. Not for the shooting of the soldiers, but for the fact that he has confessed.

Mr. CHAMBERS. Very well, Let's go ahead then.

Mr. VOLLPRECHT. Ritzer was then presented by Mr. Ellowitz with a sketch which he had prepared. Mr. Ellowitz asked me to look closely onto this sketch and to ask questions to Ritzer then maybe I will remember the shooting of PW's.

I was allowed to ask a few questions of Ritzer. I remembered the situation which was pictured on the sketch very well because we had been on this particular place for hours. I was tank driver, had nothing to do at that time, so we were standing there, could observe the tanks which were in front of me, also the street ahead of me up to the curve, and knew exactly that there were no American PW's in front of our tank. I told this to Ritzer. He had marked in the PW's before our first tank, on the sketch. I also drew the attention of Ritzer to the fact that the position of our tanks were not exactly correct.

When I asked this question, Ritzer and Szyperski were sent out of the cell immediately.

Upon this Mr. Kirschbaum and Mr. Ellowitz talked to me again and asked me to confess, I should work together with them, that I have convinced myself that those who have given a confession, how well they are off and that could also happen to me.

I answered that I could not do this because it is not according to the facts.

Then I was again taken out of the cell and brought into the same cell that I have been brought into before, the cell with the gates. There I was for several hours alone.

Again, toward the evening, an American entered the cell whom I later recognized during the trials as Mr. Thon.

Mr. Thon introduced himself as my defense counsel. He told me that matters about me were pretty bad, probably I would be hanged in the morning. He could only help me if I could find confidence and agree with everything which was desired to be said by Mr. Ellowitz and Mr. Kirschbaum. He said if I could do that, he could guarantee me that I should not be hanged.

I told Mr. Thon that I have not committed any crime, have not asked for defense counsel, and had no confession to make.

He wanted to convince me then that I should do it in spite of that. He told me repeatedly that nothing is planned against me, but against my superiors, but I could not fill this request.

He told me then that things would remain this way, I should be hanged in the morning, and I should utter my last wish—if I wanted a priest I should tell him so. I turned down both.

Mr. Thon left then with the words "Well, let them hang you."

After all this, I had the impression that the following morning everything would be over with. Mr. Kirschbaum appeared later again, and he said that whether I had thought it over, and that I have one more chance to make my confession, but I remained with the truth.

I stayed then for 2 more days in this cell. During that time I was again faced with my former company commander, Mr. Christ. I should charge Christ because of his speech which he had made at Blankenheimerwald, which means the Forest of Blankenheim.

Mr. Kirschbaum believed to have some advantage because I had differences with my company commander but I could not do it in this case.

Mr. CHAMBERS. What kind of differences did you have with Christ?

Mr. VOLLPRECHT. When we were enclosed in the gully of La Gleize, we were surrounded at La Gleize and our tank was dug in there, all these days we were almost without pause under artillery fire. During that time we had 11 hits. During intermission of fire Christ sent a messenger to me and had him tell me that I should get him something to eat or to drink. I told the messenger that if he was hungry he should see where he can get it himself because we did not have anything ourselves. After this incident, our relations were naturally strained.

Mr. CHAMBERS. How did Ellowitz know about this?

Mr. VOLLPRECHT. Mr. Kirschbaum has told me many details from my service, about my time of service.

Mr. CHAMBERS. You mean Mr. Kirschbaum told of this particular incident, Mr. Kirschbaum knew about it?

Mr. VOLLPRECHT. He led me to it and said he knew very well that I had been in strained relations with Mr. Christ.

Mr. CHAMBERS. O. K.; proceed.

Mr. VOLLPRECHT. Several hours after I was faced with Christ, I was led out of this particular cell again, was called for by an American guard. I was dressed with a hood, but he led me very orderly, was then brought over several steps and flights again to a community cell where I found myself alone, however. From this cell I could ob-

serve the entrance of the prison and the sports area. Next day, another comrade was brought in and the following days also here one and two were added into this cell. I was not interrogated any more. Some comrades were called out again for interrogation but I was not asked any more.

One comrade, Tomczak, arrived in the cell one afternoon. He looked as if he had been beaten. He had swollen eyes, and he had a strangling mark around his neck and, as he has told us, from a rope.

Several hours later Tomczak was taken out again. In the meantime another individual was brought in. As I found out later, it was a certain Philips. He did not speak to us for 2 or 3 days, walked up and down constantly in the cell, got up at night and murmured things in front of himself which we could not understand. Some afternoon he started to yell all of a sudden, and foam was in front of his mouth, and shouted at us, "Why do you look at me like that? Do you believe, too, that I have shot American PW's?"

He said, "I am fed up. I don't want to be tortured any more. Beat me to death."

He ran over to a chair and wanted to take one of the wooden legs off the chair so that one of us would beat him with it.

Mr. CHAMBERS. What was his name?

Mr. VOLLPRECHT. Philips.

Mr. CHAMBERS. And this was when, about the end of March?

Mr. VOLLPRECHT. It can already be that it was the beginning of April.

Mr. CHAMBERS. How many witnesses were there in the room at the time?

Mr. VOLLPRECHT. Approximately 8 to 10.

Mr. CHAMBERS. Did they all live in that same cell?

Mr. VOLLPRECHT. Yes; we were all together there.

Mr. CHAMBERS. You are sure now that there was as many as 8 to 10 there, and they lived in that cell with you?

Mr. VOLLPRECHT. Yes.

Mr. CHAMBERS. Was one of these people this fellow Tomczak that had the strangle marks?

Mr. VOLLPRECHT. Yes. He was, however, only a few hours with us. He was taken out again.

Mr. CHAMBERS. He doesn't say that in his affidavit.

After talking about this rope business, it is pretty hard to tell just what day of the month that he says they had a rope around his neck, but he does say that:

Whereupon, this procedure was discontinued with the remark by Mr. Thon or Mr. Perl that some major feels sorry for you. You have been granted another 24 hours. Then I was led to a larger cell where I was together with five other comrades.

And that is the end of it, and I assume that is where he stayed until they went to Dachau.

However, you are testifying. I just wanted to tell you what Tomczak said there.

Go ahead.

Mr. VOLLPRECHT. I remain with what I have said.

Mr. CHAMBERS. I have no quarrel with you. I wanted to tell you what the other one, Tomczak, said.

Mr. VOLLPRECHT. After Philips ran to the chair and wanted to do what was previously described, four of us held him. We had banged against the door of the cell. Two Polish guards arrived. They saw Philips, left immediately and closed the door again. About 10 minutes later three Americans arrived who took Philips away from us, who we were still holding.

Since that time I do know nothing about Philips.

Middle of April I was taken with other comrades in a closed transport to Dachau. We were housed in a separate camp with approximately 200 men. After 3 days about 40 to 50 comrades were singly taken for interrogation. One day later, after these 40 to 50 men had been interrogated, they were taken into another barracks. Everything then, in our barracks, was surrounded by barbed wire so we could not get in touch with them any more.

But later at the time of the proceedings, we got together with them, here and then, during that time at which we had nothing to smoke or write, these comrades had better care. They had smokes and they could write.

Mr. CHAMBERS. I thought you told me that after you were put back in the community cell, thereafter you had a chance to get tobacco.

Mr. VOLLPRECHT. There in the last week we have tobacco regularly.

Mr. CHAMBERS. At Schwabisch Hall?

Mr. VOLLPRECHT. In Schwabisch Hall, the last 2 or 3 weeks.

Mr. CHAMBERS. At Dachau, did you get tobacco?

Mr. VOLLPRECHT. Not in the first weeks.

Mr. CHAMBERS. Go ahead.

Mr. VOLLPRECHT. But during that time, the others from us separated comrades had already received smokes. These cigarettes were brought to them, being sent to them through Mr. Perl and Kirschbaum.

Later, several times Mr. Kirschbaum and Mr. Perl visited us in our barracks. It was already at that time when witnesses were heard at the proceedings. Mr. Kirschbaum talked to me again at that occasion and tried to find out what I shall say the next few days for which I was ordered the proper things I would say.

At first, at this conversation I told Mr. Kirschbaum pretty much in detail everything what I was going to say. Mr. Kirschbaum laughed and said I should not imagine that I would be able to help my comrades. My statement would not be believed anyway, for others had given confessions and the trial and case was as good as closed.

Mr. CHAMBERS. Let me ask something. You said you had been ordered to appear before the court the next day. That was as a witness for the defense, wasn't it?

Mr. VOLLPRECHT. Yes; as witness for the defense.

Mr. CHAMBERS. Well now, which defense lawyers talked to you?

Mr. VOLLPRECHT. Dr. Hertkorn, he defended Christ.

Mr. CHAMBERS. When did you talk to him?

Mr. VOLLPRECHT. During the first days of the proceedings—of the trial.

Mr. CHAMBERS. Now, did he talk to you at some length about these matters that we are now discussing?

Mr. VOLLPRECHT. Yes, yes; with another comrade, I was once 2 hours with him.

Mr. CHAMBERS. Now, Dr. Hertkorn knew about these matters of the beatings and the other things?



Mr. VOLLPRECHT. Yes. Dr. Hertkorn knew it. We discussed it very shortly.

Mr. CHAMBERS. Well then, in that case why didn't Dr. Hertkorn have you tell it to the court?

Mr. VOLLPRECHT. He asked me whether I was ready to make statements about this matter, and I said "Yes," but I was not heard to this point.

Mr. CHAMBERS. Dr. Leer, this point confuses me. I wonder if you could help me out.

(The translation between Mr. Chambers and Dr. Leer was through the medium of Mr. Gunther, as interpreter.)

Mr. CHAMBERS. Here is a man who was not an accused, who had been abused, according to his statement, and who knew of abuse to others, and he told his defense counsel about it. He told Dr. Hertkorn about it.

Now, why in the world didn't Dr. Hertkorn or somebody have this man tell it to the court?

Dr. LEER. I said at the occasion of my statements that we had been looking for witnesses during the trial, that those who had made confessions at Schwabisch Hall had been beaten or otherwise mishandled. Because of the shortage of time we could not discuss any other matters. I believe I had spoken to Vollprecht twice in the preparation of the defense. Vollprecht will, if you ask him, probably say how this went about.

Vollprecht knew about a man who knew that at a certain time Peiper was not at a certain place. My question to Vollprecht could only treat this matter very shortly because I did not have the time to continue on it.

Mr. CHAMBERS. May I interrupt? It seems to me, Dr. Leer, that not only did you have the accused who were claiming mistreatment, but you had one man who was not an accused about whom at least some of the defense counsel knew, and that he was willing to testify, and the defense attorney had already talked to him for a couple of hours and that this matter was of such vital importance that someone should have had this man tell it to the court.

Dr. LEER. Colonel Chambers is right, and I say the same today, too. However, I don't know why my colleague Hertkorn did not call this man to the witness stand.

Mr. CHAMBERS. But he did.

Dr. LEER. I don't know to which point he has called him upon the stand and why he hasn't called him in this matter. I am sure that I, if I had known that he was a witness as to Schwabisch Hall, would have called him to the stand, and asked him about Schwabisch Hall. So, I have one also with the witness Tratt or Tautt. I don't know why Hertkorn has not asked Vollprecht. I have not discussed this with Hertkorn, and I do not know that Hertkorn knew about a witness who can make statements about Schwabisch Hall.

Mr. CHAMBERS. Doctor, didn't you tell us yesterday that the defense counsel had meetings at which they discussed their problems?

Dr. LEER. Yes. They had them repeatedly, but the theme of the conference was given by the American colleagues because they did understand the trial better.

Mr. CHAMBERS. I understand that, but didn't American counsel as well the German counsel know about what was alleged at Schwabisch Hall?

Dr. LEER. One counsel knew it and the other one did not know it. We met for a short while and as you know from the record that the time was hardly sufficient to make an orderly plan for the defense. Colleague Hertkorn does not know English. Why he did not mention that in these conferences I do not know. As I said yesterday, the German lawyers had only a very short schooling in the American procedure.

Mr. CHAMBERS. This is not a matter of procedure. This is a matter of fundamental justice.

Dr. LEER. Yes.

Mr. CHAMBERS. And I know that in a case I would have been trying to handle for you, we would have a perfect defense for Peiper and everybody else if you had proven what this boy says is right.

Dr. LEER. Yes.

Mr. CHAMBERS. Now, Hertkorn, of course, knew that, so either this fellow didn't tell him about it or Hertkorn pulled an awful mistake, didn't he?

Dr. LEER. Correct. I don't know why Hertkorn did not say that. If you want to listen to Hertkorn I can bring him in.

Mr. GUNTHER. One more remark from Vollprecht.

Mr. CHAMBERS. Surely.

Mr. VOLLPRECHT (through Mr. Gunther as interpreter, unless otherwise indicated). I had the impression from Hertkorn that he has so many points of charges from Christ that he had hardly the time to get the individual witnesses for the individual points together, and according to my assumption, and out of this reason he has left off everything what did not immediately belong to this matter.

Mr. CHAMBERS. Yes; it would have been the best defense for Christ, wouldn't it?

Mr. VOLLPRECHT. Exactly.

Mr. CHAMBERS. All right.

Mr. VOLLPRECHT. But at the beginning of the proceedings I would have been able to report very detailed, but at the end my questions were narrowed down so much that everything went over my head.

Mr. CHAMBERS. Go ahead, do you have anything else?

Mr. VOLLPRECHT. Yes. A witness against the accused who was known to us in Dachau, a man named Messner, told us that Supreme Judge Jackson was there, and said that the sentences for the Malmedy trial were fixed, and statements for the defense would not help and everybody who would try to make any statements for the defense would be held for 1 year thereafter, while those witnesses who support the accusations would be dismissed immediately. It was also that way. I stayed 1 year longer in Dachau, while some witnesses for the accusations, who were housed with the 50 men who lived separately in a different barracks, some of them were dismissed immediately after the end of the trial.

Mr. CHAMBERS. Well, is that all?

Mr. VOLLPRECHT. One short remark to the end. Many comrades who certainly could have made statements to the matter of Schwabisch Hall were still so much in fear from the time of Schwabisch Hall, and

feared that they would have some disadvantages later after they had been dismissed so that they did not do anything about it.

Mr. CHAMBERS: Very well.

When did you first get in touch with Dr. Leer?

Mr. VOLLPRECHT. I have first made the acquaintance with him at the time of the proceedings of the trial.

Mr. CHAMBERS. Did you talk to him at that time?

Mr. VOLLPRECHT. During the trial.

Mr. CHAMBERS. Did you tell him about these things?

Mr. VOLLPRECHT. Not about Schwabisch Hall, only the one point of accusation where he was looking for a witness for Peiper. The conversation was of length of approximately 5 or 10 minutes.

Mr. CHAMBERS. When did you first tell Dr. Leer about this?

Mr. VOLLPRECHT. After my dismissal from Dachau.

Mr. CHAMBERS. When was that?

Mr. VOLLPRECHT. I was dismissed in March 1947.

Mr. CHAMBERS. You have made no affidavit on this?

Mr. VOLLPRECHT. No; I have not made any statements.

Mr. CHAMBERS. What opportunity have you had to refer to the records and other matters which would give you the detailed memory that you have here?

Mr. VOLLPRECHT. Several occasions with Dr. Leer I have checked on the accuracy of names so I had opportunity to look into the record.

Mr. CHAMBERS. Did you have a chance to see Dr. Leer's petition for review?

Mr. VOLLPRECHT. Naturally.

Mr. CHAMBERS. And the affidavits that went with it?

Mr. VOLLPRECHT. Yes.

Mr. CHAMBERS. That is all, unless you have something else to add.

Mr. VOLLPRECHT. No; and that would be shortly everything.

Mr. CHAMBERS. This record will be made a part of the total record when our Senators will see it and read it.

The only reason our Senators are not here is because they were sent by the Congress to Stockholm to this Interparliamentary Congress.

Thank you very much.

(Whereupon, at 4:40 p. m., the hearing of the above witnesses was closed; the next meeting of the subcommittee being scheduled to commence at 1:30 p. m., Tuesday, September 13, 1949, in the Military Government Building, Schwabisch Hall, Germany.)

# MALMEDY MASSACRE INVESTIGATION

TUESDAY, SEPTEMBER 13, 1949

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
*Schwabisch Hall, Württemberg, Germany.*

The subcommittee met, pursuant to adjournment, at 1:30 p. m., in the Military Government Building, official room, Senator Raymond E. Baldwin (chairman) presiding.

Present: Senators Baldwin, Kefauver, and Hunt.

Also present: Col. C. C. Fenn, Department of the Army; Lt. Col. E. J. Murphy, Jr., Department of the Army; Richard J. Jackson, chief legal officer, Württemberg; Paul J. Gernert, chief prison officer, Württemberg; J. M. Chambers, on the staff of the committee; and Ernest J. Gunther, translator.

Senator BALDWIN. The meeting will come to order.

Our first witness will be Fritz Otto Eble.

Before proceeding, Mr. Gunther, I think you should be sworn as interpreter, again.

Do you solemnly swear that you will make a true interpretation to the witness of the questions that are propounded to him, and likewise a true interpretation of his answers to us, in a language which he can understand and speak, to the best of your knowledge and information, so help you God?

Mr. GUNTHER. I do.

Senator BALDWIN. All right, let's have the witness sworn.

Do you solemnly swear that the evidence you shall give shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge and belief, so help you God?

(Unless otherwise indicated, the questions were interpreted into the German language by Mr. Gunther, and the answers of the witness thereto were interpreted into the English language.)

Mr. EBLE. I do.

## TESTIMONY OF FRITZ (OTTO) EBLE

Senator BALDWIN. Give us your full name.

Mr. EBLE. Eble, Friedrich.

Mr. CHAMBERS. Can we have his age, present address, and present occupation?

Mr. EBLE. Born on 19th of October 1920, residing at Kappel, near Freiburg, Bergmannsheim; miner, profession.

Mr. CHAMBERS. Were you ever confined in Schwabisch Hall?

Mr. EBLE. From beginning 13th of December 1945 until 21st of May 1946.

Mr. CHAMBERS. I believe that you have put in an affidavit on the matters that happened at Schwabisch Hall?

Mr. EBLE. Yes.

Mr. CHAMBERS. We would like to have you tell us, in your own words, the things that happened at Schwabisch Hall while you were there.

Mr. EBLE. 13th of December 1945 I was sent to Schwabisch Hall. There I was interrogated day and night for about 8 days. I was interrogated day and night, with poor food. The interrogation was carried out by First Lieutenant Perl and Sergeant Kirschbaum. I was asked there whether or not I was a member of the Regiment Peiper. Although I always said, "No," I was threatened by words.

After a week elapsed, during the first week I have only received beatings. After this first week the interrogations did not show any results, and then the mistreatments have started.

First I received matches under my fingernails, on all fingernails. They were pushed under the fingernails approximately 5 to 7 millimeters. While this was carried out my hands were tight to the table. The interrogator then ignited the matches and let them burn out under my fingernails.

Mr. CHAMBERS. Who was this interrogator?

Mr. EBLE. First Lieutenant Perl and Sergeant Kirschbaum.

Mr. CHAMBERS. Go ahead.

Mr. EBLE. After this I was left alone for a few days, and then again one was trying to tell me that I was a member of the Peiper Regiment and I should admit it because it would otherwise be useless, and this way for 2 or 3 days the interrogation was carried on day and night.

After this, as no results were obtained, my right hand was tied to the table.

I received thus several stabbings on my arm with a dagger [exhibiting certain scars to the subcommittee].

Mr. CHAMBERS. Who did this to you?

Mr. EBLE. Also First Lieutenant Perl and Sergeant Kirschbaum was present.

With every stabbing I was asked whether I would finally admit, and I should make a confession. I said, "No" repeatedly, and while I was stabbed, I was yelling loudly.

Then I was beaten in the face with fists and with rubber sticks until I fell down to the floor. After this I was taken back to my cell.

The following day an American medic came. His name I do not know. He bandaged my arm. The fingernails which in the meantime produced pus were not treated.

Then again after 4 or 5 days I was taken in again, only for a few hours, was taken back to my cell again, and this way this procedure was repeated for several times. Some day soldier came and took me out for an interrogation. That was approximately in February.

I was again brought before Lieutenant Perl and he read to me a death sentence. Naturally, I could not observe the procedure because I had a hood over my head. The hood stayed on my head. A rope was put around my neck. While this was going on he was reading to me my death sentence, saying that "You are Eble, Otto, and this and that." And he told me that I could see a priest and confess to him.

After this I told him that I haven't confessed for 10 years and therefore I regarded it as an insult.

Then four soldiers took hold of me, put a rope around my neck, I could not observe that fact that there were four soldiers because I had my hood over my head. Before I have received a beating yet, and then the hood fell down.

The four soldiers placed the rope around my neck and in the hallway where they had a gallow, I was pulled up slowly and the rope was tight down and thus I was hanging until I lose consciousness. I was hanging so long, I must add this, so that I made in my pants.

After this I was thrown in the cell and water was poured over me. Dry clothes were not made available for me.

Then I was sitting for a long time without interrogation and then I was taken to Ludwigsburg, Larger 74—the place was Ludwigsburg Osweil. There the mistreatments of that sort were not continued but beatings with a stick and baseball bats, and so forth, were continued.

They were carried out by Sergeant Zimmerman and Lieutenant Wertheim.

Mr. CHAMBERS. We are getting a little bit beyond the Schwabisch Hall and Malmedy thing. Do you have anything to tell us about what happened at Schwabisch Hall regarding Malmedy?

Mr. EBLE. No, personally not. Only later in the camp I have gathered with others and through Bishop Wurm I have heard several things, otherwise nothing.

Mr. CHAMBERS. When did you prepare your affidavit on this case?

Mr. EBLE. First, I have given such a statement to First Lieutenant Bivat, and I believe it is written, he was chief of the CIC in Ludwigsburg, camp No. 74.

Mr. CHAMBERS. Did you give an affidavit to one of the German attorneys, or—go ahead.

Mr. EBLE. Yes, later. Lieutenant Bivat told me he is going to return this letter to me, but then he was transferred and in 1947 I have given it to—in 1947 I have given it again to Landsbishop Wurm; and in 1948 I have sent another one to Dr. Leer, to Munich.

Mr. CHAMBERS. Did Dr. Leer or anyone else ask you to prepare the affidavit that you sent to Bishop Wurm?

Mr. EBLE. No, not to—but the camp leaders of camp 74—

Mr. CHAMBERS. Who were the camp leaders of camp 74? That's all right, were they American people or Germans or who?

Mr. EBLE. Interned camp leaders.

Then Captain Williams, while in the hospital at Karlsruhe to him I had given it to, told me—Captain Williams has taken one copy for himself.

Mr. CHAMBERS. A copy of your affidavit?

Mr. GUNTHER. It is in English, sir.

Mr. CHAMBERS. Tell him that is an affidavit dated August 1, 1947, at Ludwigsburg.

Mr. EBLE (through Mr. Gunther as interpreter). I have had them multiplied into about 15 copies and they have been signed by the Spreuchcomer (?), that is the de-Nazification Board of Germany.

Mr. CHAMBERS. Mr. Gunther, read some of those words to compare it.

Mr. GUNTHER. He has a copy here, sir, which will be compared to this one.

He has a copy here which is exactly the same.

Mr. CHAMBERS. Then, sir, I would like to place in the record at this time an affidavit executed under the name of Otto Eble.

Senator KEFAUVER. Does he identify it?

Senator BALDWIN. Did you look at that affidavit?

Mr. EBLE. Yes, sir.

Senator BALDWIN. Is that your affidavit; is that the same which you have a copy?

Mr. EBLE. Yes, sir.

Senator BALDWIN. All right.

Mr. CHAMBERS. And this is dated at Johannesburg July 13, 1947, and has been identified by the witness as the one which he executed.

Why did you sign this "Otto Eble"? Your name is not Otto; is it?

Mr. EBLE. No. I was taken PW, and on the 25th of October 1945 I was arrested by the Americans. I was told—

Mr. CHAMBERS. May I interrupt? What was your rank at the time you were arrested?

Mr. EBLE. I was Unterscharfeurer.

Mr. CHAMBERS. What is that—sergeant?

Mr. EBLE. It is similar to a sergeant.

Mr. CHAMBERS. Did you use the name "Otto" and give your rank as captain?

Mr. EBLE. At Hitler's headquarters there was a man by the name of Otto Eble. I remember that he was not arrested yet at that time. Then they found my name, and they claimed that I was Otto Eble. I admitted that. I was beaten, and then I admitted that.

Mr. CHAMBERS. You admitted what?

Mr. EBLE. That I was Capt. Otto Eble.

Mr. CHAMBERS. You admitted that you were Capt. Otto Eble, but you actually were Sgt. Friedrich Eble?

Mr. EBLE. Then I continued to lie, and in this way it started to be all mixed up, because I told myself that according to the Geneva convention, as a PW, I do not have to tell these things.

I must say, however, that to this name, to admit that name and this rank, I was forced because I have received beatings, and if I had said "No," it would have continued.

Mr. CHAMBERS. You say that you took the name Otto because there was a man at Hitler's headquarters by that name?

Mr. EBLE. No. The CIC maintained that I was Otto Eble, because they were looking for this Otto Eble because he was at the headquarters Der Führer.

Mr. CHAMBERS. Didn't you just tell us that Otto Eble you knew had not yet been taken prisoner?

Mr. EBLE. Yes; that the CIC told me.

Mr. CHAMBERS. Now, in fact don't you have a brother by the name of Otto?

Mr. EBLE. Yes; I have a brother.

Mr. CHAMBERS. So that, was he a captain in the army?

Mr. EBLE. Yes.

Mr. CHAMBERS. So, in fact what you did then was take your brother's name and rank; isn't that correct?

Mr. EBLE. Yes.

Senator BALDWIN. Why did you do that?

Mr. EBLE. To protect my brother to be arrested.

Senator KEFAUVER. Where was your brother?

Mr. EBLE. He was first in Russian PW camp and he returned in September 1945 from there through his own means. He ran away.

Mr. CHAMBERS. You say that your brother was in a Russian PW camp?

Mr. EBLE. Yes, sir.

Mr. CHAMBERS. Where is he now?

Mr. EBLE. He is now near Freiburg.

Senator BALDWIN. Did you ever tell anybody, did you ever say to anybody that you took your brother's name because he was an officer and you thought you would get better treatment?

Mr. EBLE. Yes.

Senator BALDWIN. Then, you have told three different stories of how you got the name of Otto Eble; haven't you?

Mr. EBLE. Well, everything was a mix-up. I just said, because of the beatings I have received, I was really forced to do so.

Senator BALDWIN. Who forced you?

Mr. EBLE. The CIC.

Senator BALDWIN. The CIC forced you to do this?

Mr. EBLE. The CIC has been beating me and told me I should admit that I am the man, and after they had already beaten me unconscious a few times, I wanted to be left alone and I just said "Yes."

Senator BALDWIN. Where did they beat you; what place?

Mr. EBLE. In Heilbronn.

Senator BALDWIN. Was it in Schwabisch Hall that they forced you to give the name of Otto Eble?

Mr. EBLE. No; that was before.

Senator BALDWIN. Well, you told them in Schwabisch Hall—

Mr. EBLE. In Schwabisch Hall they only maintained that I was a member of the Peiper Regiment.

Senator BALDWIN. What name did you give at Schwabisch Hall?

Mr. EBLE. Also Otto Eble.

Senator BALDWIN. How many times did the CIC beat you?

Mr. EBLE. In Heilbronn; yes.

Senator BALDWIN. How many times?

Mr. EBLE. Six or seven times.

Senator BALDWIN. Were they Americans?

Mr. EBLE. Yes. They were in American uniforms.

Senator BALDWIN. What German unit did you belong to?

Mr. EBLE. First, I was a member of the air corps in 1943, and after that I was a member of the Division Viking—infantry division. I was first in the Third Battalion of the Germania.

Senator BALDWIN. You know that every SS man has an insignia under his arm; don't you?

Mr. EBLE. Yes; I have it here.

Senator BALDWIN. You have that insignia under your arm?

Mr. EBLE. Yes.

Senator BALDWIN. Were you ever a member of the SS troops?

Mr. EBLE. Yes.

Senator BALDWIN. What unit was that?

Mr. EBLE. It was the Division Viking, Weapons, SS.

Senator KEFAUVER. Was your brother a member of the SS.

Mr. EBLE. No.



Mr. CHAMBERS. You have told us three stories, here, since you have been on the stand, as to why you took your brother's name.

Now, nobody is beating you here, now, or trying to confuse you. Why don't you tell us the truth?

Mr. EBLE. It was the truth that I had been beaten in Heilbronn, because in Heilbronn they maintained that they were looking for Otto Eble, and the CIC insisted that I was the Otto Eble.

My brother's name is Otto Eble, and there is also an Otto Eble at the Führer's headquarters.

Mr. CHAMBERS. What I am trying to get at is this: I asked you why you took your brother's name, and you gave me three different stories here: One, because you said they were looking for a man named Otto Eble, who had not been caught, and who had been in the Führer's camp; and, then, you said you took it because it was your brother's name, and you wanted to protect him; and, third, you admitted to Senator Baldwin, because you thought you might get a little better break in taking the name and rank of your brother, who was an officer.

Mr. EBLE. Because I wanted to cover my brother because I knew he was coming from the Russian zone, and I feared that he was going to be taken by the United States as a prisoner of war. I have taken this name too at the same time—I wanted to give in to the demands of the CIC. On the other hand, I thought I would do well for my brother.

Mr. CHAMBERS. The fact remains, you gave the wrong name and the wrong rank—didn't you?—and also gave the wrong place of birth on your affidavit.

Mr. EBLE. Yes.

Mr. CHAMBERS. And didn't you also, in an interrogation—

Senator KEFAUVER. Why did you give another place of birth?

Mr. CHAMBERS. Why did you give the wrong place of birth?

Mr. EBLE. I have written there "Tiengen near Freiburg." That is my birthplace.

Mr. CHAMBERS. Is this the correct place of birth?

Mr. EBLE. Spelled T-i-e-n-g-e-n, near Freiburg.

Mr. CHAMBERS. Isn't it a fact that, in an interrogation in the State of Baden, you stated in that interrogation that you took advantage of the similarity in name; you said, "I thought in that way I would be given better treatment and given privileges not granted to a simple staff sergeant"?

Mr. EBLE. This is not correct.

Mr. CHAMBERS. Didn't you just tell Senator Baldwin that you had stated that to somebody?

Mr. EBLE. No. I said that I did it because I wanted better treatment for my brother.

Senator BALDWIN. For the record—

Mr. EBLE. I, personally—no.

Senator BALDWIN. For the record, Mr. Chambers, do we have a copy of the statement he made at Baden?

Mr. CHAMBERS. For the record, we have a copy of the report of that interrogation, rendered by the Inspector "OPJ," whoever that is, and it gives a complete report of the interview of that man Friedrich Eble at Baden, and I would like to place it in the record at this point.

Senator BALDWIN. All right.

(See exhibit X in the appendix.)

Mr. CHAMBERS. Now, Mr. Eble, you have explained why you have used the name of your brother, but it is not a fact that you also, while in another camp, used the name of Erwin Sinnhauser?

Mr. EBLE. Erwin Sinnhauser; this was for 1948.

Mr. CHAMBERS. This was fairly recently.

Mr. EBLE. I was interned until August 1948.

Mr. CHAMBERS. Go ahead, tell us why you used the name.

Mr. EBLE. Mr. Rosenberg was there, and from Zurich, Switzerland, a Mr. Schmidt was there.

Mr. CHAMBERS. Was where?

Mr. EBLE. In Ludwigsburg.

Mr. CHAMBERS. Go ahead.

Mr. EBLE. Mr. Rosenberg mentioned that Mr. Schmidt came to Ludwigsburg because he claimed that I was of Swiss nationality because I have the same dialect.

Mr. CHAMBERS. Who was Mr. Rosenberg?

Mr. EBLE. He was an American employed there; came from Captain Austin in Stuttgart.

Mr. CHAMBERS. Isn't it a fact that back in March 1947 you escaped, along with a man by the name of Grosser?

Mr. EBLE. Yes.

Mr. CHAMBERS. And then, when you were later put back in camp, you had an opportunity to cover up the fact that your name was actually Eble and you used the name Sinnhauser?

Mr. EBLE. Yes.

Mr. CHAMBERS. Well now, why? I mean, it was not true, of course, and why would you do it, and what was the reason for it?

Mr. EBLE. Sinnhauser was a Swiss national. He was a member of the Waffen SS. I covered him in this manner; that he could run away; he wanted to go to Spain.

Mr. CHAMBERS. Well, then, it is a fact that in 1947 and 1948, for a period of approximately 6 weeks, you gave the wrong name, and you told a story about your family and where you were born in order to cover up for, you say, another SS man who wanted to go to Spain.

Mr. EBLE. Yes; that is correct.

Mr. CHAMBERS. Now, is it not also a fact, Mr. Eble, that you have been four times tried upon various criminal offenses?

Mr. EBLE. Yes.

Mr. CHAMBERS. And is it not also a fact that, when you were questioned about that at one time, you admitted to only two cases, two times being tried?

Mr. EBLE. I have not been asked about that?

Mr. CHAMBERS. Were you not asked by the French at one time about your criminal record, and you told them you had only been arrested twice?

Mr. EBLE. He told me twice; so I said twice.

Mr. CHAMBERS. Even though you knew it was four times?

Mr. EBLE. He asked me only about the two cases.

Mr. CHAMBERS. Very well.

Senator BALDWIN. What were these crimes that you were convicted of?

Mr. CHAMBERS. Let's take them in order.

What was the first crime for which you were convicted?

Mr. EBLE. One theft, one embezzlement—all four were theft and embezzlement.

Mr. CHAMBERS. When did these take place, what years?

Mr. EBLE. 1936 until 1943.

Senator BALDWIN. Do you have any questions, Senator Kefauver?

Senator KEFAUVER. Let me ask the interpreter—what is this?

Mr. GUNTHER. That is the police identification which the Germans carry on their persons. It is an identity card.

Senator KEFAUVER. When you were a German soldier, and when you were first captured, didn't you have your service identification?

Mr. EBLE (through the interpreter Gunther). Yes; I did have those, but I was first taken P.W. by the British.

Senator KEFAUVER. What happened to your service book?

Mr. EBLE. They were taken away from me by the Secret Service at Camp 031, British.

Senator KEFAUVER. Well, when you were released and started using your brother's name, did you have some identification at that time?

Mr. EBLE. I was not released. I ran away from the British, from Lüneburg.

Senator KEFAUVER. Then, when you were released from the prison here at Schwabisch Hall, did you have any identification then?

Mr. EBLE. No. From Schwabisch Hall, I was sent to Ludwigsburg into another camp, and was interned until August 1948.

Senator KEFAUVER. When you were released from there, did you have an identification card?

Mr. EBLE. Yes; a slip of dismissal. This is it, sir [passing document to Senator Kefauver].

Senator KEFAUVER. Was it after this release that you used your brother's name?

Mr. EBLE. No; not after that. That was during my internment.

Senator KEFAUVER. And when you gave the Swiss name, was it after this release?

Mr. EBLE. That was also during the internment.

Senator KEFAUVER. Why did you want to do this great favor for the Swiss national?

Mr. EBLE. The Swiss interns have all been turned over to Switzerland, and they received somewhere from 10 to 15 years, but he whose name I had taken had in the meantime run away. If they had brought me to Switzerland, they couldn't have done anything to me, because—Mr. Rosenberg knows this case exactly. He worked on it. I was in solitary confinement in Ludwigsburg for 15 months. I was held in the former German Wehrmacht Institution.

Senator KEFAUVER. You got convicted in civil or military courts of these embezzlements?

Mr. EBLE. All before a military court.

Senator BALDWIN. In 1937?

Mr. EBLE. In 1937, it—I was with the Arbeitsdienst, which was the German Workers Service, similar to the CCC.

Senator KEFAUVER. How old are you now?

Mr. EBLE. I am 28 now. I will be 29 in October.

Senator KEFAUVER. Were you ever convicted in a civil court?

Mr. EBLE. Yes; that time when I was in the German Labor Service, I was sentenced by a German Youth civil court.

Senator KEFAUVER. How much time did you serve?

Mr. EBLE. Two months.

Senator KEFAUVER. Was that embezzlement?

Mr. EBLE. They were both theft and embezzlement.

Senator KEFAUVER. Mr. Chairman, I wonder if we couldn't find, through inquiry of some of the lawyers who are familiar with German law, whether a conviction of embezzlement rendered a person infamous under German laws.

Senator BALDWIN. I don't believe we have a lawyer here with this experience.

Mr. Chambers, do you have any information on that?

Mr. CHAMBERS. Mr. Jackson, do you have any information as to the degree of the seriousness of these crimes? Are they infamous crimes, felonies?

Mr. JACKSON. If it is a simple theft, it is not a felony.

Mr. CHAMBERS. But, if it was a theft, why would he get as much as 2 years?

Mr. JACKSON. I don't know.

Senator KEFAUVER. I believe you were charged with stealing grain and trading it to the Russians for vodka; isn't that it?

Mr. EBLE. Yes; that is correct.

Mr. CHAMBERS. I would like to come back to a question Senator Kefauver asked you a moment ago. You said you had been confined for 15 months at Ludwigsburg in solitary confinement.

Mr. EBLE. During my time of internment, I was interned 15 months in solitary confinement. Mr. Rosenberg put me into solitary confinement there because of this name. He told me it was by orders of Captain Austin.

Mr. CHAMBERS. Is it not a fact that on several occasions you escaped from several internment camps, Nos. 72, 74, and 76, and it was while you were free on one of these occasions that you assumed that different identity?

Mr. EBLE. No; I had the name Otto Eble before that.

Mr. CHAMBERS. Didn't you escape from this—

Mr. EBLE. I did not run away from 72.

Mr. CHAMBERS. From—

Mr. EBLE. From 72.

Mr. CHAMBERS. Didn't you run away from 74 and 76?

Mr. EBLE. Once at the internees' hospital, Karlsruhe, I run away, and I got as far as Switzerland; and the other time, it was near Ludwigsburg.

Mr. CHAMBERS. I have no more questions.

Senator BALDWIN. Have you any questions, Senator Hunt?

Senator HUNT. I don't want to prolong this, but I do want to ask a question.

The witness spoke of being confused while he was a prisoner here at Schwabisch Hall, and he said that confusion was caused by the mistreatment.

While you were confused, were you examined by a doctor, by a psychiatrist, given a mental test of any kind?

Mr. EBLE. No; only once I believe—what I believe I said was when a medical sergeant came and treated my arm because the muscle was injured.

Senator HUNT. While you were incarcerated in the various institutions you have been in, were you ever punished for infraction of the rules of the institution while you were incarcerated?

Mr. EBLE. Once I received 14 days of rest in Hohenasberg, because I tried to run away.

Senator HUNT. That doesn't answer my question. Were you ever punished while you were in any penitentiary?

Let me amplify that by saying, either by being put in solitary confinement, bread and water, or any other kind of punishment.

Mr. EBLE. After I had run away in Hohenasberg, I upon my return, received 4 weeks of water and bread, and then the full food ration, and I received 6 months of solitary confinement.

Mr. CHAMBERS. You say solitary confinement for 6 months, but you told me a few moments ago that you had been in solitary confinement for 15 months at Ludwigsburg.

Mr. EBLE. I said that I was in Hohenasberg 6 months and thereafter I was in Ludwigsburg 9 months. That would be together 15 months, because Hohenasberg had been dissolved, and therefore I was taken to Ludwigsburg.

Senator HUNT. No more questions.

Senator BALDWIN. Any more questions?

Senator KEFAUVER. I had understood from previous testimony that there was no solitary-confinement place at Ludwigsburg. Are you sure about that?

Mr. EBLE. No; I was all the time in solitary confinement, only when I was in the hospital I was out.

Senator BALDWIN. Anything else?

Senator KEFAUVER. I wanted to ask, who did you see first about making an affidavit in the Malmedy matter?

Mr. EBLE. First Lieutenant Bivat, from the CIC, that I have submitted this to first. I showed him my arm, and the wound was still open and thereupon he told me that I should write this down.

Senator KEFAUVER. May I interrupt you? You say that wound was still open in your arm in 1947?

Mr. EBLE. No; I said in '46, in May I was taken from here to Ludwigsburg and there was the CIC Bivat, and that was the first time; and this declaration Lieutenant Bivat kept. Thereupon, in 1947 I made the second one, this is the one.

Senator BALDWIN. Any further questions?

Senator KEFAUVER. May I ask Mr. Chambers, did you ever hear of the one in 1946?

Mr. CHAMBERS. I have no record of it. The only affidavit we have in our files is the one Dr. Leer turned in, and the one the newsmen used some months ago, and it was for 1947.

Senator BALDWIN. I think that is all.

We have two doctors and a dentist who have been at Landsberg Prison examining the prisoners at Landsberg. We would like to have you go with them and they are going to examine your fingers and the wounds on your arm and anything else they think they would like to look at.

Mr. EBLE. I have held over a disease from the solitary confinement and the poor food. It is on the gall. I was operated on the gall 5 weeks ago.

Senator BALDWIN. Are you willing to submit to a medical examination?

Mr. EBLE. Yes.

(The witness left the room.)

Senator BALDWIN. Will you stand now, Miss Geiger?

Do you solemnly swear that the evidence that 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. Gunther, as hereinbefore, interpreted the questions of the subcommittee, and the answers of the witness, unless otherwise indicated.)

Miss GEIGER. I do.

### TESTIMONY OF MARIA LOUISA GEIGER

Mr. CHAMBERS. Will you please give us your full name, your age and address, and what you do for a living?

Miss GEIGER. Maria Louisa Geiger; born 7th of September 1925, in Schwabisch Hall; Gelbinger Gasse 48. I am the helper to dentist Dr. Knorr.

Mr. CHAMBERS. Were you at one time a helper to Dr. Knorr?

Miss GEIGER. Yes; the practice is still running.

Mr. CHAMBERS. Did you assist Dr. Knorr when he was seeing the prisoners at Schwabisch Hall?

Miss GEIGER. Yes.

Mr. CHAMBERS. Did you go to the prison with Dr. Knorr?

Miss GEIGER. Yes.

Mr. CHAMBERS. During what period of time did this take place?

Miss GEIGER. This was October '45 to February '46.

Mr. CHAMBERS. Wasn't it true that you were not there during the month of January, when you were out sick with typhus?

Miss GEIGER. That was from February 'til May.

Mr. CHAMBERS. Did you have occasion to observe or see the Malmedy prisoners, as distinct from the internee prisoners?

Miss GEIGER. Yes.

Mr. CHAMBERS. How did you know they were Malmedy prisoners?

Miss GEIGER. I have heard that these are Malmedy prisoners, and the Malmedy prisoners arrived with black hoods into the room for treatment.

Mr. CHAMBERS. Did they wear the hoods all the way into the room?

Miss GEIGER. Until they were placed into the chair.

Mr. CHAMBERS. Did they bring more than one Malmedy prisoner over at a time?

Miss GEIGER. No.

Mr. CHAMBERS. Did the guard, or the medical—the American guard or medical attendant stay with them while they were being treated?

Miss GEIGER. Yes.

Mr. CHAMBERS. Did you ever talk to the prisoners?

Miss GEIGER. Yes; I asked once how things are.

Mr. CHAMBERS. Just once?

Miss GEIGER. No, here and there. I couldn't speak very much.

Mr. CHAMBERS. Why not?

Miss GEIGER. Because the guard was always there.

Mr. CHAMBERS. And you were not supposed to speak to them, is that correct?

Miss GEIGER. Nobody has told me prohibit.

Mr. CHAMBERS. Did Dr. KNORR ever discuss these treatments he gave these people?

Miss GEIGER. Yes; he discussed it with me.

Mr. CHAMBERS. Did he ever tell you that some of these people have had teeth knocked out or jaws broken or anything of the kind?

Miss GEIGER. Yes, one break in the jaw and then we had several teeth beaten out.

Mr. CHAMBERS. How did you know they were beaten out?

Miss GEIGER. Because the wounds were still fresh.

Mr. CHAMBERS. Did they ever tell you, or the doctor how they lost their teeth?

Miss GEIGER. Only through the beating.

Mr. CHAMBERS. Well, they didn't say anything about it, is that right?

Miss GEIGER. No, because they were afraid because the guard was there.

Mr. CHAMBERS. Then in fact no one ever told you that they had their teeth knocked out by a guard, or prisoner, but they just supposed that because the teeth were knocked out, that they had been beaten out, is that correct?

Miss GEIGER. Yes. I remember well that one said that the teeth were knocked out.

Mr. CHAMBERS. Now Miss Geiger, I thought you said nobody said their teeth were knocked out.

Miss GEIGER. Yes, one said it. I just said that.

Mr. CHAMBERS. Did he also say who knocked it out or how they were knocked out?

Miss GEIGER. No, that much one could not discuss.

Mr. CHAMBERS. Who asked you, Miss Geiger, to prepare the affidavit which you have put into this case?

Miss GEIGER. I want to correct my last statement to this, which was not right. It was a Dr. Schwarz, Langenburg.

Mr. CHAMBERS. Have you ever submitted an affidavit to Dr. Leer?

Miss GEIGER. Yes; this was for Dr. Leer.

Mr. CHAMBERS. Have you talked to anyone, or has anyone talked to you since I last saw you about this case?

Miss GEIGER. No.

Mr. CHAMBERS. And you haven't heard from any of the attorneys?

Miss GEIGER. Nothing, no.

Senator BALDWIN. Do you have any questions, Senator Hunt?

Senator HUNT. Yes; I have a few here I would like to ask.

Miss Geiger, as assistant to Dr. Knorr, just what were your duties?

Miss GEIGER. I was always near the chair, and also had to help.

Senator HUNT. Did you also function as a receptionist?

Miss GEIGER. No; the prisoners always came in like this.

Senator HUNT. Did you keep the doctor's records?

Miss GEIGER. Yes, in the prison—yes.

Senator HUNT. By that, by the "records," I mean the case record on each mouth.

Miss GEIGER. Yes.

Senator HUNT. Did you keep the prisoners by number or by name, or how was the card entitled?

Miss GEIGER. Only with a number. We were not allowed to ask for name.

Senator HUNT. Where are those records now?

Miss GEIGER. We have burnt them because we don't need them any more.

Senator HUNT. How long do you keep case card records in your downtown office?

Miss GEIGER. Yes; in the city sometimes 10 years.

Senator HUNT. Who suggested that you burn them, or was that your own action?

Miss GEIGER. No. Dr. Knorr said that, at that time, that I should burn them.

Senator HUNT. He told you to destroy them?

Miss GEIGER. Yes.

Senator BALDWIN. Dr. Knorr?

Miss GEIGER. Dr. Knorr.

Senator HUNT. With reference to this statement which is Dr. Knorr's affidavit, did the doctor dictate it?

Miss GEIGER. He has written it himself and then I have written it again with a machine.

Senator HUNT. Was there any discussion between you and the doctor with reference to the contents of the affidavit, as to its correctness, after the doctor had written it out in longhand, before you typed it?

Miss GEIGER. Yes; that we have discussed.

Senator HUNT. Tell us, in your own words, what that discussion was.

Miss GEIGER. Oh, I don't know that exactly any more.

Senator HUNT. Was it with reference to the number of patients, or to particular patients?

Miss GEIGER. I cannot say any more what was discussed. We have only discussed whether or not we have truly stated everything therein, but exactly I don't recall any details.

Senator HUNT. In you discussions with Dr. Knorr, was any reference made as to who first suggested such a statement to Dr. Knorr?

Miss GEIGER. No.

Senator HUNT. Did Dr. Knorr receive the request for such a statement by mail, by telephone, or in person?

Miss GEIGER. Through a personal visit.

Senator HUNT. Through a personal visit?

Miss GEIGER. Yes.

Senator HUNT. Who was that person?

Miss GEIGER. That I don't know any more who that person was.

Senator HUNT. With reference to Dr. Knorr's illness, tell us when the doctor first became ill, when he had his leg amputated, when he went to the hospital, and approximately the date of his death.

Miss GEIGER. At this moment I cannot say it in detail, but he became ill in August 1946—no, it was 1947.

Senator HUNT. Had he been in ill health some time prior to that, but not sufficiently ill to stay away from the office?

Miss GEIGER. No; I have not noticed anything.

Senator HUNT. In what form did the doctor present his bill for services?

Miss GEIGER. For the prison, or which do we mean?



Senator HUNT. For the Malmedy defendants.

Miss GEIGER. There he didn't receive anything.

