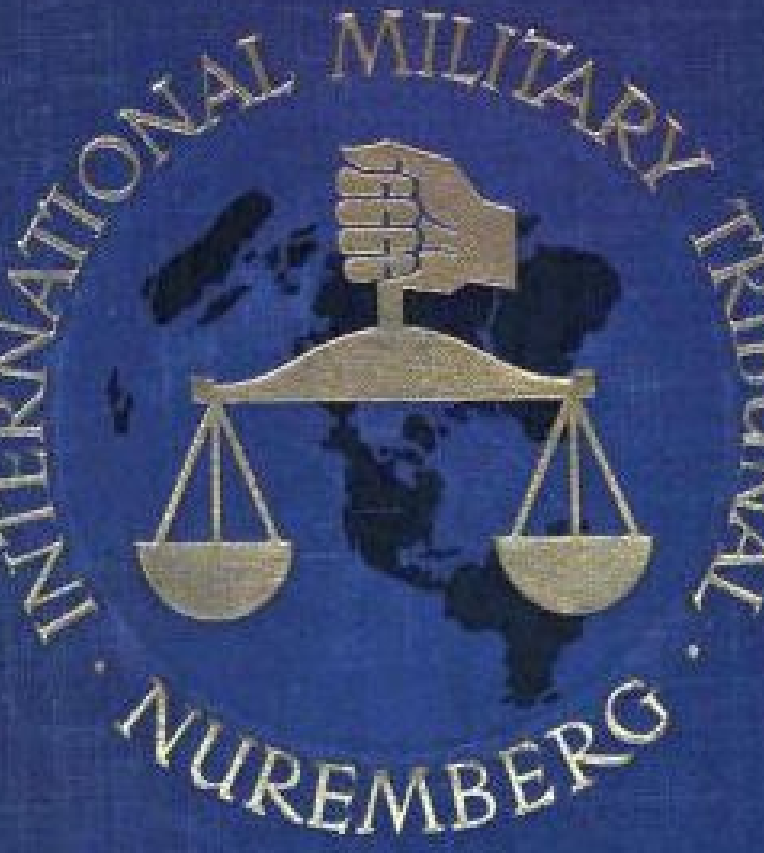
INTERNATIONAL MILITARY TRIBUNAL
NUREMBERG

Title: Trial of the Major War Criminals Before the International Military Tribunal: Nuremberg 14 November 1945-1 October 1946 (Vol. 8)
Date of first publication: 1947
Author: Various
Date first posted: Sep. 9, 2020
Date last updated: Sep. 9, 2020
Faded Page eBook #20200917

This eBook was produced by: John Routh, Cindy Beyer & the online Distributed Proofreaders Canada team at https://www.pgdpcanada.net

TRIAL
OF
THE MAJOR WAR CRIMINALS

BEFORE

THE INTERNATIONAL MILITARY TRIBUNAL

NUREMBERG
14 NOVEMBER 1945-1 OCTOBER 1946

PUBLISHED AT NUREMBERG, GERMANY
1947

This volume is published in accordance with the direction of the International Military Tribunal by the Secretariat of the Tribunal, under the jurisdiction of the Allied Control Authority for Germany.

VOLUME VIII

OFFICIAL TEXT

IN THE

ENGLISH LANGUAGE

PROCEEDINGS

20 February 1946-7 March 1946

EDITOR'S NOTE

On 1 July 1947 Mr. S. Paul A. Joosten was appointed Deputy General Secretary of the International Military Tribunal.

On 30 September 1947 Mr. S. Paul A. Joosten was appointed Editor of the Record in addition to his other duties.

CONTENTS

Sixty-third Day, Wednesday, 20 February 1946,
Morning Session 1
Afternoon Session 31

Sixty-fourth Day, Thursday, 21 February 1946,
Morning Session 53
Afternoon Session 81

Sixty-fifth Day, Friday, 22 February 1946,
Morning Session 105
Afternoon Session 125

Sixty-sixth Day, Saturday, 23 February 1946,
Morning Session 159
Afternoon Session 186

Sixty-seventh Day, Monday, 25 February 1946,
Morning Session 202
Afternoon Session 230

Sixty-eighth Day, Tuesday, 26 February 1946,
Morning Session 251
Afternoon Session 281

Sixty-ninth Day, Wednesday, 27 February 1946,
Morning Session 300
Afternoon Session 324

Seventieth Day, Thursday, 28 February 1946,
Morning Session 353
Afternoon Session 383

Seventy-first Day, Friday, 1 March 1946,
Morning Session 409
Afternoon Session 431

Seventy-second Day, Saturday, 2 March 1946,

Morning Session..... 468

Seventy-third Day, Monday, 4 March 1946,
Morning Session..... 489
Afternoon Session..... 517

Seventy-fourth Day, Tuesday, 5 March 1946,
Morning Session..... 532

Seventy-fifth Day, Wednesday, 6 March 1946,
Morning Session..... 554
Afternoon Session..... 578

Seventy-sixth Day, Thursday, 7 March 1946,
Morning Session..... 597
Afternoon Session..... 621

SIXTY-THIRD DAY

Wednesday, 20 February 1946

Morning Session

GENERAL R. A. RUDENKO (Chief Prosecutor for the U.S.S.R.): Mr. President, with the permission of the Tribunal, evidence on the count "Despoliation and Plunder of Private, Public, and National Property" will be presented by the State Counsellor of Justice, Second Class, L. R. Shenin.

STATE COUNSELLOR OF JUSTICE OF THE SECOND CLASS L. R. SHENIN (Assistant Prosecutor for the U.S.S.R.): May it please Your Honors, my task consists in presenting to the Tribunal evidence of the criminal and predatory motives of Hitlerite aggression and of the monstrous plundering of the peoples of Czechoslovakia, Poland, Yugoslavia, Greece, and the U.S.S.R.

My colleagues have already proved that the attack on the U.S.S.R., as well as on other European countries, was planned and prepared beforehand by the criminal Hitlerite Government.

I shall submit to the Tribunal a number of the conspirators' original documents, statements, and speeches, which in the aggregate will prove that the despoliation and plunder of private, public, and national property in the occupied territories was also premeditated, planned, and prepared on a large scale, and that thus, simultaneously with the development of their purely military and strategic plans of attack, the Hitlerites with the cold-blooded deliberateness of professional robbers and murderers also developed and prepared beforehand the plan of organized plunder and marauding, after having minutely and accurately calculated their future profits, their criminal gains, their robbers' spoils.

The official report of the Czechoslovak Government on the crimes committed by the Hitlerites on the territory of Czechoslovakia, the first victim of German aggression, has already been submitted to the Tribunal as Exhibit Number USSR-60 (Document Number USSR-60).

In the third section of this report there is a short extract from an article by Ley, published on 30 January 1940 in the *Angriff*. I quote:

"It is our destiny to belong to a superior race. A lower race needs less room, less clothing, less food, and less culture, than a superior race."

This promise, this program of action, found its concrete expression in the fact that the Hitlerite conspirators subjected all territories occupied by them to unrestrained plunder, highly varied in form and method and entirely shameless in its devastating results. The report of the Czechoslovak Government contains a large number of examples corroborating the corresponding counts of the Indictment.

I shall read this section into the record starting with the first paragraph on Page 72 of the Russian translation. I read:

"The German plan of campaign against Czechoslovakia was aimed not only against the republic as a political and military unit, but also against the very existence of the Czechoslovak people, who were to be robbed not only of all political rights and cultural life, but of their wealth and their financial and industrial resources.

"(1) Immediate Plunder.

"(a) After Munich.

"Immediately after Munich the Germans seized all the industrial and commercial concerns belonging to the Czechs and Jews in the seized areas of the republic; this was done without any compensation. Czechs and Jews were robbed of their property and of their office and plant equipment, usually by violence and bloodshed."

The following characteristic fact is mentioned in the report, namely, the way in which Hitler became acquainted with Czechoslovakia, which he had just seized. I shall read into the record Subparagraph B of this section, entitled, "After the Invasion of 15 March 1939." The Tribunal will find this excerpt on Pages 3 and 4 of the document book. I quote:

"Hitler entered Prague at nightfall on 15 March 1939, and spent the night there in the famous Hradschin castle. He left on the following day, taking with him a number of valuable tapestries. We mention this robbery not because of the value of the stolen objects, but as an example set by the head of the Party and of the German State on the very first day of invasion.

"The German troops who invaded Prague brought with them a staff of German economic experts, that is, experts in economic looting.

"Everything that could be of some value to Germany was seized, especially large stocks of raw materials, such as copper, tin, iron, cotton, wool, great stocks of food, *et cetera*.

"Rolling stock, carriages, engines, and so on were removed to the Reich. All the rails in the Protectorate which were in good condition were lifted and sent to Germany; later they were replaced by old rails brought from Germany. New cars fresh from the factory which were on order for the Prague municipal tramways and had just been completed were deflected from their purpose and sent to the Reich.

"The vessels belonging to the Czechoslovak Danube Steam Navigation Company (the majority of shares belonged to the Czechoslovak State) were divided between the Reich and Hungary.

"Valuable objects of art and furniture disappeared from public buildings, without even an attempt at any legal justification of such robbery; pictures, statues, tapestries were taken to Germany. The Czech National Museum, the Modern Art Gallery, and public and private collections were plundered.

"The German Reich Commissioner of the Czechoslovak National Bank stopped all payments of currency abroad and seized all the gold reserve and foreign currency in the Protectorate. Thus the Germans took 23,000 kilograms of gold of a nominal value of 737,000 million crowns (5,265,000 pounds sterling) and transferred the gold from the Bank of International Settlement to the Reichsbank."

One of the methods of thorough—I should say total—plunder was the so-called economic Germanization. I submit to the Tribunal as evidence of these crimes the following extract from the official Czechoslovak report. This extract the Tribunal will find on Pages 4 and 5 of the document book:

"(2) Economic Germanization.

"A. Rural. Expropriation.

"(aa) After Munich.

"In the areas occupied by the German Army in October 1938 Germany began to settle her nationals on all the farms formerly belonging to Czechs or Jews who had fled for political or racial reasons.

“The Czechoslovak Land Reform Act of 1919, insofar as it benefited Czech nationals, was declared invalid; Czech farmers were expelled from their land and compelled to relinquish their cattle, agricultural implements, and furniture.

“On paper the Czechs received compensation; in fact, however, they were burdened with taxes in order to make good the so-called ‘deliberate damage’ they were alleged to have caused by their flight. These taxes far exceeded the compensation.

“The large agricultural and government estates of the Czechoslovak Republic automatically became Reich property and came under the jurisdiction of the Reich ministries concerned.

“(bb) After the invasion of 15 March 1939.

“After the invasion, German directors, supervisors, and foremen replaced Czech nationals in state-owned enterprises of the Czechoslovak Republic.

“Germanization of private property began, of course, under the slogan ‘Aryanization.’

“The Germanization of rural Bohemia and Moravia was entrusted to a special body called ‘Deutsche Siedlungsgesellschaft’ located in Prague.

“Czech peasants were offered compensation for their food products but at entirely inadequate prices.

“Rural Germanization, apart from Germanization pure and simple, aimed at pauperizing as many well-to-do Czech nationals as possible.

“The Nazis did their utmost to squeeze as much as possible out of Czech agriculture. Here too their aim was twofold: On the one hand to obtain as much foodstuffs as possible, and on the other, to carry the process of Germanization as far as possible.

“Farmers were turned out of their farms to make way for German settlers—entire agricultural districts were in this way cleared of Czechs. Agricultural co-operative societies in control of production were transformed into auxiliary organizations and were gradually germanized.

“The looting of property and wealth was followed by the pillaging of products of the soil. Heavy fines and frequently even the death penalty were imposed on Czech peasants for intentional failure to comply with orders regarding production, delivery, and rationing.

“B. Expropriation of banks and their funds.

“In Czechoslovakia industrial undertakings were directly financed by the banks, which often owned or controlled the majority of shares. Having obtained control of the banks, the Nazis thus secured control of industry.

“(a) After Munich.

“After Munich, two important German banks, the Dresdner Bank and the Deutsche Bank took over the branches of Prague banks, situated in the ceded territory. Thus among the enterprises taken over by the Dresdner Bank were 32 branches of the Bohemian Discount Bank and among those taken over by the Deutsche Bank were 25 branches of Bohemian Union Bank.

“As soon as these two banks obtained control of the branch banks in the Sudetenland they also endeavored to gain influence on the respective head offices of these banks in Prague.

“The Czechoslovak banks were joint stock companies. Every joint stock company with even one Jewish director was considered to be Jewish. In this manner the non-Jewish property was also taken over.

“(b) After the invasion of 15 March 1939.

“After the invasion several Czechoslovak banks in Bohemia, in consequence of their Aryanization, became the property of the Dresdner Bank. Among other enterprises, this German bank took over the Union Bank of Bohemia. In this way all the financial interests which these banks had in Czech industry, as well as the entire share capital, fell into German hands.

“From that time on German capital began to infiltrate into the Czech banks; their expropriation and incorporation into the German bank system began. The Dresdner Bank (the establishment which administered the funds of the National Socialist Party) and the Deutsche Bank were officially entrusted with the task of expropriating the funds belonging to the Czechoslovak banking concerns.

“By means of various ‘transactions,’ by gaining influence through the branch banks in the Sudetenland over their respective head offices in Prague, by reducing the share capital, which was later increased with German assistance, by appropriating industrial holdings and in this way acquiring influence over the controlling

banks which were thus deprived of their industrial interests, *et cetera*, the two Berlin banks achieved complete control of the banks of the Protectorate. Gestapo terror helped them."

I skip one paragraph of this report and pass on to the next count:

"C. Destruction of National Industry.

"(a) Compulsory organization.

"After the invasion the Germans introduced into the Protectorate the compulsory organization of Czech industry on the German model.

"They appointed a committee for every new association and all the industrial 'groups' appointing at least one Nazi as chairman or vice chairman or, just as an ordinary member. However, all the Czech members actually were mere puppets.

"(b) Armament factories.

"The Dresdner Bank acquired the most important armament factories in Czechoslovakia, that is, the Skoda Works in Pilsen and the Czechoslovak 'Zborjobka' in Brünn. The private share-holders were forced to surrender their shares at prices far below their actual value; the bank paid for these shares with coupons which had been withdrawn from circulation, and confiscated by the Germans in the districts previously ceded in accordance with the Munich agreement.

"(c) The Hermann Göring Werke.

"The seizure by the Germans of the Czechoslovak banks and thus of the industry, through the big Berlin banks, was accomplished with the help of the gigantic Hermann Göring Werke which seized the greatest Czechoslovak industries, one by one, at the smallest financial cost, that is to say, under the pretext of Aryanization, by pressure from the Reich, by financial measures, and finally by threatening Gestapo measures and concentration camps.

"Finally, all the large Czechoslovak enterprises, factories, and armament plants, and the coal and iron industries fell into German hands. The huge chemical industry was seized by the German concern, I. G. Farben Industrie."

I skip the paragraph concerning the same methods adopted in the case of light industry and pass on to the next count of the report, "Financial Spoliation."

"After the occupation of the territory, ceded apparently in accordance with the Munich agreement, the Germans refused to take over part of the Czechoslovak State debt, although they acquired very valuable State property in the districts taken away from Czechoslovakia. Government bonds of low denominations amounting to a total of 1,600 million crowns were in circulation in the occupied territory.

"The Germans reserved the right to use these obligations in Czechoslovakia as legal tender."

Gentlemen, further on in this report we find a detailed account of the Hitlerite campaign of spoliation directed against the financial economy of the Czechoslovak Republic. With a view to saving time I shall refrain from quoting this excerpt and shall merely submit the balance sheet of the Czechoslovak National Bank.

"The balance sheet of the Czech National Bank showed the following figures for 'other assets' in million of crowns: 31 December 1938, 845; 31 December 1939, 3,576; 31 December 1942, 17,366."

I now quote an excerpt from the section entitled, "Taxes":

"When war broke out the Nazis fixed the war contribution of the Protectorate at an annual sum of 2,000 million crowns (14.2 million pounds sterling). The Nazis claimed that they were entitled to this on the grounds that the Czechs did not have to fight, because the Germans fought for them.

"Immediately after the occupation the Germans seized the proceeds of various indirect taxes and diverted them into the Reich Treasury."

Gentlemen, the excerpt which I just read from the report of the Czechoslovak Government gives an adequate picture of the manner in which, after having seized Czechoslovakia, the Hitlerites subjected it to wanton plunder in every field of its economic life—agriculture, industry, and finance.

Having seized the entire economic resources of the Czechoslovak Republic, the Hitlerite Government forced this economy to serve their criminal interests, extracting everything possible in order to prepare for further aggression against the peoples of Europe and for new military attacks with the monstrous aim of achieving world domination by the German "master race."

I shall now pass to the reading of the fourth section of the official report of the Polish Government dealing with crimes committed by the Hitlerites in occupied Poland. This report has already been presented to the Tribunal as Exhibit Number USSR-93 (Document Number USSR-93) and, according to Article 21 of the Charter, constitutes irrefutable evidence. I quote an excerpt from this report which the Tribunal will find on Page 14 of the document book:

"Expropriation and plunder of public and private property.

"a) On 27 September 1939 the German military authorities issued a decree concerning the sequestration and confiscation of Polish property in the western provinces. 'The property of the Polish State, Polish public institutions, municipalities and unions, individuals, and corporations can be sequestered and confiscated,' stated Paragraph 1 of the said decree.

"b) The right of the military authorities to dispose of Polish property in the incorporated provinces passed to the 'Haupttreuhandstelle Ost' (created by Göring on 1 November 1939) with headquarters in Berlin and branch offices in Poland. It was entrusted with the administration of confiscated property of the Polish State, as well as with the general policy in Poland in accordance with the plan devised by the Reich Government.

"c) By a decree of 15 January 1940, the entire property of the Polish State was placed under 'protection,' which practically meant confiscation of all State property in the incorporated territories. A special decree of 12 February 1940 dealt with agriculture and forestry in the same way.

"d) The confiscation of private property in the western provinces was initiated by a decree of 31 January 1940. Special permission was required for acquisition of property and transfer of ownership rights in all enterprises in the incorporated territory. By another decree of 12 June 1940, Göring authorized the 'Haupttreuhandstelle Ost' to seize and administer, not only State property, but also the property of citizens of the 'former Polish State.'

"e) The process of confiscation, however, went further. The property of Polish citizens became liable to seizure and confiscation unless the owner acquired German citizenship in accordance with Hitler's decree of 8 October 1939.

> "Other decrees dealt with the repayment of debts, because the sequestrators were authorized to repay debts to privileged creditors only. These were members of the 'Deutsche Volksliste' so far as war debts were concerned, as well as citizens of the Reich or the free city of Danzig, as regards debts incurred after 1 September 1939."

I skip two pages of this report enumerating the companies which were specially created for carrying out of this plunder activity and also for plundering the Polish-Jewish population, which as is already known to the Tribunal, was later exterminated. I pass on to the end of the Polish Government report. The Tribunal will find this excerpt on Page 17 of the document book.

Mere quotations from these and other decrees may create a wrong impression as to the means used by the defendants in the case of the Jewish property in Poland. But it should be pointed out that steps concerning Jewish property were only preliminaries to infinitely greater crimes in the future. At the end of this section of the report is justly stated—I quote:

> "Aside from the crimes which have been proved and described here, there are thousands of others which fade into insignificance beside the numberless crimes of mass murder, mass plunder, and mass destruction."

It is impossible to enumerate all the crimes committed in Poland under the direct leadership of the Defendant Frank, who was the head of all the administration in the so-called Government General.

Frank's diaries which were found and became part of the evidence in this case, give a clear and concrete idea of the crimes committed by the Hitlerites in Poland under his direction. In these diaries, Your Honors, are entries which have a direct bearing on the subject of my presentation.

Therefore I should like, with your permission, to quote excerpts from this diary which have not yet been quoted.

I quote from the volume entitled "Conference of Departmental Heads for 1939-1940" (Document Number USSR-223), Pages 11 and 12. In your document book, gentlemen, this excerpt is on Page 21:

> "My relationship with the Poles resembles that between an ant and a plant louse. When I treat the Poles helpfully, tickle them in a friendly manner, so to speak, I do it in the expectation that I shall profit by their labor output. This is not a political, but a purely tactical and technical problem. In cases where, in spite of all measures, the output does not increase, or where I have the

slightest reason to step in, I would not hesitate to take even the most Draconian action."

From the volume entitled "Diary 1942" I quote:

"Dr. Frank: 'We must remember that notes issued by the Bank of Poland to the value of 540,000,000 zlotys were taken over in Occupied Eastern Territory by the Governor General without any compensation being made by the Reich. This represents a contribution of more than 500 million exacted from the Government General by Germany, in addition to other payments.' "

From the same volume, Page 1277—this concerns the Governor's conference which took place on 7 December 1942, in Kraków—measures for increasing production for the years 1942-43 were discussed. A certain Dr. Fischer stated:

"If the new food scheme is carried out, it would mean that in Warsaw and its suburbs alone 500,000 people would be deprived of food."

From the same volume on Page 1331, Frank speaks:

"I shall endeavor to squeeze out from the reserves of this province everything that it is still possible to squeeze out. . . . If you recall that I was able to send to Germany 600,000 tons of grain and that an additional 180,000 tons were reserved for local troops, as well as many thousands of tons of seed, fats, vegetables, besides the export to Germany of 300 million eggs, *et cetera*, you will understand how important work in this region is for Germany."

This same Frank on Page 1332 states the following—the Tribunal will find this quotation on Page 27 of the document book:

"These consignments to the Reich had, however, one definite drawback to them, since the quantities we were responsible for delivering exceeded the actual food supplies required by the region. We now have to face the following problem. Can we, as from February, cut 2 million non-German inhabitants of the region out of the general rationing scheme?"

In the volume entitled "Workers Conferences for 1943," we find an excerpt concerning the conference of 14 April 1943, which took place in Kraków. On Page 28 of the document book, the Tribunal will find the excerpt which I wish to read into the record.

"President Naumann is speaking, and he quotes the figures estimated for 1943-44:

"One thousand five hundred tons of sweets for the Germans, 36 million liters of skimmed fresh milk; 15,100,000 liters of full cream milk for the Germans."

On Page 24 the same person continues—this total account is on Page 28 of the document book:

"Last year, more than 20 percent of the total amount of live stock in the Government General was requisitioned. Cattle which were really required for the production of milk and butter were slaughtered last year so that the Reich and the armed forces could be supplied and the meat ration maintained to a certain extent. If we want 120,000 tons of meat, we must sacrifice 40 percent of the remaining live stock."

And further:

"In answer to a question by the Governor General, President Naumann replied that 383,000 tons of grain were requisitioned in 1940, 685,000 tons in 1941, and 1.2 million tons in 1942. It appears from these figures that requisitions have increased from year to year and have steadily approached the limits of possibility. Now they are preparing to increase the requisitions by another 200,000 tons which will bring them to the extreme bounds of possibility. The Polish peasant cannot be allowed to starve beyond the point where he will still be able to cultivate his fields and carry out any further tasks imposed upon him, such as carting wood for the forestry authorities."

However, the quotation which I have read from Naumann's reply in no way influenced the policy of the merciless plundering of the Polish people, whose fate, to use Frank's own words, interested him from one angle only.

In the volume entitled "Diary, From 1 January to 28 February 1944" there is the following statement by Frank made at the conference of the leaders of German agriculture on 12 January 1944. The Tribunal will find this excerpt on Page 30 of the document book.

"Once we have won the war, the Poles, Ukrainians, and all other people living around can be made into mincemeat, or anything else, as far as I am concerned."

I believe, Your Honors, that after this quotation there is no need for me, as a representative of the Soviet Prosecution, to add anything more to that

section of my statement which deals with the crimes committed by the Hitlerite criminals on the territory of the Polish State. Indeed, any one of the sentences quoted is more than sufficient to give us an exact picture of the regime in Poland created by Frank, and of Frank himself, who created this regime.

Turning now to the plunder and pillage of private and public property by the Hitlerites in Yugoslavia, I must, Your Honors, read the appropriate extracts of the official report of the Yugoslav Government, submitted to the International Military Tribunal by the Soviet Prosecution as Exhibit USSR-36 (Document Number USSR-36). This report, in accordance with Article 21 of the Charter, is submitted as irrefutable evidence.

Count 6 of this report, entitled "Plunder of Public and Private Property," reads as follows—this count is on Page 32 of the document book:

> "6. Plunder of public and private property.
>
> "Along with the exploitation of manpower the plundering of public and private property was systematically carried out in Yugoslavia. This plunder was carried out in various ways and within the scope of the different measures taken. In this way, too, Germany succeeded in completely exhausting the economic and financial forces in occupied Yugoslavia and in destroying her almost completely from the economic point of view.
>
> "We shall cite here only a few examples of this systematic plunder:
>
> "A. Currency and credit measures.
>
> "Just as in other occupied countries, the Germans, immediately after their entry into Yugoslavia, carried out a series of currency measures which enabled them to take out of Yugoslavia in great quantities goods and other valuables at an insignificant price. As early as 14 April 1941"—that is to say, even before the occupation of Yugoslavia was actually completed—"the Commander-in-Chief of the Army, 'on the basis of the authority received from the Führer and Supreme Commander of the German Armed Forces,' issued the 'Proclamation Concerning Occupied Yugoslav Territory.'
>
> "Article 9 of this proclamation fixes an obligatory rate of exchange of 20 Yugoslav dinars for 1 German mark. Thus the value of the dinar in relation to the Reichsmark was artificially and by force lowered. The real rate of exchange before the war was much more favorable to the Yugoslav currency.

"This proves clearly the violation of the appropriate regulations of the Hague Convention, as well as the existence of a plan prepared in advance for the depreciation of Yugoslav currency."

I submit to the Tribunal a certified photographic copy of the aforementioned proclamation as Exhibit Number USSR-140 (Document Number USSR-140).

"The second predatory measure in the field of currency policy was the introduction of German bonds (Reichskreditkassenschein) as an obligatory means of payment in the occupied territory of Yugoslavia. This measure was also mentioned in Paragraph IX of the proclamation submitted to the Tribunal as Exhibit Number USSR-140. These so-called occupation marks, which were without any economic foundation and without any value whatsoever in Germany itself, were printed in Yugoslavia in accordance with the needs of the German forces of occupation and authorities and in this way served as a means for enabling them to make purchases at a very low price.

"On 30 June 1942"—that is to say, more than a year later—"these Reich bonds were withdrawn. This took place after the Germans had already bought up almost everything that could be purchased in Yugoslavia, and the Yugoslav State Bank had been liquidated and all its properties plundered. In its stead the Germans created the so-called Serbian National Bank.

"However, so that the Germans would suffer no loss through this measure, the Serbian National Bank was forced to exchange the so-called occupation marks for new dinars. The marks thus exchanged were simply withdrawn from the Serbian National Bank by the Germans against receipt. In this way one of the most shameless plunders was carried out, which cost Yugoslavia many thousands of millions of dinars."

I submit to the Tribunal as Exhibit Number USSR-194 (Document Number USSR-194), "the German decree of 30 June 1942 concerning the withdrawal of notes issued by the Reichskreditkasse and also a certified copy of the decree concerning the Serbian National Bank, of 29 May 1941," as Exhibit Number USSR-135 (Document Number USSR-135).

"It can be seen from these documents that the German occupation authorities carried out by force the illegal liquidation of the Yugoslav State Bank, under the pretext that Yugoslavia no longer

existed, and that they took advantage of this liquidation in order to plunder the country on an enormous scale.

"The Germans established the so-called Serbian National Bank exclusively for the purpose of creating an instrument for their predatory economic and currency policy in Serbia. The bank was administered by officials whom they themselves appointed.

"The measures taken with regard to Yugoslav metal coins are also very characteristic. The Yugoslav coinage, which contained a certain percent of silver and brass, was withdrawn, and replaced by coins of very poor metal alloy. Naturally, the Germans carried to Germany a large quantity of the most valuable Yugoslav coins.

"B. Requisitions and fines."

The Tribunal will find this excerpt on Page 40 of the document book:

"Reich Minister Speer, head of the Armament and War Production Ministry, declared that fixed prices were the Magna Carta of the Armament Program."

The Defendant Göring, on 26 March 1943, issued a decree demanding a further decrease in the prices of all goods imported from the occupied countries.

"This lowering of prices was attained by means of currency measures as well as by means of requisitioning, confiscation, fines, and in particular, through a special price policy.

"By means of requisitioning, a policy of fixed low prices, and compulsory sales, the Government of the Reich was enabled to plunder thoroughly the Yugoslav people. This went so far that even the quisling institutions collaborating with the Germans frequently had to declare that the quotas of goods demanded by the Germans could not be filled.

"Thus, a report made by the district chief, for the Moravski District"—quisling administration of Milan Nedic—"on 12 February 1942, stated:

"1. If they are deprived of so many cattle, the peasants will not be able to cultivate their fields. On the one hand, they are ordered to cultivate every inch of ground, on the other hand, their cattle are ruthlessly confiscated.

"2. The cattle are purchased at such a low price that the peasants feel that they are hardly compensated at all for the loss of their cattle.

"Similar examples from other regions or districts of Yugoslavia are very numerous.

"In order to plunder the country, the Germans often reverted to the systematic imposition of money fines. For instance the cash fines imposed by the 'Feldkommandantur' in Belgrade during 1943 alone amounted to 48,818,068 dinars. In Nish, during the first 3½ months of 1943, the cash fines amounted to 5,065,000 dinars.

"Finally, we should like to give here a few details regarding the clearing accounts through which the export of Yugoslav goods to Germany was carried out. As early as 1 March 1943 the clearing balance in favor of Serbia amounted to 219 million Reichsmark, or 4,380 million dinars. By the end of the occupation Germany owed Serbia 10,000 million dinars.

"The situation was the same in all the other provinces of Yugoslavia, and only the methods of plundering varied according to local conditions.

"C. Confiscations.

"Confiscations were one of the most widespread and effective means of plundering Yugoslavia.

"Before the occupation of Yugoslavia was completed in 1941, a decree on confiscation was issued by the Germans in the combat zone. Pursuant to this decree the Germans confiscated enormous quantities of agricultural products, raw materials, semi-manufactured, and other goods."

I submit to the Tribunal a certified copy of the above-mentioned decree as Exhibit Number USSR-206 (Document Number USSR-206).

"Immediately after the occupation of the country, the German occupation authorities introduced by means of numerous decrees, the system of confiscation of private and public property."

In order to save time I skip a part of this section of the document which quotes concrete examples of the confiscation of property belonging to the Yugoslav population, and I pass on to the next count, which is entitled, "Other Methods of Plunder." The members of the Tribunal will find this section on Page 52:

"Together with the aforesaid methods of plunder, which were carried out on the basis of various decrees, laws, and regulations, more primitive methods of looting were practiced throughout the Yugoslav territory. They were not sporadic incidents but

constituted a part of the German system for enslavement and exploitation.

"The Germans plundered everything from industrial and economic undertakings, down to cattle, food, and even simplest objects for personal use."

I shall cite a few examples:

"1. Immediately after their entry into Yugoslavia, the Germans looted all the bigger firms and storehouses. They generally engaged in this form of looting at night, after the so-called curfew hours.

"2. The order of Major General Kuebler"—which has already been submitted to the Tribunal by the Soviet Prosecution as Document Number USSR-132—"contains the following passage:

" 'Troops must treat these members of the population who maintain an unfriendly attitude toward the occupation forces in a brutal and ruthless manner, depriving the enemy of every means of existence by the destruction of localities which have been abandoned and by seizing all available stocks.'

"On the basis of this and similar orders, the Germans ceaselessly looted the country under the pretext of so-called 'control of existing stocks,' using the opportunities afforded by the 'destruction of localities which had been abandoned.'

"3. Punitive expeditions, which became an everyday event during the occupation, were, naturally, always accompanied by the looting of the victims' property. In the same way they robbed their prisoners and the bodies of those who had fallen fighting in the Free National Army, as well as all the internees in the concentration camps.

"4. Not even churches were spared. Thus, for example, the German unit 'Konrad-Einheit,' which operated in the vicinity of Sibenik, looted the Church of St. John in Zablad."

There are numerous examples of the same kind.

"During the 4 years the whole of Yugoslavia was systematically looted. This was carried out either through numerous so-called 'legal measures,' or through mass looting on the part of the Germans. The Nazi occupation forces showed great inventive ability and applied to Yugoslavia the experience which they had gained in other occupied countries.

"These criminal measures damaged the Yugoslav State and its citizens to such an extent that one can consider it simply as economic destruction of the country."

From this Your Honors may see that the plunder of public and private property in Yugoslavia was conducted by the Hitlerites according to a preconceived plan, that it affected every class and every branch of the country's economy, and caused enormous material loss to the Yugoslav State and to its citizens.

THE PRESIDENT (Lord Justice Sir Geoffrey Lawrence): I believe this would be a convenient time to recess.

[*A recess was taken.*]

MR. COUNSELLOR SHENIN: After the invasion of Greece, the Hitlerite conspirators pursued their policy of merciless despoliation of the occupied countries and immediately began to plunder her national property. The official report of the Greek Government on the crimes committed by the Hitlerites has already been submitted to the Tribunal.

The appropriate section of this report entitled, "Exploitation," gives the concrete facts of the plunder of public and private property in Greece. I quote the following excerpts from the part, "Exploitation," from this report of the Greek Government, which will be found on Page 59 of the document book:

"Owing to her geographical position, Greece was used by the Germans as a base of operations for the war in North Africa. They also used Greece as a rest center for thousands of their troops from the North African and Eastern fronts, thus concentrating in Greece much larger forces than were actually necessary for purpose of occupation.

"A large part of the local supplies of fruit, vegetables, potatoes, olive oil, meat, and dairy products were confiscated to supply these forces. As current production was not sufficient for these needs, they resorted to the requisitioning of livestock on a large scale, with the result that the country's livestock became seriously depleted."

In addition to requisitioning supplies for their armies, the Hitlerite conspirators exacted enormous sums of money from Greece to cover the so-called cost of occupation. In the report of the Greek Government the following remark is made on the subject—this is on Page 60 of the document book—I read:

> "Between August 1941 and December 1941 the sum of 26,206,085,000 drachmas was paid to the Germans, representing a sum of 60 percent more than the estimated national income during the same period. In fact, according to the estimates of two Axis experts, Dr. Barberin, from Germany, and Dr. Bartoni, an Italian, the national income for that year amounted to only 23,000 million drachmas. In the following year, as the national income decreased, this money was taken from national funds."

Another method of plundering Greece which the Hitlerites applied on a vast scale was the so-called requisitions and confiscations. In order to save time, I shall, with the permission of the Tribunal, merely read into the record a brief excerpt from the Greek report dealing with this question. I quote:

> "One of the enemy's first measures on occupying Greece was to seize all the existing stocks in the country by requisition or open confiscation. Among other goods, they requisitioned from the wholesale and retail trade 71,000 tons of currants and 10,000 tons of olive oil; they confiscated 1,435 tons of coffee, 1,143 tons of sugar, 2,520 tons of rice, and a whole shipload of wheat valued at 530,000 dollars."

As the country was divided among three occupying powers, the Hitlerites blockaded that part of Greece which was occupied by their own troops and forbade the export of food supplies from that zone. The Hitlerites began to confiscate all existing stocks of food and other goods, a measure which reduced the population to a state of extreme misery and starvation. This plundering had such catastrophic consequences for the Greek nation that, finally, even the Germans themselves were forced to realize that they had gone too far. The practical result of this was that towards the end of 1942 the German authorities promised the International Commission of the Red Cross that they would return to the population all the local products confiscated and exported by the armies of occupation. The Germans also undertook to replace them by the importation of products of the same caloric value. This pledge was not fulfilled.

As in all the occupied countries, the Germans issued and put into circulation an unlimited amount of currency. It should be noted that this currency represented the so-called occupation marks without any security. I quote an excerpt from this report, which the members of the Tribunal will find on Page 63 in the document book. I read:

> "From the very first they"—the Germans—"put into circulation 10,000 million occupation marks, a sum equal to half the money

> in circulation at that date. By April 1944 the monetary circulation had reached 14,000 million drachmas, that is, it had increased 700 percent since the start of the occupation."

The Germans, after causing great inflation in that way, purchased all goods at prices fixed before the occupation. All goods purchased, as well as valuables, articles of gold, furniture, and so forth, were shipped by the Germans to Germany.

Finally, as in every country they occupied, the Hitlerites put into operation in Greece also the so-called "clearing system." Under this system, all goods earmarked for export were first confiscated or put under embargo by the military authorities. Then they were bought up by German firms at arbitrarily fixed prices. The price of the goods established in this one-sided way was then credited to Greece. The prices for merchandise imported from Germany were fixed at from 200 to 500 percent higher than their normal value. Finally, Greece was also debited with the price of merchandise imported from Germany for the needs of the occupation forces. The Germans called this cynical method of plundering "clearing."

I quote a short excerpt from the report of the Greek Government which the members of the Tribunal will find on Page 64 of the document book. I read:

> "In consequence, notwithstanding the fact that Greece exported the whole of her available resources to Germany, the clearing account showed a credit balance of 264,157,574.03 marks in favor of Germany when the Germans left. At the time of their arrival the credit balance in favor of Greece was 4,353,428.82 marks."

In this way, Your Honors, the Hitlerites plundered the Greek people.

May it please Your Honors, I pass on to the statement of the facts of the monstrous plunder and pillage to which private, public, and state property was subjected by the Hitlerite usurpers in the temporarily occupied territories of the Soviet Union. The irrefutable original documents which I shall have the honor to present for your consideration, Your Honors, will prove that long before their attack on the U.S.S.R., the fascist conspirators had conceived and prepared their criminal plans for the plunder and spoliation of its riches and of its national wealth.

Like all other military crimes committed by the Hitlerites in countries occupied by them, the plunder and pillage of these territories was planned and organized beforehand by the major war criminals whom the determination and valor of the Allied nations have brought to justice.

The crimes committed by those who carried out the conspirators' criminal plans over wide areas of the Soviet land, on the fertile steppes of the Ukraine, in the fields and forests of Bielorussia, in the rich cornfields of the Kuban and the Don, in the blossoming gardens of the Crimea, in the approaches to Leningrad and in the Soviet Baltic States—all these monstrous crimes, all this mass plunder and wholesale pillage of the sacred wealth created by the peaceable and honest work of the Soviet peoples, Russian, Ukrainian, Bielorussian, and others—all these crimes were directly planned, designed, prepared, and organized by the criminal Hitlerite Government and the Supreme Command of Armed Forces—the major war criminals, now occupying the dock.

I shall begin with evidence as to the premeditated nature of the crimes committed on U.S.S.R. territory. I shall prove that the wholesale indiscriminate pillage of private, public, and state property committed by the German fascist usurpers was not an isolated occurrence, not a local phenomenon. It was not the result of the disintegration or the thefts of individual army units but was, on the contrary, an essential and indissoluble part of the general plan of attack on the U.S.S.R. and represented, moreover, the fundamental purpose, the chief motive underlying this criminal aggression.

May I beg the indulgence of the Tribunal if, in stating the facts connected with the preparations for this type of crimes, I am obliged to refer very briefly also to several of the documents already submitted to the Tribunal by my American colleagues. I shall endeavor, however, to avoid repetitions and shall mainly quote such extracts from these documents as have not been previously read into the record.

It is known that simultaneously with the elaboration of "Plan Barbarossa," which provided for all strategic questions connected with the attack on the U.S.S.R., purely economic problems arising from the plan were elaborated.

In the document known under the title, "Conference of 29 April 1941 with Branches of the Armed Forces," and presented to the Tribunal by the American prosecution on 10 December as Document Number 1157-PS, we read:

> "Purpose of the conference: Explanation of the administrative organization of the economic section of undertaking 'Barbarossa-Oldenburg'. . . ."

Further on in this document it is indicated that the Führer, contrary to previous practice in the preparation measures envisaged, ordered that all

economic questions were to be worked out by one center and that this center is to be "the special-purpose economic staff Oldenburg under the direction of Lieutenant General Schubert" and that it is to be under the Reich Marshal, that is, Göring. Thus, as early as April 1941, the Defendant Göring was in charge of all preparations for plundering the U.S.S.R.

To finish with this document, I should like to recall that provision is made in it, even at that early date, for the organization of special economic inspectorates and commands at Leningrad, Murmansk, Riga, Minsk, Moscow, Tula, Gorki, Kiev, Baku, Yaroslavl, and many other Soviet industrial towns. The document points out that the tasks of these inspectorates and commands included "the economic utilization of suitable territory" that is, as is explained below, "all questions of food supply and rural economy, industrial economy, including raw materials and manufactured articles; forestry, finance and banking, museums, commerce, trade, and manpower." As you see, Your Honors, the tasks were extremely wide and extraordinarily concrete.

The Plan Barbarossa-Oldenburg was further developed in the so-called "directives for economic management of the newly occupied eastern territories" which were also elaborated and issued secretly before the attack on the U.S.S.R.

Before passing on to the "Green File" I should like to present to the Tribunal and read but in part another document—the so-called "File of the District Agricultural Leader," which was submitted to the Tribunal by my colleague Colonel Smirnov as Document Number USSR-89. These very detailed instructions for future district agricultural leaders which were also worked out and published in advance, bore the title of "District Agricultural Leaders File," and were dated 1 June 1941. Naturally this document, too, is also marked "top secret."

This instruction begins, "12 Commandments for the Behavior of Germans in the East and Their Attitude towards Russians." My colleague, Colonel Smirnov, read into the record only one of those commandments: and I, with the Tribunal's permission, shall read into the record the other commandments. The first commandment states—the members of the Tribunal will find it on Page 69 of the document book. I read:

> "Those of you who are sent to work in the East must adopt as your guiding principle the rule that output alone is decisive. I must ask you to devote your hardest and most unsparing efforts to this end."

What sort of "work" is meant is clearly shown by the following commandments. I quote extracts from this document:

> "5th commandment: It is essential that you should always bear in mind the end to be attained. You must pursue this aim with the utmost stubbornness; but the methods used may be elastic to a degree. The methods employed are left to the discretion of the individual. . . .
>
> "6th commandment: Since the newly incorporated territories must be secured permanently to Germany and Europe, much will depend on how you establish yourself there. . . . Lack of character in individuals will constitute a definite ground for removing them from their work. Anyone recalled for this reason can never again occupy a responsible position in the Reich proper."

In this way the future "agricultural leaders" were not only ordered to be implacable, merciless, and cruel in their plundering activities, but were also warned of what would happen to them if they were not implacable enough or if they showed "lack of character."

The following commandments develop the same idea:

> "7th commandment: Do not ask, 'How will this benefit the peasants?' but 'How will it benefit Germany?'
>
> "8th commandment: Do not talk—act! You can never talk a Russian around or persuade him with words. He can talk better than you can, for he is a born 'dialectic'. . . .
>
> "Only your will must decide, but this will must be directed to the execution of great tasks. Only in this case will it be ethical even in its cruelty. Keep away from the Russians—they are not Germans, they are Slavs.
>
> "9th commandment: We do not wish to convert the Russians to National Socialism; we wish only to make them a tool in our hands. You must win the youth of Russia by assigning their task to them—by taking them firmly in hand and administering ruthless punishment to those who practice sabotage or fail to accomplish the work expected of them.
>
> "The investigation of personal records and pleas takes up time which is needed for your German task. You are neither investigating magistrates nor yet the Wailing Wall.
>
> "11th commandment: . . . his (Russian) stomach is elastic, therefore—no false pity for him!"

Such were these commandments for agricultural leaders, which one should—to be more exact—call "commandments for cannibals." The file

begins with these "commandments," which are followed by a perfectly clear-cut program for the plundering of U.S.S.R. agriculture. At the beginning of this program we read:

> "Fundamental economical directives for the Organization of Economic Policy in the East, Agricultural Group.
>
> "As regards food policy, the aim of this campaign is:
>
> "1. To guarantee food supplies for many years ahead for the German Armed Forces and the German civilian population."

As you see, Your Honors, a perfectly clear and candid formulation of the aims of the attack on the U.S.S.R. is given. Of course, it does not exhaust these aims. This aim was not confined to the stealing of provisions, and provisions were far from being the only thing stolen. This is only an extract from the agricultural leaders' file, and they were not the only people to be entrusted with tasks of pillage and to perform these tasks.

The file as a whole contains the following sections of a carefully thought out and extremely concrete program for the plunder of the Soviet Union's agriculture. I read the table of contents. Your Honors will find this document on Page 67 of the document book:

> "1. 12 commandments. 2. General economic directives. 3. Organization chart. 4. Instructions for the regional agricultural leader. 5. Instructions for securing personnel. 6. State farms: Directives on the taking over and management of State farms. 7. Directives for taking over and managing collective farms. 8. Agriculture machine depots, directives regarding administration. 9. Directives for registration. 10. Furnishing food supplies for the cities. 11. Schedules for agricultural work. 12. Price lists."

I am not, Your Honor, going to take up your time by reading the whole of this document, which consists of 98 typewritten pages. I am presenting it to the Tribunal in its entirety, to be included in the files of the Trial.

I shall read from this document, already presented to the Tribunal by my American colleagues on 10 December of last year as Exhibit Number USA-147 (Document 1058-PS), only a few short lines. It is a note of the record of a speech made by Rosenberg at a secret conference on 20 June 1941, dealing with questions of the East. In his speech, Rosenberg stated particularly:

> "The problem of feeding German nationals undeniably heads the German demands on the East just now, and here the southern regions and the northern Caucasus must help to balance the German food situation. We certainly do not consider ourselves

obliged to feed the Russian people as well from the produce of these fertile regions. We know that this is a cruel necessity, which has nothing to do with any humane feelings. It will undoubtedly be necessary to carry out evacuation on a large scale and the Russians are doomed to live through some very hard years."

Thus did the leaders of Hitlerite Germany formulate the tasks they set themselves when preparing their attack on the Soviet Union.

Already in August 1942—that is, from 26 to 28 August—Gauleiter Koch, who had just arrived from Hitler's headquarters, spoke at the conference in Rovno. The record of this conference was found in Rosenberg's archives. This document was kindly put at our disposal by our American colleagues. It is registered as Document Number 264-PS, but it has not been presented to the Tribunal.

I read into the record an excerpt from this record. The members of the Tribunal will find it on Page 72 in the document book. I read:

"He"—Koch—"explained the political situation and his tasks as Reich Commissioner"—in the following way—" 'There is no free Ukraine. We must aim at making the Ukrainians work for Germany, and not at making the people here happy. The Ukraine will have to make good the German shortages. This task must be accomplished without regard for losses. . . .

" 'The Führer has ordered 3 million tons of grain from the Ukraine for the Reich, and they must be delivered. . . .' "

I shall show later how far this original figure—3 million tons of grain—was exceeded by the Hitlerite plunderers, whose avid appetites grew from month to month.

All these aims of plunder had been planned in advance by the criminal Hitlerite Government, who worked out an organized scheme for carrying out organized plunder and practical methods of pillaging the occupied territories.

With the Tribunal's permission I shall read extracts from a secret document by Reich Marshal Göring which was captured by units of the Red Army. This document bears the title, "Directives for Economic Management in the Newly Occupied Areas in the East (Green File)," and extracts of it have already been mentioned by my colleagues. This document is presented by the Soviet Prosecution as Exhibit Number USSR-10 (Document Number USSR-10).

The title page of the document reads—Page 76 of the document book:

"Eastern Staff for Economic Leadership; top secret.

"Note: The present directives are to be considered as top-secret documents (documents of State importance) until X-Day; after X-Day they will no longer be secret and will be treated as open documents for official use only.

"Directives on the subject of economic management in the newly occupied areas in the East (Green File).

"Part I. Economic tasks and organization, Berlin, June 1941; printed by the Supreme Command of the Armed Forces."

As is clear from the text of the document, these directives were published immediately before Germany's attack on the U.S.S.R. "for the information of military and economic authorities regarding economic tasks in the eastern territories to be occupied."

In setting forth the "main economic tasks" the directives state in the first paragraph:

"I. According to the Führer's order, it is essential in the interests of Germany that every possible measure for the immediate and complete exploitation of the occupied territories be adopted. Any measure liable to hinder the achievement of this purpose should be waived or cancelled.

"II. The exploitation of the regions to be occupied immediately should be carried out primarily in the economic field controlling food supplies and crude oil. The main economic purpose of the campaign is to obtain the greatest possible quantity of food and crude oil for Germany. In addition, other raw materials from the occupied territories must be supplied to the German war economy as far as is technically possible and as far as the claims of the industries to be maintained outside the Reich permit."

I omit the next part of the excerpt, and I pass on to the following excerpt, which the members of the Tribunal will find on Page 78:

"The idea that order should be restored in the occupied territories and their economic life re-established as soon as possible is entirely mistaken. On the contrary, the treatment of the different parts of the country must be a very different one. Order should only be restored and industry promoted in regions where we can obtain considerable reserves of agricultural products or crude oil."

I omit the rest of this quotation in order to save time.

Further, the plan devised in advance for the organized plunder of the Soviet Union provided in detail for the removal from the U.S.S.R. to Germany of all raw materials, supplies, and stocks of goods available. In confirmation of this I cite excerpts from this document so that I shall not have to read it in full. The members of the Tribunal will find these excerpts on Page 83, 87, and 88 of the document book:

> "All raw materials, semi-manufactured, or finished products of which we can make use are to be withdrawn from commerce. This will be done by IV Wi and by the economic authorities by means of appeals and orders, by ordering confiscation or by military supervision, or both."

Page 88—from the section "Raw Material and the Exploitation of Commercial Resources":

> "Platinum, magnesium, and rubber are to be secured at once and transported to Germany as soon as possible."

Back of Page 87:

> "Food products, articles for personal use, and clothing discovered in combat and rear zones are to be placed at the disposal of IV A for immediate military requirements."

Back of Page 83—in the section of the directives entitled "Economic Organization" we find a project of an apparatus with wide ramifications which was to carry out this organized plunder of the U.S.S.R. I shall read a series of excerpts from this section, which the members of the Tribunal will find on Page 79 of the document book:

> "A. General questions.
>
> "To guarantee undivided economic leadership in the theater of military activities, as well as in the administrative areas to be established at a later date, the Reich Marshal has organized the 'Staff for Economic Leadership East' directly under himself and headed by his representative, State Secretary Körner."

Second excerpt:

> "The orders of the Reich Marshal apply to all economic spheres, including food supply and rural economy."

In directing your attention to these two excerpts, Your Honors, I consider it definitively proved that the Defendant Göring not only had personal charge of the preparations for the plunder of private, public, and state property, but later on directed personally the vast apparatus specially set up

for these criminal purposes. You can judge of the projected organization of this apparatus, by the following extracts from the Green File. I read:

> "Organization of Economic Administration in the operational area.
>
> "1. The economic establishments, subordinated to the Economic Staff East, insofar as their activities cover the theater of military activities, are incorporated in the army staffs and are subordinate to them in military matters, namely:
>
> "A. In the rear area: One economic inspectorate at each of the chief commands of the rear area; one or several mobile units of the economic section with the security divisions; one IV Wi group at each of the field command headquarters.
>
> "B. In the army administration district: One IV Wi group (liaison officer Wi Rü Amt) with the army commander. One IV Wi group for each of the field commands attached to the army of the region; in addition, as and when necessary, economic units are sent forward to the armies in the field. These units are subordinate in military matters to the army command."

Further on, in Paragraph 4 of this same section, under the title "Structure of the Individual Economic Institutions" the whole plan of construction of the Economic Staff East is described. I shall cite it in my own words in order to save time. The members of the Tribunal will find the document to which I refer at the back of Page 79 in the document book.

Chief of the Economic Staff with the leadership group (field of activity, leadership questions, also manpower); Group IA, in charge of food and agriculture, running the entire agricultural production and also the assembling of supplies for the army; Group W, in charge of industry, raw materials, forestry, finance, banking property, and trade; Group M, in charge of troop requirements, armaments, and transport; economic inspectorates attached to army groups, in charge of the economic exploitation of the rear area. Economic task forces organized in the zone of each security division and consisting of one officer as commander, and several specialists in different branches of the work. Economic groups attached to the field commands, who are responsible for supplying the immediate requirements of the troops stationed within the sphere of activity of the field command and for preparing the economic exploitation of the country in the interests of war economy.

To these economic groups were attached experts on manpower, food production and agriculture, industrial economy and general economic questions; the economic section, attached to the army command, with

special technical battalions and platoons as well as special intelligence subsections for industrial research, particularly in the field of raw materials and crude oil, and subsections for discovering and securing agricultural produce and machines, including tractors.

This same plan also provides for special technical units for crude oil—battalions and companies—and also the so-called mining battalions.

Thus, under the direct control of the Defendant Göring, a whole army of plunderers of all ranks and branches was provided, prepared, trained, and drilled in advance for the organized pillage and looting of the national property of the U.S.S.R.

Your Honors, I will not take up your time by reading the whole text of the Green File; I shall limit myself to enumerating its remaining sections, which bear the following titles—Page 77 in the document book:

> "Execution of individual economic tasks; Economic transport; Problems of military protection of economy; Procuring of supplies for the troops out of the resources of the country; Utilization of manpower, particularly of the local population; War booty, paid labor, captured material, prize courts; Economic objectives of war industries; Raw materials and utilization of goods available; Finance and credit; Foreign trade and clearings; Price control."

Thus the plunder of all branches of the U.S.S.R.'s national economy was foreseen.

To conclude I shall read into the record Keitel's order, dated 16 June 1941, 6 days before the attack on the U.S.S.R., in which he instructed all military units of the German Army to be ready to execute all the directives of the Green File. I shall now read this order—you will find this, Your Honors, at the back of Page 89 of the document book:

> "By the Führer's order, the Reich Marshal has issued 'Directives for the Guidance of the Economic Administration of the Territories To Be Occupied.'
>
> "These directives (Green File) are intended for the guidance of the military command and economic authorities in the economic tasks within the territories to be occupied in the immediate future. They contain directives for supplying the army from the resources of the country and give orders to army units to assist the economic authorities. Army units must comply with these directions and orders.
>
> "The immediate and thorough exploitation of the territories to be occupied in the immediate future in the interest of Germany's war

economy, especially in the field of fuel and food supply, is of the highest importance for the further conduct of the war."

I omit the second part of this order which contains detailed instructions as to how the directives of the Green File should be executed, and I read only the last paragraph of Keitel's order:

"The exploitation of the country must be carried out on a wide scale, with the help of field and local headquarters, in the most important agricultural and oil-producing districts.

"Chief of the High Command of the Wehrmacht, Keitel."

The concluding provision of this document, which says that "the exploitation of the country must be carried out on a wide scale" was strictly observed by units of the German Army; and the occupied regions of the U.S.S.R., from the very first day of the war, were subjected to the most merciless plunder. In confirmation of this, I shall later present to the Tribunal a series of original German documents, orders, directives, instructions, decrees, and so forth, issued by German military authorities.