Senator HUNT. Are you sure he received no remuneration from any source for his dental work at Schwabisch Hall?

Miss GEIGER. For the interned, yes; but not for the Malmedy cases.

Senator HUNT. Would you know how many Malmedy men the doctor treated?

Miss GEIGER. Approximately 20.

Senator HUNT. Do you remember one prisoner, Malmedy prisoner, coming into the dental office who had just had four teeth knocked out?

Miss GEIGER. Yes.

Senator HUNT. Being a dental assistant, you may know, though you may not remember, but will you designate the teeth that had been knocked out?

Miss GEIGER. They were front upper teeth.

Senator HUNT. Do you remember, right or left?

Miss GEIGER. That I do not know any more.

Senator HUNT. Did you classify them all as anterior teeth, front teeth?

Miss GEIGER. That I cannot say exactly.

Senator HUNT. Was there only one prisoner that came in with four teeth knocked out?

Miss GEIGER. Yes.

Senator BALDWIN. When the doctor treated this man who had four teeth knocked out, did he treat him at Schwabisch Hall?

Miss GEIGER. Yes.

Senator BALDWIN. Any further questions? Anything, Senator Hunt?

Senator HUNT. I have nothing further.

Senator BALDWIN. Senator Kefauver?

Senator KEFAUVER. Did the doctor take any of the Malmedy prisoners to his office, or anywhere else for treatment?

Miss GEIGER. No; they could not leave.

Senator KEFAUVER. How old are you?

Miss GEIGER. Twenty-four.

Senator KEFAUVER. Did you take a course in dental hygiene, or to be a dentist's assistant?

Miss GEIGER. Yes; as helper.

Senator KEFAUVER. That is all.

Senator BALDWIN. How many different Malmedy prisoners did Dr. Knorr treat?

Miss GEIGER. Approximately 20 altogether.

Senator BALDWIN. About 20 altogether?

Miss GEIGER. Yes.

Senator BALDWIN. Was that 20 different men?

Miss GEIGER. Yes, I assume, because I have hardly recognized them because I did not know their names.

Senator BALDWIN. I wondered if he treated anyone more than once.

Miss GEIGER. Maybe twice; for certain I cannot say.

Senator BALDWIN. It was 20 different people, or 20 different times, which was it?

Miss GEIGER. Twenty times, I should say.

Senator BALDWIN. And were they all for injuries?

MISS GEIGER. No.

Senator BALDWIN. How many were for injuries?

MISS GEIGER. Approximately 10, but I am not sure.

Senator BALDWIN. Approximately 10?

MISS GEIGER. Yes.

Senator BALDWIN. Was there anybody treated for a broken jaw?

MISS GEIGER. Yes; one we had, but we have seen him only once, and then he was gone again.

Senator BALDWIN. Do you remember where the jaw was broken, what part of the jaw?

MISS GEIGER. That I don't know any more.

Senator KEFAUVER. Does a dentist usually treat anyone for a broken jaw, or do they send him to a regular physician?

MISS GEIGER. No, he has always done that himself.

Senator BALDWIN. Do you have any questions, Mr. Chambers?

Mr. CHAMBERS. I have one or two more questions.

When Dr. KNORR prepared his original affidavit, had he talked to anybody about it ahead of time?

MISS GEIGER. Yes; with me he had discussed it at that time.

Mr. CHAMBERS. Had anyone talked to Dr. Knorr, an attorney, or somebody like that and asked him to prepare an affidavit?

MISS GEIGER. That I don't know any more.

Mr. CHAMBERS. You don't know any more? Do you recall whether or not Dr. Knorr mentioned to you that somebody had written him a letter and asked him for an affidavit, or that somebody had talked to him and said that he would like to get an affidavit?

MISS GEIGER. No; I do not recollect.

Mr. CHAMBERS. When this attorney came to you, Miss Geiger, to get you to make an affidavit, did they tell you what they wanted you to say?

MISS GEIGER. Yes. He said chiefly because Dr. Knorr died, I would have to continue that now and I would have to make a new statement so that I will be able to continue the case.

Mr. CHAMBERS. Now, at that time, did you have a copy of Dr. Knorr's affidavit, or did the attorney give you one, or how did you remember what Dr. Knorr said?

MISS GEIGER. I had the copy.

Mr. CHAMBERS. Did you talk over, a little bit, with the attorney, and read it over together and decide, generally speaking, what you would say, in yours?

MISS GEIGER. Yes. I knew everything already that the doctor said at that time.

Mr. CHAMBERS. But you did talk it over with the attorney, and he discussed it over with you, as to the form and substance of the affidavit?

MISS GEIGER. Yes. He has asked me a few other things but I cannot remember exactly what he asked me.

Senator BALDWIN. Any further questions of this witness?

Senator KEFAUVER. Mr. Chairman, I wonder if, while she is here, if she and our dentist could examine these defendants and see if they could get together on who they were and see if we could have that for the record. Maybe we could talk it over about that.

Senator BALDWIN. Do you want to step out, Miss Geiger, and wait a few moments, please.

Let's have a 5-minute recess.

(A short recess was taken.)

Senator BALDWIN. The meeting will be in order.

Mr. CHAMBERS. Gunther, will you bring in Schnell?

Senator BALDWIN. Will you stand up and raise 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?

(As hereinbefore, the questions were translated from English into German for the witness, and the answers thereto were translated from German into English, by the translator, Mr. J. Gunther.)

Mr. SCHNELL. I do.

### TESTIMONY OF DIETRICH SCHNELL

Mr. CHAMBERS. Schnell, give the reporter your name, your age, your address, and what you do for a living.

Mr. SCHNELL. Dietrich Schnell, born on the 1st of July, 1921; presently employed with the firm Boehringer in Goepingen.

Mr. CHAMBERS. Schnell, were you an internee in Malmedy Prison when the Malmedy prisoners were there?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. You, on the 20th of January, 1948, executed an affidavit on the Malmedy matters?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. At whose request did you prepare this affidavit?

Mr. SCHNELL. The wife of the S. S. Obergruppenführer Dietrich, by request of lawyer Dr. Leer, came to me.

Mr. CHAMBERS. I believe you told me, in our earlier interrogation, that Dr. Leer and Mrs. Dietrich were the only ones who talked to you about this matter?

Mr. SCHNELL. Yes. Dr. Leer has not personally spoken to me.

Mr. CHAMBERS. Is it not a fact that you called Dr. Leer up after our last interrogation and talked to him about it?

Mr. SCHNELL. I have called Dr. Leer after my interrogation in Goepingen. Before that I have not called him.

Mr. CHAMBERS. Why did you think it necessary to call Dr. Leer, Schnell?

Mr. SCHNELL. I found it necessary that I inform Dr. Leer about the fact that I was interrogated by the senatorial committee.

Mr. CHAMBERS. Did Mrs. Dietrich or Dr. Leer ask you to let them know in event anyone ever talked to you about this case?

Mr. SCHNELL. No.

Mr. CHAMBERS. Didn't you also talk to, or turn some information—furnish some information to Dr. Rudolf Aschenauer?

Mr. SCHNELL. No. The name is completely unknown to me.

Mr. CHAMBERS. Schnell, Dr. Aschenauer has given us several pages of material here, headed "Mistreatments in Schwabisch Hall."

Now, generally speaking, it follows the pattern of your affidavit, but it differs in considerable detail. I wonder where he got it.

Mr. SCHNELL. It is unknown to me. I have never seen or spoken to Dr. Aschenauer and the name has come to my attention for the first time today.

Mr. CHAMBERS. So that as far as you know, Dr. Aschenauer had no direct knowledge of any information furnished by you in the Malmedy matters?

Mr. SCHNELL. I don't know by which means and way Dr. Aschenauer has received this information, but with my knowledge and with my will I have never given him any information.

Mr. CHAMBERS. Now, Schnell, without going into the complete details in your affidavit, will you tell the committee what you saw and observed at Schwabisch Hall when you were there?

Mr. SCHNELL. In December 1945 several trucks of prisoners arrived, of which we did not know where they came from. Only after a few weeks we could determine that they were members of the unit called Leibstandarte Adolf Hitler. At the arrival of these trucks we were prohibited to talk to these men because we were told that these were murderers and criminals.

Approximately 2 weeks later a commission arrived which I believe to be the War Crimes Commission who started the interrogations. As time passed on we could find out that during these interrogations things did not go correctly. We could determine mistreatment which partly happened before our eyes.

Mr. CHAMBERS. May I interrupt? You say, "We could determine mistreatment." What were you doing at the time to let you see these mistreatments?

Mr. SCHNELL. It was partly possible during our walk through the courtyard to observe mistreatment.

Mr. CHAMBERS. Where?

Mr. SCHNELL. In the courtyard of the prison.

Mr. CHAMBERS. Now, what type of mistreatment did you see in the courtyard of the prison?

Mr. SCHNELL. The guards were armed with these wooden clubs. With these clubs the prisoners who were taken to the interrogation room were mishandled, beaten, and pushed.

Mr. CHAMBERS. Well, now, did you see this yourself?

Mr. SCHNELL. Several times.

Mr. CHAMBERS. What do you mean by "mishandled"?

Mr. SCHNELL. If I beat somebody with a wooden club, I call it mishandling.

Mr. CHAMBERS. You said mishandled, mistreated, and beaten a minute ago, and I was trying to find out what you meant by mishandled.

Mr. SCHNELL. I defined the expression mistreatment by saying beating and pushing.

Mr. CHAMBERS. Beating and pushing. Did they strike them over the head with the club, on the back, or over the rump or what?

Mr. SCHNELL. I could not say in detail where these people were beaten, but I have seen in the nape of the neck, on the upper arms, and they were also pushed in the sides, and beaten on the back.

Mr. CHAMBERS. The last time I talked to you, Schnell, you said, "As a matter of principle, prisoners were driven with these wooden clubs in the back end and in the back, often in the pressure of the march."

That is the end of the quotation.

Now, you say you didn't know how they were beaten. Did they or did they not keep time, were they beating them along to the measure of the march, or didn't they?

Mr. SCHNELL. Naturally they were beaten.

Mr. CHAMBERS. Were they trying to injure the prisoners; do you think?

Mr. SCHNELL. I said already the last time I hardly believed this was the intention of the guards. I was of the opinion that they just wanted to get them across and to their place of destination as fast as possible and therefore encouraged it with their clubs.

Mr. CHAMBERS. How many internees were permitted to be out in the courtyard with you, Schnell?

Mr. SCHNELL. All.

Mr. CHAMBERS. You mean that the courtyard was used by the internees generally for their exercise?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And they brought the prisoners across from the big building, alongside the dispensary, over to the interrogation cells; is that correct?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Were there any of the Malmedy prisoners kept in the cells, other than the interrogation cells and so-called dark cells?

Mr. SCHNELL. Yes. The entire cell construction was taken by Malmedy prisoners, as well as blocks A and B, and the circular building.

Mr. CHAMBERS. Was the circular building the building in which the interrogations took place?

Mr. SCHNELL. No.

Mr. CHAMBERS. What did you call the building in which the interrogations took place?

Mr. SCHNELL. The interrogation building.

Mr. CHAMBERS. Were there any prisoners kept there other than those in the dark or death cells?

Mr. SCHNELL. Yes. In front of these so-called dark cells there were approximately 20 cells which were all taken by prisoners.

Mr. CHAMBERS. How about up on the next floors; were there Malmedy prisoners on the next floor?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. All right. Now, I interrupted your talking here, Schnell. You were telling about seeing the guards bringing the prisoners across the yard. Suppose you go on from there.

Senator BALDWIN. May I ask one question there?

As I understood Mr. Schnell, he said that these guards were doing this to help the prisoners along, or push the prisoners along, is that correct?

Mr. SCHNELL. Yes.

Senator BALDWIN. How hard did they hit them?

Mr. SCHNELL. The strength of the beatings were over and above the usual measure of encouragement.

Mr. CHAMBERS. Did the prisoners cry out in pain or anything of that kind?

Mr. SCHNELL. One could at least hear a moaning, but a yelling one could not hear.

Senator BALDWIN. Were these American guards or Polish guards?

Mr. SCHNELL. At the beginning there were American guards, and then there were also partly Polish guards.

Mr. CHAMBERS. Wait a minute. The last time I talked to you, Schnell, I asked you that same question and you said that the Polish guards did not participate in the transport within the prison.

Mr. SCHNELL. I might state here in addition that four or five Polish guards were dressed in American uniforms and they aided the American War Crimes Commission there.

Mr. CHAMBERS. Why didn't you tell me that the last time we talked, Schnell?

Mr. SCHNELL. That I have remembered in the meantime.

Mr. CHAMBERS. And you say that these Polish guards were dressed up in American uniforms and were helping the War Crimes Commission?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. How were they helping them?

Mr. SCHNELL. They assisted the transport of PW's within the prison. They had a slip of paper on which the names appeared of those internees who should be brought to another place for questioning.

Mr. CHAMBERS. What do they mean "internees should be brought"?

Mr. GUNTHER. The Malmedy prisoners.

Mr. CHAMBERS. Did he say Malmedy prisoners or internees?

Mr. GUNTHER. Malmedy prisoners.

Mr. CHAMBERS. What you are saying, then, is that the War Crimes Commission were using Polish guards to assist them in moving the Malmedy prisoners back and forth; is that correct?

Mr. SCHNELL (through Mr. Gunther, translating). Yes; within the last 4 or 5 weeks.

Mr. CHAMBERS. How about these American guards that you saw beating them? Were they Americans or Polish dressed up in American uniforms?

Mr. SCHNELL. Those were American guards.

Mr. CHAMBERS. I might point out the difference between the Polish guards in the American uniforms and the American guards.

The Polish guards had merely the GI trousers and shirts while the American guards had the complete uniform and the helmets.

Then, what you are saying is that you never saw any of the Polish guards beat prisoners, but you did see American guards beat prisoners; is that correct?

Mr. SCHNELL. The Polish guards did not have any wooden clubs but by pushing the prisoners into their ribs, they have in the same manner mishandled prisoners.

Mr. CHAMBERS. Well, let's go ahead.

You were telling us what you had seen about the guards bringing prisoners through the courtyard. Let's go on from there.

Mr. SCHNELL. Of these Malmedy prisoners who arrived with a transport, everyone received a black hood over his face. This hood reached his shoulders.

Mr. CHAMBERS. That was used when they transported them from one place to another; isn't that correct?

Mr. SCHNELL. Yes.

In those cases one American would go ahead, in this case it was a Mr. Shillingham.

Mr. CHAMBERS. Which case is that you are talking about?

Mr. SCHNELL. In most of the cases Mr. Shillingham went ahead.

The first Malmedy prisoner had to take, put his hands on the shoulders of Mr. Shillingham, or who else would be leading the group, and the following prisoners followed in the same manner. The leading American gave the rhythm for the step of march in the way by saying "Hop-Hep-Hop-Hep."

When they were transported across to the stairs, it happened at times that the speed was so high that some of them fell. In these cases the guards appeared immediately and brought these people onto their feet again by beating them.

Mr. CHAMBERS. May I interrupt there? You say they fell on the steps. The steps are inside the prison; is that correct?

Mr. SCHNELL. The stairs were the ones that led to the cell construction building and to the building where the interrogations took place.

Mr. CHAMBERS. And they were outside where you could see them; is that correct?

Mr. SCHNELL. The steps to the cell construction building are outside of the building, while the steps to the Interrogation Building are within the building.

Mr. CHAMBERS. Schnell, how many times did you see people fall down or stumble?

Mr. SCHNELL. An exact number I cannot give, but it was at least in 10 cases.

Mr. CHAMBERS. How many times did you see guards hit different prisoners?

Mr. SCHNELL. Here again I cannot give an exact number, but it may be approximately 10 to 12 cases. Here I want to add that at the time when the trucks arrived, and when the PW's, the prisoners entered the cell construction building, I can say that every individual man was mishandled.

Mr. CHAMBERS. Where were you at the time they brought these prisoners in, Schnell?

Mr. SCHNELL. I was in the hospital.

Mr. CHAMBERS. And which window were you looking out?

Mr. SCHNELL. At the first cell to the right, immediately next to my cell.

Mr. CHAMBERS. Where was your cell?

Mr. SCHNELL. My cell was at the end of the hall of the hospital building on the first floor.

Mr. CHAMBERS. Is that the room where you and I looked through the window?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And from—

Mr. SCHNELL. That is right.

Mr. CHAMBERS. From that window you could see the prisoners getting out of the truck, and going back into the cell building?

Mr. SCHNELL. No; I said explicitly that while they were unloading I looked on from another cell which was the cell next to my cell.

Mr. CHAMBERS. Which way does the window open on that?

Mr. SCHNELL. It was not allowed to open the window.

Mr. CHAMBERS. Well, now, Schnell, as you come into that room there are four windows, looking across at the interrogation rooms?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Now, the next cell is just a regular cell which opens out toward the cell building; is that the room you mean?

Mr. SCHNELL. It is a cell for four or five prisoners.

Mr. CHAMBERS. With your permission, I would like to try to identify this room we are talking about.

Mr. SCHNELL. Sir, I would like to draw a sketch.

Mr. CHAMBERS. This is Knorr's office?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. This is a big room, these windows are the ones we were looking out?

Mr. SCHNELL. One moment. Here is the bathroom. Here is the kitchen for the helper, and here is my cell.

Mr. CHAMBERS. All right.

Mr. SCHNELL. Here is a water closet.

Mr. CHAMBERS. Look, this is a big room; isn't it?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And you mean there is a water closet?

Mr. SCHNELL. No, no; and here is the door, here is a cell for four or five men. It is a big room, too.

Mr. GERNERT. Here is where he was, he was never in there [indicating on diagram under discussion].

Mr. CHAMBERS. I remember looking out there.

Mr. SCHNELL. Here is a window, and here is two windows.

Mr. CHAMBERS. Mr. Frey, go to the dispensary and get the warden and go to that room and check on the cell construction, the doors, the placement of the windows, and so forth.

(Mr. Walter E. Frey, interpreter, left the room.)

Mr. CHAMBERS. Schnell, from this window could you see the prisoners come up and unload and the prisoners go into the big cell?

(The pending question was read by the reporter.)

Mr. SCHNELL. Big cell construction building.

Mr. CHAMBERS. And did they bring all the Malmedy prisoners in at one time, or bring them in over a period of several days?

Mr. SCHNELL. Over a period of several days, they are constantly arriving in transports and also transports were leaving.

Mr. CHAMBERS. And during this time you watched all of them as they came in, saw all the trucks come in and saw how all the prisoners were handled; is that correct?

Mr. SCHNELL. I have not seen all prisoners and all trucks coming in because they were partly also arriving at other buildings.

Mr. CHAMBERS. Well, then, a moment ago, when you made the remark that you could see that all prisoners when they came in were mishandled, you were referring only to those that you saw, and you didn't see them all; is that correct?

Mr. SCHNELL. All those who were put into the cell construction building.

Mr. CHAMBERS. Go ahead, Schnell.

Senator BALDWIN. May I ask you this question? What door did they lead the prisoners in, into the cell block?

Mr. SCHNELL. Through the large entrance door opposite from the tower.

Senator BALDWIN. At the end of the building?

Mr. SCHNELL. No, that is actually the beginning of the building. The tower is the end of the building.



Senator BALDWIN. Do you mean the end of the building toward the main gate, or the end of the building away from the main gate?

Mr. SCHNELL. The entrance door was toward the main gate of the prison.

Senator BALDWIN. And that is where you saw them taking the prisoners in?

Mr. SCHNELL. Yes.

Senator BALDWIN. And you could see that from the infirmary windows?

Mr. SCHNELL. Yes.

Senator BALDWIN. And you were in a cell in the infirmary, not in the hospital?

Mr. SCHNELL. This was the hospital cell.

Senator BALDWIN. Well, there is an open hospital room with several beds. Were you in there?

Mr. SCHNELL. I beg for an explanation of what you mean with "open room."

Senator BALDWIN. There is a large room with several hospital beds in it.

Mr. SCHNELL. That was my cell, in which I was usually living, but I have seen this incident from another cell which I have previously described.

I would like to add that the doors of the interned cells were open all day long so that anybody within the prison could enter and check on them.

Mr. CHAMBERS. When they brought these trucks in, where did they put them; that is, put the trucks?

Mr. SCHNELL. They toured around the cell construction, and were directed toward the main gate.

Mr. CHAMBERS. And they did not come into the court?

Mr. SCHNELL. Yes, in the court between the cell building and the hospital, they were going through there.

Mr. CHAMBERS. But they didn't go on into the court between the hospital and the interrogation building?

Mr. SCHNELL. When there was a large transport, the first car had to wait until all other cars had unloaded, and then only the first one could take off again.

Mr. CHAMBERS. What I am trying to ask is, Did they have any truck come into the court where they could see them out of the windows?

Mr. SCHNELL. One could not observe it from the windows because the windows were closed.

Mr. CHAMBERS. Did any truck ever come into the court between the hospital and the interrogation building?

Mr. SCHNELL. No trucks with prisoners did come through there.

Mr. CHAMBERS. Were there ever any trucks in there?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Where?

Mr. SCHNELL. In the court of the hospital and the interrogation building.

Mr. CHAMBERS. Well, isn't that in the area in which you told me they had the gallows?

Mr. SCHNELL. I meant in this case, actually, the occasion at which the gallows were unloaded.

Senator BALDWIN. Did you see the gallows unloaded?

Mr. SCHNELL. I helped unloading myself.

Senator BALDWIN. Were they ever erected?

Mr. SCHNELL. No.

Senator BALDWIN. What did they do with them?

Mr. SCHNELL. They were stored in the porch and covered with a big canvas.

Mr. CHAMBERS. Do you remember when you first told me about these gallows, you said that is where they had the gallows?

Mr. SCHNELL. It was one gallows, it was only a question of one.

Mr. CHAMBERS. One gallows. Do you remember when you told me that that is where they had the gallows?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And do you remember it was not until after the guard who had been there at the same time you were there told us that there was no gallows there, and it was then you bothered to tell me that they were not erected but were laying down flat, and were covered up with canvas?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And do you also remember when I asked you how you knew they were gallows, and you said that one day you had a chance to look.

Mr. SCHNELL. No, that I have not said. At that occasion I have declared, Mr. Chambers, myself that I have helped to unload that gallows.

Mr. CHAMBERS. Well, at the time that you were talking to me about this, there were several people there, and I don't propose to get into any argument with you on that, but if you told me that I don't recall it at all.

Mr. SCHNELL. I must say that at that time only Mr. Gernert was present when I talked about this.

Mr. CHAMBERS. Do you recall, Mr. Gernert, Schnell telling me, in company with you, do you recall he said he helped?

Mr. GERNERT. No, he never said anything about unloading or about anything within the yard covered with canvas.

Mr. CHAMBERS. Did I ask whether there was a gallows there?

Mr. GERNERT. That is right.

Mr. CHAMBERS. Do you recall what he said?

Mr. GERNERT. That I don't remember.

Mr. CHAMBERS. It was clear in your mind that he did not say he had helped to unload it?

Mr. GERNERT. That is right.

Mr. GUNTHER. Shall I convey it to him?

Mr. CHAMBERS. Yes.

(The preceding colloquy was translated into German, for the benefit of the witness.)

Mr. CHAMBERS. Now, the room you referred to is definitely there, and there are windows in it, and you could, from those windows, observe the trucks being unloaded.

Senator KEFAUVER. Were the gallows ever put up there—the gallows?

Mr. SCHNELL. No.

Senator KEFAUVER. What was the answer?

Mr. GUNTHER. "No" was his answer.

Mr. CHAMBERS. Did you ever hear of any gallows being in any of the rooms or hallways of the prison?

Mr. SCHNELL (through the translator, Mr. Gunther). I have never heard about it.

Mr. CHAMBERS. And I believe you told me your duties took you around the prison quite a bit, which is why you knew so much about this thing, and if there had been a gallows you would have known about it?

Mr. SCHNELL. Yes, if it had been in the halls.

Senator BALDWIN. When you said you have seen some of the guards strike the prisoners, at that time were the prisoners on their way from the cell block over in the administration and interrogation building?

Mr. SCHNELL. From the cell construction building to the interrogation building.

Senator BALDWIN. Did you ever see any of the prisoners, while they were being interrogated?

Mr. SCHNELL. Yes, one.

Senator BALDWIN. And will you tell us about that?

Mr. SCHNELL. The exact date I cannot recollect. The time was between 23 and 24 hours. For some reason during that night I could not sleep and therefore I opened the window.

Senator BALDWIN. What window was that—in your cell?

Mr. SCHNELL. In my cell.

On the same hall, within the interrogation building, the interrogation rooms were located. In one of these interrogation rooms one window, respect to one wing of the window, was open.

Senator BALDWIN. One wing?

Mr. GUNTHER. One side of the window was open.

Senator BALDWIN. All right.

Mr. SCHNELL (through Mr. Gunther, as translator). There I saw one prisoner seated at a table. I must say that I did not see the table myself but I saw that the prisoner was supporting his arms thereupon, and I knew that there was a table because I, myself, have helped to install this room.

Mr. CHAMBERS. Schnell, when did you put this table in the room?

Mr. SCHNELL. When we received the order to furnish this interrogation room with furniture.

Mr. CHAMBERS. What did they put in that room?

Mr. SCHNELL. Tables, chairs, a self, typewriter tables, and a box.

Mr. CHAMBERS. Then this was an administrative office and not the room where they normally carried out their interrogations, is that correct?

Mr. SCHNELL. It was an interrogation room.

Senator BALDWIN. Do you mean by that, it was a room where they always did the questioning, or what do you mean by that?

Mr. SCHNELL. Not all interrogations took place in this particular room, but as far as I recollect there were three rooms in which interrogations took place.

Senator BALDWIN. Were they all on the same side of the building?

Mr. SCHNELL. No; two on the side of the hospital, and one on the other side.

Mr. CHAMBERS. As a matter of fact, didn't they use quite a few of those cells on that floor for interrogation?

Mr. SCHNELL. Perhaps, I could not determine that; but in general, these interrogation rooms or cells were used to keep the prisoners there until they were interrogated.

Mr. CHAMBERS. Well now, two of the three interrogation rooms which you, Schnell, knew about, were on the hospital side; is that correct?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Well, go ahead with the details of this interrogation, but I want to ask a couple of questions more about it before you tell us the details about it.

This was at night, you say?

Mr. SCHNELL. Between 11 and 12 o'clock at night.

Mr. CHAMBERS. When I talked to you last time, you said it was between 11 and 12 at night, and then you told me that that was the only time you ever saw anything over there, because the rest of the work was done in the daytime; is that correct?

Mr. SCHNELL. I said that in the other case, at the other times, the window was closed. I did not say that it was the only time that it happened at night, but it was the only time that I saw it at night because otherwise the window was also closed.

Mr. CHAMBERS. Couldn't you see through the windows even when they were closed, if the light was on at night?

Mr. SCHNELL. No, the windows—one could not see through the window, one could determine shadows but not identify anything within the room.

Mr. CHAMBERS. Then the only time that you saw any beating of a prisoner, or anything of the kind, during interrogation was that one night?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Well, now, didn't they do a lot of night work there?

Mr. SCHNELL. I have already told in my declaration that the War Crimes Commission has worked a lot at night.

Mr. CHAMBERS. You were telling Senator Baldwin what you saw that night, and we had gotten to the point where you said that you knew about this table because you helped move it in there—will you go ahead and tell us what you saw that night?

Mr. SCHNELL. It lasted about 2 or 3 minutes and Lieutenant Perl appeared within vision of the open window. He approached the prisoner and slapped him into his face with his right hand. He wanted to continue to beat the prisoner with his left arm, but the prisoner ducked and thus escaped the slap.

Mr. CHAMBERS. This is a minor point, but the last time you told the story, you said that—

the prisoner was sitting at the table, Perl came around the table into my view. The prisoner leaned back on the back of the chair and Perl gave him a slap in the fact with his left hand.

You just said, "right hand." Now, which did he hit him with?

Mr. SCHNELL. I have corrected my initial statement which probably was taken in Goeppengen already several times because I had been asked several times about this and have corrected myself and stated that he had first slapped him with the right hand.

Mr. CHAMBERS. With the right hand—go ahead.

Mr. SCHNELL. After this, the prisoner, who was about 30 centimeters taller than Mr. Perl, was facing me, Mr. Perl had his back turned toward the window. Then, I saw Mr. Perl make the movement as if he was kicking with his foot.

Mr. CHAMBERS. This is a most important point, because here is something on which Schnell has changed his story completely.

Schnell, I know you will understand most of this. Isn't it a fact at Goepfingen when you told us about this incident that you first of all said very specifically that Perl kicked him, and then when you were asked whether or not—how he kicked—"Did he push with his foot or kick him?" And you showed us how, and you kicked and got the foot up there and leg up there, isn't that correct?

Mr. SCHNELL. I have seen the movement of kicking. I could not see the foot myself, but it was pretty clear, the movement of kicking.

Mr. CHAMBERS. Well, did you not tell me that Perl kicked the man, and I:

Perl has given him once more two slaps and then kicked him back into the room with the foot.

Didn't you tell me that at Goepfingen?

(The question was read by the reporter.)

Mr. SCHNELL. Yes; they are how I said up in Goepfingen.

Mr. CHAMBERS. Didn't you also take me to the window from which you saw this happen?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And we had Lieutenant Bratton, a taller man, much taller, first of all sitting down and then standing up?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And then when I pointed out to you that you could not see him from the waist down, you then began to tell me that you hadn't seen him kick him, but you had seen a movement of the foot, at that the prisoner fell back, and that you thought he had been kicked? Is that correct?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Very well.

Now, after Perl made a movement with his body and the prisoner fell back in the room, then what happened?

Mr. SCHNELL. The prisoner fell back in such a manner that he could no longer be observed through the opening of the window. Lieutenant Perl followed immediately and could no longer also be seen through the window.

Mr. CHAMBERS. Did you see anything else that night?

Mr. SCHNELL. No. Shortly thereafter the light was turned out.

Mr. CHAMBERS. Did you ever see anything again in that room, a beating or mistreatment of prisoners?

Mr. SCHNELL. No, the window was never opened at night after that.

Mr. CHAMBERS. Well now, in fact, Schnell, did you ever see any beating or mistreatment of prisoners by the War Crimes Commission people other than this one time?

Mr. SCHNELL. I was not informed in that manner to distinguish between Americans who were members of the War Crimes Commission and those who were not members of the Commission; but of those people that were known to me as being members of the War Crimes Commission, I have seen no other mistreatment of prisoners.

Mr. CHAMBERS. Did you ever see Thon, Kirschbaum, or Shumacker mistreat anybody?

Mr. SCHNELL. No.

Mr. CHAMBERS. Did you ever hear or see Fanton or Ellis mistreat anybody?

Mr. SCHNELL. No.

Mr. CHAMBERS. Did you ever hear of any of these five that I have named mistreat anybody?

Mr. SCHNELL. No, not seeing.

Mr. CHAMBERS. I asked you, did you ever hear of them?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Who told you?

Mr. SCHNELL. Prisoners.

Mr. CHAMBERS. The internee prisoners or the Malmedy prisoners?

Mr. SCHNELL. The Malmedy prisoners.

Mr. CHAMBERS. Well now, Schnell, the last time I asked you this question, and it is almost the same as I have asked it here, you said that you did not see them mistreat the prisoners, but when I asked you if you had heard of them ill treating anybody, you said that you heard it but did not think much of it because you knew that most of the internees could not distinguish the gentlemen of the War Crimes Commission.

(The pending question was read by the reporter.)

Mr. SCHNELL. I spoke exclusively of the interned, and not for the Malmedy prisoners.

Mr. CHAMBERS. Why didn't you tell me when I asked you, if you had ever heard of these people mistreating prisoners in the Malmedy case, the Malmedy prisoners, that the Malmedy prisoners had told you yes, that it had happened?

Mr. SCHNELL. I cannot remember the question 100 percent, but I think that I was asked about this interned, because I also answered the questions for the interned.

Mr. CHAMBERS. I will tell you what the questions were. I asked you about several people, Thon, Kirschbaum, and Schumacker, and so on. Then I asked you the question: "Did you ever see them ill-treating anybody?" And you said, "No."

I am quoting from the transcript right now. I then asked you: "Did you ever hear that one of them ill-treated anybody?" And you said, "I heard it, but I did not think much of that because I knew that most of the internees could not distinguish the gentlemen of the War Crimes Commission."

Mr. SCHNELL. I said that specifically the interned—

Mr. CHAMBERS. And the answer is now that the Malmedy prisoners told you that some of these people did mistreat them, is that correct?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. But you did not see any of this with your own eyes?

Mr. SCHNELL. No. The mistreatments I have not seen. I have only heard, and there seen the results of such individuals.

Mr. CHAMBERS. What did you see—where did you see that?

Mr. SCHNELL. In the hospital, while the doctor was treating them, and partly also while I took care of these people myself.

Mr. CHAMBERS. What doctor treated the Malmedy prisoners?

Mr. SCHNELL. The question I have to answer in such a manner was that the United States doctor, Richter, has partly treated these prisoners. The other part was left to us for treatment.

I remember one case where Dr. Richter treated a case where an incision into an abscess had to be made.

Mr. CHAMBERS. Do you mean that Dr. Richter treated the Malmedy prisoners in the hospital prison—I should say prison hospital?

Mr. SCHNELL. This one case with the abscess incision took place in the prison.

Mr. CHAMBERS. Was that the only case where they treated the Malmedy prisoners in the hospital—prison hospital?

Mr. SCHNELL. No; they were currently treated in the hospital of the prison.

Mr. CHAMBERS. Well now, for the record, both Dr. Karan and Dr. Richter testified that minor ailments and injuries were treated by the Medical Corps, American Medical Corpsmen stationed at the hospital and anything that required hospitalization they took to Stuttgart. They took this record—

Senator BALDWIN. Do you have any further questions?

Mr. CHAMBERS. Yes; I have two, in connection with the hospital treatment.

Did Dr. Knorr, the dentist, work there while you were there?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Did you have a chance to observe the prisoners being brought in for dental care?

Mr. SCHNELL. Yes; partly I was standing directly into the dental chair.

Mr. CHAMBERS. And did they bring them over one at a time or two at a time, or how did they bring them over?

Mr. SCHNELL. Sometimes alone, one at the time; sometimes two at the time; sometimes three at the time.

Mr. CHAMBERS. And when they brought them over two or three at a time, what did they do with their hoods?

Mr. SCHNELL. In most cases the hoods were taken off in the antechamber. However, often the hoods were left on until they were immediately at the chair.

Mr. CHAMBERS. Didn't you tell me that they frequently took their hoods off and left them in the outer office and they would bring in one or two or three and sit them on stools while they were awaiting their turns in the dental chair?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Was Miss Geiger working with Dr. Knorr when you were there?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And there was one other assistant?

Mr. SCHNELL. Yes; but not all that time. During the time that Miss Geiger had taken ill, another girl was there.

Mr. CHAMBERS. But that was not until after late in February, was it?

Mr. SCHNELL. I cannot remember exactly when she took ill, but probably it was during February.

Mr. CHAMBERS. Well now, when we were down at Schwabisch Hall Prison together, Schnell, you pointed out to me the room in which the—the cell in which Freimuth called to you out of the window. It

was a window on the court, on the side next to the hospital and the third window in on the second floor, as I recall it. Is that correct?

(The pending question was read by the reporter.)

Mr. SCHNELL. I do not exactly remember which window it was. I have also in my sworn statement spoken of cell 64 which I have also correct now which should read "44" because in the meantime have checked at the prison.

Mr. CHAMBERS. In your sworn affidavit you said 63 or 64.

Mr. SCHNELL. If I remember well, I have also written, "If I remember, 63 or 64."

Mr. CHAMBERS. That is correct. You remember it very well indeed.

Now, who did you check with at the prison to find the cell that Freimuth was in?

Mr. SCHNELL. We were led to this cell.

Mr. CHAMBERS. No. He prepared this affidavit on January 12, 1948, and he said it was either 63 or 64. He has just said that he went to the prison people and wants to correct his affidavit.

Now, who did you talk to there, to correct the affidavit?

Mr. SCHNELL. I do not have to talk to anybody. Maybe Mr. Chambers remembers that the numbers were fixed at the sides of the walls in the court.

Mr. CHAMBERS. That is exactly why I am asking you these questions, Schnell. You pointed to these windows. I know what was in your affidavit. Can you keep up with me?

(The preceding two statements were read by the reporter.)

Mr. SCHNELL. Yes.

Mr. CHAMBERS. And you knew that I pointed to a window which was not named in your affidavit?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Now later on in the day, I asked a member of the War Crimes Group who came down to take me through the prison, to show me Freimuth's cell, and he pointed it to me, and told me it was No. 63, which was one of the two numbers that you had in your affidavit; but, if Freimuth was in 63, which has been told to us, and which you put in your affidavit, then you could not have seen him hanging out the window, and saying that, "They extorted perjury from me. I want to die." Because there just wasn't any window there where you could hear him.

Let me go on with it.

Now, you tell me you want to change your affidavit so that it will correspond with a window which would open out where you could have heard him. I would like also to point out, in your affidavit, Schnell, that you went into great detail. You have described in minute detail the way he had been abused, and the way he had been treated, and you found blood clots on the inside of the clothing, and skin fragments and a front tooth missing, and about other people, and then when you get to talking about Freimuth, you gave considerable detail about signs of blows and lacerations all over his body.

You were exact in that apparently, but you were completely wrong as to the room he was in.

Mr. SCHNELL. First, I would like to say that we were led into the cell, in the middle of the night.



Mr. CHAMBERS. Wait a minute. I don't want to know about the suicide at the moment. I want to know about when he was hollering out the window at you.

Mr. SCHNELL. I do not want to make any statement to that. I want to say that to determine the number of the cell was not possible at night.

Mr. CHAMBERS. Let me go back to you being called to, out of the window. Let me read from his affidavit—yours, Schnell:

At about the middle of March 1946 I and several others heard someone call out from one window of the cell building. As far as I can remember it was either cell 63 or 64. The man in question had pulled himself up at the window and several times called out to us these very words, "They extorted perjury from me. I want to die." The following night the camp commander, Captain Evans woke the internees' physician and took us to the very same cell in the cell building, and inside we found the inmate, Freimuth dead.

Mr. SCHNELL. I must say now that this translation of this statement is not correct.

Mr. CHAMBERS. Well, this is the signed statement which is identical with the one given us by Dr. Leer, and supported Dr. Leer's petition for review, and supported the request for habeas corpus in the Supreme Court.

Mr. SCHNELL. It is only a detail but I have mentioned that an interned doctor, myself, and an interned aidman were led to this cell, but this interned aidman has not been mentioned.

Mr. CHAMBERS. Well, all right, I'm not worrying about that. I am worrying about the room, or cell that Freimuth was at.

Now, you have identified to me practically every cell in the interrogation wing. You have identified to me many other points around the prison, but then you are now telling me that you were wrong on the location of where the only man who committed suicide down there was found dead, and it wasn't until you went down there with me last week, or week before last that you began to get aware of the fact that your affidavit made it impossible for him to hang out of the window, isn't that correct?

Mr. SCHNELL. I have not determined that it was impossible to hang out of this window, but I found out that I made a mistake in the number of the cell. I wrote this declaration 2 years after my stay in Schwabisch Hall, and I did not write it in Schwabisch Hall. I did not at that time know exactly the number of the cell, and therefore I have written in my statement, so far as I can remember, 63 or 64.

I knew the last number "4" for sure, but I have only mistaken 6 for 4.

Mr. CHAMBERS. What floor was he on?

Mr. SCHNELL. According to German description, he was on the first floor, which would be second floor.

Mr. CHAMBERS. I would like to repeat again that without any advance knowledge of the type of questioning that would be asked, that a member of the War Crimes investigating team who was there at the time identified Freimuth's cell as No. 63 as it appears in your affidavit, which is not on the outside wing, so that if he was in fact in that cell he could not have shouted through the windows.

Senator KEFAUVER. Off the record.

(There was discussion off the record.)

Mr. SCHNELL. The gentleman of the War Crimes Commission also made statements in front of the Senate in America, and they could not say whether it was cell 44 or 63 or 64.

Mr. CHAMBERS. This was in Schwabisch Prison, and the afternoon of the day he was down there.

Senator BALDWIN. Any questions, Senator Kefauver?

Senator KEFAUVER. What were you interned for, Mr. Schnell?

Mr. SCHNELL. I was Hitler youth leader before the war, and after I was heavily wounded, I was commanded to do service at the party. Senator BALDWIN. You were wounded so that you had to leave the army?

Mr. SCHNELL. No. I was—did not leave the army; I was still a member of the army, but I was doing service with the party as such.

Senator KEFAUVER. When were you released from Schwabisch Hall?

Mr. SCHNELL. On 22d of June 1946.

Senator KEFAUVER. Were you taken somewhere else, or set free?

Mr. SCHNELL. After this I was interned at the internment camp, Dachau.

Senator KEFAUVER. Have you been charged with any crime by the military court, or by the War Crimes Commission?

Mr. SCHNELL. No; we had in Dachau an internment camp in which general interned were kept, and also we had there a war-crimes camp.

Senator BALDWIN. Do you have any further questions?

Senator KEFAUVER. Just a second, please.

How old are you, Mr. Schnell?

Mr. SCHNELL. I am 28 now.

Senator KEFAUVER. What were you in the army?

Mr. SCHNELL. First lieutenant.

Senator KEFAUVER. In what branch of the service?

Mr. SCHNELL. Parachute troops.

Senator KEFAUVER. Are you married?

Mr. SCHNELL. Yes.

Senator KEFAUVER. What is your occupation at the present time? I know you said where you worked, but what do you do with this company?

Mr. SCHNELL. I am employed. I have taken care of the advertising for the firm, and I am now charged with the incoming merchandise.

Senator KEFAUVER. I didn't get, a minute ago, when you were finally released from detention by the armed forces.

Mr. SCHNELL. On the 1st of March 1947, based on my wounds.

Senator KEFAUVER. That is all I have.

Senator BALDWIN. Any questions, Senator Hunt?

Senator HUNT. I want to ask just one.

The witness spoke of after being released from the army that his time was taken in service for the party.

Tell us what that service was.

Mr. SCHNELL. I was employed at the Kreisleitung, district office for Goepingen, for the party, NSDAP, charged with organization and procurement of quarters—defendants.

Senator BALDWIN. Any further questions?

Senator KEFAUVER. I have none.

Senator HUNT. No.

Mr. CHAMBERS. None.

Senator BALDWIN. Thank you very much for coming. That is all.

May I make this statement for the benefit of the record, so that

when we are studying the record back in the States, we will know the facts?

We shall look up the testimony taken by Senator Hunt of some of the prisoners who claimed to be injured, particularly one who had four of his front teeth knocked out. When Senator Hunt was at Landsberg Prison the other day, it is my recollection that that testimony is to the effect that this prisoner was not treated for his four teeth at Schwabisch Hall, but was taken in a jeep some distance away; and I understand also that while Dr. Lloyd has not completed his testimony, that in his examinations that he will testify that all of these men who were treated for injuries to their teeth, in their statements to him at Landsberg Prison since he has been examining there, have all said that they were taken in jeeps some distance from Schwabisch Hall for the treatment. None of them were treated at Schwabisch Hall.

I merely wanted to mention that fact so we can check on the testimony when we get back to the United States.

(Whereupon, at 5:10 p. m., the subcommittee adjourned, subject to call of the chairman.)

# MALMEDY MASSACRE INVESTIGATION

WEDNESDAY, SEPTEMBER 28, 1949

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
*At sea, aboard the USAT Alexander Patch.*

The subcommittee met pursuant to call of the chairman, at 4 p. m., in stateroom 4, Senator Raymond E. Baldwin (chairman) presiding.

Present: Senators Baldwin, Kefauver, and Hunt.

Also present, J. M. Chambers, on the staff of the committee.

Senator BALDWIN. The meeting will come to order.

Proceed, Mr. Chambers.

Mr. CHAMBERS. Perhaps you had better swear them as witnesses, sir.

Senator BALDWIN. Dr. Terry, Dr. Lane, and you Dr. Lloyd, will you three raise your right hands?

Do you and each of you solemnly swear that the evidence you shall give, and testimony in the matter now in question, shall be the truth, the whole truth and nothing but the truth, so help you God?

Dr. TERRY. I do.

Dr. LANE. I do.

Dr. LLOYD. I do.

## TESTIMONY OF DR. LUTHER LEONIDAS TERRY, UNITED STATES PUBLIC HEALTH SERVICE

Mr. CHAMBERS. Dr. Terry, will you give us your full name, age, and address?

Dr. TERRY. My name is Luther Leonidas Terry. My age is 38 years; my address is United States Marine Hospital, Baltimore 11, Maryland.

Mr. CHAMBERS. You are a doctor?

Dr. TERRY. I am a physician.

Mr. CHAMBERS. Will you give us some idea of your medical education and training?

Dr. TERRY. I was graduated from Tulane University with my M. D. degree in 1935. Subsequent thereto I received postgraduate hospital training for approximately 5 years and then for 2½ years was teaching at the medical branch of the University of Texas.

In 1942 I entered the Public Health Service and since that time I have been a medical officer stationed at the United States Marine Hospital at Baltimore.

I am a certified specialist in internal medicines, being a diplomate of the American Board of Internal Medicine, and since 1943 have been Chief of the Medical Service at the Marine Hospital in Baltimore.

My title in the Public Health Service is that of Medical Director.

Mr. CHAMBERS. Dr. Terry, have you made a physical examination of the Malmedy prisoners who are confined at Landsberg Prison?

Dr. TERRY. Our group did examine these 59 prisoners.

Mr. CHAMBERS. Did you also make an examination of a man by the name of Eble?

Dr. TERRY. We did examine Friedrich Eble at Schwabisch Hall.

Mr. CHAMBERS. Is this the same Friedrich Eble who at times used the name of Otto Eble?

Dr. TERRY. That is my understanding. As a matter of fact, I heard him admit that he had used that alias, while testifying before the Senate subcommittee.

Mr. CHAMBERS. Will you describe to us the method in which you conducted your physical examinations?

Dr. TERRY. In accordance with our instructions from the subcommittee of the Senate Committee on Armed Services, we proceeded to War Crimes Prison No. 1 at Landsberg, Germany, and on August 31, 1949, began the examination of these 59 prisoners incarcerated at that institution.

Our examinations required the greater part of the following 10 days. Each of the 59 prisoners was first questioned by a German interpreter, and through this interpreter a complete medical history, including any allegations of maltreatment while a prisoner of war, was obtained.

After this history had been obtained and recorded by the interpreter, the prisoner then came to the next station of our examining unit where one of the physicians reviewed the Malmedy history, particularly with relation to any allegation of physical mistreatment; and during this time he listed all of the pertinent details with regard to the medical history.

The prisoner was then sent to the next station where he was seen by the dentist of our group, and again he was questioned about any allegations of mistreatment involving injuries about the face, mouth, teeth, or jaws.

The dentist then did a thorough examination, recording all of the data.

Next, the prisoner went to another station which was conducted by one of our physicians. At this point he was given a careful complete physical examination. Attention was paid to any scars present on the body, and all of these scars were carefully described and recorded in the records.

After the examination had been completed, the three members of the Medical Board jointly reviewed the individual records on each prisoner and prepared a summary on each individual case.

In addition, after the individual case summaries had been prepared, a composite report of our examination was prepared and is available for submission to the subcommittee.

Mr. CHAMBERS. You have both the individual records and composite reports for submission to the subcommittee?

Dr. TERRY. We do.

Mr. CHAMBERS. With the permission of the chairman, we will at this time receive into the record the reports submitted by Dr. Terry, and signed by Dr. Terry, Dr. Lane, and Dr. Lloyd.

Were there photographs and X-rays taken in connection with these examinations?

Dr. TERRY. During the examination whenever the prisoner alleged physical mistreatment of which there was any objective evidence that could be shown on photographs, photographs were taken; and, in addition, in the face of such allegations involving other injuries, such as injuries to the teeth, dental X-rays were taken, and in some instances, X-rays of other portions of the body were taken when it was thought pertinent.

Senator BALDWIN. Dr. Terry, you and Dr. Lane and Dr. Lloyd submit these records?

Dr. TERRY. Yes.

Dr. LANE. Yes.

Dr. LLOYD. Yes.

Mr. CHAMBERS. And you certify that these are true and correct to the best of your knowledge and belief?

Dr. TERRY. Yes.

Dr. LLOYD. Yes.

Dr. LANE. Yes.

Mr. CHAMBERS. These also include the photographs that you refer to; is that correct?

Dr. TERRY. That is correct.

Mr. CHAMBERS. And you do certify the records?

Dr. TERRY. I do.

Mr. CHAMBERS. Well now, Dr. Terry, did you all arrive at any conclusions in connection with the examination of these 59 prisoners?

Dr. TERRY. Yes. There were certain conclusions which we were able to reach as a result of our examinations.

Mr. CHAMBERS. Would you read those into the record at this time?

Dr. TERRY. Our conclusions are stated as follows:

It is obvious that one group, consisting of 11 prisoners, was not subjected to physical maltreatment. This fact is supported by their own statements, as well as the absence of physical findings.

A second group consisting of 35 prisoners allege physical maltreatment. They did not contend that they had physical evidence, and the examiners did not find physical evidence to support their allegations.

The third group, consisting of 13 prisoners, allege physical maltreatment and presented physical findings which they contended were the result of that maltreatment. The findings in this group have been discussed above, and the individual reports of their cases are attached hereto. Three of these, on examination, had consequences which definitely were not due to physical maltreatment. The remaining 10 showed physical findings which might have resulted from trauma. However, none of these 10 prisoners showed evidence of acts of severe physical violence.

It is concluded, from the above findings, that the evidence of physical maltreatment found in the examination of these 59 prisoners is relatively minimal. When these findings are compared with the allegations of physical maltreatment in the prisoners' histories, there is a striking conflict of evidence.

The medical members of the staff can now refute the charges of some physical maltreatment, but it is our opinion that the severity of the maltreatment in the allegations is completely out of proportion to the physical findings which might support their contention.

Senator BALDWIN. Thank you, Dr. Terry.

Senator KEFAUVER. May I ask a question?

Who ordered him to be sent, how did he happen to be chosen?

Dr. LLOYD. The Public Health Service.

Mr. CHAMBERS. For the record, it should be stated that the subcommittee addressed a letter to the Administrator of the Federal Security Agency, asking for its assistance in making a physical and dental examination of certain of the prisoners in the Malmedy case. In due course, representatives of the Public Health Service, which is a part of the Federal Security Agency, contacted our office and stated that Drs. Terry, Lane, and Lloyd were being assigned to this job.

### TESTIMONY OF DR. JOHN D. LANE, JR., UNITED STATES PUBLIC HEALTH SERVICE

Mr. CHAMBERS. Dr. Lane, will you give us your full name, age, and present address?

Dr. TERRY. May I interrupt a moment?

Mr. CHAMBERS. Surely.

Dr. TERRY. Off the record.

(There was discussion off the record.)

Mr. CHAMBERS. Dr. Terry, are you and your associates in this case members of the Board of Medical Review within the Public Health Service?

Dr. TERRY. Yes. The three of us constitute three-fourths of the Medical Review Board of the Public Health Service. This review board was constituted by the Surgeon General of the Public Health Service for the purpose of reviewing physical findings on applicants for commission in the Public Health Service, and also on commissioned officers already on duty in the Public Health Service when questions arose with regard to retirement for physical disability, or other recommendations with regard to illnesses or separation from the service.

Mr. CHAMBERS. Do you feel that this type of duty within the Public Health Service has added to your qualifications for evaluating the physical and dental findings in this case?

Dr. TERRY. I feel that it does.

Mr. CHAMBERS. Dr. Terry, do you or any of the other doctors in this case have any interest in the Malmedy matters, or any of the persons involved?

Dr. TERRY. I personally do not have any interest in it and have not been associated in any way with the Malmedy cases in the past, and have no particular interest in them in any way.

I feel that that is true of the other two members of our medical-examination team.

Mr. CHAMBERS. We will ask them that question when they are testifying.

Is there anything else?

(No response.)

Mr. CHAMBERS. Dr. Lane, will you give your full name, age, and present address?

Dr. LANE. John Dunn Lane; age, 46; present address, United States Marine Hospital, Baltimore 11, Md.

Mr. CHAMBERS. What is your title with the Public Health Service?

Dr. LANE. Medical director, designated as Chief of the Surgical Service, United States Marine Hospital, Baltimore, Md.

Mr. CHAMBERS. Will you give us your medical background, both education and experience?

Dr. LANE. I received a B. S. degree from the University of Georgia in 1922. I received an M. D. degree from the University of Georgia in 1927. I received 8 months of postgraduate work following a residency at the University of Georgia; and, in 1929 I entered the United States Public Health Service, was stationed at United States Marine Hospital, Detroit, Mich., in charge of the surgical service until 1939. From 1939 until 1944, I was in charge of the surgical service at United States Marine Hospital, New Orleans, La. From 1944 until the present date, I have been stationed at the United States Marine Hospital, Baltimore, Md., as Chief of the Surgical Service.

Mr. CHAMBERS. Dr. Lane, you have heard the testimony given by Dr. Terry. Do you concur in the statements he made, and the report he has submitted to the committee?

Dr. LANE. I do.

Mr. CHAMBERS. Do you have any interest or any knowledge or any association with any of the persons involved in the Malmedy case?

Dr. LANE. No; I have not. In fact, my knowledge as to the exact scope and meaning of the Malmedy trials was very meager until assigned to this duty.

Mr. CHAMBERS. Do you have anything that you would care to add to the statements made by Dr. Terry?

Dr. LANE. I have none.

#### TESTIMONY OF DR. RALPH SPURR LLOYD, UNITED STATES PUBLIC HEALTH SERVICE

Mr. CHAMBERS. Dr. Lloyd, give us your full name, age, and present address.

Dr. LLOYD. Ralph Spurr Lloyd; age, 41; my residence address, United States Marine Hospital, Baltimore, Md.

Mr. CHAMBERS. What is your title with the Public Health Service?

Dr. LLOYD. I am dental director of the Public Health Service, and at the present time am assigned as Chief of the Dental Service, Baltimore, Md.

Mr. CHAMBERS. Can you give us some idea of your dental and medical education and experience?

Dr. LLOYD. I graduated from the Western Reserve University, with a B. S. degree, and received my D. D. S. degree in 1932, Western Reserve, at Cleveland, Ohio.

I interned 2 years in the Public Health Service and was commissioned in the Public Health Service in 1934. I received a year and a half of postgraduate training at Memorial Hospital, New York, in 1940, in the field of maxillo-facial prosthesis.

At the present time, I am designated as the Chief of the Dental Service, at Marine Hospital, as stated before.

Mr. CHAMBERS. Well, Dr. Lloyd, you have heard the testimony given by Dr. Terry. Do you concur in his statements and in the record which has been submitted to the committee?

Dr. LLOYD. In every detail.

Mr. CHAMBERS. Do you have any interest in, or any relationship with, any of the persons or circumstances connected with the Malmedy matter?

Dr. LLOYD. None whatsoever.



Mr. CHAMBERS. Do you have any statement that you would care to make or to add to the testimony that has already been given?

Dr. LLOYD. I have not.

Mr. CHAMBERS. Dr. Terry, is the conclusion which you expressed a moment ago a part of the report which is signed by all three of you doctors?

Dr. TERRY. It is a joint report submitted by the three of us.

Mr. CHAMBERS. Dr. Terry, was the examination of Friedrich Eble contained in your report?

Dr. TERRY. We, the three of us, have prepared a separate medical report on the examination of Friedrich Eble.

Mr. CHAMBERS. I believe in his affidavit he claims that he had been tortured by having burning matches thrust under his fingernails, suffered certain knife wounds and other types of physical duress.

Dr. TERRY. Those were the contentions he made to us.

Mr. CHAMBERS. What medical evidence did you find to support those facts?

Dr. TERRY. What was that question?

(The pending question was read by the reporter.)

Dr. TERRY. On examination of Friedrich Eble, we found several scars on his right upper and lower arm. Careful examination of the hands showed no abnormality which in any way might suggest damage which is evident at this time, and which he contended resulted from the insertion and burning of matches beneath the fingernails.

In addition to the actual physical findings, it should be pointed out by the medical examiners that Eble showed many discrepancies in his history. These discrepancies, with the other evidence presented, has led the medical examiners to believe that Eble is a psychopathic personality and a pathological liar. It is our opinion that no credence can be placed on any statement made by Eble.

Mr. CHAMBERS. Dr. Terry, is it reasonable to assume that if Eble had been tortured, having burning matches placed under his fingernails, and which he stated later became infected, that there would have been some physical evidence remain?

Dr. TERRY. Eble stated to us that matches were inserted to a depth of at least 5 millimeters under each of his 10 fingernails, and that these matches were allowed to burn down to the tips of the fingers. He stated that the nails had been burned; that the tips of the fingers were not burned, due to the fact that there were calluses on the tips of the fingers.

When questioned further about the manner in which he acquired calluses on the tips of his fingers, he stated that they were the result of having used a rake as a farm hand prior to his incarceration at Schwabisch Hall.

When the medical examiner then pointed out to him that we did not feel that calluses could be produced on the tips of fingers by the use of a rake, he then turned and offered the explanation that he had been digging potatoes with his hands, in addition, and this had resulted in the calluses.

He further explained that he had always been known to have tougher skin than the average individual, and that physicians had often remarked about this tough skin, upon giving him injections.

Eble was asked the direct question as to whether he had calluses on his fingertips at the time we were examining him, and, after looking at the fingertips carefully, he stated that he did have calluses.

Immediately thereafter we jointly examined his fingertips carefully, and there was absolutely no evidence of any calluses on the fingertips.

Mr. CHAMBERS. May I interrupt, Doctor?

Dr. TERRY. Yes.

Mr. CHAMBERS. Do you believe, if he had been burned with a match at the time you were examining him it would have blistered and left scars?

Dr. TERRY. It is inconceivable to me that a match inserted under the fingernail could burn down to the tip of the finger and actually burn the fingernail without producing a blister or at least some charring of the skin on the tip of the finger, yet Eble stated that the burning did burn his fingernails, but did not blister or char the tips of his fingers.

Mr. CHAMBERS. Dr. Terry, do you have any further comment to make on the story told by Mr. Eble?

Dr. TERRY. Yes. With regard to his contention that matches were inserted under each of the 10 fingers, and were allowed to burn to the fingertips and burn the nails, and, according to his statement, each of the 10 fingers became infected and drained pus for a period of 6 weeks after the injury—the members of the medical-examining team felt that such injuries as the alleged burns, and particularly when they were complicated by infection lasting over a period of 6 weeks, should at least result in the loss of the fingernails, and also some permanent scarring of the nail beds and fingertips, yet Eble stated that he did not lose any of the fingernails, and examination showed no evidence of any scarring of the fingertips, nail beds, or nails.

Mr. CHAMBERS. Do you have a report to file on the Eble case?

Dr. TERRY. We do have a joint report signed by Dr. Lane, Dr. Lloyd, and myself.

Mr. CHAMBERS. Without objection, the report submitted by the medical examining team will be placed in the record.

Senator BALDWIN. Let me ask, Doctor, in connection with Eble—you have described on the record here the condition of his fingers, and what he had to say about them?

Dr. TERRY. Yes.

Senator BALDWIN. Does the record disclose other claims that he made, that you came to the conclusion were unfounded?

Dr. TERRY. Yes.

Senator BALDWIN. Do you have any questions, Senator Kefauver?

Senator KEFAUVER. None.

Mr. CHAMBERS. I would at this time like to have inserted in the record two staff studies, one on the subject of pretrial investigation procedures on the continent, and the second, an analysis of the development of international war crime procedures.

In addition, I would like to include in the record at this point a verbatim testimony of an interrogation of Dietrich Schnell, which was conducted by myself at Goepfingen, Germany, on August 31, 1949, along with the report I prepared for the subcommittee on the interrogation of Schnell; along with the preliminary report of an investigation of an assistant to Dr. Edward Knorr by the name of

Miss Geiger, who later testified before the subcommittee at Schwabisch Hall.

Senator BALDWIN. They may be inserted.

(See exhibits V and W in appendix.)

Senator BALDWIN. If the transcript of proceedings before Senator Hunt at Landsberg Prison, at which time he interviewed several of the prisoners now in Landsberg, has not previously been inserted in the record, it should be inserted at this point.

(See exhibit BB in appendix.)

(Thereupon, at 4:40 p. m., the hearings in the above-entitled matter were adjourned.)

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# APPENDIX

## EXHIBIT M

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
Monday, October 10, 1949.

The subcommittee met and accepted into the record the deposition of Col. Willis M. Everett, Jr.

TESTIMONY OF COL. WILLIS M. EVERETT, JR. TAKEN BEFORE COLONEL J. M. CHAMBERS, PROFESSIONAL STAFF MEMBER BY DIRECTION OF THE SENATE SUBCOMMITTEE ON THE MALMEDY MATTERS, FOR INCLUSION IN THE RECORD OF THE INVESTIGATION ON SENATE RESOLUTION 42.

Colonel CHAMBERS. Do you, Colonel Willis Everett, swear that the facts you are about to give in this case are the truth, the whole truth, so help you God?

Colonel EVERETT. I do.

Colonel CHAMBERS. Will you please give your full name, age, and present address?

Colonel EVERETT. Willis M. Everett, Jr.; age, 49; residence, 2510 Rivers Road NW, Atlanta, Ga. Do you want the office address?

Colonel CHAMBERS. No; that isn't necessary.

Will you for the benefit of the record give me your legal education and experience?

Colonel EVERETT. After finishing at Washington and Lee University in 1921 I entered the office of my father Willis M. Everett, Sr., in order to assist him, studying law at night at the Atlanta Law School.

I have continuously practiced law since that date, having been admitted to all of the inferior courts of Georgia as well as the Court of Appeals and the Supreme Court of Georgia, district court of the United States, circuit court of appeals, as well as the Supreme Court of the United States.

Colonel CHAMBERS. When were you admitted to the bar in Georgia, Colonel Everett?

Colonel EVERETT. My recollection was 1923 or 1924.

Colonel CHAMBERS. Colonel Everett, it is my understanding that you served with the United States Army during World War II. Will you give us a brief outline of your military experience, first, as Reserve officer prior to the war, and then your connection with the Army during the war.

Colonel EVERETT. In 1918 I went to Plattsburg, N. Y., at the infantry officers training camp, successfully completed that course, and ended my World War I experience at Fort Monroe, Va., in January 1919 in Coast Artillery.

Colonel CHAMBERS. May I interrupt just a second?

Off the record.

(Discussion off the record.)

Colonel EVERETT. I think in 1923 I entered the reserve component of the United States Army and received successive promotions until September 1, 1940, when I entered active duty with the Fourth Corps Area headquarters in Atlanta, Ga., as assistant to the Assistant Chief of Staff, G-2. About 1930 I transferred to the Military Intelligence Branch of the Reserve.

During the period from 1924 to 1940 I would say that I had participated in about 15 tours of active duty, almost all of which were serving with the Regular Army component. I served as Assistant G-2—

Colonel CHAMBERS. We do not need the detail on this service. I am just trying to get some idea of the background.

Colonel EVERETT. Until I was made the Director of Security and Intelligence with headquarters in Atlanta, which was my last assignment until attending the second European staff officers course at Columbia University in 1945.

Colonel CHAMBERS. During that period were you responsible for the general security of the prisoners of war in this area, Fourth Corps Area?

Colonel EVERETT. I had complete charge of over 90,000, including the housing, work, and discipline and administration as Director of Security and Intelligence.

Colonel CHAMBERS. In 1945 you went to Columbia to attend the European staff officers school?

Colonel EVERETT. That is correct.

Colonel CHAMBERS. After which you were assigned overseas?

Colonel EVERETT. That is correct.

Colonel CHAMBERS. What assignment did you receive overseas?

Colonel EVERETT. Most of the graduates who attended this school, a few of them were transferred, went over as a group, expecting to serve with the European headquarters in some capacity in connection with this course that we had taken in international affairs at Columbia University, but upon arrival at Frankfurt, Germany, and on account of being an attorney I was immediately assigned to war crimes group with headquarters in Wiesbaden.

Colonel CHAMBERS. During your assignment to the war crimes group were you assigned to any duties in connection with the Malmédy trials?

Colonel EVERETT. Upon arrival at Wiesbaden I was introduced to Colonel Micklewaite, and remained there for about 2 weeks.

Colonel CHAMBERS. I believe Colonel Micklewaite was the deputy theater judge advocate for war crimes.

Colonel EVERETT. That is correct.

And was then sent to Ludwidsburg to observe the war crimes trials that were being conducted there at that time. I had only been there a few days when some captain informed me that Colonel Micklewaite's office had telephoned them to the effect that I would be chief defense counsel for the Malmédy defendants, and that I was to proceed immediately to Schwabisch Hall, Germany, where I would be met by additional members of a defense staff.

Colonel CHAMBERS. This was approximately the first week in April, was it not, Colonel?

Colonel EVERETT. Roughly, yes.

Colonel CHAMBERS. When you got to Schwabisch Hall, did you find other members of your defense staff there?

Colonel EVERETT. As I recall, Lt. John S. Dwinnell, Capt. Benjamin Narvid and Lt. Wilber Wahler were already there.

Colonel CHAMBERS. How long did it take you to organize and get together your entire defense staff?

Colonel EVERETT. Originally when I was informed that I was to be chief defense counsel for the 74 Malmédy defendants I strongly protested the assignment because of the fact that during my civilian practice I had only defended three criminals and I wasn't adept at criminal trial procedure although I have had extensive experience over a 25-year period in civil and estate practice.

Colonel CHAMBERS. To whom did you make this protest?

Colonel EVERETT. To the captain who informed me and later to Colonel Micklewaite, and I believe I informed Lieutenant Colonel Ellis to the same effect when I first met him.

The answer that I received from higher headquarters was to the effect that I would be given qualified and adequate assistants to carry on the defense of this case, and that my job would be principally to organize and see that the defense proceeded smoothly.

Colonel CHAMBERS. Did you, in your opinion, receive adequately trained personnel to assist you in this case?

Colonel EVERETT. Most emphatically I did not.

Colonel CHAMBERS. In what way was the assigned personnel to you inadequate?

Colonel EVERETT. On account of their lack of criminal trial experience in the United States prior to their entry into the Army.

Colonel CHAMBERS. Did you also have the assistance of German counsel who were retained by the individual defendants?

Colonel EVERETT. Answering your question technically no. Mr. Herbert Strong and one of my assistants went to Munich, Germany from Dachau and got together a group of high class practitioners at the German bar to act on behalf of certain of the defendants who had requested that German counsel be secured.

Colonel CHAMBERS. Were these German practitioners paid by the defendants or were they paid by the United States?

Colonel EVERETT. They were paid by no one while I was in Germany and I left there in 1946.

Colonel CHAMBERS. As far as you know these attorneys, among whom was Dr. Leer, were receiving no fees for their part in the defense of the Malmédy accused?

Colonel EVERETT. They never received a penny while I was in Germany.

Colonel CHAMBERS. In your opinion, were these German practitioners well qualified in the practice of law?

Colonel EVERETT. Several of them were unusually good but none of them had any knowledge whatsoever of our American procedure or principles of trial, nor did they have any experience except for Dr. Rau in any war crimes trial work.

Colonel CHAMBERS. Did any of these German attorneys speak English?

Colonel EVERETT. Only one, Dr. Leiling, who was a graduate of Oxford University and married a British subject.

Colonel CHAMBERS. Did you yourself speak German?

Colonel EVERETT. I did not.

Colonel CHAMBERS. Did any of your staff of American lawyers with the exception of Mr. Strong speak German?

Colonel EVERETT. Not fluently, nor did they know the technical words of the German language, and it was necessary for all to have interpreters with them except for Mr. Strong.

Colonel CHAMBERS. Colonel Everett, during the first 10 days to 2 weeks after your appointment to the job of chief defense counsel, were you able to actually do any work in preparation of the case for defense, or was that time spent in completing the administrative arrangements and getting your staff organized so that it could commence to function?

Colonel EVERETT. We were unable to do any defense preparation work until after the 1st of May except for possibly working on certain motions such as severance, jurisdiction, et cetera.

Colonel CHAMBERS. Then this only gave you approximately 2 weeks to study and prepare your case for defense?

Colonel EVERETT. That is correct.

Colonel CHAMBERS. Was this adequate time?

Colonel EVERETT. Absolutely inadequate. We were not even able to interview all of the defendants prior to the commencement of the trial.

Colonel CHAMBERS. Did your interviewing continue during the process of the trial?

Colonel EVERETT. We were forced to interview, to finish the interviewing of our defendants while the trial was proceeding as Colonel Corbin and others had told us that we had to get under way according to instructions from Colonel Micklewaite's office.

Colonel CHAMBERS. Did you at any time ever officially or formally request the court for additional time?

Colonel EVERETT. Only one time, when the prosecution rested and the court in informal discussion had stated they would only give us 2 or 3 days to start the defense work, the defense presentation of the case, at which time our German counsel completely rebelled in the matter and insisted that additional time be given. This was made a matter of formal motion and a small additional amount of time was given.

Colonel CHAMBERS. Do you recall how much time you had between the time the prosecution rested and the defense began to present its case?

Colonel EVERETT. About 6 days, as I recall.

Colonel CHAMBERS. Prior to the commencement of the trial and prior to the time that the prosecution rested its case, did you present any formal request to the court for additional time in which to prepare the case of the defense?

Colonel EVERETT. No formal request was made.

Colonel CHAMBERS. Why didn't you make such a request?

Colonel EVERETT. Because Col. Frank C. Corbin, in charge of the administration of the war crimes trials at Dachau, had informed me that Colonel Micklewaite's office demanded that the trial start and it would be absolutely useless to try to get an extension of time from the court or anyone else.

Colonel CHAMBERS. That was a matter which was within the discretion of the court itself, though, was it not, Colonel Everett?

Colonel EVERETT. I would say no, that administratively the courts were run according to the desires of the higher headquarters.

Colonel CHAMBERS. Normally as perhaps distinct from the way these particular courts were handled, it is within the purview of the military court to itself determine whether or not a motion for additional time to prepare a case for defense, or for that matter, for the prosecution to prepare its case, lies within the discretion of the court?

Colonel EVERETT. That is true, but this is not a military court in any sense. It had no semblance of military justice.

Colonel CHAMBERS. Technically it was a military court, was it not, appointed by—

Colonel EVERETT. Actually it was but not technically.

Colonel CHAMBERS. Actually it was appointed by the Third Army.

Colonel EVERETT. That is my recollection.

Colonel CHAMBERS. And it was a military government court that was appointed under rules and regulations of the Army but which operated under procedures which were different from those normally followed in military courts?

Colonel EVERETT. I would say if followed in military courts, not normally followed. No rules of evidence or any of the other rules were similar to military justice.

Colonel CHAMBERS. Colonel Everett, what was your understanding of the rules under which you were operating? Were they derived from normal American procedures or from where did they come?

Colonel EVERETT. My understanding was that they were adopted as a result of the London agreement between Russia, Great Britain, France, and the United States.

Colonel CHAMBERS. Off the record again.

(Discussion off the record.)

Colonel CHAMBERS. Colonel Everett, what opportunity had you or your staff to familiarize yourself with the rules of procedure under which you were supposed to defend the Malmédy defendants?

Colonel EVERETT. Colonel Dwinell, Captain Narvid, Lieutenant Colonel Sutton were completely new at war crimes, being assigned about the same time. Lieutenant Wahler had not tried any war-crimes-trial cases but had for a short period of time been in Colonel Micklewaite's office in Wiesbaden. Mr. Strong and Mr. Walters were engaged in war-crimes-trials work at Ludwigsburg when I first met them.

Colonel CHAMBERS. Colonel Everett, did you find any particular difficulty in the physical facilities that were made available to you or efficiency of the interpreters or any other of the arrangements that were made available to you in preparing your case for trial?

Colonel EVERETT. We had practically no facilities whatsoever for preparing for the trial after meeting the three members of my staff at Schwabisch Hall.

Colonel CHAMBERS. May I interrupt for a moment.

How long did you and your staff members stay at Schwabisch Hall?

Colonel EVERETT. One night only.

Colonel CHAMBERS. During that time—

Colonel EVERETT. And part of the morning.

Colonel CHAMBERS. Excuse me.

During that time you had no opportunity to physically inspect the prison or the operations of the investigating staff?

Colonel EVERETT. We had no reason to investigate anything at that time, and I have only been in the prison, seen the interrogation or office room, together with quite a number of the cells, having been given what might be called a conducted tour of the prison by Colonel Ellis.

Colonel CHAMBERS. Did you see any cells which had an interior iron grill in addition to the outer door which I believe were located on the same floor of the administrative offices and the cells that were used for interrogation?

Colonel EVERETT. I do recall barred doors in addition to the solid iron door that was in front of all of the cell doors.

Colonel CHAMBERS. Have you been—

Colonel EVERETT. But I do not know the location of these, but I do recall the barred doors in addition to the others.

Colonel CHAMBERS. Have you in your capacity as an attorney had occasion to visit other prisons within the United States?

Colonel EVERETT. Very few. The Federal Prison in Atlanta and prison in San Juan, P. R., and the common jails of Atlanta.

Colonel CHAMBERS. Compared to the common jails in Atlanta and the other prisons you have seen, how did Schwabisch Hall stack up as a prison?



Colonel EVERETT. No comparison. The American—the common jails that I have seen were comparatively open, whereas all of the cells in Schwabisch Hall that I saw were absolutely closed off to any intercommunication, with solid doors and solid walls.

Colonel CHAMBERS. Did the cells that you observed have toilets in them?

Colonel EVERETT. Yes.

Colonel CHAMBERS. Were they adequately lighted? Did they have windows in them?

Colonel EVERETT. Very small windows which were at the top of the cell but no access—very little access for light.

Colonel CHAMBERS. Were they warm or heated when you were in them?

Colonel EVERETT. I do not remember.

Colonel CHAMBERS. Was there a difference between the size of the windows in the cells which had the iron bars and the other cells that you might have seen?

Colonel EVERETT. I do not remember.

Colonel CHAMBERS. We interrupted a line of questioning in there. We had been talking about facilities and you said you had met your staff down at Schwabisch Hall, and I interrupted.

Could we go back and pick up that line of thought now, Miss Reporter?

(Question read as follows: "Colonel Everett, did you find any particular difficulty in the physical facilities that were made available to you or efficiency of the interpreters or any other of the arrangements that were made available to you in preparing your case for trial?")

Colonel EVERETT. After meeting part of my staff at Schwabisch Hall we proceeded to Dachau and there met Colonel Corbin. I informed him that Colonel Ellis would need housing facilities for a certain number of his staff as well as housing facilities for my own staff. I made arrangements for these houses but did not occupy any of the same until Colonel Ellis arrived in Dachau so that he might have his choice.

Colonel CHAMBERS. Did you have an adequate number of qualified interpreters?

Colonel EVERETT. No. We also arranged during this waiting period in a large deserted building next to the main court room building and administrative building at Dachau getting three rooms for my staff and three rooms for Colonel Ellis's staff. No attempt was made during this period of time to secure stenographers or other personnel because I had no knowledge of what requirements would be necessary.

One of the first requests after the defendants came to Dachau was for interpreters and stenographers. Colonel Corbin did the best that he could for me but we were never able to get fast, competent interpreters or stenographic help.

I also demurred strenuously to Colonel Micklewaite's office about the inadequacy of stenographic help as well as interpreters.

Colonel CHAMBERS. Did they intervene and try to help you?

Colonel EVERETT. After the trial was under way we were able to get one or two full-time stenographers from Colonel Micklewaite's office.

I am satisfied that Colonel Corbin did everything within his power to secure them for us as well as Colonel Micklewaite's office, but they were not available due to the other trials that were in progress.

Colonel CHAMBERS. Do you recall when the defendants were first brought to Dachau?

Colonel EVERETT. About the last week in April.

Colonel CHAMBERS. Did you have free access to the defendants after they arrived at Dachau so that you could prepare your case for defense?

Colonel EVERETT. I did not.

Colonel CHAMBERS. In what respect were you precluded from having such access?

Colonel EVERETT. Under the trial guide the chief prosecutor assumed that he was responsible for the defendants until after the trial was over. The entire proceeding being new to myself and most of my staff we had no reason to challenge this authority. Colonel Ellis insisted that we not allow the defendants to meet in a group or allow any two of them together without some American being present to see that they did not discuss the case among themselves. This was a continuation of the policy carried out at Schwabisch Hall as Colonel Ellis had first cautioned me about their being allowed to talk together and he so informed me that they had been kept absolutely separate so that the defendants could not get together with their stories and make up a common defense.

Colonel CHAMBERS. Did Colonel Ellis state why he felt that such a procedure was necessary?

Colonel EVERETT. Because they would collaborate among themselves and make a common—a collaborated story about their participation in the Malmedy offensive.

Colonel CHAMBERS. Did these restrictions impede the development of the defense in this case?

Colonel EVERETT. Absolutely. When the defendants were brought to Dachau by Colonel Ellis they were placed in separate cells in the same manner in which they had been housed at Schwabisch Hall and Colonel Ellis demurred strongly to my having a meeting of all 74 defendants the first night that I was permitted to talk to them in Dachau.

Colonel CHAMBERS. Did you have any difficulty getting individual defendants brought down to your respective attorneys so that they could work on that particular case?

Colonel EVERETT. The only difficulty was that Colonel Ellis insisted that only a very few defendants would be brought at one time.

Colonel CHAMBERS. Did he ever object, however, to you or any of your people questioning a particular defendant as an individual?

Colonel EVERETT. No.

Colonel CHAMBERS. But you did have to request through Colonel Ellis that the defendants be brought—in other words, he had custody or assumed the responsibility for the prisoners and you had to ask him to send a particular defendant in for you to handle?

Colonel EVERETT. That is not correct. He demurred when the defendants first came to Dachau about my having all of them in one room at one time. The purpose of this first meeting being to impress on all the defendants the absolute necessity for telling the whole truth and the complete story to their individual attorneys that I had assigned to each one.

Colonel CHAMBERS. Did you personally through an interpreter address them?

Colonel EVERETT. That is correct.

Colonel CHAMBERS. Did you find that the prisoners originally were reluctant to cooperate with you?

Colonel EVERETT. The next day after this meeting my various teams came to me throughout the day and stated that they could get no information for or against and that the prisoners would not confide in them in any way. Again I called a meeting, as I recall, that night and had the prisoners brought again into a large vacant room next to these offices where the prosecution and defense had their offices. Again I insisted, urged and exhorted these defendants that they must tell us the truth regardless of what they did in order that we could prepare a proper defense.

Colonel CHAMBERS. Did this second meeting have the desired effect?

Colonel EVERETT. It did not. We still—the next day the same pattern occurred, and to the best of my recollection I spent several hours with Colonel Peiper and General Kraemer and maybe one or two others, urging and exhorting them to see if they could not make these defendants tell to us the whole truth about what transpired. It must be remembered that at this time we had no confessions, purported confessions, or any knowledge of any duress of any type.

That night another meeting was held but in the bunker where the prisoners were separately housed and in Dr. Dortheimer's office. At this meeting Colonel Peiper and some of their own officers insisted that they talk freely to their defense counsel, that we were in fact their legitimate defense counsel, and that we were honestly making an effort to prepare a defense on their behalf.

Colonel CHAMBERS. As I understand the record, after this meeting the prisoners began to cooperate?

Colonel EVERETT. The next day, throughout the entire morning, one attorney after another would come to me in my office in much excitement telling me about some gruesome story of how this defendant had been beaten, kicked, mock trials, and other forms of force and duress. To the best of my recollection I immediately went to Colonel Corbin with this gruesome story and he informed me that he was only handling the administrative angle of these trials and that the matter would have to be taken up with Colonel Micklewaite's office.

Colonel CHAMBERS. Had you at this time submitted a questionnaire to each of the accused to be executed by them to develop certain pertinent information about each individual and also which raised certain questions concerning duress?

Colonel EVERETT. I had not.

Colonel CHAMBERS. At what stage of the game were these questionnaires which had been referred to by other witnesses prepared?

Colonel EVERETT. To the best of my recollection, it was at the end of that first day's interview after Colonel Peiper told these men that they were to tell us the entire truth.

Colonel CHAMBERS. So that the first intimation you had of duress in this case stemmed from the verbal testimony or verbal reports that were given to your various attorneys by various defendants?

Colonel EVERETT. That is correct.

Colonel CHAMBERS. After reporting this to Colonel Corbin, it is my understanding that shortly thereafter you were sent up to talk to Colonel Micklewaite who was in charge of the war crimes group about these matters of duress. Is that correct?

Colonel EVERETT. That is correct. But at that time I think that the—I am sure that the questionnaire had been taken.

Colonel CHAMBERS. As I understand this, the questionnaire was prepared after Colonel Peiper had talked to the accused. Let me see if I can get this clear in the record. Was the questionnaire distributed to the accused before they began to tell your various attorneys about duress?

Colonel EVERETT. No.

Colonel CHAMBERS. Then—

Colonel EVERETT. I had no knowledge of any duress.

Colonel CHAMBERS. I understand that. The point I am trying to get in is this: You previously stated that your first knowledge of duress had been as a result of the verbal statements made to your attorneys by the accused. The point I am trying to get in is whether or not these questionnaires had been distributed to the prisoners but had not yet been executed and returned to you before they began to tell their story.

Colonel EVERETT. They had not.

Colonel CHAMBERS. They had not.

Colonel EVERETT. The questionnaire was the result of these first free interviews. When I say "free" I mean where the defendant freely talked to his defense counsel, and I worked up with my staff, as I recall it, that first night a series of questions, and the next day we mimeographed that list, and I remember that Colonel Ellis strenuously objected to our allowing these prisoners to even have a pencil in their cells to fill these out, fill out these questionnaires.

Colonel CHAMBERS. After the questionnaires were filled out you made your trip up to see Colonel Micklewaite?

Colonel EVERETT. That is my recollection.

Colonel CHAMBERS. And based on your visit to Colonel Micklewaite was there an investigation or an examination made of any of the accused for the purpose of determining the validity or attempting to evaluate the statements and charges being made by them concerning duress?

Colonel EVERETT. Yes. I was flown to Wiesbaden the next day after the questionnaires came. I able to fabricate the results on a large chart, cardboard chart approximately 18 inches square. When I arrived at Wiesbaden I talked for a few minutes with Colonel Micklewaite and he informed that I should take the entire matter up with Colonel Bresee who was a member of his staff.

Colonel CHAMBERS. Was anyone else present at your interview with Colonel Bresee?

Colonel EVERETT. When I walked into his office Colonel Ellis was already there, and I was informed that I should make my claims of duress and so forth in his presence.

Colonel CHAMBERS. Just so the record will be perfectly clear, were you told that pretty much in so many words? In other words, did they say that Ellis is here now and he wanted to hear these things, or did they say—

Colonel EVERETT. It wasn't a direct order. Is that what you are referring to?

Colonel CHAMBERS. That is correct.

Colonel EVERETT. It wasn't a direct order or similar to what you said.

Colonel CHAMBERS. But as a matter of fact, Colonel Ellis was present and they said, well, for you to go ahead and tell your story and he remained there while you did make your report. Is that correct?

Colonel EVERETT. That is correct. Let me bring in one thing.

Colonel CHAMBERS. Off the record.

(Discussion off the record.)

Colonel CHAMBERS. Colonel Everett, did you feel that it was proper to make this report in the presence of the chief prosecutor, Colonel Ellis?

Colonel EVERETT. This was probably the hardest decision that I had been called upon to make throughout my entire Army career. I was here forced to make

the decision of exposing my plan of defense for these 74 defendants who I was charged with the responsibility of defending their lives and the duty of my country to expose in open court the various tricks, ruses, mock trials, force, and duress thereby exposing to public eyes the conduct of our American Army and citizens.

Colonel CHAMBERS. At that time, Colonel Everett, the only evidence you had to support this belief were the statements made by the accused and of course the statements they had put in their questionnaires. Is that correct?

Colonel EVERETT. That is correct. But it must be borne in mind that according to Colonel Ellis' statement to myself and to my personal knowledge while these prisoners were in Dachau they never had an opportunity to get together and make up these various sordid stories of mistreatment and the abuses of the prosecution while being in charge of these prisoners.

Colonel CHAMBERS. If we could, in our own discussion here on the record, separate out, sort out in our own mind the various types of duress which had come to your knowledge as a result of the statements made as well as the questionnaires that had been filled out by the accused so that we could find those things of which there was no denial and of which you had certain knowledge, and then those things of which we were completely dependent on the statements of the accused who had in the majority of cases made confessions and might have some motivation to claim duress, I think it would be very helpful. It would appear to your knowledge you did know these people had been kept separate and had had no opportunity to get together and frame up these stories. Is that correct?

Colonel EVERETT. While they were in Dachau, but prior to that time, according to Colonel Ellis' statement that they had been separated, and his insistence that they not even be allowed to be brought together in one room at the same time.

Colonel CHAMBERS. And now—

Colonel EVERETT. I played ball with Colonel Ellis and cooperated with him in keeping them separate and trying to keep them from ever getting together and making up these stories.

Colonel CHAMBERS. While you were at Schwabische Hall, you had been told and probably had observed that the defendants were moved from point to point in the prison with a hood over their head so that they had no opportunity to see each other or even know who was in the prison. Is that correct?

Colonel EVERETT. That is correct. The first time that Colonel Dwinell, Captain Marbid, Lieutenant Wahler, and myself went to that prison about 9 o'clock at night until about 12 o'clock at night when these prisoners were brought in in groups of about 10 defendants at a time and served with a copy of charges they were moved throughout the prison with hoods over their heads, even including Difenthal, who only had one leg.

Colonel CHAMBERS. Insofar as the mock trials are concerned, had there at this time been any admission or any understanding on your part that had been given to you by anyone on the prosecuting staff, or anybody else, that they had used mock trials?

Colonel EVERETT. At what time?

Colonel CHAMBER. At the time you were having this conference with Colonel Bresee, did you have any corroboration of the claims made by the accused that the mock trials had taken place?

Colonel EVERETT. I had none whatever.

Colonel CHAMBERS. At that time?

Colonel EVERETT. None whatsoever except that the defendants had brought these stories into their counsel.

I might say, for the benefit of the record, that I had three groups of counsel. Colonel Dwinell and Mr. Strong represented the officers.

Colonel CHAMBERS. The general officers; was it not, sir?

Colonel EVERETT. All the officers. Colonel Sutton and Lieutenant Wahler represented the privates. Captain Narbid and Mr. Walters represented the non-commissioned officers.

Colonel CHAMBERS. To complete the record, the German defense counsel who were later assigned, whom did they represent or assist?

Colonel EVERETT. They didn't really get started on any interviewing to any extent until the trial was practically started, and some of them—they were only out interviewing their prospective defendants maybe 2 or 3 days before the trial actually started.

Colonel CHAMBERS. In addition, the mock trials which had at this time only been reported to you by the accused but which later was admitted by the prosecution staff, the charges of beating and force, were based solely on the state-

ments that had been made by the accused; you had no evidence of any kind to support it at that stage of the game?

Colonel EVERETT. None whatsoever. Still based on the individual statement of the individual defendant while in individual confinement without the benefit of collaborating with other defendants.

Colonel CHAMBERS. Did any of the members of your staff, or you yourself, observe any physical evidence of brutality, such as bruises or any evidence of anybody having been beaten up, or anything of the kind?

Colonel EVERETT. I never saw any evidence of any whatsoever.

Colonel CHAMBERS. Did any of your counsel or your staff report they had seen anything which would indicate there had been physical brutality?

Colonel EVERETT. Not to my recollection.

Colonel CHAMBERS. Did you ask or request that a physical examination be made of any of the accused for the purpose of determining the accuracy of some of these statements?

Colonel EVERETT. To the best of my recollection, there was no necessity for making a request at the beginning of the trial based on any force or physical violence that was had against any defendant, because, as near as I can recall, the force and duress used and first reported only amounted to such things as blows to the jaw by members of the prosecution, blows to the head, kicking in the testicles, and such matters pertaining to a general beating up rather than having the impression of permanent disability.

Colonel CHAMBERS. No one, for instance, reported they had their teeth either knocked or kicked out?

Colonel EVERETT. Not to my recollection.

Colonel CHAMBERS. If I can pursue that point just a little further, would it appear reasonable to you, Colonel Everett, that if an accused had had four teeth kicked out for the purpose of securing a confession—in other words, during his interrogation period—that he probably would have put that on his statement when he was reporting the duress which had been used on him?

Colonel EVERETT. I don't know, because I only believe that we were able, shall we say, to sell to part of these defendants the idea that we were genuine defense counsel, and I don't know that at that early stage that all of these defendants believed—well, these fellows are honest, instead of being a mockery of justice and mock trials, as they had previously had.

Colonel CHAMBERS. I understand your answer there. According to your testimony, some of these affidavits alleged they had been beat in the head or on the body or kicked in the testicles, and the problem in your mind was whether or not all the defendants told everything that happened to them. Is that correct?

Colonel EVERETT. That is correct. I doubt it.

Colonel CHAMBERS. Then, the thing that disturbs me, and I believe you have answered as completely as you can, but I am going to take another shot at it: Did you personally examine all of the statements that were made by the accused?

Colonel EVERETT. I did not.

Colonel CHAMBERS. But you did have this tabulation which you listed?

Colonel EVERETT. That is correct, and in that tabulation there was an absolute pattern of the same type of force of threat being used on one defendant after another. Take, for instance, they described the big bull whip that was lying there in view.

Colonel CHAMBERS. Whereabouts was this?

Colonel EVERETT. At Schwabisch Hall when they were being brought into an interrogation room.

Colonel CHAMBERS. They put that on their statements?

Colonel EVERETT. Various things of that type; the pistols and the candles on the table and the crucifix.

Colonel CHAMBERS. That is at the mock trial you are referring to there?

Colonel EVERETT. The mock trials.

Colonel CHAMBERS. Did anyone on the prosecution staff ever admit to you that he carried a bull whip or used a bull whip in connection with his interrogations?

Colonel EVERETT. Not in use in connection with it, but a driver for Colonel Ellis whose name was Tex and came from some part of Texas, jokingly spoke about his bull whip and how handy it came in in dealing with the Germans, but I do not recall that he ever mentioned any use of that bull whip in interrogations, but I do recall that on these questionnaires that some of the defendants stated that they had on the table in front of these interrogators where they were trying to force them to make confessions both pistols, bull whip, and other weapons.

Colonel CHAMBERS. Was this man Tex an interrogator?

Colonel EVERETT. No.

Colonel CHAMBERS. Was he an interpreter?

Colonel EVERETT. No.

Colonel CHAMBERS. He was a driver for Colonel Ellis?

Colonel EVERETT. That is my recollection.

Colonel CHAMBERS. Colonel Everett, whatever happened to these statements that were executed by the defendants?

Colonel EVERETT. I have no idea. The last that I recall was after they were tabulated on this chart they were returned to the three teams of my lawyers for their further use in the preparation of the trial, and this was in the building adjacent to the main courthouse, court building.

Colonel CHAMBERS. You did not retain any for your personal files, or anything of the kind?

Colonel EVERETT. I did not.

Colonel CHAMBERS. After your meeting with Colonel Bresee and Colonel Ellis, was there any type of investigation made by Colonel Micklewaite's staff or any of his representatives?

Colonel EVERETT. Upon my continued insistence while telephoning to Wiesbaden, Colonel Micklewaite's office, I don't recall who at the present time.

Colonel CHAMBERS. Was it Colonel Carpenter; do you recall?

Colonel EVERETT. Colonel Carpenter did come to Dachau. On what date, I do not recall. But he came in one morning with a Lieutenant Guth. And I had my three teams of lawyers to pick out certain defendants who had claimed force, duress, et cetera, so that Colonel Carpenter could interview them.

Colonel CHAMBERS. Did he personally examine all of the statements insofar as you can recall?

Colonel EVERETT. I don't think so.

Colonel CHAMBERS. However, he did take out those that were selected by your three groups of attorneys?

Colonel EVERETT. As I recall, I turned over to him, or my counsel turned over to him, certain selected ones where it looked like the most force and duress had been used.

Colonel CHAMBERS. Did you ever learn of the results of Carpenter's investigation?

Colonel EVERETT. Never did.

Colonel CHAMBERS. Did he ever talk to you about it?

Colonel EVERETT. Never did.

Colonel CHAMBERS. And up to the time of the trial or during the trial no one ever told you what Carpenter's recommendations or findings had been?

Colonel EVERETT. Never did.

Colonel CHAMBERS. Colonel, since so many of your defendants had alleged aggravated duress of various kinds, why did you not insist that each of them take the stand and call these matters to the attention of the court so that, even though the particular court might not give too much credence to their stories, that they at least would be in the record and could be considered on review?

Colonel EVERETT. The matter was discussed with Col. Abraham H. Rosenfeld, the law member of the court, and I am pretty sure with Colonel Ellis, as to the placing of the defendants on the stand for a specific purpose and that the cross-examination by the prosecution would be limited to the direct examination conducted by the prosecution—by the court's defense staff. They absolutely refused to allow this. So, after several of the defendants had taken the stand in their own behalf, it was clearly indicated that these defendants were becoming frightened, confused, or beset by the prosecution, and they would try to shift the responsibility to other defendants. This placed me in an unusual and unwarranted position, being forced to be both a prosecutor with one of my defendants as the prosecution witness testifying against another of my defendants, and at the same time it forced me to be defense counsel for this other defendant who was being accused by one of my other defendants. The inequity of this circumstance became apparent, and I called two or three meetings of all of the defendants with all of the defense counsel and discussed this situation with them in detail. Colonel Dwinell and Lieutenant Wahler and others insisted that no prima facie case had been made against any of the defendants and that they should not take the stand.

This matter was discussed over a period of several days and I finally announced to the court after a meeting in the court room where all of the defendants were present as well as all the defense counsel, and it was agreed at this meeting that I should announce to the court that none of the other defendants would

take the stand. Therefore, in open court I made the announcement that I was taking the responsibility for the rest of the defendants not taking the witness stand; my reasons being that I could not be both prosecutor and defense, and when one of my lawyers would have his defendant on the witness stand, another of my lawyers would be duty-bound to cross question and break down his testimony, if possible, because this co-defendant had testified against the second defendant.

Colonel CHAMBERS. Colonel Everett, when Lieutenant Colonel Dwinnell was testifying before our committee, he indicated that these defendants who did take the stand in their own behalf were clutching at straws like drowning rats and were lying about other defendants and for that reason, he, Colonel Dwinnell, felt that it was wrong to put any more of them on the stand because he assumed that they would do the same. Generally speaking, is that the same feeling that you had about placing them on the stand?

Colonel EVERETT. I would not say that these defendants were lying because I had no knowledge, first-hand knowledge. I do know that they acted as clutching at anything for their lives, and I know that that is the German attitude. I know that the German from practically childhood has been taught to shift the responsibility.

Colonel CHAMBERS. Without attempting to question the accuracy of your evaluation of their psychology, if these people were telling the truth on the stand, it would appear that they were giving very damaging evidence against co-defendants.

Colonel EVERETT. And that is exactly what Burt Ellis stated that he anticipated and expected, that we would make his case for him. That was the plan of the prosecution.

Colonel CHAMBERS. If, on the other hand, they were lying on the stand and attempting to shift the responsibility to co-defendants by lying, and that was the way Colonel Dwinnell testified, it would appear that a man who would lie in that particular regard also might exaggerate about some of these statements of duress that he had alleged.

I have specific reference to the fact that some 18 months after trial certain of the accused who took the stand in their own behalf put in affidavits in which they alleged physical mistreatment which differed in detail and substance from that which they told on the stand when they were testifying in their own behalf. I wonder if you have had an opportunity to examine these affidavits that had been submitted some 18 months after trial.

Colonel EVERETT. I have only read a very few of them, but I do not base my determined opinion as to force, duress, mock trial, and so forth, on the defendants on these subsequent statements that were written after the defendants had had an opportunity to pattern them after each other's.

Colonel CHAMBERS. In other words, you are basing your belief as to these matters of duress on the evidence that was adduced through your interrogation of the accused prior to trial and through the questionnaires which they submitted to you?

Colonel EVERETT. And based on their not having any physical opportunity to make up and collaborate their stories before I received these reports from my various groups of officers examining them at Dachau, Germany.

Colonel CHAMBERS. But insofar as the statements made after trial are concerned, do you believe, out of your experience as a lawyer and military intelligence man, that there might have been some grounds for belief that the convicted prisoners might possibly shape their stories up so as to form a common pattern in the hopes they could effect some commutation of their sentences?