Meanwhile, to finish with the Green File, I may state in conclusion that this striking document is definite evidence of the remarkable qualifications for plunder and the vast experience in brigandage of the Hitlerite conspirators.

The program for plundering the occupied territories of the Soviet Union, conceived on a wide scale and elaborated in detail by the conspirators, was put into practice by the Hitlerite aggressors from the very first days of their attack on the U.S.S.R.

Apart from the organized plunder carried out by the vast apparatus specially formed for this purpose—an apparatus consisting of all kinds of agricultural leaders, inspectors, specialists in economics, technical and intelligence battalions and companies, economic groups and detachments, military agronomists, and so forth—the so-called "material interest" of the German soldiers and officers, who had unlimited possibilities of robbing the civilian population and sending their booty to Germany, was widely encouraged by the Hitlerite Government and the High Command of the German Army.

The universal plundering of the population of the towns and villages of the occupied territories of the U.S.S.R. and the mass removal to Germany of the personal property of Soviet citizens, the property taken from the collective farms and co-operative unions and the property of the State itself, was carried out according to a prearranged plan wherever the German fascist aggressors appeared.

I turn, Your Honors, to the presentation of individual Soviet Government documents on this question. A few months after Hitlerite Germany's treacherous attack on the U.S.S.R., the Soviet Government had already received irrefutable data about the war crimes committed by the Hitlerite armies in the Soviet territories they occupied.

My colleagues have already presented to the Tribunal as Document Number USSR-51 a note of the People's Commissar for Foreign Affairs of the U.S.S.R., Molotov, dated 6 January 1942.

In order to avoid repetition and to save time, I shall read only a few excerpts from this note which have a direct bearing on the subject of my presentation. You will find the quoted extracts, underlined on Page 100 of the document book:

> "Every step which the German fascist army and its allies took on the occupied Soviet territory of the Ukraine and Moldavia, Bielorussia and Lithuania, Latvia, and Estonia, the Karelo-Finnish territory and the Russian districts and regions is marked by the ruin or destruction of countless objects of material and cultural value."

The last paragraph of this quotation:

> "In the villages occupied by German authorities, the peaceful peasant population is subjected to unrestrained depredation and robbery. The farmers are robbed of their property, acquired through whole decades of persistent toil, robbed of their houses, cattle, grain, clothing—of everything, down to their children's last little garments and the last handful of grain. In many cases, the Germans drive the rural population, including old people, women, and children, out of their dwellings as soon as the village is occupied and they are compelled to seek shelter in mud huts, dugouts, forests, or even under the open sky. In broad daylight the invaders strip the clothing and footgear from anyone they meet on the road, including children, savagely ill-treating those who try to protest against, or offer any kind of resistance to, such highway robbery.
>
> "In the villages liberated by the Red Army in the Rostov and Voroshilovgrad regions in the Ukraine, the peasants were plundered again and again by the invaders. As successive German army units passed through these areas each of them renewed their searches, lootings, arsons, and executions for failure to deliver up provisions. The same thing took place in the Moscow, Kalinin,

Tula, Orel, Leningrad, and other regions, from which the remnants of the German troops are now being driven by the Red Army."

In order to save time I shall not read the next paragraphs of this note, but shall give an account of them to the Tribunal in my own words. They contain a whole series of concrete facts of the looting of the peaceful population in different regions of the Soviet Union and the names of the victims as well as the list of such things and belongings as were taken from these peaceful citizens. Further, this note reads as follows:

"The marauding orgies of the German officers and soldiers have spread to all the Soviet areas they have seized. The German authorities have legitimatized marauding in their armies and encouraged looting and violence. The German Government sees in this practice the realization of their bandit principle that every German combatant must have 'a personal interest in the war.' Thus, in a confidential order of 17 July 1941, addressed to all commanders of propaganda squads in the German Army and discovered by Red Army units when the 68th German Infantry Division was routed, explicit instructions are given to foster in every officer and soldier of the German Army the feeling that he has a material interest in the war. Similar orders inciting the army to mass looting and murder of the civil population are also issued by the armies of the countries fighting on the German side.

"On the German-Soviet front, and especially in the vicinity of Moscow, more and more fascist officers and soldiers can be met dressed in pilfered clothes, their pockets crammed with stolen goods and their tanks stuffed with women's and children's wearing apparel torn from their victims' bodies. The German Army is becoming more and more an army of ravenous thieves and marauders, who are looting and sacking flourishing towns and villages of the Soviet Union, ravaging and destroying the property and belongings of the laboring population of our villages and towns, the fruit of its honest toil. These are facts testifying to the extreme moral depravity and degeneracy of the Hitlerite Army, whose looting, thievery, and marauding have earned it the contempt and the curses of the entire Soviet nation."

Several months later, on 27 April 1942, in connection with the information which continued to come in regarding the crimes committed by the German fascist armies, Molotov, People's Commissar for Foreign Affairs of the U.S.S.R., published for the second time a note on the

monstrous misdeeds, atrocities, and acts of violence of the German fascist invaders in occupied Soviet territories and on the responsibility of the German Government and the High Command for these crimes. This second note is also submitted to the Tribunal. . .

THE PRESIDENT: General, what do you mean by "published"?

MR. COUNSELLOR SHENIN: What I mean is that this note was first sent to all the governments with whom the U.S.S.R. Government maintained diplomatic relations. The text of the note was also published in the Soviet official press.

This document has already been presented by the Soviet Prosecution as Exhibit Number USSR-51 (Document Number USSR-51). I shall read a few brief excerpts from this document which have a direct bearing on the subject of my presentation.

THE PRESIDENT: Perhaps we had better adjourn now, and you can read it after the adjournment.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

MARSHAL (Colonel Charles W. Mays): May it please the Court: I desire to announce that the Defendant Streicher will be absent on account of illness.

MR. COUNSELLOR SHENIN: I shall read now excerpts from the note of the People's Commissar. . .

[*The proceedings were interrupted by technical difficulties in the interpreting system.*]

THE PRESIDENT: The Tribunal will adjourn.

[*A recess was taken.*]

THE PRESIDENT: Owing to the delay the Tribunal will sit until half past 5 tonight without further adjournment.

Yes, Colonel.

MR. COUNSELLOR SHENIN: I am reading into the record excerpts from the note by the People's Commissar for Foreign Affairs dated 27 April 1942, and in order to save time I shall, with your permission, quote only a few of the most necessary excerpts from this note. They are very short. In this note, attention was drawn to the fact that the documents captured by the Soviet authorities and put at the disposal of the People's Commissar for Foreign Affairs are evidence of the premeditated nature of the plunder carried out by the Hitlerites.

I read the following excerpts; last paragraph on Page 44 of my statement, Russian text.

> "The appendix to Special Order Number 43761/41 of the Operations Department of the General Staff of the German Army, states:
>
> " 'It is urgently necessary that articles of clothing be acquired by means of forced levies on the population of the occupied regions enforced by every possible means. It is necessary above all to confiscate woolen and leather gloves, coats, vests, and scarves, padded vests and trousers, leather and felt boots, and puttees.'
>
> "In several places liberated in the districts of Kursk and Orel, the following orders have been found:
>
> " 'Property such as scales, sacks, grain, salt, kerosene, benzine, lamps, pots and pans, oilcloth, window blinds, curtains, rugs,

phonographs, and records must be turned in to the commandant's office. Anyone violating this order will be shot.'

"In the town of Istra, in the Moscow region, the invaders confiscated decorations for Christmas trees and toys. In the Shakhovskaya railway station they organized the 'delivery' by the inhabitants of children's underwear, wall clocks, and samovars. In districts still under the rule of the invaders, these searches are still going on; and the population, already reduced to the utmost poverty by the thefts which have been perpetrated continually since the first appearance of the German troops, is still being robbed."

I omit the rest of the quotation from Mr. Molotov's note and conclude with the last paragraph:

"The general character of the campaign of robbery planned by the Hitler Government, on which the German Command tried to base its plans for supplying its Army and the districts in its rear, is indicated by the following facts: In 25 districts of the Tula region alone the invaders robbed Soviet citizens of 14,048 cows, 11,860 hogs, 28,459 sheep, 213,678 chickens, geese, and ducks, and destroyed 25,465 beehives."

I omit the remainder of this quotation which gives an inventory of all property, cattle, and fowl confiscated by the invaders from 25 districts of the Tula region.

Your Honors, the notes which I have read, mention only a few of the innumerable crimes and cases of plunder committed by the Hitlerites on Soviet soil.

With the permission of the Tribunal I shall now present several German documents from which you will see how the German commanders and officials themselves described their soldiers' behavior. Later I shall read candid statements by the German fascist leaders saying that German soldiers and officers must not be hindered in their marauding activities. It is natural that under these conditions the moral disintegration of the German fascist armies should reach its culminating point. Things reached such a point that the Hitlerites begin to plunder each other, thereby proving the truth of the well-known Russian proverb, "A thief stole a cudgel from a thief."

May I now quote from the document which I present to the Tribunal as Document Number USSR-285. This is an extract from a report of the German District Commissioner of Zhitomir to the Commissioner General of

Zhitomir dated 30 November 1943. You will find the document to which I refer on Page 93 in the document book. I read:

> "Even before the German administration left Zhitomir, troops stationed there were seen to break into the apartments of Reich Germans and to appropriate everything that had any value. Even the personal luggage of Germans still working in their offices was stolen. When the town was reoccupied it was established that the houses where the Germans lived were hardly touched by the local population, but that the troops just entering the town had already started to loot the houses and business premises. . . ."

I read the second excerpt from the same document:

> "The soldiers are not satisfied with taking the articles they can use, but they destroyed some of the remaining items; valuable furniture was used for fires, although there was plenty of wood."

Now I shall read into the record an excerpt from a report of the German District Commissioner of the town of Korostyshev to the Commissioner General of Zhitomir. The members of the Tribunal will find this excerpt on Page 94 of the document book.

> "Unfortunately the German soldiers behaved badly. Unlike the Russians they broke into the storehouses even when the front line was still far away. Enormous quantities of grain were stolen, including large quantities of seed. That might have been tolerated in the case of combat units. . . . Upon the return of our troops to Popelnaya, the warehouses were again broken into immediately. The 'Gebiets- und Kreislandwirt' nailed up the doors again, but the soldiers broke in once more."

I read into the record other excerpts from the same document:

> "The Kreislandwirt reported to me that the dairy farm was plundered by retreating units; the soldiers carried away with them butter, cheese, *et cetera*."

And the second excerpt:

> "The co-operative store was plundered before the eyes of the Ukrainians. Among other things the soldiers took with them all the cash in the store."

Then the third excerpt:

> "On the 9th and 10th of this month the guards of the field gendarmerie were posted at the co-operative store in Korostyshev. These guards could not repel the onslaught of the soldiers. . . ."

And the last excerpt:

> "Pigs and fowls were slaughtered to the most irresponsible degree and taken away by the soldiers. . . . The appearance of the troops themselves can only be described as catastrophic."

In these towns; Your Honors, is the conduct of the German soldiers depicted by a German commissioner in his official report.

There is no doubt that this description is an objective one, especially since it is supplemented by an official report of the German Ukrainian company for supplying agriculture in the Commissariat General, addressed to the Commissioner General of Zhitomir. This is how the report describes the results of a raid by German soldiers on the company's premises, ". . . The office was in a horrifying and incredible condition." Second excerpt:

> ". . . A 20-room private house at Hauptstrasse Number 57 had an appalling appearance. Carpets and stair carpets were missing, and all the upholstered armchairs, couches, beds with spring or other mattresses, chairs, and wooden benches."

I skip a few lines:

> "The condition of the living rooms generally is almost indescribable."

I omit two more excerpts from the document.

Such, Your Honors, is the heartcry of the German brigands of the company for the economic adoption of the Ukraine, who themselves complain of the brigands in the German Army.

In order to show that it was not only in Zhitomir and Korostyshev that such things took place, I shall quote yet another report, this time by the Commissioner of the Kazatinsky district, which contains the following statement, ". . . The German soldiers stole food, cattle, and vehicles." This laconic but significant introduction is followed by no less significant details:

> "Threatening him with a pistol, the corporal demanded the keys of the granary from the District Commissioner. . . . When I said that the key was in my pocket, he yelled, 'Give me the key.' With these words he pulled out his pistol, stuck it against my chest, and shouted, 'I'm going to shoot you—you are a shirker.' He followed up this remark by a few more specimens of invective, thrust his hand into my pocket and grabbed the key, saying, 'I am the only person who gives orders here.' This occurred in the presence of numerous Germans and Ukrainians."

The chief of the main department, Dr. Moisich, relates the same story in a report to the Commissioner General of Zhitomir, dated 4 December 1943. All these documents are being presented in their original form to the Tribunal.

I shall now, Your Honors, proceed to read excerpts from the official reports and communiques of the Extraordinary State Commission of the Soviet Union for the investigation and establishment of crimes committed by the German intruders and their accomplices. In order to save time, I ask the Tribunal to permit me to read only a few excerpts from these documents, and to give you the contents of the rest in my own words.

The report of the Extraordinary State Commission on the looting and crimes perpetrated by the Hitlerites in the city and district of Rovno has already been submitted to the Tribunal as Document Number USSR-45. The corresponding section of this report reads as follows:

> "During their stay in Rovno and the district, Hitlerite officers and soldiers unrestrainedly plundered the peaceful Soviet citizens and thoroughly looted the property of cultural and educational institutions."

I shall not quote all the data mentioned in this report of the Extraordinary State Commission. The report made by the Extraordinary State Commission on the atrocities committed by the Hitlerites in Kiev, and submitted to the Tribunal as Document Number USSR-9, emphasizes the fact that the Hitlerites plundered the peaceful population of Kiev. I quote a brief extract, "The German occupation forces in the city of Kiev looted factory equipment and carried it off to Germany."

Following the directives of the criminal German Government and the Supreme Command of the German Armed Forces, the satellite states also joined in plundering and other crimes. Romanian troops who temporarily occupied Odessa along with German Armed Forces plundered this flourishing city in accordance with instructions from their German masters. The report of the Extraordinary State Commission concerning the crimes committed by German and Romanian invaders in Odessa reads in part as follows:

> ". . . The Romanians damaged Odessa considerably from the economic and industrial point of view during the occupation.
>
> "German-Romanian aggressors have confiscated and removed to Romania 1,042,013 centners of grain, 45,227 horses, 87,646 head of cattle, 31,821 pigs, *et cetera*, belonging to co-operative farms and co-operative farmers."

The report of the Extraordinary State Commission on the damages inflicted by the German fascist invaders on industry, urban economy, and cultural and educational institutions in the Stalino region, already presented to the Tribunal as Document Number USSR-2, also gives a good deal of data on the looting and removal to Germany of the factory equipment of this important industrial region.

I have quoted only a few of the reports compiled by the Extraordinary State Commission on certain districts of the Ukraine. This flourishing Soviet republic was subjected to unrestrained looting by the Hitlerites. The Hitlerite conspirators considered the Ukraine a tidbit and plundered her with exceptional voracity. I should like to read several documents in proof of the above.

Rosenberg's letter to Reichsleiter Bormann dated 17 October 1944. This document which has already been submitted on 17 December by the United States Prosecution under Exhibit Number USA-338 (Document Number 327-PS) states that the Central Trading Company for the East for marketing of agricultural produce sent the following goods to Germany in the period between 1943 and 31 March 1944 only:

> "Cereals, 9,200,000 tons; meat and meat products, 622,000 tons; oil seed, 950,000 tons; butter, 208,000 tons; sugar, 400,000 tons; fodder, 2,500,000 tons; potatoes, 3,200,000 tons, and so forth."

The Defendant Rosenberg reported his "agricultural achievements" to Hitler's closest assistant in these terms.

It should be noted that during the first year of the war the voracity shown by the Hitlerites in plundering the Ukraine was so great, that it awakened certain misgivings even in themselves.

I shall read an excerpt from a letter addressed by the Inspector of Armaments in the Ukraine to the Infantry General Thomas, Chief of the Economic Armament Office of the OKW. The letter is dated 2 December 1941. This document was submitted to the Tribunal by the United States Prosecution on 14 December as Document Number 3257-PS. I read a short excerpt:

> "The export of agricultural surpluses from the Ukraine for the purpose of feeding the Reich is only possible if the internal trade in the Ukraine is reduced to a minimum. This can be attained by the following measures:
>
> "1. Elimination of unwanted consumers (Jews; the populations of the large Ukrainian towns, which, like Kiev, receive no food allocation whatsoever).

"2. Reduction as far as possible of food rations allocated to the Ukrainians in other towns.

"3. Reduction of food consumption by the peasant population."

Having outlined this program, the author explains further:

"If the Ukrainian is to be made to work, we must look after his physical existence, not for sentimental motives, but for purely business reasons."

I omit the next paragraphs of this quotation.

However, the Reich Commissioner for the Ukraine, Koch, went steadily on with his policy of ruthlessly plundering the Ukraine. In due course I shall submit to you numerous further documents, also in the original, in confirmation of the above. Koch's policy met with the approbation of the Hitlerite Government.

It is worthy of note that at the beginning of the war the plundering of the occupied territories of the U.S.S.R. was organized in accordance with the directives contained in the Green File, already mentioned. I submit to the Tribunal, as Exhibit Number USSR-13 (Document Number USSR-13), a letter by Göring dated 6 September 1941 on the subject of inspection for the seizure and utilization of raw materials, in which, among other things, the following passage occurs—the Tribunal will find this excerpt on Page 131 of the document book:

"The war emergency demands that the supplies of raw materials found in the recently captured eastern territories be put at the disposal of the German war economy as quickly as possible. The Directives for the Economic Management of the Occupied Eastern Territories (Green File) are to be taken as authoritative."

I omit the last part of the quotation.

Later however, when the Germans set up their so-called civil administration and organized a number of special economic bodies in various occupied territories including the Ukraine, in particular, disputes arose among the numerous German military and civil bodies and organizations, all of whom were engaged in plundering the occupied territories. Rosenberg, as Reich Minister for the Eastern Occupied Territories, began to insist that all military and economic organizations in the Ukraine were to be liquidated and their functions transferred to German civil administrations.

I submit to the Tribunal a draft report for State Secretary Körner on this subject, dated 3 December 1943, as Exhibit Number USSR-180 (Document

Number USSR-180). I read from it:

> "Subject, 1. Economic administration in the Occupied Eastern Territories; 2. General economic staff for the occupied territories.
>
> "In a letter to the Reich Marshal, dated 20 November 1943, copies of which were sent to the Chief of Staff of the OKW, and the Leader of the Party Chancellery, Minister Rosenberg made the following demands:
>
> "1. For the Ukraine,
>
> "a. Military economic establishment still in existence to be dissolved.
>
> "b. The office of Chief of the Army Group Economic Departments to be abolished and the military functions of the latter to be taken over again by the Chief Quartermaster.
>
> "c. In case of the retention of the office of the Chief of the Army Group Economic Departments the practice of the same specialists working both in the Reich Commissariat and under the Chief of the Army Group Economic Departments to be discontinued."

I omit the rest. In the same draft are detailed objections made by General Stapf and submitted by him to Keitel. He criticizes Rosenberg's suggestion and advises the retention of the Economic Staff East.

And now, with the permission of the Tribunal, I present as Exhibit Number USSR-174 (Document Number USSR-174), another original document which is a covering letter from the Permanent Deputy of the Reich Minister for the Occupied Eastern Territories to State Secretary Körner on the same subject.

Written suggestions by Rosenberg were appended to this letter in which Rosenberg insists that the entire economic activities be placed under the control of his ministry once more. As this is a rather long document and I am presenting it in the original, I ask your permission not to read it since it is mainly concerned with Rosenberg's proposal, which I have already described to the Tribunal. For the information of the interpreters—I omit two pages of my presentation and pass to Page 62.

Evidently Rosenberg did not receive the answer he wanted, so on 24 January 1944 he again wrote to Göring on the same subject. I submit this letter as Exhibit Number USSR-179 (Document Number USSR-179). In this letter Rosenberg suggests—I shall read into the record a short quotation, which the Tribunal will find on Page 151 of the document book:

". . . in the interest of smooth working and economy of staff, I would request that the Economic Staff East and its subordinate agencies be abolished and that the economic administration in the Occupied Eastern Territories and even in those districts where fighting is still going on, be transferred to my sphere of authority."

Göring replied to this in a letter dated 14 February, which I offer in evidence as part of the same Exhibit Number USSR-179. I quote:

"Dear Party Member Rosenberg:

"I received your letter of 24 January 1944 regarding economic administration in the Occupied Eastern Territories. Since the Reich Commissariat Ukraine is now almost entirely army administrative territory"—this is a reference to the Red Army offensive—"I consider it advisable to postpone our conference on the future organization of the economic administration until the military situation is completely clarified."

Thus, Your Honors, Rosenberg's claims met with resistance on the part of other German authorities who stubbornly refused to give up such a choice "economic activity."

Rosenberg in his turn refused to yield and continued to press his demands. I now offer in evidence the following document, Exhibit Number USSR-173 (Document Number USSR-173)—this is a letter from Rosenberg to Göring dated 6 March 1944. In this letter, Rosenberg refers to his experience in Bielorussia and again urges his proposals. It is a long document and I shall not read it, as it is presented to the Tribunal *in toto*. But Göring still had his doubts and decided against Rosenberg.

On 6 April 1944, a month after the above-mentioned letter was sent off, Rosenberg again wrote to Göring. This document I submit to the Tribunal as Exhibit Number USSR-176 (Document Number USSR-176). May I omit reading it into the record, since in substance it is like the last; and the arguments advanced in it are not such as to interest us greatly now. I omit Page 65 and pass on to Page 66.

Thus, Your Honors, even when the Red Army was delivering its last crippling blows against the German fascist hordes, the Hitlerite brigands went on quarreling about the spoils. I think there is no need to prove that while this haggling continued, the occupied territories were looted in feverish haste by the German authorities, both military and civil.

Now, Your Honors, I shall read some brief excerpts from the report made by the Extraordinary State Commission of the Soviet Union on the crimes committed by the Hitlerite invaders in the Lithuanian, Latvian, and Estonian

Soviet Socialist Republics, which were also mercilessly plundered by the German fascist aggressors.

All these reports have been already presented to the Tribunal by the Soviet Prosecution. The report of the Extraordinary State Commission on the crimes of the Hitlerites in the Lithuanian Soviet Socialist Republic contains the following statement:

> "As the result of the way in which the Hitlerite invaders managed affairs, even according to incomplete data, the number of livestock and poultry in all the 14 districts of the Lithuanian S.S.R. decreases in comparison with the year 1940-41 by 136,140 horses, 565,995 cattle, 463,340 pigs. . . ."

I shall now quote excerpts from the report of the Extraordinary State Commission on the crimes committed by the German invaders in the Latvian Soviet Socialist Republic. For the information of the interpreters—this quotation is on Page 68, second paragraph:

> "The Germans plundered the depots of tractors and agricultural machinery throughout Latvia; and according to figures which are far from complete, they sent to Germany 700 tractors, 180 motor vehicles, 4,057 ploughs, 2,815 cultivators, 3,532 harrows."

Second quotation:

> "In consequence of the despoliation of Latvian rural economy by the German invaders, the livestock in Latvia was decreased by 127,300 horses, 443,700 head of cattle, 318,200 pigs, and 593,800 sheep."

Further, I shall read a short excerpt from the report of the Extraordinary State Commission on the Estonian S.S.R.: I quote:

> "The German invaders plundered the rural population of Estonia without restraint. This plunder took the form of forcing the peasants to hand over various kinds of farm produce.
>
> "The quantities of farm produce to be delivered as ordered by the Germans were very high."

I omit part of the quotation and I read the second paragraph on the next page:

> "The Germans confiscated and drove to Germany 107,000 horses, 31,000 cows, 214,000 pigs, 790,000 head of poultry. They plundered about 50,000 beehives."

I omit one more paragraph and I read the last quotation from this report:

> "The Hitlerites took away 1,000 threshing machines, 600 threshing machine motors, 700 motors for driving belts, 350 tractors, and 24,781 other agricultural machines which were the personal property of individual peasants."

Your Honors, a similar policy of plundering private, public, and national property was also carried out by the German fascist invaders in the occupied territories of Bielorussia, Moldavia, the Karelo-Finnish S.S.R. and the Russian Soviet Federated Socialist Republic.

Various military units and organizations in different districts of the U.S.S.R. employed the same methods of plunder at all stages of the war in accordance with the same criminal plan and in pursuit of the same criminal aims. This plan was worked out, these aims were determined, these crimes were organized by the major war criminals who are now in the dock.

The U.S.S.R. Prosecution has at its disposal tens of thousands of documents on this subject. The presentation of all these numerous documents to the Tribunal would require such a long time that it would only complicate the Trial. For this reason, with the Tribunal's permission, I shall not quote any further documents or reports of the Extraordinary State Commission on separate regions and republics, but I shall read into the record the statistical report of the Extraordinary State Commission relative to the material damage done by the German fascists to state enterprises and establishments, collective farms, public organizations, and individual citizens of the U.S.S.R.

This document is being presented to the Tribunal as Exhibit Number USSR-35 (Document Number USSR-35). I shall read into the record only those extracts from the report which have a direct bearing on the subject of my presentation. They are stated as follows—Page 71 of the statement:

> "The German fascist aggressors destroyed and pillaged 98,000 collective farms, 1,876 State farms, and 2,890 machine and tractor stations. Seven million horses, 17 million head of cattle, 20 million pigs, 27 million sheep and goats, and 110 million poultry were slaughtered or shipped to Germany."

The Extraordinary State Commission calculates the damage done to the national economy of the Soviet Union and to individual villagers and townspeople at 679,000 millions of rubles reckoned at the official prices current in 1941 as follows:

> "1. State concerns and institutions, 287,000 million rubles; 2. collective farms, 181,000 million rubles; 3. villagers and

townspeople, 192,000 million rubles; 4. co-operatives, trade unions, and other public organizations, 19,000 million rubles."

I omit the following sections of this report, which describe how this damage is divided among separate Soviet Republics, and I pass on to the fourth paragraph, which describes the destruction of collective farms, State farms, and machine tractor stations. In order to save time, I shall confine myself to a few separate excerpts:

"While burning the villages and hamlets, the German fascists plundered completely the inhabitants of these villages. Those of the peasants who offered resistance were brutally murdered."

Further, some concrete data are given on the plundering in the Kamenetz-Podolsk and the Kursk region, the collective farm "For Peace and Work" in the region of Krasnodar, the collective farms "For the Times" in the Stalino region, as well as collective farms in Mogilev and Zhitomir districts and others. The German fascist invaders inflicted great damage on the State farms of the U.S.S.R. They shipped out of collective farms all stocks of agricultural products and destroyed farm and other buildings belonging to the state farms.

Another excerpt:

"Horse Farm Number 62 in the Poltava district lost its stock of Russo-American trotting brood mares through the German occupation. Up to the war, this stud farm had 670 brood mares. The Germans acted in the same way in regard to other breeding farms."

I omit the remaining excerpt of this section; and I pass on to Paragraph 6, which deals with the mass looting of Soviet citizens' property by the Germans:

"In all the republics, districts, and territories of the Soviet Union which were occupied, the fascist German invaders looted the property of the rural and urban population, stealing valuables, property, clothing, and household articles, and imposing fines, taxes, and contributions on the peaceful population."

The same section contains a whole series of concrete facts of the plunder of Soviet citizens in Smolensk, Orel and Leningrad Provinces; the Dniepropetrovsk and Sumsky Provinces, *et cetera*. With the Tribunal's permission, I omit two pages of my presentation, and I read the following paragraph at the bottom of Page 76:

"The plundering of the Soviet population was being carried out by the German aggressors throughout the whole of the occupied Soviet territory.

"The Extraordinary State Commission has undertaken the task of estimating the damage done to the Soviet citizens by the occupation authorities and has established that the German fascist invaders burned down and destroyed approximately four million dwelling houses which were the personal property of collective farmers, workers, and employees; confiscated 1½ million horses, 9 million head of cattle, 12 million pigs, 13 million sheep and goats; and took away an enormous quantity of household goods and chattel of all kinds."

The above documents and reports of the Extraordinary State Commission depict the crimes committed by the Hitlerites in the occupied territories of the U.S.S.R. These crimes had been organized by the defendants.

The fact that Göring, in his capacity as Reich Marshal and Plenipotentiary for the Four Year Plan of the Hitlerite Government, was directly in charge of all the operations of the German military and civil authorities for the preparation and execution of despoliation of the occupied territories, is clearly shown by the documents which I have already presented. Nevertheless, I beg the indulgence of the Tribunal to read the final document on this matter, that is, the decree issued by Hitler on 29 June 1941.

A copy of this decree was kindly put at our disposal by the American Prosecution, and it has not yet been presented. I, therefore, present it to the Tribunal as Exhibit Number USSR-287 (Document Number USSR-287). This decree reads as follows:

"1. Reich Marshal Hermann Göring, as Plenipotentiary for the Four Year Plan, will employ, within the scope of the power allotted to him for the purpose, all means necessary for exploiting to the fullest extent supplies and economic resources discovered in the newly occupied eastern territories and for developing all their economic possibilities for the benefit of the German war economy.

"2. For this purpose he is also authorized to give direct orders to military authorities in the newly occupied eastern territories.

"3. This decree will become effective as from today. It must first be made public by special order."

However, Your Honors, the granting of extraordinary powers to Göring does not, in any way, mean that the other defendants took only a passive interest in organizing the looting of the occupied territories. All of them, jointly and separately, worked feverishly in this direction. Frank robbed the Poles; Rosenberg managed affairs in the Ukraine and in the other occupied territories of the U.S.S.R.; Sauckel and Seyss-Inquart were busy here and there; Speer and Funk made schemes for and carried out predatory measures within the scope of the Ministry of Economics and the Ministry for Armament and War Production, while Keitel acted in the field of the Armed Forces.

In this connection I should like to submit to the Tribunal two more documents relating to Keitel's economic activities. These documents, Your Honors, are presented to the Tribunal as Exhibit Number USSR-175 (Document Number USSR-175). On 29 August 1942 Keitel, in his capacity of Chief of the Supreme Command of the Armed Forces, issued the following order under "Number 002865/42-g.Kdos. regarding securing of supplies for the Armed Forces." I shall read only two short excerpts from this order. Your Honors will find them on Page 181 of the document book. I read:

> "The food situation of the German people is such that it is necessary for the Armed Forces to contribute as far as possible towards alleviating it. All the necessary means of doing so exist in the combat zones and in the occupied territories both in the East and in the West.
>
> "It is essential, above all, that much greater quantities of supplies and forage . . . should be secured in the occupied territories of the East than has been the case up to now."

The second excerpt:

> "All establishments should consider it their pride as well as their duty to attain this goal at all costs so that in this field, too, they may play a decisive part in achieving victory."

In a memorandum by section chiefs Klare and Dr. Bergmann, dated, "19 November 1942, most secret, subject: Procurement of Supplies for the Armed Forces"—I submit this memorandum in the original to the Tribunal under the same number, Document Number USSR-175—we find the following estimate of the results achieved by the above-mentioned order from Keitel. I now read into the record only the first paragraph of this memorandum.

"By order of the Führer, the Chief of the OKW has decreed in the attached order of 29 August 1942 that the Armed Forces must, as far as possible, contribute towards the task of ensuring food supplies for the German people and that they must themselves make every effort, not only to obtain sufficient food supplies locally to cover the needs of the armies, but also to ensure that the quantities required by the Reich are secured in addition.

"As the result of this order co-operation between the Army and the economic authorities has fortunately grown closer."

Now with Your Honor's permission, I shall read into the record one more document, namely, a telegram sent by Keitel on 8 September 1944. This document was kindly put at our disposal by the American Prosecution and registered as Document Number 743-PS. It was not presented to the Tribunal before; I therefore submit it now as Exhibit Number USSR-286, and I quote:

"1. To General Staff of the Army: Attention General Quartermaster, Office of Chief of Staff, (Anna).

"2. To General Staff of the Army: Attention General Quartermaster, Army Administration Office, (Anna-Bu).

"3. To Commanding General, Army Group North.

"4. To Commanding General, Army Group Center.

"5. To Economic Staff East.

"6. To Military District H.Q.I."

I read this text as follows:

"1. The Führer has entrusted Gauleiter Koch with the utilization of local resources in the parts of Reichskommissariat Ostland occupied by troops of Army Group Center. Furthermore, the Führer has ordered that all German and local administrative authorities be subordinated to Gauleiter Koch. In securing economic resources, Gauleiter Koch is to maintain contact with competent Supreme Reich agencies.

"2. All authorities of the Armed Forces will give Gauleiter Koch every assistance in their power in executing this order."

Thus, Your Honors, even at the end of 1944, when under the blows of the Red Army and its allies Hitlerite Germany was precipitated towards its final defeat and only a few months before its final military and political

collapse, Hitler, Keitel, Koch, and many others were still stretching out their already stiffening fingers to grab the property and wealth of others.

This is the evidence I have to show regarding the looting and marauding perpetrated by the Hitlerite hordes in the occupied territories of the Soviet Union. But they plundered not only the living, they also plundered the dead. My colleague, Colonel Smirnov, has already presented comprehensive evidence on this question. I do not wish to quote it again, but I refer to it only to show how closely interlocked and all-embracing was the circle of their crimes. As Rauschning testifies in his book, which has already been presented by the Soviet Prosecution to the Tribunal, Hitler once said:

> "I need people with strong fists whose principles will not prevent them from taking human life if necessary; and if on occasion they swipe a watch or a jewel, I don't care a tinker's damn."

And Hitler actually found these men in the persons of the defendants and their numerous accomplices.

As the documents which I have just presented show, the Defendant Göring, on account of his position in Hitler's Government as Reich Marshal and Plenipotentiary for the Four Year Plan and as head of the whole criminal system for the plundering of the occupied territories, was guilty of these crimes.

For this reason the stenographic record of a secret conference of German administrative leaders (Reich Commissioners) for the occupied countries, which took place on 6 August 1942, is of particular interest. Göring presided over the meeting. This document, like many other original documents which I had the honor of presenting today to the Tribunal, was found by Soviet military authorities in September 1945 in one of the municipal buildings of the town of Jena, in Thuringia.

This extraordinary document contains a long speech by Göring and the replies of the Hitlerite rulers of the occupied countries. And, Your Honors, many of the people who are sitting in the dock now took part in this conference. The contents of this document are such that any comment on my part is unnecessary. Therefore, if it pleases the Tribunal, I shall proceed to read from this document.

> "Stenographic notes; Thursday, 6 August 1942, 4 p. m., in the Hermann Göring Hall in the Air Ministry.
>
> "Reich Marshal Göring: 'The Gauleiter stated their views here yesterday. Although they may have differed in tone and manner, it was evident that they all feel that the German people have too

little to eat. Gentlemen, the Führer has given me general powers exceeding any hitherto granted within the Four Year Plan.

" 'At this moment Germany commands the richest granaries that ever existed in the European area, stretching from the Atlantic to the Volga and the Caucasus, lands more highly developed and fruitful than ever before, even if a few of them cannot be described as granaries. I need only remind you of the fabulous fertility of the Netherlands, the unique paradise that is France. Belgium too is extraordinarily fruitful and so is the province of Posen. Then, above all, the Government General has to a great extent the rye and wheat granary of Europe, and along with it the amazingly fertile districts of Lemberg (Lvov) and Galicia, where the harvest is exceptionally good. Then there comes Russia, the black earth of the Ukraine on both shores of the Dnieper, the Don region, with its remarkably fertile districts which have scarcely been destroyed. Our troops have now occupied, or are in process of occupying, the excessively fertile districts between the Don and the Caucasus.' "

Göring then goes on to say:

" 'God knows, you are not sent out there to work for the welfare of the people in your charge but to squeeze the utmost out of them, so that the German people may live. That is what I expect of your exertions. This everlasting concern about foreign peoples must cease now, once and for all.

" 'I have here before me reports on what you expect to be able to deliver. It is nothing at all when I consider your territories. It makes no difference to me if you say that your people are starving.

" 'One thing I shall certainly do. I will make you deliver the quantities asked of you; and if you cannot do so, I will set forces to work that will force you to do so whether you want to or not.

" 'The wealth of Holland lies close to the Ruhr. It could send a much greater quantity of vegetables into this stricken area now than it has done so far. What do I care what the Dutchmen think of it.

" 'The only people in whom I am interested in the occupied territories are those who work to provide armaments and food supplies. They must receive just enough to enable them to continue working. It is all one to me whether Dutchmen are Germanic or not. They are only all the greater blockheads if they are; and more important persons than they have shown in the past

how Germanic numskulls sometimes have to be treated. Even if you receive abuses from every quarter, you will have acted rightly, for it is the Reich alone that counts.' "

And now I come to the next excerpt:

" 'I am still discussing the western territories. Belgium has taken care of herself extraordinarily well. That was very sensible of Belgium. But there, too, gentlemen, rage incarnate could seize me. If every plot of ground in Belgium is planted with vegetables, then they must surely have had vegetable seed. When Germany wanted to start a big campaign last year for utilizing uncultivated land, we did not have nearly as much seed as we needed. Neither Holland nor Belgium nor France have delivered it, although I myself was able to count 170 sacks of vegetable seed on a single street in Paris. It is all very well for the French to plant vegetables for themselves. They are accustomed to doing this. But, gentlemen, these people are all our enemies and you will not win over any of them by humane measures. The people are polite to us now because they have to be polite. But let the English once force their way in and then you will see the real face of the Frenchman. The same Frenchman who dines with you and in turn invites you to dine with him will at once make it plain to you that the Frenchman is a German-hater. That is the situation, and we do not want to see it any other way than it is.

" 'It is a matter of indifference to me how many courses are served every day at the table of the Belgian king. The king is a prisoner of war; and if he is not treated as such, I will see to it that he is taken to some other place where this can be made clear to him. I am really fed up with the business.

" 'I have forgotten one country because nothing is to be had there except fish; that is Norway.

" 'With regard to France, I say that it is still not cultivated to the greatest possible extent. France can be cultivated in a very different way if the peasants there are forced to work in a different manner. Secondly, inside France itself the population is gorging itself to a scandalous degree. . . .

" 'Besides, Heaven help a German car parked outside a French tavern in Paris! it is reported. But a whole row of French gasoline-driven vehicles parked there doesn't bother anyone.

" 'I would say nothing at all, on the contrary, I would not think much of you if we didn't have a marvelous restaurant in Paris where we could get the best food obtainable. But I do not want the French to be able to saunter into it. Maxim must have the best food for us.' "

Mr. President, I see one of the German Defense Counsel wishes to take the floor. I shall, therefore, give him an opportunity to do so.

DR. ALFRED THOMA (Counsel for Defendant Rosenberg): Mr. President, I have only a short question.

The prosecutor has not told us where this document can be found, in which document book and what number it has. He mentioned only the page on which the Court can find that document.

MR. COUNSELLOR SHENIN: This document was presented to the Tribunal as Document Number USSR-170. The photostatic copy was turned over to Defense Counsel.

May I continue, Mr. President?

THE PRESIDENT: It comes from the archives of the Defendant Göring, does it not? You have so stated.

MR. COUNSELLOR SHENIN: Yes.

" 'For German officers and men three or four first-class restaurants —excellent, but not for the French.' "

I quote the next excerpt:

" 'Furthermore, you should be like bloodhounds on the track of anything the German people can use; that stuff should be brought here out of the warehouses like lightning. Whenever I issued a decree, I stated repeatedly that soldiers are entitled to buy as much as they want and whatever they want, as much as they can carry. . . .

" 'Now you will say—Laval's foreign policy. Herr Laval calms down Herr Abetz and as far as I am concerned, may go to Maxim's, although it is out of bounds. But the French will soon have to learn. You have no idea of the impudence they have. When our friends hear that a German is interested they charge fantastic prices. They charge three times the normal price and if they hear that the Reich Marshal is in the market, they charge five times the normal price. I wanted to buy a tapestry. Two million francs was asked. The woman was told that the buyer wanted to see the tapestry. She said she did not wish to let it out of her sight. Well,

then she would have to go with it. She was told that she was going to see the Reich Marshal. When she arrived the tapestry was priced at 3 million francs. I reported it. Do you think anything was done? I submitted the case to the French court and they taught milady that it is inadvisable to profiteer when dealing with me.

" 'All that interests me is what we can squeeze out of the territory now under our control with the utmost application and by straining every nerve; and how much of that can be diverted to Germany. I don't give a damn about import and export statistics of former years.

" 'Now, regarding shipments to the Reich. Last year France shipped 550,000 tons of grain, and now I demand 1.2 million tons. Two weeks from now a plan will be submitted for handling it. There will be no more discussion about it. What happens to the Frenchmen is of no importance. One million two hundred thousand tons will be delivered. Fodder—last year 550,000 tons, now 1 million; meat—last year 135,000 tons, now 350,000; fats—last year 23,000, this year 60,000.' "

And so on.

The next excerpt from this address concerns the quotas to be fixed for deliveries from countries such as the Netherlands, Belgium, Norway, and the Government General. In reply to Göring's questions and instructions definite figures were quoted by those attending the meeting. I omit one page and continue:

"Reich Marshal Göring: 'So much for the West. A special order will be issued concerning purchasers who buy up all the clothes, shoes, *et cetera*, that are to be had.

" 'Now comes the East. I have settled this point with the Wehrmacht. The Wehrmacht waives the demands it made on the home country. How much hay was required?'

"Backe: '1.5 million tons. Over 1 million tons straw and 1½ million tons oats. We can't manage that.(?)'

"Reich Marshal Göring: 'Now, gentlemen, there is only one thing more regarding Wehrmacht supplies. I want to hear nothing more about you until further notice. No more requests. The country—with its sour cream, apples, and white bread—will feed us abundantly. The Don valley will take care of the rest.' "

Passing to the next quotation—Göring is speaking:

" 'The Wehrmacht in France will, of course, be supplied with food by France. That is a matter of course, and I did not even mention it before.

" 'Now about Russia: There is no doubt of her fertility. The position there is almost incredibly good. . . .' "

The next quotation—Göring is still speaking:

" 'I was glad to hear that the Reich Commissioner in Ostland is doing just as well, and the people are just as fat and chubby and puff a little when they work. Nevertheless, I shall see to it, no matter how carefully certain groups are treated, that some contribution is made from the inexhaustible fertility of this area.' "

After this Lohse, Reich Commissioner for Bielorussia, addressed the meeting:

" 'May I state my opinion in a few words? I should like to give you more but certain conditions have to be observed. The harvest is certainly excellent but in more than half of the area of Bielorussia which is well cultivated, it is scarcely possible to get in the crops, unless we can put a stop to the disturbances caused by guerrillas and partisans. I have already been crying out for help for 4 months.' "

Lohse goes on to describe the activities of the partisans in Bielorussia. In this connection Göring interrupts him and says:

" 'My dear Lohse, we have known each other for a long time. I know well enough that you are a great poet.' "

And Lohse answered:

" 'I won't stand for that; I have never written poetry.' "

In conclusion I quote the last three quotations from Göring's speech. He said:

" 'We must have buyers from the Ministry of Economics, Funk, in the Ukraine and elsewhere. We must send them to Venice to buy odds and ends, those frightful alabaster things and cheap jewelry, *et cetera*. I don't think there is any other place except Italy where one gets quite such junk.

" 'Now let us see what Russia can deliver. I think, Riecke, we should be able to get 2 million tons of cereals and fodder out of the whole of Russia.'

"Riecke: 'That can be done.'

"Reich Marshal Göring: 'That means that we must get 3 million, apart from Wehrmacht supplies.'

"Riecke: 'No, all that is in the front areas goes for the Wehrmacht only.'

"Reich Marshal Göring: 'Then we bring 2 million.'

"Riecke: 'No.'

"Reich Marshal Göring: 'A million and a half then.'

"Riecke: 'Yes.'

"Reich Marshal Göring: 'All right.' "

The discussion went on in the same way. Göring's speech ends with the following sentence:

" 'Gentlemen, I would just like to say one thing more. I have a very great deal to do and a very great deal of responsibility. I have no time to read letters and memoranda informing me that you cannot supply my requirements. I have only time to ascertain from time to time through short reports from Backe whether the commitments are being fulfilled. If not, then we shall have to meet on a different level.' "

As Your Honors have heard, besides Göring this conference was attended by the Defendants Rosenberg, Sauckel, Seyss-Inquart, Frank, Funk, and others. As you have heard, Göring finished his speech with a direct threat against the participants in this conference, by saying that "we shall have to meet on a different level." This threat came true. The matter has, in every sense of the term, been met on a different level—from the level of the dock.

Thus the whole volume of evidence submitted establishes beyond all doubt:

1. That simultaneously with their well-laid preparations for the military invasion of Czechoslovakia, Poland, Yugoslavia, Greece, and the U.S.S.R., the criminal Hitlerite Government and the Supreme Command of the German Armed Forces worked out a plan for the mass plunder and spoliation of private, public, and state-owned property in the territories belonging to these countries.

2. That having worked out this criminal plan, the conspirators carried out all the preliminary measures necessary for its execution by training special bodies of officers and officials for the despoliation of the territories they meant to seize by preparing and issuing special instructions, reference books, and orders for this purpose, and by creating a special and very

complicated organization of all sorts of "economic inspectorates," "detachments," "groups," "joint stock companies," "plenipotentiaries," *et cetera*, and by calling in a large number of specialists in different branches, military experts on agriculture, agricultural leaders, economic spies, *et cetera*.

3. That in accordance with this long-prepared plan, they subsequently plundered and despoiled private, public, and State property in the occupied territories and also robbed the peaceful population of these territories, having recourse to atrocities, violence, and arbitrary practices of the most appalling nature.

4. That in order to make the soldiers and the officers of the German Army "economically interested" in the war, the conspirators not only failed to prosecute cases of marauding and robbery committed, by German soldiers and officers, but even encouraged these crimes and incited their men to commit wholesale looting.

5. That by the commission of all these crimes the conspirators caused enormous economic damage to the people of the occupied territories, exposing them to starvation and suffering, and that they profited by their criminal activities for the personal gain and enrichment of themselves and their adherents.

6. That having thus planned, prepared, and initiated wars of aggression against the freedom-loving nations, the conspirators aimed at the predatory despoliation of these nations and thereafter achieved these criminal ends by means of equally criminal and predatory methods.

On the strength of the above, the defendants have consciously and deliberately violated Article 50 of the Hague Convention of 1907, the laws and customs of war, the general principles of criminal law accepted by the penal codes of all civilized nations, as well as the national law of those countries in which these crimes were committed.

For these criminal acts, Your Honors, each and all of which are covered by Article 6(b) of the Charter of the International Military Tribunal, all the defendants must be found guilty; all of them without exception must be held responsible both individually and as members of the conspiracy.

May it please Your Honors, the documents which I have presented to the Tribunal and which I have read into the record are silent witnesses to the crimes organized and committed by the defendants.

But the conscience of the Judges will hear the testimony of these silent witnesses, who relate truthfully the story of the arbitrary practices and

crimes of the Hitlerite brigands and the boundless sufferings of their innumerable victims.

THE PRESIDENT: The Tribunal will adjourn.

[*The Tribunal adjourned until 21 February 1946 at 1000 hours.*]

SIXTY-FOURTH DAY

Thursday, 21 February 1946

Morning Session

MARSHAL: The Defendant Hess will be absent from today's session on account of illness.

GEN. RUDENKO: I would like to inform Your Honor that in accordance with the plan of the Soviet Prosecution presented to the Tribunal and with the permission of the Tribunal, we shall start presenting evidence on that section entitled, "The Destruction and Plunder of Cultural and Scientific Treasures, Cultural Institutions, Monasteries, Churches, and Other Religious Institutions, as well as the Destruction of Cities and Villages."

The evidence on this section will be presented by State Counsellor of Justice of the Second Class, Raginsky.

STATE COUNSELLOR OF JUSTICE OF THE SECOND CLASS M. Y. RAGINSKY (Assistant Prosecutor for the U.S.S.R.): May it please Your Honors, among the numerous and grievous war crimes committed by the Hitlerite conspirators—crimes enumerated in detail in Count Three of the Indictment—crimes against culture occupy a definite place of their own. These crimes expressed all the abomination and vandalism of German fascism.

The Hitlerite conspirators considered culture of the mind and of humanity as an obstacle to the fulfillment of their monstrous designs against mankind, and they removed this obstacle with their own typical cruelty. In working out their insane plans for world domination, the Hitlerite conspirators, side by side with the initiation and prosecution of predatory wars, prepared a campaign against world culture. They dreamed of turning Europe back to the days of her domination by the Huns and Teutons. They tried to set mankind back.

It is unnecessary to quote the numerous pronouncements of the fascist ringleaders on this subject. I shall permit myself merely to refer to one pronouncement of Hitler's quoted on Page 80 of Rauschning's book, and already presented to the Tribunal by the Soviet Prosecution. "We," said

Hitler, "are barbarians and we wish to be barbarians. It is an honorable calling."

On behalf of the Soviet Prosecution, I shall present to the Tribunal evidence of how the defendants put into practice these orders of Hitler, which found concrete expression in the wrecking of cultural institutions, the looting and destruction of cultural treasures, and the suffocation of the national cultural life of the peoples in the territories temporarily occupied by the German armies, that is, the territories of the U.S.S.R., Poland, Czechoslovakia, and Yugoslavia.

I shall present to the Tribunal evidence of the Hitlerites' preparations and planning for the looting of cultural treasures; how, long before the treacherous attack on the U.S.S.R., the so-called Einsatzstab Rosenberg prepared for pillage, how the predatory activity of the Defendant Rosenberg was co-ordinated with Göring, Heydrich, and the Supreme Command, and how this pillage was disguised.

It is now generally known to what monstrous lies and provocations the Hitlerites resorted in the camouflaging of their crimes. While annihilating millions of people in the extermination camps they had set up, they spoke, in their orders, of "filtration" and "cleansing." While destroying and plundering cultural treasures, the fascist vandals sought shelter behind the terms "collection of materials" and the "study of problems," and shamelessly referred to themselves as "bearers of culture."

The Hitlerite conspirators endeavored to change into serfs, bereft of all their rights, the peoples of the territories seized; and, for this purpose, they destroyed the national culture of these peoples.

The destruction of the national culture of the Slav peoples and particularly of the Russian, Ukrainian, and Bielorussian cultures, the destruction of national monuments, schools, literature, and the compulsory Germanization of the population, followed the German occupation everywhere, in obedience to the same criminal principle which governed the ensuing pillage, rape, arson, and mass murders.

I omit, Mr. President, the end of Page 3 and Page 4 of my presentation, and I proceed to the presentation of Section 2, Page 5.

As I have already indicated, the destruction of the national culture of the peoples in the occupied territories was a fundamental part of the general plan for world domination established by Hitler's conspirators. It is difficult to determine whether destruction or plunder was the prevalent factor in these plans. But there is no disputing the fact that both plunder and destruction were aimed at one goal only—extermination; and this extermination was

carried out everywhere, in all the territories occupied by the Germans, and on an enormous scale.

Article 56 of the 1907 Hague Convention laid down, I quote:

> "The property of municipalities, of Church institutions and establishments dedicated to charity and education, arts and sciences, even when belonging to the State, shall be considered as private property. All premeditated seizure of, and destruction or damage to, institutions of this character, to historic monuments, works of art and science, is forbidden and should be made the subject of legal proceedings."

The Hitlerites consciously and systematically scoffed at the principles and demands laid down in Article 56. All the conspirators are guilty of this, and the Defendant Rosenberg in the first place.

Rosenberg had an organization with widespread ramifications for the plunder of cultural treasures and with numerous staffs and representatives. The Einsatzstab Rosenberg and Rosenberg's chief of staff, Utikal, were the central point of the network co-ordinating the criminal activities of many predatory organizations inspired and directed by the Hitlerite Government together with the German Supreme Command. Rosenberg was officially placed in charge of plundering the cultural treasures in the occupied territories by a decree of Hitler of 1 March 1942.

I have in mind Document Number 149-PS presented to the Tribunal on 18 December of last year by the United States Prosecution and accepted by the Tribunal as Exhibit Number USA-369. With your permission, Mr. President, I shall quote only two paragraphs of this document. You will find this document on Page 3 of your document book. I quote:

> "His"—Rosenberg's—"Einsatzstab for the occupied territories has the right to investigate libraries, archives, and every other kind of cultural establishment for corresponding materials, and to confiscate these materials for the realization of the ideological aims of the National Socialist Party. . . ."

I omit one paragraph and quote the last paragraph of this document:

> "The regulations for the co-operation with the Armed Forces are issued by the Chief of the Supreme Command of the Armed Forces in agreement with Reichsleiter Rosenberg.
>
> "The necessary measures for the eastern territories under German administration will be taken by Reichsleiter Rosenberg in his capacity as Reich Minister for the Occupied Eastern Territories."

This decree of Hitler's was issued, as is clear from the document quoted, to all departments of the Armed Forces, the Party, and the Government.

But it is not 1 March 1942 which should be considered as the beginning of Rosenberg's predatory activities. I shall submit several excerpts from a letter of Rosenberg to Reichsleiter Bormann in confirmation. The letter is dated 23 April 1941. This document was presented to the Tribunal on 18 December 1945 by the United States Prosecution, and it was accepted by the Tribunal as Exhibit Number USA-371 (Document Number 071-PS).

This document—which Your Honors will find on Page 4 of your document book—is interesting also for the fact that the plunder, referred to as "confiscation" in the letter, was carried out by the Defendant Rosenberg in close collaboration and contact, based on a written agreement, between the departments of Rosenberg and Himmler. I cite extracts from Page 1 of the Russian translation of this letter:

> "I have"—wrote Rosenberg—"transmitted to you a photostatic copy of my agreement with the Security Police (SD), concluded with the express approval of Gruppenführer Heydrich."

And further—you will find this on Page 5 in your document book:

> "Questions bearing on works of art"—as stated in this letter—"were considered of secondary importance. Of primary importance was the Führer's directive regarding the twice-issued order from the Chief of the Supreme Command of the Armed Forces, for the occupied territories of the West, to the effect that all archives and all scientific property belonging to our ideological opponents, be placed at my disposal. This, too, was carried out on a wide scale and in close co-operation with the SD and the military leaders."

The importance attached by the Hitlerite conspirators to Rosenberg's predatory staffs is shown in Göring's special circular of 1 May 1941, addressed to all Party, Government, and military institutions, which had been ordered to co-operate with the Einsatzstab Rosenberg. This document was presented by our American colleagues on 18 December of last year and accepted by the Tribunal as Exhibit Number USA-384 (Document Number 1117-PS).

Even at that time the scale on which the pillage was conducted was already enormous. As Rosenberg stated in his letter of 23 April 1941, at that time, that is, in April 1941, 7,000 cases of looted works of art had already been dispatched to Germany.

To conclude with this document I shall, with your permission, read one further brief quotation into the record. It consists of one paragraph only. You will find this paragraph on Page 6 of the document book:

> "And thus"—wrote Rosenberg—"these problems practically solved themselves and the work has followed its own course. Here I would like to ask for a confirmation that these decisions, already adopted in the West, should, in the present circumstances, be rendered valid in the other occupied territories, or in those which are to be occupied."

This document, in which pillage is referred to as "work," proves that Rosenberg's criminal activities were carried out in close contact with the Supreme Command of the Armed Forces; and, finally, that as early as April 1941 plans were being made for plundering the territories about to be occupied.

The speech of the Chief Prosecutor for the U.S.S.R., General Rudenko, and the speech of the representative of the United States Prosecution, Mr. Alderman, defined what Rosenberg meant in his letter by "territories about to be occupied" at that time. That was the period of the practical realization of the evil Hitlerite schemes, planned in the so-called Plan Barbarossa, the period when the German fascist hordes were hurled against the frontiers of the Soviet Union, the period of the attack on the U.S.S.R.

Lastly, it is necessary to point out that, in April 1941, the Defendant Rosenberg placed Utikal at the head of all operational staffs, "the creation of which may become necessary during the course of this war." In this connection Rosenberg referred to the "successful work" and to the "experience gained" by his operational staff in the western occupied territories and in the Netherlands.

This fact is confirmed by a certificate issued to Utikal, dated 1 April 1941, and signed by Rosenberg. The authenticity of this document—which bears Document Number 143-PS—was confirmed by Rosenberg at his interrogation on 26 September 1945. I present this document to the Tribunal as Exhibit Number USSR-371.

In reporting on the organization for the looting and destruction of cultural treasures, it is necessary to indicate yet another department which combined diplomacy with pillage. I have in mind the German Ministry for Foreign Affairs.

The Chief Prosecutor for the U.S.S.R., General Rudenko, in his opening speech pointed out that the general pillage in the occupied regions of the U.S.S.R., carried out on the direct orders of the German Government, was

directed not only by the Defendants Göring and Rosenberg and by the various "staffs" and "commands" subordinated to them; the Ministry for Foreign Affairs, headed by the Defendant Ribbentrop, also participated through a "special formation."

The creation of such a formation—the so-called "Ribbentrop Battalion"—and its practical activities in the looting of cultural treasures in the territory of the U.S.S.R. are testified to in a written statement of 10 November 1942 by Obersturmführer Dr. Förster, who was captured by Red Army units in the region of Mosdok. In this statement Förster likewise indicated the task of Rosenberg's staff in the plunder or, as he expressed it, in the "withdrawal" of museum treasures and antiques. A certified photostat of this statement I present to the Tribunal as Exhibit Number USSR-157 (Document Number USSR-157).

It is stated in Förster's statement, I read:

> "In August 1941 while in Berlin, I, with the assistance of my old acquaintance from the University of Berlin, Dr. Focke, then employed in the press section of the Foreign Office, was transferred from the 87th Tank Destroyer Division to the special purpose battalion attached to the Foreign Office. This battalion had been created on the initiative of the Reich Minister for Foreign Affairs, Ribbentrop, and was under his direction. The officer commanding the battalion is Major of the Waffen-SS, Von Künsberg.
>
> "The task of the special purpose battalion was to seize and to secure, immediately after the fall of large cities, their cultural treasures and all objects of great historic value, to select valuable books and films, and finally to dispatch them all to Germany.
>
> "The special purpose battalion consists of four companies. The first company is attached to the German Expeditionary Corps in Africa, the second company to Army Group North, the third to Army Group Center, and the fourth to Army Group South. The first company is located at present in Italy, in Naples, awaiting possible deployment to Africa. Battalion staff headquarters are in Berlin, Hermann Göring Strasse, Number 104. The confiscated material is stored in the premises of the Adler firm, in the Hardenbergstrasse.
>
> "Prior to our departure for Russia, Major Von Künsberg transmitted to us Ribbentrop's order, thoroughly to 'comb out' all scientific establishments, institutions, libraries, and all the palaces,

to search all the archives, and to lay our hands on anything of a definite value.

"I heard from my comrades that the second company of our battalion had removed valuable objects from the palaces in the Leningrad suburbs. I myself was not there at the time. At Zarskoje Selo the company seized and secured the property belonging to the palace-museum of the Empress Catherine. The Chinese silk draperies and the carved gilt ornaments were torn from the walls. The floor of artistic ornaments was dismantled and taken away. From the palace of the Emperor Alexander antique furniture and a large library containing some 6,000 to 7,000 volumes in French and over 5,000 volumes and manuscripts in Russian, were removed.

"The fourth company, to which I was attached, confiscated the Kiev laboratory of the Medical and Scientific Research Institute. The entire equipment, as well as scientific material, documents and books, was shipped to Germany.

"We reaped a rich harvest in the library of the Ukrainian Academy of Science, treasuring the rarest manuscripts of Persian, Abyssinian, and Chinese literature, Russian and Ukrainian chronicles, the first edition books printed by the first Russian printer, Ivan Fjodorov, and rare editions of the works of Shevtchenko, Mickiewicz, and Ivan Franko.

"From the Kiev museums of Ukrainian art, Russian art, Western and Eastern art and from the central Shevtchenko museum numerous exhibits which still remained there, including paintings, portraits by Repin, canvases by Vereschagin, Fedotoff, Goe, sculptures by Antokolsky and other masterpieces of Russian and Ukrainian painters and sculptors were dispatched to Berlin.

"In Kharkov several thousand valuable books in de luxe editions were seized from the Korolenko library and sent to Berlin. The remaining books were destroyed. From the Kharkov picture gallery several hundred pictures were secured, including 14 pictures by Aivasovsky, works by Repin and many paintings by Polienov, Schischkin, and others. Antique sculptures and the entire scientific archive of the museum were also taken away. Embroideries, carpets, Gobelin tapestries, and other exhibits were appropriated by the German soldiers.

> "I also knew"—testified Dr. Förster in his statement—"that the staff of Alfred Rosenberg used special kommandos for the confiscation of valuable antique and museum pieces in the occupied countries of Europe and in the territories of the East. Civilian experts were in charge of these kommandos.
>
> "After the occupation of any big city, the leaders of these kommandos arrive, accompanied by various art experts. They inspect museums, picture galleries, exhibitions, and institutions of art and culture, they determine their condition and confiscate everything of value."

I omit the last paragraph of this statement.

With your permission, Your Honors, I shall read two more excerpts into the record from a letter of the Reich Minister for the Occupied Territories, dated 7 April 1942, and signed by order of the Minister, by Laibrandt, closest assistant of the Defendant Rosenberg. This letter, Your Honors, is in your document book, on Pages 12 and 13, and was submitted on 18 December last year by the United States Prosecution as Exhibit Number USSR-408 (Document Number USSR-408).

This document is very revealing in that it indicates the scale of the projected pillage and disguises this pillage which, in the document, is shamelessly referred to as "the preservation of objects of culture, research material, and of scientific institutions in the Occupied Eastern Territories."

This document is also characteristic in that Rosenberg, fearing that he might miss some of the booty, established his own monopoly to plunder and only made concessions to the quartermaster general of the Army, in conjunction with whom—as the letter reveals—Operational Staff Rosenberg carried on its "work."

I read the first excerpt of this letter. I quote:

> "I have entrusted the Einsatzstab Rosenberg for the Occupied Territories with the listing and detailed handling of all cultural valuables, research materials, and scientific work in libraries, archives, research institutions, museums, et cetera, found in public and religious establishments, as well as in private houses. The Einsatzstab, instructed once again by the Führer's order of 1 March 1942, begins its work jointly with the quartermaster general of the Army immediately after the occupation of the territories by combat troops and executes this work after the establishment of civil government, in co-operation with the competent Reich Commissioner, until such time as the task is completed. I request

> all the authorities of my department to support, as far as possible, the representatives of the Einsatzstab in the execution of these measures and to supply them with all essential information, especially in connection with the registration of objects in the occupied territories, whether or not they have been removed, and if so, where this material is located at the present time."

As you see, Your Honors, the looting of libraries, archives, scientific research institutes, museums—both public and private—and even of church treasures, was already being planned.

The fact that this is not a question of preserving cultural treasures, but of plunder, is revealed by the following excerpt from the letter mentioned. You will find it on Page 12 of your document book. I quote:

> "Insofar as seizures or transports have already taken place contrary to these provisions . . . Reichsleiter Rosenberg's Einsatzstab, Berlin-Charlottenburg (2), Bismarckstrasse 1, must be informed without delay."

I shall not burden you by enumerating the many addresses to whom copies of this letter were sent. I shall merely name some of them: OKH, the Reich Minister of Economics, the Plenipotentiary for the Four Year Plan, the Reich Commissioners for the Baltic regions, the Ukraine, *et cetera*. Thus this document reconfirms that both Göring and Funk, as well as the representatives of the OKH, actively participated in this pillage.

The priceless works of art plundered in the occupied countries were removed to Germany, now transformed by the Hitlerites into a robber's den.

The Extraordinary State Commission of the Soviet Union established that, in January 1943, the Commander of the 1st Tank Army, Cavalry General Mackensen, in the presence of the head of the propaganda department of the 1st Tank Army, Müller, removed from the Rostov Museum of Pictorial and Plastic Art, which had been evacuated to the town of Piatigorsk and which was then on the premises of the Lermontov Museum, the most valuable canvases of Ribera, Rubens, Murillo, Jordaens, Vereshtshagin, Korovine, Kramskoy, Polenov, Repin, Lagorio, Aivasovsky, and Shishkin, sculptures by Donatello, and other exhibits.

This statement, Your Honors, has already been presented to the Tribunal as Exhibit Number USSR-37 (Document Number USSR-37). With your permission I should like to read into the record only one paragraph on Page 5 of this document. The quotation is on Page 18 of your document book. I quote:

"The Rostov Museum of Pictorial Art had been looted and its contents carried off into Germany by the commander of the 1st Tank Army, Cavalry General Mackensen, and by the chief of the propaganda section of the 1st Tank Army, Müller."

From the affidavit of the Plenipotentiary of the Polish Government, Stefan Kurovsky, it has been established that the Defendant Frank, in looting the cultural treasures of the Polish State, was also striving after his own personal gain. Pictures, porcelain, and other works of art from the plundered museums of Warsaw and Kraków, particularly from Vavel Castle, were transferred to the estate of the Defendant Frank.

The affidavit to which I referred is an appendix to the report of the Polish Government and is presented to the Tribunal as Exhibit Number USSR-302 (Document Number USSR-302). This document, Your Honors, is to be found on Pages 19-20 of your document book.

In this document registered under Document Number 055-PS, which is a letter from the head of the Political Leadership Group P4 of the Reich Ministry for the Eastern Occupied Territories, dated 14 September 1944, there are indications as to where the looted treasures were taken and stored. This letter, addressed to the "Reich Minister through the Chief of the Political Leadership Staff" is headed, "Objects of Art Evacuated from the Ukraine." This letter is to be found in your document book on Page 21. I present this letter as documentary evidence and, submit it as Exhibit Number USSR-372 and I quote the text. I read:

"The Reich Commissioner for the Ukraine has stored the objects of art and the pictures evacuated from Kiev and Kharkov, in the following shelters in East Prussia: 1. The Richau family estate, near Wehlau; 2. Wildenhoff Manor (owner, Count Schwerin)."

I read further from the text of this letter:

"There are 65 cases, the exact contents of which are enumerated on the attached list. As to the other 20 cases, 57 portfolios, and one roll of engravings, their inventory has not been taken to date. Among the pictures there are a great number of very ancient icons, works by famous masters of the German, Italian, and Dutch schools of the 16th, 17th, and 18th centuries, as well as the works of the best Russian masters of the 18th and 19th centuries. On the whole, this property consists of extremely valuable works of art, which had been removed from public Ukrainian museums and whose value, even at a rough estimate, amounts to a sum of many

millions. In addition, this is the sole collection of such international value on German territory. . . .”

I omit the last paragraph of this letter since it has no material bearing on the subject, and will continue by quoting an excerpt from Page 2 of Rosenberg’s letter, of which I have already read one quotation earlier in the day. You will, Your Honors, find it on Page 5 of the document book. I quote. Rosenberg wrote:

> “In the process of these confiscations we have, of course, found also many other works of art. Among them there are some of great value and, in order to preserve them, the Chief of the High Command of the Army, at my request and in accordance with the Führer’s directives, ordered me to draw up a catalogue of these works of art and to keep them for the Führer.”

You have heard, Your Honors, of Hitler’s attitude towards the property of the people and the works of art in the countries seized by the Germans.

This episode is to be found in the Czechoslovakian Government report, presented to the Tribunal; excerpts from this report were read yesterday into the record. Therefore, I consider there is no necessity for reading it into the record once more. However, it is necessary to note that not only Hitler but Göring was an ardent adherent of this policy of “acquisitions.” You also heard, Your Honors, yesterday how Göring acquired valuable Gobelin tapestries in France. However, Göring did not acquire Gobelin tapestries only. He wrote in one of his letters to Rosenberg—I refer to Document Number 1985-PS, which I submit to the Tribunal as Exhibit Number USSR-373, and which is in your document book on Pages 156 to 158—Göring wrote that he “by means of purchases, presents, bequests, and barter owns perhaps the most important private collection, at least in Germany, if not in Europe.” The document presented is a copy of a typewritten letter and includes a series of corrections and notes in ink, evidently in Göring’s own hand. This copy was captured, together with Göring’s other correspondence, by units of the American Army, a fact which was confirmed and in due time presented to the Tribunal by our American colleagues.

This document, Your Honors, reveals, to a remarkable extent, the nature of the “acquisitions” effected by Göring and also confirms Ribbentrop’s part in the “preservation” of cultural treasures in the occupied territories. For this reason, I shall, with your permission, read a few extracts from this document.

I read the extract from the first page of this letter. I quote:

> "After prolonged search"—wrote Göring to Rosenberg—"I was much gratified that an office was at last charged with the collection of these things although I want to point out that other departments are also claiming the authority of the Führer. First of these was the Reich Minister for Foreign Affairs, who, several months ago, sent a circular to all departments, in which he, inter alia, stated that he had received full authority for the preservation of cultural objects in occupied territories."

I now read an extract from Page 2 of the letter, the last paragraph:

> "In order to avoid misconceptions regarding these articles, part of which I want to claim for myself, part of which I have purchased, and part of which I wish to acquire, I want to inform you as follows:
>
> "1. I have now obtained by means of purchase, presents, bequests, and barter, perhaps the greatest private collection in Germany at least, if not in Europe."

I omit one paragraph and I read Subparagraphs 2 and 3 of the next one. Subparagraph 2 enumerates the objects which Göring would like to acquire. It refers to a very extensive and highly valued collection of Dutch artists of the 17th century, while Subparagraph 3 mentions "a comparatively small though very good collection of French artists from the 18th century, and finally, a collection of Italian masters."

You have heard, Your Honors, what was meant, in practice, by "the personal material interest of soldiers in the war." All this established irrevocably that the Hitlerites engaged in pillage and brigandage and that everybody, from the privates to the criminal leaders of Hitlerite Germany, participated in the plunder. The same must be said regarding the destruction of cultural treasures. Decrees and directives concerning the destruction of cultural treasures came from the leaders of Hitlerite Germany and from the highest ranks of the Military Command.

I shall refer, as evidence, to the order of the Commander of the German 6th Army, signed by Field Marshal Von Reichenau, approved by Hitler and entitled, "On the Behavior of the Troops in the East." This order was presented to the Tribunal as Document Number USSR-12. This document, contrary to the usual Hitlerite custom, contains direct and entirely undisguised instructions for the destruction and suppression of culture in the occupied territories.

With your permission, I shall quote just one paragraph of this order. It is on Page 161 of your document book. I quote:

> "The Army is interested in extinguishing fires only in such buildings as may be used for Army billets. . . ."

All the rest to be destroyed; no historical or artistic buildings in the East to be of any value whatsoever.

I shall quote one more document which establishes that the destruction and pillage of cultural treasures, universally carried out by the Hitlerites in the territories occupied by them, was inspired and directed by the Hitlerite Government. I refer to the diary of the Defendant Frank, extracts of which have already been submitted to the Tribunal as Document Number USSR-223. In the first volume of Frank's diary, on Page 38—Page 169 in your document book—there appears an entry dated 4 October 1939 which reads as follows:

> "Berlin. Conference with the Führer. The Führer discussed the general situation with the Governor General and approved the activity of the Governor General in Poland, particularly in the demolition of the Warsaw Palace, the non-restoration of this city, and the evacuation of the art treasures."

I consider that the documents, now submitted and read into the record, are fully sufficient to enable us to draw the following conclusions:

(a) The pillage and destruction of the cultural treasures of the peoples in the German occupied territories were carried out in accordance with previously elaborated and carefully prepared plans.

(b) The fascist Government and German High Command directed the pillage and destruction of cultural treasures.

(c) The most active role in the organization of the pillage and destruction of cultural treasures was taken by the participants in the conspiracy, the Defendants Rosenberg, Ribbentrop, Frank, and Göring.

I pass on to the next section of my presentation, entitled, "Destruction and Pillage of Cultural Treasures in Czechoslovakia, Poland, and Yugoslavia."

I reported to the Tribunal on the general plans of the Hitlerite conspirators for strangling national cultural life in the countries occupied by them. I now pass on to report on the actual materialization of the criminal plans of the Hitlerite conspirators in Czechoslovakia, Poland, and Yugoslavia.

I shall refer only to such irrefutable proofs as the official reports of the Governments of Czechoslovakia, Poland, and Yugoslavia, already submitted to the Tribunal by the Soviet Prosecution. I shall read into the record a few

parts of the relevant sections of these reports directly concerning the theme expounded by me, which have not been quoted by my colleagues.

I begin by quoting extracts from the Czechoslovak Government reports. These excerpts, Your Honors, are to be found in your document book, on Pages 81 to 88. I quote from Page 81:

> "K. H. Frank, who was appointed Secretary of State and Deputy to Reich Protector Von Neurath in March 1939 and in August 1943 became Minister of State and head of the German Executive in the Protectorate, said, 'The Czechs are fit to be used only as workers or farm laborers.'
>
> "K. H. Frank replied to a Czech delegation which, in 1942, requested the Czech universities and colleges to be reopened, 'If the war is won by England, you will open your schools yourselves; if Germany wins, an elementary school with five grades will be enough for you.' "

The Germans seized all colleges and hostels for students.

I pass to a quotation on Page 83 of the report:

> "They immediately seized the most valuable apparatus, instruments, and scientific equipment in many of the occupied institutions. The scientific libraries were systematically and methodically damaged. Scientific books and films were separated and taken away, the archives of the Academy Senate (the highest university authority) were torn up or burned, the card indexes destroyed and scattered.
>
> "Suppression of Czech schools. . . .
>
> "K. H. Frank, in November 1939, personally ordered the closing of all Czech higher educational institutions.
>
> "Such university students as were still at liberty were forbidden to exercise any intellectual profession and were invited to find manual occupation within 48 hours, failing which they would be sent to labor camps in Germany.
>
> "The closing of the universities was aggravated by the closing of the great scientific libraries and of all institutions capable of offering intellectual sustenance to the students expelled from the universities. The library of the University of Prague was henceforth accessible to Germans only.
>
> "Suppression of all scientific activities:

"The closing down of Czech universities and colleges was merely a preliminary step towards the complete suppression of the entire Czech scientific life. The buildings of scientific institutions were converted either into German universities and colleges or placed at the disposal of the German military and civil authorities. The Germans removed all scientific instruments and books and even complete laboratories to Germany, on the pretext that the Czechs would no longer need them. The number of works of art, pictures, statues, and rare manuscripts stolen from the library of the University of Prague and from private collections cannot be calculated, nor can their value be estimated. Scientific collections were also given to German schools, provided they had not been stolen piecemeal."

I pass on to the excerpts on Page 86 of the Czechoslovakian report:

"Hundreds of Czech elementary and secondary schools were closed in 1939, and so rapid was the systematic closing of Czech schools during the first year of the war that, by the end of 1940, 6,000 of the 20,000 Czech teachers were unemployed.

"By September 1942 some 60 percent of the Czech elementary schools had been closed by the Germans.

"All Czech books published during the republican regime have been confiscated, and the glorification of Greater Germany and its Führer became the basis of all teaching at Czech elementary schools. In 1939 the number of pupils permitted to enter Czech secondary schools had diminished by 50 percent as compared with 1938. About 70 percent of the Czech secondary schools had been closed by the end of 1942. Girls have been entirely excluded from the secondary schools.

"Nursery schools for children between 3 and 6 were completely germanized and employed only German teachers.

"Other crimes in cultural spheres.

"Monuments:

"In many towns the 'Masaryk Houses,' which for the most part contain libraries, halls for the showing of educational films, and for the performance of plays and concerts, have been confiscated and transformed into barracks or offices for the Gestapo. The statues they contained, sometimes of great artistic value, were spoiled and broken. . . . A number of monuments in Prague,

among them Bilek's 'Moses' and Mardjatka's 'Memorial to the Fallen Legionaries,' have been melted down. . . .

"A decree of the autumn of 1942 ordered all university libraries to hand over all early printed Czech works and first editions to the Germans. The collections in the National Museum were pillaged; and the Modern Art Gallery, containing a unique collection of Czech art of the 19th and 20th centuries with some precious specimens of foreign (mainly French) art, was closed.

"The crown jewels of the ancient Czech kings had to be handed over to Heydrich.

"Literature:

"Translations of works by English, French, and Russian authors, both classic and modern, were withdrawn from circulation. The severest censorship was applied to the works of modern Czech authors. The Germans liquidated many leading publishing firms."

THE PRESIDENT: This is a good opportunity to adjourn.

[*A recess was taken.*]

MR. COUNSELLOR RAGINSKY: "The entire political literature of the free republic, as well as the works of the participants in the Czech revival of the 18th and 19th centuries, were withdrawn. The books of Jewish authors were prohibited, as well as those of politically unreliable writers. The Germans withdrew the Czech classics, as well as the works of the 15th century reformer John Hus, of Alois Erassek, the author of historical novels, the poet Victor Dieck, and others."

Thus the Hitlerites destroyed the national culture of the peoples of Czechoslovakia, plundered and pillaged works of art, literature, and science.

In Poland, as in Czechoslovakia and Yugoslavia, the German fascist invaders carried out a large-scale liquidation of national culture with exceptional cruelty. The Hitlerite conspirators destroyed the Polish intelligentsia, closed educational establishments, prohibited the publication of Polish books, looted works of art, blew up and burned national monuments.

I am reading into the record relevant extracts from the Polish Government report, which was submitted to the Tribunal as Exhibit Number USSR-93 (Document Number USSR-93). These excerpts, Your Honors, are on Pages 197-200 of the document book:

“Annihilation of the Polish intelligentsia:

“In the incorporated regions the intelligentsia were deprived of all means of livelihood. Many of them, professors, teachers, lawyers, and judges, were interned in concentration camps or murdered.

“In the Government General about 80 percent of the intelligentsia were deprived of all means of subsistence. Owing to the liquidation of the press, journalists and writers were unable to earn a living. The publication of new books was prohibited.

“Four universities and twelve schools of the university type ceased to exist. Their average attendance before September 1939 reached 45,000.

“Secondary schools:

“There were about 550 secondary schools in the German occupied territory. Their closing was ordered. In the incorporated territories they were completely closed down. In the Government General they were allowed to continue their activity, but in November 1939 an order was issued to cease teaching. The only schools which were allowed to continue work were commercial or trade schools. Educated Poles were not needed; the Poles were to become artisans and workmen. Such was the official line of policy.

“Elementary schools:

“In the incorporated territories Polish schools were completely abolished. They were replaced by German schools. Polish children were educated in the German tongue and German spirit.

“On the eve of war there were about 2,000 periodicals published in Poland, among them 170 newspapers. By order of the Germans the press was almost entirely eradicated.

“The publication, printing, and distributing of Polish books was prohibited as early as October 1939.

“On 5 November 1940 the German *Verordnungsblatt* published the following decree:

“ ‘Until further notice, the publication, without exception, of all books, pamphlets, periodicals, journals, calendars, and music is prohibited, unless published by the authority of the Government General.’

“Theaters, music, and radio:

"The principles of German policy in Poland were outlined in a circular of a special branch of national education and propaganda in the German Government General. It read as follows:

" 'It is understood that not a single German official will assist in the development of Polish cultural life in any way whatsoever.'

"The sole purpose which was to be followed, in the words of the circular, was to 'satisfy the primitive demands for entertainment and amusement, all the more as this was a question of diverting as far as possible the attention of the intellectual circles from conspiracy or political debates which encouraged the development of an anti-German feeling.' "

I skip the last paragraph and pass on to the next page:

"Looting, spoliation, and carrying away of works of art, libraries, and collections from Poland."

The excerpts are on Pages 207 and 208 of the document book.

"On 13 December 1939 the Gauleiter of the Warthegau issued an order that all public and private libraries and collections in the incorporated territories were to be registered. Upon completion of registration, libraries and book collections were confiscated and transported to the 'Buchsammelstelle.' There special experts carried out a selection. The final destination was either Berlin or the newly constituted State Library (Staatsbibliothek) in Posen. Books which were considered unsuitable were sold, destroyed, or thrown away as waste paper.

"The best and largest libraries of the country were victims of the organized looting in the Government General. Among them were the university libraries in Kraków and Warsaw. One of the best, though not the largest, was the library of the Polish Parliament. It consisted of about 38,000 volumes and 3,500 periodical publications. On 15 and 16 November 1939 the main part of this library was transported to Berlin and Breslau. Ancient documents, such as, for instance, a collection of parchments—the property of the central archives—were also seized.

"The Diocesan Archives in Pelilin, containing 12th century documents, were burned in the furnaces of a sugar refinery.

"The first art treasure removed from Poland was the well-known altar of Veit Stoss from the Kraków Cathedral. It was taken to

Germany on 16 December 1939. The Defendant Frank issued a decree concerning the confiscation of works of art."

I skip a few paragraphs and pass on to the last paragraph on Page 221:

"Three valuable pictures were removed from the galleries of the Czartoryski in Sieniawa. Frank seized and kept them until 17 January 1945, and then transferred them to Silesia, and thence, as his personal property, to Bavaria."

National monuments:

"In the process of destroying everything that was connected with Polish history and culture, many monuments and works of art were destroyed and demolished.

"The monument of the eminent Polish King, Boleslaw, the Valiant, in Gniezno, was first wound round with ropes and chains with a view to throwing it off its pedestal. After an unsuccessful attempt, acetylene was used: the head was cut off and the pedestal broken in pieces. The same fate befell the monument of the Sacred Heart in Posen, the monuments to Chopin, the poet Slowacki, the composer Moniuszko, the Polish national hero Kósciuszko, President Wilson, the greatest Polish poet Mickiewicz, and many others."

To the report of the Polish Government is attached a list of public libraries, museums, books and other collections sacrificed to plunder and looting. These lists of objects are available on Pages 254 and 255 of the document book. In the first list we find the names of 30 libraries and in the second 21 museums and collections of works of art which were plundered and destroyed. I shall not read these lists in full, but shall mention only some of the museums and collections which were a subject of national pride and constituted the treasure of the Polish State.

The following objects became the booty of the fascist vandals: The treasure house of the Wawelski Cathedral in Kraków, the Potocki Collection in Jablonna, the Czartoryski Museum in Kraków, the National Museum in Kraków, the Museum of Religious Art in Warsaw, the State Numismatic Collections in Warsaw, the Palace of King Stanislaw-August in the Lazienkowski Park, the Palace of King Jan Sobieski in Willanow, the collection of Count Tarnowski in Sukhaya, the Religious Museum in Posen, and many others.

The Hitlerite invaders also plundered monasteries, churches, and cathedrals. On Page 43 of the report of the Polish Government, corresponding to Page 223 of the document book, there are final notes by

the Polish Primate, Cardinal Hlond. They concern a written communication from Cardinal Hlond to Pope Pius XII. I shall read into the record only two paragraphs of these concluding notes. I quote:

> "Monasteries have been methodically suppressed, as well as their flourishing institutions for education, press, social welfare, charity, and care of the sick. Their houses and institutions have been seized by the army of the Nazi Party.
>
> "Then the invaders confiscated or sequestrated the patrimony of the Church, considering themselves the owners of this property. The cathedrals, the episcopal palaces, the seminaries, the canons' residence, the revenues and endowments of episcopates and chapters, the funds of the seminaries, all were pillaged by the invaders."

I omit the end of Page 29 and pass on to Page 30: Yugoslavia.

The destruction of the national culture of the peoples of Yugoslavia was carried out by the Hitlerites by various means and methods. I shall not, Your Honors, enumerate them in detail. These means and methods are already known.

In Yugoslavia the same thing occurred as in Poland and Czechoslovakia. We need only stress that, in the destruction of the culture of the peoples of Yugoslavia, the German fascist occupants showed great ingenuity and utilized the vast experiences acquired in other countries occupied by them. The system of destruction of the national culture of the peoples of Yugoslavia starts with attack and pillage and ends with mass murder, camps, and the ovens of the crematories.

In the report of the Jugoslav Government, presented to the Tribunal as Document Number USSR-36, there are quoted a large number of facts and documents which establish, without any possibility of doubt, the criminal deeds of the defendants. But even these numerous facts quoted in the report do not exhaust all the crimes committed by the Hitlerites. The report of the Yugoslav Government quotes only typical cases as examples. I shall cite a few excerpts from this report. These excerpts, Your Honors, are on Page 303 of the document book. I quote:

> "Immediately after the invasion of Slovenia, the Germans started to fulfill their plans, thought out long beforehand, to germanize the 'annexed' territories of Slovenia."

And further, on Page 307:

> "The occupiers closed all the schools in Slovenia, exiled all the Slovene teachers, destroyed all Slovene libraries and books, and forbade the use of the Slovene language, which was considered as an act of sabotage."

The German barbarians destroyed and plundered not only schools and libraries, they also destroyed universities and broadcasting stations, cultural establishments, and sanatoria. On Page 23 of the report, corresponding to Page 278 of the document book, we find, for instance, the following facts concerning Belgrade. I quote:

> "Without any military need, the Germans premeditatively destroyed and burned a great number of public buildings and cultural institutions, such as the New University, the People's University 'Koloraz,' the first high school for boys, the second high school for girls, the ancient royal palace, the broadcasting station, the Russian Home of Culture, the sanatorium of Dr. Jivkovich, and so forth. In the university building valuable and highly important collections of scientific works and research matter were destroyed."

As is established by the report of the Jugoslav State Commission, which is Document Number J-39(a), and which I submit under Exhibit Number 364, Page 313(a) of our document book—the Hitlerites razed to the ground the National Library in Belgrade and burned hundreds of thousands of books and manuscripts, which constituted the basic stock of Serbian culture. They completely destroyed 71 and partially destroyed 41 scientific institutes and laboratories of Belgrade University. They razed to the ground the State Academy of Art, and they burned and looted thousands of schools.

I omit the end of Page 31 and pass on to Page 32. Your Honors will find this passage on Page 303 of the document book.

During the 4 years of German domination, the people of Yugoslavia experienced great sufferings and sorrow. The Germans looted the economic wealth of the country and caused great material damage. But the damage they caused to the culture of the people of Yugoslavia was even greater.

In concluding this chapter of my report, I consider it essential, Your Honors, to quote yet another excerpt from the diary of the Defendant Frank. I have in mind the calico-bound volume of the diary entitled, "Conferences of the Leaders of Departments of 1939-1940," which contains an entry regarding the conference of the departmental leaders of 19 January 1940 in Kraków. This excerpt is on Page 169 of the document book. I read:

> "On 15 September 1939, I was entrusted with the administration of the conquered eastern territories, and received a special order pitilessly to devastate this district regarding it as a combat zone and a prize of war, and to reduce its economic, social, cultural, and political structure to a heap of ruins."

To this statement of Frank's, we need only add that the Defendant Frank zealously performed this task in Poland and that the Reich, Gau, and other leaders acted with equal zeal in the occupied territories of the U.S.S.R., Czechoslovakia, and Yugoslavia.

I am now going to present, Your Honors, proof of crimes committed by the defendants against the culture of the peoples of the Soviet Union.

We have heard in this court what brutality was used and on how vast a scale the Hitlerites conducted the destruction and spoliation of the cultural wealth of the peoples of Czechoslovakia, Poland, and Yugoslavia. The crimes perpetrated by the Hitlerite conspirators in the occupied territories of the U.S.S.R. were graver still. The criminal organization, known as the Hitler Government, aimed not only at plundering the people of the Soviet Union, at destroying their towns and villages, and at extirpating the culture of the peoples of the U.S.S.R., but also at enslaving the people of the Soviet Union and of transforming our native country into a fascist colony of serfs.

In the second part of my statement I have proved how the destruction of the cultural monuments of the peoples of the U.S.S.R. was planned and perpetrated.

In the note of the People's Commissar for Foreign Affairs V. M. Molotov, dated 27 April 1942, which was presented to the Tribunal as Exhibit Number USSR-51(3) (Document Number USSR-51(3)), documents and facts are quoted which establish beyond dispute that the destruction of historic and cultural monuments and the vile mockery of national feelings, beliefs, and convictions constituted a part of the monstrous plan evolved and put into practice by the Hitlerite Government, which strove to liquidate the national culture of the peoples of the U.S.S.R. Later I shall refer again to this document, but at present I wish, with your permission, to read into the record the following excerpt which is on Page 321 of your document book. I omit the first and quote the second paragraph:

> "The desecration and destruction of historical and cultural memorials in occupied Soviet territories, as well as the devastation of the numerous cultural establishments set up by the Soviet authorities, are a part of the monstrously senseless plan conceived and pursued by the Hitlerite Government which strives to liquidate

Russian national culture and the national cultures of the peoples of the Soviet Union, forcibly to germanize the Russian, Ukrainian, Bielorussian, Lithuanian, Latvian, Estonian and other peoples of the U.S.S.R.

"In Order Number 0973/41, General Hodt, commander of the German 17th Army, demands that his subordinates thoroughly assimilate that misanthropic notion so typical of the thick-skulled fascists, that the 'sound feeling of vengeance and repulsion towards everything Russian should not be suppressed among the men but, on the contrary, encouraged in every way.' "

True to their custom of destroying universally recognized cultural valuables, the Hitlerites everywhere on the Soviet territory occupied by them, devastated and mostly burned libraries, from the small club and school libraries up to and including the most valuable collections of manuscripts and books, containing unique bibliographical valuables.

I omit a paragraph and continue the quotation:

"The Hitlerites looted and then set on fire the famous Borodino Museum, the historical exhibits of which related to the struggle against the armies of Napoleon in 1812, particularly dear to the Russian people. The invaders looted and set fire to the Pushkin House Museum in the hamlet of Polotnyany Zavod.

"In Kaluga the Hitlerites assiduously destroyed the exhibits in the house-museum in which the eminent Russian scientist K. E. Tsiolkovsky, whose services in the field of aeronautics enjoy world-wide fame, lived and worked.

"The fascist vandals used Tsiolkovsky's portrait as a target for revolver practice. Extremely valuable models of dirigibles, together with plans and instruments, were trampled underfoot. One of the museum rooms was turned into a hen coop and the furniture burned. One of the oldest agricultural institutions in the U.S.S.R., the Shatilov selection station in the Orel district, was destroyed by the invaders, who blew up and consigned to the flames 55 buildings of this station, including the agrochemical and other laboratories, the museum, the library containing 40,000 volumes, the school, and other buildings. Even greater frenzy was shown by the Hitlerites when looting the cultural institutions and historical monuments of the Ukraine and of Bielorussia."

I omit two paragraphs and pass on to the last paragraph of this quotation:

"There was no limit to the desecration by the Hitlerite vandals of the monuments and homes representing Ukrainian history, culture, and art. Suffice to mention, as an example of the constant attempts to humiliate the national dignity of the Ukrainian people, that after plundering the Korolenko Library in Kharkov, the occupiers used the books as paving stones for the muddy street in order to facilitate the passage of German motor vehicles."

The German vandals treated with particular hatred these cultural monuments which were most dear to the Soviet people. I shall quote several instances:

The Hitlerites plundered Yasnaya Polyana, where one of the greatest writers, Leo Tolstoy, was born, lived, and worked.

They plundered and despoiled the house where the great Russian composer, Tschaikovsky, lived and worked. In this house Tschaikovsky created the world-famous operas *Eugen Onegin* and *The Queen of Spades*.

In Taganrog they destroyed the house where the great Russian writer Chekhov lived; in Tikhvin they destroyed the residence of the Russian composer Rimsky-Korsakov.

As evidence, Your Honors, I shall read into the record an excerpt from the note of Foreign Commissar Molotov, dated 6 January 1942. This document has already been submitted to the Tribunal as Document Number 51(2). This excerpt is on Page 317 of the document book. I quote:

"For a period of 6 weeks, the Germans occupied the world-famous property of Yasnaya Polyana where Leo Tolstoy, one of the greatest geniuses of mankind, was born, lived, and created. This glorious memorial to Russian culture was wrecked, profaned, and finally set on fire by the Nazi vandals. The grave of the great writer was desecrated by the invaders. Irreplaceable relics relating to the life and work of Leo Tolstoy, including rare manuscripts, books, and paintings, were either plundered by the German soldiers or thrown away and destroyed. A German officer named Schwartz, in reply to a request of one of the museum's staff collaborators to stop using the personal furniture and books of the great writer for firewood and to use wood available for this purpose, answered, 'We don't need firewood; we shall burn everything connected with the name of your Tolstoy.'

"When the town of Klin was liberated by the Soviet troops on 15 December, it was ascertained that the house in which P. I. Tschaikovsky, the great Russian composer, had lived and worked

and which the Soviet State had turned into a museum, had been wrecked and plundered by fascist officers and soldiers. In the museum building proper, the Germans set up a garage for motorcycles, heating this garage with manuscripts, books, furniture, and other museum exhibits, part of which had in any case been stolen by the German invaders. In doing this, the Nazi officers knew perfectly well that they were defiling one of the finest monuments of Russian culture.

"During the occupation of the town of Istra, the German troops established an ammunition dump in the famous ancient Russian monastery known as the New Jerusalem Monastery, founded as far back as 1654. The New Jerusalem Monastery was an outstanding historical and religious monument of the Russian people and was known as one of the most beautiful specimens of religious architecture. This did not, however, prevent the German fascist vandals from blowing up their ammunition dump in the New Jerusalem Monastery on their retreat from Istra, thereby reducing this irreplaceable monument of Russian church history to a heap of ruins."

I omit the next paragraph and close this quotation.

Acting upon directions of the German Military Command, the Hitlerites destroyed and annihilated the cultural-historic monuments of the Russian people connected with the life and work of the great Russian poet, Alexander Sergeivitch Pushkin.

The report of the Extraordinary State Commission of the Soviet Union, the original copy of which is now submitted to the Tribunal as Document Number USSR-40 (Exhibit Number USSR-40), reads as follows:

"To preserve the cultural and historical memorials of the Russian people connected with the life and creations of the gifted Russian poet and genius, Alexander Sergeivitch Pushkin, the Soviet Government, on 17 March 1922, declared the poet's estate at Mikhailovskoye, as well as his tomb at the monastery of Svyatogorsky and the neighboring villages of Trigorskoye, Gorodischtsche, and Voronitch, a state reservation.

"The Pushkin reservation, and especially the poet's estate at Mikhailovskoye, was very dear to the Russian people. Here Pushkin finished the third and created the fourth, fifth, and sixth chapters of *Eugen Onegin*. Here, too, he finished his poem

Gypsies, and wrote the drama *Boris Godunov*, as well as a large number of epic and lyrical poems.

"In July 1941 the Hitlerites forced their way into the Pushkin reservation. For 3 years they made themselves at home there, ruined everything, and destroyed the Pushkin memorials."

I shall omit the beginning of Page 1 of the report.

"The plundering of the museum had already begun in August 1941."

I shall also omit the next paragraph. I read on:

"In the autumn of 1943 the commander of the Pushkin Military Kommandantur, Treibholz, urged Director K. V. Afanassiev to prepare for the evacuation of all the museum valuables. All these valuables were packed into cases by the German authorities, loaded into trucks, and sent to Germany."

I omit the next paragraph and read on:

"At the end of February 1944 the Germans turned Mikhailovskoye into a military objective and into one of the strongpoints of the German defense. The park area was dug up for combat and communication trenches; shelters were constructed. The cottage of Pushkin's nurse was taken to pieces and next to it, and partly on its former site, the Germans constructed a large dugout, protected by five layers of timber. The Germans built a similar dugout near the former museum building.

"Prior to their retreat from Mikhailovskoye, the Germans completed the destruction and desecration of the Pushkin estate. The house-museum erected on the foundation of Pushkin's former residence was burned down by the Germans and nothing remained but a heap of ruins. The marble plate of the Pushkin monument was smashed to pieces and thrown onto the pile of ashes. Of the other two houses standing at the entrance to the Mikhailovskoye estate, one was burned down by the Germans, the other severely damaged. The German vandals put three bullets into the large portrait of Pushkin hanging in an archway at the entrance to the Mikhailovskoye park; then they destroyed the archway.

"After their retreat from Mikhailovskoye, the fascists bombarded the village with mine throwers and artillery fire. The wooden stairs leading to the River Soret were destroyed by German mines. The old lime trees of the circular alley leading to the house were

broken down; the giant elm tree in front of the house was damaged by shell fire and splinters."

I omit the end of this page and pass on to Page 41 of the report:

"In the village of Voronitch the wooden church was burned down which dated back to Pushkin's times and where Pushkin had a requiem sung on 7 April 1825 to commemorate the death of the great English poet, Byron. The churchyard near the church where V. P. Hannibal, one of Pushkin's relatives, and the priest, Rayevsky, close friend of the poet, lay buried, was criss-crossed by trenches, mined, and devastated. The historical aspect of the reservation, in which the Russian people saw a symbol of Pushkin, was disfigured beyond all recognition by the Germans.

"The sacrileges perpetrated by the Germans against the national sanctuaries of the Russian people are best demonstrated by the desecration of Pushkin's tomb. In an attempt to save the Pushkin reservation from destruction, the units of the Red Army did not defend this district, but withdrew to Novorzhev. Nevertheless, on 2 July 1941 the Germans bombarded the monastery of Svyatiye-Gory, at the adjoining walls of which is Pushkin's tomb.

"In March 1943, long before the battle line approached the Pushkinskiye hills, the Germans began the systematical demolition of the Svyatiye-Gory monastery."

I omit the rest of this page, and I pass on to Page 42:

"The poet's tomb was found completely covered with refuse. Both stairways leading down to the grave were destroyed. The platform surrounding the grave was covered with refuse, rubble, wooden fragments of icons, and pieces of sheet metal."

I omit a paragraph and quote further:

"The marble balustrade surrounding the platform was damaged by fragments of artillery shells and by bullets. The monument itself inclined at an angle of 10 to 12 degrees eastwards, as a result of a landslide following the shelling, and of the shocks caused by the explosions of German mines.

"The invaders knew perfectly well that, on entering the Pushkinskiye hills, the officers and soldiers of the Red Army would first of all visit the grave of the poet, and therefore converted it into a trap for the patriots. Approximately 3,000 mines were discovered and removed from the grounds of the

monastery and its vicinity by the engineers of the Soviet Army. . . ."

The destruction of works of art and architecture in the towns of Pavlovsk, Tzarskoe-Selo, and Peterhof, figure among the worst anti-cultural crimes of the Hitlerites. The magnificent monuments of art and architecture in these towns, which had been turned into "museum towns," are known throughout the civilized world. These art and architectural monuments were created in the course of 2 centuries. They commemorated a whole series of outstanding events in Russian history.

Celebrated Russian and foreign architects, sculptors, and artists created masterpieces which were kept in these "museum towns" and, together with valuable masterpieces of Russian and foreign art, they had been blown up, burned, robbed, or destroyed by the fascist vandals.

I read into the record Exhibit Number USSR-49 (Document Number USSR-49) which includes a statement of the Extraordinary State Commission of the Soviet Union dated 3 September 1944. The excerpts which I shall quote, Your Honors, are on Pages 330-332 of the document book.

I omit the end of Page 43 and the whole of Page 44 of this statement, and begin my quotation in the middle of Page 45:

"At the time the German invaders broke into Petrodvoretz (in Peterhof) there still remained, after the evacuation, 34,214 museum exhibits (pictures, works of art, and sculptures), as well as 11,700 extremely valuable books from the palace libraries. The ground floor rooms of the Ekaterininsky and Alexandrovsky Palaces in the town of Pushkin contained assorted furniture suites of Russian and French workmanship of the middle of the 18th century, 600 items of artistic porcelain of the late 19th and 20th centuries, as well as a large number of marble busts, small sculptures, and about 35,000 volumes from the palace libraries.

"On the basis of documentary materials, the statements and testimony of eyewitnesses, the evidence of German prisoners of war and as a result of careful investigation, it has been established that: Breaking into Petrodvoretz on 23 September 1941, the German invaders immediately proceeded to loot the treasures of the palace-museums and in the course of several months removed the contents of these palaces.

"From the Big, Marly, Monplaisir, and Cottage Palaces, they looted and removed to Germany some 34,000 museum exhibits,

among them 4,950 unique items of furniture of Italian, English, French, and Russian workmanship from the periods of Catherine the Great, Alexander I, and Nicholas I, as well as many rare sets of porcelain of foreign and Russian manufacture of the 18th and 19th centuries. The German barbarians stripped the walls of the palace rooms of the silks, Gobelin tapestries, and other decorative materials which adorned them.

"In November 1941 the Germans removed the bronze statue of Samson, the work of the sculptor Koslovsky, and took it away. Having looted the museum treasures, the Hitlerites set fire to the Big Palace, created by the famous and gifted architect Bartolomeo Rastrelli.

"Upon their withdrawal from Petrodvoretz"—I have skipped a paragraph—"the Germans wrecked the Marly Palace by delayed-action mines. This palace contained very delicate carvings and stucco moldings. The Germans wrecked the Monplaisir Palace of Peter the Great. They destroyed all the wooden parts of the pavilion and of the galleries, the interior decorations of the study, the bedroom and the Chinese room.

"During their occupation, they turned the central parts of the palace, that is, the most valuable from the historical and artistic viewpoint, into bunkers. They turned the western pavilion of the palace into a stable and a latrine. In the premises of the Assembly Building the Germans tore up the floor, sawed through the beams, destroyed the doors and windowframes, and stripped the panelling off the ceiling."

I skip one paragraph and quote the last one on this page:

"In the northern part of the park, in the so-called Alexander Park, they blew up the villa of Nicholas II, completely destroyed the frame cottage which served as billet for officers, the Alexander gates, the pavilions of the Adam fountain, the pylons of the main gates of the upper park and the Rose Pavilion."

I skip one paragraph on Page 47:

"The Germans wrecked the fountain system of the Petrodvoretz parks. They damaged the entire pipe-line system for feeding the fountains, a system extending from the dam of the Rose Pavilion to the upper park.

"After the occupation of New Petrodvoretz, units of the 291st German Infantry Division, using heavy artillery fire, completely destroyed the famous English Palace at Old Petrodvoretz, built on the orders of Catherine II by the architect Quarenghi. The Germans fired 9,000 rounds of heavy artillery shells into the palace; together with the Palace they destroyed the picturesque English park and all the park pavilions."

THE PRESIDENT: The Tribunal has appreciated the successful efforts which the other members of the Soviet Delegation have made to shorten their addresses, and they would be glad if you could possibly summarize some of the details with which you have to deal in the matter of destruction and spoliation and perhaps omit some of the details.

That is all for this morning.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

MR. COUNSELLOR RAGINSKY: The looting and destruction of historical and artistic palaces in the town of Pushkin (Tzarskoe-Selo) was carried out with malice aforesight by order of the highest German authorities.

I omit the end of Page 47 and the beginning of Page 48:

"A considerable part of the Catherine Palace was burned down by the Germans. The famous ceremonial halls, 300 meters long and designed by Rastrelli, perished in the flames. The famous antechambers"—waiting rooms—"decorated by Rastrelli were likewise ruined."

I omit one paragraph and continue:

"The Great Hall—outstanding creation of the genius of Rastrelli—presented a terrible spectacle. The unique ceilings, work of Torelli, Giordano, Brullov, and other famous Italian and Russian masters, were destroyed."

I omit another paragraph.

"Equally ruined and pillaged was the Palace Church, one of Rastrelli's masterpieces, famous for the exquisite workmanship of the interior decoration."

I omit one more paragraph.

"In January 1944 the retreating German invaders prepared the complete destruction of all that was left of the Catherine Palace and adjoining buildings. For this purpose, on the ground floor of the remaining part of the palace, as well as under the Cameron Gallery, 11 large delayed-action aerial bombs were laid, weighing from 1 to 3 tons.

"In Pushkin the Hitlerite bandits destroyed the Alexander Palace, constructed at the end of the 18th century by the famous architect Giacomo Quarenghi."

I omit a paragraph.

"All the museum furniture, stored in the basements of the Catherine and Alexander Palaces, items of artistic porcelain, and books from the palace libraries were sent to Germany.

"The famous painted ceiling, 'Feast of the Gods on Olympus,' in the main hall of the Hermitage pavilion was removed and shipped to Germany."

I omit two paragraphs:

"Great destructions were caused by the Hitlerites in the magnificent Pushkin parks, where thousands of age-old trees were cut down.

"Ribbentrop's special purpose battalion and the Kommandos Staff Rosenberg shipped to Germany from the Pavlovsky Palace extremely valuable palace furniture, designed by Veronikhin and by the greatest masters of the 18th century."

I omit the end of Page 49 and the beginning of Page 50 of the report.

"During their retreat the fascist invaders set fire to the Paul's Palace. The greater part of the palace building was entirely burned down."

I omit the next two paragraphs and quote the last paragraph, which concludes this document:

"The Extraordinary State Commission established that the destruction of art monuments in Petrodvoretz, Pushkin, and Pavlovsk was carried out by the officers and soldiers of the German Army on the direct instructions of the German Government and the High Command."

Many large towns were destroyed by the German fascist invaders in the occupied U.S.S.R. territories. But they destroyed with particular ruthlessness the ancient Russian cities containing monuments of ancient Russian art. I quote as an example the destruction of the cities of Novgorod, Pskov, and Smolensk. Novgorod and Pskov belong to these historical centers where the Russian people laid the foundation of their state; here, in the course of centuries flourished a highly developed and individual culture. It left a rich heritage which constitutes a valuable possession of our people. Thanks to the survival of numerous monuments of ecclesiastic and civil architecture, murals, paintings, sculpture, and handicraft, Novgorod and Pskov were rightly considered the seat of Russian history.

The Hitlerite barbarians destroyed, in Novgorod, many valuable monuments of Russian and foreign art of the 11th and 12th centuries. They not only destroyed the monuments but they reduced the entire city to a heap of ruins.

By way of proof, I shall read into the record some excerpts from the document presented to the Tribunal as Document Number USSR-50. You will, Your Honors, find these excerpts on Pages 333 and 334 of the document book. I read:

> "The ancient Russian city of Novgorod was reduced to a heap of ruins by the German fascist invaders. They destroyed the historical monuments and dismantled some of them for use in the construction of defense fortifications. . . .
>
> "The German fascist vandals destroyed and obliterated, in Novgorod, the greatest monuments of ancient Russian art. The fascists destroyed the vaults and walls of the Saint George Cathedral tower of the Yuryev Monastery. This cathedral was built in the early part of the 12th century, was decorated by 12th century frescoes.
>
> "The Cathedral of Saint Sophia, built in the 11th century, was one of the oldest monuments of Russian architecture and an outstanding monument of world art. The Germans destroyed the cathedral building. . . .
>
> "The Hitlerites robbed the cathedral entirely of all its interior decorations; they carried off all the icons from the iconostasis and the ancient chandeliers, including one which belonged to Boris Godunov. . . .
>
> "The Church of the Annunciation on the Arkage, dating back to the 12th century, was converted by the fascists into a fortified position and barracks."

I omit one paragraph.

> "The Church of the Assumption on Volotov Field, a monument of Novgorod architecture of the 14th-15th centuries, was turned by the Germans into a heap of stones and bricks."

I omit one sentence.

> "The Church of the Transfiguration of our Lord, in Ilyin Street, was destroyed. It was one of the finest specimens of Novgorod architecture of the 14th century, particularly famed for its frescoes, painted in the same period by the great Byzantine master, Theofan, the Greek."

I omit the rest of this page and pass on to Page 54, of my report.

> "Over 2 years of Hitlerite rule in Novgorod brought about the ruin of many other wonderful, ancient monuments of Russian

architecture. . . . By order of the commanding general of the 18th German Army, Generaloberst Lindemann, the German barbarians dismantled and prepared for removal to Germany the monument to 'a thousand years of Russia.' This monument was erected in the Kremlin Square in 1862 and represented, in artistic images, the main stages of the development of our native land up to the sixties of the 19th century. . . .

"The Hitler barbarians dismantled the monument and smashed the statuary. They did not, however, succeed in shipping it off and melting down the metal."

Citizen Youri Nikolaievich Dimitriev, in his affidavit, gives a very detailed account of the barbarous destruction by the Germans of the monuments of ancient Russian art in the cities of Novgorod and Pskov. Dimitriev, since 1937, was the custodian of the Ancient Russian Art Section of the Russian State Museum in Leningrad. He began the study of the historical monuments of Novgorod and Pskov in 1926. As a great expert in this particular sphere of art, he was asked by the Extraordinary State Commission of the Soviet Union to participate in the investigation of the crimes of the German fascist invaders.

I submit to the Tribunal the original of Dimitriev's depositions, duly certified, in accordance with legal procedure in the U.S.S.R., as Document Number USSR-312 (Exhibit Number USSR-312). You will find it, Your Honors, on Pages 335 and 347 in your document book. In submitting his affidavit, I shall omit facts already known to the Tribunal from the report of the Extraordinary State Commission previously read into the record. I quote only a few short excerpts which will be found on Pages 336 and 339. Mr. Dimitriev stated as follows—I read:

"The greater part of Novgorod is razed to the ground; only a few districts were left by the Germans and even these were in ruins. Pskov was also left in ruins by the Germans; during their retreat they blew up the buildings and monuments. Of 88 buildings of historical and artistic value in Novgorod only two buildings are without grave damages. . . . Only a few isolated monuments in Pskov were left undamaged.

"In Novgorod and Pskov the Germans deliberately destroyed monuments of historical and artistic value."

And further:

"The German Army, while destroying and damaging monuments of historical and artistic value, plundered and carried off works of

art and valuable objects which formed part of, or were contained in, these monuments.

"At the same time the German troops profaned and desecrated several ecclesiastical monuments of historic and artistic value in Novgorod and Pskov."