Colonel EVERETT. That is entirely possible. I would not want to state that I think they have done this because I wasn't present and have no right to judge that path, but I place my whole reliance on these initial statements made to us.

Colonel CHAMBERS. Colonel Everett, did you receive copies of these affidavits from any source?

Colonel EVERETT. Dr. Eugene Leer has sent to me several groups of them. I would say two or three groups of the affidavits—

Colonel CHAMBERS. Was this—

Colonel EVERETT. Some of them being—all of them being in German.

Colonel CHAMBERS. Did you use any of the material that was contained in these affidavits in your petition to the Supreme Court?

Colonel EVERETT. As near as I can recall I did not even have any copies of them before I filed my petition to the Supreme Court, except for a petition by Dr. Leer through myself to the Supreme Court which was written in German and I had no way of translating the same.

Colonel CHAMBERS. Colonel Everett, from the knowledge that you had at the time the trial started, which of course was secured during the limited time available to you, do you believe that the statements made by the accused concerning this physical mistreatment had been corroborated to the degree that you can accept them as true?

Colonel EVERETT. I will state this: I believe that there was something—there was funny business going on with the prosecution at Schwabisch Hall. I couldn't say that I believe that this defendant was lying and that defendant was telling the truth when he made his initial statement, but I do state with certainty that on account of this original pattern without the benefit of collaboration among themselves that there was enough smoke coming out of Schwabisch Hall to make a reasonable person apprehensive of whether it wasn't possible that all these things could have happened. Whether they did happen or not, I can't say, for a certainty, but I believe that they could have happened after what I have seen.

Colonel CHAMBERS. Colonel Everett, do you know a man by the name of James Finucane?

Colonel EVERETT. I have received several communications from him and I might have written him one or two letters, but I do not recall—but I have never met him personally.

Colonel CHAMBERS. You have talked to him on the telephone?

Colonel EVERETT. While I was in Washington, D. C., about the first of March, quite to my surprise, he telephoned me at the Dodge Hotel, as I recall, and had a short conversation, but I was unable to meet him as he had requested.

Colonel CHAMBERS. In these communications that you have written him, were they in connection with the Malmedy matter?

Colonel EVERETT. That is correct, but I do not recall that they dealt with any details of the Malmedy case.

Colonel CHAMBERS. Were they in response to letters from him?

Colonel EVERETT. That is correct, as near as I can recall.

Colonel CHAMBERS. Does either he or his organization from time to time send you material that pertains to the Malmedy trial?

Colonel EVERETT. He has sent me various clippings and matters pertaining to the Malmedy trial.

Colonel CHAMBERS. At the time you were originally requested to appear before the Senate Armed Services Committee did Mr. Finucane get in touch with you and discuss the matter as to whether or not you were going to testify?

Colonel EVERETT. I have no recollection of such an incident. I have always desired to testify before the committee and I desire to testify before the Committee at the present time.

Colonel CHAMBERS. As a matter of record, you are testifying before the committee at the present time because I assure you that this record will be read by the committee members. But the point I was trying to get in there specifically is this: Did Mr. Finucane contact you and discuss whether or not you were going to testify before the Committee and did you tell him that you were not able to because of your physical condition but that you had suggested certain other persons who might be appropriate witnesses as former defense counsel?

Colonel EVERETT. On March 11, 1949, I had a coronary occlusion, and my physician, Dr. Carter Smith, who is a heart specialist of Atlanta, Ga., refused to allow me to go to Washington to testify before this committee. He stated that it might be absolutely fatal. I have insisted repeatedly and tried to get permission from him to make my appearance before the full committee but he will not even to the present time permit it.

As I recall, Mr. Finucane did write to me requesting information as to whether I was going to testify before the committee and as I recall it, I wrote him and stated that I could not testify on account of my health, and as near as I recall I informed him of others who could testify as to the same general facts that I knew about.

Colonel CHAMBERS. Colonel Everett, you received a letter dated May 2d from Mr. Finucane discussing the conduct of the hearings before your committee on the Malmedy matter?

Colonel EVERETT. Right.

Colonel CHAMBERS. Was this the first letter you received from Mr. Finucane on this subject?

Colonel EVERETT. No, it was not.



Colonel CHAMBERS. Would you have any objection to placing in the record of the committee the various letters you have received from the National Council for the Prevention of War in this matter?

Colonel EVERETT. They are private communications. If he has no objection, I have no objection.

Colonel CHAMBERS. Off the record.

(Discussion off the record.)

Colonel CHAMBERS. Maybe we can get at it this way. What was the first contact you had with Mr. Finucane on this matter?

Colonel EVERETT. As near as I can recall it was by letter of December 31, 1948, enclosing a release from the National Council for the Prevention of War, date line, Washington, D. C., December 18.

Colonel CHAMBERS. The—

Colonel EVERETT. The subject of which—do you want this?

Colonel CHAMBERS. You might identify it.

Colonel EVERETT. Was a press release on a speech by Judge Van Roden.

Colonel CHAMBERS. Subsequent to the receipt of that press release did Mr. Finucane write to you on other occasions?

Colonel EVERETT. I received several communications from him pertaining to the progress of the hearing before this committee.

Colonel CHAMBERS. Do you have any objection to placing into the record of the committee the correspondence that has passed between you and Mr. Finucane?

Colonel EVERETT. I would prefer not to until he has consented in the matter because he is not the subject of investigation here and I do not believe it would be proper to place the private files—private correspondence of Mr. Finucane—in evidence.

Colonel CHAMBERS. Would you care to tell me the number of letters you have received from Mr. Finucane during this period?

Colonel EVERETT. I think there were six letters in all.

Colonel CHAMBERS. Did you receive any telegrams or other communications from him?

Colonel EVERETT. I have received two telegrams from him.

Colonel CHAMBERS. And generally speaking these communications were to keep you informed as to the progress of the hearings in Washington?

Colonel EVERETT. That is right as near as I can recall but it has been some time since I have read any of the letters.

Colonel CHAMBERS. Have you received any correspondence from other persons in the National Council for the Prevention of War?

Colonel EVERETT. Not that I recall.

Colonel CHAMBERS. Have you received—

Colonel EVERETT. Well, I don't know. Wait a minute.

Colonel CHAMBERS. Off the record.

(Discussion off the record.)

Colonel EVERETT. They are all from him.

Colonel CHAMBERS. Have you received any communications directly or indirectly from other persons in Germany except Dr. Leer and possibly personal letters from some of the former defendants in this case; specifically, have you received any communications from a man by the name of Aschenauer?

Colonel EVERETT. I do not recall any such communication, but I am pretty certain that I have had no correspondence with him certainly about the legal aspects of the Malmedy case.

Colonel CHAMBERS. Have you had communications from others in Germany on this matter?

Colonel EVERETT. Many letters from various people in Germany.

Colonel CHAMBERS. In substance, Colonel Everett, what has been the purpose of those letters?

Colonel EVERETT. Many wives and members of families of defendants have written to me pleading for information about the status of their husbands' or relatives' cases, and from other individuals relative to these defendants who were able to write English and they had written at the request of defendants.

Colonel CHAMBERS. Colonel, purely for the purpose of clearing the record, have any of these persons in Germany retained you or attempted to retain you to defend or attempt to get any of these accused out of prison or their sentence commuted?

Colonel EVERETT. Absolutely they have not. I have not received 1 penny from any source whatsoever since I left the Army nor have I had any correspondence with a living person in reference to any payments in the future on behalf of any of these defendants. This matter is entirely a matter of principle with me.

Colonel CHAMBERS. Just to clear the record, I have a very specific reason for this, and you, of course, received no payments before you left the Army?

Colonel EVERETT. That is correct. On the contrary, I have spent since I have left the Army in the maintenance of my family and the maintenance of my office—without any charges for services I have expended over \$30,000 from the principal of my estate in fighting this case, this Malmedy case, and ended up with a heart attack.

Colonel CHAMBERS. Do you recall having made a statement to Colonel Ellis substantially as follows: That on or about the 30th of April 1946, which would be prior to the start of the trial, that Sprenger, Neve, Hoffman, and Jaekel admitted the fabrication of their stories of beatings?

Colonel EVERETT. That is not true.

Colonel CHAMBERS. Have you ever been asked by anyone, including the National Council for the Prevention of War, to furnish the names of any persons other than the attorneys who you have already mentioned who might testify in this particular hearing?

Colonel EVERETT. I don't quite get that.

Colonel CHAMBERS. Off the record.

(Discussion off the record.)

Colonel EVERETT. I don't have any recollection of it.

Colonel CHAMBERS. Have you been in correspondence on the Malmedy matters with any persons who have participated in these hearings?

Colonel EVERETT. I have been in touch with Senator McCarthy.

Colonel CHAMBERS. Did you call him or did he call you?

Colonel EVERETT. I called him.

Colonel CHAMBERS. And for what purpose?

Colonel EVERETT. After I had seen some newspaper clipping, or somebody had sent me information that he was fighting trying to develop the full picture and what I would term representing the defense side of this issue as opposed to Colonel Ellis' continued presence for the prosecution.

Colonel CHAMBERS. Was this telephone call entirely original with you or was it at the suggestion of someone else?

Colonel EVERETT. It was entirely original with myself, prompted by nothing except a spirit of appreciation for him to jump in and assist in this fight that I had carried on for 3 years single-handed.

Colonel CHAMBERS. Colonel Everett, I believe I have asked all the questions that I have been directed to cover. Is there anything that you would care to add in the record which we have been discussing this morning?

Colonel EVERETT. Upon receiving a telegram from the committee I replied by stating in substance that my physician refused to allow me to testify before the committee in Washington but that I was sending a short statement answering a few questions. This statement was sent to the Honorable James C. Davis, Congressman, Fifth District of Georgia, who has known me and practiced—we have practiced law side by side for my entire years at the Atlanta bar, and I desired that he present the same to the committee on my behalf.

Colonel CHAMBERS. Colonel Everett, if you would care to present a copy of that statement for inclusion in this deposition, I would be happy to have it.

Colonel EVERETT. I would rather it would be included there together with any other remarks that Congressman Davis would care to make.

Colonel CHAMBERS. Off the record.

(Discussion off the record.)

Colonel EVERETT. I would like to emphatically state for the record that this fight extending over a period of three and a half years is motivated entirely by a desire on my part to see that a fair trial is accorded to these defendants whom I was charged with the responsibility of defending. Somewhere in the testimony given by—when I appeared before Judge Simpson and Judge Van Roden in the Pentagon Building after they returned from Europe, it had been represented to them in Europe that I was a fanatic. I freely admit that I am a fanatic on the subject of a fair trial, whether it be to a Negro, to a white person, to a Jew, to a gentile, a German, or a Russian, when a fair trial has been promised, which was done in this particular Malmedy case by the president of the court, General Dalby. Many times throughout the trial he has seen the worry and strain that I was undergoing and he reassured me many times, stating for me not to worry, that they would be given a fair trial.

As typical of the underhanded methods that were employed throughout the trial I again called the attention of this committee to the incident when Lieutenant Perl climbed over the fence within my vision, went into the bunker house where my defendants were required to stay throughout the trial, and this was done in contradiction to orders that no American was to go into this bunker, including myself and my staff. The defendants were guarded by Polish soldiers.

In about 15 minutes I saw Perl come out of the bunker house with an armful of papers, climb back over the fence and in about 5 minutes came into the courtroom and discussed something with Colonel Ellis who was at the prosecution table. He then went out.

In passing I might state that the only entry to this bunker was through the courtroom and Perl had slipped in there by crawling over the surrounding fence.

After he had conversed with Ellis and gone outside, I then went to the American lieutenant of the guard, whose name I do not at present recall. He assured me with certainty that no American had been in the bunker house and insisted that I must be mistaken.

I then went and reported the matter with the lieutenant of the guard to Colonel Corbin. Colonel Corbin then went into Colonel Ellis' office with the guard and found Lieutenant Perl translating these papers that had been stolen from my defendants. Perl admitted that he had taken the matter up with Colonel Ellis and Colonel Ellis had informed him that he should translate these stolen documents which consisted of notes and memoranda written by defendants to their defense counsel.

As illustrative of the total lack of cooperation by the Army, referring specifically to the office of Colonel Micklewaite as deputy theater judge advocate for war crimes, I have to but mention the failure to secure witnesses for these 74 defendants. I do not wish to infer that Colonel Micklewaite, who is a gentleman of the highest order, played any part in failing to cooperate, but his office was dilatory in securing witnesses. It was only toward the latter part of the trial that I was given two boys to try to locate witnesses.

From the very beginning I tried to locate and get hold of a Lieutenant Colonel McGowan who was a prisoner of this Malmédy group in Stonmont or Le Glaze, Belgium. Colonel Micklewaite's office assured me from the first day that they were trying to locate this American officer. They went as far as to assure me that Lieutenant Colonel Carpenter had been flown to the United States to locate this officer.

Finally in desperation I took the matter up with friends of mine with the intelligence division at Heidelberg and within 48 hours Lieutenant Colonel McGowan was on his way to Germany, but instead of reporting to me as my witness he was taken from Frankfurt, Germany, to Wiesbaden and kept there over a period of 2 or 3 days and then finally delivered to me by Lt. Col. Burt Ellis, who drove him from Wiesbaden to Dachau.

Colonel CHAMBERS. Colonel Everett, in closing I would like to ask you this question: Has the Department of the Army made available to you copies of the record of trial proceedings and the various reviews that have been made of the Malmédy case?

Colonel EVERETT. When I first returned from Europe in 1947, spring of 1947, I requested the Civil Affairs Division of the War Department for a copy of the record and have repeatedly requested copies since that time. I was refused a copy of the same in Europe, stating that every copy of the record must be turned in. I have never been able to get a copy of the original record of the trial and it was only the end of last year of the first part of this year, before I became ill, that Colonel Young informed me that I would be allowed to see the original record of trial in his office. I have made written and repeated requests for copies of reviews, et cetera, pertaining to the Malmédy case. These have been refused.

It must be remembered that in the drawing of my petition to the Supreme Court and in all subsequent work on this case I have had to rely upon my memory.

Prior to my filing of the petition to the Supreme Court of the United States, I flew to New York and went over in detail every single allegation in my petition with Lieutenant Colonel Dwinell. I had requested the Army to let him assist me in the preparation of my petition to the Supreme Court. This has been refused and I have had no assistance from anyone whatsoever.

Colonel CHAMBERS. Dwinell did help you—

Colonel EVERETT. Colonel Dwinell on his own time while visiting his father in New York went over with me the entire petition and he approved the entire matter. In the presence of General Green, Colonel Dwinell stated that statements in my Supreme Court petition were absolutely true.

I asked for no mercy for any of these defendants. I do not know whether they are innocent or guilty. I do know that they have not had a fair trial and I believe that duress was used in various forms in securing many of these statements.

Colonel CHAMBERS. Colonel Everett, as I gather from your testimony this morning, the trial to you means, from the start of the trial up until the time the final approvals were made and would include the various review procedures.

Colonel EVERETT. That is my understanding.

Colonel CHAMBERS. So that, therefore, your objection is not to the sentences as finally approved after review but the method of conducting the trial and the pretrial interrogation?

Colonel EVERETT. That is correct, and having a cloud of doubt on the pretrial and during the trial record I do not think than any of them should be sentenced to death without a retrial.

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EXHIBIT N

HOUSE OF REPRESENTATIVES,  
Washington, D. C., October 7, 1949.

Col. J. M. CHAMBERS,  
*Malmedy Trial Investigating Subcommittee,*  
*United States Senate, Washington, D. C.*

My DEAR COLONEL CHAMBERS: You will recall that I talked with you by telephone this morning.

It was my desire to appear in person before the subcommittee, for the purpose of presenting a statement forwarded to me by Col. Willis M. Everett, of Atlanta, Ga., the officer who was assigned to defend some 74 of these prisoners in Germany.

You stated to me that no further hearing will be held by the subcommittee, and I am therefor forwarding Colonel Everett's statement to you with the request that it be considered by the subcommittee, and that it be placed in the record.

In submitting Colonel Everett's statement, I wish to state to the subcommittee that this matter was brought to my attention by Colonel Everett when he filed his petition in the Supreme Court in behalf of these prisoners.

I have been personally acquainted with Colonel Everett for 25 years or more. I knew him when I was a practicing attorney at the Atlanta, Ga., bar; and I knew him as a judge of the superior courts when I became judge of the Stone Mountain Judicial Circuit, which position I filled from 1934 to 1947. He is an able, upright, conscientious, honest attorney and officer.

I have discussed these cases at great length with Colonel Everett, with Secretary Forrestal, with Secretary of the Army Royall, with General Green and his assistants, and with Members of the House and Senate.

I feel that the duty rests upon me as Member of the Congress of the United States to state in certain and definite language, without any equivocation whatever, that simple justice requires that these prisoners should have a new trial, because of the utterly inadequate time allowed for preparation of the cases, and further because of the methods used in procuring evidence and in conducting the trials. I say this without any intention of reflecting personally upon anyone concerned. However, in my opinion, simple justice requires that this action be taken.

If laws and regulations do not permit the granting of a new trial, then by all means I say that the sentences of death by execution should be commuted to imprisonment.

If present laws and regulations do not permit steps to be taken which are necessary in rendering justice, I do not think the obligation and responsibility to do justice can be sidestepped by pointing to the laws and regulations and saying these do not permit it.

With personal regard, I am  
Sincerely yours,

JAMES C. DAVIS,

STATEMENT OF COL. WILLIS M. EVERETT, JR., SUBMITTED THROUGH CONGRESSMAN  
JAMES C. DAVIS, FIFTH DISTRICT, GEORGIA

Several questions seem to trouble the committee and witnesses. The answers seem to depend on my testimony. It remains uncontroverted that "mock trials with phony court members, false prosecutors, and purported defense counsels" did occur. That fact being well established and only a very few defendants taking the witness stand during the original trial, no reviewing authority, investigating committee, or even the original defense staff could state with certainty whether these defendants who did not take the witness stand would have testified as to the various forms of deceit, force, duress, beatings, mock trials, and other purported legitimate tricks while in the prison at Schwabisch Hall, Germany. Therefore, doubt will always exist as to whether these confessions as well as the confessions of other prosecution witnesses were the result of these various forms of force and duress. That much-asked question as to why I assumed the responsibility and prevented the remaining defendants from taking the witness stand is specifically answered as follows: My responsibility was to defend 74 Germans. When one of these defendants took the stand and became frightened, confused, or beset by the prosecution, he would try to shift the responsibility to other defendants and thereby force me to be both a prosecutor, with one of my defendants as a prosecution witness, and at the same time act as defense counsel with another of my defendants as the defendant or accused. This was the anticipated and announced plan of the prosecution. No world trial system known to me would require such a paradox of justice. Therefore, the iniquity of this system, after a flat refusal of my motion for severance, forced me to prevent the other defendants from testifying. No alternative course was available.

The reason why no motion for an extension of time was made at the trial is another unanswered question. The United States Army could have answered that question. Col. Frank C. Corbin positively refused to allow the defense any additional time to prepare their case because of Colonel Straight's or Colonel Micklewaite's insistence that the trial start immediately. Subsequent information was received that Lt. Col. Burton F. Ellis, the chief prosecutor, was about to run for solicitor general (in absentia) of a California court and he needed the newspaper publicity of this Malmedy trial to help his campaign. Well, it did, and about the end of the trial he informed me that he was elected. Col. Abraham Rosenfeld, the law member of the court, also informed me prior to the trial that no extension of time would be given in the commencement of this case.

Initially Ellis refused to cooperate even to the extent of giving me a single copy of these forced confessions of my defendants. This was only overcome through Colonel Corbin's efforts after telling Ellis that he was giving the defense 6 months or a year to prepare a defense if they were not forthcoming. Finally, in dribblets, most of these purported confessions were given to my small and inadequate staff by the time the trial started.

No attempt to refute much of the silly and absolutely untrue testimony of Ellis and the rest of the wrongdoers can be undertaken by me because of my continued physical impairment. As typical of the untruthfulness of Ellis' testimony in his statement, "That, to the best of my knowledge and belief, none of the accused or other prisoners were ever abused or mistreated in any manner." Actually, he personally told me in Dachau, Germany, of seeing the blood dripping from beneath the hood and down the uniform of a prisoner as he was being marched along the corridors of Schwabisch Hall and upon his (Ellis) lifting the hood, he saw that the boy's nose was bleeding profusely, having been caused by a blow from some guard or other person.

## EXHIBIT O

## MILITARY GOVERNMENT COURT

(Militargericht)

## CHARGE SHEET

(Anklageschrift)

DACHAU, GERMANY

Dachau, Deutschland)

11 April 1946

## NAMES OF THE ACCUSED

(Namen der Angeklagten)

Valentin Bersin	Joachim Hofmann	Wolfgang Richter
Friedel Bode	Hubert Huber	Max Rieder
Willi Braun	Siegfried Jäkel	Rolf Ritzer
Kurt Briesemeister	Benoni Junker	Axel Rodenburg
Willi Von Chamier	Friedel Kies	Erich Rumpf
Friedrich Christ	Gustav Knittel	Willi Schaefer
Roman Clotten	Georg Kotzur	Rudolf Schwambach
Manfred Coblenz	Fritz Kraemer	Kurt Sichel
Josef Diefenthal	Werner Kühn	Oswald Sigmund
Josef (Sepp) Dietrich	Oskar Klingelhoef	Franz Sievers
Fritz Eckmann	Erich Maute	Hans Siptrott
Arndt Fischer	Arnold Mikolaschek	Gustav Adolf Sprenger
Georg Fleps	Anton Motzheim	Werner Sternebeck
Heinz Friedrichs	Erich Münkemer	Herbert Stock
Fritz Gebauer	Gustav Neve	Erwin Szyferski
Heinz Gerhard Godicke	Paul Hermann Ochmann	Edmund Tomczak
Ernst Goldschmidt	Joachim Peiper	Heinz Tomhardt
Hans Gruhle	Hans Pletz	August Tonk
Max Hammerer	Georg Preuss	Hans Trettin
Armin Hecht	Hermann Priess	Johann Wasenberger
Willi Heinz Hendel	Fritz Rau	Erich Werner
Hans Hennecke	Theo Rauh	Otto Wichmann
Hans Hillig	Heinz Rehagel	Paul Zwigart
Heinz Hofmann	Rolf Roland Reiser	

are hereby charged with the following offenses:

(sind hiermit wegen der folgenden strafbaren Handlungen angeklagt:)

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 Chamier, Friedrich Christ, Roman Clotten, Manfred Coblenz, Josef Diefenthal, Josef (Sepp) Dietrich, Fritz Eckmann, Arndt Fischer, Georg Fleps, Heinz Friedrichs, Fritz Gebauer, Heinz Gerhard Gödicke, Ernst Goldschmidt, Hans Gruhle, Helmut Haas, Max Hammerer, Armin Hecht, Willi Heinz Hendel, Hans Hennecke, Hans Millig, Heinz Hofmann, Joachim Hofmann, Hubert Huber, Siegfried Jäkel, Benoni Junker, Friedel Kies, Gustav Knittel, Georg Kotzur, Fritz Kraemer, Werner Kühn, Oskar Klingelhoef, Herbert Losenski, Erich Maute, Arnold Mikolaschek, Anton Motzheim, Erich Münkemer, Gustav Neve, Paul Hermann Ochmann, Werner Pedersen, Joachim Peiper, Hans Pletz, Georg Preuss, Hermann Priess, Fritz Rau, Theo Rauh, Heinz Rehagel, Rolf Roland Reiser, Wolfgang Richter, Max Rieder, Rolf Ritzer, Axel Rodenburg, Erich Rumpf, Willi Schaefer, Rudolf Schwambach, Kurt Sichel, Oswald Sigmund, Franz Sievers, Hans Siptrott, Gustav Adolf Sprenger, Werner Sternebeck, Herbert Stock, Erwin Szyferski, Edmund Tomczak, Heinz Tomhardt, August Tonk, Hans Trettin, Johann Wasenberger, Erich Werner, Otto Wichmann, Paul Zwigart, 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 MALMEDY, HONSFELD, BUELLINGEN, LIGNEUVILLE, STAUMONT, LA GLEIZE, CHE-NEUX, PETIT THIER, TROIS PONTS, STAVELOT, WANNE and LUTRE-BOIS, all in BELGIUM, at sundry times between 16 December 1944 and 13 January 1945, wilfully, deliberately, and wrongfully permit, encourage, aid,

abet, and participate in the killings, 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 :

HOWARD F. BRESEE,  
*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 :

W. G. CALDWELL,  
*Colonel, Adjutant General's Dept.,*  
*Acting Adjutant General.*

Copy of above served on accused

1946.

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(Signature of person making service)

MILITARY GOVERNMENT COURT

CHARGE SHEET

DACHAU, GERMANY, 17 April 1946.

NAMES OF THE ACCUSED

Günther Weis  
Heinz Stickel

are hereby charged with the following offences :

FIRST CHARGE : Violation of the Laws and Usages of War.

Particulars : In that Günther Weis and Heinz Stickel, 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 MALMEDY, HONSFELD, BUELLINGEN, LIGNEUVILLE, STOUMONT, LA GLEIZE, CHENEUX, PETIT THIER, TROIS PONTS, STAVELLOT, 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 :

HOWARD F. BRESEE,  
*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 :

W. G. CALDWELL,  
*Colonel, Adjutant General's Dept.,*  
*Acting Adjutant General.*

Copy of above served on accused

1946.

---

(Signature of person making service)

## EXHIBIT P

[Corrected copy]

Special orders }  
Number 117 }HEADQUARTERS,  
THIRD UNITED STATES ARMY,  
APO 403, 10 May 1946.

## EXTRACT

32. So much of par. 24, special orders No. 90, Hqs Third United States Army, dated 9 April 1946, as appoints a General Military Court is amended and changed to read as follows:

Pursuant to authority delegated to the Commanding General, Third U. S. Army, by Commanding General, U. S. 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, U. S. A., Hq. 3rd Inf. Division.  
 Col. Paul H. Weiland, O8418, F. A., Hq. Third U. S. Army.  
 Col. Lucien S. Berry, O4461, Cav., 9th Inf. Division.  
 Col. James G. Watkins, O7249, F. A., 32nd F. A. Brig.  
 Col. Robert R. Raymond, Jr., O12274, F. A., 9th Inf. Div.  
 Col. Wilfred H. Steward, O8448, C. A. C., Hq. 31st AAA Brig.  
 Col. Raymond C. Conder, O16131, F. A., Hq. 9th Inf. Div.  
 Col. A. H. Rosenfeld, O212685, Inf. Hq. USFET.  
 Lt. Col. Burton F. Ellis, O908468, J. A. G. D., Hq. USFET, Trial Judge Advocate.  
 Lt. Col. Homer B. Crawford, O902586, A. C., Hq. USFET, Asst. TJA.  
 Capt. Raphael Shumacker, O1798521, C. M. P., Hq. USFET, Asst. TJA.  
 1st Lt. Robert E. Byrne, O1826233, J. A. G. D., Hq. USFET, Asst. TJA.  
 Mr. Morris Elowitz, U. S. Civ., Asst. TJA.  
 Col. Willis M. Everett, Jr., O179702, M. I., Hq. USFET, Defense Counsel.  
 Lt. Col. John S. Dwinell, O241872, C. A. C., Hq. USFET, Asst. Defense Counsel.  
 Lt. Col. Granger G. Sutton, O185405, Inf., Hq. USFET, Asst. Defense Counsel.  
 Capt. B. N. Narvid, O1557506, C. E., Hd. USFET, Asst. Defense Counsel.  
 2nd Lt. Wilbert M. Wahler, O2052758, J. A. G. D., Hq. USFET., Asst. Defense Counsel.  
 Mr. Herbert J. 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. CARLTON,  
Colonel, General Staff Corps,  
Chief of Staff.

Official:

W. G. CALDWELL,  
Colonel, Adjutant General's Department.  
Acting Adjutant General.

## EXHIBIT Q

SUPREME HEADQUARTERS,  
ALLIED EXPEDITIONARY FORCE,  
APO 757 (Main), 9 July 1945.

AG 000.5-2 GAP-AGM

Subject: Trial of War Criminals.

To: Commanding General, U. S. Forces, European Theater, APO 887 (Rear).

1. Reference is made to the following:

a. Directive for Military Government for Germany Prior to Defeat or Surrender (AG 014.1-1 (Germany) GE-AGM) dated 9 November 1944, as amended by letter, this headquarters, AG 014.1-1 (Germany) GE-AGM, dated 15 December 1944.

b. Supreme Headquarters, AEF, Handbook for Military Government in Germany, December 1944.



c. Cable, this headquarters, FWD-20816, dated 7 May 1945, continuing in effect the authority cited in *a* and *b*, above.

d. Letter, War Department, AG 000.5 (7 Oct. 44), OB-S-A-M, to the Commanding General, USAF, European Theater of Operations, subject: Establishment of War Crimes Offices, dated 25 December 1944.

e. Cable, WX-18961, dated 19 June 1945, relating to trials of war criminals.

f. Cable, WX-25769, dated 2 July 1945, amending *e*, above.

2. Pursuant to instructions contained in reference 1e, above, persons charged with war crimes (other than certain categories excepted in said reference) committed prior to 9 May 1945 who are to be tried under authority of the United States, may be tried by Military Government courts, especially appointed for the purpose, and when so tried Judge Advocate personnel shall be utilized in connection therewith in consonance with reference 1d, above.

3. The Commanding General, U. S. Forces, European Theater, is hereby vested with all powers requisite to the exercise of the authority granted in paragraph 2, above, and he is especially authorized to modify the procedures prescribed in the references cited in paragraph 1 hereof relating to the appointment of courts, reference for trial, trial, and review and approval of sentences of Military Government courts to the extent that he deems necessary or desirable for the expeditious and proper trial of offenses in the categories contemplated. He is further authorized to delegate such of his powers to such subordinates as he deems necessary or desirable.

4. Nothing herein shall be deemed to affect the jurisdiction of Military Government courts, the powers relating to the confirmation of death sentences of Military Government courts as now prescribed, or the authority of commanders of components of the United States Army with respect to trials other than those provided for herein.

For the Supreme Commander :

H. H. NEWMAN,  
Colonel, AGD,  
Assistant Adjutant General.

Distribution :

- 5—Addressee.
- 2—Hq., USFET Rear, Attn.: Judge Advocate.
- 2—Hq., 6th Army Gp., Attn.: Judge Advocate.
- 2—Hq., 12th Army Gp., Attn.: Judge Advocate.
- 2—CG, Third U. S. Army.
- 2—CG, Seventh U. S. Army.
- 2—CG, Ninth U. S. Army.
- 2—CG, Fifteenth U. S. Army.
- 2—G-1 Division.
- 2—G-5 Division.
- 1—AG Records.

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EXHIBIT R

HEADQUARTERS,  
U. S. FORCES, EUROPEAN THEATER,  
APO 757 (Main) 16 July 1945.

AG 000. 5-2 GAP

Subject: Trial of War Crimes and Related Cases.

To: Third U. S. Army/Military District Commander.

Seventh U. S. Army/Military District Commander.

1. General.

a. As a matter of policy, cases involving offenses against the laws and usages of war or the laws of the occupied territory or any part thereof commonly known as war crimes, together with such other related cases within the jurisdiction of Military Government courts as may from time to time be determined by the Theater Judge Advocate, committed prior to 9 May 1945, shall be tried before the specially appointed courts provided for in this directive. Such trials in the United States Army zone of occupation will hereafter be conducted before Military Government courts, except where otherwise directed, by the Theater Commander.

b. Charges against persons accused of offenses of the character described above will originate in the Office of the Theater Judge Advocate, will be processed through Army Judge Advocates to trial by specially appointed Military Govern-

ment courts, and will be reviewed by Army Judge Advocates prior to approval of sentences in accordance with procedures herein provided.

2. *Procedural matters before trial.*

a. *Charges.*—Charges in the cases contemplated will be prepared under the direction of the Theater Judge Advocate in the form prescribed for Military Government courts.

b. *Reference for trial.*—The Theater Judge Advocate, or the authority designated by him, will forward charges to the appropriate Army/Military District Commander for reference to trial by Military Government courts. Such charges when forwarded will be addressed "Attention: Staff Judge Advocate." The charges will be referred to the court for trial by the Army/Military District Commander, or in his discretion by his Staff Judge Advocate.

c. At the time of forwarding such charges to the Army/Military District Commander the Theater Judge Advocate will in each case designate those United Nations, if any, which in his judgment should be invited by such commander to send observers to the trial.

3. *Appointment of courts.*—Military Government courts will be appointed by Army/Military District Commanders for the special purpose of the trial of the cases herein contemplated, the personnel for the courts to be selected from the officer personnel of military organizations under the command of the appointing authority. General Military Courts and Intermediate Military Courts appointed under the authority hereof shall consist of not less than five members and not less than three members, respectively. The orders appointing such courts will designate one or more prosecutors and defense counsel. The senior member present at each trial will be the president and presiding officer of the court. At least one officer with legal training will be detailed as a member of such courts.

4. *Trial.*—The trial will be conducted according to pertinent Military Government directives and instructions, except that no person shall be convicted or sentenced by the courts provided for herein except by the concurrence of two-thirds of all the members present at the time the vote is taken.

5. *Post-trial action.*

a. Irrespective of the result of trial, the accused will be returned to custody pending final disposition.

b. The prosecuting officer will be responsible for the preparation of the record of trial which, after being properly authenticated, will be forwarded to the Staff Judge Advocate of the appointing authority who will prepare a written review of the case for submission to the approving authority. No administrative examination by any legal officer on the staff of the appointing authority will be required.

c. In taking the action prescribed in subparagraph b, above, the Staff Judge Advocate will take into consideration and include in the discussion and recommendations made in such written review any Petition for Review filed by or on behalf of the accused. Final action on each case will be deferred for the ten-day period prescribed under Military Government court procedure for the filing of such petition.

d. No sentence of a Military Government court appointed under the authority hereof shall be carried into execution until the case record shall have been examined by the Army/Military District Judge Advocate and the sentence approved by the officer appointing the court or the officer commanding for the time being, except that such approving authority may designate an officer for such action on sentences of Intermediate Military Courts appointed hereunder. The action taken will be entered on the case record in the space provided on Legal Form No. 8 over the signature of the approving authority or, in the case of Intermediate Military Courts, of his designee.

e. No sentence of death shall be carried into execution until confirmed as prescribed for Military Government courts.

f. Approving authorities will in each case where a death sentence is adjudged advise the Theater Judge Advocate (Attention: Chief, War Crimes Branch) of the approval of any such sentence, and will withhold execution after confirmation pending receipt of clearance from the Theater Judge Advocate in connection with each person so sentenced.

6. The execution of death sentences, designation of places of confinement, and the effective date of prison sentences will be as provided for other Military Government courts.

7. All directives and instructions of this and subordinate headquarters relating to the conduct of trials by Military Government courts are modified to the extent necessary to give effect to the provisions of this letter. Except as so modified

herein, all existing directives and instructions shall be applicable to the special category of courts hereby authorized.

By command of General Eisenhower :

H. H. NEWMAN,  
Colonel, AGD,  
Assistant Adjutant General.

Distribution :

- 5, each addressee.
- 5, USFET, Rear (JA).
- 5, 12th Army Group (JA).
- 5, 6th Army Group (JA).
- 5, Third Army (JA).
- 5, Seventh Army (JA).
- 5, Ninth Army (JA).
- 5, Fifteenth Army (JA).
- 3, G-1, USFET Main.
- 1, AG, USFET, Rear.
- 1, AG Records, USFET, Main.

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EXHIBIT S

THE INVESTIGATING JUDGE IN EUROPEAN CRIMINAL PROCEDURE (EMPHASIS UPON GERMANY)

PURPOSE OF REPORT

(In the process of the investigation of those German SS troops accused of participation in the Malmedy massacres, the interrogators used a so-called "Schnell" procedure to obtain statements from the accused. The purpose of this memorandum is to examine the continental, and particularly the German, criminal procedural background from which this device was drawn—the European legal institutions of the examining magistrate.)

INTRODUCTION

For five centuries the investigating judge has been a distinctive figure in the preliminary stages of the continental criminal proceeding.<sup>1</sup> In Germany, he is known as the *Untersuchungsrichter*,<sup>2</sup> and in France as the *juge d'instruction*.<sup>3</sup> His duties and powers have their origin in inquisitorial procedure,<sup>4</sup> as contrasted to the Anglo-American procedure of party accusation, and were first outlined in the French Code of 1808.<sup>5</sup> The code followed Napoleon throughout continental Europe, and has since remained—and the institution of the examining magistrate with it—in the great majority of European countries. Even with the rise of the Nazis to power in Germany, and the degradation of the German criminal courts to departments of the Gestapo under Himmler, Nazi legislation did not provide an entirely new system of criminal procedure.<sup>6</sup> And not until March 21, 1942, under the strain of war, did the German Government abolish the preliminary judicial examination (*Voruntersuchung*) in all cases.<sup>7</sup>

WHEN THE PROCEDURE IS USED

Generally speaking, the preliminary judicial examination is used only where major criminal offenses are involved.<sup>8</sup> The judge never acts on his own motion, but can begin an investigation or examination only when authorized by the prosecutor.<sup>9</sup> In France, the use of a *juge d'instruction* is only required for serious offenses.<sup>10</sup> In correctional matters, and for lesser offenses, use of a judge

<sup>1</sup> Plascowe, Morris, *The Investigating Magistrate (Judge D' Instruction) in European Criminal Procedure*, 33 Mich. Law Rev. 1010, 1010 (1935).

<sup>2</sup> Wolff, Hans Julius, *Criminal Justice in Germany*, 42 Mich. Law Rev. 1067, 1085 (1944).

<sup>3</sup> Plascowe, *op. cit.*, p. 1010.

<sup>4</sup> Wolff, *op. cit.*, p. 1085.

<sup>5</sup> Esmeu, A., *A History of Continental Criminal Procedure*, pp. 596-604, p. 596.

<sup>6</sup> Wolff, *op. cit.*, p. 1069.

<sup>7</sup> *Ibid.*, 1085.

<sup>8</sup> Esmeu, A., *op. cit.*

<sup>9</sup> Plascowe, *op. cit.*, p. 1012.

<sup>10</sup> *Ibid.*

is discretionary with the prosecutor.<sup>11</sup> The judge in France has no place in police offenses.<sup>12</sup> In Germany, on the other hand, action by an examining judge is required before all jury trials in the *Laudgericht*, the district trial court of base line jurisdiction for only the major crimes, i. e. arson, murder, willful perjury, and for all cases within the original jurisdiction of the higher courts (*Reichgericht* and *Aberlandesgericht*).<sup>13</sup> In felony or misdemeanor cases, an examination could be demanded either by the prosecutor or by the prisoner in his reply to the information against him issued by the state's attorney.<sup>14</sup> It is interesting to note here that in France and Italy the examining magistrate has in rein jurisdiction over the offense. He may proceed with an investigation upon the information of the prosecutor when the offenders are not known.<sup>15</sup> In Germany, the information authorizing the opening of the investigation must not only indicate the offense, but also the person charged.<sup>16</sup>

#### THE JUDGE

The German examining magistrate (*Unterserchungrichter*) is a member of the *Landgericht*.<sup>17</sup> He is charged with the special function for a period of 1 year, and is barred from participation in the trial of the case in which he conducted the preliminary examination.<sup>18</sup>

#### PURPOSES AND SCOPE OF THE PRETRIAL JUDICIAL EXAMINATION

##### *Duties and powers of the investigating judge*

The purposes and scope of this pretrial examination vary greatly among the various continental code countries. Common to all, however, is a sharp distinction between this "judicial" investigation, and the type of investigation conducted by the police.<sup>19</sup> Under continental law, in theory at least, the public prosecutor does not play the role of a party, as he does under Anglo-American law.<sup>20</sup> The prosecutor and the accused are not equals, pursuing their own claims, but the prosecutor is a superior, exercising the power of the state to investigate crime.<sup>21</sup> The examining judge exercises the same power as the prosecutor, the only difference being that of function under the criminal code.<sup>22</sup> In practice, however, the prosecutor is really a party, and even though the institution is an outgrowth of inquisitorial procedure, it has been maintained partly on the theory that the investigation of a magistrate gave the accused better protection than one by a prosecutor who is more tempted to use partisan methods.<sup>23</sup>

Beyond this, the investigating judge really performs and coordinates all the functions of police, prosecutor, coroner, grand jury, committing magistrate, and defense attorney.<sup>24</sup> Acting upon the application of the prosecutor, it is his duty to make a thorough investigation of a criminal complaint with the view of making possible a decision, either by himself, or another judicial body, as to whether or not a trial should be held.<sup>25</sup> And further, it is his duty to perpetuate and preserve all testimony and evidence received by him for the benefit of both prosecution, and defense,<sup>26</sup> which evidence is presented in dossier form to the trial court. To perform these duties as a judicial officer, he can exercise all compulsory process of the state to further his investigation.<sup>27</sup> He has the power to examine and detain an accused, to hear witnesses as presented by both the prosecution and the defense, to visit and inspect localities and objects, to order searches and seizures, to confront witnesses with one another, to compel witnesses to appear and testify, and expect witnesses to make reports as to the findings required of them, and to administer oaths.<sup>28</sup>

<sup>11</sup> *Ibid.*, see also Esmein, op cit.

<sup>12</sup> Esmein, op. cit.

<sup>13</sup> Wolff, op. cit., pp. 1072-1074. See also St PO 178.

<sup>14</sup> *Ibid.*, p. 1085, St PO 178.

<sup>15</sup> Plascowe, op. cit., p. 1012.

<sup>16</sup> *Ibid.*, p. 1013; Wolff, op. cit., p. 1086. See also, St PO 179.

<sup>17</sup> Wolff, op. cit., p. 1085.

<sup>18</sup> *Ibid.*, pp. 1085-1086.

<sup>19</sup> Esmein, A., op. cit.

<sup>20</sup> Wolff, op. cit., p. 1076.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, p. 1085.

<sup>24</sup> Plascowe, op. cit., p. 1010.

<sup>25</sup> *Ibid.*, pp. 1010, 1013-1014.

<sup>26</sup> *Ibid.*, p. 1017; Wolff, op. cit., p. 1086. See also St PO 188.

<sup>27</sup> Plascowe, op. cit., p. 1010.

<sup>28</sup> Wolff, op. cit., p. 1086; St PO 59, 66, 190. Esmein, A., op. cit.

Under the theory of the German Code, it is not the duty of the judge to arrive at a full statement of facts sufficient for judgment by the trial court, but only to gather sufficient evidence to determine the question of whether or not a trial on the matter should be held.<sup>29</sup> Often the judge is called to the witness stand during the regular trial to testify as to his findings.<sup>30</sup> However, this attempt to limit his duty to eliminating unsubstantiated prosecutions means nothing in practice.<sup>31</sup> Actually, the judge prepares the case in such minute detail that the dossier sent by the judge through the prosecutor to the trial court is really the primary evidence,<sup>32</sup> and is almost always sufficient for a disposition of the matter by the trial court.<sup>33</sup> The code countries of France and Italy frankly admit that this is the scope of the pretrial judicial examination.<sup>34</sup>

#### CHARACTERISTICS OF THE EXAMINATION

The principal characteristic of the pretrial judicial examination, at least as far as the accused and his defense counsel are concerned, is that of secrecy—and the public is completely excluded.<sup>35</sup> The theory seems to be that the judge should be completely protected from popular pressure, unhampered by defense counsel, in arriving at his conclusions.<sup>36</sup> Access of the accused to his counsel, rights of accused and his counsel to testimonial and expert evidence resulting from the investigation, the presence of counsel when witnesses and the accused are being questioned, and his role under such circumstances are all narrowly circumscribed. In France, under the original Code of 1808, the accused was not entitled to advice by counsel during his examination, but because of many abuses by the *juge d'instruction*, under an amendment in 1897, the accused was permitted to have defense counsel present, not only for the purpose of taking part in the questioning, but solely for control reasons.<sup>37</sup> In both Germany and Italy, the judge is even less bothered with defense counsel. The accused may have advice of counsel, but any evidence which the investigation has produced, whether testimonial or documentary (reports drawn up in secrecy by experts solely under the control of the judge),<sup>38</sup> need not be revealed to defense counsel until the investigation has been completed, unless the judge in his discretion permits defense counsel to examine such evidence.<sup>39</sup> In these countries the judge also completely controls the attorney-client relationship during this pretrial stage. He censors the mail between the accused and his counsel; if the accused is confined, interviews between accused and attorney take place in the presence of the judge; only after the investigation is completed is the attorney-client relationship free from judicial control.<sup>40</sup> Finally, at no time may the defense counsel be present during the examination of other witnesses by the judge, whether or not those witnesses have been recommended by the prosecutor or defense counsel.<sup>41</sup> Depositions of these witnesses are taken by the judge and his clerk, subject to the approval of the witness.<sup>42</sup>

The relationship between judge and prosecutor is completely different. There is no secrecy here. The prosecutor is kept informed of what is being done, he has access to the dossier of evidence taken before the judge at any time,<sup>43</sup> and in Germany he may be present during most of the investigation.<sup>44</sup> In France, he

<sup>29</sup> Wolff, *op. cit.*, p. 1086; St PO 188, 190.

<sup>30</sup> Wolff, *op. cit.*, p. 1086.

<sup>31</sup> Plascowe, *op. cit.*, p. 1014.

<sup>32</sup> 18 Columbia Law Review 43, *The Procedure in the Cour D'Assises de Paris*, p. 52.

<sup>33</sup> Mittermaier, Wolfgang, *The Criminal Law of the German Empire*, Penal Codes of France, Germany, Belgium, and Japan, H. Exec. Doc. No. 489, 56th Cong., 2d sess., Washington, D. C., 1901, pp. 117-118. See also, Plascowe, *op. cit.*, p. 1014.

<sup>34</sup> Plascowe, *op. cit.*, pp. 1013-1014. The prominent French author Garraud has written that the purpose of the pretrial examination is to "bring to trial only accusations justifiable on the facts and the law (to guarantee) individual and social interests." Faustin-Hélié has written that the purpose of the investigation is "to gather together all the materials of the proceedings to enlighten the judge by inquiries, visits to the scene of the crime, examination of witnesses, and interrogations of the accused; to indicate clues to be followed, the documents to be consulted, the evidence which he must take into account; in a word, to prepare in advance the grounds and the weapons for the judicial battle." This certainly indicates the broad scope of the investigation.

<sup>35</sup> *Ibid.*, p. 1014.

<sup>36</sup> *Ibid.*, pp. 1015-1016.

<sup>37</sup> *Ibid.*, p. 1015.

<sup>38</sup> *Ibid.*, pp. 1019-1021.

<sup>39</sup> *Ibid.*, p. 1016; St PO 147, 148 (1927).

<sup>40</sup> *Ibid.*, St PO 148 (1927).

<sup>41</sup> Plascowe, *op. cit.*, p. 1018.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*, p. 1025.

<sup>44</sup> *Ibid.*

may be present at the interrogation of the accused and all other witnesses, whether those witnesses were recommended by the prosecutor himself, or by the defense counsel.<sup>46</sup> The rights of the prosecutor make it possible for him to see that nothing is neglected in the build-up of the case.

#### INTERROGATION OF THE ACCUSED

The interrogation of the accused is of course an indispensable part of this pre-trial procedure. Under the German Code, he must be examined at least once.<sup>46</sup> In Germany, France, and Italy, the accused is not examined under oath<sup>47</sup>—that a man will perjure himself to save his life is the assumption—but witnesses are examined under oath.<sup>48</sup> Generally, the accused must answer without the assistance of counsel.<sup>49</sup> France alone permits the accused to be prepared for questioning.<sup>50</sup> The accused is informed of his right to counsel, and his right to the presence of his counsel during his examination. He may freely communicate with his counsel. The defense counsel must be notified when the accused will be questioned, and counsel must have the dossier of evidence at least 24 hours beforehand.<sup>51</sup>

There are a number of purposes for this interrogation of the accused. It will aid the defense by informing the accused of his rights, and it may uncover facts disadvantageous to the accused.<sup>52</sup> But one of the chief objectives of this examination is to obtain a confession of guilt.<sup>53</sup> Since the whole procedure stems from inquisitorial process, this would necessarily be so. In no jurisdiction can the accused be compelled to testify, the only difference being in France the accused is so informed by the judge; in Germany and Italy he is not informed of his right.<sup>54</sup>

Sometimes an examining judge will be found who will use unjustifiable means to obtain a confession. Certainly none of the countries permit torture, but now and then the magistrate may use an Inquisitionkunst to wear down the accused and bring a confession from him.<sup>55</sup> Such interrogator may resort to surprises, threats, promises of immunity, and even deliberate lying, but these are now considered abuses, even though a prominent French legal writer of the nineteenth century has sanctioned the use of deceit and trickery by the *juge d'instruction*.<sup>56</sup> France alone makes sure that the confession will be trustworthy—the judge cannot question the accused at his first appearance; he can question only in presence of defense counsel, and counsel for the accused has a right to examine the dossier of evidence taken before the judge.<sup>57</sup>

#### DISPOSITION OF THE CASE

The duty of making the final decision as to whether or not a trial will be held on a particular criminal charge falls upon different judicial offices in the various code countries. Also the processes of appeal from decisions of the examining magistrate on particular matters vary. In France, the *juge d'instruction* makes the final decision himself, with the advice of the prosecutor.<sup>58</sup> But the prosecutor may appeal the decision of the judge to a special tribunal composed of three judges of the appellate court (*chambre de mises en accusation*) if he disagrees with the disposition of the case by the *juge d'instruction*.<sup>59</sup> Quite the opposite, in Germany, the judge makes no recommendation as to whether or not a trial should be held at all.<sup>60</sup> Such decision is up to three special judges of the *Landgericht*, and they make their decision wholly on the basis of the dossier

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, p. 1023; St PO 135.