Day by day for 26 months, the Hitlerites systematically destroyed one of the most ancient Russian cities, Smolensk.

The Soviet Prosecution has presented to the Tribunal a document as Document Number USSR-56, containing the report of the Extraordinary State Commission of the Soviet Union. I shall not quote this document; but I shall only refer to it and endeavor, in my own words, to emphasize the fundamental points of this document, dealing with the reported theme now.

In Smolensk, the German fascist invaders plundered and destroyed the most valuable collections in the museums. They desecrated and burned down ancient monuments; they destroyed schools and institutes, libraries, and sanatoriums. The report also mentions the fact that in April 1943, the Germans needed rubble to pave the roads. For this purpose, they blew up the intermediate school. The Germans burned down all the libraries of the city and 22 schools; 646,000 volumes perished in the library fires.

I now pass on to Page 57 of my report:

"Prior to the German occupation Smolensk contained four museums with extremely valuable collections.

"The museum of art possessed most valuable collections, primarily of Russian historic-artistic, historic-sociological, ethnographic, and other valuables: paintings, icons, bronzes, porcelains, metal castings, and textiles. These collections were of international value and had been exhibited in France. The invaders destroyed the museums and took the most valuable exhibits to Germany."

I shall quote only one last paragraph on Page 57:

"The Einsatzstab Rosenberg for the confiscation and exportation of valuables from the occupied regions of the East had a special branch in Smolensk, headed by Dr. Norling, the organizer for the plunder of museums and historical monuments."

Such are some of the numerous facts of the crimes committed by the fascist barbarians. They demonstrate how the criminal schemes of the Hitlerite conspirators were actually materialized.

It is known how mercilessly the German fascist invaders carried out the economic plunder of the Ukrainian people. But destruction and plunder of Ukrainian cultural and historical treasures played no lesser part in the plans of the Hitlerite conspirators, and was carried out with the same savage zeal. In accordance with their criminal plans for the enslavement of the freedom-loving Ukrainian people, the Hitlerite conspirators endeavored to annihilate its culture. From the very first days of their invasion of the Ukraine the Hitlerites, in execution of their criminal designs, embarked upon the systematic destruction of schools, higher educational institutions, scientific establishments, museums, libraries, clubs, and theaters.

The historical and cultural treasures in the cities of Kiev, Kharkov, Odessa, in the Provinces of Stalino and Rovno, and many other larger and smaller cities, were subjected to plunder and destruction.

From the document presented by the Soviet Prosecution under Document Number USSR-32, containing the sentence pronounced by the military tribunal of the 4th Ukrainian Front between 15-18 December 1943, it is evident that the German fascist armies of Kharkov, in the Province of Kharkov, acting on direct instructions of Hitler's Government, burned, plundered, and destroyed the material and cultural treasures of the Soviet people. These excerpts, Your Honors, you will find on Page 359 in your document book.

I now proceed to the evidence of crimes committed by the Hitlerites in the capital of the Ukrainian Republic, Kiev. I quote one paragraph of the document presented by the Soviet Prosecution under Document Number USSR-248. You will find it on Page 363 of your document book. It is an extract from the records of the Extraordinary State Commission "about the destruction and plunder by the fascist aggressors of Kiev's Psychiatric Hospital." Among other destructions they—I quote:

> ". . . burned the archives of the institute, priceless from a scientific point of view, destroyed the magnificent hospital library of 20,000 volumes, plundered the especially protected and priceless monument of the 11th century—the famous Cathedral of Saint Cyryl situated in the institute grounds."

I next pass on to several excerpts from the Extraordinary State Commission's report which was presented to the Tribunal as Exhibit Number USSR-9 (Document Number USSR-9). The excerpts quoted are on Pages 365-366 of the document book:

> "Before the German invasion, Kiev possessed 150 secondary and elementary schools. Of this number, 77 schools were used by the

Germans as military barracks. Nine served as warehouses and workshops, two were occupied by military staffs and eight were turned into stables. During their retreat from Kiev, the German barbarians destroyed 140 schools."

I omit the next paragraph.

"The German invaders stole more than 4 million volumes from the book stocks of the Kiev libraries. From the library of the Ukrainian S.S.R. Academy of Science alone the Hitlerites sent to Germany over 320,000 various valuable and unique books, magazines, and manuscripts."

I beg Your Honors to note that Dr. Förster, SS Obersturmführer, who served in the special purpose battalion, established on the initiative of the Defendant Ribbentrop and acting under his orders, testified to the plunder of the library of the Ukrainian S.S.R., Academy of Science, in his deposition of 10 November 1942, which I have already read into the record.

I omit one paragraph and pass on to a further reading from the report of the Extraordinary State Commission:

"On 5 September 1943 the Germans burned and blew up one of the most ancient centers of Ukrainian culture, the T. G. Shevtchenko State University in Kiev, founded in 1834. In the fire perished the greatest of cultural treasures which for centuries had represented the scientific and educational bases on which the work of the university was founded; perished, the priceless documents from the historical archives of ancient manuscripts; perished, the library containing over 1,300,000 books; destroyed, the zoological museum of the university with over 2 million exhibits, together with a whole series of other museums. . . .

". . . The German occupiers also destroyed other institutions of higher learning in Kiev; they burned and looted the majority of the medical institutions.

"In Kiev the fascist barbarians burned down the building of the Red Army Dramatic Theater . . . , the Theatrical Institute, the Academy of Music, where the instruments were burned together with the very wealthy library and all the equipment; they blew up the beautiful circus building; they burned down, with its entire equipment, the M. Gorki Theater for Juvenile Audiences; they destroyed the Jewish theater. . . .

"In the Museum of Western European and Eastern Art only some large canvases were left; the robbers had not had time to remove

them from the high walls of the stairway shafts. From the Museum of Russian Art the Hitlerites carried off, together with all the other exhibits, a collection of Russian icons of inestimable value. They looted the Museum of Ukrainian Art; only 1,900 exhibits of the National Art Section of this museum were left of the original 41,000."

I omit the remainder of this page and pass to Page 62 of my report:

"The Hitlerites plundered the T. G. Shevtchenko Museum and the historical museum. They looted the greatest monument to the Slav peoples—the Cathedral of Saint Sophia—from which they removed 14 12th century frescoes."

I omit one paragraph.

"By order of the German Command the troops plundered, blew up, and destroyed a very ancient cultural monument—the Kievo-Pecherskaya Abbey. . . .

"The Uspenski Cathedral, built in 1075-89 by the order of Grand Duke Svjatoslav, with murals painted in 1897 by the famous painter V. V. Vereshchiagin, was blown up by the Germans on 3 November 1941."

I omit the remainder of Page 62 and pass on to Page 63 of the report:

"We cannot gaze without sorrow"—states Nicholas, Metropolitan of Kiev and Galicia, and member of the Extraordinary State Commission—"on the heaps of rubble of the Uspenski Cathedral, founded in the 11th century by the genius of its immortal builders. The explosions formed several huge craters in the area surrounding the cathedral, and, beholding them, it would appear that the very earth had shuddered at the sight of the atrocities committed by those who no longer had a right to be called human beings. It was as if a terrible hurricane had passed over the abbey, overturning everything, scattering and destroying the mighty buildings of the abbey. For over 2 years Kiev lay shackled in the German chains. Hitler's executioners brought death to Kiev, together with ruins, famine, and executions. In time all this will pass from the near present to the far distant past; but never will the people of Russia and the Ukraine, or honest men all the world over, forget these crimes."

Mr. President, may I dwell on two more documents?

The first, Document Number 035-PS, is entitled, "A Brief Report on Security Measures of the Chief Labor Group in the Ukraine during the Withdrawal of the Armed Forces." It was presented to the Tribunal by our American colleagues on 18 December 1945. A characteristic peculiarity of this document is that it openly testifies to the looting. It is quite clear to all that reference is made to a gang of robbers, although the Hitlerites still persist in referring to robbery as work. They shipped the most valuable exhibits of the Ukrainian Museum to Germany as "miscellaneous textiles."

The report begins with the description of the creation of safe quarters for the Einsatzstab establishments, a purpose for which the inhabitants of an entire district were thrown out of their quarters. There then follows, in this document, a list of booty removed from the plundered museums of Kharkov and Kiev, from archives, and even from private libraries.

I shall quote one brief excerpt only from this document, dealing with the contents of the Ukrainian and the prehistorical museum of Kiev. You will find this excerpt on Page 368 of the document book. I quote:

> "October 1943, materials of the Ukrainian museum in Kiev.
>
> "On the basis of the general evacuation orders of the city commissioner, the following were sorted out by us and loaded for shipment to Kraków:
>
> "Miscellaneous textiles; collections of valuable embroidery patterns; collections of brocades; numerous wooden utensils, *et cetera*.
>
> "Moreover, a large part of the prehistoric museum was carried away."

The second, Document Number 1109-PS of 17 June 1944, is headed, "Note for the Director of Operation Group P4," and is addressed to Von Milde-Schreden. I shall quote it completely because it is really a short excerpt which you will find on Page 369 of the document book:

> "2. The removal of cultural property.
>
> "A great deal of material from museums, archives, institutions, and other cultural establishments was in an orderly manner removed from Kiev in the autumn of 1943.
>
> "These actions to safeguard the material were carried out by Einsatzstab RR, as well as by the individual directors of institutes, *et cetera*, at the instigation of the Reich Commissioner."

Here, Your Honors, I would point out that Einsatzstab Rosenberg in some documents is also referred to as the "Task Staff RR." These initials

stand for Reichsleiter Rosenberg.

> "At first, a great deal of the property that was to be evacuated was taken only to the areas of the rear; later on, this material was forwarded to the Reich. When the undersigned, towards the end of September, received the order from the cultural division of the Reich Commissioner to take out of Kiev the remaining cultural effects, the materials most valuable from a cultural point of view had already been removed. During October some 40 carloads of cultural effects were shipped to the Reich. In this case it was chiefly a question of valuables which belonged to the research institutions of the national research center of the Ukraine. These institutions, at present, are continuing their work in the Reich and are being directed in such a manner that at any given moment they can be brought back to the Ukraine. The cultural values which could not be promptly safeguarded incurred plunder. In this case, however, it was always a question of less valuable material, as the essential assets had been removed in an orderly manner.
>
> "In October 1943 factories, workshops, plants, and other equipment were removed from Kiev by the order of the town commander, but where it was taken, I do not know."

This letter ends with the following sentence:

> "At the time the Soviets entered the city there was nothing valuable, in this respect, left in the city."

May it please Your Honors, from the documents submitted by the Soviet Prosecution, the Tribunal has already learned about the criminal conspiracy between Hitler and Antonescu. As a reward for supplying Germany with cannon fodder, oil, wheat, cattle, *et cetera*, Antonescu's criminal clique received from Hitler's Government authorization to plunder the civilian population between the Bug and the Dniester. German and Romanian invaders plundered and destroyed many objects of cultural value, health resorts, and medical institutions in Odessa. The Hitlerites also plundered on their own account, as well as in co-operation with Antonescu's clique. To prove this, I shall now read into the record a few excerpts from the report of the Extraordinary State Commission of the Soviet Union, presented to the Tribunal as Exhibit Number USSR-47 (Document Number USSR-47). These excerpts are taken from Page 372 of your document book. I omit one paragraph and begin to quote from the penultimate paragraph on this page of my report:

"The German Military Command plundered the museums of Odessa, carrying away hundreds of unique objects."

Further, I here omit two paragraphs and quote the last line of Page 66:

"According to a plan, drawn up in advance, the German fascist invaders . . . blew up or burned 2,290 of the largest buildings of architectural, artistic, and historical value. Included in these were the house of A. S. Pushkin . . . the Saban barracks, built in 1827, and others, representing in themselves valuable monuments to the material culture of the beginning of the 19th century.

"In Odessa the German-Romanian invaders destroyed: The first hospital for contagious diseases, the second district hospital, the somatological hospital, the psychiatric hospital, and two children's hospitals, a children's polyclinic, seven infant consulting centers, 55 day nurseries, two maternity homes, one dispensary, one leprosarium, six polyclinics, and research institutions for the study of tuberculosis, for studying conditions in spas and others. They destroyed 29 sanatoria located around Odessa."

The Hitlerites committed crimes on an exceptionally large scale in the Stalino Province. I omit the rest of this page and pass to Page 68 of my report. The report of the Extraordinary State Commission, presented by the Soviet Prosecution as Exhibit Number USSR-2 (Document Number USSR-2), relates an enormous number of facts. I shall not quote all of those, Your Honors; but I shall confine myself only to several excerpts from the above-mentioned document which have not yet been read into the record by my colleagues. They can be found on Pages 374 and 375 in your document book. I quote:

"During their retreat from Stalino, the Hitlerites completely destroyed . . . 113 schools, 62 kindergartens, 390 shops, the winter and summer theaters, the Palace of the Pioneers, the radio theater, the Museum of the Revolution, the picture gallery and the Dzerjinsky Club of the city.

"Special Engineer detachments went from school to school, pouring incendiary liquid over them and setting them on fire. Such Soviet people who tried to extinguish the fires were immediately shot by the fascist scoundrels. . . .

"Exceptionally severe damages were caused by the invaders to the medical establishments of the city."

I omit three paragraphs of the report, and I quote the penultimate paragraph on this page:

> "The Medical Institute, a model scientific establishment for 2,000 students, was destroyed on the orders of Oberfeldarzt Roll, chief medical officer of Belindorf, and the chief medical officer of Kuchendorf.
>
> "Of a total of 600,000 books on science and art, 530,000 volumes were burned by the Hitlerites. . . .
>
> "In the town of Makeyewka the German fascist invaders blew up and burned down the city theater, seating 1,000 persons; the circus, seating 1,500 persons; 49 schools, 20 day nurseries, and 44 kindergarten schools. By order of the Town Commander, Vogler, 35,000 volumes from the central Gorky library were destroyed on a pyre."

I shall not enumerate all the cities. These facts were mentioned in a document which, according to Article 21 of the Charter, provides irrefutable evidence. In agreement with the rulings of the Tribunal, this document will not be read into the record in full. I must, however, draw your attention to the fact that in all industrial towns of the Province of Stalino the Hitlerites burned down schools, theaters, day nurseries, hospitals, and even churches. Thus in the town of Gorlovka:

> ". . . they destroyed 32 schools, attended by some 21,649 children, burned down the town hospital, five polyclinics, a church, and the Palace of Culture. . . .
>
> "In the city of Konstantinovka the occupational authorities blew up and burned down all the 25 city schools, two cinemas, the central city library with 35,000 volumes, the Pioneers' Club, the children's technical center, the city hospital, and the day nurseries.
>
> "Before their retreat from Mariupol the German occupational authorities burned down all the 68 schools of the city, 17 kindergarten schools . . . and the Palace of the Pioneers."

I shall now quote a few excerpts from the document presented to the Tribunal as Exhibit Number USSR 45 (Document Number USSR-45). These excerpts are found on Page 378 of your document book. The document deals with the Hitlerite crimes in Rovno and the region of Rovno. The city of Rovno was of special importance. It was the residence of Reich Minister Erich Koch, the closest collaborator of the Defendant Rosenberg. Numerous conferences of the Hitlerite leaders for elaborating their plan for the

enslavement of the Ukrainian people took place in this city. The above-mentioned report of the Extraordinary State Commission established the following facts:

> "The Hitlerites, on the Ukrainian territory they had seized, endeavored to establish a regime of slavery and serfdom and to annihilate the Ukrainian sovereignty and culture. . . .
>
> "The considerable material in possession of the Extraordinary State Commission, based on documents, testimonies of witnesses, and personal inspection by members of the commission, and their acquaintance with conditions prevailing in various cultural and educational establishments on Ukrainian territory liberated by the Red Army, leaves no doubt that the German fascist barbarians had for their aim the destruction of Ukrainian culture and the extermination of the best representatives of Ukrainian art and science who had fallen into their hands."

I omit two paragraphs, and I quote the penultimate paragraph on this page:

> "The German fascist aggressors closed down nearly all the cultural and educational establishments in Rovno. On 30 November 1941 the closing down of schools in the General Commissariat of Volhynia and Podolia was officially announced in the newspaper *Volyn*."

I omit the end of Page 70, and I quote the last paragraph of this document on Page 71 of my report:

> "The fact that all these crimes were committed in the residence of the former Reich Commissioner for the Ukraine, Erich Koch, serves as additional proof that all the crimes of the Hitlerite bandits were perpetrated in execution of a plan for the extermination of the Soviet people and the devastation of the Soviet territories temporarily occupied by the Hitlerites, a plan conceived and executed by the Hitlerite Government."

In Section 5 of his opening statement, General Rudenko, Chief Prosecutor for the U.S.S.R., quoted an extract from a letter of the Commissioner General for Bielorussia, Kube, addressed to the Defendant Rosenberg.

This document is a typewritten letter, signed in ink by Kube. It has several notations in pencil, evidently by the hand of Rosenberg; and it has a stamp, "Ministerial Bureau," and is dated 3 October 1941. This document, identified as Document Number 1099-PS, I submit to the Tribunal as Exhibit

Number USSR-374 in evidence of the enormous proportions assumed by the plundering of historical treasures, carried out everywhere by the Hitlerites.

With your permission I shall now take the liberty of quoting some additional extracts from this document, which discloses the fact that not only were the plundered treasures sent to Germany but that they had also been stolen by individual generals of Hitler's Army. Kube's letter reveals at the same time the existence of a previously elaborated plan for the plunder of the cultural treasures in Leningrad, Moscow, and the Ukraine. The vandalism of the Hitlerites reached such proportions that even Kube, that hangman of the Bielorussian people, was roused to indignation. He was afraid of allowing a profitable deal to slip through his hands and sought compensation from Rosenberg. I quote the second paragraph from the beginning of the letter:

> "Minsk possessed a large and, in part, a very valuable collection of art treasures and paintings which have now been removed almost in their entirety from the city. By order of Reichsführer SS, Reichsleiter Heinrich Himmler, most of the paintings, some still during my term of office, were packed by the SS and sent to the Reich. They are worth several millions which were withdrawn from the general district of White Ruthenia. The paintings were supposedly sent to Linz and to Königsberg in East Prussia. I beg to have this valuable collection—as far as it is not needed in the Reich—placed once more at the disposal of the general district of White Ruthenia or, in any case, to place the monetary value of these collections with the Ministry for the Occupied Eastern Territories."

Kube, as well as the Defendant Rosenberg, was of the opinion that he had the right to monopolize the stolen treasures and complained—I quote the second part of the second paragraph of this letter:

> "General Stubenrauch has taken a valuable part of this collection and has carried it off to the area of military operations. Sonderführer, whose names have not yet been reported to me, have carried off three truckloads (without receipt) of furniture, paintings, and objects of art."

Having, along with other fascist leaders, robbed the people of Bielorussia, and taken a direct part in the mass ill-treatment and extermination of the Soviet population, Kube hypocritically declared—I quote the last paragraph of this letter:

"Bielorussia, already poor in itself, has suffered heavy losses through these actions."

And Kube recommended to Rosenberg—I quote:

"I hope that experts will be appointed beforehand to prevent such happenings in Leningrad and Moscow, as well as in some of the ancient Ukrainian cultural centers."

That was the ultimate goal of their ideas. It is now universally known what meaning the Hitlerites attached to the word "measures" when applied to the occupied territories. It meant a regime of bloody terror and violence, of unrestricted plunder, and arbitrariness.

On breaking into Minsk, capital of the Bielorussian Republic, the German fascist invaders attempted to destroy the culture of the Bielorussian people and to turn the Bielorussians into obedient German slaves. As has been established by a special investigation, the Hitlerite military authorities, acting on direct orders from the German Government, ruthlessly destroyed scientific research institutes and schools, theaters and clubs, hospitals and polyclinics, kindergartens and day nurseries.

I am reading into the record an excerpt from the document which was presented by the Soviet Prosecution as Exhibit Number USSR-38 (Document Number USSR-38).

"For 3 years the German fascist invaders in Minsk set out to destroy, systematically, the scientific research institutes, institutions of higher education, libraries, museums, institutions of the academy of science, theaters, and clubs.

"The Lenin library in Minsk was a foundation more than 20 years old. In 1932 the work was completed by the construction of a special new building with a large and well-equipped depository for storing books. From this library the Germans carried off to Berlin and Königsberg 1½ million extremely valuable books on the history of Bielorussia. . . ."

I omit the end of Page 73 of my report.

"In their attempt to eradicate the culture of the Bielorussian people, the German fascist invaders destroyed every cultural and educational institution in Minsk. . . . The libraries of the Academy of Science, containing 30,000 volumes, of the State University, of the Polytechnical Institute, and the medico-scientific library and the public library of the city, A. S. Pushkin, were carried away to Germany.

"The Hitlerites destroyed the Bielorussian State University together with the Zoological, the Geological, and Mineralogical, the Historical, and Archaeological Museums as well as the Medical Institute with all its clinics. They also demolished the Academy of Sciences with its nine institutes."

I omit the remainder of this paragraph.

"They destroyed the State Art Gallery and carried away to Germany paintings and sculptures by Russian and Bielorussian masters. . . . They plundered the Bielorussian State Theater of Opera and Ballet, the First Bielorussian Dramatic Theater, the House of National Creative Art, together with the houses of the unions of writers, artists, and composers.

"In Minsk the fascists destroyed 47 schools, 24 kindergarten schools, the Palace of the Pioneers, 2 lying-in hospitals, 3 children's hospitals, 5 municipal polyclinics, 27 nurseries, and 4 children's welfare centers; the Institution of Infant and Maternity Welfare was reduced to a heap of ruins."

The Prosecution has at its disposal Document Number 076-PS which is a report entitled, "On Minsk Libraries," by a German private first class, Abel. This private had investigated all the libraries in Minsk and stated in his report that nearly all of them had been destroyed.

I present this report as Exhibit Number USSR-375 (Document Number USSR-375). I consider, Mr. President, that it will be quite sufficient to read into the record individual excerpts from this report. There is no need to read the report in its entirety. It is stated, on Page 75 of my report, that:

"The Lenin library was the central library of Bielorussia. It is difficult to estimate the number of volumes, but the number of books is approximately 5 millions. . . . The depositories for storing books present a desolate picture. . . ."

I omit two paragraphs of my report, and I quote further:

"The library of the Polytechnical Institute in the basement of the left wing, as well as a great number of laboratories, were devastated beyond hope and left in complete disorder."

The report concludes with the following sentence, which I quote:

"The purpose of this report"—wrote the German private—"can be achieved only if submitted to the Supreme Command and when the command will issue the necessary orders plainly forbidding the German soldier from behaving like a barbarian."

But such orders never followed and never could follow, since fascism and barbarism are inseparable; fascism, in fact, means barbarism.

THE PRESIDENT: What were you proposing to do after the adjournment this afternoon?

MR. COUNSELLOR RAGINSKY: After the recess I shall present several written documents pertaining to the destruction of cultural valuables in the Lithuanian, Estonian, and Latvian Republics and later, with the permission of the Tribunal, I should like to present a documentary film, so that at the close of the session all presentation of evidence would be completed and my report finished.

THE PRESIDENT: How long will the film take?

MR. COUNSELLOR RAGINSKY: The presentation of the documentary film will take about 30 to 35 minutes.

THE PRESIDENT: Do you not think that after the vast amount of damage and spoliation to which you have drawn our attention in some detail it would be sufficient if you were to summarize by telling us the countries in which similar spoliation had taken place? It is difficult to assimilate all this vast amount of detail.

MR. COUNSELLOR RAGINSKY: I have in mind, Mr. President, to present to the Tribunal a document which will serve as a summary and in which all the general totals will be given.

THE PRESIDENT: Very well. We will adjourn now for 10 minutes.

[*A recess was taken.*]

MR. COUNSELLOR RAGINSKY: I wish to draw the attention of the Tribunal for a few minutes to the fact that before presenting the conclusion of this document I should like to read into the record a German document referring to the subject.

Having occupied the Lithuanian, Estonian, and Latvian Soviet Republics, the German fascist invaders attempted to reduce the Soviet Baltic provinces to the status of a German colony and to enslave the people of these republics. This criminal design of the Hitlerite Government found its full expression in universal plunder, general ruin, violence, degradation, and in the mass murder of old men, women, and children.

In order to germanize the people of the Lithuanian, Estonian, and Latvian Soviet Socialist Republics, the Hitlerites destroyed, by all possible means, the culture of the peoples of these republics. I skip the remainder of Pages 76, 77, and 78, and from Page 79 I quote one paragraph only:

"The capital of Soviet Latvia, Riga, was declared by the occupational authorities as the capital of 'Ostland' (Eastern Territory) and the seat of Staff Rosenberg."

In the documents presented to the Tribunal by the Soviet Prosecution as Document Number USSR-7, Document Number USSR-39, and Document Number USSR-41, there are a number of facts which do not and cannot exhaust the crimes perpetrated by the German fascist invaders in the Soviet Baltic provinces. Among the monstrous crimes against the peoples of the Baltic provinces, the Defendant Rosenberg, the former Reich Minister, played a major part.

I read from Page 81. Even at the time when it was quite evident that the downfall of fascist Germany was fast approaching, when the hour of just and stern retribution was facing the Hitler criminals, the Defendant Rosenberg still continued in his plundering. As late as the end of August 1944, Rosenberg organized and executed the plundering of cultural resources in Riga and Reval, in Dorpat, and in a number of towns in the Estonian Republic.

I draw the attention of the Tribunal to Document Number 161-PS, dated 23 August 1944, entitled "Assignment" and signed by Rosenberg's Chief of Staff, Utikal. This document is submitted to the Tribunal as Exhibit Number USSR-376 (Document Number USSR-376), which Your Honors will find on Page 400 of the document book. I quote:

"Order. On 21 August 1944, Reichsleiter Alfred Rosenberg requested Haupteinsatzführer Friedrich Schueller from the Einsatzstab RR to report on the possibilities still existing for the evacuation of cultural treasures from the eastern territories. On the basis of this report the Reichsleiter has ruled that the most precious cultural riches of the Ostland could still be removed by his staff, insofar as this can be done without interfering with the interests of the fighting forces. The Reichsleiter specified the following cultural objects as having particular value:

"From Riga—the city archives, the state archives (the major part of these were in Edwahlen);

"From Reval—the city archives, the Estonian Literary Society, and small collections from Schwarzhäupterhaus, the town hall, Evangelical Lutheran consistory, and Nicolas' Church.

"From Dorpat—the university library; collections evacuated to Estonian estates—Jerlep, Wodja, Weissenstein, and Lachmes.

"Haupteinsatzführer Schueller, in his capacity as acting director of the main working group of the Einsatzstab RR, is commissioned with the carrying out of the removal and shipment.

"He is advised to maintain special contact with Army Group North in order to co-ordinate the execution of this mission of the Reichsleiter, with the transportation requirements of the field forces.

"Utikal, chief of Einsatzstab"

I should like to draw the attention of the Tribunal to another peculiar circumstance. In this case, too, the looting was carried out by Rosenberg together with the High Command, and as late as the fall of 1944, "future chiefs" of Staff Rosenberg were selected.

An analysis of all these circumstances permits us categorically to reassert that the destruction and looting of cultural valuables was inspired, directed, and executed by a central organization, and that this central organization was the criminal Hitler Government and the High Command, the representatives of which, in the persons of all the defendants in this Trial, should suffer punishment in accordance with Article 6 of the Charter of the International Military Tribunal.

May it please Your Honors, when we deal with a system of wholesale destruction and plunder, it is impossible, and scarcely necessary, to enumerate all the facts, even if these facts are, *per se*, of great importance. In the occupied territories of the Soviet Union the Hitlerites carried out precisely such a system of wholesale and manifold destruction and plunder of cultural treasures of the peoples of the U.S.S.R. At this moment it is not yet possible to draw up an exhaustive balance of the defendants' crimes.

But I shall, with the permission of the Tribunal, submit a document containing data which, although only of a preliminary nature, are absolutely accurate and bear witness to the tremendous damage inflicted by the Hitlerites.

I have in view the report of the Extraordinary State Commission of the Soviet Union, submitted to the Tribunal as Exhibit Number USSR-35 (Document Number USSR-35). This document is on Pages 404 and 405 of your document book. From this I shall only quote individual excerpts concerning the subject which I am presenting and which have not yet been read into the record:

"Destruction of Cultural-Social Institutions, Public Organizations, and Co-operatives.

"The German plunderers destroyed various establishments, clubs, stadia, rest homes, and sanatoria belonging to consumer and industrial co-operatives, trade unions, and other public organizations . . . in the occupied territory of the U.S.S.R. They destroyed over 87,000 industrial buildings belonging to co-operatives, trade unions, and other social organizations; 10,000 residential buildings and 1,839 cultural and social institutions. They carried off to Germany about 8,000,000 books. . . .

"Of the property of the trade unions the German invaders completely destroyed 120 sanatoria and 150 rest homes in which over 3 million workers, engineers, technicians, and other employees spent their annual rest leave. Of this total figure they destroyed, in the Crimea 59 sanatoria and rest homes. . . in the spas of the Caucasus 32 sanatoria and rest homes; in the Leningrad area 33 sanatoria and rest homes; in the Ukraine 88 sanatoria and rest homes.

"The German fascist invaders destroyed the buildings of 46 pioneer camps and children's convalescent institutions belonging to the trade unions. They destroyed 189 clubs and palaces of culture."

I omit one paragraph and quote the last paragraph on this page:

"In the territory of the Soviet Union which was occupied by the Germans, at the beginning of 1941, there were 82,000 elementary and secondary schools with 15 million pupils. All the secondary schools possessed libraries, each with from 2,000 to 25,000 volumes; many schools possessed auditoria for physics, chemistry, biology, and others. . . .

"The German fascist invaders burned, destroyed, and plundered these schools with their entire property and equipment. . . ."

I omit the end of this paragraph.

"The German fascist invaders entirely or partially destroyed 334 colleges at which 233,000 students were studying; they removed to Germany the equipment of the laboratories and lecture rooms together with the exhibits, unique of their kind, from the collections of the universities, institutes, and libraries.

"Great damage was inflicted on the medical colleges. . . .

"The occupants destroyed or looted 137 pedagogical institutions and teachers' colleges. . . . They removed historical material and

ancient manuscripts from special libraries, and stole or destroyed over 100 million volumes in the public libraries."

I omit the next paragraph:

"They destroyed, on the whole, 605 scientific research institutes."

I omit the end of Page 85 of my report and the first paragraph of Page 86.

"Enormous damage was inflicted by the Germans on the medical establishments of the Soviet Union. They destroyed or plundered 6,000 hospitals, 33,000 polyclinics, dispensaries, and out-patient departments, 976 sanatoria and 656 rest homes."

I omit the next three paragraphs.

"Destruction of Museums and Historical Monuments.

"In the occupied territories the German fascist invaders destroyed 427 out of a total of 992 museums of the Soviet Union."

I omit the end of this page and quote the beginning of Page 87 of the report:

"The Germans also destroyed the museum of the peasant poet S. D. Drozhzhin, in the village of Zavidovo, the museum of the people's poet I. S. Nikitin, in Voronezh, and the museum of the famous Polish poet Adam Mickiewicz, at Novogrudka in the Bielorussian S.S.R. At Alagir they burned the manuscript of the national singer Osetij Kosta Khetagurov.

"The German fascist invaders destroyed 44,000 theaters, clubs, and so-called 'Red corners.' "

Now with the permission of the Tribunal, I should like to submit a documentary film and a certificate testifying to the documentary character of this film. The film is entitled, "Destruction of Art and Museums of National Culture perpetrated by the Germans on the Territory of the U.S.S.R." This film and the documents testifying to the documentary nature of these reels are submitted to the Tribunal as Exhibit Number USSR-98 (Document Number USSR-98). In this film, besides documentary photographs taken between 1941-45, there are also extracts made in 1908, showing Yasnaya Polyana and Leo Tolstoy. Subsequent photographs show what the German invaders did to this cultural relic of the Soviet people.

May I proceed with the presentation of the film, Your Honor?

THE PRESIDENT: Yes, of course.

[*Moving pictures were then shown.*]

MR. COUNSELLOR RAGINSKY: I must dwell, Your Honors, on one more category of crimes committed by the Hitlerites—the spoliation and destruction of churches, convents, and other places of religious worship.

By destroying monasteries, churches, mosques, and synagogues and robbing their property, the German invaders sadistically mocked the religious feelings of the people. These blasphemous crimes assumed a general appearance in all the territories which were under German rule. Soldiers and officers organized bloody orgies in places of worship, kept horses and dogs in the churches, donned the church vestments, and made sleeping bunks out of the icons.

I shall not trespass on your time by reading all the numerous documents at the disposal of the Soviet Prosecution, and shall merely dwell on some of these, in particular on the documentary photographs, an album of which I present to the Tribunal as Exhibit Number USSR-99 (Document Number USSR-99).

With your permission, I should like to read a few more documents and particularly a short extract from the document which has already been presented to the Tribunal as Exhibit Number USSR-51(3) (Document Number USSR-51(3)). You can find this extract in your document book on the back of Page 321. I quote:

> "The Hitlerite invaders do not spare the religious sentiments of the believing section of the Soviet population either. They have burned, looted, blown up, and desecrated hundreds of churches on Soviet territory, including several irreplaceable monuments of ancient church architecture."

I omit two paragraphs, and I quote the next one:

> "The priest Amvrosy Ivanov writes from the village of Iklinskoye, in the Moscow region:
>
> " 'Before the arrival of the Germans the church was in complete order. A German officer ordered me to take everything out of the church. . . . At night troops arrived, occupied the church, brought in their horses. . . . Then they began to smash and break everything in the church and to build bunks. They threw out everything: the altar, the holy gates and banners, and the holy shroud. In a word, the church was turned into a robbers' den.' "

I omit the remaining part of Page 88, and I read Page 89 of the report:

> "In the village of Gosteshevo, the Germans plundered the church, broke up the holy banners, threw the books about, robbed the

Reverend Mikhail Strakhov and carried him off with them to another district. In the village of Kholm, near Mozhaisk, the Germans robbed and beat up the 82-year-old local priest. In retreating from Mozhaisk, the Germans blew up the Church of the Ascension, the Church of the Holy Trinity, and the Cathedral of Nicholas, the miracle worker. As a rule, before retreating, the Germans would drive part of the population of the villages destroyed by fire into the churches, lock them up, and then set fire to these churches."

I am now reading into the record a short excerpt from Exhibit Number USSR-312 (Document Number USSR-312), submitted to the Tribunal:

"In a north side-altar of the Znamensky Cathedral, the Germans set up a latrine for the soldiers living in the crypt of the cathedral.

"The Church of the Prophet Elijah on the Slavna was transformed into a stable.

"Stables were built in the following Pskov churches: Bogoyavlenie on Zapskovie, Kozma and Demian on the Gremiatchy Hill, Constantine and Helen, and in the Church of Saint John the Evangelist."

The document which was presented to the Tribunal as Exhibit Number USSR-279 (Document Number USSR-279) describes facts of blasphemous mockery which took place in the town of Gjatsk where the churches were transformed by the Germans into stables and warehouses. In the Church of the Annunciation the Germans set up a slaughterhouse for horned cattle.

The document which I am now presenting to the Tribunal as Exhibit Number USSR-246 (Document Number USSR-246) is a report of the Extraordinary State Commission of the Soviet Union and contains general data relating to the churches, chapels, and other institutions of religious worship which have been destroyed or damaged. This document states:

"The German fascist invaders completely destroyed or partly damaged 1,670 churches, 69 chapels, 237 Roman Catholic churches, four mosques, 532 synagogues, and 254 other buildings for religious worship."

Your Honors will find in the document, submitted to the Tribunal as Exhibit Number USSR-35 (Document Number USSR-35), these general data on the subject. I will not burden the Tribunal's attention by reading the document into the record in full, but I should like to quote a few very short excerpts from it. I quote:

"The material responsibility by the Germans cannot make complete amends for the destruction of ecclesiastical buildings, and of the most ancient historical monuments; the majority of these can never be restored."

Omitting the remainder of the page, as well as the first four paragraphs of Page 91 of the report, I read the last paragraph of this page:

"Many churches, historical monuments of antiquity, were destroyed by the German invaders in Bielorussia. Thus, in the city of Vitebsk, they destroyed the Church of the Nativity, an interesting monument of Bielorussian architecture of the 12th century. They completely destroyed the wooden Apostle and Saint Nicholas Churches, built in the 18th century.

"Almost irreparable damage was done to the Voskresenko-Zaruchjevsky Church, built in the 18th century. This church was an interesting example of the Bielorussian classic style of architecture. In the same area, in the city of Vitebsk, the Germans destroyed a Roman Catholic church built in the 18th century. . . .

"In the town of Dyesna, of the Polotsk region, the Germans burned a Roman Catholic church founded in the 17th century, after plundering its property.

"Timoschel Rudolf, German garrison commandant of the town of Rozhnyatov, in the Stanislav region, used three synagogues for barracks and later on destroyed the buildings after plundering the property contained therein."

I omit the next paragraph.

"Before destroying buildings of various religious cults the Germans plundered and destroyed all their equipment. A great number of icons and church decorations were removed from ecclesiastical buildings to Germany.

"The Joseph-Volokalamsky Monastery was plundered and the ancient shrouds of the monastery, together with the personal belongings of Joseph Volotsky, founder of the monastery, have disappeared. . . .

"In 1941 German soldiers and officers stole from the Staritzki Church all the vessels, altar crosses, crowns, miters, and tabernacles.

"In the town Dokshitza, in the Polotsk region, the Germans looted and took away all the property of the local mosque. The same fate

was shared by nearly all the churches in the territories occupied by the Germans.

"Everywhere the Germans plundered Orthodox and Catholic churches, synagogues, mosques, and other buildings of religious worship."

The Hitlerite conspirators not only actually plundered, tortured, and murdered, but they also strove to humiliate the believers morally and to rob them of their spiritual treasures.

Such, Your Honors, is the conclusive evidence concerning the crimes against culture, committed by Rosenberg, Frank, Göring, Ribbentrop, Keitel, and the other participants in the conspiracy. The crimes of the defendants against culture are terrible indeed in their consequences. Even though it be possible, by a tremendous effort, to rebuild the cities and villages destroyed by the Hitlerites, even though it be possible to restore the factories and plants blown up or burned down by them, mankind has lost for all time the irreplaceable art treasures which the Hitlerites so ruthlessly destroyed, as it has lost forever the millions of human beings sent to their death in Auschwitz, Treblinka, Babye-yar, or Kerch.

Having inherited the savage hatred of all mankind from the dim ages of the past, the modern Huns have far surpassed, in cruelty and vandalism, the darkest pages of history. While arrogantly challenging the future of mankind, they trampled under foot the finest heritage of mankind's past. Themselves without faith or ideals, they sacrilegiously destroyed both the churches and the relics of the saints.

But in this unparalleled struggle between culture and obscurantism, between civilization and barbarism, culture and civilization prevailed. The Hitlerite conspirators who had aspired to world domination, who had dreamed of destroying the culture of the Slavs and of all other nations, now stand in the defendants' dock. May a just punishment be theirs.

THE PRESIDENT: Will you continue until 5 o'clock?

MR. COUNSELLOR RAGINSKY: As you wish, Your Honor.

THE PRESIDENT: Yes; will you go on until 5 o'clock?

MR. COUNSELLOR RAGINSKY: I should only like to ask for a few minutes' interval in order to collect some documents. It will literally take only a few moments.

THE PRESIDENT: It would be hardly worth while if you want a short interval. We shall stop at 5 o'clock.

MR. COUNSELLOR RAGINSKY: It would perhaps be more convenient to begin again at 1000 hours tomorrow.

THE PRESIDENT: Then we will adjourn now.

[*The Tribunal adjourned until 22 February 1946 at 1000 hours.*]

SIXTY-FIFTH DAY

Friday, 22 February 1946

Morning Session

MARSHAL: May it please the Court: The Defendant Fritzsche will be absent until further notice on account of illness.

MR. COUNSELLOR RAGINSKY: May it please Your Honors, may I begin the submission of evidence to prove the charge that the defendants are guilty of the destruction of towns and villages and of the perpetration of other kinds of destruction. This charge is laid down in Section C of Count Three of the Indictment.

We shall present evidence proving that the destruction of cities and towns was brought about neither by the hazards of war nor by military expediencies. We shall submit evidence that this deliberate destruction was carried out in accordance with the thoroughly elaborated plans of the Hitlerite Government and orders of the German military command; that the destruction of towns and cities, of industry and transportation was an integral part of the conspiracy which aimed at enslaving the peoples of Europe and other countries, and establishing a world hegemony of Hitlerite Germany.

Wherever the German fascist invaders appeared, they brought death and destruction. In the flames of the fires were lost the most valuable machines devised by the genius of mankind; factories and dwellings giving work and shelter to millions were blown up. People themselves perished, especially old men, women, and children, left without a roof over their heads or any means of existence.

With particular ruthlessness the Hitlerites annihilated and destroyed the towns and cities in the territories of the Soviet Union which they temporarily occupied, where, acting on direct orders of the German High Command, they created a desert zone.

As proof, I read into the record an excerpt from the document which had been submitted to the Tribunal as Exhibit Number USSR-51(2) (Document

Number USSR-51(2)). This excerpt the Members of the Tribunal will find on Page 3 of the document book. I quote:

> "An order recently seized near the town of Verkhovye, Orel region, issued to the 512th German Infantry Regiment and signed by Colonel Schittnig, stated with unparalleled brazenness:
>
> " 'A zone which, in view of the circumstances, is to be evacuated, upon withdrawal of the troops should present a desert zone. In order to carry out a complete destruction, all the houses shall be burned. To this end they should first be filled with straw, particularly stone houses. Structures of stone are to be blown up, particularly cellars. Measures for the creation of desert zones . . . are to be prepared beforehand and carried out ruthlessly and in their entirety.' "

So runs the order to the 512th German Infantry Regiment.

> "In razing our towns and villages, the German command demands of its troops that a desert zone be created in all Soviet localities from which the invaders are successfully expelled by the Red Army."

This order to the 512th Regiment, which is mentioned in the document I just quoted, is submitted as Exhibit Number USSR-168 (Document Number USSR-168).

THE PRESIDENT: Do you know the date of it?

MR. COUNSELLOR RAGINSKY: The date of this order is 10 December 1941. From this document it is clear that the German military command underwrote a ruthless and complete destruction of inhabited localities and that this destruction was planned and prepared in advance.

A large number of documents and facts concerning this question are in the possession of the Soviet Prosecution. I shall limit myself to reading into the record an excerpt from the verdict of the regional military court in the case of the German war criminals Lieutenant General Bernhardt and Major General Hamann. I submit this verdict to the Tribunal as Exhibit Number USSR-90 (Document Number USSR-90).

The military court established that the generals, Bernhardt and Hamann, had acted in accordance with the common plans and directives of the High Command of the German Army and that they—I quote a short excerpt from the verdict which Your Honors will find on Pages 24 and 25 of the document book:

". . . had carried out a planned destruction of towns and inhabited localities, determined in advance, along with the destruction of industrial buildings, hospitals, sanatoria, educational institutions, museums, and other cultural educational institutions, as well as dwellings. The latter were blown up without any previous warning to the Soviet citizens living in them, with the result that people as well perished."

As in the case of the destruction of inhabited localities, plants, and factories, power-stations and mines were also destroyed with premeditation.

For confirmation I shall draw the attention of the Tribunal to the report of the Extraordinary State Commission of the Soviet Union which was submitted to the Tribunal as Exhibit Number USSR-2 (Document Number USSR-2). This document is on Page 28 of the document book.

In this report is quoted the secret directive of the leader of the department of economics (Wirtschaftsoffizier) of Army Group South of 2 September 1943, under Number 1/313/43, which ordered army leaders and leaders of the economics detachments to carry out a thorough annihilation of industrial institutions, emphasizing particularly that ". . . the destruction must be carried out not at the last moment when the troops may be engaged in combat or in retreat, but ahead of time."

The note by V. M. Molotov, the People's Commissar for Foreign Affairs of the U.S.S.R. of 27 April 1942, deals with the orders of the German Supreme Command and with the manner in which these orders were executed. This note was submitted to the Tribunal as Exhibit Number USSR-51(3) (Document Number USSR-51(3)).

I shall now quote several excerpts from Part II of the note just mentioned, which is entitled, "The Devastation of Cities and Towns," excerpts which were not read into the record before. These excerpts will be found on Pages 6, the reverse side, and 7 of the document book which is in the hands of the Tribunal. I read:

"By direct order of its High Command the German fascist Army has subjected Soviet towns and villages to unparalleled devastation upon seizure and in the course of the army's occupation."

I omit the end of Page 4 and the beginning of Page 5 of my report.

THE PRESIDENT: I do not think you ought to omit the first four lines of Page 5.

MR. COUNSELLOR RAGINSKY: I omitted it inasmuch as I read this document into the record yesterday, but if the Tribunal wishes—I shall

gladly do it.

THE PRESIDENT: If you read it yesterday, do not read it again. I do not remember. Was it read yesterday?

MR. COUNSELLOR RAGINSKY: Yes, I read this into the record yesterday.

THE PRESIDENT: Very well.

I am told that—and I think—that you did not read those lines "from 10 October 1941" at the top of Page 5. I think you had better read them. I am referring to the order of 10 October 1941, which is set out in your exposé.

MR. COUNSELLOR RAGINSKY: This is the excerpt from the order given to the 6th German Army, on 10 October 1941, signed by Von Reichenau. This document is presented to the Tribunal as Exhibit Number USSR-12 (Document Number USSR-12). I quote:

> "The troops have an interest in extinguishing fires only inasmuch as military quarters have to be conserved. Otherwise the disappearance . . . also of buildings, is within the limits of the fight of extermination.
>
> "At the end of 1941 and the beginning of 1942 the German command issued a number of orders instructing German army units to destroy, in the course of their retreat under the pressure of the Red Army, everything that had remained unscathed during the occupation. Thousands of villages and hamlets, whole city blocks, and even entire cities are reduced to ashes, blown up, or razed to the ground by the retreating German fascist army. The organized destruction of Soviet towns and villages has become a special branch of the criminal activity of the German invaders on Soviet territory; special instructions and detailed orders of the German command are devoted to methods of devastating Soviet populated centers; special detachments, trained in this criminal profession, are set up for this purpose. Here are some of the many facts which are at the disposal of the Soviet Government:"

Once again I refer to the order addressed to the 512th Infantry Regiment already presented to the Tribunal as Exhibit Number USSR-168 (Document Number USSR-168).

> "This order . . . is an exposition, consisting of seven typed pages of the most precisely detailed plan for the methodical destruction of village after village, from 10 December to 14 December inclusive, in the regiment's area. This order, which follows a model used throughout the German Army, states:

" 'Preparations for the destruction of populated centers must be carried out in such a way that:

" '(a) No suspicions whatever be aroused among the civilian population prior to its announcement;

" '(b) The destruction should begin and be carried out in a single blow at the appointed time. On the day in question particularly strict watch must be kept to see that no civilians leave this place, especially after the destruction has been announced.'

"An order of the commander of the 98th German Infantry Division, dated 24 December 1941, after listing 16 Soviet villages designated to be burned down, states:

" 'Available stocks of hay, straw, foodstuffs, *et cetera*, are to be burned. All the stoves in dwelling houses are to be wrecked by placing hand grenades in them, thus making further use of them impossible. This order under no circumstances is to fall into the hands of the enemy.' "

The following order of 3 January 1942, issued by Hitler, is of the same nature. The order states:

" 'Cling to every populated center; do not retreat a single step; defend yourself to the last soldier, to the last grenade. That is the requirement of the present moment. Every point occupied by us must be turned into a base, which must not be surrendered under any circumstances, even if outflanked by the enemy. If, however, the given point must be abandoned on superior orders, it is imperative that everything be razed to the ground, the stoves blown up. . . .

" '(Signed): Adolf Hitler.'

"Hitler felt no embarrassment about publicly admitting that the devastation of Soviet towns and villages was carried out by his Army. In his speech. . ."

THE PRESIDENT: That order of 3 January 1942, signed by Hitler, is that in the official Soviet State report? Where did it come from?

MR. COUNSELLOR RAGINSKY: This order is incorporated in the note of People's Commissar for Foreign Affairs Molotov. I quote an excerpt from it, a document which was presented to the Tribunal as Exhibit Number USSR-51(3).

THE PRESIDENT: That is Mr. Molotov's report?

MR. COUNSELLOR RAGINSKY: Yes, this is a note of the Foreign Commissar, Molotov.

THE PRESIDENT: All right.

MR. COUNSELLOR RAGINSKY: ". . . In his speech of 30 January 1942, Hitler stated:

" 'In those places where the Russians have succeeded in making a break-through and where they thought that they would once again be in possession of populated centers, these populated centers no longer exist; they are but a heap of ruins.' "

While retreating from the Kuban under the thrust of the Red Army, the German High Command worked out a detailed plan of operations which bore the code name of "Movement Krimhild," and a considerable part of this plan, a whole section, in fact, is devoted to the demolition plan. I omit one paragraph of my report.

This plan is mentioned in a two-page secret document transmitted by telegraph to the chiefs of the higher staffs. The document is signed by Hitler and has the following heading on the first page: "Top secret (A) 2371; 17 copies." The document which we submit to the Tribunal as Exhibit Number USSR-115 is the 17th copy of the Hitler order. This document is listed as Document Number C-177; in your document book it is contained on Pages 31 to 33. I shall read into the record the second point of this document:

"2. Demolitions in case of retreat.

"(a) All structures, quartering facilities, roads, constructions, dams, *et cetera*, which may be useful to the adversary have to be thoroughly destroyed.

"(b) All railroads and field railways are to be either removed or completely destroyed.

"(c) All constructed corduroy roads must be torn up and rendered useless.

"(d) All oil wells in the Kuban bridgehead must be entirely destroyed.

"(e) The harbor of Novorossiysk will be so demolished and obstructed as to render it useless to the Russian fleet for a long time.

"(f) Extensive sowing of mines, delayed-action mines, *et cetera*, also come under the heading of destruction.

"(g) The enemy must take over a completely useless, uninhabitable desert land where mine detonation will occur for months hence."

Many other documents bear witness of similar orders, but I want to draw the attention of the Tribunal to just two of them. I refer to an entry in the diary of the Defendant Frank which dealt with this subject in particular, as well as a directive issued by the commanding general of 118th German Jäger Division which operated in Yugoslavia.

In Frank's diary, which has already been submitted to the Tribunal, there is the following entry for 17 April 1944, contained in the volume which was started on 1 March 1944 and ended on 31 May 1944, entitled, "The Business Meeting at Kraków on 12 April 1944." Your Honors will find the quotation on Page 45 of the document book. I read:

"It is important that the troops be given an order to leave only scorched earth to the Russians. In cases when it becomes necessary to withdraw from a certain area, no distinction should be made between the territory of the Government General and any other territory."

May I remind the Tribunal that according to Exhibit Number USSR-132 (Document Number USSR-132), which is a secret instruction issued to the 118th German Jäger Division with the signature of Major General Kübler and was captured in June 1944 by units of the Yugoslav People's Liberation Army, the troops were to treat the population "ruthlessly with cruel firmness" and to destroy the inhabited localities which were abandoned.

May it please Your Honors, in concluding this part of my report I deem it necessary to draw your attention to another circumstance. The destruction of peaceful towns and villages was not only planned, not only carried out deliberately and with exceptional ruthlessness, but was executed by special detachments created by the German High Command for that very purpose. By way of evidence I shall quote several excerpts not yet read into the record from official Soviet Government documents.

In the note of 27 April 1942 is stated—I quote an excerpt which is on Page 9 of your document book:

"The special detachments set up by the German Command for the purpose of setting fire to Soviet populated centers and for the mass extermination of the civilian population during the retreat of the Hitlerite Army, are perpetrating their sanguinary deeds with the cold-bloodedness of professional criminals. Thus, for instance before their retreat from the village of Bolshekrepinskaya, Rostov

region, the Germans sent down the streets of the village special flame-throwing machines which burned 1,167 buildings, one after the other. The large, flourishing village was turned into flaming bonfires which consumed the dwellings, the hospital, the school, and various other public buildings. At the same time machine gunners, without any warning, shot at inhabitants who approached their burning houses; some of the residents were bound, sprayed with gasoline and thrown into the burning buildings."

I omit part of Page 9 of my report and pass on to the next, to the last paragraph on that page of my report. The report of the Extraordinary State Commission of the Soviet Union which was presented to the Tribunal as Exhibit Number USSR-46 (Document Number USSR-46) states:

"In their insane fury against the Soviet people, which was caused by defeats suffered at the front, the commanding general of the 2d German Panzer Army, General Schmidt, and the commander of the Orel administrative region and military commander of that city, Major General Hamann, had created special demolition commandos for the destruction of towns, villages, and collective farms of the Orel region. These commandos, plunderers, and arsonists destroyed everything in the path of their retreat. They destroyed cultural monuments and works of art of the Russian people, burned down cities, towns, and villages."

In the document submitted to the Tribunal as Exhibit Number USSR-279 (Document Number USSR-279), the following facts are described—I read:

"In Viazma and Gjatsk, the commanding generals—Major General Merker of the 35th Infantry Division, Major General Schäfer of the 252d Infantry Division, and Major General Roppert of the 7th Infantry Division—organized special incendiary and demolition commandos to set on fire and blow up dwellings, schools, theaters, clubs, museums, libraries, hospitals, churches, stores, and industrial plants, so that only ashes and ruins would be left in the wake of their retreat."

In the document which is presented to the Tribunal as Exhibit Number USSR-2 (Document Number USSR-2) there are several depositions of German prisoners of war. I shall quote one of these depositions. I read at the end of the page:

"Herman Verholtz, a private first class, from the 597th Infantry Regiment of the 306th Division of the German Army, deposes as follows:

" 'As a member of a demolition squad I took part in setting fire to and blowing up government buildings and dwellings on First Line, the main street of Stalino. My job was to place the explosives, which I then ignited and thus blew up the buildings. Altogether I participated in the demolition of five large houses and in the burning of several others.' "

Your Honors, one could go on with the same kind of quotations. I repeat that scores of them are contained in the documents and depositions which we presented to the Tribunal, but I consider that there is no necessity to do that. What has already been read into the record permits us to conclude that the premeditated and deliberate devastations which were carried out by the Hitlerites in the occupied territories were really a system and not individual acts, and that those devastations were not perpetrated only at the hand of individual officers and soldiers of the German Army, but that these devastations were carried out on the orders of the German Supreme Command. Therefore, I omit Page 11 of my report, and I begin with Page 12.

In the criminal plans of the fascist conspirators, the devastation of the capitals of the Soviet Union, Yugoslavia, and Poland occupied a particular place. Among these plans the destruction of Moscow and Leningrad received special attention.

Intoxicated by the first military successes, the Hitlerites elaborated insane plans for the destruction of the greatest cultural and industrial centers dear to the Soviet people. For this purpose they prepared special task forces. They even hurried to advertise their "decision" to refuse the capitulation of the cities which never even took place.