<sup>47</sup> Plasowce, *op. cit.*, p. 1023.

<sup>48</sup> From an interview with Mr. Fred Karpf, Foreign Law Section, Library of Congress, former Austrian lawyer. See also Wolff, *op. cit.*, p. 1086; St Po 59, 66.

<sup>49</sup> Plasowce, *op. cit.*, p. 1023.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, pp. 1023-1024.

<sup>52</sup> *Ibid.*, p. 1024.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, pp. 1024-1025.

<sup>55</sup> *Ibid.*, p. 1025.

<sup>56</sup> *Ibid.*, note 51. Mangin, one of the outstanding French writers of the nineteenth century on criminal procedure sanctioned the use of deceit and trickery by the judge. See 1 Mangin, *De L'Instruction Ecrite* 225 (1847).

<sup>57</sup> Plasowce, *op. cit.*, p. 1025.

<sup>58</sup> *Ibid.*, p. 1026.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

of evidence forwarded to them from the examining judge through the prosecutor.<sup>61</sup> The accused or the prosecutor may appeal individual decisions of the investigating judge to this panel of three judges of the Landgericht.<sup>62</sup>

## COMMENT

It is only fair to state that the European-born United States Army officer investigators had ample continental procedural background to draw upon for the so-called mock trial device, and probably it was only natural for them to do so. It should be noted that one of the primary purposes of this pretrial judicial examination was to obtain a confession if possible, also that the investigation was carried on in secrecy, and finally that the rights of the suspect accused are narrowly circumscribed. It should also be noted that if the S. S. accused were to be tried by their own courts, and certainly the Nazi special tribunals, they would probably have been subjected to such a procedure. Of course, the United States investigators were not a properly constituted pretrial examining court, and legally the whole procedure was a ruse.

The committee was not able to find any written authority for the use of a crucifix and candles to impress those interrogated with the sanctity of the oath. Mr. Fred Karpf, a former Austrian lawyer and refugee from the Austrian Anschluss, now a member of the Foreign Law Section of the Library of Congress, volunteered the information that such objects were used when witnesses were questioned. As noted above in the body of the report, the oath was not administered to the suspect accused.

A final important matter—this investigation takes place before the suspect accused is formally indicted for the crime.

## FOOTNOTES

1. German Code of Criminal Procedure, *Strafprozedurordnung*—St PO Original form enacted in 1877, in force since October 1, 1879.
2. Amendment to German Code of Criminal Procedure, *Strafprozedur*—ST P Nov. enacted in June 1935, in order to adjust criminal procedure and court organization to Nazi principles.

## EXHIBIT T

## DEVELOPMENT OF WAR CRIMES PROCEDURES AND SUGGESTIONS PERTAINING THERETO

Under present international law, there can be no doubt that the national military court has the jurisdiction to try every combatant for violation of the laws and customs of war, whether or not the court is appointed after hostilities have ceased.<sup>1</sup> However, under the pressure of present international thinking, the problem soon becomes "how fair is the trial of a vanquished enemy by a victorious army?"<sup>2</sup> Such social and legal inquiry is revealed by the present investigation by a subcommittee of the Senate Armed Services Committee of the conduct of the trial by United States Army authorities of the German S. S. troops accused of participation in the Malmédy massacres. The purpose of such an investigation is not only to determine factually whether or not the United States Army is guilty of the alleged mistreatment of these accused, but also to make some constructive proposals along lines of both procedure and substance should such trials occur in the future.

Can such crimes be tried under international law?

Much has been written about the "legality" of the charter of the International Military Tribunal under international law. The problems of *ex post facto* law,<sup>3</sup> the doctrines of "act of state" and "superior orders,"<sup>4</sup> and the liability of

<sup>61</sup> *Ibid.*, p. 1027.

<sup>62</sup> *Ibid.*, p. 1026.

<sup>1</sup> Manner, George, *The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War* (37 *American Journal of International Law* 407; U. S. Court Art. 1, S. c. 10; U. S. Articles of War, 12, 15). In *Re Yamashita* (66 Sup. Ct. 340, 346.)

<sup>2</sup> In *Re Yamashita* (66 Sup. Ct. 340.) See particularly the dissenting opinions of Justices Murphy and Rutledge.

<sup>3</sup> See, Glueck, S., *The Nuremberg Trial and Aggressive War, War Criminals—Their Prosecution and Punishment*; Manner, George, *The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War*, op. cit.; Finch, George A., *The Nuremberg Trial and International Law* (41 *American Journal International Law*, 20-37); Goodhart, A. L., *Legality of the Nuremberg Trial* (58 *Juridical Rev.* 1 (1946)).

<sup>4</sup> *Ibid.*

individuals under international law<sup>5</sup> have been argued convincingly pro and con. There is no need to synthesize their arguments, and decide who is "legally" right or wrong. The problem is really to evolve a procedure for the trial of war crimes which will satisfy both the legal experts on international law, and yet not forget that the society of nations does have an international moral code which neither nation nor individual can transgress without penalty.<sup>6</sup>

At the outset, it might be well to define rather narrowly the scope of the subject under consideration. We are not concerned with whether or not the waging of "aggressive" war is "legally" an international crime.<sup>7</sup> On the basis of the Hague and Geneva Conventions, and the Kellogg-Briand Pact of 1928, it might well be.<sup>8</sup> We are dealing with those crimes comparable to count 3 of the Nuremberg indictment,<sup>9</sup> violations of the laws and customs of war, and specifically, the murder of prisoners of war and noncombatant civilians, committed by persons other than heads of state, whether combatants or not. There is considerable evidence that such violations of the laws of war by combatants are "international crimes". The Geneva (Prisoners of War) Convention of July 27, 1929 sets out a positive duty to protect prisoners of war against acts of violence. The Annex to Hague Convention No. IV of October 18, 1907, prohibits the killing or wounding of any enemy who has laid down his arms and has no longer a means of defense.<sup>10</sup> Article I of this annex, defining the persons to whom belligerent rights and duties attach, was signed by 44 nations.<sup>11</sup> This is the black-letter international law, but the problem becomes "who or what is liable under this law?"

A number of authorities have forthrightly argued that there is no such thing as an "international" war crime, that only states and not individuals are the subjects of international law,<sup>12</sup> and the only sanctions are civil sanctions.<sup>13</sup> These authorities further argue that under international indictment, the defense doctrines of "acts of state" and "superior orders" protect the accused from individual liability,<sup>14</sup> even though under statements of national military law these doctrines may "legally" be whittled away to nothing.<sup>15</sup> Other writers argue just

<sup>5</sup> *Ibid.*

<sup>6</sup> Preamble to Hague Convention IV, October 18, 1907, governing the laws and customs of war on land. Preamble: " \* \* \* and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." (Italics added.)

<sup>7</sup> Article 6 (1), Charter of the International Military Tribunal, London Conference, 1945.

<sup>8</sup> Glueck, S., *The Nuremberg Trial and Aggressive War*. See report of Mr. Justice Robert Jackson to the President of the United States of June 6, 1945, part IV, where he states that the basic crime for which the Nuremberg defendants would be tried would be the making of unjustifiable war.

Contra, Finch, George A., *The Nuremberg Trial and International Law* (41 American Journal of International Law 20, 24-26); Schick, *The Nuremberg Trial and the International Law of the Future* (41 American Journal of International Law 770, 784).

<sup>9</sup> Article 6 (2) Charter of the International Military Tribunal, London Conference, 1945.

<sup>10</sup> 36 Stat. 2295.

<sup>11</sup> *Ex Parte Quirin* (317 U. S. 1, 30, note 7); See also, German General Staff, *Kriegsbrauch im landkriege*, (1902) ch. 1.

<sup>12</sup> Manner, George, *The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War* (37 American Journal of International Law 407, 407. Criminal acts of violence contrary to the rules of warfare constitute penal offenses against the municipal regulations of states. The Geneva (Prisoners of War) Convention, 1929, provides:

" \* \* \* in the extreme case of war, it will be the duty of every power \* \* \* "

Article 3 of the Hague Convention No. IV of 1907 provides:

" \* \* \* contracting party \* \* \* shall be responsible for all acts committed by persons forming part of its armed services."

See particularly the discussion in this article concerning the action taken by the "Committee on the Responsibilities of the Authors \* \* \* (of World War I)" and the report of this Committee to the Versailles Peace Conference. The majority of the Allied representatives of this committee proposed the promulgation of the "international war crime," but this view was defeated by two minority groups, the United States delegation of Mr. Lansing and Mr. Scott, and the Japanese delegation. See I Oppenheim, *International Law*, 504-5, 288(?).

<sup>14</sup> Manner, George, *op. cit.*, pp. 416-418.

Schick, *The Nuremberg Trial and the International Law of the Future*, 41 American Journal of International Law, pp. 788-794.

<sup>15</sup> For example, until 1944, chapter XIV of the British Manual of Military Law, and F. M. 27-10, War Department, United States Army, Rules of Land Warfare, paragraph 347, stated that "acts of state" and "superior orders" were valid defenses. In 1944, both of these regulations were changed. Paragraph 347 of the United States Army Rules of Land Warfare was amended by 345.1 which revoked the validity of these defenses, and substituted the rule that such plea could only be considered in mitigation of punishment.



as convincingly that individuals are subjects of international law,<sup>16</sup> that the net result of the defense doctrines of "acts of state" and "superior orders", is that no one is liable under international indictment for violations of the laws and customs of war, hence in effect rendering international law in this sphere a nullity.<sup>17</sup> On such grounds, these writers believe that the London Conference of October, 1945, which drew up the charter for the International Military Tribunal had every right to circumscribe the two defense doctrines which would have defeated liability.<sup>18</sup> After all, they argue, was not the charter merely an internationalization of domestic criminal law, at least along lines of count 3 (the Nuremberg indictment for violations of the laws and customs of war)<sup>19</sup> and hadn't national interpretation of international law, both Allied and German, greatly modified the doctrine of individual nonliability and the two defense doctrines?<sup>20</sup>

Nevertheless, because of this conflict, it is submitted that some new machinery, patterned in some practical aspects after the international jurisdiction of the International Military Tribunal, should be evolved for the postwar trial of war crimes. And this machinery should, if possible, satisfy the present doctrines of international law and yet not sacrifice the world desire that justice be done and offenders of an international moral code punished.

Undoubtedly, the ideal solution to the problem would be an international criminal court set up under some form of world government to which all nations had delegated major portions of their individual sovereignty. Such a court would have internationally promulgated rules of jurisdiction, rules governing trial and appeal. Such a solution, of course, presupposes sound world government of substantive law, and all structural problems of such an organization crystallized. It is elementary to note that world organization has never reached such peak of perfection, yet some authorities on international law would have us wait until such world organization is achieved to create international jurisdiction over violations of the laws of war, and make individuals liable to inter-

<sup>16</sup> Goodhart, A. L., *Legality of the Nuremberg Trial* (58 *Juridical Rev.* 1 (1946) op. 5-14). The argument in this article sets forth what seems to be the basic difficulty. This writer seems to think that, just because there is no international machinery to supplement the law concerning individuals, there is no justification for decrying that no international law governing the conduct of individuals exists. He cites the example of piracy.

Glueck, Sheldon, *War Criminals, Their Prosecution and Punishment*, New York, 1944. See chaps. 7-9, pp. 121-159.

For precedent, see *Trial of Henry Wins*, 40th Cong., 2d sess., House of Representatives (Ex. Doc. 23, p. 812).

*Llandovery Castle case* (16 *Am. Jr. Int. Law* 708). In this case, one of the few German war-crimes trials of German nationals after World War I, as required by the Versailles Treaty, the Leipzig Court found the accused guilty of murder contrary to international law.

<sup>17</sup> Goodhart, A. L., op. cit. p. 8. See Glueck, Sheldon, *The Nuremberg Trial and Aggressive War*, New York, 1946 (chaps. 4, 5, pp. 46-70).

<sup>18</sup> Charter of the International Military Tribunal, London Conference, October 1945:

ART. 7. "The official position of defendants, whether as heads of state or responsible officials in government departments, shall not be considered as freeing them from responsibility or mitigating punishment."

ART. 8. "The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility but may be considered in mitigation of punishment if the tribunal determines that justice so requires."

<sup>19</sup> Glueck, S., *The Nuremberg Trial and Aggressive War*, op. cit., ch. 5, pp. 66, 67. See also Finch, George A., *The Nuremberg Trial and International Law* (41 *Am. Jr. Int. Law*, p. 22). This author is one of those who strenuously objects to the ex post facto aspects of art. 6 (1) of the Charter of the International Military Tribunal which made the waging of aggressive war an international crime. Yet, with respect to count 3 of the Nuremberg indictment—that dealing with violations of the laws and customs of war—he feels that there is no question of ex post facto law involved. He says that this part of the indictment is "legally adapted to the vindication of accepted principles of international law."

<sup>20</sup> See note 14, supra, in regard to Allied changes in these doctrines. Article 47, German Military Code (*Militärstrafgesetzbuch*):

(1) If a criminal law is violated through the execution of an order in a matter pertaining to the service, the superior giving the order is alone responsible. The subordinate who obeys such an order, however, is punishable as a participant (2) if he knew that the order of the superior concerned an act which had in view a *general (allgemeines)* [italics supplied] or *military major or minor crime*. For a close legal analysis that by the substitution of the word "general" for "civil" in this article of the German Military Code, both the German Civil Code and international law, both written and unwritten, are included by analogy. See Franklin, Mitchell, *Sources of International Law Relating to Sanctions Against War Criminals* (36 *Journal of Criminal Law and Criminology* 153, pp. 162-169). This author also argues that art. 4 of the German Constitution of 1919 made the rules of international law an integral part of the law of the German Reich, binding upon individuals (pp. 169, 170). The Nazi Propaganda Minister, Herr Goebbels himself, has said with regard to the doctrine of "superior orders":

"No international law on warfare is in existence which provides that a soldier who has committed a mean crime can escape punishment by pleading as his defense that he followed the commands of his superiors. This holds particularly true if those commands are contrary to all human ethics and opposed to the well-established international usage of warfare" (*The Air Terror of Our Enemies*, 1944; *Berliner Börsenzeitung*, May 28, 1944).

national authority.<sup>21</sup> Even attempts at such organization, the United Nations, are at the brink of failure under present world conditions. Practically, then, the ideal solution is impossible. The nations must work in this sphere within the present international framework.

It is submitted that the court of base line trial jurisdiction for these offenses should remain the national military court. The question of international law involving the jurisdiction of such tribunals seems to be settled,<sup>22</sup> the only problem remaining that of objective fairness, which requirement may be better served by some form of check or balance at a later stage in procedure. Then, of course, violations of the laws of war are peculiarly military in nature; hence these tribunals would have the special competence called for.<sup>23</sup> However, the basic reason for preserving the jurisdiction of the national military tribunal stems from the experience of the international trial court of Nuremberg. To conduct a multitude of war-crimes trials patterned after the trial at Nuremberg would prove far too costly on the basis of the administrative difficulty and expense there encountered.<sup>24</sup>

The procedure before the national military tribunals should be standardized as much as possible, and uniformly applied. And international rules for trial procedure already exist, in the charter of the International Military Tribunal promulgated by the London Conference of 1945. This work is already done. The elements of fair trial, or "procedural due process," in Anglo-American terms, are there in the charter.<sup>25</sup> Under article 16 the defendant has a right to see, at a reasonable time before the trial, a detailed list of the charges against him. He has the right during any preliminary examination to make an explanation of those charges. He has rights breaking down the language barrier, to counsel, to offer evidence on his own behalf, to be sworn and take the stand in his own behalf after summation by the prosecution,<sup>26</sup> to cross-examination. The powers of the International Tribunal,<sup>27</sup> and the order of trial,<sup>28</sup> are set forth in the charter as a model for the national military tribunal, and in point of fact, the charter has already been used as a model in many respects for the procedure before United States general military courts.<sup>29</sup> Article 19, which provided that the International Tribunal was not to be bound by technical rules of evidence but should adopt and apply to the greatest possible extent expeditious and non-technical procedure, and should admit any evidence which it deems to have probative value, will still raise some controversy in Anglo-American legal circles. But it is submitted that in the light of the absence of a jury, and the necessity for an international agreement on this controversial subject, since under continental procedure hearsay is admissible, article 19 is a sound compromise. The standardization of national military-court trial procedures, patterned after the charter of the International Military Tribunal, could probably be handled through the present military Joint Chiefs of Staff organization.<sup>30</sup>

To partially obviate the inherent unfairness in a complete trial and appeal machinery governed by the military organizations of the victorious nations, the review or appellate stage of such war-crimes proceedings should be taken out of the hands of the military completely. Such a change necessitates some evolutionary alterations in existing international institution, which changes, it is submitted, are politically feasible under present international circumstances. An international criminal jurisdiction must be created. Both substantive law

<sup>21</sup> See Schick, *The Nuremberg Trial and the International Law of the Future* (41 Am. J. Int. Law, pp. 770-794).

Glueck, S., *The Nuremberg Trial and Aggressive War* (p. 6, note 5, New York, 1946).

"A major fallacy of the American Representatives on the Commission of Responsibilities (of the authors of World War I), as of the German delegates to the Versailles Peace Conference, was to take it for granted that the characteristics of a fully developed system of law are indispensable to all justice according to law." Lansing and Scott wanted a world legislature and world criminal legislation to exist before establishment of a world criminal court. But a court can also enforce the common or unwritten law \* \* \* That branch of the law of nations which deals with prohibited acts of warfare is as yet undeveloped as was the early English common law." (From Glueck, S., *War Criminals, Their Prosecution and Punishment*, New York, 1944, pp. 97, 98.)

<sup>22</sup> Manner, George, *op. cit.*, pp. 407-409, 419-420. See note 1, *supra*.

<sup>23</sup> Glueck, S., *By What Tribunal Shall War Offenders Be Tried?* (24 Neb. L. Rev. 143, 148).

<sup>24</sup> Report to the President by Mr. Justice Jackson, October 7, 1946, pt. II.

<sup>25</sup> Charter of the International Military Tribunal (19 Temple L. Q. 162). See arts. 7, 8, 16, 17, 18, 19, 20, 21, 24.

<sup>26</sup> *Ibid.*, art. 24 (i).

<sup>27</sup> *Ibid.*, art. 19.

<sup>28</sup> *Ibid.*, art. 24.

<sup>29</sup> Title 5, U. S. Forces European Theater Manual, November 30, 1945, Legal and Penal Administration, (sec. 305 (1-14)).

<sup>30</sup> See Report of Robert H. Jackson, United States representative to the International Conference on Military Trials, London, 1945 (Department of State, Publication 3080, preface, p. XI).

and machinery for the appellate stage must be provided by international action.

The General Assembly of the United Nations should declare by resolution that the murder of unarmed combatants in prisoner-of-war status and noncombatant civilians is an international crime for which individuals may be held responsible. Such declaration should also cut off the defenses of "acts of state" and "superior orders" except in mitigation of punishment as done by the charter of the International Military Tribunal.<sup>31</sup> This could be accomplished through article 13 of the UN Charter which provides that the member nations may encourage "the progressive development of international law." Then this declaration should be enacted into municipal law by the member nations through whatever legislative authority each may have.<sup>32</sup>

Is such action in the matter of substantive international law politically feasible at the present time?

On December 11, 1946, the United Nations General Assembly created a committee to study "the methods by which (the) General Assembly should encourage the progressive development of international law," and submitted to this committee for study a proposal of the Panamanian delegation that the charter of the Nuremberg tribunal be adopted by the Assembly as part of an international criminal code. The idea of an international criminal code was not new.<sup>33</sup> As yet, the Assembly has taken no action on this proposal in toto, but on December 16, 1946, a resolution was unanimously adopted making race extermination as a national policy, or genocide, an international crime, making individuals responsible for such action, and inviting member states to enact the necessary municipal legislation for the prevention and punishment of this crime.<sup>34</sup> This resolution encompasses the major portion of count 4 of the Nuremberg indictment under article 6 (3) of the charter of the international tribunal. Why should not count 3 of the Nuremberg indictment, under article 6 (2) of the charter of the tribunal, be handled similarly? The military codes of most states prohibit the murder of unarmed prisoners of war and noncombatant civilians; there is no political or policy problem of the promulgation of a complete international criminal code,<sup>35</sup> and the controversial question of whether or not the waging of "aggressive war" is a "crime against peace"<sup>36</sup> is in no way involved. With such international substantive law in black and white, and the enactment by Congress making such action a Federal crime (even though under existing United States case law such action by Congress is not necessary<sup>37</sup>), there will be no storm of legal controversy concerning *ex post facto* law should the occasion for war crimes trials again arise,<sup>38</sup> and an international appellate tribunal will have sound ground upon which to proceed.

As mentioned above, international appellate machinery must be provided if the review stage of such trials are to be taken out of the hands of the national military. The idea of an international criminal court is also not a new one, because usually the proposals of an international criminal code and court are considered together.<sup>39</sup> But the idea of a criminal court with only appellate jurisdiction is slightly different.

<sup>31</sup> Charter of the International Military Tribunal (arts. 7, 8).

<sup>32</sup> A bill which would make race murder or genocide a Federal crime is now pending before the Eighty-first Congress, the municipal follow-up of the resolution of the UN General Assembly making such action an international crime.

It has even been suggested that Federal legislation be adopted defining "aggression," and making the waging of aggressive war a "crime against peace" on the municipal level (Finch, George A., *The Nuremberg Trial and International Law*, 41 *Am. Jr. Int. Law* 20, 37). The proposal herein outlined would not even touch upon this larger controversial issue.

<sup>33</sup> The committee of jurists which drafted the statute for the Permanent Court of International Justice in 1920 recommended the promulgation of an international penal code, to be enforced by an international criminal court, but the Assembly of the League of Nations denounced the plan as premature. Kuhn, Arthur (41 *American Journal of International Law* 430, 432 (1947)). The same matter was discussed at the 1924 Stockholm meeting of the International Law Association (Schick, *op. cit.*, p. 771).

<sup>34</sup> Schick, *op. cit.*, p. 794.

<sup>35</sup> See note 34, *supra*.

<sup>36</sup> See Manner, Schick, Glueck, Goodhart, cited above.

<sup>37</sup> Under Articles of War 15, Congress "incorporated by reference" all offenses defined as such by the law of war and placed them under the "pre-existing jurisdiction of military commissions \* \* \* \* \* (*Ex Parte Quirin*, 317 U. S. 1, 29, 30).

<sup>38</sup> See note 35.

<sup>39</sup> Note 32, *supra*. A draft statute for a criminal chamber of the Permanent Court of International Justice was prepared for the International Law Association by Mr. Bellot and adopted at the Vienna conference of the association in 1926. The Inter-Parliamentary Union tentatively adopted a draft of Professor Villa at the Washington conference in 1925 (Kuhn, Arthur K., 41 *American Journal of International Law* 430, 432, 433).

Through appropriate procedures, the United Nations General Assembly should propose an amendment to the United Nations Charter and statute of the International Court of Justice which would create a criminal appellate side of that court, restricting its jurisdiction to war crimes of the type contemplated under article 6 (2) of the charter of the Nuremberg Tribunal (and the genocide resolution as already passed by the General Assembly, if desired), and granting compulsory jurisdiction over both states and individuals for this type of appellate hearing only. Such amendment would require a limited change in article 34 of the statute of the International Court of Justice which now provides that only states may be parties before the Court, and also a minor change in the optional jurisdiction feature of article 36 of the statute. Because of the international consensus of opinion on this subject, there should be little danger that the cry of "political not legal dispute involved" will defeat such amendments<sup>40</sup>—the controversial "crimes against peace," with all their political connotations, are nowhere involved.<sup>41</sup> Of course, such alterations must be adopted by a two-thirds vote of the General Assembly, and then ratified by the constitutional processes of two-thirds of the members of the United Nations,<sup>42</sup> including all permanent members of the Security Council, and then will be binding only upon nations which have ratified.<sup>43</sup>

Under article 30 of the statute, the Court could frame the necessary rules of procedure for carrying on the functions of its newly created criminal appellate side, and eminent jurists of all nations could be called to sit upon such hearings.

There is one conceptual problem that should be briefly discussed. An argument could be made that it is legally improper, and politically unfeasible, to jump from the national military trial stage to the international civil appellate stage. This may well be true, but it seems that if the nations could come to an agreement to submit the leading war criminals to international trial jurisdiction under civilian judges, as they did at the London Conference in 1945, they will again relinquish sufficient sovereignty to submit lesser war criminals to an international appellate jurisdiction as here outlined. Judging from the experience of the United States Army authorities in Germany with these cases, it is submitted that military authorities will not balk at an opportunity to shift heavy review burdens to an international body with the requisite powers.

If the foregoing recommendations can be put into effect, three basic needs will be fulfilled. First, by taking one trial stage out of the hands of the military, the accused will probably get a more impartial consideration of their cases than if they were left to the oftentimes swift and prejudicial mercies of military justice. Second, the least controversial, but none the less important, legal doctrines of the Charter of the Nuremberg Tribunal will become sound international substantive law, and not merely be branded as "political precedent."<sup>44</sup> Third, such action will promote the sound "development of international law" under article 13 of the United Nations Charter, and will be one more step on the road to an international criminal code, and a world court with compulsory criminal jurisdiction,<sup>45</sup> which in turn should lead to sound world government under law and justice.

<sup>40</sup> Schick, *op. cit.*, p. 777.

Hudson, Manley O., *The World Court—The Next Step* (19 Temple Law Quarterly 290, 293-295).

<sup>41</sup> See note 35.

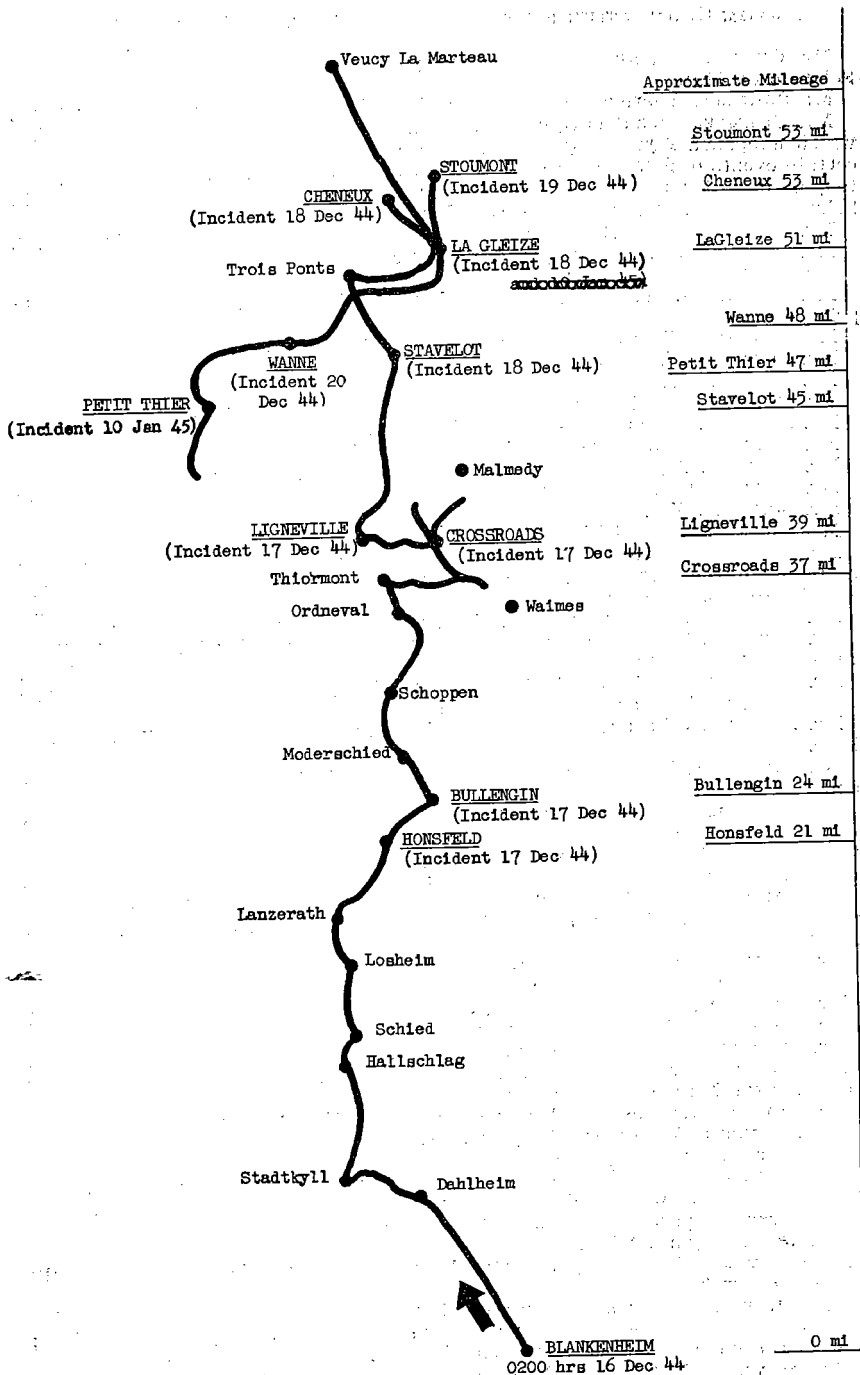
<sup>42</sup> Article 69, Statute of the International Court of Justice; Article 108, Charter of the United Nations (19 Temple Law Quarterly 256 et seq.).

<sup>43</sup> Schick, *op. cit.*, p. 777.

<sup>44</sup> *Ibid.*

<sup>45</sup> Hudson, Manley O., *The World Court—The Next Step* (19 Temple Law Quarterly 290).

EXHIBIT U



## EXHIBIT V

VERBATIM STAFF INTERROGATION OF DIETRICH SCHNELL ON AUGUST 31, 1949

Mr. CHAMBERS. I am here to refresh your memory of the Malmedy trial in Schwabisch Hall.

Mr. SCHNELL. There were no trials in Schwabisch Hall but only investigations.

Mr. CHAMBERS. That is right. I only intended to direct your memory to that which happened 2 years ago. Some time ago you made out an affidavit about certain events in Schwabisch Hall and I have seen that affidavit. I want to talk to you in order to get more details on this affidavit. What did you do in Schwabisch Hall and when were you there?

Mr. SCHNELL. From September 1945 to April 1946 as internee in prison No. 2.

Mr. CHAMBERS. Where did you go from Schwabisch Hall?

Mr. SCHNELL. To Dachau.

Mr. CHAMBERS. Were you brought there at the same time as the Malmedy prisoners?

Mr. SCHNELL. They went there about 3 weeks before us.

Mr. CHAMBERS. Were you a medical student?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Did you work there in the dispensary prison?

Mr. SCHNELL. I was in the internee hospital.

Mr. CHAMBERS. Not together with the Malmedy prisoners?

Mr. SCHNELL. A part of them were treated by us in the internee hospital.

Mr. CHAMBERS. Were Malmedy prisoners ever treated in the internee hospital?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. What kind of cases?

Mr. SCHNELL. Diseases, injuries of the jaws, and furthermore in two cases swellings of the sexual organs caused by mistreatment and in several cases actual diseases, abscesses and diseases caused by lack of adequate nourishment.

Mr. CHAMBERS. Why did not Dr. Kerrer or Richter treat these cases?

Mr. SCHNELL. These doctors were not permanently in Schwabisch Hall. They came only periodically and inquired about the status of health of the patients.

Mr. CHAMBERS. Is it certain that the Americans had not stationed there the doctors and medical enlisted personnel?

Mr. SCHNELL. Of course, American enlisted medical personnel were stationed there.

Mr. CHAMBERS. Was it not a fact that a doctor was stationed there permanently?

Mr. SCHNELL. I did not see any there. I knew Dr. Richter, who in our practice room had cut abscesses. But he was not active there all of the time. Repeatedly it was so, that the sanitary personnel declared to us in several cases we had to wait until a competent doctor would be here again.

Mr. CHAMBERS. As I understand you were not together with the Malmedy prisoners. How could you ask an American enlisted man to call an American doctor?

Mr. SCHNELL. In this hospital were 20 cells. Fourteen of them were occupied by internees and mostly six by Malmedy prisoners.

Mr. CHAMBERS. How many Malmedy prisoners were as a total in the hospital?

Mr. SCHNELL. It changed. The maximum number was six.

Mr. CHAMBERS. How many Malmedy prisoners were in the prison all together?

Mr. SCHNELL. I could figure out the number about because in our kitchen the meals for the Malmedy prisoners were cooked, too, and on a board the number was always written down. There were permanently 700 to 800.

Mr. CHAMBERS. Who were the prisoners, if you recall the names, who had a ruptured jaw or injured genitals?

Mr. SCHNELL. It was forbidden to us to talk more than it was necessary for the treatment. It was forbidden to inquire about the name. Dr. Knorr, the dentist, was not permitted to note the name as he did with us, but could only designate them by a number.

Mr. CHAMBERS. How did you learn about these injured jaws? Did you talk to the prisoners?

Mr. SCHNELL. There was not only one but several prisoners whom I saw with injured, not ruptured, jaws. In one case the upper and lower jaw were broken; in other cases teeth had been removed violently.

Mr. CHAMBERS. How did you happen to come into the dental room?

Mr. SCHNELL. It was the same room we had. It was so that the Malmedy prisoners were treated between treatments of internees.

Mr. CHAMBERS. Did guards lead the Malmedy prisoners to the treatment?

Mr. SCHNELL. No; American medical enlisted personnel. In almost all cases Technical Sergeant Andersen.

Mr. CHAMBERS. You said the dental practice was in the same room. Were you present during the treatments?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Did you hear the reasons as stated for the ruptures of the jaws?

Mr. SCHNELL. It was so that in these cases Dr. Knorr as a matter of principle inquired about the cause of the injury.

Mr. CHAMBERS. Were you present when these inquiries were made? Was it not forbidden to Dr. Knorr, too, to talk to these prisoners?

Mr. SCHNELL. These questions belonged of course to the information necessary for the treatment.

Mr. CHAMBERS. Do you recall a Sergeant King?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Did you know him enough to talk to him about matters of the prison?

Mr. SCHNELL. I talked to Sergeant King in the room of the German camp chief, Professor Dibitsch.

Mr. CHAMBERS. Did you talk to King about events in the prison?

Mr. SCHNELL. I talked once to King in the internee hospital when he was treated by Dr. Knorr for a change of the dental bridge. At that time he was asked by me and by Dr. Knorr whether he could bear it upon his conscience to participate in such handling of the prisoners.

Mr. CHAMBERS. How did you know what the handling was?

Mr. SCHNELL. It was quite evident that we who were stationed in this part of the prison were interested in the men who were interrogated in the Malmedy trial and watched them and I had contact with them every day and I observed all the circumstances which were visible outwardly. I had to supply all these Malmedy prisoners with wash water, food, and clothes. I had constant contact with these prisoners in the internee hospital.

Mr. CHAMBERS. Had you never occasion to talk to them or to ask them what would happen to them?

Mr. SCHNELL. Caused by my own desire I tried to ask these people why they were here, where they belonged and where they had got their injuries. I had this interest for Germans as a German internee.

Mr. CHAMBERS. Did you ask them?

Mr. SCHNELL. As far as I had a chance to do so; whenever the guard gave me an occasion I attempted to ask.

Mr. CHAMBERS. What was King's first name?

Mr. SCHNELL. I do not know.

Mr. CHAMBERS. Was he a sergeant? How did his insignia look?

Mr. SCHNELL. Mostly he wore only a plain shirt. I cannot recall how the insignia looked.

Mr. CHAMBERS. Were there three stripes and something above them? How much space did the insignia take?

Mr. SCHNELL. I believe they were rather large. I know only that generally he was addressed "Sergeant."

Mr. CHAMBERS. We talked to Sergeant King. Sergeant King denies ever to have talked to Schnell about such matters.

Mr. SCHNELL. I believe that he did not know my name. He did not talk to me alone. There were three more persons present.

Mr. CHAMBERS. Did you ever see that somebody was beaten, slapped, or kicked?

Mr. SCHNELL. In many cases of the Malmedy prisoners.

Mr. CHAMBERS. You did see that personally?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Who?

Mr. SCHNELL. Several members of the War Crimes Commission.

Mr. CHAMBERS. Do you know the names of these members of the investigation team?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Do you know the names of the men who mistreated the prisoners physically?

Mr. SCHNELL. I observed in one case First Lieutenant Perl when he mistreated somebody.

Mr. CHAMBERS. Whom did he ill-treat?

Mr. SCHNELL. That I do not know. He slapped the man, kicked him, and insulted him with the abuses generally used.

Mr. CHAMBERS. You said that you saw Perl when he ill-treated somebody. What did Perl do at this occasion?

Mr. SCHNELL. He slapped the man, kicked, and abused him as we could hear it every day in Schwabisch Hall.

Mr. CHAMBERS. Where did this ill-treatment happen?

Mr. SCHNELL. In the office of the War Crimes Commission.

Mr. CHAMBERS. How did you happen to be present?

Mr. SCHNELL. It was possible for us to look from the hospital into the windows of the investigation room and the windows were open, it was about 23 or 24 hours. I could see also other things. The room in which the table was covered with black cloth.

Mr. CHAMBERS. How did you happen to make out the affidavit?

Mr. SCHNELL. By intervention and requested by the German individuals who should have been heard during the Dachau trial. But for some reasons, which I do not know, this did not happen.

Mr. CHAMBERS. Who had requested you to be ready to make a statement in Dachau?

Mr. SCHNELL. The defense counsel of Sturmfuhrer Peiper, Dr. Lehr.

Mr. CHAMBERS. When did you make out the affidavit?

Mr. SCHNELL. In 1948.

Mr. CHAMBERS. Why did you wait so long?

Mr. SCHNELL. I did not know the address of the defense counsel and because I was in the internee camp until March 1947.

Mr. CHAMBERS. You cannot recall at this time the first name of King. I wonder if you knew his first name when you made out the affidavit.

Mr. SCHNELL. I did not know it.

Mr. CHAMBERS. I want the truth now. Did the defense counsel come to you and ask you for this affidavit?

Mr. SCHNELL. Not the defense counsel, personally, but upon their request the wife of S. S. Obergruppenfuhrer Dietrich once.

Mr. CHAMBERS. Did she tell you at that time that she intended to gather a number of affidavits for the purpose of an appeal?

Mr. SCHNELL. It was said to me that I would be the first of a number of persons giving statements, and that it was intended to gather statements from all people.

Mr. CHAMBERS. Did you give other names for that purpose?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Whose names did you suggest?

Mr. SCHNELL. The German camp chief, Professor Dibitsch; dentist, Dr. Knorr. I do not know whether I gave other names. It is possible but I cannot recall it.

Mr. CHAMBERS. Did you see Dr. Knorr again?

Mr. SCHNELL. Three months ago in the hospital here, a short time before he died.

Mr. CHAMBERS. Is that the only time you met Dr. Knorr? Did you ever write to him or did you communicate otherwise with him?

Mr. SCHNELL. I had no other communication with him. I did not write to him.

Mr. CHAMBERS. How did you know that he was in the hospital?

Mr. SCHNELL. By other internees who are living here and who were interned with us.

Mr. CHAMBERS. What was Dr. Knorr's condition?

Mr. SCHNELL. I would say he was near dying.

Mr. CHAMBERS. Did Knorr recognize you?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Did you talk about Schwabisch Hall?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. When did that happen?

Mr. SCHNELL. Six weeks ago. The cause was the information given by the local police that we had to be ready for an interrogation by a Senate investigation committee.

Mr. CHAMBERS. On which date did you visit Dr. Knorr?

Mr. SCHNELL. I do not recall it. I believe that I saw clearly that Dr. Knorr's life could not be saved?



Mr. CHAMBERS. Do you recall that two Americans were here to talk to him, but it was not possible?

Mr. SCHNELL. That must have been at a later date. He did not tell me about that. He asked me to get a German attorney, if possible, somehow. Undoubtedly he would have told me if somebody had come to see him. Prior to my visit I requested permission of the nurse to see him. It was not necessary to get the permission of the doctor.

QUESTION to Dr. PETERSEN. Would it have been reported to you, if somebody had come to a nurse and asked to be permitted to visit Dr. Knorr?

Dr. PETERSEN. After the second operation, certainly.

Mr. SCHNELL. On the day when I visited Dr. Knorr his son and daughter-in-law were with him for a visit.

Mr. CHAMBERS. Did you come together with them?

Mr. SCHNELL. When I came they were already there.

Mr. CHAMBERS. You said before that Lieutenant Perl had ill-treated a prisoner. Did you ever see another member of the War Crimes Commission ill-treating a prisoner?

Mr. SCHNELL. Beside Lieutenant Perl I saw none directly. I saw only lower grades of whom I do not know whether they belonged to the guard or to the War Crimes Commission. As far as I know they were members of the War Crimes Commission.

Mr. CHAMBERS. Do you know the names of any of these guards or sergeants?

Mr. SCHNELL. I know the first name of one. He was known as Herman. He was of German descent and spoke a perfect Bavarian dialect.

Mr. CHAMBERS. When this corporal or sergeant did beat, how did it happen and where?

Mr. SCHNELL. That was first when the men were transported to the prison in December 1945 when they went off the trucks and had to go to the cell building. When they entered the cell buildings they were ill-treated the first time and then when they were within the yard of the prison, led to the interrogations wearing black hoods.

Mr. CHAMBERS. How did you happen to be present?

Mr. SCHNELL. A part of the prisoners passed us directly at a distance of 1 meter while we were in the yard and then of course we observed this.

Mr. CHAMBERS. Are you sure they were brought to the investigation room when they were ill-treated?

Mr. SCHNELL. Of course.

Mr. CHAMBERS. I believed that the interrogations were in the prison and that the prisoners were only led from one cell to another room and not led across the yard.

Mr. SCHNELL. These rooms were not in the cell building where the Malmedy prisoners were kept but in another building.

Mr. CHAMBERS. That may be. What do you understand concerning ill-treatment?

Mr. SCHNELL. One had a half-meter-long wooden club, the so-called clap. As a matter of principle the prisoners were driven with these wooden clubs in the back end and in the back, often in the measure of the march.

Mr. CHAMBERS. You were a soldier yourself. Do you believe that one can drive somebody forward in this way?

Mr. SCHNELL. Hardly. One would attain the opposite.

Mr. CHAMBERS. How strong were the blows?

Mr. SCHNELL. If one does it easily one can call it caressing.

Mr. CHAMBERS. What do you understand under ill-treatment?

Mr. SCHNELL. It was so, that the guards partly swung the wooden clubs as far as possible in order to beat.

Mr. CHAMBERS. They did not try to drive the prisoners, but to injure them?

Mr. SCHNELL. I would not think they intended to injure. This belonged undoubtedly to the attempt to bring this people as fast as possible across the yard, so that we as internees could see this spectacle only for a time as short as possible.

Mr. CHAMBERS. Was there any difference between the Polish and American guards?

Mr. SCHNELL. Polish guards did not participate in the transports within the prison.

Mr. CHAMBERS. Do you know a Sergeant Scales?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Do you trust him?

Mr. SCHNELL. I cannot answer this question. He did not participate in the ill-treatment. He kept away from us.

Mr. CHAMBERS. Sergeant Scalesi said such things did not happen. The only time they had troubles with the guard, this guard was dismissed.

Mr. SCHNELL. If Sergeant Scalesi said this I have to call it a lie.

Mr. CHAMBERS. How about Unterzieher, do you trust him?

Mr. SCHNELL. That is a difficult question. We always had to be very careful with Sergeant Unterzieher for we knew that he always spent his off-duty time with Lieutenant Perl. He went skiing with Lieutenant Perl and was always in company of Lieutenant Perl's wife.

Mr. CHAMBERS. How about Harry Thon?

Mr. SCHNELL. He was known to us since he called himself a German by descent, born near Schwabisch Hall. I personally had nothing to do with him.

Mr. CHAMBERS. How about Mr. Kirschbaum?

Mr. SCHNELL. I saw him about five or six times from a short distance. I once talked shortly to him, when the offices were occupied, about a matter of furnishing. Otherwise I had nothing to do with him.

Mr. CHAMBERS. Captain Shumacher?

Mr. SCHNELL. I treated him twice when he had an abscess in his nape and we had to treat this abscess with hot cloth. He stayed each time for 1 hour in the hospital room.

Mr. CHAMBERS. Did you ever see Thon, Kirschbaum, or Shumacher ill-treated anybody?

Mr. SCHNELL. No.

Mr. CHAMBERS. Did you ever hear that one of them ill-treated anybody?

Mr. SCHNELL. I heard it but I did not think much of that because I knew that most of the internees could not distinguish the gentlemen of the War Crime Commission.

Mr. CHAMBERS. You said, you were bringing the prisoners their meals. Was that into the prison or in the hospital?

Mr. SCHNELL. In both.

Mr. CHAMBERS. Then, your duties brought you into the cells?

Mr. SCHNELL. Yes.

Mr. CHAMBERS. Were these prisoners fed well?

Mr. SCHNELL. They got the same food as we did.

Mr. CHAMBERS. Did the prisoners get enough water?

Mr. SCHNELL. Besides the usual coffee rations there was no water.

Mr. CHAMBERS. Did they get enough to drink, so that they were not thirsty?

Mr. SCHNELL. Besides the usual rations they got nothing. Of course, I cannot state how thirsty they were.

Mr. CHAMBERS. Could they ask a guard for water?

Mr. SCHNELL. They could try, but they have got no water.

Mr. CHAMBERS. Do you know that quite a few of these accused assert in their statements to have been literally starved out?

Mr. SCHNELL. I believe this offhand, for in the death cells, which were called, so it was possible then that the prisoners did not get food for 1 week.

Mr. CHAMBERS. Wherefrom do you know that?

Mr. SCHNELL. Partly, the prisoners came back again into their cells unwashed, unshaven, and starved out. I furtively gave those people double rations, although I was forbidden to do so.

Mr. CHAMBERS. Was it your regular task to bring the food to the prisoners into their cells?

Mr. SCHNELL. Yes; it was.

Mr. CHAMBERS. How many death cells were there?

Mr. SCHNELL. Six to eight, as far as I can remember, and these death cells were situated opposite the interrogation rooms.

Mr. CHAMBERS. I should like to hear some particulars about the window observations.

Mr. SCHNELL. It was approximately between 23 and 24 hours, date I don't know any more, when I opened the window. I could not sleep, in our cell. Opposite lay the interrogation rooms, brightly illumined, and two windows of the interrogation room were completely opened. Thereby, I could see one of the Malmedy prisoners sitting at a table and suddenly Lieutenant Perl entered into my ken around that table.

Mr. CHAMBERS. How far were you away from it?

Mr. SCHNELL. About 20 to 25 meters.

Mr. CHAMBERS. Were you on the same corridor?

Mr. SCHNELL. Yes; I was.

Mr. CHAMBERS. How high were the windows?

Mr. SCHNELL. The window sill was about 80 centimeters above ground, the window itself about 1.60 high.

Mr. CHAMBERS. Were they latticed windows?

Mr. SCHNELL. Yes; broadly latticed windows.

Mr. CHAMBERS. How was the window you were looking in?

Mr. SCHNELL. They were somewhat higher. I cannot say how high, because I was never in that room.