It is necessary to note that such expressions as "raze to the ground" or "wipe from the face of the earth" were used quite frequently by the Hitlerite conspirators. These were not only threats but criminal acts as well. As we shall see from the subsequent presentation, in some places they did succeed in razing flourishing towns and villages to the ground.

I omit one paragraph of my report.

I shall now present two documents which reveal the intentions of the Hitlerite conspirators.

The first document is a secret directive of the naval staff, numbered I-a 1601/41, dated 22 September 1941. It is entitled, "The Future of the City of Petersburg." (Document Number C-124, Exhibit Number USSR-113). Therefore, as we are in possession of the original of this document, which was distributed in several copies, I believe that it does not have to be read

into the record. With your permission, Mr. President, I shall remind the Tribunal of the contents of this directive. In this directive it is stated, "The Führer has decided to wipe the city of Petersburg from the face of the earth," that it is planned to blockade the city securely, to subject it to artillery bombardment of all calibers, and by means of constant bombing from the air to raze Leningrad to the ground. It is also decreed in the order that should there be a request for capitulation, such request should be turned down by the Germans. Finally, it is stated in this document that this directive emanates not only from the naval staff, but also from the OKW.

I omit Page 13 of my report and begin with the last paragraph of the page.

The second document, bearing the number Document C-123, presented to the Court as Exhibit Number USSR-114, is also a top secret order of the Supreme Command of the Armed Forces, dated 7 October 1941, Number 44/1675/41, and signed by the Defendant Jodl. This document, Your Honors, is to be found on Pages 69 and 70 in the document book. I read into the record the text of this document, or rather a few excerpts from this letter on Page 14 of my presentation. I read the first paragraph of the letter:

> "The Führer has again decided that a capitulation of Leningrad or, later, of Moscow is not to be accepted even if it is offered by the enemy."

And further the last but one paragraph of this page:

> "Therefore, no German soldier is to enter these cities. By our fire we must force all who try to leave the city through our lines to turn back. The exodus of the population through the smaller, unguarded gaps toward the interior of Russia is only to be welcomed. Before the cities are taken, they are to be weakened by artillery fire and air attacks, and their population should be caused to flee.
>
> "We cannot take the responsibility of endangering our soldiers' lives in order to save Russian cities from fire, nor that of feeding the population of these cities at the expense of the German homeland. . . .
>
> "All commanding officers shall be informed of this will of the Führer."

The Hitlerite conspirators began to put their criminal ideas about the destruction of Leningrad into effect with unprecedented ferocity. In the report of the Leningrad city commission for the investigation of the

atrocities of the German fascist invaders, the monstrous crimes of the Hitlerites are described in detail.

This document had been presented to the Court as Exhibit Number USSR-85. I shall read into the record only a general summary of the data presented on Page 1 of the report, which is on Page 71 of the document book. I read:

> "As a result of the barbarous activities of the German fascist invaders in Leningrad and its suburbs, 8,961 household and annexed buildings, sheds, baths, *et cetera*, with a total volume of 5,192,427 cubic meters were completely destroyed, and 5,869 buildings with a total volume of 14,308,288 cubic meters were partially destroyed. Completely destroyed were 20,627 dwellings, with a total volume of 25,429,780 cubic meters, and 8,788 buildings, with a total volume of 10,081,035 cubic meters were partially demolished. Six buildings dedicated to religious cults were completely, and 66 such buildings partially, destroyed. The Hitlerites destroyed, ruined, and damaged various kinds of institutions valued at more than 718 million rubles, as well as more than 1,043 million rubles' worth of industrial equipment and agricultural machinery and implements."

This document establishes that the Hitlerites bombed and shelled, methodically and according to plan, day and night, streets, dwelling houses, theaters, museums, hospitals, kindergartens, military hospitals, schools, institutes, and streetcars, and ruined most valuable monuments of culture and art. Many thousands of bombs and shells hammered the historical buildings of Leningrad, and at its quays, gardens, and parks.

I omit the end of Page 16.

In conclusion, I shall permit myself to quote one of the many German depositions which are quoted in the document, namely paragraph 4 on Page 14. Your Honors will find this deposition I am quoting on Page 84 of the document book. I quote:

> "Sergeant Fritz Köpke, commanding Number 2 gun of the 2d battery of the 2d Detachment of the 910th Artillery Regiment stated:
>
> " 'For the bombardment of Leningrad, there was in the batteries a special stock of munitions supplied over and above the limit to an unlimited amount. . . .
>
> " 'All the gun crews know that the bombardments of Leningrad were aimed at ruining the town and annihilating its civilian

population. They therefore regarded with irony the bulletins of the German Supreme Command which spoke of shelling the "military objectives" of Leningrad.' "

The Hitlerite conspirators aimed at the complete destruction of the Yugoslav capital, Belgrade.

I remind you of Document Number 1746-PS, presented to the Tribunal on 7 December 1945; it is an order by Hitler, dated 27 March 1941, dealing with the attack on Yugoslavia. It is known that this order, entitled "Instruction Number 25," gives in detail the military strategy for the attack and, besides, decrees that all the Yugoslav Air Force ground installations and the city of Belgrade shall be destroyed by means of continuous day and night air raids.

I omit the first paragraph of Page 18 of my report, inasmuch as the facts which are mentioned in this paragraph have been read into the record on 11 February. I shall read a few excerpts from Pages 22 and 23 of the official report of the Yugoslav Government. This corresponds to Pages 111 and 112 in your document book. I read:

"The planned and systematic execution of these crimes, based on the orders of the Government of the Reich and of the OKW, is confirmed by the fact that the destruction of inhabited localities and of the population did not cease even at the time of the retreat of the German troops from Yugoslavia.

"Typical for thousands of such cases is the destruction of Belgrade and extermination of its citizens in October 1944.

"The fights for the liberation of Belgrade lasted from 15 to 20 October 1944. Even before the fighting started, the Germans prepared a plan for the systematic destruction of the city. They sent into the city a large number of specially trained units whose duties consisted of mining houses and killing the population. Though, because of the swift advance of the Red Army and of the Yugoslav National Liberation Forces, they failed to carry out their task as ordered by the German commanders, they succeeded in destroying a large number of houses in the southern part of the city and in killing a considerable number of its inhabitants.

"To a still greater extent, this happened in the northern part of the city, on the Rivers Sava and Danube. The Germans went from house to house, herded the inhabitants, unclothed and unshod, into the streets, sprayed inflammable chemical explosives into every apartment, and set fire to all the buildings. If a house happened to

be made of a very solid material, they mined it. They fired at the inhabitants, killing defenseless people; in several large houses the inhabitants were locked in, and were destroyed by fire and by mine explosions. The entire damage thus caused in the city of Belgrade totals the sum of 1,127,129,069 dinars at prewar value."

Thus, the destruction of Belgrade was prescribed by Hitler's order of 27 March 1941 and was carried out on direct orders of the Defendant Göring; in October 1944 it was carried out by the same methods as those employed by the Hitlerites in the occupied territories of the U.S.S.R.

I shall now present evidence of the intentional and unexampled destruction by the Hitlerites of the capital of the Polish nation, Warsaw.

I shall quote three documents which reveal the criminal intentions of the fascist conspirators to raze this city. As the first document, Exhibit Number USSR-128 (Document Number USSR-128), I present to the Tribunal a telegram Number 13265, addressed to the Defendant Frank, and signed by the Governor of the Warsaw District, Dr. Fischer. This document can be found on Page 148 of the document book. I read into the record the text of this telegram:

"To the Governor General and Reich Minister, Dr. Frank, at Kraków.

"Warsaw, Number 13265; 11. X. 44; 10.40, HE.

"Subject: New Policy with Regard to Poland.

"As a result of the visit of SS Obergruppenführer Von dem Bach to the Reichsführer SS, I wish to inform you of the following:

". . . 2) Obergruppenführer Von dem Bach again received an order to pacify Warsaw—that is, to raze Warsaw to the ground while the war is still on, if there is nothing against this from the military point of view (construction of fortresses). Prior to destruction, all raw materials, textiles, and furniture should be taken out of Warsaw. The main role in performing this task should be assumed by the civilian administration.

"I am informing you of these facts because this new order of the Führer regarding the destruction of Warsaw is of the greatest importance for the future policy toward Poland.

"The Governor of the Warsaw District, temporarily at Sochaczew, signed: Dr. Fischer."

Von dem Bach, mentioned in the telegram just read into the record, is already known to you, Your Honors; he testified in the afternoon session of

the Tribunal on 7 January.

How SS Obergruppenführer Von dem Bach carried out Hitler's order regarding the destruction of Warsaw can be seen from the written evidence given by him on oath on 28 January 1946, during his interrogation by the Public Prosecutor of the Polish Republic, M. Savitzky.

I present to the Court the original record of the interrogation in German, duly signed by Von dem Bach. I shall read two extracts from this record. . .

[*Dr. Seidl approached the lectern.*]

THE PRESIDENT: We will hear the objection.

DR. ALFRED SEIDL (Counsel for Defendant Frank): I object to the reading of the interrogation of the witness Von dem Bach-Zelewski. The witness was heard before the Court, and it would have been possible at that time to hear the witness about the matter of the interrogation right here before the Court.

Should the Soviet Prosecution not wish to forgo the presentation of this material, then I request that the witness, Von dem Bach-Zelewski, who is still here in Nuremberg, be summoned before the Tribunal again, so that the Defense may have an opportunity to cross-examine the witness.

THE PRESIDENT: General Raginsky, do you want to say anything?

MR. COUNSELLOR RAGINSKY: Mr. President, this record of the interrogation of Von dem Bach-Zelewski was given under oath, and it was presented to the Soviet Delegation by the representatives of the Polish Government. The record of the interrogation is formulated according to the laws of procedure and was given under oath. Therefore, we consider it imperative and possible to present it to the Tribunal without calling Von dem Bach-Zelewski for a second interrogation before the Tribunal. If the Tribunal decides that the testimony of Bach-Zelewski cannot be read into the record without his being called again before the Tribunal, then, in the interests of expediting the Trial, and in order not to protract the presentation of our evidence, we agree not to read this testimony into the record inasmuch as evidence regarding these facts is contained in other documents which I shall later present to the Tribunal.

THE PRESIDENT: May I ask you then, General: If the evidence given before the Polish Commission is the same as the evidence which Bach-Zelewski gave in court, it would be cumulative; if it is different, then surely the defendants' counsel ought to have the opportunity of cross-examining him upon it.

MR. COUNSELLOR RAGINSKY: The testimony which was given by Bach-Zelewski to the prosecutor of the Polish Republic is supplementary.

Bach-Zelewski was not examined before the Tribunal about the devastations.

THE PRESIDENT: General Raginsky, the Tribunal understood you to say that you would be prepared to withdraw this evidence in view of the fact that the witness had given evidence already and the Tribunal considers that that is the proper course to take. So then the evidence will be withdrawn and struck from the record so far as it has been put on the record.

I think this would be a good time to adjourn.

[*A recess was taken.*]

MR. COUNSELLOR RAGINSKY: As a result of the decision of the Tribunal, I exclude Page 21 from my report and pass on to Page 22. I shall read into the record an extract from the diary of the Defendant Frank, which was presented to the Tribunal as Exhibit Number USSR-223 (Document Number USSR-223). This extract is on Page 45 of the document book. I have in mind the file which was begun on 1 August 1944 and brought to 14 December 1944, entitled "Diary," where there is a note which mentions the contents of a telegram sent by Frank to Reich Minister Lammers. I read—on 5 August 1944:

> "The Governor General sends the following telegram to Reich Minister Dr. Lammers:
>
> " '. . . The city of Warsaw is, for the most part, engulfed in flames. Burning of the houses is the surest way to rob the insurgents of any shelter. . . .
>
> " 'After this uprising and its suppression, Warsaw will justly be committed to its deserved fate of being completely destroyed.' "

These documents prove, thus, that the fascist conspirators set for themselves the aim of razing to the ground the capital of the Polish State, Warsaw, and that the Defendant Frank played an active part in this crime.

In all the territories of the U.S.S.R., Yugoslavia, Poland, Greece, and Czechoslovakia which they occupied, the German fascist invaders systematically destroyed inhabited localities according to plan, under the pretense of fighting the partisans. Punitive expeditions, detachments, and commandos, specially detailed by the German military command, burned down and blew up tens of thousands of villages, hamlets, and other inhabited localities.

I skip a paragraph of my report.

From the numerous documents in the possession of the Soviet Prosecution I shall quote, as examples, a few which are typical and which characterize the whole system developed by the Hitlerites.

The report of Captain Kasper, a company commander, dated 27 September 1942 and entitled, "Conclusive Report on the Results of the Punitive Expedition Carried out in the Village of Borisovka from 22 to 26 September 1942," starts as follows: "Tasks: Company 9 must destroy the band-infested village of Borisovka." This document has been presented to the Tribunal as Exhibit Number USSR-119 (Document Number USSR-119).

I omit the beginning of Page 42 of my report.

In January 1942, in the Rezeknes district of the Latvian Socialist Soviet Republic, the Germans destroyed the village of Audrini with its entire population, ostensibly for having aided members of the Red Army. In the towns of Latvia a notice to this effect was posted by the chief of the German State Security Police in Latvia, SS Obersturmbannführer Strauch, in German, Latvian, and Russian.

I present to the Tribunal a certified photostatic copy of this notice as Exhibit Number USSR-262 (Document Number USSR-262), and I read into the record an excerpt from this document. This excerpt is on Page 158:

> "The commander of the Security Police in Latvia hereby announces the following:
>
> ". . . 2) The inhabitants of the village of Audrini, in the Rezeknes district, concealed members of the Red Army for over one-quarter of a year, armed them, and assisted them in every way in their anti-government activities. . . .
>
> "As punishment I ordered the following:
>
> "a) That the village of Audrini be wiped from the face of the earth."

The Hitlerites widely practiced punitive expeditions in the occupied districts of the Leningrad region. As can be seen from a verdict of the military tribunal of the Leningrad Military District, which is submitted to the Tribunal as Exhibit Number USSR-91 (Document Number USSR-91), the Hitlerites burned down, in February 1944, 10 inhabited localities in the Dedovitch, Pozherevitz, and Ostrov districts. The Hitlerite punitive expeditions also burned down the villages of Strashevo and Zapolye in the Plyuss district, and the villages of Bolshye, Lyady, Ludoni, and others.

Numerous punitive detachments, acting on the orders of the German Supreme Command, burned down many hundreds of inhabited localities in

the Yugoslav territory.

I refer, as evidence, to the third section of the report of the Yugoslav State Commission for establishment of the crimes of the German invaders, which has been presented to the Tribunal as Document Number USSR-36, and also to the special memorandum of the Yugoslav State Commission, numbered 2697 (45) and signed by Professor Nedelkovitsch, which I present to the Tribunal as Document Number USSR-309. This document is on Pages 165 to 167 of the document book. In these documents we find a number of facts concerning the burning and destruction of villages and hamlets by the special punitive expeditions of the Hitlerites. As examples, the localities of Zagnezdye, Udora, Mechkovatz, Marsich, Grashniza, Rudnika, Krupnya, Rastovach, Orakh, Grabovica, Drachich, Lozinda, and many others can be named. Whole districts of Yugoslavia were completely devastated after the Germans had been there.

I also present to the Tribunal the original copy of a notice by the so-called Commander-in-Chief of Serbia, which I beg the Tribunal to accept as evidence as Exhibit Number USSR-200 (Document Number USSR-200). This notice was captured in Serbia by troops of the Yugoslav Army of Liberation, which fact is duly certified by the Yugoslav State Commission in Belgrade. I read into the record only one paragraph: "The Commander-in-Chief of Serbia announces: The village of Skela has been burned and razed to the ground."

German punitive detachments also destroyed inhabited localities in Poland. As evidence I submit to the Tribunal Exhibit Number USSR-368 (Document Number USSR-368), which is an affidavit of the Plenipotentiary of the Polish Government, Dr. Stefan Kurovsky. This affidavit is an appendix to the report of the Polish Government and is on Page 169 of your document book.

This document ascertains that in the spring of 1943 in the territory of Zamoisk, Bilgoraisk, Khrubeshovsk, and Krasnitzk the Germans burned down a number of inhabited localities under the orders of the SS leader, Globocznik; and in February 1944 five villages were destroyed in the Krasnitzk district with the help of the air force.

The Germans burned and razed to the ground a considerable number of inhabited localities in Greece. As examples we shall name the settlements of Amelofito, Kliston, Kizonia, Ano-Kerzilion, and Kato-Kerzilion in the Salonika district, and the settlements of Mesovunos and Selli in the Korzani district, and others.

I present to the Tribunal, as Exhibit Number USSR-103 (Document Number USSR-103), certified photostatic copies of three telegraphic reports of the 164th German Infantry Division to the Chief of Staff of the 12th Army. These reports, Your Honors, are on Page 170 of your document book. Each of these reports consists of nine to ten lines. They are uniform in type and standardized. But these short official documents reveal in essence the monstrous system generally employed by the Hitlerites in the territories occupied by them.

I shall read into the record one of these reports. I read:

"18 October 1941; to the Chief of Staff of the 12th Army, Athens.

"Daily report.

"1. The villages of Ano-Kerzilion and Kato-Kerzilion (75 kilometers east of Salonika on the mouth of the Struma) which had been ascertained to be the base of a considerable guerrilla band in this area, were razed to the ground by troops of the division on 17 October. The male inhabitants between 16 and 60 years of age—(totalling 207 persons)—were shot, women and children evacuated.

"2. No other special incidents."

Surely, there is no need for a comment regarding this document.

I should also like to refer to the official report of the Greek Government, which is presented to the Tribunal as Exhibit Number USSR-379 (Document Number UK-82). On pages 29 and 30 of the report, which correspond to Page 207 of your document book, we find numerous facts concerning the burning and destruction of villages on the Island of Crete. Thus, the villages of Skiki, Prassi, and Kanados were completely burned down in retaliation for the murder of some German parachutists carried out by the employees of the local police at the time of the attack on the Island of Crete. Certain villages were demolished by the Germans for the sole reason that they were in the partisans' zone of operations.

It is stated in the report that 1,600 out of 6,500 villages were completely or partially demolished. It should also be noted that the Germans intentionally bombed undefended towns and caused heavy damage to 23 Greek towns, among which the towns of Yanina, Arta, Preveza, Tukkala, Larissa, and Canea were almost completely destroyed. This is mentioned on Page 21 of the report of the Greek Government. It is on Page 190 of your document book.

Your Honors, the whole world knows about the Hitlerites' crimes at Lidice. The 10th of June 1942 was the last day of Lidice and of its

inhabitants. The fascist barbarians left irrefutable evidence of their monstrous crime. They made a film of the annihilation of Lidice, and we are able to show this evidence to the Tribunal. Upon orders from the Czechoslovak Government, a special investigation was carried out which established that the filming of the tragedy of Lidice was entrusted by the so-called Protector to an adviser on photography of the NSDAP, one Franz Treml, and was carried out by him in conjunction with Miroslav Wagner. Among the documents which we present to the Tribunal are photographs of the operators who filmed the phases of the destruction of Lidice.

I present these documents to the Tribunal as Exhibit Number USSR-370 (Document Number USSR-370). I should like to remark, Your Honors, that this film is a German documentary film. It was filmed a few years ago. The technical state of this reel is not very satisfactory, and therefore when we present it, there may be a few defects.

I beg the indulgence of the Tribunal beforehand and request permission to show this film.

[*Moving pictures were then shown.*]

MR. COUNSELLOR RAGINSKY: What the Germans perpetrated in Lidice was repeated a short time later in another inhabited point of Czechoslovakia in the village of Lezhaky. I shall refer as evidence to the Czechoslovak Government's report, Pages 126-127. This report is presented to the Court as Exhibit Number USSR-60 (Document Number USSR-60). This report states, "Lezhaky, like Lidice, was totally destroyed and the ground where it stood is now covered over with rubble."

I pass on to the next section of my report, the destruction of villages and towns, industry, and transport in the territory of the U.S.S.R.

Your Honors, I have quoted above the general directives of the criminal Hitler Government and the German Supreme Command concerning the destruction of inhabited centers, industry, and means of communications in the U.S.S.R. Now I pass on to the presentation of evidence of those destructions which were carried out in execution of these directives by the Hitlerites everywhere on the territory of the Soviet Union which they temporarily occupied.

I omit the evidence regarding the destruction of single towns of the Soviet Union and pass on to the presentation of my report beginning on Page 42.

There are a large number of documents at the disposal of the Soviet Prosecution which incriminate the Hitlerite criminals in premeditated and

systematic, calculated and cruel annihilation and destruction of cities and towns, plants and factories, railways and means of communication.

The presentation of all this documentation would seriously delay the Trial. Therefore, I consider it possible to pass on to the presentation of the general conclusive data established by the Extraordinary State Commission of the Soviet Union instead of presenting separate documents.

From Exhibit Number USSR-35 (Document Number USSR-35), I shall read into the record only those sections and data which have not been read into the record previously and only those which directly concern my subject. These extracts, Your Honors, are on Pages 223-224 of your document book. I quote:

> "The German fascist invaders totally or partially destroyed and burned 1,710 towns and more than 70,000 villages and hamlets. They burned and destroyed more than 6 million buildings and rendered some 25 million persons homeless. Among the destroyed towns which suffered most are the greatest industrial and cultural centers: Stalingrad, Sevastopol, Leningrad, Kiev, Minsk, Odessa, Smolensk, Novgorod, Pskov, Orel, Kharkov, Voronezh, Rostov-on-the-Don, and many others.
>
> "The German fascist invaders destroyed 31,850 industrial works which employed some 4 million workers."

I omit the end of Page 43, Pages 44 and 45, and the beginning of Page 46 of my report.

> "The Hitlerites destroyed . . . 36,000 postal and telegraphic offices, telephone centers, and other communication centers. . . . During their occupation of a part of the territory of the Soviet Union, and especially during their retreat, the German fascist invaders caused great damage to the railway system, waterways, and river transport.
>
> "They used special machines for the destruction of roads and thus put out of action 26, and partially destroyed eight, main railway lines. They destroyed 65,000 kilometers of rails and 500,000 kilometers of cables for the automatic railroad controls, signals, and communication lines. They blew up 13,000 railway bridges, 4,100 railway stations, and 1,600 water pressure stations. They destroyed 317 locomotive depots and 129 locomotive and wagon repair shops, as well as railway machine works.
>
> "They destroyed, damaged, or evacuated to Germany 15,800 locomotives, and Diesel locomotives, and 428,000 railway cars.

"The enemy caused great damage to the buildings, enterprises, and institutions and ships of the shipping lines operating in the Arctic Ocean, in the White Sea, the Baltic Sea, the Black, and the Caspian Seas. They sank or partially damaged more than 1,400 passenger, cargo, and special ships.

"The sea ports of Sevastopol, Mariupol, Kerch, Novorossisk, Odessa, Nikolaiev, Leningrad, Murmansk, Lepaya, Tallinn, and other ports equipped with modern technical installations suffered greatly.

"The invaders sank or captured 4,280 passenger and cargo ships and steam tugs of the river shipping and auxiliary services, as well as 4,029 barges. They destroyed 479 harbor and quay installations, as well as 89 dockyards and machine factories.

"While retreating under the pressure of the Red Army, German troops blew up and destroyed 91,000 kilometers of highways and 90,000 road bridges of a total length of 930 kilometers."

With this I conclude my statement, Your Honors.

The documents which were read into the record and presented to the Tribunal clearly demonstrate how the Hitlerite conspirators, in all the territories seized by them in the U.S.S.R., Yugoslavia, Poland, Czechoslovakia, and Greece, violated the laws and customs of war, the fundamental principles of criminal law, and the direct provisions of Articles 46 and 50 of the Hague Convention of 1907.

The documents submitted also prove that the German invaders contemplated complete destruction of cities and villages from which the Hitlerites were compelled to retreat under the blows of the Armed Forces of the Soviet Union.

Finally these documents show with what bestial cruelty and mercilessness the Hitlerites carried out their criminal plans in reducing to dust and ashes the largest cultural and industrial centers. Over a wide area from the White to the Black and the Aegean Seas, in the territory temporarily occupied by the German troops, the Hitlerites purposely and according to plan reduced to ruins densely populated and flourishing Russian, Bielorussian, Yugoslavian, Greek, and Czechoslovakian cities, towns, and villages. All this was the result of the criminal activity of the Hitlerite Government and of the German High Command, the representatives of which are now in the dock.

In conclusion I should like, Mr. President, to present as evidence and as Exhibit Number USSR-401 (Document Number USSR-401) a documentary

film concerning the destruction perpetrated by the Germans on the territories of the Soviet Union. Documents certifying the authenticity of this film are now being submitted to the Tribunal.

[*Moving pictures were then shown.*]

THE PRESIDENT: We will adjourn until 1410 hours.

[*The Tribunal recessed until 1410 hours.*]

Afternoon Session

MR. COUNSELLOR RAGINSKY: Mr. President, in order to exhaust fully the presentation of evidence on the subject matter of my report I ask your permission to examine witness Joseph Abgarovitch Orbeli who has been brought to the courthouse. Orbeli will testify to the destruction of the monuments of culture and art in Leningrad.

[*Dr. Servatius approached the lectern.*]

THE PRESIDENT: Do you have any objections to make?

DR. ROBERT SERVATIUS (Counsel for Defendant Sauckel and for the Leadership Corps of the Nazi Party): I would like to ask the Court to decide whether the witness can be heard on this subject, whether this single piece of evidence is relevant. Leningrad was never in German hands. Leningrad was only fired upon with the regular combat weapons of the troops and also attacked from the air, just as it is done regularly by all the armies of the world. It must be established what is to be proved by this witness.

THE PRESIDENT: The Tribunal considers that there is no substance in the objection that has just been made, and we will hear the witness.

[*The witness Orbeli took the stand.*]

THE PRESIDENT: What is your name?

JOSEPH ABGAROVITCH ORBELI (Witness): Joseph Abgarovitch Orbeli.

THE PRESIDENT: Will you repeat the oath after me—state your name again: I—Orbeli, Joseph, a citizen of the Union of Soviet Socialist Republics—summoned as a witness in this Trial—in the presence of the Court—promise and swear—to tell the Court nothing but the truth—about everything I know in regard to this case.

[*The witness repeated the oath in Russian.*]

THE PRESIDENT: You may sit if you wish.

MR. COUNSELLOR RAGINSKY: Witness, will you tell us, please, what position do you occupy?

ORBELI: Director of the State Hermitage.

MR. COUNSELLOR RAGINSKY: What is your scientific title?

ORBELI: I am a member of the Academy of Science of the Union of the Soviet Socialist Republics, an active member of the Academy of Architecture of the U.S.S.R., an active member and president of the

Armenian Academy of Science, an honorable Member of the Iran Academy of Science, member of the Society of Antiquarians in London, and a consultant member of the American Institute of Art and Archeology.

MR. COUNSELLOR RAGINSKY: Were you in Leningrad at the time of the German blockade?

ORBELI: Yes, I was.

MR. COUNSELLOR RAGINSKY: Do you know about the destruction of monuments of culture and art in Leningrad?

ORBELI: Yes.

MR. COUNSELLOR RAGINSKY: Can you tell the Tribunal the facts that are known to you?

ORBELI: Besides general observations which I was able to make after the cessation of hostilities around Leningrad, I was also an eyewitness of the measures undertaken by the enemy for destruction of the Hermitage Museum, and the buildings of the Hermitage and the Winter Palace, where the exhibits from the Hermitage Museum were displayed. During many long months these buildings were under systematic air bombardment and artillery shelling. Two air bombs and about 30 artillery shells hit the Hermitage. Shells caused considerable damage to the building, and air bombs destroyed the drainage system and water conduit system of the Hermitage.

While observing the destruction done to the Hermitage I could also see, across the river, the buildings of the Academy of Science, namely: the Museum of Anthropology and Ethnography, the Zoological Museum, and right next to it the Naval Museum, in the building of the former Stock Exchange. All these buildings were under especially heavy bombardment of incendiary bombs. I saw the effect of these hits from a window in the Winter Palace.

Artillery shells caused considerable damage to the Hermitage. I shall mention the most important. One shell broke the portico of the main building of the Hermitage, facing the Millionnaya Street and damaged the piece of sculpture “Atlanta.”

The other shell went through the ceiling of one of the most sumptuous halls in the Winter Palace and caused considerable damage there. The former stable of the Winter Palace was hit by two shells. Among court carriages of the 17th and 18th centuries that were there displayed, four from the 18th century of high artistic value, and one 19th century gilt carriage were shattered to pieces by one of these shells. Furthermore, one shell went through the ceiling of the Numismatic Hall and of the Hall of Columns in

the main building of the Hermitage, and a balcony of this hall was destroyed by it.

At the same time, a branch building of the Hermitage Museum on Solyanoy Lane, namely the former Stieglitz Museum was hit by a bomb from the air which caused very great damage to the building. The building was absolutely unfit for use, and a large part of the exhibits in this building suffered damage.

MR. COUNSELLOR RAGINSKY: Please tell me, Witness, do I understand you correctly? You spoke about the destruction of the Hermitage and you mentioned the Winter Palace. Is that only one building? Where was the Hermitage located, the one you mentioned?

ORBELI: Before the October Revolution, the Hermitage occupied a special building of its own facing Millionnaya Street, and the other side facing the Palace Quay of the Neva. After the Revolution, the Little Hermitage, the building of the Hermitage Theater, the building which separated the Hermitage proper from the Winter Palace, and later even the entire Winter Palace were incorporated into the Hermitage.

Therefore, at the present moment the series of buildings comprising the Hermitage consist of the Winter Palace, the Little Hermitage, and Great Hermitage, which was occupied by the museum prior to the Revolution, and also the building of the Hermitage Theater, which was built during the reign of Catherine II by the architect Quarenghi and which was hit by the incendiary bomb which I mentioned.

MR. COUNSELLOR RAGINSKY: Besides the destruction of the Winter Palace and the Hermitage, do you know any other facts about the destruction of other cultural monuments?

ORBELI: I observed a series of monuments of Leningrad which suffered damage from artillery shelling and bombing from the air. Among them damage was caused to the Kazan Cathedral, which was built in 1814 by Architect Voronikhin, Isaak's Cathedral, whose pillars still bear the traces of damage pitted in the granite.

Within the city limits considerable damage was done to the Rastrelli Wing near the Smolny Cathedral, which was built by Rastrelli. The middle part of the gallery was blown up. Furthermore, considerable damage by artillery fire was done to the surface of the walls of the Fortress of Peter and Paul, which cannot now be considered a military objective.

MR. COUNSELLOR RAGINSKY: Besides Leningrad proper do you know anything about the destruction and devastation of the suburbs of Leningrad?

ORBELI: I had the chance to acquaint myself in detail with the condition of the monuments of Peterhof, Tzarskoye Ssyelo, and Pavlovsk; in all those three towns I saw traces of the monstrous damage to those monuments. And all the damage which I saw, and which is very hard to describe in full because it is too great, all of it showed traces of premeditation.

To prove, for instance, that the shelling of the Winter Palace was premeditated, I could mention that the 30 shells did not hit the Hermitage all at once but during a longer period and that not more than one shell hit it during each shooting.

In Peterhof, besides the damage caused to the Great Palace by fire which completely destroyed this monument, I also saw gold sheetings torn from the roofs of the Great Palace, the dome of Peterhof Cathedral, and the building at the opposite end of this enormous palace. It was obvious that the gold sheetings could not fly off because of the fire alone, but were intentionally torn off.

In Monplaisir, the oldest building of Peterhof, built by Peter the Great, the damage showed also signs of long and gradual ravages, and was not a result of a catastrophe. The precious oak carvings covering the walls were torn off. The ancient Dutch tile stoves, of the time of Peter the Great, disappeared without trace, and temporary, roughly-built stoves were put in their place. The Great Palace, built by Rastrelli in Tsarskoye Ssyelo, shows indubitable traces of intentional destruction. For example, the parquet floors in numerous halls were cut out and carried away, while the building itself was destroyed by fire. In Catherine's Palace, an auxiliary munition plant was installed, and the precious carved 18th century fireplace was used as a furnace and was rendered absolutely worthless.

Paul's Palace, which was also destroyed by fire, showed many a sign that the valuable property that once could be found in its halls was carried out before the Palace had been set on fire.

MR. COUNSELLOR RAGINSKY: Tell me, please, you said the Winter Palace as well as the other cultural monuments that you mentioned were intentionally destroyed. Upon what facts do you base that statement?

ORBELI: The fact that the shelling of the Hermitage by artillery fire during the siege was premeditated was quite clear to me and to all my colleagues because damage was caused not casually by artillery shelling during one or two raids, but systematically, during the methodical shelling of the city, which we witnessed for months. The first shells did not hit the Hermitage or the Winter Palace—they passed near by; they were finding the

range and after this they would fire in the same direction, with just a little deviation from the straight line. Not more than one or two shells during one particular shelling would actually hit the Palace. Of course, this could not be accidental in character.

MR. COUNSELLOR RAGINSKY: I have no more questions for the witness.

THE PRESIDENT: Do any of the other Prosecuting Counsel want to ask any questions? Do any of the Defense Counsel want to ask any questions?

DR. HANS LATERNSER (Counsel for the General Staff and High Command of the German Armed Forces): Witness, you have just said that through artillery shelling and also through aerial bombs, the Hermitage, the Winter Palace, and also the Peterhof Palace were destroyed. I would be very much interested to know where these buildings are located; that is, as seen from Leningrad.

ORBELI: The Winter Palace and the Hermitage, which stands right next to it, are in the center of Leningrad on the banks of the Neva on the Palace Quay, not far from the Palace Bridge, which during all the shelling, was hit only once. On the other side, facing the Neva, next to the Winter Palace and the Hermitage, there are the Palace Square and Halturin Street. Did I answer your question?

DR. LATERNSER: I meant the question a little differently. In what part of Leningrad were these buildings—in the south, the north, the southwest, or southeast section? Will you inform me on that?

ORBELI: The Winter Palace and the Hermitage are right in the center of Leningrad on the banks of the Neva, as I have already mentioned before.

DR. LATERNSER: And where is Peterhof?

ORBELI: Peterhof is on the shores of the Gulf of Finland, southwest of the Hermitage, if you consider the Hermitage as the starting point.

DR. LATERNSER: Can you tell me whether near the Hermitage Palace and Winter Palace there are any industries, particularly armament industries?

ORBELI: So far as I know, in the vicinity of the Hermitage, there are no military enterprises. If the question meant the building of the General Staff, that is located on the other side of the Palace Square, and it suffered much less from shelling than the Winter Palace. The General Staff building, which is on the other side of Palace Square was, so far as I know, hit only by two shells.

DR. LATERNSER: Do you know whether there were artillery batteries, perhaps, near the buildings which you mentioned?

ORBELI: On the whole square around the Winter Palace and the Hermitage there was not a single artillery battery, because from the very beginning steps were taken to prevent any unnecessary vibration near the buildings where such precious museum pieces were.

DR. LATERNSER: Did the factories, the armament factories, continue production during the siege?

ORBELI: I do not understand the question. What factories are you talking about—the factories of Leningrad in general?

DR. LATERNSER: The Leningrad armament factories. Did they continue production during the siege?

ORBELI: On the grounds of the Hermitage, the Winter Palace, and in the immediate neighborhood, no military enterprise worked. They were never there and during the blockade no factories were built there. But I know that in Leningrad munitions were being made, and were successfully used.

DR. LATERNSER: I have no further questions.

DR. SERVATIUS: Witness, the Winter Palace is on the Neva River. How far from the Winter Palace is the nearest bridge across the Neva River?

ORBELI: The nearest bridge, the Palace Bridge, is 50 meters from the Palace, at a distance of the breadth of the quay, but, as I have already said, only one shell hit the bridge during the shellings; that is why I am sure that the Winter Palace was deliberately shelled. I cannot admit that while shelling the bridge, only one shell hit the bridge and 30 hit the near-by building. The other bridge, the Stock Exchange Bridge, connecting Vasilievsky Island with the Petrograd side, is on the opposite bank of the Great Neva. Only a few incendiary bombs were dropped from planes on this bridge. The fires which broke out on the Stock Exchange Bridge were extinguished.

DR. SERVATIUS: Witness, those are conclusions that you are drawing. Have you any knowledge whatever of artillery from which you can judge whether the target was the palace or the bridge beside it?

ORBELI: I never was an artillery man, but I suppose that if German artillery was aiming only at the bridge then it could not possibly hit the bridge only once and hit the palace, which is across the way, with 30 shells. Within these limits—I am an artillery man.

DR. SERVATIUS: That is your conviction as a non-artillery man. I have another question. The Neva River was used by the fleet. How far from the Winter Palace were the ships of the Red Fleet?

ORBELI: In that part of the Neva River there were no battleships which were firing or were used for such kind of service. The Neva ships were anchored in another part of the river, far from the Winter Palace.

DR. SERVATIUS: One last question. Were you in Leningrad during the entire period of the siege?

ORBELI: I was in Leningrad from the first day of the war until 31 March 1942. Then I returned to Leningrad when the German troops were driven out of the suburbs of Leningrad and had a chance to inspect Peterhof, Tsarskoye Ssyelo, and Pavlovsk.

DR. SERVATIUS: Thank you. I have no more questions.

THE PRESIDENT: General, do you want to ask the witness any questions in re-examination?

MR. COUNSELLOR RAGINSKY: We have no further questions.

THE PRESIDENT: The witness can retire.

[*The witness left the stand.*]

STATE COUNSELLOR OF JUSTICE OF THE 3RD CLASS MAJOR GENERAL N. D. ZORYA (Assistant Prosecutor for the U.S.S.R.): May it please Your Honors, I want to begin to submit documentary evidence on the part of the Soviet Prosecution with regard to the employment of compulsory slave labor practiced by the Hitlerite conspirators on an enormous scale.

Fascism, with its plans for world domination, with its denial of law, ethics, mercy, and humane considerations, foresaw the enslavement of the peaceful population of the temporarily occupied territories, the deportation of millions of people to fascist Germany, and the compulsory utilization of their labor power. Fascism and slavery—these two concepts are inseparable.

I shall begin, Your Honors, the presentation of documents relating to this count with the report of the Yugoslav Republic, which has already been submitted to the Tribunal as Exhibit Number USSR-36 (Document Number USSR-36). I shall ask you to look at Page 40 of the report, which is on Page 41 of the document book at the disposal of the Tribunal. I read into the record extracts from the report of the Yugoslav Republic, which is entitled, "Forced Labor of Civilians." I quote:

> "The Nazi policy of the wholesale exploitation of the occupied territories has also been applied in Yugoslavia.
>
> "Immediately after the occupation of Yugoslavia the Reich Government and the OKW introduced obligatory labor service for the population of the occupied territory. The exploitation of manpower in Yugoslavia has been carried out within the

framework of the general German plan. The Defendant Göring, as the leader of the German economic plan, issued directives to his subordinates concerning the systematic exploitation of manpower of the occupied territories.

"In a report from Berlin, written by one of the head functionaries of the economic service of the German Kommandantur in Belgrade, named Ranze, instructions by Göring are communicated, according to which the economic measures in the occupied territories do not aim at the protection of the local population, but at the exploitation of manpower of the occupied countries for the benefit of the German war economy.

"Immediately after the occupation of Yugoslavia, the Germans established offices for enlisting workers for 'voluntary' labor in Germany. They also used the organizations which already existed in Yugoslavia for arranging employment of workers, and began to carry out their plans through these organizations. Thus, for example, in Serbia they used the central office for arranging employment of workers as well as the labor exchange. Through these organizations, until the end of February 1943, and from Serbia alone the Germans sent 47,500 workers to Germany. Later on this number considerably increased but the relative data in this respect have not yet been fully established. These workers were employed in agriculture and various industries in Germany, mostly in the heaviest work."

In the report of the Yugoslav Republic it is stated that the Gestapo and a special commission used pressure and force. This went so far that these "volunteer" workers were hunted in the streets, collected in units, and herded into Germany by force.

"Apart from these so-called 'volunteer' workers, the Germans sent into forced labor in Germany a large number of prisoners from various camps, as well as politically 'suspicious' persons, who had to perform the heaviest kinds of work under disgusting living and working conditions. As early as 1942 many innocent victims of the Banyitza, Saimishte, and other camps, were sent into Germany.

"The first transport of them left on 24 April 1942, and these transports continued without interruption until 26 September 1944. Old and young, men and women, farmers, workers, intellectuals, and others were taken not only to Germany, but to other countries under German occupation as well.

"According to the registers of Banyitza Camp, which are far from giving an exact picture, over 10,000 prisoners were sent for forced labor from this camp alone.

"The German authorities in Serbia issued a series of orders, aiming at maximum exploitation of manpower. Among the first measures two decrees were passed: The Decree for General Labor Service and Restriction of the Freedom of Labor, of 14 December 1941, and the Decree for the National Labor Service for the Reconstruction of Serbia, of 5 November 1941. According to the first decree all persons between 17 and 45 years of age could be called up for compulsory labor in certain enterprises and branches of economy. According to the second order, such persons could be called up for civilian service in the National Reconstruction, which in fact meant that they had to work for the strengthening of the German economic and war effort.

"The persons eligible for labor in accordance with these two laws, although remaining in the country, worked in fact for the aims and benefit of the Germans' economic exploitation. They were primarily used for work in the mines (Bor, Kostolac, *et cetera*), for road building and railway line repairs, in the water transport, and so on.

"On 26 March 1943 the German Commander of Serbia, Befehlshaber Serbien, in a special order introduced the so-called war economy measures of the Reich in the occupied territory of Serbia, and by this act imposed the general mobilization of manpower in Serbia. . . .

"By this decree, therefore, the entire population of occupied Serbia was mobilized for the German war economy. The Germans exploited Serbian manpower, in fact, to the greatest possible extent. . . .

"The situation was in no way different in the other occupied areas of Yugoslavia. Without entering into numerous details of this planned exploitation, we shall quote here only one example from occupied Slovenia.

"According to an official announcement of the German Farmers' Union in Carinthia (Landesbauernschaft Kärnten) of 10 August 1944, issued in Klagenfurt, every case of pregnancy of non-German women was to be reported, and in all such cases these women were to be obliged to have their child 'removed by

operation in a hospital.' The announcement itself explains that in cases when non-German women give birth to their children this 'creates difficulties for their use in work,' and besides, it is also 'a danger for the population policy.' Furthermore, this announcement states that the Office of Labor Service should try to influence these women to commit an abortion.

"As another proof of the exploitation of manpower, we quote the circular instructions of the German Landrat for the Marburg (Maribor) district, of 12 August 1944. This circular deals with the question of enlisting everybody eligible according to that decree into the armed forces and into the labor service, and it calls upon all the inhabitants of Lower Styria, and not only upon the indigenous population, but also upon the Dutchmen, Danes, Swedes, Luxembourgers, Norwegians, and Belgians who may find themselves living there."

I shall pass on now to the Report of the Polish Government which was presented to the Tribunal by the Soviet Prosecution as Exhibit Number USSR-93 (Document Number USSR-93). First we should note the special role of the Defendant Frank in organizing deportations of the Polish population for compulsory labor to Germany. I shall read into the record several excerpts from a document known under the title "Frank's Diary," which is at the disposal of the Tribunal as Exhibit Number USSR-223 (Document Number USSR-223).

Frank described his attitude toward the Poles at the meeting of the section chiefs which took place in Kraków, 12 April 1940, as follows—I shall quote an excerpt on Page 62 of the document book, to be exact, on the reverse side of the page. I quote:

"Under pressure from the Reich, it had now been decreed that, since sufficient labor did not present itself voluntarily for service in the German Reich, compulsion could be used. This compulsion meant the possibility of arresting male and female Poles. A certain amount of unrest had been caused by this, which, according to some reports, had spread very widely and which could lead to difficulties in all spheres. Field Marshal Göring had once pointed out, in his big speech, the necessity for sending a million workers to the Reich. One hundred and sixty thousand had been delivered to date. . . . To arrest young Poles as they left church or the cinema would lead to ever-increasing nervousness among the Poles. Fundamentally Frank had no objections to removing people capable of work who were lounging about in the streets. But the

best way would be to organize a round-up, and one was absolutely justified in stopping a Pole in the street and asking him what work he did, where he was employed, *et cetera*."

During his conversation with Defendant Sauckel, 18 August 1942, the Defendant Frank stated—I quote the part which is on Page 67 of the document book:

> "I am pleased to be able . . . to inform you officially that we have now supplied more than 800,000 workers for the Reich. . . .
>
> "You recently requested the supply of a further 140,000 workers. I am pleased to be able to inform you that, in accordance with our agreement of yesterday's date, we shall deliver 60 percent of these newly requested workers to the Reich by the end of October and the remaining 40 percent by the end of the year. . . .
>
> "Over and above the present figure of 140,000, you can, however, count on a further number of workers from the Government General next year, as we are going to use the police to recruit them."

Frank fulfilled his promise given to the Defendant Sauckel.

At the conference of the political leaders of the Labor Front in the Government General, 14 December 1942, Frank stated in his address—this is on the same page of the document book:

> "You know that we have delivered more than 940,000 Polish workers to the Reich. The Government General thereby stands absolutely and relatively at the head of all European countries. This achievement is enormous and has also been recognized as such by Gauleiter Sauckel."

Will you kindly permit me to quote that section of the report of the Government of the Polish Republic which is entitled, "Deportation of the Civilian Population for Forced Labor." This document is on Page 72 and 73 of the document book:

> "a) As early as on 2 October 1939 a decree was issued by Frank concerning the introduction of forced labor for the Polish civilian population within the Government General. By virtue of the said decree Polish civilians were under the obligation to work in agricultural establishments, on the maintenance of public buildings, road construction, regulation of rivers, highways, and railways.

"b) A further decree of 12 December 1939 extended the groups of those liable to forced labor to children from the age of 14 years. And a decree of 13 May 1942 gave the authorities the right to use forced labor even outside the Government General.

"c) The practice which developed on the basis of those decrees turned into mass deportation of civilians from Poland to Germany.

"Throughout the Government General, in towns and villages, posters were continually inviting Poles to go 'voluntarily' to work in Germany. At the same time however every town and village was told how many workers it was to supply.

"The result of the 'voluntary' recruitment was usually very disappointing. As a result of that the German authorities invited the people to go or arranged round-ups in the streets, restaurants, and other places, and those caught were sent straight to Germany. There was a particular hunt for young workers of both sexes. The families of those deported received no news from them for months and only after some time postcards arrived describing the poor conditions in which they were forced to live. Often, after several months, the workers used to return home in a state of spiritual depression and complete physical exhaustion.

"There is substantial evidence that while on that forced labor thousands of men were sterilized, while young girls were forced into public houses.

"d) These laborers were either sent to live with German farmers to work on their land, to work in factories, or to special work in forced labor camps. The conditions in those camps were terrible.

"e) According to provisional estimates, in 1940 alone 100,000 women and men were sent to Germany as laborers.

"f) To this great army of slave workers thousands of Poles deported from the incorporated territories have to be added and also 200,000 Polish prisoners of war who, by a decree issued by Hitler in August 1940, were 'released' from camps, but only to be sent to forced labor into various parts of Germany.

"g) These deportations continued throughout the years of war. The total number of those workers reached at a certain point a figure of 2 million.

"Exact figures are obviously not available. But if one considers that in spite of the very high death rate among those people, there

are now about 835,000 Polish citizens registered in western Germany, the estimate appears correct.

"The whole chapter concerning the deportations to forced labor is presented here in a very condensed form. Behind these few lines lies the history of hundreds of thousands of Polish families destroyed, tragedy, death, and sorrow. The history of each of these laborers was a continuous tragedy: fathers leaving their families without means; husbands their wives with no possibility of maintaining them, with no protection and little hope of return. The quoted number of 2 million conceals an ocean of broken lives, involving, at the least, 10 percent of the total population of Poland.

"This was a terrible crime. Deportation and forced labor were a flagrant violation of the laws and customs of war."

The Greek Report on German atrocities, submitted to the Tribunal as Exhibit Number USSR-369 (Document Number USSR-369) states the following—I beg you to refer to Page 74 of the document book:

"As in all the other occupied territories, the Germans pursued two main objectives in their occupational policy in Greece: the maximum exploitation of the country's resources in the interests of the German military economy, and the enslavement of the population by means of systematic terror and general repression. The Germans pursued their two-sided policy of plunder and revenge, violating commonly accepted laws."

The section of the report of the Greek Government entitled "Recruitment of Manpower" contains two paragraphs which I intend to read into the record:

"One of the problems confronting the German administration was that of recruiting labor. All males between 16 and 50 years of age were liable to labor conscription. Strikes were declared illegal, and severe penalties enforced for resort thereto. Persons who organized and directed a strike were liable to the death penalty. Strikers were tried by military courts.

"At first the Germans, by propaganda and various forms of indirect pressure, tried to recruit Greek labor to work within Germany. They promised high wages and better conditions of life. As this kind of 'voluntary' recruitment failed to produce the expected results they abandoned it and confronted the workers with the dilemma either of being taken as hostages or else of being sent to Germany to work."

Similar measures of deportation of manpower to Germany were applied by the fascists also in Czechoslovakia.

But the deportation by the fascist criminals of the peaceful populations into slave labor reached its climax in the temporarily occupied territories of the Soviet Union. I would like now to dwell briefly on the preparatory measures taken by the Hitlerite criminals for the utilization of forced labor in the temporarily occupied territories of the Soviet Union.

Even before their attack on the Union of Soviet Socialist Republics, in a document which is known to the Tribunal as the "Green File" of the Defendant Göring, Exhibit Number USSR-10 (Document Number EC-472), a whole chapter was dedicated to the problem of organizing compulsory labor in the Soviet territories which the war criminals intended to occupy; the chapter was called "Allocation of Labor and Recruitment of Indigenous Population."

This chapter—Pages 17 and 18 of the Russian text of the Green File, which is on Page 83 of the document book—lays down the Principle of compulsory labor for the peaceful Soviet population.

Paragraphs 3 and 2 of Subsection A in the second part of that chapter entitled, "Recruitment of the Local Population," point out that:

> "The workers in public utilities—gas, water, electricity, oil drilling, oil distilling, and oil storage, as well as emergency work in important industries . . . will be ordered to continue their work under threat of punishment, if necessary."

And several lines above that:

> "In case of necessity, the workers will be organized into labor gangs."

The nonpayment of wages for the compulsory labor of Soviet citizens had already been provided for in this so-called Göring's Green File. It was presupposed that the problem of payment was reduced to the question of providing the workers with food. The fascist slave owners were only interested in maintaining the working potential of the people and nothing more—Page 18 of the Russian text of the Green File. This is the back of Page 83 of the document book. . .

THE PRESIDENT: This document has already been read into the record.

GEN. ZORYA: I think that this particular part of the document has not been read into the record. This is a document of the Soviet Prosecution, which was published completely for the first time in the note of the People's Commissar for Foreign Affairs, V. M. Molotov, in May 1942.

THE PRESIDENT: If you say that it has not yet been read into the record, please go on.

GEN. ZORYA: On Page 18 of the Russian text of the Defendant Göring's Green File it is mentioned at least three times that food was to be the only payment. I do not wish to take more time of the Tribunal with this document, but will proceed with my presentation.

Defendant Göring, who signed this directive for the plunder of the Soviet Union—for how else could we refer to the above-mentioned document—continued to organize forced labor in the temporarily occupied territories of the Soviet Union.

As evidence I present to the Tribunal Exhibit Number USSR-386 (Document Number USSR-386), a document which discloses this phase of the Defendant Göring's activity. This document, or to be precise, these two documents are the record of the conference of 7 November 1941, on "Allocation of Russians," in which Göring participated, and a covering letter to this record.

One hundred copies of the document were originally prepared and mailed to the 14 addresses which are listed, as Your Honors may see, on Page 5 of the Russian text of the document, at the end of the covering letter.

The covering letter attached to the record bears the signature of the Chief, Military Administration, Economic Staff East, Dr. Rachner. The minutes of the conference in question have been written by one Von Normann who was evidently an official of the same organization.

I think it will promote clarification if I read into the record certain parts of these minutes. I quote Page 6 of the Russian text of the document which corresponds to Pages 95 and 96 of the document book:

> "Conference of 7 November 1941 on the allocation of Russian manpower. The Reich Marshal gave the following directives for the utilization of Russian manpower:
>
> "I. Russian labor has demonstrated its capacity for production in building up the gigantic industry of Russia. It must now be successfully allocated in the Reich. In the face of such an order of the Führer, objections are of secondary importance. The disadvantages that may result from the employment of Russian labor must be reduced to a minimum, and this is primarily the concern of the counterintelligence service (Abwehr) and the Security Police (Sicherheitspolizei).
>
> "II. Russians in the operational zone. The Russians are to be used primarily in the construction of roads and railroads, for clearing

work, clearing out mine fields, and in the construction of air fields. The German construction battalions are largely to be dissolved (for example in the Air Force). German skilled workmen belong in war industry. Digging and stone breaking is not their work. The Russian is there for that.

"III. Russians in the territories of the Reich commissioners and of the Government General. Here the same principle applies as in the second paragraph. In addition, increased use in agriculture; if machines are lacking, manpower must produce what the Reich will have to demand in the agrarian sector from the Eastern territories. Further local manpower should be made available for the ruthless exploitation of the Russian coal deposits.

"IV. Russians in the territory of the Reich, including the Protectorate. The number to be employed is to be determined by the need. Need is to be decided from the standpoint that foreign workers who eat much and produce little are to be sent away from the Reich and that in the future the German woman is not to be used as extensively in the field of labor as hitherto. Along with Russian prisoners of war, free Russian manpower is also to be utilized."

I shall now omit one page of this document and refer to Page 7. In the middle of the page there is Section B, entitled "The Free Russian Worker."

My colleague, Colonel Pokrovsky, already mentioned the fact that the Hitlerites considered the civilian population as prisoners of war. This gave them the opportunity to increase for propaganda purposes the number of the allegedly captured Red Army soldiers in their reports on military operations, on the one hand, and to draw on them for manpower, on the other hand.

The section to which I just referred begins as follows, "Employment and treatment is not actually to be other than that given to Russian prisoners of war." It should here be noted that the minutes of the conference end with the following statement by Göring—you will find this excerpt on Page 98 of the document book:

"Enlistment of workers and the utilization of prisoners of war are to be carried on in a uniform manner, and they must be organizationally combined."

Coming back to Page 7 of the same minutes we come across the following eloquent statement by Göring on the subject of labor conditions for Russian workers and particularly their wages. . .

THE PRESIDENT: We will adjourn now.

[*A recess was taken.*]

THE PRESIDENT: General Zorya, can you tell the Tribunal whether you think you will be able to finish the presentation of your documents this afternoon?

GEN. ZORYA: My intention is to finish my presentation today.