Mr. CHAMBERS. So you were looking through a window which was 80 centimeters above ground and 1½ meters high. And then you were looking into a window, the lower edge of which was more than 80 centimeters above ground.

Mr. SCHNELL. Yes; I was in another building and the windows were open.

Mr. CHAMBERS. You have heard Perl talking with that man?

Mr. SCHNELL. Talking itself I have not heard; the distance was too great for it. Only when he, shouting, affronted the man I could hear it.

Mr. CHAMBERS. Could you understand the words?

Mr. SCHNELL. I could not hear them quite distinctly. But I could make out the sense like "lying pig."

Mr. CHAMBERS. As far as I understand, you have seen Lieutenant Perl beating a man, shoutingly affronting and kicking him. Except of this incident, you have seen no member of that team ill-treating anybody?

Mr. SCHNELL. No; I did not. Except for the known gentleman, nobody.

Mr. CHAMBERS. Have you watched this window prior and later on?

Mr. SCHNELL. Quite quickly afterwards the interrogation was finished and the lights went out.

Mr. CHAMBERS. After you had once seen that, you were certainly curious to make further observations on other days?

Mr. SCHNELL. Of course. But the window was not opened any more, only at daytime, but I could not see what happened, except for this case, nothing.

The COLONEL. What has Perl done to this prisoner who was sitting there?

Mr. SCHNELL. He was sitting at the table. Perl came around the table into my ken. The prisoner leaned back on the back of the chair and Perl gave him a slap into the face, viz, with his left hand. He wanted to give him a second slap, but the man dived through underneath and was standing on the other side of the table. Then Perl stood before the prisoner and I could not see him anymore.

Mr. CHAMBERS. Has Perl kicked the man?

Mr. SCHNELL. Perl has given him once more two slaps and then kicked him back into the room with the foot.

Mr. CHAMBERS. Do you think that it has been ever necessary for the prisoners to drink from the toilet in order to still their thirst?

Mr. SCHNELL. Yes, I do.

Mr. CHAMBERS. These were the same prisoners whom they sent to you for treatment?

Mr. SCHNELL. With us it was without more ado possible to give the men triple coffee rations. I have given on principle more to the men in the hospital than to men in the cell building.

Mr. CHAMBERS. The men of the WCC team were responsible to provide sufficient evidence for the trial, Captain Evans was in charge of administration, guards, food, and similar. Is that right?

Mr. SCHNELL. I cannot state the exact division of competence. But I think that Captain Evans was also responsible for providing food for the Malmedy prisoners, as it was also cooked for those prisoners in our kitchen.

Mr. CHAMBERS. According to your statements the Malmedy prisoners received the same food as the others. Does it seem to you possible that these prisoners, on the other hand, were compelled to drink the water from the toilet?

Mr. SCHNELL. We internees had any time the possibility to fetch the necessary water in our building. It was always possible for us to provide the necessary drinking water in addition from the kitchen, from the faucet. This was not possible for the prisoners.

Mr. CHAMBERS. Does it seem reasonable to you that in view of the fact how these men were fed these prisoners were treated in that one small point so that they did not get water?

Mr. SCHNELL. I don't know how great the thirst was of the individual. Also, there was fish on some days and there water did not suffice even for us. And then there is something else, that these men could not leave these cells for 3 or 4 months and that they had more thirst than we in this dry air is self-evident.

Mr. CHAMBERS. Have you ever been able to find that one of the Malmedy prisoners had to drink from the toilet?

Mr. SCHNELL. Yes; I have.

Mr. CHAMBERS. How and where?

Mr. SCHNELL. Prisoners who were a longer time in the dark arrest cells rushed on the coffee ration like a beast and said that it was the first time they got something decent to drink and that they were compelled many a time to drink water from the toilet.

Mr. CHAMBERS. Only those from the dark cells?

Mr. SCHNELL. I have heard it only from such people who came from the dark cells.

Mr. CHAMBERS. If you had to make a written statement once more, would you make it out with exactly the same contents?

Mr. SCHNELL. I would not change it. Perhaps, I would alter it insofar as I would still add some particulars.

Mr. CHAMBERS. After this talk you can do it. Has Mrs. Dietrich offered you a recompense?

Mr. SCHNELL. If yes, then I doubtless would not have made this declaration. One does not give such declarations against recompense.

The COLONEL. Have you heard about the Malmedy prisoners beating each other in their own cells?

Mr. SCHNELL. About this I have heard nothing.

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#### EXHIBIT W

##### STAFF REPORT ON DIETRICH SCHNELL AND MARIA LOUISA GEIGER

On January 10, 1948, Dietrich Schnell executed an affidavit alleging many specific items concerning mistreatment of prisoners at Schwabisch Hall.

On August 31, 1949, Schnell was interrogated at Goeppling in an effort to ascertain more details concerning his knowledge of these matters.

His memory of the details of his affidavit was so complete as to indicate careful and recent study, in that he remembered practically every word. For this reason the details of his testimony, insofar as his affidavit was concerned will not be put into this record.

When questioned about other matters he began to elaborate upon certain parts of his affidavit. Under direct examination he admitted that the only member of the interrogation team that he had ever seen physically abuse an accused was Perl, and he stated that on one occasion, at approximately 11 o'clock at night, he had observed, from his window, Lieutenant Perl interrogating a prisoner in a room some 70 yards distant, in another wing of the prison.

He described the incident in considerable detail, including correcting the interpretation of his answer, by stating that he did not say that Perl had pushed the man with his foot, but that he had kicked him.

As he made this explanation, he demonstrated with a vigorous and unmistakable kick.

After considering the matter, the military government was requested to bring Schnell to Schwabisch Hall the following day for the purpose of showing us precisely where these various matters took place.

Accordingly, the interrogation was resumed the following morning at Schwabisch Hall.

At this time Schnell was asked to take us through the prison, showing us the various rooms and the location of the so-called death cells and interrogation chambers and items which had been mentioned in his affidavit.

This he did in great detail.

There were several matters in which his testimony was impeached because he would change his story as to how he knew certain things were true, as, for instance, in describing the details of the death cells, he stated that his duties took him constantly into the area where these cells were located.

At this point I would like to state that the so-called death cells were well lighted, well ventilated rooms of the same size as most of the other individual cells. They had toilets, and in no way did they resemble a dark dungeon, as described in some of the testimony before our committee.

The major difference between these cells and the others was that there is an interior grillwork which separates the main door from the inmate of the cell, and through which food and water could be passed at an opening in the barrier.

However, upon later questioning, Schnell also described the kind of cot that was in the so-called death cells, but he denied, however, ever having been in any of these cells or having served food to prisoners in these cells.

We asked how he knew about the cots, and he stated that he had looked through the peepholes, which are small, round openings covered by a sliding cover, and which he himself stated he was not permitted to do.

He said that, at another point, there was a guard there all the time, and that he had only been in this place a total of six times, and on only two of these occasions had he had access to the so-called death cells.

We asked how he then had an opportunity to look through the peepholes, and he walked by one and pushed the cover in such a manner as to make it very difficult to understand how he could have observed anything within the cell.

This long explanation is merely given to indicate the discrepancies in the story, as he began to give us an elaboration on the items in his affidavit.

When we went to the spot from which he alleged he observed Perl strike and kick a prisoner, a CIC investigator was placed in approximately the same position supposed to have been occupied by Lieutenant Perl. It was clear that nothing could be seen from the waist down. Schnell observed this quickly and began to hedge his story about Lieutenant Perl kicking the prisoner, in spite of the definite and positive statement he had made the previous day.

Furthermore, another example of discrepancies occurred when we were going through the courtyard of the prison: Schnell pointed out a spot and said "This is where they had the gallows."

A guard by the name of Hupfliman, who was a guard in this same part of the prison while the Malmedy prisoners were there, was questioned and stated positively that no gallows had ever been in Schwabisch Hall.

Schnell was then reapproached and asked about this gallows being erected, and he stated that they had not been erected, but had been in a knocked-down condition and hidden under a tarpaulin.

The guard was then questioned further, and he stated positively that he had had every opportunity to observe that area continuously, and there was never any pile of material under a tarpaulin at that point.

In the afternoon of the same day Mr. Harry Thon, one of the investigators of Malmedy, was brought down from Frankfurt for the sole purpose of showing us the lay-out of the various activities within the prison. Mr. Thon had no knowledge of the fact that we had previously been to the prison with Schnell. Furthermore, he was brought down by special plane and the whole matter was a complete surprise to him.

He took us generally in the same area of the prison through which Schnell had taken us, but his description of the lay-out varied in marked detail from the story told by Schnell.

It is not further necessary, at this point, to go beyond one example:

The room in which Perl was supposed to have been interrogating the accused, when he struck him, was pointed out, without any question, as an administrative room in which were located clerical help, their desks, and a couple of tables; and, in response to questioning, Mr. Thon said the room had never been used for any questioning, and before he left Schwabisch Hall he was asked whether or not they ever did any night work—interrogations—and he stated that on one occasion he and Mr. Shumacker came down to interrogate a prisoner who had just arrived from the United States at about 11 or 12 o'clock at night, and that the reason they did this was because Colonel Ellis was working on reports and administrative matters and they felt that they might just as well get the interrogation over with, of this man, since their job was practically completed at Schwabisch Hall.

He stated that he and Colonel Ellis were the only ones who had the keys to the prison, or to that section of the prison, and that had Mr. Perl desired to get in to work at night, he would, of necessity, have had to get the keys from them.

Thon stated positively that Perl had never gotten the keys from him, and that he thought that had Colonel Ellis given the keys to Perl, that he, Thon, would have known about it.

Returning to Schnell, he made another statement concerning the matter of bringing prisoners to the dispensary for dental care.

He stated that they were brought there with hoods on their heads, and frequently there were two or three of them; that the hoods were removed in the outer office, and that as many prisoners as were present were taken into the dental office and sat on stools awaiting their turn.

This was completely denied by Miss Geiger, who was a dental assistant to Dr. Knorr and accompanied him on practically all of the times that he treated prisoners at Schwabisch Hall.

Her testimony will be discussed in a separate statement.

Because of the many clear discrepancies between Schnell's stories, and what appear to be the substantiated facts of the case, it is felt that little credence can be given the affidavits filed by Schnell. Accordingly, it is recommended that little or no probative value be given to his sworn statements.

J. M. CHAMBERS.

Miss Maria Louisa Geiger was interviewed at Schwabisch Hall on September 1, 1949. Miss Geiger was the dental assistant to Dr. Eduard Knorr, who cared for the teeth of the internee prisoners at Schwabisch Hall and, on occasion, took care of the Malmédy prisoners.

Dr. Knorr has made a very positive and definite affidavit to the effect that on one occasion he treated a man for a ruptured jaw and, on several occasions, men for teeth being knocked out.

His affidavit also alleges brutality and mistreatment of prisoners.

Miss Geiger corroborates this story in complete detail.

She admits, however, that she assisted Dr. Knorr in the preparation of his affidavit.

Her appearance was exceptionally alert and intelligent, and she seemed to be completely sincere in her answers.

However, she further admitted that she had been contacted within the past few weeks by a German attorney, name unknown to her, and she had executed an affidavit substantially in accordance with the statement she was making to me.

She said that Dr. Knorr told her, in his opinion, all of these broken teeth and the broken jaw were fresh injuries, and had happened while the accused were in Schwabisch Hall.

In this connection she noted that Dr. Knorr only came to the prison twice a week, and it would appear that some further consideration should be given as to why all injuries were fresh at the time he treated them, since he was not there on an every-day basis.

In reference to the matter of broken teeth and the broken jaw, the best evidence will be furnished by our doctors who are immediately examining the people at Landsberg Prison.

Accordingly, it is recommended that no final decision be reached until the medical report is received.

On the other hand, it is felt that considerable weight should be given to the affidavit of Dr. Knorr, as supported by Miss Geiger.

Apropos of Dr. Knorr, he died in July of this year.

Death occurred at the Goeping Hospital on July 3, 1949. He suffered from arterio sclerosis in the limbs, which resulted in several amputations, and which finally were the cause of his death. He was 64 years of age at the time of his death, and Dr. Charlie Winker, administrative doctor at the hospital, stated that he knew the case very well, and that in his opinion, Dr. Knorr's mental faculties were present and he was of sound mind and competent at the time of his death.

Dr. Inge Peterson, a lady physician at the hospital, who treated Dr. Knorr, indicated that in her opinion he did suffer from hallucinations just before he died, but that they were matters of hearsay to her and that she never had an opportunity to observe them.

The CIC officials at Schwabisch Hall contacted different friends of Dr. Knorr and, in particular, one attorney of the same name, who is of no relation to Dr. Knorr, and who knew him intimately. They had considerable confidence in this friend and he stated that the doctor's mind had not been affected by his illness.

Miss Geiger also testified that Dr. Knorr's mind was perfectly sound up until the time he died.

J. M. CHAMBERS.

#### NOTES FOR THE FILE

Checks were made at Schwabisch Hall to see if cries or moans could be heard from one cell to another. It was clear that this is possible. Further examination was made to determine if persons living near the prison walls could hear cries and screams from within the prison.

This is true, particularly at night. Local CIC informant of great dependability stated that he move into that area immediately adjacent to the prison after the Malmedy prisoners had left, and that on two different occasions he personally heard cries coming from within the prison. He stated, further, that his neighbors, who lived there during the Malmedy hearing, stated that the cries used to be much worse, and more frequent.

He made it clear, however, that these were hearsay statements to him, and he did not know whether these persons had actually heard the cries, or were merely repeating the fact that somebody claimed to have heard the cries.

The prison guard referred to in the Schnell testimony stated categorically that he had opportunity to observe the Malmedy prisoners being moved from cells and that he never observed any mistreatment of any kind. He also stated that he, at that time, was working in the kitchen, and that the food given them was the same as the other prisoners, and was a very excellent ration.

It is perfectly clear and obvious, from statements made, that the defense attorneys are very active in keeping this matter alive, and securing affidavits, and, I suspect, briefing witnesses.

Mrs. Deitrich, wife of Sepp Deitrich, has also been in the area soliciting affidavits.

Those persons who admitted giving affidavits all denied receiving any compensation therefor.

Local CIC authorities were requested to place agents on Mr. Schnell for the next 2 or 3 days for the purpose of determining whether or not he contacts any people in connection with this case.

People in the area informed us, many of them, that it was generally known that our committee was going to make its investigation, and that the matter was causing considerable interest.

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### EXHIBIT X

JUNE 24, 1949.

Memorandum for: Armed Services Subcommittee.

Subject: Investigation Concerning Allegations of "Otto" Eble.

1. At Tab A is a copy of the statement of one "Otto" Eble, which was inclosure No. 2 to a petition dated 12 April 1948 submitted in behalf of the Malmedy defendants by Dr. Eugen Leer. In this statement it is noted that Otto Eble states that he was born on 7 March 1916 at Tiengen near Freiburg, Switzerland, that he was a captain in the Waffen SS and that he was in Internment Camp No. 73, Kornwestheim. On 13 December 1946, Eble alleges that he was transferred to Schwabisch Hall as a suspect in the Malmedy case. The rest of his statement consists of a colorful description of alleged tortures suffered by him while he was being interrogated at Schwabisch Hall.

2. At Tab B is a dossier on Eble received from the 7771 Documents Center, Darmstadt.

3. At Tab C is a copy of a report on Eble received from the French Headquarters at Baden-Baden.

4. Study of the dossier furnished by the Documents Center, together with the information gathered by the French Surete, reveals a number of discrepancies in the affidavit made by Eble:

Otto Eble is *actually* Fritz Eble, born 19 October 1920 at Tiengen near Freiburg in the French Zone of Germany. Fritz Eble was a member of the Hitler Youth and the highest rank held by him in the Waffen SS was that of Unterscharführer (sergeant). He was arrested on 23 November 1945 at Heilbronn by CIC Team No. 38, 7th Army. He was interned during 1945, 1946, 1947 and part of 1948 at the following US (later German controlled) civilian internment inclosures: No. 72, Kornwestheim, No. 76, Ludwigsburg, and No. 76, Honensperg, all of which are located in the Stuttgart-Ludwigsburg area.

Fritz Eble escaped from all of the above internment inclosures and while free attempted to assume other identities. He did assume the name and complete identity of one Erwin Sennhausen, born 7 March 1916, who was reported to be a Swiss expatriate serving as a captain in the Waffen SS. Using this identity, Fritz Eble attempted to enter Switzerland, but was arrested by the Swiss frontier police and returned to the civilian internment inclosure No. 76, Honensperg, where he continued to pose as Sennhausen until confronted by discrepancies between his photo and fingerprints and those of Sennhausen. Following a later escape he assumed the name of his brother *Otto* and commenced to use the latter's birth date of 6 August 1919.

It is noted that when Eble made his affidavit of 13 July 1947 (Tab A) he was still using the birthdate of Sennhausen as well as the latter's rank of captain in the SS but that he signed the affidavit with his brother's name of Otto.

5. Search of all available records including the card file of suspects in the Malmedy Case does not disclose any positive proof that Eble was ever imprisoned or interrogated at Schwabisch Hall. Messrs. Harry Thon, Joseph Kirschbaum, and Frank Steiner have all been contacted and all deny any personal knowledge of Eble.

6. Pursuant to a general OMGUS directive, Eble was discharged from internment on 5 August 1948 to await denazification by his local Spruchkammer. His destination upon release was given as Freiburg/Rheingau, French Zone, Schwartzwaldstrasse 22. His denazification dossier was transferred to the local commission for denazification, Freiburg.

7. a. On 2 April 1949, the French High Command, Baden-Baden, reported (Tab C) that Eble now resides in Kappel-Bergmannshelm/Baden, where he is employed as a coal miner. The French also report that Eble was classified by the Spruchkammer as a "chief delinquent" and is prohibited from holding a civil-service position for four years.

b. The French records also indicate that in 1937, 1939, 1940, and 1943, he was sentenced to 10 months, 1 year, 2 years, and 3 years penal servitude for theft, embezzlement, and fraud. The French authorities also confirm the fact that Eble's brother *Otto*, whose identity he assumed and whose name he signed to the affidavit furnished by Dr. Leer, has never been subjected to any interrogation or internment.

8. Agencies concerned directly with the case have included in their dossiers remarks to the effect that any story given by this man is open to serious doubt. This impression is corroborated by his criminal record and by a signed statement made by him to the effect that he was formerly a Swiss officer attached to the Swiss General Staff and that he deserted to the Germans carrying secret documents, that he was on intimate terms with Baldur von Schirach, Hitler Youth leader, and that he was used by the Germans to secure information concerning the plans of General von Paulus to surrender to the Russians. Examination of the dossier on Eble reveals that he also used the alias of Graf von Kadenek and has given a number of birthplaces, Alschweir, Alsace; Zurich, Switzerland; and Friedrichshaven, Germany.

WADE M. FLEISCHER,  
Colonel, United States Air Force,  
Chief, War Crimes Branch.

#### TAB A

SECURITY DEPARTMENT OF THE STATE OF BADEN, REGIONAL BRIGADE, SECTION S. T.

No. 147

#### MINUTES OF INTERROGATION

Subject: Hearing of Otto Eble, born 6 August 1919, German national, at present at Oberrotweil.

In 28 June 1949, we Jean Pinglaut, Inspector S. M. of the Security Division of the State of Baden at Freiburg, Police Officer, assistant of the Public Prosecutor of the Republic, assisted by the investigator-interpreter Paul Hinsinger, acting in accordance with (official) Note No. 10332CC/SUR/SDTRG, dated 15 June 1949, issued by the Security Division, went to Oberrotweil (Freiburg district) where we summoned and heard above-named subject who made the following statements in reply to our questions:

#### I. Regarding identity

My name is Otto Eble, born 6 August 1919 at Tiengen (Freiburg District), son of Wendelin and Pauline (nee Schatele) Eble. I am of German nationality. I married Paula Maier on 27 December 1948 at Oberrotweil. I am the father of one child, four years old.

I am a cook by profession, but I work as laborer at the quarry at Oberrotweil since 2 June 1948.

I am residing in this town, 66 Hauptstresse.

I was never convicted.



**2. Regarding personal history**

I am not the author of the Sworn Statement which you present to me. It can be only my brother Fritz who was interned in the Ludwigsburg camp and later on fled to Switzerland. I already knew that my brother had assumed my identity, since I received a letter of the internment camp in October 1947. This letter was addressed to me, but actually it was meant for my brother. I have tried to explain these facts, but he pretended not to know anything about it.

The correct identity of my brother is the following :

Fritz Eble, born 19 October 1920 at Tiengen (District of Freiburg), Baden, not Switzerland. He was never an SS Captain, but a simple Pfc (Sturmmann). He is an imposter.

His present address is Schauinsland, Bergmannsheim (Oberkantine). I am not in touch with him.

Additional remark: He is bragging to have been Himmler's orderly, but he tells many tall stories and one should not believe him anything. He is a pretender.

Additional remark: I have nothing to add and I told you the complete truth.

This statement was read to me in the German language, signed in your and your assistant's presence :

The affiant.

The INVESTIGATOR-INTERPRETER

The INSPECTOR.

Marcel Lobel, Chief  
Translation Section  
22 July 1949.

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SECURITY DIVISION OF THE STATE OF BADEN

No. 148

MINUTES OF HEARING (OFFICIAL REPORT)

Subject: Report on Friedrich Eble, German national, 28 years old, farmer residing at Kappel, Bergmannsheim.

On 30 June 1949, We, Jean Pinglaut, Inspector of the Security Division of the State of Baden at Freiburg, police officer assistant of the Public Prosecutor of the Republic, assisted by the investigator-interpreter Paul Hinsinger, quote here the statements made to us by the below-named individual :

**1. Regarding his identity**

My name is Friedrich Eble, born 19 October 1920 at Tiengen (District of Freiburg), son of Wendelin and Pauline (née Schaftele) Eble. I am a German national. I married on 12 February 1949 Irma Wasserbach at Ludwigsburg. We have two children, one 4 years old, the other 4 weeks old.

I am a farmer by profession, but at the present time I work as a miner for the firm Stollberger at Kappel. I am residing in the community there, at the Bergmannsheim (Home for Miners) (Upper Kantine).

I was already twice sentenced for theft. The first time in December 1937, to 10 months imprisonment by the Juvenile Court at Waldshut, the second time in April 1943, to 2 years imprisonment by the Military Tribunal of the 165th Infantry Division at Ulm.

I was issued identity card No. BD. 09385 by the Police Headquarters of Freiburg on 7 September 1948.

**2. Regarding personal history**

I was brought up by my parents at Tiengen (District of Freiburg). I visited the school of the town until 1935. After these studies I helped my parents by working on their farm. In this way I worked without interruption until April 1937. At that time I volunteered for service in the Air Corps (Luftwaffe) for a period of 12 years. I was assigned to the Air Corps Replacement Depot No. 5 at Neubiberg (near Munich) where I received my military training.

In April 1938 I was transferred along with my unit to Zelle (near Hanover). It was my ambition to become a pilot, but as a result of a thorough medical examination I was declared unfit for such duty. Therefore I was assigned to the ground crew and became a specialist in technical work. Upon declaration

of war my unit was sent to Milowitch near Prague. There we remained until August 1940. At that time we departed for the Rhine (Westphalia), where we established a base intended for the bombardment of England.

In March 1942 we left the Rhine in order to go on the Russian front. I took part in the unit's campaigns until the date of my apprehension for having stolen oats from an artillery outfit which was stationed in the vicinity. I gave this cereal to Russian farmers who gave me vodka in exchange. I was sent to Ulm where I was tried by a Military Court which sentenced me to 2 years imprisonment. I was confined in the military prison of this town. After six weeks of detention, it was proposed to me to sign up on a voluntary basis for the Armed SS. I accepted this offer and I was assigned to the "Wiking" Division which was in action on the Eastern front in the vicinity of Wiasma. I participated in the whole retreat of the German army until we reached Budapest, where my right leg was injured in February 1945. I was admitted to the hospital at Muehlhausen (Thuringen), afterward to Osnabrueck (Westphalia). I was captured by British troops on 8 May 1945. I remained in this hospital until my complete recovery.

On 8 June 1945 I was temporarily interned at the Camp 031 at Chokhagen (near Lunebourg). There I was detailed to an English post near the camp for general work. I was not guarded and I took advantage of this situation by escaping on 5 August 1945.

I went to Hellbront (Wurtemberg) where I found employment with a farmer by the name of Hans Rhamer. I worked for him as a farmhand until 25 October 1945. At that time I was apprehended by US Military Police and interned in the Camp No. 73 at Ludwigsburg until 13 December 1945. Thereupon I was transferred to a special camp for the SS at Schwabisch-Hall, where I remained until 10 May 1946. On this day was returned to the Camp No. 74 at Ludwigsburg.

On 5 May 1947 I was sent to the hospital at Karlsruhe on account of a liver complaint. On 10 May I took advantage of the night to escape together with a comrade by the name of Hans Rose whose acquaintance I had made (in the hospital). We went by foot through Ettlingen, Gaggenau to Buehl. There we took a train for Freiburg, and from this town we hitchhiked and arrived at Waldshut by the way of St. Blasien. On 21 May we crossed the Swiss border in the direction of Schaffhausen and we were arrested on the same day at Bulach in Swiss territory. It was our intention to go to Spain where according to information furnished by comrades we had met during the internment time, an SS Division had been reactivated in Spanish Morocco. After 8 days in prison I was returned to the French authorities at Gottmadingen. The rural police of this village committed me to Tuttingen where the authorities of the camp at P. G. turned me over to the Americans at Karlsruhe. After 3 days I was back in my camp at Ludwigsburg. I did not receive any punishment. I remained at Ludwigsburg until my release which took place on 5 August 1948. I would have been released a year sooner, for I was only an SS Sgt. (Unterscharfuehrer), but I was punished for a false statement I had made: I had pretended to be an SS Captain (Hauptsturmfuehrer) and had given a completely invented description of my personal history. All this was discovered in August 1947. Since my release I live a settled life. I have worked at first at Freiburg, found employment (street car jobs), then I got married and took up residence at Kappel where I still live today.

Question: Do you admit to be the writer of this sworn statement?

Reply: I admit to be the writer of this Sworn Statement which you present to me.

The facts which I report have actually taken place. I have been tortured in the manner which I described here.

Only my statement on identity, my place of birth and my rank are false. I already explained to you that I made a false statement as to my identity from the start of my custody. I took advantage of the similarity of name, for it actually existed an SS Captain (Hauptsturmfuehrer) Eble who was assigned to the Fuehrer's staff. I thought that in this way I would be given a better treatment and given privileges not granted to a simple SS Sgt (Unterscharfuehrer). My imposture was discovered on account of the Central File of the SS which the Americans inspected at Berlin.

I have drawn up this sworn statement at the time of my custody on the day which the statement indicates. I submitted it to the camp commander. I assure you that I have not given it to the Swiss authorities.

I did not escape from the US zone, but I was released through regular channels. I present to you my discharge certificate issued at Ludwigsburg on 5 August 1948 by the US authorities, it was issued by the Annex of the D. G. P. G. at Tuttlingen with the number 265,045, dated 10 August 1948.

I have nothing to add to this statement and I told you nothing but the truth. This statement was read to me in the German language, signed in the presence of the following persons whose signatures appear below:

The INVESTIGATOR-INTERPRETER.  
The INSPECTOR SN, O. P. J.

I attach to this statement a photocopy of the discharge document of subject from Ludwigsburg Camp.

The INSPECTOR SN, O. P. J.

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TAB C

REGIONALE BRIGADE SECTION

4816/BR/ST

1 JULY 1949.

THE POLICE COMMISSIONER, CHIEF OF THE SECTION S. T. OF THE REGIONALE BRIGADE

To: The Inspector General of the National Security, Inspector of the Security of the State of Baden at Freiburg, Regionale Brigade.

Subject: A/s named "Otto" Eble, in reality Friedrich Eble.

Reference: v/10 332/CC/SUR/SDT/RG, dated 15 June 1949.

P. J.: 3 P. V. (inclosures) & 1 document returned.

In transmitting to you the official report on the interrogations conducted by the Inspector S. M. Jean Pinglaut and the investigator-interpreter Paul Hinsinger of our organisation, I take the liberty of informing you of the result of the investigation to which these two officials had been assigned.

The said Otto Eble, born 7 August 1916 at Tiengen, near Freiburg (Switzerland), SS Captain (Hauptsturmfuehrer) is actually identical with the said Friedrich Eble, born 19 October 1920 at Tiengen, near Freiburg (Baden). In the course of the examination subject acknowledged to be the author of the "sworn statement." He maintains all his assertions therein, but admits to have assumed a false identity and to have never been an SS Captain.

He confirms that his imposture was discovered by U. S. Authorities in August 1947 and that he was released through regular channels. In fact, he is the holder of a discharge certificate, issued at Ludwigsburg, on 5 August 1948, a copy of which is inclosed.

He gives satisfactory explanations regarding the name Erwich Sennhausen, which he assumed on a certain occasion in the Ludwigsburg camp.

With regard to the "Sworn statement," he declares to have submitted it to the camp commander on the day indicated in the statement, and it is authenticated by the stamp of the Denazification Board of Camp 76.

Summing up, Eble is hardly an interesting person; he was sentenced for offenses pertaining to the penal law, as an impostor and adventurer. However, he seems to have readjusted himself since his release. He got married, works regularly, and does not make himself conspicuous any longer.

According to the orders by the Administration, he was restored to liberty.

[S] (illegible).

Marcel Lobel, Chief Translation Section 22 July 1949.

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TAB D

SECURITY DEPARTMENT OF THE STATE OF BADEN, REGIONAL BRIGADE, SECTION S. T.

MINUTES OF INTERROGATION

No. 149.

Subject: Friedrich EBLE Case, additional hearing.

On 1 July 1949, we, Jean Pinglaut, Inspector S. N. at the Security Division of the State of Baden at Freiburg, Police officer, assistant of the Public Prosecutor of the Republic, assisted by the investigator-interpreter Paul Hinsinger, haven taken cognizance of new information gathered in the Friedrich Eble case,

We proceed with our investigation and interrogate again subject, who makes the following statements in reply to our questions:

Question. Why did you declare in the course of your first interrogation that you have been convicted only twice. Evidence revealed that you have been 4 times convicted.

Answer. This is correct. I did not mention the other two sentences because they were suspended. In 1939, I was sentenced to 4 years imprisonment for theft, fraud, and embezzlement by a Military Court at Prague. I did not serve my prison term, since I was sent to the Eastern front with a disciplinary company. At the end of 6 weeks I was returned to my unit on account of my good conduct.

Additional remark by accused: These two sentences were eliminated from my criminal record (police notes). Therefore I did not consider it necessary to mention them to you. I have no intention to tell a lie.

Question. Did you ever assume another name? Did you ever call yourself Sennhausen?

Answer. I remember to have called myself Erwin Sennhausen. But this was not an alias. Here are the circumstances which made me adopt this name. When I was interned at Ludwigsburg in the beginning of 1948, a Swiss commission visited the American camps in order to search for Swiss subjects. Since I speak with a Swiss accent, I had the idea to pass myself off for the said Erwin Sennhausen, who is a Swiss national and whom I knew from the time of my first custody at Osnabrueck. He was a Lieutenant of the Swiss army, who had voluntarily joined the SS and obtained the rank of an SS Captain (Hauptsturmfuehrer).

My new imposture was discovered one month later by the Federal Inspector Schmidt. No disciplinary action was taken against me.

Additional remark by Eble: I have nothing to add to this statement. I have told you nothing but the truth.

This statement was read to me in the German language, signed in your and your assistant's presence:

THE AFFIANT:  
 (S) FRIEDRICH EBLE,  
 THE INVESTIGATOR-INTERPRETER,  
 (S) -----  
 THE INSPECTOR,  
 (S) -----

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EXHIBIT Y

To be handed to the press in Frankfort, Berlin, and Heidelberg at 1500, 17 March.  
 Embargoed for release at 1700, 17 March 49

EUCOM Release No. 151

HEADQUARTERS EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

17 MARCH 1949.

GENERAL CLAY REAFFIRMS BERSIN DEATH SENTENCE

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of VALENTIN BERSIN (MALMEDY).

TEXT

"I have been carefully reviewing the death sentences in the so-called MALMEDY Cases individually and in the light of the Simpson Report and the Report of the Administration of Justice Review Board of my own Headquarters. As you know, both of these reports which have been published found there was maltreatment of some prisoners to obtain evidence for conviction. Since these findings were of a general nature and, moreover, did not in any instance express any doubts as to the guilt of those sentenced for brutal and cold-blooded murder, I have had or am having each individual record analyzed to determine what part, if any, evidence thus obtained contributed to the findings of guilty.

"So far, 3 of these cases have been restudied and their record is now before me. The first of these cases is that of Sergeant Tank Commander BERSIN of the First SS Panzer Regiment.

"This man in a sworn posttrial statement claims that he was forced to spend 2 months on the prison floor, that he was beaten and kicked by the guards to the extent of losing several teeth, that he was carried to dental clinic and to interrogations with hood over his head and that he was grossly mistreated in an interrogation of March 20, 1946, by Mr. KIRSCHBAUM in the presence of Mr. ELLOWITZ. There is no supporting evidence to corroborate this posttrial sworn statement of the prisoner other than the general findings of the Reviewing Boards. The prisoner does not claim to have been given a mock trial. Mr. ELLOWITZ, who was present at the interrogation in which the prisoner claims to have been mistreated, testified at the trial under oath that no threats or promises, nor any harsh or unusual treatment was used.

"It is true that the extrajudicial statements of coaccused were used in the presentation of the case against BERSIN, but such statements were permissible for use in evidence under the rules governing the conduct of War Crimes. It is also true that one of the coaccused later claimed to have made his statement under force and duress.

"However, it is clearly proved that five Belgian civilians were murdered in cold blood and without cause by Sergeant BERSIN's unit, that he was present at the time and place; and by the statements of two fellow members who did not allege duress, that Sergeant BERSIN had participated in the crime.

"Weighing carefully the evidence in this case, there is little to substantiate the claim of force and duress made by the accused except the general findings of the Review Board. Regardless of these general findings, I am convinced that the preponderance of evidence freely obtained proves without doubt the participation of BERSIN in a particularly cold-blooded murder of Belgian civilians which cannot be alleged even to have occurred in the heat of armed conflict. I have, therefore, reaffirmed my previous approval of the death sentence.

"I do not propose to fix the date for execution in view of possible pending investigations until I have been authorized to do so by the Department of Army."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 151.

To be handed to the press at Frankfurt, Berlin, and Heidelberg, 1500, 29 March, 1949  
Embargoed for release at 1700, 29 March 49

EUCOM Release No. 171

29 MARCH 1949.

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

GENERAL CLAY REAFFIRMS BODE DEATH SENTENCE

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Friedel Bode (Malmedy).

TEXT

"I have completed my reexamination of the previously approved death sentence of Friedel Bode in the so-called Malmedy Case taking into consideration the general findings of the Simpson Commission and Administration of Justice Review Board reports that there was some maltreatment of prisoners by the prosecution to obtain evidence for conviction.

"Friedel Bode, a sergeant in the 1st Panzer Pioneer Battalion, was convicted of firing on unarmed prisoners of war at Buellingen, Belgium, on 17 December 1944; at crossroads south of Malmedy, Belgium, on the same day; and of being responsible for shooting of prisoners of war by men under his command between 16 December 1944 and 15 January 1945.

"It is clearly established that unarmed surrendered American prisoners of war, numbering perhaps 30 or more, were killed in the vicinity of Beullingen by mem-

bers of the 1st Panzer Pioneer Battalion; and that a larger number of unarmed surrendered American prisoners of war were lined up in the vicinity of crossroads on the same day and fired upon by passing German armored vehicles. Later, German officers and men moved among the prostrated bodies to shoot any who appeared to be still alive.

"The participation of Bode in the crime perpetrated at Beullingen was proved by the sworn extrajudicial statements which were presented at the trial of the co-accused, Hoffman, and by Bode's own sworn extrajudicial statement.

"The participation of Bode in the crime perpetrated at crossroads was proved by the sworn extrajudicial statements which were presented at the trial of the coaccused, Jakel and Wasenberger. Defense witnesses, all coaccused, testified at the trial that they did not see Bode at crossroads.

"In posttrial statements, Bode and Hoffman retracted their previous statements concerning the crime at Buellingen claiming that they were made under force and duress. American interrogators testified at the trial that these statements were made freely and voluntarily although one interrogator did testify of methods used in the interrogation which, while not involving physical punishment, would not comply with the normal requirements of justice.

"In posttrial statements, Bode and Jakel retracted their previous statements concerning the crime at crossroads claiming force and duress were used to obtain the statements.

"However, Wasenberger, a coaccused, in a sworn extrajudicial statement presented at the trial, stated that he was in the armored vehicle under Bode's command at crossroads and that he saw Bode open fire on the prostrate prisoners, some of whom were still alive. There is no record of repudiation of this statement. The American interrogator testified at the trial that it was obtained freely and voluntarily, without use of force or duress.

"In his first posttrial statement made in February 1948, Bode in alleging force and duress did not repudiate his previous statement, in a second post trial statement, he retracts this statement.

"It is to be noted that the three witnesses for the defense also repudiated their statements.

"The circumstantial evidence against Bode is strong. There can be no question but that his organization participated in the crimes and that Bode was in command of an armored vehicle among the armored vehicles which did bring fire upon the unarmed prisoners. The several posttrial statements of Bode and the witnesses against him are sufficiently different in content to cast doubt on their validity and these statements were all in self-interest. Nevertheless, the interrogators did admit to certain irregularities in the obtaining of these statements. However, excluding the evidence which may have been so obtained, there remains the convincing extrajudicial statement of Wasenberger which directly fixes participation in the crime of crossroads on Bode. There is no record of repudiation of this statement which the interrogator testified at the trial was freely and voluntarily given.

"Therefore, excluding entirely the evidence contained in the sworn statements which may have been obtained through force and duress, the strong circumstantial evidence supported by the direct, unrepudiated statement of Wasenberger, establishes clearly and without a doubt to my mind, that Bode was guilty of the cold-blooded killing without cause of unarmed, surrendered American prisoners of war. Therefore, I confirm the previously approved death sentence. The date of execution, will not be set until the present stay ordered by the Department of the Army has been revoked."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 171.

To be handed to the press in Frankfurt, Berlin, and Heidelberg at 1500, 17 March 49.  
Embargoed for release at 1700, 17 March 49.

EUCOM Release No. 152

17 MARCH 1949.

HEADQUARTERS EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

GENERAL CLAY COMMUTES SENTENCE OF BRIESEMEISTER TO LIFE IMPRISONMENT

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Kurt BRIESEMEISTER (MALMEDY).

TEXT

"I am now reviewing the death sentence which I had previously approved in the so-called "MALMEDY" Case in the light of the Simpson Report and the report of my Administration of Justice Review Board, both of which have been published. Each of these reports made general charges of irregularities by the prosecution in obtaining evidence for conviction although neither report expressed doubt as to the guilt of those sentenced. It has been my purpose in the further review to analyze the evidence in the cases in question to determine if force and duress directly contributed to the obtaining of the evidence which led to conviction.

"The review of the case of Kurt BRIESEMEISTER has been completed. In this case, undisputed evidence has established that unarmed American Prisoners of War were killed at "Crossroads" near Malmedy on 17 December 1944. The principal evidence against BRIESEMEISTER came from his extrajudicial sworn statement. In a posttrial statement BRIESEMEISTER claims to have made this statement under force and duress. Lieutenant PERL, who took the statement, testified at the trial that no force, duress, or threats were used. BRIESEMEISTER claims not to have arrived at the "Crossroads" until after the murders had occurred, but a Sergeant PLOHMANN testified that he had seen BRIESEMEISTER's tank at the scene of the murder. It is not alleged that PLOHMANN's evidence was obtained through force or duress.

"The evidence is conclusive both as to the crime having been committed and to BRIESEMEISTER's presence and participation. However, the degree of his participation was established largely from his own evidence. While there is no direct evidence of force and duress being used to obtain this evidence except the posttrial statement of the prisoner which is refuted by the direct testimony of Lieutenant PERL during the trial, taking the general findings of the Simpson and Administration of Justice Review Boards and the lack of corroborating evidence as to the degree of participation, I am withdrawing my previous approval of the death sentence and commuting it to life imprisonment."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 152.

To be handled to the press at Frankfurt, Berlin, and Heidelberg at 1500, 28 March 1949.  
Embargoed for release at 1700, 28 March 1949

## HEADQUARTERS, EUROPEAN COMMAND

## PUBLIC INFORMATION DIVISION

28 MARCH 1949.

## GENERAL CLAY COMMUTES SENTENCE OF FRIEDRICH CHRIST TO LIFE IMPRISONMENT

General Lucius D. Clay, commander in chief, European command, today released the text of his report to the Department of the Army in the case of Friedrich Christ (Malmedy).

## TEXT

"I have completed my reexamination of the previously approved death sentence of Friedrich Christ in the so-called Malmedy Case to take into consideration the general findings in the Simpson Commission and Administration of Justice Review Boards that there was some maltreatment of the prisoners by the prosecution to obtain evidence for conviction.

"Christ, a 1st Lieutenant in the First SS Panzer Regiment was convicted for having on 15 December instructed his company to take no prisoners and on 17 December at crossroads south of Malmedy, Belgium, ordered prisoners to be shot.

"It is well established by the evidence in this case and other cases that unarmed surrendered American soldiers were lined up in an "oblong Company Formation" and shot in cold blood by guns from German vehicles. Christ's organization was present during the period in which the crime was perpetrated and members thereof participated in the crime.

"Christ's guilt is established in his own sworn extrajudicial statement submitted at the trial and by the corroborating testimony, similarly submitted of 8 witnesses, 7 of which were coaccused.

"All of these witnesses have retracted their statements in post trial statements and all but 1 have alleged that their statements were made under force and duress. This latter witness did not testify that he saw the prisoner participate in the crime.

"There is no direct evidence other than that contained in the retracted statements to conclusively prove the full guilt of Christ. While the American interrogators testified at the trial that these statements were given freely and voluntarily without force or duress, there remains the general findings of the Simpson and Administration of Justice Review Boards which must receive credence. Thus, if the evidence which may have been obtained through improper methods is entirely excluded, there remains no direct evidence of guilt. While the general similarity in the repudiations is indicative of a concerted plan similar to the original silence of the witnesses, this cannot be proved.

"To my mind, Christ was a principal in these murders. I believe as does the Judge Advocate that he was a leading participant. Circumstantially, there can be no doubt but that he was present and, as an officer, took no action to prevent the crime. Knowing this, it is difficult not to approve the death penalty for this cold-blooded killer. However, to do so would be to accept the evidence which may have resulted only from the improper administration of justice. Excluding this evidence in its entirety in as far as direct participation of Christ is concerned, there is no doubt that he was present and, circumstantially did nothing to prevent these murders. Thus, I have no hesitancy in approving a life sentence. It is with reluctance but with the firm aim of fairly administered justice that I commute the death sentence to life imprisonment."

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 168.



To be handed to the press in Frankfurt, Berlin, and Heidelberg, 1500, 29 March 1949.  
Embargoed for Release at 1700, 29 March 49

EUCOM Release No. 172

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

29 MARCH 1949.

GENERAL CLAY REAFFIRMS DIEFENTHAL DEATH SENTENCE

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Josef Diefenthal (Malmedy).

"I have completed my reexamination of the previously approved death sentence of Josef Diefenthal in the so-called Malmedy Case to take into consideration the general findings of the Simpson and Administration of Justice Review Board that there was some maltreatment of prisoners by the prosecution to obtain evidence for conviction.

"Josef Diefenthal was a major commander in the Second Panzer Grenadier Regiment. He was convicted of having on 15 December 1944 ordered that no prisoners be taken; of having on 17 December 1944 at crossroads south of Malmedy, Belgium, permitted unarmed prisoners to be shot; of having on 18 December 1944 near Cheneux, Belgium, permitted an unarmed prisoner of war to be shot, and of being responsible for the shooting of prisoners of war, by men of his battalion between 16 December 1944 and 13 January 1945.

"It has been clearly established that unarmed surrendered American prisoners of war were shot at crossroads on 17 December 1944 and that members of Diefenthal's command participated in the killings.

"The guilt of Diefenthal with respect to issuance of orders that no prisoners would be taken was established from his own sworn extrajudicial statement and in the sworn extrajudicial statement of the coaccused Pruess and Tomhardt. Substantiation evidence was contained in the extrajudicial statement of the coaccused Peiper.

"The presence of Diefenthal at crossroads during the period in which the crime was committed was established in the sworn extrajudicial statements of Eckman, Hofmann, Sprenger, and Assenmacher.

"The participation of Diefenthal in the crime at Cheneux was established in the sworn extrajudicial statements of the coaccused, Zwigart and Friedrichs and the witness Assenmacher, with substantiating evidence in the statements of the witnesses, Rineck and Plohman.

"Two witnesses, Kindermann and the coaccused Tomhardt, the latter in testifying before the court repudiating his previous statement, testified for the defense that they did not receive instructions from Diefenthal not to take prisoners of war. Two witnesses Neckerrauer and the coaccused Peiper testified for the defense that Diefenthal was at crossroads while the Americans were still alive and that Diefenthal did not leave his vehicle.

"Diefenthal in his own sworn extrajudicial statement denied issuing orders Zwigart to kill an unarmed surrendered American soldier.

"Subsequently, all of the witnesses for the prosecution repudiated their previous statements in the posttrial statements alleging force and duress. The American interrogators at the trial testified that the statements were given freely and voluntarily without the use of force and duress. It was admitted by the interrogators that hoods were used on certain of the prisoners in connection with the interrogations.

"The presence of Diefenthal at crossroads was established by the witness Assenmacher who, while repudiating his previous testimony in part did not repudiate this statement and who also testified as to the presence of Diefenthal when Zwigart killed the unarmed American soldier at Cheneux. While Assenmacher made two posttrial statements claiming ill treatment and duress, he not only did not repudiate his testimony given at the trial, but in fact, in one of these statements, repeated the testimony given at the trial.

"While the similarity in the posttrial statements of the witness, made in self-interest, cast doubt on the claims of force and duress, the testimony of the interrogators with respect to the use of the hood and the general findings of the Simpson Commission and Administration of Justice Review Board cannot be

disregarded. Inferentially, it seems impossible that the murders committed by the men under Diefenthal's command could have taken place without his knowledge and concurrence and it is clear that, as a responsible commander he took no action to prevent these murders. However, excluding the evidence which was repudiated and may have been obtained only through improper methods, it would be difficult to exact the death penalty for his issuance of orders not to take prisoners and for his participation in the crime at crossroads.

"However, the unrepudiated testimony of Assenmacher establishes directly his presence at Cheneux when Zwigart, sentenced to death for the act, shot and killed an unarmed surrendered American prisoner. It does not stand to reason that Diefenthal's driver, Paul Zwigart, took this action without certain knowledge that it was acceptable to Diefenthal. Thus, this direct testimony indicated clearly that Diefenthal as a major commander had knowledge of and permitted the men under his command to kill unarmed surrendered American soldiers in cold blood and without cause.

"I have no doubt, with evidence which may have been obtained under force and duress, that Diefenthal was a leading figure in developing the spirit in his command which led to the killing of a substantial number of unarmed surrendered American prisoners of war and that his responsibility for these murders is as great or greater than those of his men who fired the guns. I can find no reason for commutation of his sentence and I confirm my previous approval of the death sentence."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 172.

To be handed to the press at Frankfurt, Berlin, and Heidelberg, at 1500, 31 March 1949.  
Embargoed for Release at 1700, 31 March 1949

EUCOM Release No. 174

31 MARCH 1949.

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

GENERAL CLAY COMMUTES GOLDSCHMIDT DEATH SENTENCE TO LIFE IMPRISONMENT

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Ernst Goldschmidt (Malmedy).

TEXT

"I have reexamined the previously approved death sentence of Ernst Goldschmidt in the so-called Malmedy Case taking into consideration the reports of the Simpson Commission and Administration of Justice Review Board that the prosecution on occasions used improper methods to obtain evidence for conviction.

"Goldschmidt, a Corporal in the First Panzer Pioneer Battalion, was found guilty of having on 17 December 1944 fired on prisoners of war at Honsfeld, Belgium, and at crossroads, near Malmedy, Belgium; and 19 December 1944 on prisoners of war at Stoumont, Belgium.

"It is established without doubt that unarmed surrendered American prisoners of war were killed at these places on these dates and that the members of the organization to which Goldschmidt belonged participated in the crimes.