THE PRESIDENT: Thank you very much.

GEN. ZORYA: I would like to read into the record statements by Göring which concern the labor conditions of Russian workers and particularly their wages, from the document I have just presented:

> "In connection with the labor conditions of the free Russians it is to be kept in mind that:
>
> "1. He may receive a little pocket money. . . .
>
> "3. Since his labor is available to the employer cheaply, financial compensation from the employer is to be given attention."

To clarify the above statement the Defendant Göring makes further the following suggestion—I quote on Page 8 of the Russian text of the document, Paragraph B, Subparagraph 6:

> "The allocation of Russians must under no circumstance be allowed to prejudice the wage problem in the eastern territories. Every financial measure in this sphere must proceed from the standpoint that lowest wages in the East—according to a specific Führer decree—are a prerequisite for the equal distribution to balance war costs and the clearing of war debts by the Reich at the end of the war.
>
> "Infractions are subject to the severest penalties."

This is followed by two lines which are of interest, not only because they incriminate the Defendant Göring for introducing the system of forced labor. Having expressed himself so categorically against the "prejudice of the wage problem in the eastern territories," Göring stated at the same conference as follows—Page 98 of the document book, "The same applied in substance to every encouragement of 'social aspirations' in the Russian colonial territory."

The covering letter appended to the minutes of the meeting consists of comments which really do not add anything new to the facts already presented to the Tribunal. Therefore I shall not quote this letter.

The next document which I consider necessary to submit to the Tribunal and which I beg you to accept as evidence under Exhibit Number USSR-379

(Document Number UK-82) is a decree issued by the Defendant Göring on 10 January 1942. I will quote only the first 18 lines of this decree, which are on Page 100 of the document book:

> "In the coming months the employment of manpower will acquire still greater importance. On the one hand, the recruiting situation of the Armed Forces necessitates the release of all members of the younger age groups for this task. On the other hand, urgent armament production and other phases of the war economy, and also of agriculture, must be provided with the manpower urgently needed by them. For this, the utilization of prisoners of war, especially from Soviet Russia, plays an important role.
>
> "The measures that will be necessary in this field in the future promise success only under unified leadership, and I shall use every means to attain it.
>
> "For that reason I have now granted my manpower commission—which had already been dealing with all the manpower questions of the Four Year Plan—the unlimited power to direct . . . the entire manpower program."

Later on, Your Honors, the criminal activity of the fascist conspirators in organizing and extending the system of forced labor acquired such magnitude that on 21 March 1942 Hitler issued a decree creating a special department under the Defendant Sauckel, who developed these activities on a large scale. I shall not dwell any longer on these historical facts as they have already been covered by our American, English, and French colleagues.

The vital bond between fascism and the system of forced labor is especially apparent when we consider the part played in this field not only by the fascist government machine but by the fascist Party itself. I should like to submit to the Tribunal a few documents which illustrate this fact.

I present to the Tribunal as Exhibit Number USSR-365 (Document Number USSR-365) a printed edition entitled, "Report of the Delegate of the Four Year Plan—Plenipotentiary for the Allocation of Labor." This document is on Page 101 of the document book. The copy of the report, which I present, has the order Number 1 and it is dated 1 May 1942. The first page of the report contains Hitler's decree of 21 March 1942, appointing Sauckel to this post. On the second page there is an order of the Defendant Göring dated 27 March of the same year, explaining the duties of the Plenipotentiary for Allocation of Labor within the framework of the

Four Year Plan organizational structure. And on the third page of this report there is a program prepared by Sauckel for the "Führer's birthday" in 1942.

Your Honors, the above-mentioned documents have already been submitted to the Tribunal by the Prosecution of the United States. But I wish to draw your attention to Page 17 of the Russian translation of this document, where you will find an order of the Defendant Sauckel, dated 6 April 1942: Order Number 1. This order is presented for the first time and is entitled, "Concerning Appointment of Gauleiter as Commissioners for the Allocation of Labor in the Gaue. This order begins as follows—I quote Page 118 of the document book:

> "I hereby appoint the Gauleiter of the NSDAP my commissioners for allocation of labor in the Gaue administered by them.
>
> "A. Their tasks are:
>
> "1) The achievement of smooth co-operation between all offices set up by the State, the Party, the Wehrmacht, and the economic authorities to deal with questions of manpower; and by means of this, the regulation of different interpretations and claims in such a way as to utilize manpower to the best possible effect."

I omit some points.

> "4) Investigation of the results obtained by utilizing the labor of all foreign male and female workers. Special regulations will be issued with regard to these.
>
> "5) Investigation of the correct feeding, housing, and treatment of all foreign workers and prisoners of war engaged in work."

In his program for the allocation of labor, presented—as I have already pointed out—for Hitler's birthday in 1942, the Defendant Sauckel wrote—this part of the program was not read into the record by the United States Prosecution; it is on Page 105 of the document book:

> "IV. The Plenipotentiary for Allocation of Labor will, therefore, with a very small personal staff of his own choice, make exclusive use of existing institutions set up by the Party, State, and industry, and the goodwill and co-operation of all will assure the quickest success of his measures.
>
> "V. The Plenipotentiary for Allocation of Labor has, therefore, with consent of the Führer and in agreement with the Reich Marshal of Greater Germany and the Chief of the Party Chancellery, appointed all the Gauleiter of Greater Germany as his

commissioners in the Gaue of the National Socialist Labor Party (NSDAP).

"VI. The commissioners for allocation of labor will use the competent offices of the Party in their Gaue. The chiefs of the highest competent State and economic offices in their Gaue will advise and instruct the Gauleiter in all-important questions relative to labor allocation.

"Especially important for that purpose are the following: The President of the State Labor Office, the Trustee for Labor, the State Peasant Leader, the Gau Economic Adviser, the Gau Trustee of the German Labor Front, the Gau Women's Leader, the District Hitler Youth Leader, the highest representative of the Interior and General Administration, especially if the Office for Agriculture falls within his jurisdiction.

"VII. The most elevated and most essential task of the Gauleiter of the NSDAP in their capacity of commissioners in their Gaue is to secure the maximum agreement between all offices dealing with questions of manpower in their Gau."

In this document Sauckel addressed himself to the Gauleiter asking them repeatedly to give him all possible assistance in every respect. I would like to draw Your Honors' attention to only one of Sauckel's assertions in this document. He mentions the decision of Hitler to send to the Reich "in order to help the German peasant women, four or five hundred thousand selected, healthy, and strong girls from the eastern territories," thus to relieve German women and girls of labor duty. Apparently in order to explain the advantage of this measure, Sauckel wrote, "Please trust me as an old and fanatical National Socialist Gauleiter when I say that in the end the decision could not be different."

The importance of the part played by the fascist Party in the organization of compulsory slave labor and how far this Party went into the matter, is shown by the following document which I am submitting to the Tribunal as evidence, Exhibit Number USSR-383 (Document Number USSR-383). This document is a letter of the Defendant Sauckel, dated 8 September 1942, and is entitled, "Special Action of the Plenipotentiary for Allocation of Labor for the Purpose of Procuring Female Workers from the East for the Benefit of Town and Country Households with Many Children."

In the course of my presentation I shall have the opportunity to refer once more to this document. In the meantime I wish to draw your attention to the passage which has direct bearing on the role of the fascist Party in this

measure. On Page 3 of the Russian text of the document, which I hereby submit, there is a section entitled, "Viewpoints for Selecting Households."

THE PRESIDENT: Does it matter whether these women were brought into a house where they ought not to have been brought and whether a particular German housewife was entitled to a woman worker or not? The whole point, it would seem, is whether they were deported—and forcibly deported.

GEN. ZORYA: Mr. President, I just had it in view to abridge this passage which you mentioned. But now I am talking about something else. I would like to show the part which the fascist Party played in organizing slave labor inside Germany and in particular in the distribution of those Soviet women who were transported for this purpose to Germany. Here are two short documents which I consider necessary to submit to the Tribunal. As for the rest, which concerns the regime which has already been described sufficiently by the United States and British Prosecutions, I do not intend to dwell upon it and contemplated cutting down this part to the minimum.

I wish to dwell on this part of the document which says that applications for obtaining an eastern woman worker for household duties, are to be examined by the Labor Department which would decide whether there is a real need for the worker and are then to be forwarded for final approval to the corresponding leader of NSDAP. Should the district leader object to granting a woman worker to the household, the Labor Department declines to send an eastern woman worker to the applicant and accordingly declines the permission for the employment of such. The refusal need not be motivated, and the decision is final.

You may find this on Page 129 of the document book. It is followed by the application form. You will find this in the appendix to Exhibit Number USSR-383 (Document Number USSR-383). This application form contains a brief questionnaire about the family which would like to employ a domestic worker in the household. This application form also contains the reply form of the corresponding fascist Party organization whether it recommends or not the use of an eastern slave in this household.

I request the Tribunal to pay attention to the appendix to Exhibit Number USSR-383. This appendix is entitled, "Memo for Housewives Regarding Employment of Eastern Woman Workers in Urban and Rural Households." This memo has already been mentioned by Mr. Dodd. I will not dwell upon it in detail, but will only draw the attention of the Tribunal to the subtitle which is on Page 133.

I beg Your Honors to pay attention to the subtitle of this slave owner's memo.

The statement between brackets announces that this memo is published by the Plenipotentiary for the Allocation of Labor in agreement with the chief of the Party Chancellery and other corresponding authorities. It is difficult to state it more precisely. Millions of foreign slaves were languishing in Germany. A German could become a slave-owner with the sanction and under the supervision of the fascist Party. Apparently this also constituted one of the elements of the New Order in Europe.

I deem it indispensable to refer also to the order of the Defendant Göring, dated 27 March 1942. I do not submit this document, as it is already at the disposal of the Tribunal, having been presented by the United States Prosecution:

> "The Plenipotentiary for Allocation of Labor, in order to carry out his tasks, herewith receives the power which the Führer has given me to issue directives to the superior Reich authorities and to their subordinate offices, to Party authorities and to Party organizations and attached units."

This order of the Defendant Göring does not only determine the special part of the fascist Party in the execution of the compulsory labor system, but also emphasizes the extraordinary powers of Defendant Sauckel in this field.

The documents to which I have been referring thus far give grounds for the Soviet Prosecution to assert that within the general framework of the fascist State the fascist Party was the center of all measures for the organization of compulsory slave labor.

I would like now to turn to the part taken by the German High Command in the organization of compulsory labor and deportation into slavery of Soviet people. With this object in view, I submit to the Tribunal as Exhibit Number USSR-367 (Document Number USSR-367), an OKH document regarding—I am using the words of the document itself—the "Enlistment of Russian Manpower for the Reich." I beg the Tribunal to refer to Page 138 of the document book in which this document is to be found.

First of all, let us look at the source from which this document emanates. In the upper left-hand corner of the first page you will find, "High Command of the Army, General Staff of the Army, Quartermaster General, Office of Military Administration, (EC) Number II 3210/42—secret." In the upper right-hand corner: "Headquarters, High Command of the Army, 10 May 1942," and again the stamp "secret." After the title it states:

"Subject: OKH, Gen Qu/Ec/II, Number 2877/42, secret, 25 April 1942; OKH, Gen Qu/Section Mil. Adm. Number 3158/1942, secret, 6 May 1942."

Therefore, the document which I intend to quote here originates from the OKH and is based on orders previously issued by the OKH. At the end of the document there is a list of addresses to which it was distributed. I will not quote this list in full, but it leaves no doubt as to who were the executors of the orders contained in the above document. These executors were the military authorities.

Let us now turn to the contents of the submitted document. First of all, what induced the OKH when it issued this letter? The reply to this question is contained in the first paragraph of our document, which I shall now read into the record. I abridge the quotation:

"The Plenipotentiary for Allocation of Labor appointed by the Führer, Gauleiter Sauckel . . . in consideration of the increased armament requirements of the Reich and in order to secure the manpower requirements of the German war and armament economy, has ordered that the enlisting and transferring into the Reich of Russian manpower be speeded up and considerably increased.

"For the execution of this recruiting action . . . influence of the military and local administrative authorities (field Kommandantura, local Kommandantura, I A—organization of the Economic Staff East, district administrations, town mayors, *et cetera*) . . . is necessary. This is a task of decisive importance for the outcome of the war. The labor situation of the Reich makes it necessary that the ordered measures are carried out on a priority basis and in a large scale manner. This must be the chief task of all organizations."

The next two paragraphs of the quoted document, part of which is entitled, "Priority of Manpower Needs in the Armed Forces and Economy in the East," contain the following statement—I quote Page 139 of your document book which runs:

"The immediate manpower needs of the Army must be satisfied in the highest priority inasmuch as the need is actually inescapable . . . and unalterable. The scale of the needs of the Army is to be determined by the armies, the commanders of the front areas, and the Wehrmacht commanders. However, in consideration of the urgent labor needs of the Reich . . . the severest standard is to be

applied, and especially the scale of the troops' own manpower needs is to be most carefully examined."

THE PRESIDENT: Isn't it sufficient to say that this document provides for the speeding up of the mobilization of manpower and slave labor for the purposes of the necessities of the Reich? Does it do anything more than that?

GEN. ZORYA: Yes, you are quite right, Mr. President. It would be enough if we add that this document contains the demand not only to accelerate the mobilization of manpower but also the demand for immediate participation by the military authorities who had to arrange a suitable machinery in the form of suitable officers.

I pass on to the next document which I submit to the Tribunal.

It would be a mistake to think that the OKH gave orders only of such general character. In July 1941 the Defendant Keitel learned that the subdepartments of the Organization Todt in the Lvov district paid the local workers a wage of 25 rubles. This fact made Keitel indignant. Todt immediately received an appropriate reprimand. And so we come to the next document, which I present to the Tribunal as Exhibit Number USSR-366 (Document Number USSR-366).

The Reich Minister directly refers, in this document, to the fact that Field Marshal Keitel expressed his displeasure that the subdepartments of the Organization Todt in the suburbs of Lvov paid the local workers wages of 25 rubles and that the subdepartments of the O.T. were making use of the factories.

Todt declares that during his last trip he had explained in detail to all members of the staff that the rules for the allocation of labor in Russian territory were different from those in Western Europe. Further in this document Todt categorically prohibits the paying of any sums of money at all. He concludes this document in the following terms:

"No compensation shall be given to the firms for payments not in conformity with the above principles.

"This order is to be brought to the attention of all subordinate labor allocation offices and to all firms.

"Signed: Dr. Todt."

The German Government and the High Command ordered the use of peaceful Soviet citizens for work which endangered life. This was mentioned by Göring at a conference on 7 November 1941. I now submit to the Tribunal Exhibit Number USSR-106 (Document Number USSR-106),

which contains the translation of the Führer's directive, signed by him on 8 September 1942. This directive concerns the allocation of labor for the construction of fortifications on the Eastern Front. This document comes from the German archives captured by the Allied armies in the West. The covering letter to this document states that this document "is top secret, and that copies of it will be sent to staffs and divisions and are to be returned to the Army staffs and destroyed."

On the second page of the document, we find Hitler's order. I read it into the record:

> "HQu, 8 September 1942.
>
> "The heavy defensive battles in the area of Army Groups Center and North induce me to fix my views on some fundamental tasks of the defense."

The next Paragraphs, 1 and 2 on Pages 1 to 7, concern general principles of defense, which do not interest us today. On Page 148 of the document book is the following passage which I read into the record:

> "The enemy carries on construction to a far greater extent than do our own troops. I know that it will be argued that the enemy has at his disposal more labor for construction of such positions. But it is therefore an absolute necessity at exactly this point to make use, with ruthless energy, especially of prisoners of war and the population for these tasks. Only in this respect is the Russian superior to us in his brutal way. By this means, however, the German soldier, too, can be spared to a large extent from labor on defensive works behind the front lines, in order that he may be kept free and fresh for his real duties. Frequently the necessary ruthlessness which the present fateful battle demands is not yet being employed here, for in it not a victory but the existence and survival of our people is contested. Besides, it is in all circumstances still always more humane to drive the Russian population to work, with every means, as it has always been accustomed to be driven, than to sacrifice our most precious possession, our own blood."

This order is signed by Hitler.

Units of the Red Army also captured a decree issued by the German occupation authorities, which referred to an order of the General Staff about forced labor in combat zones. I submit this document as Exhibit Number USSR-407 (Document Number USSR-407), and I deem it necessary to quote a few sentences from Page 149 of the document book:

> "Decree: In accordance with the regulations of the Chief of the OKW, dated 6 February 1943, regarding transfer for labor in the combat zone of the newly occupied eastern territory, all women born in 1924 and 1925 are hereby summoned for labor in Germany.
>
> "Point V of this order provides that: . . . those who do not present themselves on the given dates shall be held responsible as saboteurs in accordance with military laws."

I am summarizing this section.

The High Command of the German Armed Forces and the Defendant Keitel took a direct part in the execution of this system of forced slave labor. For the realization of this criminal objective they used on a large scale from bottom to top, the entire machinery of the military administration.

Your Honors, I beg to refer to the next document which I am now presenting as Exhibit Number USSR-381 (Document Number USSR-381).

THE PRESIDENT: General, was that last order that you gave us Keitel's order? It is signed apparently by the Chief of the General Staff of the Military Command.

GEN. ZORYA: This is not an order of Keitel. This document which was submitted as Exhibit Number USSR-381 is entitled "Instruction to the Economic Offices, 'Section Labor,' on the Organization of Labor Allocation in the East."

THE PRESIDENT: I thought you said that was by Keitel.

GEN. ZORYA: The preceding document which was submitted to the Tribunal was actually one of Keitel's orders, but now I wish to speak of this instruction. I beg Your Honors to pay attention to the date on which this instruction was issued, namely 26 January 1942. In this instruction, on Page 150 of the document book, it is stated that the hopes which the Reich Marshal had placed in the office for the allocation of labor must be justified at all costs:

> "The task of the economic organizations and the office for the allocation of labor in the East consists in bridging, during the coming months, the gaps in the economy which arose owing to the departure into the army of men of younger conscription age due to the universal enlistment of Russian manpower. This is of decisive importance for the war and must therefore be achieved. If the number of volunteers does not come up to expectations, then the enlistment measures already ordered should be reinforced by all available means."

The United States Prosecution has submitted to the Tribunal a document of the Soviet Prosecution, Exhibit Number USSR-381 (Document Number USSR-381), entitled, "Memo on the Treatment of Foreign Civilian Workers in the Reich."

I do not wish to quote this document again, but consider it necessary only to show. . .

DR. OTTO NELTE (Counsel for Defendant Keitel): The President has just now asked about the Document Number USSR-407 and the prosecutor has presented it here as a document of Keitel. I have only just now found this document. If it is a question of the same document that I have marked as USSR-407, then it is signed by a local commander and by a chief of the labor office.

Is this document the same as that presented to you as USSR-407?

THE PRESIDENT: I have already pointed out, have I not, that it was not by Keitel?

DR. NELTE: Yes, Sir. But the Prosecutor has thereupon repeatedly said that this Document 407 represents an order by Keitel. That is why I wanted to clarify it.

GEN. ZORYA: Perhaps the Tribunal will allow me to clarify this matter. Apparently a misunderstanding arose through faulty translation. I said that troops of the Red Army had seized a German order, and added that the order had been issued by the German occupational authorities—you can verify this by looking up the stenographic record—which referred to an order of Keitel regarding forced labor in the combat zones. This order begins with the following words, "In accordance with the regulations of the Chief of the OKW, dated 6 February 1943, transfer for labor in the combat zone," and so forth. I shall not quote any further.

If I may beg the Tribunal to consider once more a document which I have already submitted previously, that is, the document of the High Command of the Army, Number II/3210/42, it is because this order refers to corresponding orders of the General Staff of the Army on questions of allocation of labor in the East. This order of the occupational authorities, which I submitted as Exhibit Number USSR-407, refers to one of these orders. It states quite clearly, "In accordance with the regulations of the Chief of the OKW." That is why I submitted this document.

THE PRESIDENT: I am afraid I really don't understand you. What I have got in the translation before me is this, "The units of the Red Army captured a copy of the German decree which mentioned Keitel's order on forced labor in the combat zone," and continues further that those persons

refusing to work shall be apprehended as saboteurs. This document is submitted as Exhibit USSR something or other.

It may be useful to read a few excerpts of it, "By order of the Chief of the General Staff of the Military Command, of 6 February 1943, concerning the compulsory labor service . . . in the combat zone"—and then it goes on to deal with persons who don't present themselves being considered saboteurs.

Well, I thought you were saying that the Chief of the General Staff of the Military Command was Keitel. He was the Chief of the OKW. Are you still saying that he was the Chief of the Military Command?

GEN. ZORYA: I quote only that which is in the document: "In accordance with the regulations of the Chief of the General Staff of the Military Command." That is in the document, and I do not wish to add anything.

THE PRESIDENT: I don't think it is worth taking any more time over it.

GEN. ZORYA: I will now go back to that document which was submitted to the Tribunal by the United States Prosecution and which was entitled, "Memo for the Treatment of Foreign Civilian Laborers in the Reich." I will not quote this document in detail; I would like to stress only that it established a special regime for Eastern Workers. They lived in camps surrounded by guards and under supervision of a camp commander. The latter forbade a normal life for workers from the East. They were thus forbidden to visit churches or public places and they were obliged to wear special insignia—a rectangle with pale blue edges, and in the middle the word "Ost" in white letters on the dark blue background.

In the memorandum to housewives regarding the employment of women from the East in town and rural households it was stated that—Page 131 of the document book:

> "Every foreigner judges the standard of our entire people by the personal and political conduct of the individual. The foreign workers must see in the housewife and the members of her family worthy representatives of the German people."

I proceed further:

> "If, in exceptional cases, German and eastern female domestic workers are employed in the same household, the German domestic workers must be given mainly tasks of serving the family and must also be given the supervision of the Eastern woman worker. The German living in the household must always have precedence."

General conditions of work did not apply to the women workers from the East. Their labor was regulated only by the discretion of their masters. This was expressed in Paragraph 4 of the same memorandum. I quote:

> "Eastern women workers are employed in the households in a special labor relation. German regulations on working conditions and on labor protection refer to them only insofar as this is specifically decreed."

The character of these special instructions can be seen in Paragraph 9, Section B of the memorandum, which states quite openly:

> "No claim to leisure time is given. Eastern women domestic workers may leave the household only when on duty connected with the needs of the household. . . . Visiting the theaters, restaurants, cinemas, and similar . . . institutions is forbidden."

Paragraph 10 of the memorandum states:

> "Eastern female domestic workers are enlisted for indefinite time."

Paragraph 12 of the memorandum states that:

> "Germans may not share a room with the Eastern woman worker."

Paragraph 14 states that:

> "Clothing as a rule cannot be supplied."

These two documents just mentioned by me, "Memo on the Treatment of Foreign Civilian Laborers" and "Memorandum for Housewives on the Employment of Eastern Female Workers," reflect the inhuman conditions of work for the forcibly mobilized Soviet citizens. The Soviet Prosecution has at its disposal numerous documents, the testimonies of persons who themselves experienced the terror of fascist slavery. The enumeration of all these documents would take too much time. The Soviet Government had at its disposal, already in the early phases of the war against fascist Germany, many proofs of the crimes of the fascist conspirators in this field.

The first document of this kind published by the Soviet Government is the note of the People's Commissar of Foreign Affairs, Molotov, dated 6 January 1942, which was presented to the Tribunal by the Soviet Prosecution as Exhibit Number USSR-51(2), (Document USSR-51(2)) and this note stated that:

> "The peaceful citizens forcibly deported for compulsory labor were proclaimed 'prisoners of war' by the German authorities and treated as such as far as their maintenance is concerned. It has

been established by reports of Staffs of the German Army that peasants and other peaceful citizens seized by the Germans and deported for compulsory labor were automatically put on the list as prisoners of war. Thus the number of prisoners of war was artificially and unlawfully increased.

"In the vicinity of the town of Plavsk, in the region of Tula, a camp was established where Soviet war prisoners and the civilian population from neighboring villages were interned at the same time. The Soviet citizens were there subjected to inhuman tortures and sufferings. There were young boys and girls, women, and old men among them. Their only food consisted of two potatoes and some barley grits each day. The death rate reached 25 to 30 persons daily.

"After the occupation of Kiev, the Germans drove into slave labor all the civilian population from 11 to 60 years of age, irrespective of their profession, their sex, state of health, or nationality.

"People who were too ill to stand on their feet were fined by the Germans for every day of work they missed.

"In Kharkov the German invaders decided to make the local Ukrainian intellectuals an object of their mockery. On 5 November 1941 all actors were ordered to appear at the Shevtshenko Theater for registration. When they had gathered, they were surrounded by German soldiers who harnessed them to carts and drove them along the most frequented streets to the river for water."

The second document of the Soviet Government was the Foreign Commissar's note, dated 27 April 1942. This note is submitted to the Tribunal as Exhibit USSR-51 (Document Number USSR-51). Section 3 of this note is entitled, "Installation of a Regime of Slavery and Bondage in the Occupied Territories of the Soviet Union and Deportation of Civilian Population as Prisoners of War." This note states that:

"In the Ukraine and Bielorussia the Germans introduced a 14- or 16-hour workday, in most cases without any compensation and in some cases with ridiculously low wages.

"In the secret instructions entitled, 'On Current Tasks in the Eastern Regions,' captured by Red Army troops at the beginning of March 1942, the chief of the Military Economic Inspectorate Central Front, Lieutenant General Weigang, admits that:

“ ‘It has proved impossible to maintain industrial production with the labor of semi-starved and semi-clad people,’ that ‘the devaluation of money and the commodity crisis coincide with a dangerous lack of confidence in the German authorities on the part of the local population,’ and that ‘this constitutes a danger to the peace in the occupied regions which cannot be permitted in the rear of the combat troops.’ The German general in this document presumes to call these occupied regions ‘our new eastern colonial possession.’

“Acknowledging that the complete collapse of industrial production in the occupied districts has led to mass unemployment, the German General Weigang issued the following orders for speeding up the forcible dispatch of the Russian, Ukrainian, Bielorussian, and other workers to Germany.

“ ‘Only the shipping to Germany of some millions of Russian workers and only the inexhaustible reserves of healthy and strong people in the Occupied Eastern Territories . . . can solve the urgent problem of manpower shortage and therewith meet the lack of labor in Germany.’

“In an order . . . seized by units of the Red Army, recruiting the entire civilian population of the occupied districts for all kinds of heavy labor was ordered; and it was stated that this forced labor was not to be paid for; and it was insolently declared that by this unpaid labor the population would atone for its guilt for the acts of sabotage already committed as well as for the acts of sabotage which might be committed by them in the future.

“In Kaluga, on 20 November 1941, an announcement was posted, signed by the German commandant, Major Portatius, which ran as follows:

“ ‘1. Citizens who do poor work or do not work the specified number of hours will be subject to a monetary fine. In the event of nonpayment, delinquents will be subjected to corporal punishment.

“ ‘2. Citizens who have received a work assignment and who have not reported for work will be subject to corporal punishment and will receive no food rations from the municipality.

“ ‘3. Citizens evading work in general will, in addition, be expelled from Kaluga. Citizens shirking work will be attached to

labor detachments and columns, and billeted in barracks. They will be used for heavy labor.' "

This note indicated also that land would be transferred to German landowners. This was established by a land law which was promulgated at the end of April 1942 by the Hitlerite Gauleiter Alfred Rosenberg.

I pass on to the next note of People's Commissar for Foreign Affairs Molotov which was published a year after the note dated 27 April 1942.

On 11 May 1943 the People's Commissar for Foreign Affairs, Molotov, sent to all Ambassadors and Ministers of all the countries with which the U.S.S.R. had diplomatic relations a note, "Concerning the Wholesale Forcible Deportation of Peaceful Soviet Citizens to German Fascist Slavery and Concerning the Responsibility Borne for this Crime by German Authorities and Individuals." This note is submitted to the Tribunal as evidence as Exhibit Number USSR-51(4) (Document Number USSR-51(4)).

I consider it necessary to read a few quotations from this note. On Page 165 of the document book there is a reference to a declaration of Göring of 7 November 1941, which has already been mentioned by me. I will not again repeat all that Göring said at that conference. I will only stress that Göring issued a blood-thirsty order "not to spare the Soviet people deported into Germany and to handle them in the most cruel manner under any excuse." This order is included in section IV-A7 of the above-mentioned note. It reads as follows:

"In applying measures for the maintenance of order, the main principle must be swiftness and severity. Only the following forms of punishment must be employed, without intermediary grades: deprivation of food and death by sentence of field court-martial."

On 31 March 1942 Sauckel issued the following order by telegraph:

"The enlistment, for which you are responsible, must be speeded up by every available means, including the stern application of the principle of labor service."

The Soviet Government is in possession of the complete text of a report by the Chief of the Political Police and Security Service with the Chief of the SS in Kharkov, headed, "The Situation in the City of Kharkov from 23 July to 9 September 1942."

"The recruiting of labor power"—states this document—"is causing the competent bodies disquietude, for the population is displaying extreme reluctance to go to work in Germany. The situation at present is that everybody does his utmost to evade

enlistment. Voluntary departure to Germany has long been entirely out of the question."

Your Honors, I must stress that the Defendant Sauckel, as Plenipotentiary for the Allocation of Labor, actively pursued criminal activity, as it is pointed out in the note of the People's Commissar for Foreign Affairs, which I just presented. On 31 March 1942 Sauckel sent to his subordinate departments a telegraphic instruction regarding the utilization of Russians and the work of the enlistment committee. I submit this telegram of Sauckel to the Tribunal as evidence, Exhibit Number USSR-382 (Document Number USSR-382). In this telegram Sauckel writes:

"The rate of mobilization must be increased immediately and under all circumstances to insure, in the shortest possible time, that is to say, by April, that a three-fold increase in the number of dispatched workers is achieved."

Sauckel's efforts were appreciated by the Defendant Göring at the time when he was Delegate for the Four Year Plan. I refer now to the conference which Göring held on 6 August 1942. This protocol has been submitted by the Soviet Prosecution to the Tribunal as Exhibit Number USSR-170 (Document Number USSR-170). I beg you to refer to Pages 12 and 13 of this document, Page 184 of the document book. Göring came forth with the following words,

"I have to say one thing to this. I do not wish to praise the Gauleiter Sauckel; he does not need it."

THE PRESIDENT: All this was read the other day. The actual words were read yesterday.

GEN. ZORYA: I am quite sure, Mr. President, that my colleague, who read into the record this document, did not read this particular passage.

THE PRESIDENT: Yes, but I still think that he read this excerpt which you have got set out in your document, "I do not wish to praise Gauleiter Sauckel; he does not need it." He certainly referred to the excerpt which you have just summarized about Lohse.

GEN. ZORYA: I do not wish to argue but I had the information that this excerpt had not been read into the record. If you like, I will not read this passage into the record.

THE PRESIDENT: Maybe you are right. I don't know.

GEN. ZORYA: Then, I will read it into the record very briefly:

"I do not wish to praise Gauleiter Sauckel; he does not need it. But what he has done in such a short time to collect workers so

quickly from the whole of Europe and supply them to our undertakings is a unique achievement. I must tell that to all these gentlemen; if each of them used in their sphere of activity a tenth of the energy used by Gauleiter Sauckel, the tasks laid upon them would indeed easily be carried out. This is my sincere conviction and in no way fine words."

I return again to the note of the People's Commissar for Foreign Affairs, V. M. Molotov, dated 11 May 1943. This note further gives data concerning the number of Soviet people who were deported to Germany. This note states that the deportation of Soviet people to German slavery was accompanied nearly everywhere by bloody repressive measures against Soviet citizens seeking refuge from slave merchants who were hunting for them. It has been established that in Gjatsk 75 peaceful inhabitants of the town were shot and that in Poltava 65 railroad men were hanged. The same thing in other towns also—executions, shootings, and hangings were carried out on the same scale.

THE PRESIDENT: I understood from you at the beginning of your speech that you were going to finish this afternoon your presentation. It is now 5 minutes past 5. Is there any chance of your finishing today?

GEN. ZORYA: If I had not been interrupted by Defense Counsel for 10 minutes in connection with a discussion about the order of the German occupational authorities, I would have finished my statement.

THE PRESIDENT: How long do you think will it take you now?

GEN. ZORYA: A maximum of 10 minutes.

THE PRESIDENT: Very well.

GEN. ZORYA: The note states that the Soviet citizens in the territories captured by the Germans are, with growing frequency and organization, offering courageous resistance to the slave owners. The growth of the partisan movement in connection with the resistance the Soviet citizens are offering to forcible transportation into German slavery is admitted with alarm in a number of secret reports from German army and police administrations.

This note quotes further a number of testimonies of Soviet people who had escaped German slavery. I will only quote one of these testimonies of Kolkhoz member Varvara Bakhtina of the village of Nikolayevka, Kursk region, who stated:

"In Kursk we were pushed into cattle wagons, 50 to 60 persons in each wagon. Nobody was permitted to leave. Every now and then the German sentry hustled and punched us. In Lgov we had to get

out and be examined by a special commission there. In the presence of the soldiers we were compelled to undress quite naked and have our bodies examined. The nearer we got to Germany, the fewer were the people left in the train. From Kursk they took 3,000 persons but at nearly every station the sick and those dying from hunger were thrown out. In Germany we were put into a camp with Soviet prisoners of war. This was in a forest section surrounded by a high barbed-wire fence. Four days later we were taken to different places. I, my sister Valentina, and 13 other girls were sent to an armament factory."

The third section of this report describes further the treatment under which the Soviet workers lived in German slavery. This part of the report also mentions the statement made by Göring concerning Russian workers. Göring states in the above-mentioned directives:

"The Russian is not fastidious and, therefore, it is easy to feed him without affecting our food stocks to any appreciable degree. He must not be spoiled or allowed to get accustomed to German food."

Finally the note quotes a number of letters from home to the German soldiers on the Eastern Front, which describe the humiliation to which the Soviet workers were subjected. I will quote a passage from one of such letters. A letter from his mother in Chemnitz was found on the body of Wilhelm Bock, killed German private, of the 221st German Infantry Division. This letter reads:

"Many Russian women and girls are working at the Astra Works. They are compelled to work 14 and more hours a day. Of course, they receive no pay whatever. They go to and from the factory under escort. The Russians literally drop from exhaustion. The guards often whip them. They have no right to complain about the bad food or ill-treatment. The other day my neighbor obtained a servant. She paid some money at an office and was given the opportunity to choose any woman she pleased from a number here from Russia."

Letters also mention mass suicides of Russian women and men.

The note ends with a declaration of the Soviet Government, which states that it places responsibility for atrocities in this domain on the leading Hitlerite clique and the High Command of the German fascist Army:

"The Soviet Government also places full responsibility for the above enumerated crimes upon the Hitlerite officials who are

engaged in recruiting, abducting, transporting in camps, selling into slavery, and inhumanly exploiting peaceful Soviet civilians who have been forcibly transported from their native land to Germany. . . . The Soviet Government holds that stern responsibility should be borne by such already exposed criminals as . . . Fritz Sauckel and . . . Alfred Rosenberg."

And finally the note points out:

"The Soviet Government expresses the conviction that all the Governments concerned are unanimous on the point that the Hitler Government and its agents must bear full responsibility and receive stern punishment for the monstrous crimes they have committed, for the privation and suffering they have inflicted upon millions of peaceful citizens who have been forcibly deported into German fascist slavery."

This is the end of People's Commissar Molotov's note. Kindly allow me to close my statement also with these words.

THE PRESIDENT: The Tribunal will now adjourn.

[*The Tribunal adjourned until 23 February 1946 at 1000 hours.*]

SIXTY-SIXTH DAY

Saturday, 23 February 1946

Morning Session

THE PRESIDENT: Before we deal with the applications, I am going to read the Tribunal's order upon Dr. Stahmer's memorandum of 4 February 1946 and the Prosecution's motion of the 11th of February 1946. This is the order:

The Tribunal makes no order with regard to Paragraphs 2 to 5 of the Prosecution's motion as to the evidence of the defendants, dated the 11th of February 1946.

With regard to Paragraphs 2 and 7 of Dr. Stahmer's memorandum on defense procedure, dated the 4th of February 1946, the Tribunal makes the following order:

1. The defendants' cases will be heard in the order in which the defendants' names appear in the Indictment.

2. (a) During the presentation of a defendant's case, defendant's counsel will read documents, will question witnesses, and will make such brief comments on the evidence as are necessary to insure a proper understanding of it.

(b) The defendant's counsel may be assisted in the courtroom by his associate counsel or by another defendant's counsel. Such other counsel may help the defendant's counsel in handling documents, *et cetera*, but shall not address the Tribunal or examine witnesses.

3. Documentary evidence.

(a) Defendant's counsel will hand to the General Secretary the original of any document which he offers in evidence if the original is in his possession. If the original is in the possession of the Prosecution, counsel will request the Prosecution to make the original of the document available for introduction in evidence. If the Prosecution declines to make the original available, the matter shall be referred to the Tribunal.

(b) Should the original of any such document be in the possession of the Tribunal, defendant's counsel will hand to the General Secretary a copy of the whole or relevant part of such document, together with a statement of the document number and the date upon which it was received in evidence.

(c) Should counsel wish to offer in evidence a document, the original of which is not in his possession or otherwise available to the Tribunal, he will hand to the General Secretary a copy of the whole or relevant part of such document, together with an explanation as to where and in whose possession the original is located and the reason why it cannot be produced. Such copy shall be certified as being correct by an appropriate certificate.

4. Each defendant's counsel will compile copies of the documents or parts of documents which he intends to offer in evidence into a document book, and six copies of such document book will be submitted to the General Secretary 2 weeks, if possible, before the date on which the presentation of the defendant's case is likely to begin. The General Secretary will arrange for the translation of the document book into the English, French, and Russian languages, and the defendant's counsel will be entitled to receive one copy of each of these translations.

5. (a) Defendant's counsel will request the General Secretary to have the witnesses named by him and approved by the Tribunal available in Nuremberg; such request being made, if possible, at least 3 weeks before the date on which the presentation of a defendant's case is likely to begin. The General Secretary will, as far as possible, have the witnesses brought to Nuremberg 1 week before this date.

(b) Defendant's counsel will notify the General Secretary not later than noon on the day before he wishes to call each witness.

6. (a) A defendant who does not wish to testify cannot be compelled to do so, but may be interrogated by the Tribunal at any time under Articles 17(b) and 24(f) of the Charter.

(b) A defendant can only testify once.

(c) A defendant who wishes to testify on his own behalf shall do so during the presentation of his own defense. The right of Defense Counsel and of the Prosecution under Article 24(g) of the Charter to interrogate and cross-examine a defendant who gives testimony shall be exercised at that time.

(d) A defendant who does not wish to testify on his own behalf but who is willing to testify on behalf of a co-defendant may do so during the presentation of the case of the co-defendant. Counsel for other codefendants

and for the Prosecution shall examine and cross-examine him when he has concluded his testimony on behalf of the co-defendant.

(e) Subparagraphs (a), (b), (c), and (d) do not limit the power of the Tribunal to allow a defendant to be recalled for further testimony in exceptional cases, if in the opinion of the Tribunal the interest of justice so requires.

7. In addition to the addresses of each defendant's counsel under Article 24(h), one counsel representing all the defendants will be permitted to address the Tribunal on legal issues arising out of the Indictment and the Charter which are common to all defendants, but in making such address he will be held to strict compliance with Article 3 of the Charter. This address will take place at the conclusion of the presentation of all the evidence on behalf of the defendants, but must not last more than half a day. If possible, a copy of the written text of the address shall be delivered to the General Secretary in time to enable him to have translations made in the English, French, and Russian languages.

8. In exercising his right to make a statement to the Tribunal under Article 24(j), a defendant may not repeat matters which already have been the subject of evidence or already have been dealt with by his counsel when addressing the Court under Article 24(h), but will be limited to dealing with such additional matters as he may consider necessary before the judgment of the Tribunal is delivered and sentence pronounced.

9. The procedure prescribed by this order may be altered by the Tribunal at any time if it appears to the Tribunal necessary in the interest of justice.

Now the Tribunal will deal with the application for witnesses and documents on behalf of the Defendant Göring, and the procedure which the Tribunal proposes to adopt is to ask counsel for the defendant whose case is being dealt with to deal, in the first instance, with his first witness, and then to ask Counsel for the Prosecution to reply upon that witness and then, when that has been done, to ask defendant's counsel to deal with his second application for a witness, and then for the Prosecution Counsel to deal with that witness; that is to say, to hear the defendant's counsel and the Prosecution Counsel upon each witness in turn.

That procedure will probably not be necessary when the Tribunal comes to deal with documents. Probably it will be more convenient for defendant's counsel to deal with the documents together and prosecuting counsel to deal in answer to the documents together. But, so far as the witnesses are concerned, each will be taken in turn.

I call upon Dr. Stahmer.

DR. MARTIN HORN (Counsel for Defendant Von Ribbentrop): Before we go into these details I ask to be informed why the Court has the intention of treating the Defense in a fundamentally different manner from the Prosecution. In Article 24 of the Charter it is stated that the Tribunal will ask the Prosecution and the Defense whether they will submit evidence to the Tribunal and if so, what evidence. This decision has so far not been applied by the Tribunal in relation to the Prosecution. I am glad that today the Defense has been granted the possibility to name to the Tribunal those documents and witnesses, which up to now have been difficult to obtain. I am prepared today to tell the Tribunal the essential points which establish the necessity of calling the witnesses and the relevancy of the documents. I ask the Court, therefore on the basis of past practice, not to allow the Prosecution to take part in judging whether a document should be considered relevant or not. As Defense Counsel I am convinced that I would have to submit to a sort of precensorship by the Prosecution which would impair the unity of my entire evidence. I may point out that the protests of the Defense have constantly been postponed with the remark that the Defense would be heard about these points at a later date. If selection of evidence, on the basis of objections by the Prosecution, takes place here today the danger arises that protests which have been postponed will not be able to be treated later. For the reasons stated, therefore, I request the Court to proceed according to past practice, and decide as to the right of the Prosecution to protest against the procurement of evidence.

THE PRESIDENT: Will Counsel for Ribbentrop come back to the rostrum? The Tribunal is not altogether clear what motion you are making.

DR. HORN: I propose that the Prosecution should not, at this stage of the Trial, be entitled to make a decision about the calling of witnesses and the relevancy of documents.

Mr. President, I should like to plead further on that point. I meant by making a decision that the Prosecution should not yet, at this time, have anything to say about the question of the admissibility or nonadmissibility of evidence.

THE PRESIDENT: The Tribunal considers that your motion cannot be granted, for this reason: It is true that the Defense is being asked to apply for witnesses and documents now, in accordance with Article 24(d).

One principal reason for that is that the Tribunal has got to bring all your witnesses here. The Tribunal has been, for many weeks, attempting to find your witnesses and to produce them here, and to produce the documents which you want. The relevancy of those witnesses and of those documents has got to be decided by the Tribunal; but it is obvious that Counsel for the

Prosecution must be allowed to argue upon the question of relevancy, just as counsel for the defendants have been allowed to argue upon the relevancy of every witness and every document which has been introduced by the Prosecution.

Exactly the same procedure is being adopted now for the defendants as has been adopted for the Prosecution, with the sole exception that the defendants are being asked to make applications for the witnesses and documents and to deal with the matter at one time, rather than to deal with it as each witness or document is produced. The reason for that is that the Tribunal, as I have stated, have got to find and bring the witnesses here for the defendants, and also to produce the documents.

Your motion was that the Prosecution should not receive any possibility to decide on the calling of witnesses. The Prosecution, of course, will not decide upon it; the Tribunal will decide upon it. The Prosecution must have the right to argue upon it, to argue that the evidence of a certain witness is irrelevant or cumulative, and to argue that any document is not relevant.

And I am reminded that all of these documents have got to be translated for the purposes of the Tribunal.

DR. HORN: Mr. President, many of the defendants' counsel, myself included, have, so far, not been able to question decisive witnesses for the purpose of obtaining information. Therefore, in decisive points we often do not even know exactly what a witness can prove.

If, now, we already have to deal with the Prosecution before we know definitely how far it is desirable to fight or not to fight for a witness, we are in an essentially worse situation than the Prosecution, which, whenever the defendants' counsel made protests, knew exactly for what their witness or their evidence was important. In this regard the Defense is, for the most part, in a considerably worse situation, and I am of the opinion that this situation will become even worse if here, besides the Tribunal, the Prosecution can also make protests against the evidence at this stage of the Trial.

THE PRESIDENT: It is true that it is impossible to decide finally upon the admissibility of any piece of evidence until the actual question is asked; and for that reason the Tribunal has already, in deciding provisionally upon the application for witnesses, acted in the most liberal way. If it appears that there is any possible relevancy in the evidence to be given by a witness, they have allowed that witness to be alerted. Therefore, if there is any witness whose evidence appears to be, by any possibility, relevant, the Tribunal will allow that witness, subject, of course, to the directions of the Charter to hold the Trial expeditiously.

Subject to those limitations, the Tribunal will allow any witness to be called whose evidence appears to be possibly relevant. That is all the Tribunal can do because, as I have already stated, it is the Tribunal who has to undertake the difficult task of securing these witnesses for the defendants, who cannot secure them themselves.

DR. HORN: Thank you.

THE PRESIDENT: Now, Dr. Stahmer.

DR. OTTO STAHMER (Counsel for Defendant Göring): Mr. President, I do not wish to repeat, but I believe that the objection of Dr. Horn has not been understood quite rightly. Dr. Horn wanted only to complain about the fact that the Defense in no case has been asked previously whether an item of evidence that the Prosecution has presented was relevant or not, but we have always been surprised when a witness was brought in and we had no possible opportunity to make any material objections relative to him.

Insofar as objections against documents were concerned, that is, as to their relevance, the Defense has always been told that for such an objection the time had not yet come for the Defense. . .

THE PRESIDENT: I beg your pardon, Dr. Stahmer, but you have misunderstood. The Defense have never been told that objections to the admissibility of documents could be left over until later. Every objection to the admissibility of a document has been dealt with at the time. Observations upon the weight of the document are to be dealt with now, during the course of the Defense. I don't mean today, but during the course of the Defense.

There is a fundamental distinction between the admissibility of a document and the weight of a document, and all questions of admissibility have been dealt with at the time.

DR. STAHMER: Mr. President, I fully understood that distinction. Nor did I want to say that objections against admissibility were turned down, but rather objections against relevancy.

THE PRESIDENT: Objections to the relevancy of documents—that is to say, their admissibility—that is the governing consideration under this Charter as to the admissibility of documents. If they are relevant, they are admissible. That is what the Charter says. And any objection which has been made to documents or to evidence by defendants' counsel has been heard by the Tribunal and has been decided at the time.

Dr. Stahmer, the Tribunal wishes me to point out to the defendants' counsel that they have had long notice of this form of procedure, long notice that under Article 24(d) they were going to be called upon to specify or

name their witnesses and the documents which they wish to produce, and to state what the relevancy of the witnesses and the documents would be.

It seems to the Tribunal obvious that that procedure is really necessary when one remembers that it is for the Tribunal, with very great difficulty and at considerable expense, to find these witnesses and to bring them to Nuremberg, and to find the documents, if possible, and to bring them to Nuremberg.

Now, as to your or to Dr. Horn's objections to the procedure which has been adopted with reference to the Prosecution, it is open to defendants' counsel at any time, if they wish to do so, to apply to strike from the record any document which they think ought not to have been admitted. One of his objections, or possibly your objection, appeared to be that defendants' counsel have not had sufficient time to consider whether a particular document or a particular witness was relevant, and therefore admissible. You have had ample time now to consider the point and if now you wish to apply to strike out any document or to strike out any evidence, you will make that application in writing and the Tribunal will consider it.

As I have said, the object of the procedure is to help the defendants and their counsel. And it is a necessary procedure because the defendants are unable, naturally, and defendants' counsel are unable, naturally, to procure the attendance of witnesses here in Nuremberg, and in some cases to procure the production of documents.

In order that we should do so, on their behalf, it is necessary that we should know whom they want to have produced here, what documents they want to have produced here; and, in order that time should not be wasted and money should not be unduly wasted, it is necessary to know whether the witnesses and the documents have any shadow of relevancy to the issues raised.

DR. STAHMER: Then I shall begin with the naming of those witnesses whose interrogation before the Tribunal I consider necessary.

I name first General of the Air Force Karl Bodenschatz.

THE PRESIDENT: Dr. Stahmer, the Tribunal does not desire you to read your application. If you will just say in your own words, as shortly as you can, why you want the particular witness, they will then consider it. And if Counsel for the Prosecution wish to object, they will do so. Then the Tribunal will finally decide the matter.

DR. STAHMER: The witness I have named, General of the Air Force Bodenschatz, who is here in the Nuremberg prison, was with the Defendant Göring since 1933, first as adjutant and later as minister, as Chief of the

Ministerial Office. He is, therefore, informed about all the principal events of that time. I have named him as a witness for a number of facts which are individually contained in my written statement, but especially that he took part in a conference which took place at the beginning of August 1939 in Soenke Nissen Koog, at which Göring met with English negotiators in order to bring about, with them, the possibility of a peaceful solution of the difficulties already existing at that time between Germany and Poland. At that time he declared to the English negotiators that a war must not take place under any circumstances, and that they must endeavor to settle these differences peacefully.

Furthermore, he has made known statements, made by Göring during the past years, particularly 1936 to 1939, from which it can be seen that the intention of the Defendant Göring was to avoid a war, if possible. He declared that the policy of the Reich should be conducted in such a way that a war could not break out under any circumstances.

Furthermore, this witness knows about the attitude of Göring when he first heard from Hitler that Hitler intended to attack Russia.

Finally he is also informed about the social attitude of Göring, whom he had ample opportunity to know very well, particularly after 1939.

Those are, generally, the facts about which Bodenschatz could testify here as a witness.

SIR DAVID MAXWELL-FYFE (Deputy Chief Prosecutor for the United Kingdom): May it please the Tribunal, may I say one general word about the procedure of the Prosecution?

My colleagues in all the delegations have asked me to deal primarily with these particular applications. There will be some of them, if the Tribunal pleases, on which certain of my colleagues would like to add a word as they have special interest in them. But in general, and on the whole, I shall deal with the applications for the Prosecution.

May I say that the Prosecution has proceeded on this principle, that if there is any point of relevance in a witness for whom application is made, they will not, of course, object. But they want to make it quite clear, so the Tribunal will understand, that they are not, by making no objections, accepting the position that every point set out in the document or mentioned by counsel is admitted to be relevant. By making no objection they are simply admitting that there is some relevant point in the matter put forward.

On that basis—and the Tribunal will understand why I have to be careful in the matter—the Prosecution makes no objection in the case of General Bodenschatz.

THE PRESIDENT: Yes, Dr. Stahmer.

DR. STAHMER: I further name as a witness the former Gauleiter, Dr. Uiberreither, who is at present here in the prison at Nuremberg. Uiberreither is to offer the following evidence. He can give information about a speech . . .

THE PRESIDENT: May I say this to Sir David that perhaps, in view of what you have said, you might be able to indicate at the opening of Dr. Stahmer's motion in respect to each witness whether the Prosecution has any objection to the witness. Perhaps that would make it easier for him to deal shortly with it.

SIR DAVID MAXWELL-FYFE: May I say that we have no objection to Dr. Uiberreither, on the same basis as I mentioned.

THE PRESIDENT: I only meant that if Counsel for the Prosecution indicate to us that they have no objection to a particular witness, then Dr. Stahmer can deal more shortly with the witness.

DR. STAHMER: Surely.

THE PRESIDENT: Just inform us what the relevance of the evidence is, but do it shortly because the Prosecution has got no objection.

DR. STAHMER: Yes.

THE PRESIDENT: In the case of this particular witness, would it not be equally convenient to the Defense, for the purpose of shortening things, to have this evidence taken either out of an affidavit or by interrogatories?

DR. STAHMER: Regarding the witness Uiberreither, I have no objections if I have the possibility of getting a statement from the witness himself.

THE PRESIDENT: Before you pass on, you might just tell us what the substance of the evidence is.

DR. STAHMER: Uiberreither was present when Göring, in the summer of 1938, delivered a speech before the new Gauleiter of Austria in which he dealt with the policy of the Reich and in which he spoke about the goal and purpose of the Four Year Plan. The witness, furthermore, was present when Göring, some time after 10 November 1938, that is, after the demonstration against the Jews, called all the Gauleiter to Berlin and there criticized those actions very severely. Those are the two subjects of evidence.

THE PRESIDENT: Very well. Then we can pass on to Number 3 now.

DR. STAHMER: The witness is Lord Halifax. Referring to this witness . . .

SIR DAVID MAXWELL-FYFE: If I may indicate—the interrogatories have been served on and answered by Lord Halifax. The Prosecution has no objection to the interrogatories. Of course, it objects to his being called as a witness, but we understand that the Tribunal and Dr. Stahmer agree to Lord Halifax being dealt with by means of interrogatories, and we have no objections.

DR. STAHMER: I am satisfied with the reply to my interrogatories which I have already received and I do not insist on summoning the witness.

THE PRESIDENT: Very well.

DR. STAHMER: The next witness is the witness Forbes. I may say that also in this case the submission of an interrogatory was approved and the interrogatory, as far as I have been able to determine, has been sent out already. I have not yet received an answer.

SIR DAVID MAXWELL-FYFE: Well, we have no objection to Sir George Ogilvie-Forbes being dealt with by interrogatories. I will do my best to see that the answer will be forthcoming as soon as possible. My recollection—I wasn't able to check it—is that Sir George is at a foreign capital, but I will do my best to see that the answers are brought and certainly will do everything to help on the point.

DR. STAHMER: Whether I can ultimately forego him I shall naturally be able to judge only when I have the interrogatory before me. It may be that in regard to some questions he has given an insufficient answer.

THE PRESIDENT: Do you mean Dahlerus or Sir George Ogilvie-Forbes?

DR. STAHMER: Forbes.

THE PRESIDENT: Yes. Well, the interrogatories will be submitted to you as soon as they are answered.

DR. STAHMER: Yes, Sir.

THE PRESIDENT: And I think the same is true of Dahlerus. Interrogatories have been granted for him.

DR. STAHMER: With regard to the testimony of Dahlerus I have to say the following: The testimony of this witness seems to me so important that an interrogatory could not exhaust all his knowledge and therefore I ask to have the witness called so that he can be interrogated here in court.

If this should not be possible, I ask for the opportunity to question him personally at Stockholm. Dr. Siemers knows Dahlerus personally, and he will make a statement concerning this witness.

DR. WALTER SIEMERS (Counsel for Defendant Raeder): I have known Mr. Dahlerus personally for many years. Dahlerus has written to me about the fact that Dr. Stahmer intends to call him as a witness. Mr. Dahlerus, in principle, is prepared to come to Nuremberg without further ado if the Court approves. As soon as the Tribunal agrees, Mr. Dahlerus, as far as I can deduce from his letter, will certainly be ready to come personally.

I wish to say something else, as a matter of principle. In the case of important witnesses who, as for instance Mr. Dahlerus, could answer questions which are of far-reaching historic importance, most probably not only one defendant's counsel will want to ask questions, but the subject concerns several Defense Counsels. Therefore, an interrogatory which comes only from Dr. Stahmer, would, in my opinion, not be sufficient in such a case. I therefore ask the admission of the witness also from this point of view.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the position as to the Witness Dahlerus is that Dr. Stahmer has put in interrogatories consisting of 62 questions. I make no complaint of that at all. I only bring it to the notice of the Tribunal to show that Dr. Stahmer has certainly covered the ground.

In addition, if the Tribunal would turn for a moment to Dr. Stahmer's application for documents, they will see that Item 26 is Dahlerus' book—if the Tribunal will pardon my Swedish—*Sista Forsoket*, (*The Last Attempt*). That is a quite lengthy book, dealing in detail with this point, and it is desired, and the Tribunal has allowed, that Dr. Stahmer will use it.

In addition, the position of Mr. Dahlerus has been the subject of interrogatories to Lord Halifax, who was then the British Foreign Minister, and to Sir George Ogilvie-Forbes, who was then Counsellor in Berlin, and on the main point of the matter, that Dr. Dahlerus had certain negotiations and paid certain visits, there is no dispute.

In my respectful submission, the defendant is well covered by the interrogatories, the connected interrogatories to Lord Halifax and Sir George Ogilvie-Forbes; and the book, and the evidence of the Defendant Göring himself; and it is unnecessary to investigate this matter further as to whether Mr. Dahlerus wishes to come and can come and should come from Sweden.

THE PRESIDENT: Sir David, may I ask you, has the Prosecution administered cross-interrogatories to Dahlerus?

SIR DAVID MAXWELL-FYFE: No.

THE PRESIDENT: There was another question. Did the Defendant Raeder's counsel apply to have Dahlerus as a witness?

SIR DAVID MAXWELL-FYFE: No. The only other mention that I know of is by the Defendant Ribbentrop's counsel on a limited point.

DR. HORN: Before the Court makes a decision about the witness Dahlerus, I would like to inform the Tribunal that I have asked for that witness for the Defendant Von Ribbentrop. The witness Dahlerus, in the decisive hours before the outbreak of World War II in 1939, played a decisive role. The witness Dahlerus particularly can give important evidence about the last document which contained the conditions for further negotiations with Poland. This document was the cause of the second World War. I believe that this should be sufficient reason to call the witness Dahlerus to come here, especially since Dr. Siemers has declared that he knows that the witness is prepared to come on his own initiative.

DR. STAHMER: In view of the importance of this motion to me, may I in addition state the following: I have sent an interrogatory with 52 questions; but I do not believe that these questions really exhaust the subject matter of the evidence. For it is impossible, as I said before, to summarize everything that the witness knows strategically and to bring it out in such sequence that the Tribunal can have a complete picture of the important function which Dahlerus exercised at that time in the interests of England as well as of Germany.

THE PRESIDENT: Very well, the Tribunal will consider that point.

DR. STAHMER: As the next witness, I have named Dr. Baron Von Hammerstein, who was Judge Advocate General in the Air Force and who is at this time a prisoner of war either in American or British hands.

SIR DAVID MAXWELL-FYFE: With regard to Dr. Von Hammerstein, the Tribunal allowed interrogatories on the 9th of February; and Dr. Stahmer has not yet submitted the interrogatories; and the witness is not yet located. I have no objection to interrogatories. It seems as if this is essentially the type of witness that interrogatories would be most helpful with. He was the equivalent, as I understand it, of our Judge Advocate General of the Air Force, and interrogatories as to procedure, as foreshadowed in this application, would be a matter to which the Prosecution takes no objection at all. If he can be found, then Dr. Stahmer can administer the interrogatories as soon as he likes.

DR. STAHMER: As far as I can find out, I have not received any resolution that an interrogatory should be submitted, but I would nevertheless like to ask to call Hammerstein as a witness.

THE PRESIDENT: You must be mistaken about that, Dr. Stahmer, because upon our documents the right to administer interrogatories was granted on the 9th of February.

DR. STAHMER: I cannot find it at the moment. I must check on it first; but in any case I am making the request.

Hammerstein has known the defendant for many years, specifically in a field which is of greatest importance for the forming of an opinion concerning the defendant's attitude towards justice and also towards the treatment of the population in occupied territory and of prisoners of war, and here also in my opinion, it will be decisively important that the witness should give to the Tribunal detailed information about these facts and describe them in a manner which cannot possibly be expressed in an interrogatory or in answer to an interrogatory.

SIR DAVID MAXWELL-FYFE: I am told, My Lord, that the interrogatories have been sent in and reached the Tribunal Secretariat a day or two ago. I don't want to add to my point.

DR. STAHMER: I believe that is correct.

THE PRESIDENT: Yes, Dr. Stahmer, the next one?

DR. STAHMER: The next witness is Werner von Brauchitsch, Jr., colonel in the Air Force, son of General Field Marshal Von Brauchitsch, who is here in the courthouse prison in Nuremberg.

SIR DAVID MAXWELL-FYFE: I have no objection to Colonel Von Brauchitsch.

DR. STAHMER: This witness is to give information about the attitude of the defendant with regard to lynch justice, to terror fliers, and with regard to his attitude towards enemy fliers in general.

Next, General of the Air Force Kammhuber, who is a prisoner of war either in American or British captivity.

SIR DAVID MAXWELL-FYFE: With regard to General Kammhuber, interrogatories were also allowed on the 9th of February of this year, and they have not been submitted, as far as my information goes, and again the witness has not been located. I have no objection to interrogatories, and when the interrogatories are received, probably Dr. Stahmer could decide whether it is necessary to call the witness.

I remind the Tribunal that this sketch was introduced in quite guarded terms by Colonel Griffith-Jones, and therefore it seems to me the sort of subject that might well be investigated by interrogatories.

THE PRESIDENT: Sir David, do you think that some agreed statement could be put in about this?

SIR DAVID MAXWELL-FYFE: If we could see the result of the interrogatories, we would certainly be willing to consider that, because as the Tribunal will no doubt remember, it was the plan showing the Luftwaffe commands in Warsaw and other districts outside Germany, and Colonel Griffith-Jones, in dealing with it, said that he was not stating positively that it had been placed before the Defendant Göring. Therefore, if we have a statement, we should be most ready to consider it, and, if possible, agree on the point.

THE PRESIDENT: Yes, Dr. Stahmer?

DR. STAHMER: General of the Air Force Koller, a prisoner of war in American hands.

SIR DAVID MAXWELL-FYFE: The Prosecution has no objection to General Koller. The Tribunal ordered on 26 January that he should be alerted. He has not yet been located, but if he is located, then clearly the matters suggested are relevant in the view of the Prosecution.

DR. STAHMER: Colonel General Student, a prisoner of war in English hands.

SIR DAVID MAXWELL-FYFE: The Prosecution has no objection to this witness. If Your Lordship will allow me one moment, I have not had the chance to take this particular point up with my French colleague. As far as I know there is no objection. I would like to verify that.

[*There was a pause in the proceedings.*]

I am grateful to Your Lordship. My French colleague, M. Champetier de Ribes, agrees that he has no objection.

DR. STAHMER: General Field Marshal Kesselring, who is in the courthouse prison in Nuremberg at the present time.

SIR DAVID MAXWELL-FYFE: This is on the same point, and the Prosecution takes the same attitude: No objection.

THE PRESIDENT: We would like to hear some explanation from you, Dr. Stahmer, on what the evidence—what is the relevance of Field Marshal Kesselring's evidence.

DR. STAHMER: The facts about which he knows I consider relevant because the Prosecution has declared that Rotterdam had been attacked without military necessity, and that the attack, in addition, took place at a time when negotiations were already under way for the capitulation of the city.

THE PRESIDENT: You do not say where General Student is, but General Student and Field Marshal Kesselring are to give evidence, as I understand it, on exactly the same point, and therefore, if Field Marshal Kesselring were called as a witness, wouldn't it be sufficient to give interrogatories or get an affidavit from General Student?

DR. STAHMER: Yes, I agree.

SIR DAVID MAXWELL-FYFE: Agreed, My Lord.

THE PRESIDENT: Very well.

DR. STAHMER: Dr. Von Ondarza, Chief Surgeon of the Luftwaffe, whose whereabouts are unknown to me, but who has presumably been released from captivity and may be at his home in Hamburg now.

SIR DAVID MAXWELL-FYFE: The next two witnesses are really on the same point. As I understand it, I thought that—my copy is very bad, but I read it—the defendant was not informed of the experiments conducted by two doctors—the first one must be Rascher, I think, and Dr. Romberg—on inmates of Dachau and other places; that the defendant himself never arranged for any experiments whatsoever on prisoners, and Field Marshal Milch—Paragraph A—said that the defendant was not informed of the letters exchanged between the witness and Wolff concerning the experiments conducted by Dr. Rascher in Dachau, in which prisoners were employed, and the witness did not even inform the defendant of this subject; and that Dr. Rascher, on assuming his activity in Dachau, withdrew from the Luftwaffe and joined the SS as a surgeon.

Clearly evidence on that point may be relevant. We have no objection to the witness being called.

It is the position with regard to the first witness, Dr. Von Ondarza, that he is not located. The Tribunal ordered that he should be alerted on 26 January. Field Marshal Milch is in the prison. Again I should have thought that in these circumstances we would make no objection to Field Marshal Milch being called on this point, and if the surgeon, Von Ondarza can be located, then I shall agree to interrogatories, but I don't feel very. . .

THE PRESIDENT: Would that be agreeable to you, Dr. Stahmer, if we were to grant the application to call Field Marshal Milch on this point and were to allow an interrogatory for the other witness when he has been located?

DR. STAHMER: I have also examined the question whether the evidence would be cumulative. That is not the case. The evidence to be offered by Milch is slightly different, and the Defendant Göring considers it important to have Ondarza as a witness because Dr. Ondarza was his

physician for many years and therefore is well informed, and he is furthermore to tell us that the Defendant Göring did not know anything about the experiments which were made with these 500 brains. That is not yet in my application, but I have just found out about that. There was a long deposition which was submitted by the Prosecution concerning these 500 brains. I protested against that at the time and I was told that I should make this objection at a specified time.

THE PRESIDENT: Very well, the Tribunal will consider what you say upon that. You can turn now to Körner.

DR. STAHMER: State Secretary Paul Körner, who is here in Nuremberg in the courthouse prison. . .

SIR DAVID MAXWELL-FYFE: There is no objection on the part of the Prosecution.

THE PRESIDENT: Dr. Stahmer, in our documents it is stated that the suggested witness Paul Körner is not located, but in the document of your application you say that he is in the Nuremberg prison.

DR. STAHMER: I did receive that information at one time. At this moment I cannot say where my information comes from.

SIR DAVID MAXWELL-FYFE: I am afraid I do not know, but I could easily find out for the Tribunal. I will ask if the matter can be checked.

THE PRESIDENT: If you would, yes.

SIR DAVID MAXWELL-FYFE: Yes, I have just been given a roster of internees on the 19th of February and he does not appear to be in that list.

THE PRESIDENT: In the Nuremberg prison?

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: That is the information that I had.

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: Well, will you go on about this evidence, Dr. Stahmer?

DR. STAHMER: Körner was a state secretary since 1933 and he can testify about the purpose behind the establishment of concentration camps in 1933, about the treatment of the people imprisoned there, and that Göring was in charge of these camps only until 1934. He can also testify about the measures and regulations, the purpose and aim of the Four Year Plan, and also about the attitude of the defendant after he had been informed in November 1938, about the anti-Jewish incidents.

THE PRESIDENT: Very well, the Tribunal will consider that.

DR. STAHMER: Dr. Lohse, art historian, either in an English or an American camp.

SIR DAVID MAXWELL-FYFE: My information, My Lord, is that interrogatories were allowed on the 9th of February. They have not yet been submitted, and the witness is not yet located. I have no objection to interrogatories with regard to Dr. Lohse or the next witness, Dr. Bunjes, who deals with the same point.

THE PRESIDENT: Yes.

DR. STAHMER: Also the testimony of the witness Lohse seems to me important—considering the weight of the accusations which have been made here against the defendant—so important that I ask to hear him as witness here before this Tribunal. The question is a very short one: He is to testify as to what the defendant's attitude was toward the acquisition of art objects in the occupied territories. That is, to be sure, a very short subject, but for the judgment of the defendant it is extremely important; and the accusation made by the Prosecution in this respect is extremely serious.

THE PRESIDENT: You are dealing now with Dr. Bunjes?

DR. STAHMER: No, still with Lohse.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal; the interrogatories apparently seemed a suitable method to the Tribunal, and the Prosecution respectfully submits that we should see what Dr. Lohse can say in answer to the interrogatories, and then Dr. Stahmer can, if necessary, renew the application.

THE PRESIDENT: Yes, is there anything you want to say about Dr. Bunjes?

DR. STAHMER: The last witness is Dr. Bunjes, the art historian.

SIR DAVID MAXWELL-FYFE: He seems to be, My Lord, in exactly the same position as Dr. Lohse, and I do not think I need repeat what I said.

THE PRESIDENT: Except that he may be located. I do not know where he is.

SIR DAVID MAXWELL-FYFE: Yes, I think this is the first reference to Dr. Bunjes, and therefore we have not been able to find out whether he can be located or not.

THE PRESIDENT: Yes, perhaps Dr. Stahmer knows.

DR. STAHMER: I am told just now that Dr. Lohse is in the camp at Hersbruck. That is here in the vicinity of Nuremberg.

SIR DAVID MAXWELL-FYFE: Yes, I shall have inquiries made about him.

THE PRESIDENT: Dr. Bunjes—do you know where he can be located?

DR. STAHMER: No; his home is in Trier, but whether he is there I do not know.

THE PRESIDENT: Yes. Very well, that concludes your witnesses, does it not?

DR. STAHMER: Yes, Sir.

THE PRESIDENT: Are those all the witnesses that you are applying for?

DR. STAHMER: Yes.

THE PRESIDENT: As far as you know, is that your final list?

DR. STAHMER: I cannot yet foresee how far the Prosecution, which has not finished the presentation of its case, will make it necessary for me to make further applications.

THE PRESIDENT: Before we consider your documents the Tribunal will adjourn.

[*A recess was taken.*]

THE PRESIDENT: Perhaps we can deal with the documents more as a whole. Have you anything to say about them?

DR. STAHMER: Mr. President, may I make a statement concerning the two witnesses, Koller and Körner? I was just told that Koller was Chief of Staff of the Air Force, and Körner a lower staff officer. Both were repeatedly questioned by the occupying forces. This indication may make it easier and more possible to locate the witnesses.

SIR DAVID MAXWELL-FYFE: I will note that point and, of course, we will do our best to help in locating them.

THE PRESIDENT: Which two witnesses are those?

SIR DAVID MAXWELL-FYFE: Koller and Körner. They are both witnesses to whom I made no objection.

THE PRESIDENT: Yes, very well.

SIR DAVID MAXWELL-FYFE: It might be convenient, if the Tribunal please, if I were to explain the general position of the Prosecution with regard to the documents, and then Dr. Stahmer could deal with these points because they fall into certain groups which I can indicate quite shortly. There are three documents which are not in evidence, but to which there is no objection: Number 19, the Anglo-German Naval Agreement. That is a treaty, of course, and the Court can take judicial cognizance of it.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: And the Constitution of the German Reich, the Weimar Constitution of 11 August 1919. Again I shall assume the Court will take judicial cognizance of it.

THE PRESIDENT: Certainly.

SIR DAVID MAXWELL-FYFE: And Number 30, Hitler's speech of 21 May 1935.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Then there are a number which are already in evidence as far as I know:

Number 4, the Rhine Pact of Locarno; Number 5, the Memorandum to the Locarno Powers of the 25th of May 1935; Number 6, Memorandum to the Locarno Powers of the 7th of March 1936; Number 9, the Treaty of Versailles; Number 17, the speech by the Defendant Von Neurath, of 16 October 1933; Number 18, the proclamation by the Reich Government, of the 16th of March 1935. And then Number 7 was referred to but not read. That is the speech by the Defendant Von Ribbentrop before the League of Nations on the 19th of March 1936. All these are in or have been referred to and, therefore, there is no objection as far as they are concerned.

Then we come to a series of books. Dr. Stahmer has at the moment referred to the whole book: Number 1, the late Lord Rothermere's book, *Warnings and Prophecies*; Number 2, the late Sir Nevile Henderson's *Failure of a Mission*; Number 3, the references to a number of years of the *Dokumente der Deutschen Politik*.

THE PRESIDENT: Those appear to be repeated, don't they, in the ones that follow or some of them? Six and seven, for instance, are taken from those volumes, aren't they, of the *Deutschen Politik*?

SIR DAVID MAXWELL-FYFE: Yes, apparently they are, My Lord. If I might just give Your Lordship the others so that you have the group together:

Number 8, Mr. Fay's book on the *Origin of the World War*, the first World War; Number 20, Mr. Winston Churchill's book, *Step by Step*; Number 24, the Defendant Göring's book, *Building up a Nation*; Number 26, to which I have already referred, is Mr. Dahlerus' book, *The Last Attempt*.

With regard to these, there are two points: First of all, it is mechanically impossible to translate the whole of these books into Russian and French. I think most of them are in English already; secondly, the relevancy of the book cannot be decided until we see the extract which Dr. Stahmer is going to use. So the Prosecution submits that Dr. Stahmer should at the earliest

opportunity let us know what are the extracts on which he relies so that they can be translated and we can decide as to whether they are relevant or not.

Now the fourth category of books or documents, where either the issue is not clear or insofar as it is clear, it is obviously irrelevant. One to which I have already referred comes into this:

Number 8, Fay on *The Origin of the First World War*. Number 10, speech by President Wilson, of 8 January 1918—that is the 14-point speech; Number 11, the note of President Wilson, of 5 November 1918—that is the Armistice note; Number 12, a speech by M. Paul Boncour, of 8 April 1927; Number 13, a speech by General Bliss in Philadelphia, which is before 1921, because it is quoted in *What Really Happened at Paris*, published in 1921; Number 14, a speech by the late Lord Lloyd George of 7 November 1927; Number 15, an article by Lord Cecil, on the 1st of March 1924, and another on the 18th of November 1926; Number 16, Lord Lloyd George's memorandum for the peace conference of 25 March 1919.

May I pause there. As far as the Prosecution can judge, the only relevancy of these books and documents is to the issue of whether the Treaty of Versailles accorded with the 14 Points of President Wilson. The Prosecution submits that that is poles removed from the issues of this Trial and is just one of the matters against which the whole intendment of the Charter proceeds and which should not be gone into by this Court. It may be that I am wrong, or so it seems, difficult, in view of the collection of documents, to suppose that there is another issue, but it may be, and I put it in this way, that Dr. Stahmer ought to indicate quite clearly what is the issue to which these documents are directed and, where the document is long, to indicate what extract he refers to. But if the issue be that that I have referred to, then in the submission of the Prosecution—I speak for all my colleagues—we submit that it is a completely irrelevant matter.

I am sorry; I should have included in that same category Number 21 and 22, which are two letters of General Smuts in 1919. They ought to be added.

Then I have already dealt with Number 20, Mr. Churchill's book. Apart from the question of extracts, again the Prosecution submits that it ought to be made clear what is the issue for which that book has been quoted.

Number 23 is a missive of M. Tchitcherin, stated to be the Foreign Commissar of the U.S.S.R., to Professor Ludwig Stein. Again the Prosecution has not the slightest idea as to what is the issue to which that is directed.

The Defendant Göring's book, I have already dealt with, and I ask that we should get extracts. Number 28, General Fuller's book on *Total War* or

an essay on *Total War*—again the Prosecution does not know the issue at which it is directed.

Then my fifth category, Number 27, which is the White Books of the German Foreign Office.

And I draw attention to Number 4, document to the Anglo-France policy of extending the war; Number 5, further document as to the western policy of extending the war; Number 6 are secret files of the French General Staff; Number 29, documentations and reports of the German Foreign Office regarding breaches of the Hague regulations for land warfare and Crimes against Humanity committed by the powers at war with the German Reich. These last documents seem to raise quite clearly the issues of *tu quoque*: If the Reich committed breaches of the laws and usages of war, other people did the same thing. The submission of the Prosecution is that that is entirely irrelevant. The standard is laid down by the conventions and it is no answer, even if it were true that someone else had committed breaches. But, of course, there is the additional reason, that it would be quite impracticable and intolerable if this Tribunal were to embark on the further task of investigating every allegation, however tenuously founded, that some one else had not maintained these conventions.

It is in the submission of the Prosecution—again I speak for all my colleagues—a matter which is completely irrelevant; and therefore we object to any evidence, whether oral or documentary, intended on that point. Of course, we all along have taken the view that we have no objection to the Defense Counsel having access to these documents in order to use them for refreshing their memory as to the background, but we object to their introduction in evidence for the reasons that I have given.

THE PRESIDENT: Yes, Dr. Stahmer, perhaps you could say in the first instance whether you agree, that so far as the books are concerned that you would be willing to provide the extracts upon which you rely? You cannot expect the Prosecution or the Tribunal to get the whole books translated.

DR. STAHMER: This was also not my intention, and I believe that I prefaced my list of documents with a remark in which, under Number 2 I had pointed out, and had declared myself willing to specify the quotations. To that extent, of course, the objection in itself is in order.

THE PRESIDENT: Yes, I see. Very well.

DR. STAHMER: Another topic the Prosecution has attacked is the books which I have cited, and which refer to the Treaty of Versailles. Here also I will state specifically to what extent I wish to use quotations from these

books. As a matter of principle, however, the Defense must be granted the right to present its point of view in this matter, since after all. . .

THE PRESIDENT: Dr. Stahmer, all these books which Sir David referred to, of which the Tribunal will take judicial notice, of course, you can make comment upon them if you wish, as on any document of which the Tribunal takes judicial notice.

[*There was a pause in the proceedings while the Judges conferred.*]

THE PRESIDENT: Oh, I thought you were referring to the Treaty of Versailles.

DR. STAHMER: No; with the literature concerning the Treaty of Versailles.

THE PRESIDENT: You are now dealing with the ones which Sir David itemized as follows: 8, 10, 11, 12, 13, 14, 15, 16, 21, and 22?

DR. STAHMER: Yes.

THE PRESIDENT: Very well.

DR. STAHMER: Since an essential accusation made by the Prosecution is that the defendants violated the Treaty of Versailles, the Defense naturally has to take a stand relative to the question as to whether and to what extent the breach of the treaty took place and whether and to what extent that treaty was still valid. To that extent, at least, the books and dissertations which deal with these questions are important. I believe that an understanding of this question in detail can be reached only after I have submitted the quotations, and that will take place at the beginning of the presentation of testimony. I have not been able to accomplish the work.

THE PRESIDENT: Aren't you confusing the question of validity with the question of justice?

DR. STAHMER: No, Sir.

THE PRESIDENT: Go on.

DR. STAHMER: I believe that in this sphere also the Defense is justified in demanding the presentation of the *White Books*, because the contents of these *White Books* will, to a great extent, be of importance in the question of the war of aggression; and to that extent also a reference to these books has significance. Here also, I believe, it will only be possible to make a decision after the individual quotations from these *White Books* have been read.

Furthermore, the presentation of the reports concerning the breaches of the Hague Convention has been demanded. I believe that this motion cannot be rejected with the remark that it is not concerned with the question whether such breaches were committed on the other side too. This fact, in

my opinion, is of importance in two ways. First of all, to reach a just decision one has to make sure whether the conduct on the other side was really correct and beyond reproach and it is furthermore of importance because it involves the question of whether the defendants were not resorting to retaliatory measures.

THE PRESIDENT: I think you have dealt with each topic with the exception of Numbers 20, 23, and 28. Number 20 is Mr. Winston Churchill's book; 23 is Tchitcherin's, and 28 is General Fuller's book. We will take those.

DR. STAHMER: Book Number 20, Churchill's *Step by Step*—here we are concerned with statements in which Churchill at one point expresses his opinion as to whether England, by the Naval Treaty of 1935, had not sanctioned Germany's renunciation of the Versailles Treaty.

Furthermore, this book is of importance as far as I can see it now, in evaluating the extent to which England rearmed, and finally at various points in that book there are references to Hitler's personality.

SIR DAVID MAXWELL-FYFE: I say with the greatest respect to Dr. Stahmer that he has reinforced my point, that if Dr. Stahmer is putting forward the thesis that in order to reach a proper decision on the matters before the Tribunal it is necessary to investigate whether other belligerents have committed breaches of conventions, then, as I say, I join issue with him *in toto*. I cannot add to the matter. But with regard to Mr. Churchill, Dr. Stahmer makes three points; one, that some passages in the book give color to the idea that by the naval agreement the validity of the Versailles Treaty was affected. That is a point to which there are obviously many answers, including the facts that France was a party to the treaty and the United States was a party to a treaty in the same terms. But clearly Mr. Churchill's view expressed in a book, as to the legal effect of one treaty or another, is in my submission irrelevant.

Equally irrelevant is the British rearmament and the personality of Mr. Churchill himself. And I respectfully submit, without going into detail, that Dr. Stahmer has, by his examples, confirmed the argument that these matters are irrelevant to the issues before the Court. I do not wish to say more.

THE PRESIDENT: Dr. Stahmer, the Tribunal would like to know if you would go back from this question, or if you like, deal with anything you have to say about Sir David Maxwell-Fyfe's observations about Mr. Churchill's book. If you prefer to do that, do that now.

But afterwards, and before you finish your argument upon these documents, the Tribunal would like to hear you somewhat further about

Document 8 and following up to 22, in order that you should develop your argument as to how those documents can be relevant. For instance, Document 10 and Document 11, the speeches and notes of President Wilson. How can such documents as that have any bearing upon this Trial or indeed upon the validity of the Treaty of Versailles? But take it in your own order.

DR. STAHMER: These speeches form the foundation of the Versailles Treaty and they are significant therefore for the interpretation of the treaty. Consequently it is important to refer to the speeches, in order to judge the contents of the treaty and the question whether Germany rightfully or wrongly renounced the treaty, that is, whether thereby a breach of the treaty took place, or whether the treaty actually gave Germany the right to withdraw.

THE PRESIDENT: Is that all you wish to say about that?

DR. STAHMER: Yes.

THE PRESIDENT: Very well. Do you wish to say anything further about Number 20, 23, or 28?

DR. STAHMER: I have spoken about 20. Number 23 refers to the same questions regarding the interpretation and the contents of the treaty.

THE PRESIDENT: The statement by the Foreign Commissar of the U.S.S.R. in 1924. . . . Very well, you say that it is relevant on the interpretation of the Treaty of Versailles. And General Fuller's book. . .

DR. STAHMER: General Fuller also refers in this speech to the personality of Hitler and to the question of rearmament.

THE PRESIDENT: Yes, that concludes them.

[*There was a pause in the proceedings while the Judges conferred.*]

The Tribunal will consider their decision upon your witnesses and upon your documents. Have you anything further to say upon it?

DR. STAHMER: No.

[*Professor Dr. Franz Exner approached the lectern.*]

THE PRESIDENT: Yes, Dr. Exner?

PROFESSOR DR. FRANZ EXNER (Counsel for Defendant Jodl): May it please the Court, I take the liberty of adding something for the specific reason that there is danger that evidence may be refused which is of crucial importance for my client also. It concerns evidence which will show that War Crimes and violations of international law were committed by the other side too. The Prosecutor has said that this is irrelevant as far as we are concerned here in this Trial. The Defense certainly does not think of making

defendants of the prosecutors, but this point is certainly not irrelevant, specifically because:

First, it has to do with the concept of retaliation in international law. Retaliation justifies an action, which under normal circumstances would be illegal. That is to say, retaliation then has this significance when the individual action is the answer to a violation of international law committed by the other side. If, therefore one wants to justify one's own action from the point of view of retaliation—one can only do so by proving that violations of law have preceded it on the other side.

Secondly, I want to add an important point. It is well known that this war in the beginning was conducted relatively humanely and. . .

THE PRESIDENT: Dr. Exner, you will forgive me, the argument which you are presenting to us was fully developed by Dr. Stahmer and will, of course, be fully considered by the Tribunal.

[*There was a pause in the proceedings while the Judges conferred.*]

THE PRESIDENT: Would you continue then, Dr. Exner?

DR. EXNER: The second point is the following: It is well known that at the beginning of this war international law was respected on both sides and that the war was conducted humanely. It was only in the second phase of the war that a terrible bitterness among the fighting powers developed and on both sides things occurred which international law cannot sanction. In my opinion, it is entirely important in the judgment of a crime, whatever crime that may be, to consider the motive. If one does not know the motive of the action, one cannot judge the action itself. And the bitterness which was started, purely psychologically, by the manner in which the war was conducted on one side and on the other, was the motive for actions which normally cannot be justified.

I therefore ask the Tribunal to consider carefully before this evidence is declared irrelevant.

[*There was a pause in the proceedings while the Judges conferred.*]

DR. SIEMERS: I should like to mention a matter of principle with reference to the manner in which the relevancy of evidence is being discussed. If I understand the Tribunal correctly, then we should talk today about the relevancy of those witnesses and documents which are still to be brought here. That was exactly what was stated in the Tribunal's decision of 18 February.

Now, however, the Prosecution has brought the discussion round to documents which we already have in our hands. I ask the Tribunal to understand me correctly if I protest unequivocally to this. In no case was it

possible to discuss the relevancy of the Prosecution's documents weeks before they were presented. If I have documents in my possession, as is the case with most of the documents about which we have spoken, then, as defendant's counsel, I must be able to submit these documents without the consent of the Prosecution.

Sir David has said that the relevancy of books which are here in the building is to be examined after we have presented the extracts, and then the Prosecution will decide whether they are relevant. Sir David has also said that numerous books which are here are not relevant. If this motion by the Prosecution is granted, then that is an extraordinary limitation of the Defense which I cannot accept without protest.

The Prosecution was permitted to submit documents. The Court has declared that each letter and each document could be presented and therefore I do not understand why we are now arguing about the relevancy of documents which are at hand, since, in my opinion, the Court has already said that we will argue only about the relevancy of documents which are still missing.

THE PRESIDENT: I thought that on behalf of the Tribunal I had explained this morning—in answer to the argument of Dr. Horn on behalf of the Defendant Ribbentrop—what the Tribunal was seeking to do today, was to follow the provision of Article 24(d), which provides that the Tribunal shall ask the Prosecution and Defense what evidence, if any, they wish to submit to the Tribunal, and the Tribunal shall rule on the admissibility of any such evidence, and I pointed out that the reason why the Defense had been to some extent treated in a different way from the Prosecution was because in the case of the Defense the Tribunal has got to find all the witnesses and bring them here, and the Tribunal has got, in many instances, to find the documents or supply the documents; and therefore it isn't reasonable that the Tribunal should be asked to bring witnesses or documents here and it also is not in accordance with the Charter, until the Tribunal has heard argument upon the admissibility of the witness or the document. And that is what it is doing. I thought that I had fully explained that in answer to Dr. Horn's argument.

It is perfectly true that you cannot rule finally on the admissibility of a document or the admissibility of a witness until you have actually heard the passage in the document which is relied upon or the questions put to the witness which are said to be relevant or irrelevant. Therefore, the final determination upon the question of admissibility will be when the witness is put in the witness-box and asked questions or the document or the passage from the document is actually produced.

DR. SIEMERS: Yes. Excuse me, but I believe that this still does not answer one point. It is undoubtedly true that we are arguing here about documents and witnesses which are not at our disposal. But it is a different thing in the case of those documents which are already here in this building and which are at our disposal as Defense Counsel. To give an example:

The *White Books* which Sir David has mentioned are here; why should we argue now about the relevance of this evidence? This question has nothing to do with the delay of the Trial, nor with the procurement of documents.

THE PRESIDENT: Do you wish to say anything, General Rudenko?

GEN. RUDENKO: Yes, Mr. President. Sir David has already expressed the point of view of the Prosecution on the question raised by the Defense Counsel. I should like to add to what has already been said by Sir David regarding the statements made here by the Defense Counsel.

The position of Defense Counsel Exner is that the Defense would not intentionally turn the prosecutor into a defendant and that the Defense will resort to a method of analysis and explanation of events which will establish the motives, for in its opinion, the motive is unknown, and in order to determine this motive it is necessary to examine the question: Were the Geneva and Hague Conventions at least violated by other powers at war with Germany? It stands to reason in my opinion—and I believe that I am also expressing the point of view of all the Prosecution—it is really strange to hear such a statement on the part of a lawyer after a 3-months' trial and after the presentation of a mass of evidence by the Prosecution.

The Defense unquestionably has full right to submit proof—documents and witnesses—on all counts of the charges lodged against the defendants; and, as is evident from this morning's session, when the Prosecution examined the request on behalf of the Defendant Göring, as is known to the esteemed Tribunal, the Prosecution, in its opinion, gave its consent, in major part, to the calling of witnesses. But in the question raised by Dr. Exner we have here positive divergences of opinions and divergences of principle.

The Prosecution considers it impossible to diverge from the one fundamental and decisive factor, that this is a trial of the major German war criminals. The Tribunal is investigating atrocities perpetrated by the Hitlerite fascists and as a result of this position, and not losing sight of this fact, the Defense certainly could submit, after examining and analyzing the evidence already presented by the Prosecution, this or that evidence which in some manner could change individual details. But it is, not admissible and it would indeed be a grave violation of the Charter to transform examination

of these charges into a digression on questions having no relation whatever to this particular Trial.

The Prosecution therefore so energetically objects to the requests for and incorporation of such documents as have absolutely no relevancy to this Trial and the examination of which, without a doubt, would lead to a digression from the basic fact. This is what I wanted to add to what Sir David has said on behalf of the Prosecution.

THE PRESIDENT: Before the Tribunal adjourns, as it will do now, I want to say that the next four defendants on the Indictment are required to name their witnesses and the subject matter of their evidence, and the documents and the relevance of the documents, by Wednesday next at 5 p. m. The Tribunal will hold a similar session to the session it has been holding this morning with reference to the defense of those defendants on Saturday next at 10 o'clock.

The Tribunal will now adjourn until a quarter past 2.

[*The Tribunal recessed until 1415 hours.*]

Afternoon Session

THE PRESIDENT: I have an announcement to make. With reference to the announcement that I made this morning, the Tribunal may hear the applications for witnesses and documents of the Defendants Kaltenbrunner, Rosenberg, Frank, and Frick before Saturday. That will depend upon the progress of the case. I have already stated that those applications must be deposited with the General Secretary by 5 o'clock p. m. on Wednesday.

Secondly, all the defendants, other than the first eight named in the Indictment, must make application naming their witnesses and the relevancy of their evidence, and the documents and the relevancy of the documents, by Friday next at 5 p. m.

Thirdly, the Tribunal will sit in closed session on Monday next at 4 p. m.

Perhaps I also ought to say that this does not affect—it does not refer directly to defendants' counsel who represent the criminal organizations. Those counsel will be heard after the close of the Prosecution's case, as has already been announced.

Next would be Hess.

SIR DAVID MAXWELL-FYFE: I only want to say that if the Tribunal did desire to hear anything on the question of reprisals, which was raised by Dr. Exner, Mr. Dodd is prepared, if the Tribunal would care to hear further matter on it.

THE PRESIDENT: Yes. The Tribunal would like to hear that now.

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): May it please the Tribunal, I wish to say at the very outset, that I have made a rather hurried preparation during the noon recess of the few notes on this subject based on some work which we had done a little earlier. I am not altogether prepared to go into the matter to any great extent at this time, but I did want to call to the attention of the Tribunal a few of these notes that we have prepared, and to say that, in view of Dr. Exner's contention that some of the documents which are offered by the Defense, or which they intend or hope to offer, are admissible on the theory or under the doctrine of reprisal.

We would like to say to the Tribunal that the Convention of 1929 concerning the treatment of prisoners of war expressly prohibits altogether the use of reprisals against prisoners of war. Parenthetically, I might say that

the United States prohibited in its Army instructions reprisals against prisoners of war as early as 1862 or 1863.

Secondly, I should like to point out that the Hague regulations do not mention at all, insofar as we are able to ascertain, the use of so-called "reprisal action" against civilians.

It appears that the Brussels conference of 1874, which accepted the unratified Brussels Declaration, so-called in international law—that conference rejected or struck out several sections which were proposed by the Russians at that time, having to do with the use of reprisal action against civilians. I cite that because it is interesting and indicates that the powers were certainly thinking about the matter of reprisals against civilians as early as then.

Thirdly, I should like to point out to the Tribunal that it is commonly said by the writers on this subject that before reprisal action may be taken a notice of some character is usually required, and this reprisal action is directed against some specific instance which the first power believes to be offensive and which it believes may call for or justify the use of reprisal action. So that some notice of some kind seems to be required by the power which feels it has been offended to the offending power.

I might say that in the Prosecution's case-in-chief we specifically avoided any reference to the well-known incident during this war of the shackling of prisoners of war, because there, there was some color of notice, and the matter was resolved by the powers concerned.

These are the points that we have had in mind during this brief recess this noontime, and if the Tribunal would like to have us do it, we shall be glad to prepare ourselves further, and to be heard further on this subject at a later date.

THE PRESIDENT: Thank you.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the position with regard to the Defendant Hess is set out in Dr. Seidl's communication to the Tribunal; and I have one or two comments to make on that on behalf of the Prosecution.

THE PRESIDENT: Will you comment upon that, Dr. Seidl? Would it be convenient to follow the same course as we followed with Dr. Stahmer, and perhaps Sir David may say if he has any objection, first of all to the witnesses, one by one, that you are asking for?

DR. ALFRED SEIDL: I should like, however, to request the Court to permit me a short preparatory remark and to make a motion.

THE PRESIDENT: Yes.

DR. SEIDL: My Lords, from what happened in this morning's session I gained the conviction that now the Trial has entered into a decisive phase, at any rate as far as concerns the Defense. I consequently feel myself obliged to make the following application.

I should like to ask that the Court, at this point in the Trial, should, when examining the relevancy of the evidence submitted by the Defense, limit itself to the witnesses, and postpone examination of the relevancy of documents until a later time. To establish reason for this I permit myself to point out the following:

The Court issued a ruling regarding the submission of evidence by the Defense for the first time on 17 December 1945. In this ruling only witnesses and not documents were discussed. A second decision is that of 18 February in which the following introductory remark is made, "In order to avoid delay in the securing of witnesses and documents, Defense Counsel shall . . ." and then follow the remaining contents of the ruling.

I am of the opinion, My Lords, that the question as to whether a document has relevancy or not can only be decided when I have this document in my own hands; in other words, when I am familiar with the precise contents of that document. It is impossible in a summary proceeding such as is now being attempted, in which the admissibility of whole books is supposed to be decided on, to pass appropriate judgment as to whether a particular passage in a document has relevancy or not. This question can be decided clearly and definitely only if the Prosecution and the Court as well have the document in their hands in the form in which the Defense wishes to submit it. I am convinced . . .

THE PRESIDENT: But, Dr. Seidl, I have stated twice this morning that the question of the final admissibility, whether of witnesses as evidence, or documentary evidence, can only be finally decided when the document is actually put in or when the witness is actually asked a question. What we are now considering is whether the document has any possibility of relevance and must, therefore, be searched for, if necessary, or sent for.

DR. SEIDL: Yes. If I understand you correctly, Mr. President, it is not necessary . . .

THE PRESIDENT: Dr. Seidl, the Tribunal thinks that you had better deal with your witnesses and documents now, and we do not desire to hear any further general arguments on the subject. We desire to hear you upon the documents and the witnesses which you wish to call and produce.

DR. SEIDL: It is, then, a question of the documents I already have in my possession and not of the documents which I wish to obtain.

THE PRESIDENT: Yes, the documents which you are about to mention.

DR. SEIDL: It is a question of all the documents, and not simply the documents that must first be procured.

THE PRESIDENT: Well, we have before us your application for certain witnesses and certain documents, and we wish to hear you upon that application.

DR. SEIDL: Very well, but I must draw up a list by next Wednesday for the Defendant Frank, and I should like to know whether those documents should be brought up which I already have in my hands.

THE PRESIDENT: Well, first of all you had better deal with your witnesses in the same way that Dr. Stahmer did.

DR. SEIDL: The first witness that I intend to hear is Fräulein Ingeborg Berg, a former secretary to the Defendant Rudolf Hess.

SIR DAVID MAXWELL-FYFE: My Lord, I have not seen this list until a moment ago.

THE PRESIDENT: The witness he wants to call is Ingeborg Berg; is that right?

SIR DAVID MAXWELL-FYFE: If Dr. Seidl tells me that this lady was a private secretary to Hess, it seems to me, *prime facie*, reasonable that there was a chance of discussing the matter. As a general rule it seems to me reasonable that a private secretary should be called who can corroborate the matters with which the defendant was dealing. I do not think any of my colleagues will disagree with that point.

DR. SEIDL: My second witness is the previous Gauleiter and head of the Auslands-Organisation of the NSDAP, Ernst Bohle, who is imprisoned here on remand.

THE PRESIDENT: Dr. Seidl, you have not really adopted the procedure which the Tribunal asked you to adopt. You have not specified the relevance of the evidence which you wish to produce. You have referred to some previous application. The Tribunal has not got all these applications before it at the moment, and therefore we wish to know in what respect the evidence of Ingeborg Berg is relevant.

DR. SEIDL: The witness Ingeborg Berg was the secretary of the Defendant Hess at his liaison offices in Berlin. She is to make statements regarding the time Hess began making preparations for his flight to England, and what sort of preparations they were.

She is further to testify as to what Hess's attitude was toward the Jewish question in a particular case, namely, in connection with the Jewish pogrom

of 8 November 1938.

THE PRESIDENT: Is she in Nuremberg?

DR. SEIDL: She is here, in Nuremberg.

THE PRESIDENT: You may deal with the second witness now, if you like.

DR. SEIDL: The second witness is the previous Gauleiter of the Auslands-Organisation of the NSDAP, Ernst Bohle. He is imprisoned on remand in Nuremberg. He is to testify whether the Auslands-Organisation developed any activity which might make it appear to be a Fifth Column.

SIR DAVID MAXWELL-FYFE: On the second witness, that is one of our allegations against the Auslands-Organisation, and therefore it does seem relevant. I make no objection.

DR. SEIDL: Walter Schellenberg is the third witness I mention. Whether I shall be able to uphold his application I can only judge after the Court has given me the opportunity to speak to this witness who is here in Nuremberg. I do not know whether the witness can give pertinent evidence concerning the time in question, prior to 10 May 1941. I should like to avoid occupying the time of the Tribunal with the hearing of a witness whose hearing proves that he cannot offer pertinent evidence. I consequently ask the Tribunal first of all for permission to speak to this witness for the purpose of getting information.

THE PRESIDENT: Do you have anything to say about that, Sir David?

SIR DAVID MAXWELL-FYFE: I understand that this is the witness Schellenberg who was called for the Prosecution.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: I submit that it would be very undesirable to have private conversations with witnesses before cross-examination. If Dr. Seidl wishes to cross-examine the witness Schellenberg further, then he ought to apply to the Court to cross-examine him in open court.

THE PRESIDENT: Well, I think I remember that some of the defendants' counsel asked to postpone the further cross-examination of Dr. Schellenberg.

SIR DAVID MAXWELL-FYFE: My Lord, my objection is not to the further cross-examination; that is a matter, of course, which is entirely for the Court once a witness is in its hands. But my recollection is that Dr. Merkel and Dr. Kauffmann also wanted to cross-examine the witness further, and therefore I submit that, both generally and on this particular

occasion, it would be very undesirable for any counsel who is going to cross-examine to have a private conversation with the witness before he cross-examines. That is the matter to which I object.

THE PRESIDENT: Yes, but if the defendants' counsel finally decide that they are not going to cross-examine the witness, I suppose then they would be able to examine him in chief if they wanted to do so, to call him.

SIR DAVID MAXWELL-FYFE: Well, I have never heard, My Lord, of that procedure being adopted. If a witness is called by one side, then the other side must, in my respectful submission, do what they can by way of cross-examination. The witness is before the Court and, as the Prosecution have called the witness, then I submit that the Defense should deal with the witness by way of cross-examination. They have the additional rights which cross-examination gives, which is a compensation for the other rights which they would have if he were their own witness.

DR. SEIDL: Perhaps we might find a solution whereby I would renounce the right to cross-examination, and if the witness could actually say something pertinent, I could let him give me an affidavit. I do not believe that the Prosecution would object to that.

THE PRESIDENT: Sir David, as there are no technical rules of evidence applicable to this Trial, would it be objectionable, would you say, if the Defense were permitted to see Schellenberg in the presence of a representative of the Prosecution, if that is satisfactory to them?

SIR DAVID MAXWELL-FYFE: I am sure the Prosecution all desire that only the interest of justice should be furthered, and if the Tribunal consider that that would be a suitable method of dealing with it, the Prosecution would raise no objection.

THE PRESIDENT: Unless you wish to say something further about Schellenberg, the Tribunal will consider your application.

DR. SEIDL: Very well.

THE PRESIDENT: Have you any other witnesses that you wish to refer to?

DR. SEIDL: For the time being, no. However, according to the resolution of 18 February, every Defense Counsel has the right, until the conclusion of the Trial, to ask permission to call further witnesses.

THE PRESIDENT: I think now is the time for you to apply; in accordance with the order of the Tribunal to which you are referring, this is the time at which you are to apply for any witnesses you want. The Tribunal always has the discretion, which it would exercise, if you prefer to make any

further applications. If later you want to ask for further witnesses, the Tribunal will always consider your application.

Did you get that?

DR. SEIDL: Yes, Mr. President.

As to the question of whether the Auslands-Organisation, the Volksbund für das Deutschtum im Ausland, and the Bund Deutscher Osten had anything to do with the activities of a Fifth Column, a further witness who would come into question is the brother of the Defendant Rudolf Hess, Alfred Hess, who was formerly a deputy Gauleiter of the Auslands-Organisation, and is at present in Mergentheim in an internment camp.

THE PRESIDENT: Well, we have not got your application in front of us with reference to that. If you want to make any further application you may do so.

DR. SEIDL: I have made the application.

THE PRESIDENT: You say you want to make it now?

DR. SEIDL: If it is possible I should like to make the application now, since the Tribunal has asked me to speak. I am, of course, prepared to submit that application in writing later.

THE PRESIDENT: The Tribunal will hear you now, then, upon this application, and you can put the application in writing afterwards as a matter of record.

DR. SEIDL: Very well.

THE PRESIDENT: What was the name?

DR. SEIDL: Hess, Alfred. His last official position was Deputy Gauleiter of the Auslands-Organisation of the NSDAP. At present he is in the internment camp in Mergentheim.

THE PRESIDENT: Yes? For what purpose? You said because he was going to speak as to Fifth Column activities; was that it?

DR. SEIDL: Regarding the Fifth Column and regarding the question of whether the Auslands-Organisation of the NSDAP and the Volksbund für das Deutschtum im Ausland and the Bund Deutscher Osten have anything to do with a Fifth Column or not.

THE PRESIDENT: Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, I have already conceded that this is a relevant issue, and therefore the only question is cumulation. The Defendant Hess will himself be able to speak on this point, and the witness further if the Tribunal allows it.

The Tribunal might well consider, in my submission, that an affidavit or interrogatories from a third witness on the point would be sufficient at the moment, unless any further issue is disclosed, in which case Dr. Seidl could summon the witness.

THE PRESIDENT: Well, now, you can pass on to your documents.

DR. SEIDL: Very well. It is my intention first to read further passages from individual documents in Rudolf Hess's document book which was submitted by the Prosecution in order to establish the connection. A further justification of the relevance of these documents would be superfluous, since it is entirely a question of documents submitted by the Prosecution which have already been accepted in evidence by the Court.

SIR DAVID MAXWELL-FYFE: My Lord, the application is in this form:

> "I intend to read pages from the following books: *Rudolf Hess's Speeches*; *Directives of the Deputy of the Führer*. The relevancy of these documents can be inferred simply from the fact that both have already been introduced in evidence by the Prosecution."

Insofar as the documents are documents already before the Tribunal, of course, Dr. Seidl may, within the usual limits, comment on them as much as he likes. If he intends to put in other speeches and directives, documents of the same class, then the Prosecution asks that he indicate which speeches and which directives he is going to put in.

DR. SEIDL: What Sir David Maxwell-Fyfe just read was the second point of my application. It is true that I also intend to read certain passages from the book, *Rudolf Hess's Speeches*, and also from the book *Directives of the Deputy of the Führer*. But since the Prosecution has already submitted passages from both these books in evidence, which were likewise already accepted as evidence, I believe I may say that there are at least passages in these books—and that it is here a question of documents—that are most certainly relevant. Whether those passages that I intend to read are relevant or not can be decided only when I submit these documents and this is exactly what I meant at the beginning of my remarks, that it is possible to decide on the relevancy of a document only when one has that document before one and knows its precise contents.

SIR DAVID MAXWELL-FYFE: I hope Dr. Seidl will realize that this is largely a matter of mechanics. If he is going to introduce new speeches and new directives, they have got to be translated into English, Russian, and French; and therefore it will be necessary, for the general progress of the

Trial, that he should indicate which passages he is going to put in so that they can be translated as well as considered.

I am sure that Dr. Seidl will desire to use only relevant passages. Naturally, every politician makes many speeches on many subjects, and some of Hess's speeches may well not be relevant.

I suggest that it is not unreasonable; we are only trying to help along the general progress of the Trial by the request that I have made.

DR. SEIDL: Of course, Mr. President, I shall read only those passages from the speeches, and few of them at that, which are relevant. I have no intention of having whole sections of the book translated if it is not necessary. I declare formally to the Tribunal that neither as counsel for the Defendant Hess nor as counsel for the Defendant Frank shall I submit one single document that could not be considered as relevant.

THE PRESIDENT: Yes, but what Sir David was saying was that for the mechanics of the Trial, owing to the unfortunate fact that we do not all understand German, it is necessary that these documents which are in German should be translated. Therefore, it is necessary for you to specify which speech and which part of the speech you propose to rely upon, and then it will be translated.

DR. SEIDL: Mr. President, I shall incorporate every single passage that I intend to read in a document book, and I shall, in good time, submit to the Court and to the Prosecution every passage from a speech which I intend to read, in a document book. It is not the task of the Prosecution, nor of the General Secretary, to do work which, of course, I shall attend to.

SIR DAVID MAXWELL-FYFE: My Lord, that is quite all right. That is exactly the point that I was seeking to make.

THE PRESIDENT: Very well, now you are coming to Paragraph 3.

DR. SEIDL: Yes. Thirdly, I shall read passages from the report of the conference between the Defendant Rudolf Hess and Lord Byron, who at that time, as I recall, was Lord Privy Seal, and which took place on 9 June 1941. In this way the motives and aims which caused the Defendant Hess's flight to England are to be clarified. The relevancy is derived directly from the fact that the Prosecution has, for its part, submitted as evidence the reports of Mr. Kirkpatrick concerning his conference with Hess.

SIR DAVID MAXWELL-FYFE: If Dr. Seidl thinks that that conversation adds anything to the conversations with the Duke of Hamilton and Mr. Kirkpatrick, I shall not object to his reading the report.

THE PRESIDENT: Where is the document?

DR. SEIDL: It is in my possession.

THE PRESIDENT: What is the nature of the document? I mean, what authenticity has it? Who made it? Who wrote it?

DR. SEIDL: The document was found among the papers of the Defendant Hess which were given to him when he was brought from England to Germany. It is a copy of the original, that is to say a carbon copy, and a series of official stamps prove beyond doubt that it is the carbon copy of an original.

THE PRESIDENT: The Tribunal would like to see the document.

DR. SEIDL: Very well.

THE PRESIDENT: If you would let us have the document, we will consider it.

DR. SEIDL: Very well.

THE PRESIDENT: Have you finished your presentation?

DR. SEIDL: Yes.

THE PRESIDENT: Then there is a letter, isn't there? There are two other documents referred to, but you are not asking us for those? A document of a letter to Hitler on the Reich Cabinet, dated 10 May 1941?

DR. SEIDL: This application appears to have been made by my predecessor, by the lawyer Dr. Rohrscheidt. I should like to have an opportunity of examining the relevancy of this point.

THE PRESIDENT: Very well. Do you wish to say anything, Sir David, about them?

SIR DAVID MAXWELL-FYFE: We have not got that document. The Prosecution have not got the letter that the Defendant Hess sent to Hitler, and we just simply cannot help on that point.

THE PRESIDENT: Very well. If that document can be located, it shall be submitted to you.

DR. SEIDL: Very well.

THE PRESIDENT: Now, Dr. Horn.

DR. HORN: It is my intention to call as the first witness for the Defendant Ribbentrop the former Ambassador Friedrich Gaus, at present in a camp at Minden near Hanover. Ambassador Gaus was for more than three decades the head of the legal department of the German Foreign Office. I believe that this witness is necessary in view of this function alone.

SIR DAVID MAXWELL-FYFE: If Dr. Horn would carry out the same procedure as Dr. Stahmer and pause for a moment when he has introduced the witness, I shall then be able to indicate in the same way whether there is any objection.

Dr. HORN: Certainly.

SIR DAVID MAXWELL-FYFE: As far as Herr Gaus is concerned, there is no objection, subject to one point on what I may call the Foreign Office group of witnesses; and I think it will be convenient if I develop it now, and then Dr. Horn would deal with the point in one moment.

Dr. Horn is asking for Herr Gaus, Miss Blank, who was the defendant's private secretary, and then witnesses 3 to 7, five Foreign Office officials, Herr Von Sonnleitner, Herr Von Rintelen, Gottfriedsen, Hilger, and Bruns.

The position at the moment is that there is some doubt as to whether Miss Blank was allowed or not by the Tribunal, and two of the witnesses, Von Sonnleitner and Bruns were granted on 5 December. Von Sonnleitner was granted as one of two and Herr Bruns was granted *simpliciter*.

The Prosecution draws the attention of the Tribunal to the fact that no special facts are stated as to which of these witnesses will speak, and at the present moment, the applications are not within the Rule of Procedure 4 (a), but what the Prosecution suggests is this:

That it is reasonable that the defendant should have certain witnesses who will speak as to Foreign Office business and activities, but they suggest that if he has Herr Gaus and his private secretary, Miss Blank, that one other Foreign Office official to speak as to general methods would be sufficient, and Von Sonnleitner is obviously the sort of person who could help the defendant on general Foreign Office matters. They suggest that to call seven witnesses to deal with his general position in the business would be unduly cumulative, and they suggest that three is sufficient.

I hope the Tribunal will not mind my dealing with the seven witnesses, but really my point involves the number of them.