"The guilt of Goldschmidt was established in the sworn extrajudicial statement of the coaccused, Hofmann, Neve, Sprenger, Jakel, Boltz, and Schaefer.

"Goldschmidt took the stand on his own behalf and denied under oath that he had participated in the crimes, and that as a driver it was his duty to remain with his vehicle.

"All of the coaccused in posttrial statements retracted their initial statements claiming that they were made under force and duress. While the American interrogators testified at the trial that the statements were given freely and voluntarily, they did admit to the use of certain methods in obtaining evidence which must be regarded as improper.

"While the similarity in the repudiation would indicate a planned campaign in self-interest analogous to the original planned silences of the witnesses, the statements of the interrogator and the findings of the Simpson Commission and Administration of Justice Review Board cannot be ignored. Moreover, Goldschmidt did not as so many of the accused, confess to participation in the crime and there is some plausibility in his testimony that as a driver he was not normally engaged in firing.

"While I can accept the testimony of the witnesses to approving the finding of guilt, I cannot accept the recommendation of the Judge Advocate that the death sentence be confirmed. In excluding testimony which may have been obtained improperly in assessing the death sentence, I find no direct evidence that Goldschmidt participated directly in the crimes. I am unwilling to approve the death sentence in the absence of such direct evidence. However, convinced of the guilt of the accused, in commuting the death penalty, I have no hesitancy in approving imprisonment for life."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 174.

To be handed to the press in Frankfurt, Berlin, and Heidelberg, at 1500, 22 March 49.  
Embargoed for release at 1700, 22 March 49

EUCOM Release No. 154

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

22 MARCH 1949.

GENERAL CLAY REAFFIRMS HUBER DEATH SENTENCE

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Hubert Huber (Malmedy).

TEXT

"I have completed my review of the death sentences in the so-called Malmedy Case taking into consideration in the review the reports of the Simpson Commission and the Administration of Justice Review Board. While both of these reports find that there was maltreatment of prisoners to obtain evidence for conviction, they do not attempt to evaluate the importance of such evidence in specific and individual cases. Neither of these reports raise doubt as to the guilt of those who were sentenced for the brutal and cold-blooded murder of innocent civilians and unarmed American prisoners of war. Hence it is essential to examine each individual case to evaluate the part played in obtaining conviction by evidence which may have been obtained under some degree of force or duress. My review has just been completed of Hubert HUBER, Staff Sergeant and Tank Commander in the First SS Panzer Regiment. HUBER was convicted of killing unarmed American prisoners of war on 17 December 1944 at the crossroads south of Malmedy. HUBER had admitted his guilt in an extrajudicial statement which he repudiated in a sworn statement of 15 April 1948 in which he claims that he was subjected to trial by mock court, physically mistreated and threatened with execution unless he signed a statement prepared for his signature. The interrogator, Captain Schumacher, testified at the trial that the statement was voluntarily obtained without the use of force, threats, duress, or coercion.

"HUBER admits even in his repudiation that he was present after the original crime and that one American left for dead sprang up armed with a small gun and so frightened him that he fired at the American who fell and that he took a wrist watch and some clothing from the American. Thus he admits to the killing of an American soldier but indirectly claims self-defense.

"The original testimony of HUBER was corroborated by testimony of Hans HILLIG who also later repudiated his testimony on the grounds that it had been obtained under duress.

"Other witnesses testified in statements not repudiated that the alleged murder of the American soldier occurred, that the murderer was a high-ranking noncommissioned officer and that the shooting was in cold blood and not in self-defense. One witness identified HUBER at the trial and this witness has not repudiated the testimony which he gave at the trial.

"It would appear clearly established by witnesses who have not repudiated their testimony or claimed that it was submitted under duress that the crime was committed in cold blood and their evidence is corroborated in the 3 statements of the accused except for his claim that he acted in self-defense. Thus the accused has testified as to his own presence and this testimony is supported by the identification of the prisoner by a witness at the trial.

"It would appear that the evidence is convincing as to the murder of the unarmed American prisoner of war and as to the participation of HUBER in this murder. If the extrajudicial statements now alleged to have been obtained under duress were eliminated, it would appear clear that the remaining evidence is sufficient to convict HUBER of the murder in cold blood and without cause of an unarmed American soldier. Therefore I have reaffirmed my previous approval of the death sentence. The date for execution cannot be fixed until the present stay of execution ordered by the Department of the Army is modified. I propose to make the above announcement and to release with it the more detailed summary of the Judge Advocate on Tuesday, 22 March."

\* \* \* \* \*  
The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 154.

To be handed to the press at Frankfurt, Berlin, and Heidelberg, 1500, 25 March 1949.  
Embargoed for Release at 1700, 25 March 49

EUCOM Release No. 162

#### HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

25 MARCH 1949.

#### GENERAL CLAY COMMUTES SENTENCE OF OCHMANN TO LIFE IMPRISONMENT

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Paul Ochmann (Malmedy).

#### TEXT

"As a result of the Simpson and Administration of Justice Review Board reports of their investigation of the so-called Malmedy Case that there was some maltreatment of prisoners by the prosecution to obtain evidence for conviction, I am reexamining the previously approved death sentences in this case. The findings of the 2 boards were of a general nature and thus in my opinion it is necessary to examine each case separately to consider the weight of any evidence which may have been obtained under duress in the findings of guilt.

"I have just completed my review of the case of Paul Ochmann, a Master Sergeant in the first SS Panzer Regiment who was convicted of firing on prisoners of war on or about 17 December 1944 at Ligneuville, Belgium.

"In a sworn extrajudicial statement, Ochmann admits to having shot four or five unarmed American prisoners of war in the neck with a pistol while a private soldier assigned to assist him shot the remainder. Lieutenant Perl, who interrogated Ochmann, testified at the trial that this statement was made voluntarily and that no threats or promises were used to procure the statement. He claims that the confession was finally made when Ochmann was confronted with eye witnesses to the killing who described it in detail.

"The fact that the murders took place was proved by two Belgium civilians who testified at the trial but were not able to identify those responsible for the murders.

"Walter Fransee, a member of the first Panzer Grenadier Division, testified that a Master Sergeant, whom he later identified as Ochmann, came to the vehicle in which he was parked to ask for assistance in shooting 8 prisoners of war.

"One witness for the defense testified at the trial that he had been sent by Ochmann to look up 8 prisoners of war, later increased to 16, and that these prisoners of war were turned over by Ochmann to another noncommissioned officer. Ochmann's Lieutenant testified that Ochmann had never reported to him that he had shot 8 prisoners of war.

"The conclusive testimony establishing the guilt of Ochmann comes from his own sworn extra judicial statement and from the witness, Fransee.

"Ochmann, in a sworn statement made on 11 February 1948 claimed to have been badly beaten and threatened during his interrogation and to have been imprisoned in a room without heat on short rations and that as a result he became so nervous that he would have written anything desired. In this sworn statement he repudiated the sworn statement introduced at the trial. Walter Fransee who provided corroborating testimony with respect to Ochmann's part in the murder in a posttrial statement of 2 June 1948 retracted the statement which he had previously made and which led to his testimony at the trial, claiming that it had been obtained under duress.

"There is no specific evidence except the statements of the prisoners, made in self-interest, which indicates that they were subjected to force and duress, while there is the sworn testimony of the American interrogator that these statements were obtained voluntarily and without force or duress. Nevertheless if the evidence thus claimed to have been obtained through force or duress were excluded in its entirety, it would not appear that the remaining evidence is sufficient to warrant imposition of the death sentence.

"Taking into consideration the original sworn statements and testimony as given at the trial as compared with posttrial statements made in self-interest and the statement of the interrogator that the sworn statements were secured without force or duress, I am convinced of the guilt of Ochmann of the cold blooded murder of unarmed American prisoners of war without cause. However, in spite of this conviction on my part, I must give credence to the general findings of the Simpson report and of the Administration of Justice Review Board report which found that there was maltreatment of prisoners to obtain evidence. It is thus impossible to entirely discredit the posttrial statement of the accused and of the corroborating witness that they were subjected to force and duress.

"Ordinarily, the exercise of clemency results from or is accompanied by some compassion. In this instance, while I agree with the Judge Advocate that the crime fully warrants the death sentence, I am unwilling to impose it only because of the lack of sufficient corroborating evidence other than that which might have been obtained through improper methods. Therefore, having no doubt as to the guilt of the accused, I am commuting the death sentence to life imprisonment. I have duly considered the recommendation of the Judge Advocate for the confirmation of the death sentence."

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 162.

To be handed to the press at Frankfurt, Berlin, and Heidelberg at 1500, 8 April 1949.  
Embargoed for Release at 1700, 8 April 1949

EUCOM Release No. 197

#### HEADQUARTERS, EUROPEAN COMMAND

#### PUBLIC INFORMATION DIVISION

8 APRIL 1949.

#### GENERAL CLAY REAFFIRMS PEIPER DEATH SENTENCE

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Joachim Peiper (Malmedy).

#### TEXT

"I have completed by reexamination of the previously approved death sentence against Joachim Peiper in the Malmedy case, taking into consideration the general findings of the Simpson and Administration of Justice Review Boards that there was some maltreatment of prisoners by the prosecution to obtain evidence for conviction.

"Joachim Peiper, a colonel in the Waffen SS, commanded the First SS Panzer Regiment and other supporting units which formed the Combat Group Peiper.

"He was convicted for issuing orders calling for terroristic methods of combat, including the killing of prisoners of war and specifically directing the shooting of prisoners of war at Le Gleize, Stoumont, and Petit Thier, and of being present at the shooting of prisoners of war at Cheneux and Stoumont.

"The evidence against Peiper was obtained from his own sworn extrajudicial statement, and the sworn extrajudicial statements of coaccused Diefenthal, Gruhle, Sievers, Hennecke, Fischer, Klingelhofer, Rumpf, Zwigart, Motzheim, Riser, Hillig, and Sprenger. Witnesses Rineck, Assenmacher, Plohmann, Landfried, and Ebeling testified for the prosecution at the trial.

"There has been established beyond doubt that surrendered, unarmed, American soldiers were killed in cold blood and without cause at the places and on the dates alleged in the charge and that these murders were executed by the members of Combat Group Peiper.

"The sworn extrajudicial statements of the coaccused were repudiated in whole or in part in posttrial sworn statements which alleged that they were made under force and duress. American interrogators testified at the trial that the statements were obtained freely and voluntarily without force or duress. Four of the coaccused also testified before an investigation officer that their charges of brutal treatment were concocted 'to get out from under' their confessions. However, it is to be noted that although coaccused Zwigart repudiated his original testimony, in a posttrial statement, he admitted to the killing of an unarmed American soldier in the presence of his superiors, Diefenthal and Peiper, and claimed to have done so under their orders. Witness Rineck testified at the trial to Zwigart's participation in the killing at Cheneux and this testimony has not been repudiated. Witness Assenmacher, who repudiated certain sworn extrajudicial statements which were not introduced as evidence, testified at the trial that he saw Zwigart commit this crime and that Peiper was present, sitting in Zwigart's vehicle. Witness Landfried testified that he witnessed the shooting of an unarmed American soldier at Stoumont on 19 December 1944 in the presence of Peiper. Witness Ebeling corroborated this testimony.

"Witness for the defense, Braun of Peiper's combat group, testified that Peiper had prisoners of war loaded in trucks and moved to a collecting point. Mobius of Peiper's combat group gave corroborating evidence. Witness Walla of Peiper's combat group testified that Peiper's order for an execution detail at Le Gleize was to shoot a deserter from his command. Witnesses Sievers, Willicke, Freitag, and Froelich all of Peiper's combat group testified that they knew of no prisoners being killed at Stoumont. Witness McGowan, a lieutenant colonel in the United States Army, taken prisoner on 21 December by the Peiper combat group testified that the rules of war were applied. However, it is to be noted that Lieutenant Colonel McGowan was captured after the incidents for which Peiper is charged had occurred.

"There can be no question but that a number of unarmed, surrendered American prisoners of war were shot in cold blood and without cause by members of Combat Group Peiper. The number of these incidents occurring within a space of several days at several different locations would make it most unlikely that they resulted from the members of the combat group who participated in these killings having gotten out of disciplinary control. Moreover, that at least some of these incidents were known to Peiper as proved by the unrepudiated direct testimony at the trial of witnesses Rineck, Assenmacher, and Landfried to have been present when the unarmed, surrendered American prisoner of war was shot. Zwigart, who though repudiating an earlier statement, maintained in his sworn posttrial statements that he had shot an unarmed American prisoner of war under orders of his superior, Diefenthal, in the presence of Peiper. Thus, excluding all of the repudiated evidence, it is clearly established that unarmed American soldiers were killed by members of Peiper's command and that at least one of these killings took place in his presence and hence with his tacit approval as there is no evidence to indicate any action on his part to stop the killings.

"There is no question in my mind that Peiper was, in fact, the principal in the Malmedy Case. While this cannot be fully established with the exclusion of all repudiated statements, there remains sufficient direct evidence, not repudiated, to identify him as a participant in the killing of an unarmed American soldier by his driver Zwigart. In view of his senior rank, this suffices alone to warrant the death penalty. Added to this direct participation, the general conduct of the members of combat group Peiper, there can be little justification in attaching a greater guilt to his subordinates than to Peiper himself. I have no hesitation, excluding the repudiated testimony, to confirm my previous approval of the death sentence."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 197.

To be handed to the press at Frankfurt, Berlin, and Heidelberg, at 1500, 8 April 1949.  
Embargoed for Release at 1700, 8 April 1949

EUCOM Release No. 196

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

8 APRIL 1949.

GENERAL CLAY COMMUTES PREUSS DEATH SENTENCE TO LIFE IMPRISONMENT

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Georg Preuss (Malmedy).

TEXT

"I have completed my reexamination of the previously approved death sentence of Georg Preuss in the so-called Malmedy Case to take into consideration the Simpson Commission and Administration of Justice Review Board reports which found there was some maltreatment of prisoners by the prosecution to obtain evidence for conviction.

"Georg Preuss, a captain in the 2nd Panzer Grenadier Regiment was convicted of the charges that he had instructed his company to take no prisoners; that on or about 17 December 1944, near Bullingen, Belgium, he ordered a prisoner to be shot and that between 13 December 1944 and 13 January 1945, he was responsible for the shooting of prisoners of war by the men of his command.

"Evidence against Preuss was contained in his own extrajudicial sworn statement and in the extrajudicial statements of coaccused Rauh and Sigmund which were repudiated in posttrial sworn statements alleging that they were given under force and duress. Additional evidence was contained in the direct testimony of witnesses at the trial. Von Eling and Conrad, men in his company, testified that Preuss had issued instructions that no prisoners of war would be taken. Kohles testified that an American prisoner of war interrogated by Berghaus and Preuss was shot by Berghaus after the departure of Preuss. Knoblock testifies that Preuss told him of the shooting of the American prisoner but could not testify that Preuss had admitted being present or ordering the killing.

"Witnesses for the defense, men in Preuss' company, Gerwick and Mannitz, testified that they attended the same company meeting with witnesses for the prosecution and that no instructions were given by Preuss to take no prisoners. Both testified also that they saw no prisoners of war killed by the men in this command. Kindermann testified that at the meeting with the Battalion Commander no instructions were received with respect to taking no prisoners.

"While the American interrogators testified at the trial that the statements of Preuss and the coaccused were obtained without force and duress, recognizing that their posttrial repudiations were in self-interest, the findings of the Simpson Commission and the Administration of Justice Review Board cannot be disregarded. Excluding the repudiated testimony, there remains the evidence of two witnesses that Preuss issued orders to take no prisoners which is countered by two witnesses who testified that they attended the same meeting and no such orders were issued. While the killing of an unarmed surrendered American prisoner of war by a sergeant in Preuss' command shortly after the latter's departure is established, the direct part played by Preuss in this killing is not established.

"If the evidence contained in the sworn statements of Preuss and the coaccused is taken into consideration, there can be no doubt of the guilt of Preuss. I am convinced that this evidence does represent the facts, and inferentially, it would be difficult to believe that these events could have occurred without the knowledge and concurrence of Preuss, the company commander.

"Nevertheless, in the light of the Simpson Commission and Administration of Justice Review Board findings and in spite of my personal conviction of the participation of Preuss in the cold-blooded killing of unarmed, surrendered American soldiers, I do not feel justified in approving the death penalty in the absence of sufficient direct evidence, with the repudiated testimony excluded. Therefore, with reluctance but in the belief that it is in the best interest of justice, I must disagree with the recommendation of the Judge Advocate and commute the death sentence to life imprisonment."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 196.

To be handed to the press at Frankfurt, Berlin, and Heidelberg, at 1500, 31 March 1949.  
 Embargoed for Release at 1700, 31 March 1949

EUCOM Release No. 175

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

31 MARCH, 1949.

GENERAL CLAY COMMUTES RUMPF SENTENCE TO LIFE IMPRISONMENT

General Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Erich Rumpf (Malmedy).

"I have reexamined the previously approved death sentence of Erich Rumpf, a First Lieutenant in the First SS Panzer Regiment taking into consideration the general findings in the Simpson Commission and Administration of Justice Review Board reports that there was some maltreatment of prisoners by the prosecution to obtain evidence for conviction.

"Rumpf was found guilty of having: on 13 December 1944 instructed his command that no prisoners were to be taken; on 17 December, at Honsfeld, Belgium, ordered prisoners of war to be shot; on 17 December at crossroads near Malmedy, Belgium, ordered prisoners to be shot; and on 17 December at crossroads near Malmedy fired on prisoners of war.

"The guilt of the accused was established by his own sworn extrajudicial statement, and by the sworn extrajudicial statements of coaccused Gruhle, Neve, Vonchamier, Reider, Clotten, Spranger, Jakel, Schaefer, Hennecke, Hofmann, and Reiser. Three defense witnesses in Rumpf's company testified that they had not received orders not to take prisoners.

"There is no doubt as to the crimes having occurred and as to their perpetration by members of this organization.

"However, the direct participation of Lieutenant Rumpf is proved by testimony subsequently repudiated by all witness for the prosecution as having been obtained by force and duress. While the American interrogators testified at the trial that these statements were obtained freely and voluntarily without the use of force and duress, one interrogator did admit to stage settings used to soften the witnesses which must be considered improper. Recognizing the self-interest involved in the post-trial repudiations, the testimony of the interrogator and the general findings of the Simpson Commission and the Administration of Justice Review Board reports cannot be ignored.

"There can be no doubt but that Rumpf's organization participated in the crime and, inferentially, excluding the repudiated testimony, it is difficult to believe that these crimes could have been perpetrated without his knowledge and concurrence. It is more likely and, I believe, he played a leading part in their perpetration.

"However, excluding the repudiated testimony in assessing the death penalty, there remains no direct evidence to prove the specific part played by Rumpf. Unwilling to exact the death penalty without direct evidence. Unwilling to consider the repudiated testimony in fixing the death penalty, I am unable to accept the recommendation of the Judge Advocate. Convinced of the guilt of the accused and that he played a major part in these cold-blooded murders, it is with reluctance but in the sincere belief that it is the best interests of justice, I have commuted the death sentence to life imprisonment."

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The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 175.



To be handed to the press at Frankfurt, Heidelberg, and Berlin, at 1500, 28 March 49.  
Embargoed for Release at 1700, 28 March 49

EUCOM Release No. 167

HEADQUARTERS, EUROPEAN COMMAND

PUBLIC INFORMATION DIVISION

28 MARCH 1949.

GENERAL CLAY REAFFIRMS ZWIGART DEATH SENTENCE

Gen. Lucius D. Clay, Commander in Chief, European Command, today released the text of his report to the Department of Army in the case of Paul Zwigart (Malmedy).

TEXT

"I have completed my reexamination of the previously approved death sentence of Paul Zwigart in the Malmedy case taking into consideration the general findings of the Simpson Commission and Administration of Justice Review Board that there was some maltreatment of prisoners in this case by the prosecution to obtain evidence for conviction. Paul Zwigart, a sergeant, in the Second Panzer Grenadier Regiment, was convicted of the murder of a surrendered and unarmed American soldier on or about 18 December 1944 near Cheneux, Belgium.

"Zwigart in a sworn extrajudicial statement presented at the trial admitted to the killing and admitted that he acted without orders. In one posttrial statement, he changed his statement to a claim that he was acting under orders, in a second posttrial statement, he repudiated his entire testimony as having been obtained through force and duress; in a third posttrial statement, he reverted to the story in his first posttrial statement. Lieutenant Perl, the American Interrogator, testified at the trial that the statement was free and voluntarily given.

"Friedrichs, Diefenthal, and Plohmann who gave corroborating evidence all repudiated their statements in posttrial statements alleging the use of force and duress. The American Interrogators at the trial testified that these statements were freely and voluntarily given without use of force and duress.

"Rineck, a witness at the trial, testified directly that he had seen Zwigart shoot the American soldier and no repudiation had been found of this testimony.

"Assenmacher, a witness at the trial, testified that he saw Zwigart kill the American soldier. While Assenmacher has made two posttrial statements he had not repudiated his testimony against Zwigart and in fact had restated it in one of these statements.

"There was no evidence for the defense.

"While four of the witnesses, including Zwigart, have repudiated their testimony as having been given under force and duress, although this was denied at the trial by the American Interrogators, the general findings of the Simpson Commission and Administration of Justice Review Board do not permit the postwar trial statements of these witnesses to be fully accepted in confirming the death sentence.

"It is clear that Zwigart established his own guilt and that his participation in the crime is further substantiated by the unrepudiated testimony of two eye witnesses, Rineck and Assenmacher. Therefore, excluding all evidence which is claimed to or may have been obtained through force and duress, there still remains overwhelming evidence that Paul Zwigart murdered an unarmed, surrendered American soldier without cause.

"For these reasons I have confirmed the sentence of death which I had previously approved."

\* \* \* \* \*

The detailed summary of the evidence prepared by the Judge Advocate, EUCOM, is attached.

EUCOM Release No. 167.

## EXHIBIT Z

THE LOIS GRUNOW MEMORIAL,  
SECTION ON ORTHOPEDIC SURGERY,  
Phoenix, Ariz., October 6, 1949.

Col. J. M. CHAMBERS,  
Senate Armed Services Committee,  
Senate Office Building, Washington 25, D. C.

DEAR COLONEL CHAMBERS: In response to a request of the committee, but without prompting from it, I wish to write an account of the suicide of Max Freimuth, which occurred in February 1946 at the prison in Schwabisch Hall, Germany.

This prisoner was an SS trooper at the prison being investigated for participation in the Malmedy massacre. He was confined in the three-story cell block set apart slightly from the main prison building in a single cell on the second floor on the left-hand side of the building from the front entrance. I was on duty at the prison looking after the health of the prisoners being investigated. About 7 a. m. one morning I was called by one of the medical sergeants, who said that a prisoner had committed suicide by hanging. I immediately rushed down to the prison from our living quarters. Upon arrival at the prison I went to the cell in which the prisoner was located and found him dead, lying on the floor with a silken scarf about his neck. There was no question that he had already died, but examination of the heart and lungs was made, and he was pronounced dead. It was noted at the examination, which was confined to the torso, head, and neck, that rigor mortis had occurred. The prisoner's face was blue, his tongue protruded, his eyes popped out, and his lips were swollen. There were numerous blue post mortem blotches on his upper extremities and on his trunk in addition to some on his face.

It was noted that there was a hook on the wall of the cell, and apparently the prisoner had knotted the scarf about his neck, hung it over the hook, and stood on a mattress, which he then kicked out from under him and had died by strangulation. A post mortem examination was not performed since the cause of death was obvious.

Yours very truly,

JOHN H. RICKER, M. D.

I certify that the above is a true and correct account of the incident to the best of my knowledge. Signed this 6th day of October 1949.

JOHN H. RICKER, M. D.

Subscribed and sworn to before me this 6th day of October 1949.

[SEAL]

IDA MAE MILLER, Notary Public.

## EXHIBIT AA

## SUMMARY REPORT ON THE MEDICAL EXAMINATION OF THE MALMEDY PRISONERS

## 1. Introduction and method of study

In accordance with the instructions of the subcommittee of the Senate Committee on Armed Services, the undersigned two physicians and one dentist, on August 31, 1949, proceeded to War Crimes Prison No. 1, Landsberg, Germany, and during the next 10 days examined in detail the 59 Malmedy prisoners incarcerated at that institution.

Each of the 59 prisoners was examined in the following manner: First, the prisoner was requested to give a detailed medical history, including any alleged maltreatment since he was captured. This history was elicited by a German interpreter, along the lines of a routine form provided, and was given by his own volition previous to any contact with the members of the staff of medical examiners.

After this history was recorded and signed by the prisoner, he proceeded to the next station which was conducted by one of the examining physicians. At this point the physician reviewed the history with the prisoner, through an interpreter when necessary, with special attention to any alleged physical maltreatment at Schwabisch Hall. This interview was recorded verbatim by a medical stenograph-

er, and at the close of the interview the physician dictated a résumé, which was typed and accompanied the prisoner throughout the subsequent examination.

At the third station, the dentist reviewed the entire medical record. If the prisoner alleged injury to the face, jaws, or teeth, he was questioned further with regard to pertinent details of the alleged injury, and this information was recorded on the prisoner's record. Then a complete dental and facial examination was completed and recorded.

At the fourth station, the examining physician reviewed the accumulated data. Without further questioning, a complete physical examination was performed and recorded. Special emphasis was placed on scars or other abnormalities which in any way could have been related to physical injury. At the conclusion of this examination, a direct question was asked the prisoner, namely, "What scars or other detectable abnormalities do you have at the present time as a result of maltreatment as a prisoner?" If any evidence was claimed, dates, places, and circumstances were elicited. These claims were recorded, if additional information was obtained which had not been previously recorded.

If during the course of examination, pertinent physical findings were detected, dental X-rays, general X-rays, and/or photographs were obtained. These photographs and X-rays have been attached to the records of these examinations.

Also attached to the records were: Available excerpts from affidavits which related to alleged physical maltreatment, and translated copies of dental and medical records from the Landsberg Prison.

Subsequent to the completion of the examination, the three examiners jointly reviewed each individual record and prepared a summary of the pertinent medical findings and conclusions.

## 2. Summary of medical findings

Of the 59 prisoners examined, 11 denied that they received any physical mistreatment during the imprisonment at Schwabisch Hall. Regardless of this contention, each of the 11 received a complete medical history and examination as outlined above. (See attached list.)

Thirty-five of the fifty-nine prisoners alleged that they were subjected to physical maltreatment at Schwabisch Hall, but denied that they had any physical evidence at this time to support the allegation. Further, examination of these 35 prisoners did not reveal any physical findings to support the contention of maltreatment. (See attached list.)

The remaining 13 prisoners claimed physical maltreatment at Schwabisch Hall, and stated that they had physical evidence to support this contention. Individual summaries of these cases are attached hereto and may be referred to for details.

Upon examination it was found that 2 of the 13 prisoners showed physical findings which they attributed to trauma, but which in the minds of the examiners would not likely have resulted from trauma (Diefenthal and Preuss). Three additional prisoners claimed injury to the genitals as well as other forms of mistreatment. Upon examination one was found to have testicular atrophy which could not be related to trauma (Zwigart). One complained of diffuse tenderness of one testis without objective findings (Siptrott). The third (Dietrich) showed slight disparity in the size of the testes, but no definite evidence of trauma.

There were 6 prisoners of this group of 13 who presented scars which they alleged were evidence of maltreatment while at Schwabisch Hall. One of the 6 prisoners (Diefenthal) had scars which in the opinion of the examiners could not have been the result of physical maltreatment. One other prisoner (Rieder) presented a penile scar resulting from an infectious process in which trauma may have played a precipitating role. The remaining 4 prisoners presented scars on the face (Rehagel), elbow (Hendel), and legs (Sievers and Dietrich), which were compatible with the end result of trauma. However, in none of these four cases were there findings to suggest very severe trauma or major tissue damage.

There were 9 of the 13 prisoners who presented dental abnormalities which they alleged were due to physical maltreatment. One of this group (Siptrott) claimed that an artificial crown was knocked loose. At the time of examination the crown was in place and there was no means of determining whether the crown had ever been dislodged. Another prisoner (Bersin) claimed that four teeth were knocked out of one arch, three of which were posterior teeth. Since

at the time of examination he showed no evidence of fracture of the jaw, remaining roots; or soft tissue damage, the findings on examination were considered incompatible with the prisoner's claims. Another prisoner (Zwigart), claimed that a tooth was loosened by maltreatment and subsequently had to be extracted. Because of severe malocclusion and the previous loss of 13 other teeth, without any direct evidence to support trauma, considerable doubt is placed on the prisoner's allegations. One prisoner (Knittel) showed a fractured incisor which was obviously caused by trauma. Another prisoner (Friedrichs) showed the loss of two anterior teeth, while his other teeth and gums were in good condition, indicating that the loss of the two teeth was probably due to a traumatic cause. The remaining four prisoners (Sievers, Sichel, Hendel, and Rehagel) claimed that the natural crows of teeth were fractured by blows to the face. All contended that the roots were extracted at a later date. On examination the designated teeth were missing. There were no means by which the examiners could determine whether these teeth were lost as a result of disease or trauma.

None of the 59 prisoners contended, nor on examination showed, any evidence of a fractured jaw or of other fractured bones.

### 3. Conclusions

It is obvious that one group, consisting of 11 prisoners, was not subjected to physical maltreatment. This fact is supported by their own statements as well as the absence of physical findings.

A second group, consisting of 35 prisoners, alleged physical maltreatment. They did not contend that they had physical evidence, and the examiners did not find physical evidence to support their allegations.

The third group consisting of 13 prisoners alleged physical maltreatment and presented physical findings which they contended were the result of that maltreatment. The findings in this group have been discussed above and the individual reports of these cases are attached hereto. Three of these, on examination, had conditions which definitely were not due to physical maltreatment. The remaining 10 showed physical findings which might have resulted from trauma. However, none of these 10 prisoners showed evidence of acts of severe physical violence.

It is concluded from the above findings that the evidence of physical maltreatment found in the examination of these 59 prisoners is relatively minimal. When these findings are compared with the allegations of physical maltreatment in the prisoner's histories there is a striking conflict of evidence. The medical members of the staff cannot refute the charges of some physical maltreatment but it is our opinion that the severity of the maltreatment in the allegations is completely out of proportion to the physical findings, which might support their contentions.

JOHN D. LANE, M. D.,  
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LUTHER L. TERRY, M. D.,  
*Medical Director, United States Public Health Service. Chief, Medical  
 Service, United States Marine Hospital, Baltimore, Md.*

SEPTEMBER 27, 1949.

#### GROUP 1. PRISONERS WHO DENIED PHYSICAL MALTREATMENT AND WHO WERE NOT FOUND TO HAVE EVIDENCE OF PHYSICAL MALTREATMENT

Gruhle, Hans	Kramer, Fritz	Tomczak, Edmund
Hammerer, Max	Peiper, Joachim	Trettin, Heinz
Keis, Friedel	Priess, Hermann	Wassenberger, Johann
Klingelhofer, Oskar	Stickel, Heinz	

GROUP 2. PRISONERS ALLEGING PHYSICAL MALTREATMENT AND NOT SHOWING EVIDENCE TO SUPPORT THE CONTENTION

Bode, Friedel	Hoffmann, Heinz	Rodenburg, Axel
Braunn, Willi	Hofmann, Joachim	Rumpf, Erich
Briesemeister, Kurt	Huber, Hubert	Schaefer, Willi
von Chamier, Willi	Jaekel, Siegfried	Schwambach, Rudolf
Christ, Friedrich	Junker, Benoni	Siegmund, Oswald
Clotten, Roman	Kuehn, Werner	Sprenger, Gustav Adolf
Coblenz, Manfred	Mikolascheck, Arnold	Tomhardt, Heinz
Fischer, Arndt	Muenkemer, Erich	Tonk, August
Fleps, Georg	Neve, Gustav	Weiss, Guenther
Goldschmidt, Ernst	Ochmann, Paul-Hermann	Werner, Erich
Hennecke, Hans	Pletz, Hans	Wichmann, Otto
Hillig, Hans	Rauh, Theo	

GROUP 3. PRISONERS ALLEGING PHYSICAL MALTREATMENT AND PRESENT PHYSICAL EVIDENCE WHICH THEY CONTENDED WAS DUE TO PHYSICAL MALTREATMENT

Bersin, Valentin	Rehagel, Heinz	Preuss, Georg
Diefenthal, Josef	Reider, Max	Siptrott, Hans
Dietrich, Josef	Sickel, Kurt	Zwigart, Paul
Friedrichs, Heinz	Sievers, Franz	
Hendel, Heinz	Knittel, Gustav	

SUMMARY AND CONCLUSIONS OF MEDICAL EXAMINATION

BERSIN, VALENTIN

This prisoner states that he was tripped, fell, kicked, and while lying on the floor, was hit with fists. During this maltreatment he states that he received a blow to his right face, which knocked out his four upper right teeth (Nos. 2, 4, 5, and 6). Teeth Nos. 1 and 3 had been lost previously.

The prisoner stated that he was not treated by a prison dentist, but by an American Army dentist, a captain, about 40 kilometers from Schwabisch Hall. He further stated that immediately after the injury, the jaw became swollen, and he spit blood, but he did not know that any teeth were missing at that time, because his jaw was numb. The following morning, he tried to chew, and he found his upper right teeth missing. He was taken into another room, the same day, and cold packs were put on his face; but he stated that no one looked in his mouth. It was 1 month later that he was called to an American Army dentist and the prosthesis was constructed.

Examination revealed absence of those teeth, as well as six others. Three teeth had been lost in the lower left mandibular region. There was no evidence of injury to the maxilla, or cheek, and there were no remaining roots of the missing teeth. These findings were confirmed by X-ray.

It is concluded that some teeth could have been knocked out, without demonstrable evidence of injury to the adjacent structures. However it is difficult to believe that the four designated teeth could have been knocked out without leaving any roots, or producing a fracture of the maxilla and severe lacerations of the cheek. X-ray failed to reveal evidence of old fracture of the maxilla, or remnants of teeth. Further, the fact that a prosthesis was made, replacing these teeth, within 1 month of alleged injury, is additional strong evidence against a fracture of the maxilla. In addition, there were no demonstrable scars from lacerations of the cheek.

In conclusion, it is felt that there is no means of definitely establishing how the teeth were lost, but the story is not completely compatible with the findings at this time

DIEFENTHAL, JOSEF

This prisoner alleges mistreatment on several occasions, including the time that he was held as a prisoner at Dachau, Wiesbaden, and Schwabisch Hall. Prior to his capture, his left leg had been amputated, as a result of a bullet wound and subsequent infection. He alleges that while a prisoner of the Americans,

that he received inadequate treatment for the amputation stump and that this resulted in abnormal growth of skin on the stump. He stated that he was placed in the hospital at Schwabisch Hall upon arrival, but was removed after 15 hours and placed in solitary confinement, where he remained for 10 weeks. The lone allegation of physical mistreatment at Schwabisch Hall was on one occasion when he was being taken for interrogation, was so rushed that he fell down, and upon falling he was kicked about five times in the back. He did not maintain that this resulted in any serious or permanent injury.

Examination revealed a scarred stump at the point of amputation of the left leg. (See photo 1.) The stump showed little padding and some sensitivity. There was fixation of the scar to the periostium.

It is felt that this prisoner got a good result, considering the circumstances under which the amputation was performed. Such amputations usually result in considerable scar formation about the stump. Further, since he was not admitted to Schwabisch Hall until 9 months after the amputation, it is not felt that any further treatment would have been indicated at this late date. It is therefore our opinion that there is no physical evidence that this prisoner received maltreatment or neglect while at Schwabisch Hall.

#### DIETRICH, JOSEF

This prisoner was held at several prison camps prior to Schwabisch Hall, but denied any mistreatment until his arrival at Schwabisch Hall. He stated that on April 10, 1946, he was struck in the right testicle with a hard object; and on April 20, 1946, that he was kicked on the shin while standing hooded in the hall. The trauma to the genitalia resulted in pain and swelling, which lasted for about 14 days. The injury to his legs was said to have been so severe that blood ran down his legs, and that 4 weeks were required for recovery.

Examination revealed that the penis, scrotum, and left testicle were normal. The right testicle was slightly smaller than the left, but within normal limits of variation. It was soft, nontender, and showed no induration. There were three superficial, pigmented scars on the anterior aspects of both lower legs, without underlying adhesions. The prisoner also had symptoms and findings of moderately advanced Berger's disease.

The physical findings of the genitalia are considered within normal limits. The variation in size of the two testicles is probably not due to trauma, since there was no fibrosis or induration such as follows significant trauma to the testicle. The scarring of the lower legs was minimal, and involved only the more superficial soft tissues. In the presence of Berger's disease, the end results of trauma are greatly exaggerated, due to the poor circulation. Therefore, any slight trauma might have produced the scars seen on his lower legs. The character of the scars does not allow one to estimate the duration, other than to say that they are probably several years old. At any rate, the evidence of trauma is very minimal, and is not consistent with any severe trauma at any time.

#### FRIEDRICH, HEINZ

This prisoner stated that while at Schwabisch Hall, he was struck several blows in the face and over the kidneys, with gloved fists, and that he had severe pain in his back for several days. He stated that he asked for a doctor, but that no doctor came, and that an American sergeant, a first-aid man, came and gave him some pills. He stated that he was seen daily, for 3 or 4 days, and recovered in about 10 days. At a later date, he stated, he was struck in the mouth with fists, at which time the crown of one tooth was knocked off, and another tooth was knocked loose. He denied that there were any lacerations of the lips or cheeks. On the same day of the injury, he was driven to an American hospital (about 20 minutes away) and the broken and loose teeth were extracted.

Examination revealed absence of the left lower lateral incisor and cuspid [Nos. 10 and 11], with slight drifting of the approximating teeth. (See photo.) No other evidence of injury was found.

It is impossible to determine in what manner the above-mentioned teeth were lost. However, the amount of drifting of the remaining teeth is consistent with the loss of such teeth 2 to 8 years ago. The remaining teeth are in good condition, and this fact lends some credence to the contention that the two teeth may have been lost due to trauma. It should also be noted that there was an absence of scars of the adjacent soft parts indicating lacerations of the lips.

In summary, the findings are not inconsistent with the loss of teeth due to trauma, but it is impossible to determine exactly how or when these teeth were lost. He is now free of symptoms, and physical findings are normal with regards to the alleged back injury.

## HENDEL, HEINZ

This prisoner states that while at Schwabisch Hall, he was hooded, was kicked, fell down stairs and sustained an injury to his right arm in the region of his elbow. On another occasion he was beaten with fists about the head, body, and genitalia; and during this beating one tooth was broken. The following day the root of the broken tooth was extracted by a German civilian dentist at Schwabisch Hall. The building in which the dentist was located was said to be about 10 yards from the building in which the prisoner was incarcerated.

Examination revealed a superficial scar on the extensor surface of the right elbow, and the upper right first bicuspid (No. 4) was missing. There was also advanced periodontitis and caries of the adjacent teeth. (See photo and X-ray of elbow, and photo of teeth.) The X-ray was interpreted as showing normal elbow joint contour (taken on September 6, 1949).

There is no way of determining how the above-designated tooth was lost. The advanced gum disease and extensive caries present in the second bicuspid makes it evident that there was a deep pocket and extensive caries between and in the first and second bicuspids. The missing tooth could well have been lost due to disease (as were the other 12 missing teeth so lost). Minimal trauma could also fracture such a weakened tooth. The scar on the right elbow was superficial, without involving deeper structures, indicating that no major force was involved in the production of the injury. The scar is old, and may be anywhere from 1 to 25 years old.

## REHAGEL, HEINZ

This prisoner stated that in December 1945, while a prisoner at Schwabisch Hall, he was struck in the face and stomach with fists. A ring on the finger of the person striking him cut his lip and fractured a crowned tooth. The root of the broken tooth was removed 1 year later in Landsberg Prison. He also stated that while being carried to a dentist because of trouble with a wisdom tooth, a blanket was placed over his head and he was thrown into a jeep. The left cheek, near the corner of the mouth, was struck by some sharp object in the jeep, producing a laceration. On other occasions he was struck and kicked in the face, body, and genitalia.

Examination revealed absence of the lower right first bicuspid (No. 12), and that this tooth had been replaced with a bridge from the second bicuspid. There was no evidence of laceration of the mucus membrane of the cheek opposite the missing tooth. There was a scar on the left side of the face near the angle of the mouth measuring 1 centimeter in diameter, (See photo.)

It is impossible to determine when or how the crown of the above-mentioned tooth was fractured. However, it is in the records of the Landsberg Prison dental clinic that the root of the designated tooth was extracted and replaced with a bridge about 1 year after the alleged trauma. The findings with regards to the tooth and the scar of the face are compatible with trauma to the face; but the nature and time of occurrence of such trauma could not be determined. Photos of the face and teeth are attached to the record.

## RIEDER, MAX

This prisoner stated that on January 12, 1946, he was beaten in the face and stomach with fists and was kicked in the genitalia. The genitals were sore and painful for several days. A few days later the penis became more swollen and a purulent discharge developed. He was treated for about 2 days by a first-aid man at Schwabisch Hall, but the swelling and discharge continued. He was then transferred to an American hospital at Stuttgart, where an operation was performed (there was a discrepancy in dates given to the interpreter who elicited the history, and to physicians who later interrogated him with regard to the time of injury and treatment). Later, upon his return to Schwabisch Hall, he was beaten with fists and kicked in the stomach, he stated.

Examination revealed scarring about the muco-cutaneous junction on the dorsal surface of the penis. The scarring was superficial and did not interfere with the normal functioning of the foreskin. (See photo attached.)

It is concluded that this man had phimosis and balanitis which necessitated dorsal slit and circumcision. In most instances these conditions are not associated with trauma, but are the result of lack of sanitary precautions and subsequent infection. Trauma cannot be ruled out, as a contributing cause to such conditions, but it would not be expected to play a significant part in the production of these conditions.

SICKEL, KURT

The prisoner stated that while at Schwabisch Hall, he was frequently struck with sticks, while being carried to interrogations with a hood over his head. These blows usually fell upon the back and shoulders, and he stated that some of them caused pain about an old war wound of his right scapula. On April 12, 1946, he stated, he received a blow to his face which fractured the crown of the lower left second bicuspid (No. 13). Following this blow, he complained of great pains and thought something was broken, although the filling did not fall out of the tooth. Eight weeks later, while at Dachau, a piece of the tooth broke off and was attached to the gum. He removed the broken piece of tooth without dental assistance. Later, the remainder of the crown of the tooth broke off, after he was transferred to Landsberg Prison, and the root was removed on March 9, 1948. The prisoner stated that the cheek was lacerated at the time of the initial injury.

Examination revealed that the lower left second bicuspid was missing, as well as the lower left second molar (No. 15). No fibrosis could be felt and there were no scars seen opposite the missing tooth. There were no other pertinent physical findings.

It is entirely possible that a tooth could have been broken in the manner described by the prisoner. This can occur when jaws are forcibly and quickly closed, striking teeth at an odd angle. In this particular case, it would have been more easily possible since the tooth had been previously filled, and was consequently weakened. It was impossible to determine when or how this occurred, however, the records of the dental clinic at Landsberg Prison show that this tooth was removed on November 9, 1948. (It should be noted that the date given from the clinic records at Landsberg Prison differ from the exact date which was given by the prisoner during interrogation. Furthermore, the records at the prison do not show whether a root, or a tooth, was removed; but the prison dentist, Dr. Pook, stated that he remembered that it was a root.) The absence of any evidence of lacerations of the cheek further cast doubt of any severe trauma to this man's face or mouth. (Photo attached.)

SIEVERS, FRANZ

This prisoner stated that during his imprisonment at Schwabisch Hall he was frequently struck blows with fists into the body and face. On February 25, 1946, while hooded and standing in the hallway, he was struck in the face by what he presumes was a fist. The blow bruised his lip, and a previously filled left anterior tooth was broken off about 3 millimeters above the gum. This tooth was subsequently extracted on January 27, 1947, at Landsberg Prison. The prisoner also claimed that on February 27, 1946, while at Schwabisch Hall, he was kicked in the shin, and still has a scar of that injury present.

Examination revealed absence of the upper left lateral incisor (No. 2). Three other teeth (bicuspids and molars) were missing, but the remaining teeth and gums were in good condition. Over the anterior surface of the right lower leg, there were three areas in which texture of the skin showed slight thinning, with superficial scarring. These areas varied in size from 1½ to 3 centimeters, and showed no pigmentation. (See photos and X-rays of teeth, and photo of right lower leg.)

The records of Landsberg Prison show that the above-mentioned tooth was extracted on January 27, 1947, but the prison records do not differentiate between a root and a tooth, and thus one is unable to determine in what condition the tooth was at the time of extraction. Assuming that the tooth was previously fractured, there is no evidence at hand which would assist in determining when or how the tooth was fractured. The scars on the leg indicate no more serious injury than superficial abrasions, and are the type of injuries which are frequently encountered in the normal course of life.



## KNITTEL, GUSTAV

This prisoner stated that while being conducted to an interrogation in April 1946, at Schwabisch Hall, he was hooded and was struck across the back with sticks. During this time he fell into a hard object, breaking a central incisor tooth. This constitutes his lone allegation of physical maltreatment while at Schwabisch Hall.

Examination revealed that the incisal third of the upper right central incisor (No. 1) had been fractured and repaired with a white synthetic porcelain filling. The filling appeared to be fairly new, but could have been 3 or 4 years old. A review of the records at Landsberg Prison reveals no evidence of the filling having been inserted at Landsberg. X-ray revealed that the tooth is vital. (X-ray attached.)

There is a definite evidence of trauma to the upper right central incisor, which is typical of the type produced when an anterior tooth is struck a direct blow. The evidence indicates that the filling was not inserted at Landsberg and the life of such a porcelain filling is not great. Thus, it appears that the filling is approximately as old as the prisoner's history indicates. However, the exact time or cause of the fracture cannot be determined. Though the filling is fairly recent, the tooth may have been fractured before the filling was inserted.

## PREUSS, GEORG

This prisoner gives a history of considerable maltreatment before reaching Schwabisch Hall, but he does not contend that he has any evidence to support this maltreatment. During his first interrogation at Schwabisch Hall, on April 2, 1946, he stated that he was beaten in the face and chest and kicked in the testes. He stated that the left testes was ruptured, and that for several days thereafter it was very painful, but that he was denied medical attention. He claimed that the injury to his testes had resulted in permanent damage to this organ.

Examination revealed a moderate degree of varicosities of the vessels of the left spermatic cord, and slight atrophy of the left testis. The consistency of the left testis indicated no induration, irregularities, or excessive tenderness on palpation. The remainder of the external genitalia was normal. There were no scars on the penis or scrotum. Transillumination revealed no hydrocele.

The findings indicate a second-degree varicocele of the left cord, with slight secondary atrophy of the testis from stasis. There were no physical findings to suggest significant trauma to the genitalia.

## SIPTROTT, HANS

This prisoner gives a long and lurid history of being anesthetized in his cell on the nights of December 6, 7, and 8, 1945. According to the prisoner, this was accomplished by spraying liquid anesthesia into his cell through the port-hole in the door. He further stated that on December 4, 1945, he was struck in the jaw with a fist by an American guard and that a crown on one of his teeth was loosened. He claimed that his requests for dental care were denied until several months later, when he reached Dachau. He also stated that about the middle of January 1946, while in the corridor, hooded, he was kicked in the genitals. He stated that his testes were swollen for several days, and that his right testis has remained sensitive since that time.

Examination revealed that the lower right second molar (No. 15) had an artificial metal crown present. X-rays showed that the tooth devitalized, and that the root canal had been partially filled. There was no evidence of apical pathology about this tooth. X-rays attached. Thorough examination of the genitalia revealed no abnormalities, but the prisoner did complain of tenderness on pressure to any portion of the right testis.

Since the pulp canal had been partially filled, the tooth was probably badly decayed before the crown was prepared. Due to the extent of the decay, the crown probably had little retentive power. Under such circumstances ordinary mastication may loosen such a crown. It is possible that any type of minimal trauma also might have loosened such a crown. It is practically unknown for a well-fitting crown of this type to be broken loose by a blow. More commonly, severe trauma would result in fracture of the tooth. Therefore, a tooth in this condition would, in all probability, eventually lose the crown in the ordinary course of events, either by some slight trauma, or ordinary mastication.

There was no objective evidence of trauma to the genitalia, such as one would expect if the alleged degree of trauma had existed. The mere complaint of sensitivity of the testicle is not, in itself, any evidence of previous trauma. Furthermore, the fact that the patient complained of tenderness of any and all parts of the right testis tends to discount the authenticity of this complaint.

ZWIGART, PAUL

This prisoner states that while interned at Schwabisch Hall he was frequently slapped in the face, beaten with fists about the body and face, and on several occasions was kicked in the genitalia. He stated that in early December 1945 he was struck in the jaw with a fist and the lower left bicuspid (No. 12) was loosened. He alleges that repeated blows further loosened the tooth and that the looseness and pain necessitated extraction in early January 1946. The extraction was performed by an American dentist 5 to 10 minutes from Schwabisch Hall Prison. The prisoner volunteered no symptoms relative to his genitalia.

Examination revealed an extreme prognostic lower jaw: that is, the lower jaw jutted out farther than the upper jaw. Only three pairs of teeth were in occlusion, due to this abnormal configuration of the jaw. Many teeth (14 in number) had been lost from the upper and lower jaws. New dentures were in place, which had been constructed at the Landsberg Prison in March 1949. The left testis showed marked atrophy, being approximately one-third the size of the right testis. The scrotum, penis, and right testis were normal. There was no tenderness, induration, or other evidence of trauma to either testis.

It is impossible to determine how the above-designated tooth or the other 13 were lost. However, with such malocclusion as exists in this case, minimal trauma might loosen a tooth. In addition, with such an arrangement of teeth, normal mastication could loosen a tooth and necessitate extraction. It is therefore impossible to determine whether the above-designated tooth was lost as a result of trauma, or as a result of excessive wear and tear, due to the abnormal arrangement which exists in this man's mouth. See photo attached.

The prisoner was not aware that there was an inequality in the size of his testes. The atrophy of the left testis, without induration or tenderness, is not suggestive of trauma, but is more characteristic of the late effects of certain infections, such as mumps. It is therefore unlikely that such changes have resulted from trauma.

FREDERICH EBLE

Date of birth: October 19, 1920.

*Past medical history*

The subject-named man was questioned carefully with regard to past illnesses and injuries. He stated positively that he had never had an illness or an injury until 1942, at which time he sustained his first war wound. He stated, further, that he had never received any medical attention, nor had he even had a physical examination until 1937.

The following is a chronological presentation of his injuries and illnesses, beginning in 1942:

1942. Received a machine-gun bullet wound in the right calf.

1943. Appendectomy and tonsillectomy. In late 1943 he acquired spotted fever while in the German Army, in Russia.

1948. From March 15 to end of July, was confined to internment hospital at Ludwigsberg, because of acute hepatitis. He was later transferred to the internment hospital Kron-Westheim for further treatment. At the latter hospital he was attended by a German physician, Dr. Wolfgang Pils (Jaegerhofallee 59, 14-A, Ludwigsberg, Germany).

Since 1948, he contends that he has continued to have liver and gall-bladder disease, which he attributes to the poor diet that he received while a prisoner of war. As a result of this condition, his gall bladder was removed during July 1949.

Eble stated that his usual weight was about 165 pounds. He stated that at the time of release from Schwabisch Hall he weighed 105 pounds, and at the time of his release from Ludwigsberg he weighed about 120 pounds. His present weight is about 150 pounds.

### *Past dental history*

Eble stated that during the war, while in the German Army, and previously, he lost many teeth. During his imprisonment at Ludwigsberg, he stated, his face became swollen due to abscess of teeth. He alleges that the CIC at first would not allow him dental or medical care; however, shortly thereafter he became seriously ill, due to this infection, and was given dental care. He stated that four teeth (three molars and one bicuspid) had to be extracted. He infers that the loss of these teeth was due to lack of earlier dental care.

### *History of alleged maltreatment at Schwabisch Hall*

**Burning of matches under fingernails.**—Beginning on January 2, 1945, Eble stated that matches were inserted under all 10 fingernails to a depth of about 5 millimeters, and that with his hands tied to the table, the matches were ignited and allowed to burn down to his fingers. He stated that the matches burned down to the nails, and burned a portion of the nails, but stopped at the junction with the skin of the fingertips. He further stated that the tips of his fingers were scorched, but that no blisters were produced. When first questioned as to how such matches could burn the fingernails without burning the skin of the fingertips, he contended that he had callouses on the fingertips, which prevented their burning. When questioned further about the origin of such callouses, he stated that he had been using a rake, while working as a farm hand, prior to his imprisonment, and that the callouses had been produced in this manner. When it was pointed out to him, by the examiners, that it appeared impossible to produce callouses on the fingertips by the use of a rake, he then stated that he had also been digging potatoes, and that this had been responsible for the callouses. Upon further questioning, he explained that his skin had always been tougher than the normal individual's, and that doctors, upon giving him injections, had often commented to this effect.

Subsequent to the burns described above, Eble stated, all 10 of the fingernails became infected and exuded pus. He stated that he was denied medical care, and that the fingers continued to drain pus for 6 weeks. He further stated that immediately after the fingers and nails had been burned, that there was a small piece of match stem left under the nail of each of the 10 fingers. He stated that he removed these remnants of the matches with a straight pin which he carried in the lapel of his coat.

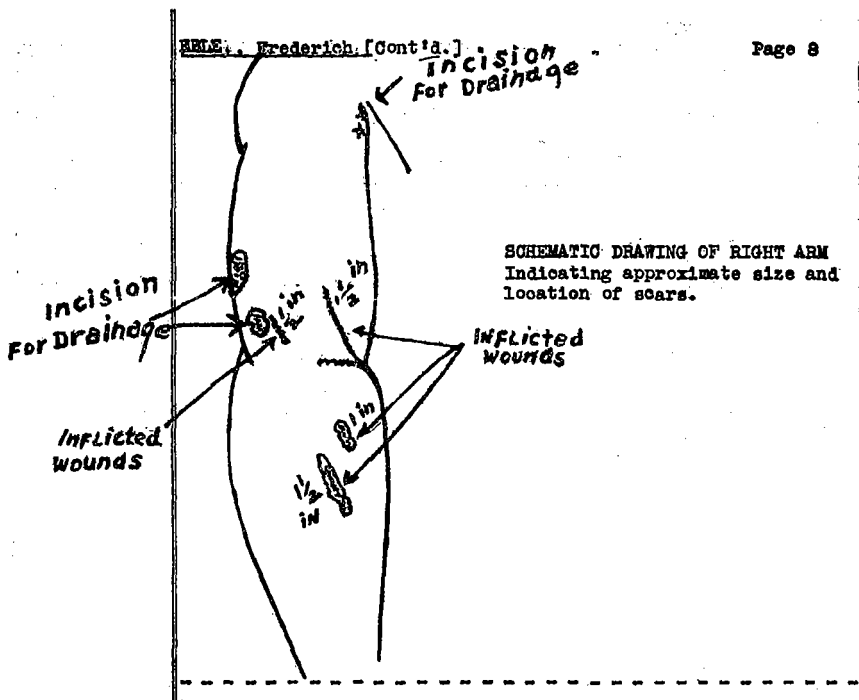
He stated that after the fingers had drained pus for about 6 weeks, there was gradual healing, and that his fingers had healed, without scars on the fingertips or on the nails. He denied that any of the nails were lost as a result of the injuries, and that the nails did not show ridges or other deformities subsequent to the injury.

In an attempt to evaluate his contention of callouses on the fingertips, he was asked the specific question as to whether his fingertips were calloused at the present time. He said definitely that they were, and further attempted to explain the present callouses by his recent occupation as a miner, and the fact that he had been employed in handling fresh walnuts.

**Stab wounds of right arm.**—Eble stated that on January 17, 1946, while at Schwabisch Hall, knife wounds were inflicted to his right arm, in an effort to obtain a confession. He stated that, with his hand tied to the table, five stab wounds were inflicted to the right arm within a period of 2 hours. He stated that the wounds were produced with a dagger-type knife. (See diagram prepared by Eble, p. 1629.) Immediately after each stabbing, the blood oozed from four of the wounds, but from one wound near the elbow the blood spurted with each pulse beat.

Eble stated that he did not receive treatment by a physician. The day following the injury, an American soldier came to his cell, painted the wounds with antiseptic, and applied bandages over the wounds of the upper arm only. He stated that the wounds in the forearm were closed and did not require bandaging. He stated that this was the only treatment that he received until several months later.

Despite the fact that the wounds had closed, Eble stated, the region of the wounds in the upper arm became swollen and painful, about the end of May 1946. (Note: This was more than 4 months after the initial injury.) He stated that the entire right arm then became swollen, and that it was necessary for the German physician whom he consulted to make three incisions in order to evacuate accumulated pus. He maintained that the physician placed a through-and-through-drain from the medial aspect of the upper arm, at the axilla, to the lower



outer third of the upper arm, near the elbow. He stated that the wounds healed promptly after drainage was established, and that he has had no recurrence since that time.

#### Physical examination

*General description.*—That of a well-developed, fairly well nourished, white adult male, weighing about 150 pounds, approximately 70 inches tall, and appearing about his stated age of about 29 years. He appeared well oriented as to time and place.

*Skin.*—The skin showed a normal hair distribution, the general texture showing the average thickness and subcutaneous adipose tissue. The following scars were noted:

**Right arm:** Demonstrated two small X-type, well-healed scars, with moderate fibrosis, with no subcutaneous fixation. (The patient stated that these were the sites of previous incisions for drainage of abscess, secondary to inflicted wounds.) There are two rounded, pigmented, superficial scars on the lateral aspect, in the lower third of the upper arm, with moderate fibrosis, and slight subcutaneous adhesions, without evidence of a fibrous tract communicating to the above-described scars. These were also stated, by Eble, to have resulted from incisions and drainage of abscesses secondary to inflicted wounds. There is a Y-shaped linear scar at the elbow on the anterior surface, with slight fibrosis, and no underlying adhesions, indicating the scars resulted from an incision which did not extend into the subcutaneous structures. The scars do not interfere with the motion of the underlying structures. A fourth scar, linear in type, with slight fibrosis, and without adhesions to the underlying structure, is situated in the lower third of the upper arm, on the anterior surface, and not interfering with the motion of the underlying structure. Two scars, in addition to the above, are situated on the anterior surface of the forearm, 3 1/2 inches below the elbow. These scars are 1 inch, and 1 1/2 inches in length, respectively, with moderate fibrosis, but without adhesions to the underlying structures. (See schematic drawing attached, for approximate location and size of scars.)

**Other scars:** There was a right, subcostal, abdominal scar, and a lower right rectus scar, stated by Abele as being the result of two abdominal operations, namely, cholecystectomy and appendectomy. The right subcostal scar appeared

to be of recent origin, 4 to 8 weeks. The right lower abdominal scar appeared to be of long duration.

On the left arm demonstrated a small, linear scar, with minimal fibrosis, in the antecubital space, without subcutaneous adhesions, alleged by Abele to be the result of a previous blood transfusion administered at this site.

The right calf demonstrated a cicatricial scar approximately 3 inches below the knee, on the medial aspect. The scar showed considerable loss of subcutaneous soft tissue, with moderate fibrosis and some adhesion between the scar and the underlying soft parts. This, however, does not interfere with the normal function of the lower right leg.

*Musculo-skeletal system.*—There is no evidence of any limitation of motion of any joints, and the range of voluntary and active motion of all of the extremities and the spine were within normal limits. This included a detailed examination of all of the joints and muscular action involved in the right arm, hand, and shoulder.

*Examination of fingers and nails.*—Careful detailed examination of the hands, fingers, and fingernails failed to reveal any significant abnormalities. The skin of the fingers of both hands was heavily and irregularly covered with a brown stain. However, the texture of the skin was perfectly normal. The fingertips were soft and showed no scars or callouses. There was a normal amount of padding of the fingertips. The fingernails were smooth and regular and showed no abnormalities. (It should be noted at this point that Abele contended, in the history, that there were callouses on the tips of his fingers at this time, and that careful examination for such callouses failed to reveal the slightest evidence of any callous formation on the tips of any of his fingers.) There was no excessive separation of the fingernails from the nailbeds, and the nailbeds presented an entirely normal appearance, without any evidence of scarring.

*Examination of the right arm and hand.*—The cutaneous surfaces of this portion were tested for pain and touch, and were considered entirely normal.

*Dental examination.*—Teeth:

	X	X		X	X						X	X	X	X	X		
R	8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8	L
	16	15	14	13	12	11	10	9	9	10	11	12	13	14	15	16	
	X		X	X								F	X	X	X	X	

Abele had no gingivitis, no stomatitis, no peridontitis, and he had good oral hygiene. There were 16 teeth missing in his dental arch. Four of these teeth, in the upper left jaw, had been extracted because of an abscess.

*Mental state.*—The patient appeared to be well oriented as to time and place. He conversed freely, but was inconsistent in many of his answers. When the plausibility of some of his answers was questioned, he would immediately substitute another answer which would appear to him to be more plausible. For instance, when he made the statement that his fingertips were not burned, despite the fact that the matches did burn the immediately adjacent nails, he tried to explain it on the basis of callouses on the fingertips. When it was pointed out that callouses of the fingertips could not be produced by the use of a rake, as he had contended, he immediately substituted the explanation that his fingers were calloused from digging potatoes prior to his capture. Then, in order to make the explanation even more plausible to himself, he added that it had always been recognized that he had tough skin, and that doctors had remarked about it. His answers to other less critical questions were also evasive and if their plausibility was questioned, another explanation would be offered immediately. The medical examiners also attended his cross-questioning, when he testified before the subcommittee. These same tactics of substitution and evasion were commonly used during the course of his testimony there.

#### *Summary and appraisal of medical history and examination*

1. This man contends that he never suffered from any illness of any type until he was 22 years of age, at the time he sustained his first war wound. The implausibility of this statement was pointed out to him, but he steadfastly held to it as the absolute truth. Though one cannot say that this is absolutely untrue, it is most unlikely, in fact, unbelievable, that he could have escaped all of the childhood diseases, other illnesses, or injuries for the first 22 years of his life. In other words, though one cannot say that this is a lie, it immediately casts considerable doubt upon the veracity of the statements made by this individual.

2. He stated that matches were inserted under each of his fingernails to a depth of at least 5 millimeters. The insertion of such objects beneath the fingernails is an extremely painful procedure, and it is difficult to believe that his hands could have been held in such an immovable position as to permit the insertion of such objects under the fingernails, one after another.

3. Eble stated further that the matches were ignited, and were allowed to burn down to the fingertips. He definitely stated that the nails were burned, and that the tips of the fingers were scorched, but were not burned. He specifically denied that blisters formed on any of the fingertips, yet he specifically maintained that the tips of the nails were burned. It appears impossible, to the examiners, that a burn such as he described of the fingertips could possibly burn fingernails without producing burns and blisters of the adjacent soft tissues.

4. Eble explained that the fingertips were not burned because they were calloused. When it was pointed out to him that callouses on the tips of the fingers were most unusual, he was asked for an explanation. He explained that prior to his imprisonment he had worked on a farm and that his fingertips had become calloused from the use of a rake. When it was further pointed out that the production of callouses on the fingertips was not possible due to handling a rake, he immediately substituted the explanation that while on the farm he had been digging potatoes with his hands and that this had produced callouses. When questioned further, he glibly volunteered the information that his skin had always been tougher than the average individual's, and that physicians, upon administering injections to him, had often commented upon this fact. He considered that this tougher skin also helped to explain why the nails were burned and yet the fingertips were not burned.

5. Eble stated that subsequent to the burning of the matches under his fingernails, all 10 fingers became infected and exuded pus for 6 weeks. He further stated that in no instance did this injury, or subsequent infection, result in the loss of a fingernail. To the examiners, it appears implausible that each of the 10 fingers could have become secondarily infected and drained pus for 6 weeks. Furthermore, it is difficult to believe that such extensive and prolonged infection beneath each of 10 nails could have failed to result in the loss of at least some of the fingernails.

6. Eble stated that there were callouses on the tips of his fingers, at the time of this examination, similar to those present at the time of the alleged injury. Careful examination of the fingertips revealed no evidence of callous, and, to the minds of the examiners, completely discredited his statement that there were callouses of the fingertips at the time of the alleged injury.

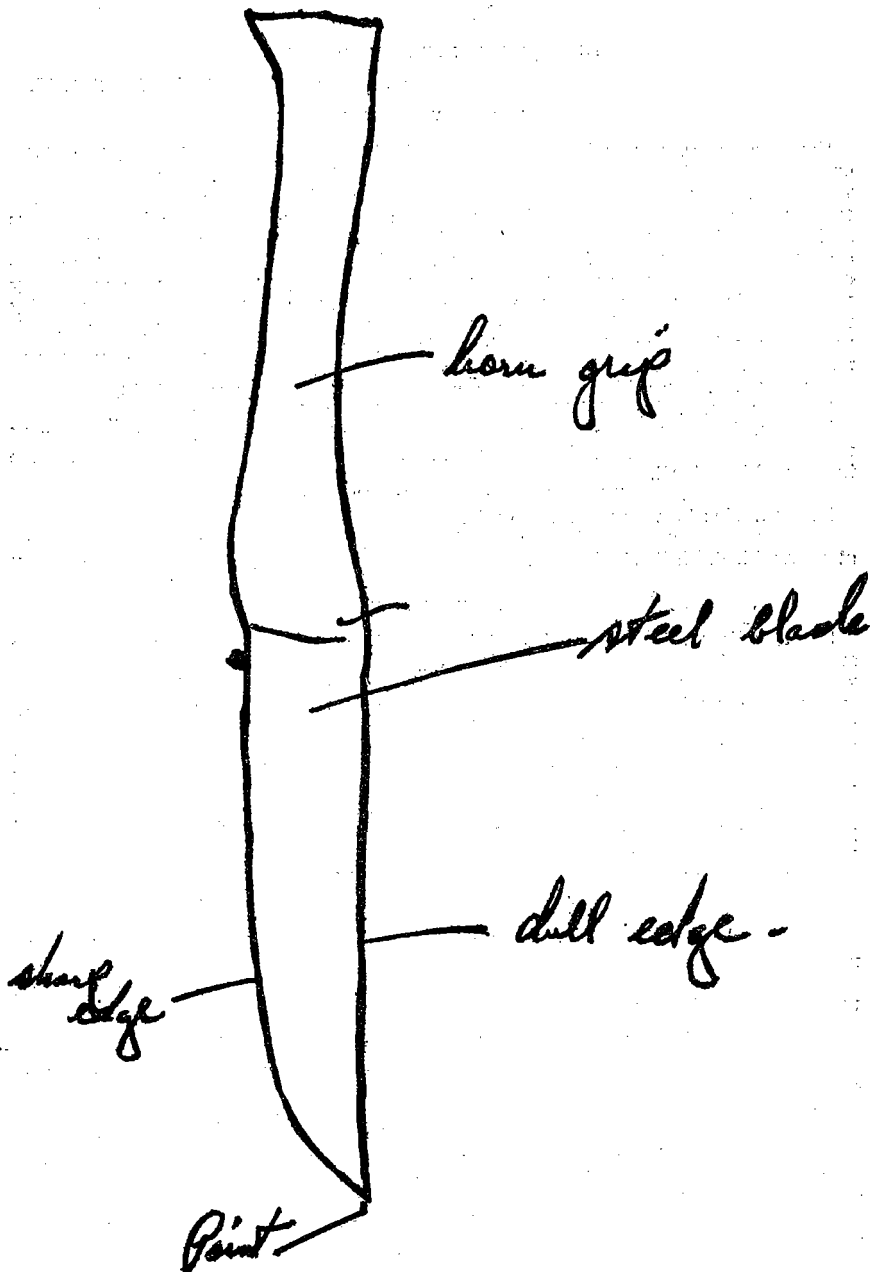
7. Eble stated that the stab wounds of the right arm were inflicted on January 17, 1946. He further stated that his arm became swollen, and that incision and drainage of pus was performed about the end of May 1946. To the examiners, this elapse of over 4 months between the alleged initial injury, and secondary infection, necessitating drainage, is completely implausible. It is hardly conceivable that secondary infection of such wounds could have been delayed more than 2 to 4 weeks after the initial injury.

8. Eble stated that at the time of the incision and drainage, a drain was inserted extending from the region of the axilla, on the inner aspect of the upper arm, to the lower third of the outer aspect of the upper arm, near the elbow. At the time of this examination there was no evidence of fibrosis in the region of this alleged drainage tract, and it is difficult for physicians to believe that such a long drainage tract was ever employed, and particularly for it to heal without leaving any residual fibrosis.

#### *Conclusions*

On the basis of the above evidence, it is the opinion of the medical examiners that Frederick Eble is a psychopathic personality and a pathological liar. It is our opinion that no credence can be placed upon any statements made by this individual.

JOHN D. LANE, M. D.  
RALPH S. LLOYD, D. D. S.  
LUTHER L. TERRY, M. D.



Drawing by Eble of knife alleged to have been used on him to obtain confession.

## EXHIBIT BB

## INTERROGATION BY SENATOR HUNT

LANDSBERG PRISON, *September 6, 1949.*

BERSIN, VALENTINE

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmédy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The subcommittee of which I am a member has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and I am ready now if you wish to make any additional statement.

BERSIN. No. In addition he made a statement on January 20, 1948.

Senator HUNT. Ask him if he testified in his own behalf at the trial.

BERSIN. He informed his defense counsel about the fake trial. Captain Narvid told him at this time that the court will be notified that those methods took place in Schwabisch Hall.

Senator HUNT. He did not testify at the trial?

BERSIN. No; he was not on the witness stand.

Senator Hunt asked Prisoner Bersin, "Did you receive any dental treatment at Schwabisch Hall within the confines of the prison?" The answer was "Nein."

BODE, FRIEDEL

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmédy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The subcommittee of which I am a member has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and I am ready now if you wish to make any additional statement.

BODE. He has made statement on Schwabisch Hall.

Senator HUNT. He has no other statements that he wants to make?

BODE. He could only go into more detail of the statements he gave.

Senator HUNT. Statements are in sufficient detail, however, if he wishes to make other statements, he may.

BODE. He would be able to make no different statement except to go into details, unless Senator Hunt wishes to ask other questions.

Senator HUNT. Did you testify at your own defense at the trial?

BODE. No.

Senator HUNT. Following the trial he made an affidavit telling of the physical force that had been exercised on him to gain a confession. Why didn't he request the privilege of appearing as a witness and explaining the ill treatment to the court?

BODE. He wanted to appear on the witness stand but Captain Narvid, defense counsel, told him it would not be necessary as long as one member of the company appears on the witness stand.

Senator HUNT. Who first suggested to him to make an affidavit with reference to the maltreatment?

BODE. We did it ourselves.

Senator HUNT. To whom did he present the affidavit when he finished it?

BODE. These affidavits were collected and turned over to somebody—who he does not know.

Senator HUNT. Had any member of the staff, or defense counsel, or any minister of any religion suggested to him to make out the affidavit?

BODE. He doesn't know for sure whether it was any member of the defense counsel, staff, or anybody else who made the suggestion at Schwabisch Hall.

Senator HUNT. What individual first suggested it to him?



BODE. The news that an affidavit could be written out was brought in by means of a letter or something.

Senator HUNT. Was it your own idea or somebody else's?

BODE. This idea was created by the defense.

Senator HUNT. Does he know what member of the defense? Colonel Everett, or Dr. Leer, the lawyer? Or some other name that he knows?

BODE. He does not know whether it came from Colonel Everett or Dr. Leer, the lawyer?

Senator HUNT. Does he know which one of those two it came from?

BODE. He does not know at all where this idea came from.

Senator HUNT. He has said that it came from defense attorneys. Now he says he does not know—which statement is right?

BODE. It is possible that this idea came from either the defense staff or defense counsel.

Senator HUNT. It was not his own idea?

BODE. It was not.

#### Conclusion

From the examination of this witness, my conclusion is that the affidavit he executed was suggested to him by defense counsel following the trials. This prisoner, as was the case with Bersin, stated that he did not take the witness stand on the advice of his counsel, Captain Narvid.

#### DIEFENTHAL

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slaying at Malmedy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The subcommittee of which I am a member has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and, I am ready now, if you wish, to make any additional statement.

Senator HUNT. Have you any other statement you would like to make?

DIEFENTHAL. Those statements he made on Friday; then he will be able to make further statements of them.

Senator HUNT. Did you appear as a witness in your own behalf?

DIEFENTHAL. No.

Senator HUNT. Why?

DIEFENTHAL. For two reasons: first, as defendants were not put on oath, the impression was that our statements will not be believed by the court; second, the chief defense counsel, Colonel Everett, advised the defendants not to take the witness stand. He would take care of that before the American authorities. It was the wish of all the defendants to take the witness stand and to retract the statements made in Schwabisch Hall.

Senator HUNT. Ask the witness if he made a personal request to be permitted to testify?

DIEFENTHAL. His direct defense counsel was Dr. Lalling. He repeatedly told Dr. Lalling that he wanted to take the witness stand but Dr. Lalling told him the speech made by Colonel Everett, which he made in front of all defendants, with respect to this, that all accusations made before the court were founded only on statements made in Schwabisch Hall. Again in the presence of Colonel Dwinnell also advised against it—also for those reasons that there are no accusations made against them except the Schwabisch Hall statements.

Senator HUNT. Can he answer this question: Would he have taken the stand to defend himself had the counsel allowed him to do so?

DIEFENTHAL. Yes.

Senator HUNT. Three of the Malmedy defendants appeared as witnesses. The defense counsels claim that these three witnesses made such poor witnesses that their testimony was convicting all of them and for that reason the defense counsel did not allow any more of the Malmedy prisoners to take the stand. Ask him if he believes that to be a fact. If he can, answer yes or no.

DIEFENTHAL. No.

If he may ask, he does not know who these three witnesses were.

Senator HUNT. This is information received from the records of the trial. I do not know who they were.

DIETTRICH. I think I know, and those were General Kramer, Preiss, Peiper.

Senator HUNT. I have no other questions.

### Conclusion

From the questions asked and answered by this prisoner, I am definitely of the opinion he, as well as other Malmedy prisoners, would like to have appeared in their own behalf, but counsel prevented them from doing so.

### DIETRICH

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmedy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The subcommittee of which I am a member has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and I am ready now if you wish to make any additional statement.

Ask him if he was kicked, beaten, or slapped or knocked down by either the guards or interrogators while he was in Schwabisch Hall.

DIETRICH. Yes.

Senator HUNT. Ask him, was he kicked?

DIETRICH. He was.

Senator HUNT. By whom?

DIETRICH. I don't know. I had a black hood over my head.

Senator HUNT. Were you knocked down?

DIETRICH. No.

Senator HUNT. Were you knocked out?

DIETRICH. No.

Senator HUNT. Did this treatment leave permanent injury.

DIETRICH. A little bit. On the shins and the right testicle hurts under slight pressure.

Senator HUNT. Have you been examined by the doctors?

DIETRICH. Yes.

Senator HUNT. Did he take the stand during the trials?

DIETRICH. No.

Senator HUNT. Why.

DIETRICH. The chief defense counsel would not let them take the stand.

Senator HUNT. With the rank that he held, would it not have been logical that he should have been a witness?

DIETRICH. Yes, but since the commanding general took the stand before him, the chief prosecutor was of the opinion that it was not necessary for him to show up at the stand to tell the same story.

Senator HUNT. Did you tell your counsel of the maltreatment at Schwabisch Hall?

DIETRICH. He told the defense lawyer and the prosecutor that he was mistreated.

Senator HUNT. He was given a questionnaire to fill out before trials. One of the questions was "Had you been mistreated at Schwabisch Hall?" What did he write on the paper at that time?

DIETRICH. He had received no questionnaire to fill out.

Co'onel FINN. Not before the trial?

DIETRICH. No.

Senator HUNT. Did you request permission to testify, from the counsel.

DIETRICH. Yes. He told his defense lawyer that he would take the stand in case it would be necessary.

Senator HUNT. Ask him if he places sole responsibility on the counsel for not being allowed to testify?

Senator HUNT. Did he receive plenty of food, and was it good?

DIETRICH. Yes.

Senator HUNT. Did he have sufficient water?

DIETRICH. The water could be taken from the latrine.

Senator HUNT. Did the guards come around with buckets of water?

DIETRICH. It can be possible, but he could not see any because he was locked away with a small hole in the door.

Senator HUNT. How did he happen to make the affidavit to the effect that he had been mistreated or did he make an affidavit to the effect that he had been mistreated?

DIETRICH. Yes; he did.

Senator HUNT. How did he happen to make that affidavit?

DIETRICH. Since they did not know how to help themselves, and since it was frequently denied that there was any mistreatment at Schwabisch Hall, the only solution was to forward an affidavit.

Colonel FINN. He did not file it?

DIETRICH. It was filed with the lawyer.

Senator HUNT. Did the lawyer tell him to make it out?

DIETRICH. No.

Colonel FINN. While he was hurt with the hood on, what was his position in the prison? What happened?

DIETRICH. First he was beaten in a hallway. He doesn't know where it was or whether he was going around in circles. He could see nothing. He thinks it must have been some hallway. The second time leading up and down the stairs, and the third time he was led into an interrogation cell.

Colonel FINN. He never was beaten in an interrogation cell?

DIETRICH. No.

Senator HUNT. Why didn't he make a written statement with reference to his mistreatment before the trial instead of after the trial?

DIETRICH. He made one statement and turned it over to Mr. Strong.

Senator HUNT. Ask him if he had hopes if in making the statement after the trials he would get a lighter sentence or a reprieve or commutation of sentence.

DIETRICH. No.

Senator HUNT. Why did he make it, then?

DIETRICH. He wanted to put it on record that Lieutenant Perle could receive those statements because of the physical condition they were in.

#### HUBER

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmedy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The subcommittee of which I am a member has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall, and I am ready now if you wish to make any additional statement.

While you were at Schwabisch Hall, did you receive any mistreatment from the interrogation team, the guards, or from anybody else?

HUBER. Yes.

Senator HUNT. Have him tell us what mistreatment he received.

HUBER. He arrived in the last part of January and up to the end of February his blankets were taken away from him. When he was taken into the interrogation cell he had to stand at attention with part of his body bare. The whole thing took place during a cold period. When he was led to another cell to finish his statement he was covered with a hood and was led with other colleagues downstairs and upstairs, and when he reached the top of the stairs he was pushed down.

Senator HUNT. Did he fall?

HUBER. Yes.

Senator HUNT. Was that the extent of the mistreatment?

HUBER. During his entire stay at Schwabisch Hall he never had any water. Whenever they wanted to drink they had to draw water from the latrines. During the whole stay in the death cell from the end of January to the end of February he was constantly kept awake by guards in front of his cell both day and night. Whenever he laid down, the guard asked him to get up again.

Senator HUNT. Do you have anything further?

HUBER. No.

Senator HUNT. Ask him if he requested permission to appear as a witness during the trial?

HUBER. Yes.

Senator HUNT. Who refused him permission to testify?

HUBER. The defense, or he is not sure who refused. It was only indicated that because of the short period of time that the process had to be hurried up.

Senator HUNT. Ask him if he would have told the story of mistreatment on the stand had he been given the opportunity to testify.

HUBER. Yes.

Senator HUNT. Ask him why he did not make the statement on his own and write it out and give it to the trial authorities?

HUBER. He didn't know who was in charge of it. He was only with his defense lawyer for about 10 minutes and then during intervals of the trial when he had a chance to say a few words with him.

Senator HUNT. Ask him who suggested to him to make the affidavit with reference to mistreatment at Schwabisch Hall.

HUBER. Nobody made the suggestion. He never made the statement. He only added that to the statement he sent to General Clay.

Senator HUNT. Ask him if he complained to anybody between the time he was at Schwabisch Hall and the trials with reference to treatment received.

HUBER. He said he never had a chance to do so. He had only once ten minutes with his lawyer and that is all. The lawyer could not talk about it because of lack of time. He said he would have to do it during the time of the trial.

Senator HUNT. Ask him if he believes that he was adequately or well defended.

HUBER. No.

Senator HUNT. Ask him if he made any direct request to his counsel to testify.

HUBER. He said that the prisoners were assembled and the defense put up the question who was willing to take the witness stand and then they reported. Then the defense was notified that it would not be possible since the trial had to be finished by a certain date.

Senator HUNT. Did his attorneys tell him that he would not testify because of shortness of time?

HUBER. He said that the time is too short to have everybody appear and it would be sufficient to have only a few fellows to appear on the witness stand.

Senator HUNT. Would you like to have appeared as a witness?

HUBER. He would like to have appeared as a witness in his own behalf.

Senator HUNT. Ask him who he handed his affidavit to with reference to his mistreatment.

HUBER. He handed it to Dr. Leer, his defense counsel and he in turn forwarded it to General Clay.

Senator HUNT. Ask him if he sent for Dr. Leer to come and get it.

HUBER. He never showed up at all. He sent the statement by mail.

Senator HUNT. Did Dr. Leer read statement before he signed it.

HUBER. No; he wrote statement and signed it.

Senator HUNT. Did any other defense attorney or any minister or priest read his confession before he signed it?

HUBER. No. He wrote it himself and forwarded it to Dr. Leer by means of mail and he in turn forwarded it to General Clay.

Senator HUNT. Did any priest or Protestant minister talk to him before he sent the statement?

HUBER. No.

Colonel FINN. As to Schwabisch Hall water, did he get tea or coffee with breakfast or dinner?

HUBER. In the morning he received a quarter of a liter of coffee. He received coffee at night.

Senator HUNT. Did the guards come around during the day with buckets of water?

HUBER. No.

Senator HUNT. He makes no claim with reference to any injury to his health?

HUBER. No.

#### KRAEMER

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmédy Crossing and to ascertain if the statements or the confessions were obtained by violence or force or the part of the interrogation.

team. The subcommittee of which I am a member, has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and I am ready now if you wish to make any additional statement.

Ask him if he filed any affidavit with reference to being mistreated.

KRAEMER. He was not mistreated in Schwabisch Hall and he did not submit any affidavit. What happened to him at Schwabisch Hall was put on record of the trial.

Senator HUNT. Did he appear as witness in the trial?

KRAEMER. He did.

Senator HUNT. Did he make any statement in the trial with reference to being mistreated in Schwabisch Hall?

KRAEMER. He was not able to talk about personal mistreatments because he was not mistreated, but whatever happened to him, he testified to it. He wonders if he could repeat what he did.

Senator HUNT. No. Doesn't he care to say whether these affidavits from the other men with reference to having teeth knocked out, with reference to being kicked in the testicles, being knocked down, told that ration cards would be taken from families, ask him to tell us if those things took place, if he will.

KRAEMER. He himself was not subject to those means.

Senator HUNT. Ask him if he saw this or was it all hearsay with him.

KRAEMER. He himself personally saw that a certain amount of men had to stand at attention with black hoods from their cells. The atmosphere at Schwabisch Hall was that everybody had the feeling that something would happen any minute. Whenever somebody was led out of the cell he was hooded and did not know where he was. There were always a number of men lined up before Mr. Thon and they had to repeat something all together so that everybody could hear it. About mistreatment he only heard about 5 days before trial. That was the first time they could talk to an American defense counsel.

Senator HUNT. Could you give the names of some men knocked down or kicked in the testicles?

KRAEMER. He could not see because he had a black hood over his head.

Senator HUNT. Did he ever fill out a questionnaire handed out to the prisoners prior to the trials in which they gave the name, organization, etc., and one question was "Have you been mistreated while you have been in Schwabisch Hall?"

KRAEMER. By whom were these questions given us? He did fill out questionnaires.

Senator HUNT. On that questionnaire, he didn't say anything about being mistreated?

KRAEMER. He was not mistreated and stated so.

Senator HUNT. Most of the other men here think that all of the other men failed to mention about mistreatment on the questionnaire. Ask him if he thinks they would have noted it had they been mistreated at that time.

KRAEMER. He is a German officer and never told a lie before in his life and has the opinion that whatever the men wrote in Schwabisch Hall was the truth.

Senator HUNT. Does he mean before trials or in testimony after trials.

KRAEMER. Apparently it does not make any difference before or after, it still would be the truth. He does not think it would be any different.

Senator HUNT. Does he think he was given the best defense possible that his attorneys were able to give him?

KRAEMER. He thinks that the American defense counsel did his best in the face of difficulties from the side of the prosecution.

Senator HUNT. Ask him if all men were allowed to testify in their own behalf, would there be some difference in the face of the trial?

KRAEMER. It would have made no difference since the prosecution made the testimony of the defense impossible. He himself witnessed that two German generals who were willing to testify in his own behalf were handicapped by the prosecution and the court did not restrain the prosecution from cross-examining.

Colonel FENN. Did Dr. Leer or any of the defense attorneys approach you to get affidavit on mistreatment?

KRAEMER. No. This affidavit was created out of the misery of the men and was not urged by Dr. Leer or anyone else.

Senator HUNT. To whom did you deliver the affidavit?

KRAEMER. He never delivered affidavits whatsoever.

## PEIPER

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmédy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The subcommittee of which I am a member, has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and I am ready now if you wish to make any additional statement.

You did not appear as a witness in your own behalf in the trials?

PEIPER. Yes, sir; I did.

Senator HUNT. You were a witness? You did testify on the stand? Who else testified?

PEIPER. General Kramer, Preiss, Hannakker, Goldschmidt, Marstheim and another accused named Boltz who later was transferred to the French Government because he was a French national.

Senator HUNT. I just had reference to the Malmédy trials.

Colonel FENN. How many altogether, six?

PEIPER. To the best of my knowledge, seven or eight.

Senator HUNT. How did you happen to testify?

PEIPER. Because I was made a key figure of all of the alleged Malmédy crimes. I wanted to give a clear account of all of the Malmédy story for the sake of my comrades, because I was the only man who was able to do so.

Senator HUNT. How were you selected to testify? By the counsel or by the rest of the prisoners?

PEIPER. I should say by both. My comrades appointed me to testify on their behalf. I talked this matter over with Colonel Everett, and he agreed that I should testify. I should like to add that this was at the beginning, but later on when some other comrades took the stand Colonel Everett got the impression that all the procedure was so organized against us that there was no reason to take the stand and then he assembled all the prisoners and told them that he would take it upon his own responsibility not to take the stand.

Senator HUNT. We have been led to believe that the witnesses who were made to appear were such poor witnesses that the balance were not made to take the stand. Is this statement true or not true?

PEIPER. The prisoners were of two groups, one group were officers who were supposed to give orders and the other group NCO's and men who were supposed to have executed these orders. These two interests were played against each other before execution and before that time by the investigating teams and by that means they got statements that they would get no punishment because they only executed orders. According to the story "A chain is as strong as its weakest link," they made written statements which served to charge superiors who wanted to stand for their men and keep face according to position, education, and ethics. When some men took the stand it was shown that when their own case was concerned they, of course, had to refer to some superior and I believe that is the question you ask, that the involved group were accused in testifying in their own behalf.

Senator HUNT. Were you mistreated in Schwabisch Hall?

PEIPER. Yes.

Senator HUNT. What mistreatment did you receive?

PEIPER. I was struck in the face.

Senator HUNT. By whom?

PEIPER. I cannot say for sure but I am pretty sure that it was the Polish guards.

Senator HUNT. Do you have any permanent injury from mistreatment?

PEIPER. No. I have testified on the stand and Colonel Ellis did not object.

Senator HUNT. Did you make any statement or any affidavit prior to trial?

PEIPER. No.

Senator HUNT. On the stand, did you say anything about mistreatment?

PEIPER. Yes. It is in the testimony.

Colonel FENN. I would like to ask, how did it happen that you made out an affidavit, or did you make an affidavit after trial?

PEIPER. Yes, I did.

Colonel FENN. How long after?

PEIPER. About a year.

Colonel FENN. How did it happen?

PEIPER. The reason was the confirmation of the death sentences.

Colonel FENN. Who made the suggestion; you did it voluntarily?

PEIPER. Voluntarily.

Senator HUNT. Did you put anything else in the affidavit?

PEIPER. No.

Senator HUNT. Was it suggested by any member of the defense counsel?

PEIPER. No; it was not.

Senator HUNT. Initiating the affidavit, you wrote it out yourself and then delivered it to the counsel without talking about it to them first?

PEIPER. Yes.

Senator HUNT. That affidavit has never been changed?

PEIPER. No; it has not.

Senator HUNT. Answer "yes" or "no" if you can. Did your counsel have any influence at all on you in the preparation or making of the affidavit? Did they signify to you a desire to have such an affidavit?

PEIPER. No. I should like to add that I have been here for 3 years and saw my counsel once and got one post card. That is all the communication I have had with my counsel.

Senator HUNT. Do you think you were adequately defended?

PEIPER. No.

Senator HUNT. None of you had anything to say as to who was appointed to defend you?

PEIPER. We were told by Colonel Ellis that we could choose. I suggested a name but it was not taken.

Senator HUNT. Were you satisfied that the counsel did everything?

PEIPER. American or German? I believe the German counsel put up a pretty poor show.

Senator HUNT. What do you think of American counsel?

PEIPER. I have respect for Colonel Everett.

Senator HUNT. You think he did a pretty good job in your behalf?

PEIPER. Yes, he was a gentleman; furthermore I was represented by Dwinell whom I respected.

PEIPER. I believe that this investigation here that is based on marks and scars which are still to be seen resulting from treatment at Schwabisch Hall cannot settle the question why these violences made these so-called confessions and what happened at Malmédy Crossroads. I believe that the background is a psychological one and therefore I should be very thankful if you could spare a few minutes to give a clear account of this.

Senator HUNT. Our only object as set out in the preliminary statement is to check on actions of brutalities in Schwabisch Hall.

PEIPER. Yes, sir; but ill-treatment and ill-treatment has a difference. It is not necessary to treat a man with violence to get a confession from him, but to treat him with psychological tricks is for some men more effective. There are other possibilities especially after a complete break-down of a nation and a lost war. That is the story of Schwabisch Hall, the lost war and the hopeless situation of men who came from the front and who had been heroes of the country and who were now subject to Polish guards. Prisoners who had but one duty, that is to keep their face as former officers and to make the best of a bad business by their attitude and by covering their subordinates. That is the problem of Schwabisch Hall and not the beatings. Therefore, I wanted to point out that the looking for scars is not the problem. The problem is very different.

Senator HUNT. We understand that. This is one of the avenues we are using. We have volumes in our files on the other aspects.

ZWIGART

(Copy of excerpts from sworn statement attached)

Senator HUNT. I am a Member of the United States Senate and a member of the subcommittee of the Armed Services Committee of the Senate. My subcommittee was directed by resolution passed by the Senate to investigate the claims of mistreatment contained in affidavits by certain prisoners convicted of the slayings at Malmédy Crossing and to ascertain if the statements or the confessions were obtained by violence or force on the part of the interrogation team. The

subcommittee of which I am a member, has no authority whatsoever to make any recommendations with reference to the sentences, nor do we have any authority to review the trials. I have here before me a statement made by you in which you allege mistreatment at Schwabisch Hall and I am ready now if you wish to make any additional statement.

Ask him if he appeared as witness in his own behalf?

ZWIGART. No.

Senator HUNT. Ask him if he requested to be allowed to take the witness stand.

ZWIGART. Colonel Everett advised him not to appear as witness.

Senator HUNT. Ask him if he told Colonel Everett of this mistreatment prior to or during the trials.

ZWIGART. Yes; he did.

Senator HUNT. What did Colonel Everett say when he was told about it?

ZWIGART. He said that he would not play ball in this lying business and that he would take the responsibility from now on.

Senator HUNT. Ask him if by that he meant that Colonel Everett did not believe that these things happened.

ZWIGART. On the contrary, he meant that there was no possibility to appear as a witness any more.

Senator HUNT. Ask him if he would have told this on the stand had it been allowed to have him appear as witness.

ZWIGART. Yes.

Senator HUNT. Ask him if he thinks he received adequate legal defense and was he pleased with the defense provided for him?

ZWIGART. He only spent about 5 minutes with Captain Narvid.

Senator HUNT. Ask him if he ever talked with Colonel Everett.

ZWIGART. No; never.

Senator HUNT. Who consulted with him and who helped him prepare this statement with reference to the brutalities?

ZWIGART. Nobody; he wrote the statement in here.

PAUL ZWIGART

(Excerpts as to physical mistreatment from sworn statement of Paul Zwigart (undated) made at Landsberg, Germany, exhibit 23, Justice Review Board.)

(Arrived at Schwabisch Hall, December 4, 1945)

"In the prison courtyard in front of the entrance to the prison building the guards jerked my arms up in the air. Then I had to walk through the whole prison building up to the fourth floor with my hands raised above my head on the double until I reached the cell which was reserved for me. In the course of this I was beaten in the back with wooden clubs by the guards I passed every 5 to 10 meters."

"On January 18, 1946, I was taken to the interrogation by a guard with a hood over my head. Someone stood me up against the wall with my face toward the wall in front of the interrogation cell and jerked my arms up in the air. Then I was kicked severely continuously for about 20 minutes as I stood in this position. After my head had been jolted against the wall very roughly for the second time, I collapsed. Then I was taken into the interrogation cell a few paces by somebody where First Lieutenant Perl violently jerked the hood from my head.

"But I had scarcely begun before Perl boxed me in the face and Mr. Thon kicked me in my sexual organs. When I writhed in pain the two officials jerked me back and forth by grabbing my clothes.

"I was beaten by these officials in my face and abdomen to such an extent that my mouth and nose bled and I writhed in pain and screamed out in a loud voice. \* \* \* both the officials beat me so long and so hard in my face and my abdomen that I bled and writhed with pain and screamed."

"\* \* \* I was taken out of the cell with a hood over my head and taken into another cell. There I had to climb up on a chair and hold my hands up in the air, the hood still over my head, during which the two interrogators helped me and cursed me or threatened me in the most brutal manner. Then a new noose was tied around my neck; as I was about to defend myself against a new threat and accusation the noose was drawn taut so that I desperately gasped for air. Then I got a terrific blow in the abdomen so that I fell down from the chair and screamed and writhed in pain. \* \* \*"

"When the first horror tales were dictated to me and I refused to write down these lies, I was beaten and threatened with the words: \* \* \* and then I was beaten again and threatened in every possible way."



Senator HUNT. Ask him how he happened to do it.

ZWIGART. The first letters he sent back home they only reached home with the address and signature on it. That was his first chance to defend himself since in former days letters were censored and whatever pertained to defense matters was cut out.

Senator HUNT. Ask him if he made a request for pencil and paper prior to the trial and if they would have given it to him would he have made that statement at that time?

ZWIGART. Yes.

Senator HUNT. Did you request pencil and paper at any time?

ZWIGART. The defense counsel said that he would have no time and the defense would have no time to fuss around with details.

Senator HUNT. Answer this question "Yes" or "No." Does he feel that his defense counsel is responsible for him making the statement \* \* \* as nothing in the statement at trials.

ZWIGART. He cannot put himself in the shoes of the defense counsel.

Senator HUNT. Tell him that the fact that these statements and affidavits were not made until after the trials had been completed and the sentences announced leads us to believe that they were made as a last resort to prevent carrying out of the sentences.

ZWIGART. No; they did not have any ideas about American or German laws whatsoever as far as rights are concerned. He did not know what the score was until his verdict was spoken and then after sentence was given it was his own wish to write and let them know what happened.

Colonel FENN. Ask him if when Colonel Everett started to work on his case if he was not given a slip of paper in which he was to answer about his branch of service, number, and whether he was mistreated?

ZWIGART. It can be possible.

Colonel FENN. Did he get such a sheet to fill out?

ZWIGART. Mr. Strong did it.

Colonel FENN. Why didn't he put that down in the paper?

ZWIGART. He entered nothing that happened at Schwabisch Hall.

Senator HUNT. He put it down?

ZWIGART. He would not know for sure.

Colonel FENN. Ask him if he still remembers a slip of paper before the trial? Ask him if Captain Narvid talked to him about it?

ZWIGART. He said Captain Narvid seemed to be in rather a hurry to make the notes on the paper. Captain Narvid made the notes on the paper.

#### *Conclusion*

This committee gives some consideration to the fact that either the truth or the falsity of the evidence submitted claiming violence and physical force used to obtain sentence depends on the statements contained in the original account of these interrogation sheets submitted to the prisoners prior to the trial which were collected by the defense counsel and have as of this date not been made available. It is the opinion of one member of the committee that unless these interrogation sheets are produced and corroborate the statements made in the posttrial evidence by the prisoners, that very little credence can be given to the evidence alleging atrocities and physical force to obtain from the prisoners the admission of guilt in the Malmédy murders.

X