DR. HORN: May I say something in reply to that? Dr. Gaus, in all probability, will be my main witness for the Defense. Therefore, since 10 November 1945, I and my predecessor have done everything to find this witness, and after that had been accomplished, to bring him here. I know that the witness, although he has now been located, is not here. Consequently, I do not know on what matters he can give us rebutting evidence. For this reason I would also prefer not to commit myself yet as to the other witnesses from the Foreign Office. I would like to demur only to the following extent: The witnesses who have been listed in addition, these additional witnesses of the Foreign Office, are not witnesses who are to give testimony on routine questions, as Sir David expressed himself, about general affairs of the Foreign Office; but they are witnesses who can offer

rebutting evidence concerning special topics which the Prosecution has brought up.

I consequently suggest that a final decision should be reached as to the calling of these other witnesses only after Ambassador Von Gaus is here. In connection with this statement, I should like to ask the Court again personally to assist me in the securing of this extraordinarily valuable witness because I can submit my rebutting evidence in writing to the General Secretary in time only if I have him here soon.

THE PRESIDENT: Yes. Well, we will consider that. That deals with 1 to 7, does it not?

DR. HORN: Mr. President, may I remark that I should like to omit Witness Number 2, Fräulein Margarete Blank. Consequently not 2 to 7, but 3 to 7.

May I make the following explanation: Fräulein Blank was for many years secretary to the former Minister of Foreign Affairs, Von Ribbentrop, specifically since 1933. The witness Blank drew up a whole series of decisive sketches and memoranda and also discussed decisive points with Ribbentrop in connection with these manuscripts. Thereby I mean memoranda which expressly relate to the charges, and I therefore ask that the Tribunal's original decision, which granted us this witness, be upheld.

THE PRESIDENT: Then you are asking, are you, that Ambassador Gaus and Fräulein Blank should be brought here as soon as possible, and that the consideration of the other witnesses 3 to 7, should be deferred until you have had an opportunity of seeing Gaus and Blank?

DR. HORN: Yes, Mr. President. As regards Fräulein Blank, I can say that she is in an internment camp near Nuremberg, in Hersbruck.

THE PRESIDENT: Did you mean that Fräulein Blank was in a camp so near Nuremberg that you could go and visit her and speak to her there?

DR. HORN: Yes, Mr. President, that is possible.

THE PRESIDENT: Very well.

DR. HORN: May I interpret this as an authorization to visit Fräulein Blank in order to interrogate her?

THE PRESIDENT: We understand that that is your application, and we will consider it.

DR. HORN: Thank you, Mr. President.

As my next witness I name the former SS Gruppenführer and personal adjutant to Hitler, at present in Nuremberg in solitary confinement.

THE PRESIDENT: Yes, Sir David?

SIR DAVID MAXWELL-FYFE: With regard to this witness, the application says that there was a decisive conference between Hitler and the Defendant Von Ribbentrop, and that he can speak as to certain things that occurred. If that is so, if he can speak as one attending the conference, the Prosecution have no objections.

They object—and this point will arise in regard to a number of witnesses—to what I call self-created evidence. That is, if a witness is merely coming to say that the defendant said that he had certain views, that, in the submission of the Prosecution, does not carry the thing any further. If I understand, this witness is speaking as an observer of the conference, and, as such, we take no objection.

DR. HORN: I should like to give Sir David my assurance that this is a witness who has first-hand knowledge of decisive events and can give such testimony.

My next witness is Adolph Von Steengracht, since 1943 Secretary of the German Foreign Office. This witness is now in Nuremberg in solitary confinement.

SIR DAVID MAXWELL-FYFE: If the Tribunal would be good enough to look at the seventh line from the foot of this application, it says that Steengracht will further testify that, contrary to the assertions of the Chief Prosecutor of the United States, the protests of the churches and of the Vatican were always processed, thus obviating even worse excesses.

If it is meant by that—and the English is a little obscure—that the Defendant Ribbentrop sent forward the protests of the churches to Hitler, then the Prosecution would feel that they ought not to object to the witness.

DR. HORN: I can say in regard to this, Mr. President, that these protests were submitted not only to Hitler, but that furthermore, on the initiative and orders of the defendant, other German offices involved in these breaches of international law were approached for the purpose of settling the difficulties arising from the protests of the churches and the Vatican.

THE PRESIDENT: Very well. Can we go on to 10?

DR. HORN: My witness Number 10 is Dahlerus. Mr. Dahlerus has already been discussed at length today, and I should like to know whether further discussion as to procurement of this witness is necessary.

SIR DAVID MAXWELL-FYFE: I have already put my general position with regard to Dahlerus. Apparently this defendant wants him on one particular point, namely, an order from Hitler; and I submit that the appropriate way would be if Dr. Horn added an interrogatory on that point.

Prima facie, it seems highly improbable that Hitler communicated his private order to a Swedish engineer, but in view of the fact that interrogatories have been ordered, I suggest that Dr. Horn can send a further interrogatory on that point.

DR. HORN: Mr. President, may I make a remark in this connection? It is not, as was translated, a question in this case of a command of Hitler, but a question of the decisive note that was the beginning of the second World War.

SIR DAVID MAXWELL-FYFE: My position goes into a great deal of these requests. This is only evidence if Herr Dahlerus can say what Hitler said, what Hitler told him. It is not evidence if Herr Dahlerus can say, "Herr Ribbentrop told me that Hitler had so ordered." That does not add to the evidence of the defendant himself.

Therefore, I think it is essential that before one can judge of the evidential value at all, the matter should be submitted, as I suggest, by way of interrogatory.

THE PRESIDENT: Dr. Horn, unless you have anything further to add with reference to this witness, we will stop at this point, because we think it is impossible to go further today, and apparently it is impossible to finish the whole of your application this afternoon, so do you wish to add anything more about Dahlerus?

DR. HORN: Yes, I should like to make another short statement in answer to what Sir David considers as decisive for the evidence. Mr. Dahlerus will not say here what he heard from Ribbentrop; he will testify to what he heard about Ribbentrop from an important person and from Hitler himself, and that is why I consider him as particularly decisive.

SIR DAVID MAXWELL-FYFE: A general point, My Lord, in the case of the witnesses who are asked for by Dr. Horn; I had prepared the comments of the Prosecution, and they have been typed out in English. The Tribunal will realize that we received this application only yesterday, and it had to be translated and is not ready by today.

I have not been able to get this translation, but I have given Dr. Horn a copy quite informally so that he would be informed; and it might be useful if I handed it in because it might shorten the proceedings and also act as a record when the Tribunal resumes the consideration of these points. I do not know if that appeals to the Tribunal.

THE PRESIDENT: Yes, very well. Then we will adjourn now.

I want to ask the Soviet Chief Prosecutor whether it would be convenient to the Soviet Prosecution that we should continue on Monday morning with

this examination of witnesses and evidence. I think it will probably take the whole of the morning if we deal with the Defendant Ribbentrop's applications and then the Defendant Keitel's, so that the Soviet Prosecution, if that course were adopted, would come on at 2 o'clock. Would that be convenient for them?

GEN. RUDENKO: If it is convenient for the Tribunal it will be so for us, Mr. President.

THE PRESIDENT: There is just one other point I should like to ask you. I think the Tribunal were notified that there were two witnesses the Soviet Prosecution proposed to call. I think that we said that the General Warlimont and, I think, General Halder, ought to be called so as to give the Defense Counsel the opportunity of cross-examining them.

GEN. RUDENKO: If the Tribunal so wishes I shall report on this question. I became acquainted with the transcript of the reports made by General Zorya and Colonel Pokrovsky when the question concerning witnesses Halder and Warlimont was discussed. The Soviet Delegation consider there to be no basis for objections to the Court examining the witnesses Generals Warlimont and Halder, at the request of the Defense. But the Soviet Prosecution intended to request that the Tribunal submit these witnesses as witnesses on behalf of the Soviet Prosecution.

I should like once again to report about the plan which the Soviet Prosecution has in mind regarding the conclusion of the presentation of evidence. There remains for us to present to the Tribunal the last section, "Crimes against Humanity." The presentation of this will take approximately 3 to 4 hours.

In addition, we shall ask the Tribunal to permit us to interrogate, episode by episode, four witnesses, Soviet citizens who have been specially brought and now are in Nuremberg. In such a way we consider that if we start our presentation tomorrow at 2 o'clock, then on Tuesday we will finish our presentation on all counts.

THE PRESIDENT: The Tribunal will expect to have General Warlimont and Halder presented here before the Soviet case finishes, not for the Soviet Prosecution to ask them questions but for them to be cross-examined by the Defense if the Defense want to, but that may take place at any time that is convenient to you. If you wish, they could be called at 2 o'clock on Monday; if you prefer, at the end of the Soviet presentation, either on Tuesday afternoon or on Wednesday morning, whichever is convenient to you.

GEN. RUDENKO: As I already stated, the Soviet Prosecution did not think of introducing either Halder or Warlimont. The Soviet Prosecution did not object that, on the request of the Defense Counsel, Halder and Warlimont be subjected to cross-examination. As far as I know, as far back as last December, the Tribunal granted the application of the Defense to call Halder into court as a witness.

Therefore it seems to me, and in order to expedite the exposition of material of the Soviet Prosecution, this really will not influence the examination of essential questions, that the examination of the witnesses Warlimont and Halder be made in the Trial during the presentation of evidence by Defense Counsel.

As far as I know, in the application of the Defendant Keitel, which was presented to the Tribunal, Halder and Warlimont are indicated as witnesses, and the Defendant Keitel and his attorney applied for examination of them as witnesses on behalf of the Defense.

On the basis of this, I consider that the examination of these witnesses should be made during the presentation of evidence by the Defense Counsel.

THE PRESIDENT: The Tribunal understands that both General Warlimont and General Halder are here in Nuremberg. Is that so?

GEN. RUDENKO: Yes.

THE PRESIDENT: Probably the most convenient course would be for the Tribunal to see exactly what order the Tribunal made with reference to their being called. We will look up the shorthand notes and see exactly what order we made and deal with the matter on Monday morning.

In the meantime, on Monday morning we will continue, as you said is convenient to you, the applications by Dr. Horn for the Defendant Ribbentrop and the applications by Dr. Nelte on behalf of the Defendant Keitel; and we shall sit from 2 until 4 o'clock only on Monday afternoon.

[*The Tribunal adjourned until 25 February 1946 at 1000 hours.*]

SIXTY-SEVENTH DAY

Monday, 25 February 1946

Morning Session

THE PRESIDENT: Dr. Horn, you dealt with Dahlerus last, I believe.

DR. HORN: That is right, Mr. President.

As the next witness, I ask the Tribunal to call General Koestring, former military attaché at Moscow, and at present in prison in Nuremberg. In this case I am willing to forego the personal appearance of the witness if the submission of affidavit will be permitted.

SIR DAVID MAXWELL-FYFE: My Lord, we object to this witness and so Dr. Horn can develop it as far as he desires.

THE PRESIDENT: You object to him?

SIR DAVID MAXWELL-FYFE: We object.

THE PRESIDENT: Go on.

DR. HORN: I wish nevertheless, to ask the Tribunal to call the witness in this case.

Originally, there was a possibility, as I was told, that the witness might be called by the Prosecution. Since this has not taken place, I ask that this witness be approved because he took part in the German-Russian negotiations from August to September 1939 at Moscow and, until the beginning of hostilities against the Soviet Union, remained at that post. The witness, therefore, can tell us about the attitude of authoritative German circles and personalities toward the German-Russian pact. For these reasons I ask the Tribunal to call the witness.

GEN. RUDENKO: As it has already been stated by Sir David Maxwell-Fyfe, the Prosecution objects to the summoning of this witness. I merely wish to define the position of the Prosecution in this case. The fact that the witness participated or was present at the August-September 1939 negotiations is scarcely of interest to the Tribunal. The Tribunal primarily proceeds from the fact of the existence of this agreement and its treacherous

violation by Germany. Consequently, the summoning of this witness to describe these negotiations would merely delay the course of the Trial.

DR. HORN: Mr. President, I am sorry, I was not able to understand the answer and the reasoning of the General.

THE PRESIDENT: Would you repeat, General?

GEN. RUDENKO: Very well. I was saying, with reference to Sir David's protest, on behalf of the Prosecution, against the summoning of this witness, that I wished to explain that the summoning of this witness in regard to his presence at the 1939 negotiations at Moscow was of no interest whatsoever to the Tribunal. The Tribunal proceeds from the facts that this agreement had been concluded in 1939 and had been treacherously violated by Germany.

I consider that the summoning of this witness before the Tribunal is superfluous since the witness in question has no connection whatsoever with the present case.

DR. HORN: I ask the Tribunal's permission to point out that for weeks General Koestring was in prison in Nuremberg at the disposal of the Prosecution. Therefore, I ask the Tribunal to grant him a hearing as a witness for the reasons which I have mentioned.

THE PRESIDENT: The Tribunal will consider the matter. Dr. Horn, the Tribunal does not understand the fact that General Koestring is in prison at Nuremberg is any answer to the objection which is made on behalf of the Prosecution, namely, that the Tribunal is not interested in negotiations which took place in September 1939, but in the violation of the treaty. The Tribunal would like to know whether you have any answer to make to that objection? The only answer you have made up to date is that General Koestring is here in Nuremberg.

DR. HORN: Mr. President, General Koestring is to testify that the pact with Russia was drawn up with full intention of its being kept on the part of Germany and on the part of my client.

I would not like to say anything further on this point at the moment and I ask the Court to call the witness on the basis of this reason.

THE PRESIDENT: Very well, the Tribunal will consider your request.

DR. HORN: The next witness is legation councillor for reports, Dr. Hesse, who was formerly in the Foreign Office in Berlin and now presumably is in the camp at Augsburg.

SIR DAVID MAXWELL-FYFE: My Lord, there is no objection to this witness. I do not know if Dr. Horn wants him in person or if an affidavit would do. The Prosecution do not feel strongly on the matter but they ask

Dr. Horn whenever possible to accept an affidavit and they suggest that he might consider it in this case.

DR. HORN: In this case I will be satisfied with an affidavit.

The next witness is the former ambassador in Bucharest, Fabricius, presumably in Allied custody in the American zone of occupation or possibly already discharged from custody.

SIR DAVID MAXWELL-FYFE: There is no objection in this case. Apparently this witness will speak as to an interview which is already in evidence before the Court and will give a different account of it. Prosecution makes no objection under the circumstances.

THE PRESIDENT: The Tribunal will consider that.

DR. HORN: The next witness is Professor Karl Burckhardt, President of the International Red Cross in Geneva and formerly League of Nations Commissioner at Danzig.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, Dr. Burckhardt is obviously in a very special position. As President of the International Red Cross he is a person to whom all belligerents, irrespective of country, are indebted; and the point that the Prosecution makes is that if he can speak of evidence coming from Hitler himself, that is if he can prove either by saying that he was informed by Hitler that the Defendant Ribbentrop had interceded; or if he can say he saw letters received by Hitler from Ribbentrop, the Prosecution would have no objection. If he is merely going to say that Ribbentrop told him so, the Prosecution would object.

Therefore, we submit that the reasonable course would be that he should make an affidavit as to his means of knowledge, and if that is done and if the means of knowledge are satisfactory, I should not think for a moment that the Prosecution would do anything but accept the evidence of Dr. Burckhardt.

The second point, we submit, is irrelevant: the question of the results of the English promises of guarantee to Poland on the position in Danzig.

DR. HORN: Aside from the reasons which I have already submitted in my application, I can also say that Professor Burckhardt visited Ribbentrop and Hitler in the year 1943 and therefore can make detailed statements with reference to the reasons which I have mentioned for calling him. That answers the first question by Sir David.

I also agree, however, in this case that Professor Burckhardt submit the necessary affidavit and thus be spared a personal examination.

The next witness is the Swiss Ambassador Feldscher, who was finally, to our knowledge, Ambassador at Berlin.

SIR DAVID MAXWELL-FYFE: I suggest, My Lord, that he comes into the same position as Dr. Burckhardt. He should be dealt with in the same way.

DR. HORN: I agree, Mr. President. The next witness is the former Prime Minister of Great Britain, Mr. Winston Churchill.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the Prosecution objects to this application and, with the greatest respect to Dr. Horn, submits that there are no relevant reasons disclosed in the application now before the Tribunal. The first part of it is apparently an account of a conversation which does not touch the facts of this case, and the second part is also a discussion of a conversation which apparently took place some years before the war, between the German Ambassador and a gentleman who at that time was in no official position in England. But what relevancy the conversation has to any of the issues in this case the Prosecution respectfully submits is not only nonapparent but nonexistent.

DR. HORN: Against this statement of Sir David, I want first to point out the following:

Prime Minister Winston Churchill was at that time Leader of His Majesty's Opposition in Parliament. In this capacity we may attribute to him a sort of official position, particularly since he, to my knowledge, as Leader of the Opposition is even paid a salary.

SIR DAVID MAXWELL-FYFE: I am sure that Dr. Horn would be the last person to rely on a point on which he has been misinformed.

Mr. Churchill was not Leader of His Majesty's Opposition at any period and was certainly not from 1936 to 1938, when the Defendant Ribbentrop was ambassador. Mr. Attlee was the Leader of the Opposition. Mr. Churchill was not in office; was a back-bench member of the Conservative Party, independent member of the Conservative Party at that time.

I did not want my friend to be under any misapprehension.

DR. HORN: At any rate, Mr. President, Mr. Churchill was one of the statesmen best known in Germany. This statement, which Churchill made at that time on the occasion of his visit to the embassy, was immediately reported to Hitler by Ribbentrop and was, in all probability, one of the reasons for Hitler's making the statements quoted in the so-called Hossbach document, submitted as Document Number 386-PS, which contains statements and declarations so surprising to the participants and in which the Prosecution saw the first definite evidence of a conspiracy in the sense of the Indictment.

Furthermore, I should like to say that the British Prosecutor, Jones, mentioned that, after the seizure of Czechoslovakia by Germany, people in England and Poland became very concerned. Therefore negotiations between England and Poland were started, and a pact of guarantee concluded.

On the basis of this statement of Churchill which has been mentioned, and those of other important British statesmen, according to which England would bring about a coalition against Germany within a few years in order to oppose Hitler with all available means—as a result of these statements, Hitler became henceforth more keenly anxious to increase his own armaments and to busy himself with strategic plans.

For these reasons I consider Churchill's statement extraordinarily important and I ask that this witness be called.

SIR DAVID MAXWELL-FYFE: I have stated my point, My Lord; I do not think I can add to it.

THE PRESIDENT: The Tribunal would like to have Dr. Horn's observations, which they have only heard through the microphone, in writing on this subject.

DR. HORN: As the next witnesses I name Lord Londonderry, Lord Kemsley, Lord Beaverbrook, and Lord Vansittart. Interrogatories have already been sent out to these witnesses.

SIR DAVID MAXWELL-FYFE: These witnesses are being dealt with by interrogatories and we make no objection to the interrogatories.

DR. HORN: As the next witness I would like to call Admiral Schuster; last address, Kiel.

SIR DAVID MAXWELL-FYFE: We object to the calling of Admiral Schuster. The grounds for his being asked for are that he took part in the negotiations which led to the German-English Naval Treaty of 1935. Apparently the point that is desired to be made is that the treaty was concluded on this defendant's initiative.

The Prosecution submit that that point is irrelevant; that the negotiations before the treaty are irrelevant, and the treaty is there for the Tribunal to take judicial notice of and from which my friend can find any argument which he desires.

But in general, the Prosecution wish to stress that going into negotiations anterior to old-standing treaties would be an intolerable waste of time when there are so many vital issues before the Tribunal.

DR. HORN: In this Trial we are discussing straightforwardly the problem of plans and preparations. In this connection it is certainly not

inappropriate to hear evidence as to what the German Government, and especially Ribbentrop, had planned and prepared at that time. This planning and preparations which took place within the negotiations leading to the signing of the naval treaty was carried further than just to the conclusion of that treaty. The treaty was considered by Von Ribbentrop—and Admiral Schuster can bear witness to the fact—the first cornerstone in a close treaty of alliance between England and Germany. To make these intentions clear to the Tribunal, and thereby the policy which the Defendant Von Ribbentrop pursued, I consider this witness important; and I ask Sir David to modify his position.

SIR DAVID MAXWELL-FYFE: I am afraid I cannot. My colleagues and I have considered this matter very carefully and I have put our general position as to pre-treaty negotiations, especially as to treaties of long standing. With the greatest desire to be reasonable, to help Dr. Horn, I am very sorry I cannot, at this point, accede to his request.

GEN. RUDENKO: I would like to complete what my colleague, Sir David, has stated by the following:

Dr. Horn has requested us to justify the arguments of the Prosecution. I believe that there is one fundamental divergence in this matter between the Prosecution and the Defense. The Defense, in calling witnesses, give evidence and try to prove the defendants' endeavors to conclude peace-promoting agreements. We proceed from another fact, namely, the treacherous violation of concluded agreements and the commission of crimes contravening these agreements. And it seems to be quite superfluous to call witnesses to prove that the defendants strove, in view of these considerations, to sign peaceful agreements. The violation and treachery in the fulfillment of these agreements are generally known facts.

THE PRESIDENT: Dr. Horn, in order to test the relevancy of this class of evidence, I should like to ask you this question:

Assume that Ribbentrop did want to make agreements with England and did not wish that Germany should make war on England. What relevancy would that have to the allegation that Germany was planning to make war upon Poland?

DR. HORN: Mr. President, to be able to answer that question decisively as far as the conduct of the Defense is concerned, I would have to go back to the state of all the political and diplomatic affairs of the period previous to the second World War. To explain the reasons for calling witnesses, I would not like to enter into arguments yet on such matters of principle before I have thoroughly scrutinized all the possible evidence at my disposal and

formed a definite opinion—and a basis for my conduct of the Defense. The ruling which the President gave regarding reasons for summoning witnesses—that the Tribunal will help us to procure the witnesses and the evidentiary material—I have understood to mean that for the summoning of witnesses, we have only to state reasons which in all probability would be confirmed by the witnesses themselves after preliminary interrogation.

To make it quite clear, I do not wish to prejudice myself.

THE PRESIDENT: It is a material question to consider in considering what evidence is relevant. But as you do not wish to commit yourself upon the point, you can proceed.

DR. HORN: The next witness is Ambassador Dr. Paul Schmidt, former interpreter at the Foreign Office in Berlin, at this time probably at Oberursel in the interrogation camp.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the next two witnesses, who are grouped together in the application, they are desired to give evidence of the fact that this defendant asked Hitler five or six times for permission to resign. Again I make the point, which I have made several times to the Tribunal, that if these witnesses can give evidence from the Hitler side of these offers, then there would be no objection.

If they merely give evidence of the fact that Von Ribbentrop told them that he had offered to resign, that does not, in the submission of the Prosecution, take it any further. But it may well be that there are letters which went to Hitler which these gentlemen saw; and if that is the purpose of their evidence, then the Prosecution feel that it might be relevant, certainly on the question of sentence; if not, then they would reserve all rights to say whether it was a question of guilt or innocence in view of the provisions of the Charter.

I therefore suggest that the reasonable course would be for both these gentlemen to make affidavits of their means of knowledge and that would deal with the point which I have put to the Tribunal.

THE PRESIDENT: Do you suggest a preliminary affidavit rather than interrogatories? Would not interrogatories be wiser?

SIR DAVID MAXWELL-FYFE: I would agree, My Lord; interrogatories which would cover that point of means of knowledge would be the best thing. I do not think, if I may put it that way, that it would be worth while making two bites at the cherry, if I may use a colloquialism.

DR. HORN: We can talk about the next two witnesses at the same time. I believe I can already say that Sir David will give the same reasons against them as he did against the other witnesses.

SIR DAVID MAXWELL-FYFE: I should have thought, My Lord, that my friend and I could agree that they stand or fall with the Tribunal's decision on Admiral Schuster.

DR. HORN: Then, I would like to forego the calling of these two witnesses, provided the Court will grant me Admiral Schuster.

The next witness is the former Chief Recorder at the Foreign Office, Dörnberg, at present most probably interned at Augsburg.

SIR DAVID MAXWELL-FYFE: Again, with great respect, Herr Dörnberg's views on the veracity of Count Ciano, in my submission, are not relevant. If we get into calling witnesses to express their views as to the veracity of or other characteristics of the statesmen of Europe, the Tribunal would embark on a course that might well take a very long time and would not lead to any great results, and I respectfully submit that this is not a class of testimony or a ground of testimony which the Tribunal should entertain.

DR. HORN: Mr. President, with reference to this matter I can say that Ciano, himself, in his diary which has now been made accessible to us, presents this proof—at least as to the decisive point—which Mr. Dörnberg is supposed to bring; and we shall submit it to the Court at the proper time and —I believe I can say—in a conclusive form.

The second point of Dörnberg's statement deals with the matter of decoration. The Russian Prosecution has accused Ribbentrop of bartering Siebenbürgen for a high Romanian order. For this reason I would like permission to question Mr. Dörnberg about this point either here or in the form of an affidavit.

THE PRESIDENT: Yes.

DR. HORN: Next I name Ambassador Schnurre, chief of the commercial policy department of the Foreign Office, present whereabouts unknown, presumably in custody in the British zone.

SIR DAVID MAXWELL-FYFE: With great respect, My Lords, the Prosecution again say that there is no need for a witness to be called to give information that his political chief intended to keep a treaty which he signed. The very grounds that are given for the application seem to me to show that this is really a matter of comment and argument, and we submit that a witness on this point is both irrelevant and unnecessary.

DR. HORN: I ask the Tribunal to permit me this witness, because the fact alone that the witness can testify about the sincerity or insincerity or the intentions of his chief is not so important for me as the fact that, on the basis of participation at the negotiations and preliminary negotiations and his

discussions with other important persons about the background of this treaty, he can testify with regard to an important point of the Indictment.

THE PRESIDENT: May I ask you again, with reference to the relevance of this evidence, suppose it were true that in August 1939 the German authorities intended to keep the treaty which was made with Russia, that depended or might have depended upon whether England supported Poland in the war which Germany was about to begin with Poland; and it may very well be that the German authorities intended to keep the treaty with Russia in order to keep Russia out of the war with Poland and England. Therefore, how would the intention of Ribbentrop at that time be relevant?

DR. HORN: Mr. President, for determining the criminal facts in this case in order to establish guilt, it is material to know the extent to which the Defendant Ribbentrop, as a human being, strove to keep the treaty; and it is a different question how far he may have been compelled, by political necessity and other forces, to witness how a treaty was not kept in the sense in which it was originally signed.

THE PRESIDENT: You can pass on.

DR. HORN: Ambassador Ritter of the Foreign Office, eventually a liaison man with the OKW; at this time most probably in the internment camp at Augsburg.

SIR DAVID MAXWELL-FYFE: The application for Ambassador Ritter falls into two parts. One raises the point which we have just been discussing with regard to the Russo-German Treaty of 23 August 1939, and I have indicated the view of the Prosecution on that. The second deals with the defendant's attitude with regard to the treatment of Allied airmen. The position at the moment is that I put in a document which was prepared by Ambassador Ritter and another document in which Ambassador Ritter said that the Defendant Ribbentrop had approved the memorandum from the German Foreign Office dealing with the proposals for lynching aviators and handing them over to the SD before they could become prisoners of war and entitled to the rights under the Convention.

If it is desired to say that Ambassador Ritter was wrong in stating that Ribbentrop had approved the memorandum, then, of course, it would be a relevant point. But at the moment these documents are in, and I am not quite clear from this for what purpose my friend wishes him called on the second point. If there is any further purpose, then perhaps Dr. Horn will indicate it.

DR. HORN: Sir David has just stated the reason why I have requested the witness. The witness is supposed to and will testify that Von Ribbentrop was opposed to special treatment of terror fliers—at least for acts covered by

the Geneva Convention—without previous notification to the signatory powers of that convention.

SIR DAVID MAXWELL-FYFE: Dr. Horn says that he wants to call Ambassador Ritter to contradict the two documents prepared by Ambassador Ritter, which are already in evidence. Then I can't make any objection. That is obviously a relevant point, if he is going to contradict his own document.

THE PRESIDENT: Would it be acceptable to Dr. Horn to have interrogatories administered to Ambassador Ritter, or would the Prosecution prefer that he should be called, if he is to give evidence of any sort?

SIR DAVID MAXWELL-FYFE: If he gives evidence, the Prosecution would prefer that he should be called, because that is our position. There are two documents in, prepared by this gentleman; and if he is going to contradict them, then I suggest he should come and do it in person.

DR. HORN: I leave it up to the Prosecution.

THE PRESIDENT: Yes.

DR. HORN: The next witness is the former German Ambassador in Oslo, Von Grundherr, at present presumably in Allied custody.

SIR DAVID MAXWELL-FYFE: Again, I don't want to go into detail. The position is that there is a document before the Court signed by the Defendant Rosenberg in which he says that 10,000 pounds sterling a month were given to Quisling through an arrangement with this gentleman. If Dr. Horn wishes to call Herr Von Grundherr to contradict the statement of the Defendant Rosenberg, again I suppose the Prosecution cannot make any objection.

THE PRESIDENT: Yes.

DR. HORN: Regarding the witnesses which I have listed under points 30 to 34, I can limit my statement to the fact that I want to call them to testify that Ribbentrop, from 1933 to 1939, also earnestly and constantly endeavored to bring about close relations with France.

The witnesses, above all M. Daladier, former Prime Minister of France, can give substantive, detailed evidence about these efforts. If the Court should decide that these witnesses, or some of these witnesses, could give their testimony in the form of affidavits, I will submit relevant questions to the Tribunal.

SIR DAVID MAXWELL-FYFE: In the submission of the Prosecution, the grounds stated for calling these witnesses are too vague and general to justify their being called before the Court. When two countries are at peace, the fact that a foreign minister or an ambassador has made statements saying

that he hopes the good relations between the two countries will continue, or words to that effect, does not really take us any further; and it would, in the submission of the Prosecution, be a waste of time for witnesses to be called for such a purpose.

Apart from that, the first four witnesses, the Marquis and Marquise De Polignac, and Count and Countess Jean de Castellane, as far as the Prosecution know, have not been in any official position, and there is, therefore, the additional objection that calling people who may be the most admirable people but are in a position of general friendship to talk as to what really becomes their view of the state of mind of a defendant, is not evidence which is relevant or which the Tribunal should entertain.

DR. HORN: With these witnesses the Defense wishes to prove exactly the fact that the efforts of Ribbentrop with respect to France went further than normal remarks which could not be called anything more than *courtoisie internationale*. For this reason I ask that one or the other of the witnesses in this group be granted me.

THE PRESIDENT: Dr. Horn, these witnesses seem to raise the same question as to relevance as I put to you earlier on them.

Assuming that it was the intention of the German Foreign Office to try to keep France out of any war which Germany was preparing to make, what relevance has that got to the question whether she was about to make an aggressive war upon Poland?

DR. HORN: I would like through these witnesses to produce evidence that it was at least not the intention of the Defendant Von Ribbentrop to plan and prepare wars but that he has tried for years to improve relations with Germany's neighboring states.

The Prosecution, Mr. President, accuses my client also of having planned and carried out aggressive aims, war against England and France. If the Prosecution will forego this point, I, of course, can also forego these witnesses.

THE PRESIDENT: The Tribunal will give this the necessary consideration.

DR. HORN: The next witness is Mr. Ernest Tennant of London.

SIR DAVID MAXWELL-FYFE: With regard to this witness, I don't know the gentleman, and I have never heard of him, and the only information which is in the application is that he is a member of the firm of Tennant and Company and a member of the Bath Club, and also that he was well known to the Defendant Ribbentrop. But the matters for which he is sought to be called are surely the acme of irrelevance. It is submitted that the

witness can testify that in the early and middle 30's the defendant asked him to bring him in contact with Lord Baldwin, Mr. Macdonald, and Lord Davidson for the purpose of negotiating with the latter toward paving the way to good political relations, aiming at the conclusion of an alliance. In 1936 the defendant was Ambassador to the Court of St. James. Mr. Macdonald had just ceased being Prime Minister in 1935 and was still, I think, Lord President of the Council. Lord Baldwin was then Prime Minister and Lord Davidson, I think, was Chancellor of the Duchy of Lancaster in the same administration. At any rate, he held a comparatively less important office.

But how it can be relevant to the issues before this Tribunal, that at or shortly before that time the defendant asked a gentleman of no official position whether he could introduce him to the three gentlemen I have just mentioned, I really suggest, cannot be stated; and I submit that this witness should not be allowed.

DR. HORN: Mr. President, in the naming of witnesses we always come back to the same fundamental question. The Prosecution always raises the question: What can this witness tell us about the fact that Germany did or did not march against Poland, or is to blame for the Polish-German war, inasmuch as the witness comes from an entirely different country and has nothing to do with Poland or Polish affairs?

The Defense is of the opinion, on the other hand, that the entire policy of Germany toward Poland can only be understood within the framework of the whole of European politics. Therefore, the Defense has called for witnesses whom the Prosecution would like to exclude, because they can offer us material for the reconstruction of the large picture. With this in mind, I also ask for Professor Conwell-Evans of London.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal again I have never heard of Professor Conwell-Evans, and he does not appear in the Who's Who, the British publication showing a very large number of the citizens who have certain grades of distinction or hold certain offices. But I would like Dr. Horn to consider this point, which I respectfully put to the Tribunal:

Accepting that every word that is stated in this application with regard to Professor Conwell-Evans was said in Court by Professor Conwell-Evans, I submit that it would not advance the case at all and that the Tribunal would be left in exactly the same position if it had that evidence as it is in at the present moment. After all, the defendant will be able to give evidence himself and to make his own impression on the Tribunal as to his intentions and as to his honesty of mind at various times. The submission of the

Prosecution is that the evidence of this gentleman would not help the Trial at all and is not relevant to any issue before the Court.

THE PRESIDENT: Yes.

DR. HORN: As next witness I name Wolfgang Michel, Oberstdorf in Allgäu, the witness under Number 38.

SIR DAVID MAXWELL-FYFE: This gentleman is stated to have been a partner in the defendant's former business. According to the application, it is really desired that he should give his views of the defendant's general attitude and state of mind. Again, the Prosecution fail to see to what issue he is relevant; but it may be that it would please the defendant to have affidavits from an old business partner to give his views on the defendant. If that is desired, the Prosecution would be prepared to consider such an affidavit; but they really must take up the consistent attitude that a witness of this kind is irrelevant—a witness who is going to say, "I have known this defendant for 20 years; I have been in business with him; and I have always had a high opinion of him." That, in the submission of the Prosecution, does not touch the issues before this Tribunal and, therefore, is irrelevant. But, as I say, if my friend cares to produce an affidavit, the Prosecution will consider it with the greatest sympathy.

DR. HORN: I would be satisfied, in the case of the witness Michel, with an affidavit.

Mr. President, I would like to come back to the witness listed under Number 5, Legation Counsellor Gottfriedsen.

THE PRESIDENT: One moment. Aren't you going to deal with Number 38? You didn't deal with 37. You are passing that over, are you?

DR. HORN: I believe that the same objections would be raised against him as were raised with reference to the other witnesses. Since I assume that the Tribunal is going to decide in principle about the question whether or not all the related facts should be submitted here, I have left out the naming of this witness and ask the Tribunal for a decision.

THE PRESIDENT: I see. Now you want to go back to Number 5?

DR. HORN: I would like to come back to Number 5, Legation Counsellor Gottfriedsen. Legation Counsellor Gottfriedsen conducted the entire official and private finances of the Defendant Von Ribbentrop for many years.

Ribbentrop has been accused by various members of the Prosecution of enriching himself with objects of art and similar things. About this point Legation Counsellor Gottfriedsen can give decisive evidence which will invalidate these charges. I therefore ask for approval of this witness.

SIR DAVID MAXWELL-FYFE: My Lord, I have just asked Dr. Horn on this point whether he would prefer Herr Gottfriedsen to Herr Von Sonnleitner. I think Dr. Horn says that, if there was a question of choice, he would.

The Prosecution do not want to be unreasonable. I made my general statement that this group of witnesses, of seven foreign office witnesses, ought to be restricted to three. If my friend thinks that Herr Gottfriedsen will be more helpful, especially on this point, I have no objection to the substitution, so long as some limitation is made in the group of witnesses.

THE PRESIDENT: Would it be satisfactory if interrogatories were administered?

DR. HORN: Yes, Mr. President; in this case I ask for the witness Gottfriedsen.

THE PRESIDENT: Yes.

DR. HORN: My statement on the subject of summoning witnesses is thereby concluded.

DR. STAHMER: I have not named some witnesses because other defendant's counsel had asked for them. Among these is also the interpreter Dr. Schmidt. I likewise have the greatest interest in the questioning of this witness. Schmidt was Göring's interpreter and was present at almost all foreign political negotiations with statesmen. Therefore I also ask for the summoning of this witness and to that extent support the application made by Dr. Horn.

THE PRESIDENT: We will consider that, Dr. Stahmer. We will adjourn now for 10 minutes.

[*A recess was taken.*]

DR. HORN: Mr. President, may I please bring up one other point having to do with the calling of witnesses?

I have also named a number of the witnesses, because I must ascertain when the conspiracy in general begins and when my client could have joined this conspiracy. The Prosecution made things relatively easy for itself as regards setting the time at which the conspiracy begins, by stating in the general Indictment "sometime before 8 May 1945."

Now, if I can call no witnesses with regard to the years 1933 to 1938, then I must assume that the Prosecution admits that the Defendant Ribbentrop could not have been a party to the conspiracy at least before 1939. I should like this point of view to be taken into consideration in the granting of witnesses.

SIR DAVID MAXWELL-FYFE: It might be helpful, if I indicated quite generally what Dr. Horn has to meet.

The Tribunal will remember that on the 8th and 9th of January I presented the individual case against this defendant. The first point is the time of Hitler's accession to power in 1933. It is the case for the Prosecution that this defendant assisted in various ways in that accession. After that, he held various positions in close touch with Hitler.

If Dr. Horn will refer to the transcript of my presentation, he will find that there is detailed, with a note of all the supporting documents, the part which his client played in the aggression against Austria, Czechoslovakia, Lithuania, Poland, England, France, Norway, Denmark, Holland, Belgium, Luxembourg, the Soviet Union, and finally, the United States and Japan. All these matters are set out with the supporting documents, and a reference to them will show exactly what is alleged against the defendant on that point.

Apart from that, there are four matters under Counts Three and Four which are specially raised.

First of all, the defendant pressed that measures contrary to international law and the conventions should be taken against Allied aviators. Again, the supporting documents are in evidence. Second, there is General Lahousen's evidence as to what the defendant said with regard to the treatment of the population of Poland. Third, there is the defendant's responsibility for putting the various Protectors of Bohemia and Moravia in office with unrestricted powers, which resulted in the crimes against the populations of these areas. Then there is a similar position with regard to the Netherlands.

The third main category is the treatment of the Jews. Again, there is an American official document, the report of Ambassador Kennedy; there is a long Foreign Office statement on the policy towards the Jews; and there is a document showing the preparation for an anti-Semitic congress, of which this defendant was to be an honorary member.

Finally, there is the question of plunder, the evidence given by my Soviet colleague on the Ribbentrop battalions for the collection of plunder, which was given the other day.

I don't think that if Dr. Horn will consider various points, which are practically all collected in the transcript for the 8th and 9th of January, except the last point, he will find that there is any difficulty in deciding the commencement of these allegations or their detailed and concrete constitution.

THE PRESIDENT: Sir David, the Tribunal would like to know whether the Prosecution allege any particular date at which the conspiracy started;

and second, they would like to know whether you contend that defendants joining the conspiracy after it started are responsible for the conspiracy.

What the Tribunal would like to know is whether a person who joins the conspiracy after it started would be responsible for acts committed by the conspirators before he joined.

SIR DAVID MAXWELL-FYFE: If I might deal with the questions in order, the position of the Prosecution on the question of time is as set out in Count One of the Indictment. The Prosecution say that the Nazi Party was the core of the conspiracy and that it was an essential part of the conspiracy that the Nazi Party should obtain political and economic control of Germany in order that they might carry out the aims set out in Articles 1 and 2 of the Nazi Party program. That part of the conspiracy started with the emergence of the Nazi Party as a force in German politics and was fully developed in January 1933. At that time it was the aim of the Nazi Party to secure the breaches of the Treaty of Versailles and the other matters set out in these articles, if necessary by force.

But, as is stated in the statement of offense under Count One of the Indictment, the conspiracy was not static; it was dynamic. And, in 1934, after Germany left the League of Nations and the Disarmament Conference, the aggressive war aspect of the conspiracy increased in momentum.

It is the case for the Prosecution that from 1935, when conscription was introduced and the Air Force came into being, through 1936 when the Rhineland was reoccupied, that the securing of Germany's objectives—the objectives of the Nazi Party—if necessary by aggressive war, became a stronger, clearer, and more binding aim.

The position is crystallized by the meeting on the 5th of November 1937, when Hitler declared that Austria and Czechoslovakia would be conquered at the earliest opportunity. That was succeeded by the acquisition of Austria in March 1938, and the Fall Grün against Czechoslovakia, which originated in May 1938, to be carried out before October.

From that time the Prosecution say that the plan of aggressive war followed the well-known and clear technique of attacking one country or taking aggressive measures against one country, and giving assurances to the country that was next on the list to be attacked.

From that time the succession and procession of aggressive wars takes a clear course, which I have just mentioned in outlining the accusation of aggression against the Defendant Ribbentrop. I may summarize it by saying that the Prosecution submit that the Nazi Party was always engaged in this agreement and concerted action to get control of Germany and carry out its

aims but that the aggression crystallized and became clear from 1934 and the beginning of 1935 onwards.

THE TRIBUNAL (Mr. Francis Biddle, Member for the United States): Sir David, I would like to ask you a few questions in connection with this.

First of all, you must know either the date when the conspiracy began, or you must not be able to give us the date. Now, is it the contention that the Prosecution don't know when the conspiracy began? If you do know, would you tell us?

SIR DAVID MAXWELL-FYFE: The conspiracy began with the formation of the Nazi Party.

THE TRIBUNAL (Mr. Biddle): And what was that date?

SIR DAVID MAXWELL-FYFE: 1921.

THE TRIBUNAL (Mr. Biddle): 1921? Now, was the conspiracy to wage aggressive war begun on that date?

SIR DAVID MAXWELL-FYFE: Yes, it was begun in this way that Hitler had said, "I have certain objects, one of them being to break the Treaty of Versailles—which means also breaking the treaty of friendship with the United States which has the same clauses—and I shall attain these objects, if necessary by using force." That was always one of the beliefs and aims of the Party.

Now, if people agree to commit an illegal act, or a legal act by illegal methods, that is, *ipso facto*, the committing of the offense of conspiracy. Conspiracy is constituted by the agreement, not by the acts carrying out the agreement. Therefore, in that way the conspiracy starts in 1921. But, as Mr. Justice Jackson made clear in his opening and as I have repeated this morning, the aims—and more particularly the methods by which the conspirators sought to achieve these aims—grew and acquired particular forms as the years went on. They appear to have acquired the special form and to have decided on the method of breaking the Treaty of Versailles in 1934 and bringing that to fruition in 1935.

I am not seeking to avoid answering the question of the learned American Judge; but I am putting, in summary form, exactly what is stated in both the statement of offense and the particulars of offense under Count One, and I hope that I will not be thought to be avoiding the question. I am not doing that. I am trying to put it in the clearest and most accurate language.

THE TRIBUNAL (Mr. Biddle): Well, I wouldn't ask you, were I clear about the matter in my own mind, Sir David. Let me ask you a few more questions.

The conspiracy to commit Crimes against Humanity—was that begun in 1921?

SIR DAVID MAXWELL-FYFE: To the extent that a general readiness was adopted to use all methods, irrespective of the rights, safety, and happiness of other people, it was commenced with the start of the Nazi Party. Ruthlessness and disregard for the rights, and safety, and happiness of others was a badge of the Nazi Party program, insofar as the rights and happiness of others might interfere with their aims, from the very start.

Again, the translation of that into practical methods developed as the years went on, and in a period well before the war—Mr. Biddle will not put it against me that I should remember exact documents in an answer straight off the rule to his question, but well before the war—there will be found again and again in the speeches of Hitler to his associates that utter ruthlessness and disregard for non-German populations should be employed. That is the foundation of the War Crimes and Crimes against Humanity, and it was initiated and grew in the method which I have stated.

THE TRIBUNAL (Mr. Biddle): Did you answer the President with respect to the question of whether the conspirators joining later became responsible? If that were true, then this defendant would be responsible for acts running back to 1921.

SIR DAVID MAXWELL-FYFE: There are two legal conceptions which have to be borne in mind in considering that point. I can only speak with knowledge on the law of England, but I understand that the law of the United States is very much the same.

In England there is a common law offense of conspiracy. There are also certain statutory offenses, but there is a common law offense of conspiracy. The gist of that offense is, as I have already stated, entering into an agreement to commit an illegal act or a legal act by illegal means. As far as a conviction for conspiracy per se is concerned, there is no doubt about the law of England. If someone joins a conspiracy at a late state, a conspiracy to do any illegal act, he can be convicted of conspiracy to do that act however late he joins.

The usual analogy, with which I am sure the learned American Judge is familiar, is that of a stage play. The fact that a character does not come in until Act 3 does not mean that he is any the less carrying out the design of the author of the play to present the whole picture which the play embraces. It is a very useful analogy because it shows the position. That is one aspect of the law, and on that there is no doubt at all.

The other aspect of the law is as to how far those who act in consort to commit a crime are responsible for each other's acts, that is, irrespective of the substantive offense of conspiracy. If one may take an example—a highly fantastic one but I think it raises the point—assume that you had a conspiracy on the part of road operators to wreck railway trains, and a number of road operators agreed in December to wreck a train on the 1st of January and to wreck a further train on the 1st of February. Between the 1st of January and the 1st of February, another road operator joins the conspiracy. I hope I have got rightly the point in My Lord's mind and in the mind of the learned American Judge. Then there is, as far as I can see, some doubt as to whether that road operator would be liable for a murder committed in the wrecking that took place on the first of January.

I hope I have made my point clear. I am postulating someone who joins a conspiracy on the 15th of January, after the first wrecking has been carried out during which someone has been killed, and therefore those who consorted with regard to the first wrecking are guilty of murder. But as to the person who joins after that, there is some doubt as to whether he acquires retroactive responsibility. In English law it would appear to be at least doubtful—it certainly is arguable that in American law he would, as I have been told the decision.

THE TRIBUNAL (Mr. Biddle): I think you have made that very clear, Sir David, but what I am getting at is what the Prosecution claim in this case.

SIR DAVID MAXWELL-FYFE: I am very sorry if I have been theoretical, but it has been rather a difficult point, and I wanted to relate it to the law with which I am most familiar.

With regard to the present case, the Prosecution say that the defendants do become responsible for the consequences of acts done in pursuance of the conspiracy. It is rather difficult to speak entirely in vacuo in the matter; but if one may take, for example—again I speak from memory—the Defendant Speer, who comes on the scene rather late, if my recollection is right, he then becomes minister for production and armaments and makes the demands for the slave labor which were fulfilled by the Defendant Sauckel.

In the submission of the Prosecution, there would not be any difficulty in convicting the Defendant Speer on all counts, assuming that the Tribunal accepted the evidence of the Prosecution. By his actions, he has conspired to commit a Crime against Peace; he has joined and entered into the conspiracy to carry on aggressive war; he has taken part in the waging of aggressive war by making the demands for the slave labor; he has instigated a war crime, namely the ill-treatment of populations of occupied countries; and

also, by instigating and procuring the action of the Defendant Sauckel, he has committed Crimes against Humanity in that he has participated in actions which are condemned by the criminal law of all civilized countries; and probably—I am speaking from memory now—these actions have taken place in countries where it is arguable whether they were strictly occupied countries after an invasion, as in Czechoslovakia.

On the method in which our Indictment is drawn, there is no difficulty, the Prosecution submit, in convicting a defendant who emerges in evidence at a later date on each of the counts.

THE TRIBUNAL (Mr. Biddle): Just one more question and then I am through. You understand I am asking these questions only in performance of what we are doing to determine what witnesses should be called, and therefore the year 1921 as the beginning of the conspiracy becomes a year obviously not remote in time when we consider witnesses. Would that not follow?

SIR DAVID MAXWELL-FYFE: A year not. . . ?

THE TRIBUNAL (Mr. Biddle): Not remote in time with relation to the conspiracy.

SIR DAVID MAXWELL-FYFE: No, it is part of the particular Indictment.

DR. HORN: Mr. President, may I make some brief remarks in this connection?

I have based myself on the general Indictment as regards the time of the conspiracy. The general Indictment states simply and solely that the definitive point of time which one can take as the start of the conspiracy is any time before 8 May 1945.

The Chief Prosecutor of the United States, in his opening statement, described the Party program, in the form in which it was framed in ’21 and revised, I believe, in ’25, and characterized it as legitimate and unimpeachable—according to the German translation—insofar as these aims were not to be attained by war.

Now, assuming that the Party leadership was to pursue these objectives by war, it is, first of all, not clear with what point of view these goals were set; and the Defense as well as the Prosecution must prove that from this time on these aims were to be attained through war. Furthermore, it can hardly be denied that only a very few people, and perhaps only one person, had knowledge of war plans.

Now, as regards the various defendants, as well as my own client, the times at which they came into contact with the Party are quite different.

First, they were ordinary Party members, so they had consequently to assume, as the Chief Prosecutor did, that the Party program of which they had become adherents, was legally unimpeachable.

Now the question arises for the Defense, and above all, for conducting the defense: When did the individual client enter the sphere in which it was known that the aims were to be attained by war, aims which so far he had considered legitimate and unimpeachable, that is, aims which according to his previous assumption, were not to be pursued by recourse to war? Had the Defendant Ribbentrop already entered the circle of conspirators when in 1932 he contacted Party circles? Was he, as Ambassador in London, already "in the know" and thereby a party to the conspiracy; or did he only realize, at the time of the Hossbach document, that the political aims of the Party were to be materialized through war? Or when?

The Defense must be aware of the danger that the defendant will be accused by the Prosecution that he joined the conspiracy the very earliest moment he came in contact with the Party and its aims. In this connection I can refer to the words just spoken by Sir David who said that the foundation of the conspiracy was laid in 1921. I ask—or rather—is it my task or my duty to prove through witnesses that my client, for instance, up to 1939 was striving for peaceful relations in order to refute that he then already planned or prepared wars or took a decisive part in these plans and preparations?

From this point of view, I ask the Tribunal to weigh the applications for the witnesses and subjects of evidence as set forth in my brief. Furthermore, I expressly maintain that this discussion has not clarified the question: When does the conspiracy start?

SIR DAVID MAXWELL-FYFE: My Lord, I don't want to repeat any general argument. My desire is that Dr. Horn should know what case Ribbentrop has to meet, and I have already stated that, but I want to make it quite clear.

According to the entry in *Das Archiv* Ribbentrop entered the service of the Nazi Party in 1930, and between 1930 and January 1933 was one of the instruments and vehicles by which the accession of the Nazi Party to power took place. That semi-official publication says that some meetings between Hitler and Von Papen and the Nazis and representatives of President Von Hindenburg took place in his house at Berlin-Dahlem. That is the first point. It is quite clear and it is all set out in the transcript.

The second stage is that he held certain offices between 1934 and 1936 that show that he was an important and rising Nazi politician and negotiator in the realm of foreign affairs. In 1936 he justified the action of Germany in

breaking the Versailles Treaty. The defendant justified it before the League of Nations. Therefore, he has to meet that point.

In the same year he negotiated the Anticomintern Pact. He has to explain that.

From that time onwards, there are a succession of German documents, all referred to in the transcript for the 8th and 9th of January, which show exactly the part this defendant played in 10 sets of aggression against 10 separate countries.

I respectfully submit to the Tribunal that that is a perfectly clear case which this defendant has to meet. There is no doubt about it at all.

I have already summarized the case on the War Crimes and Crimes against Humanity. Again Dr. Horn will find it dealt with, with every document mentioned, in the transcript for the 9th of January.

I respectfully submit that whatever else may be said, the particularity and clarity of the case against the Defendant Ribbentrop is manifest.

DR. HORN: Mr. President, in my presentation of defense against the charges lodged by Sir David Maxwell-Fyfe in his special plea for the Prosecution, I have offered rebutting evidence in answer to these charges. I have, however, not only to confine myself to refuting those charges just mentioned, but I have—and thus I have to repeat what I just said—to consider all these charges under the point of view of conspiracy, as according to the submission of the Prosecution, the Defendant Ribbentrop is party to this conspiracy; and the question cannot be avoided: When did the conspiracy start? Taking the supposition that my client took part in a conspiracy, this participation did not start in 1930, as submitted by the Prosecution—I shall be able to refute this—but only in 1932; but I should like to prove through witnesses and otherwise that then and later he did not join in any conspiracy.

THE PRESIDENT: Well now, perhaps you will get on with the documents which you want.

SIR DAVID MAXWELL-FYFE: My Lord, with regard to the documents, I have had the opportunity of discussing it informally with Dr. Horn; and I understand that with regard to Documents 1 to 14, Dr. Horn really wants these books as working books which he can read and use and, if necessary, take extracts from to illustrate his argument and point at that time. Now, that is a matter of course to which we make no objection at all. I have consistently taken the view that there should be no objection to any book for working purposes for the Defense.

What I do want to ask is this, that if Dr. Horn or any other Defense Counsel wishes to use an extract from a book when it comes to presenting his case, he will let us know what the extract is and, if necessary, for what purpose he is going to use it. I say "if necessary" because in many cases it will be quite apparent for what purpose, but in some cases it may have special significance; and if they let us know, then any question of relevance can be argued when the matter is produced in court.

THE PRESIDENT: But that seems to me to be necessary in order that the documents should be translated.

SIR DAVID MAXWELL-FYFE: Quite; yes.

THE PRESIDENT: I mean that the part of the book or part of the document which Dr. Horn wants to use should be translated.

SIR DAVID MAXWELL-FYFE: But as far as providing the Defense with working copies, any co-operation that the Prosecution can do in that way they will gladly do. That is a matter on which we should be anxious to help.

The last five documents named fall into rather a different category. I haven't discussed these with Dr. Horn; but I respectfully submit—and it is the united view of the Prosecution—that complete files of newspapers will be difficult to justify as evidence before the Tribunal, but again, if Dr. Horn wants them for matter of reference, then it just becomes a question of possibility.

I am not sure with regard to these whether it is desired to use them or whether it is merely desired to have them to refer to. I don't know anything about Number 19, the withdrawn number of the *Daily Telegraph*, but I suppose the Secretariat can make inquiries about that from the proprietors.

DR. HORN: The last item I should like to take up: Now that the Trial has already progressed so far that I now require these documents in order to be able to make use of them for rebutting evidence, may I ask that copies of those newspapers—it is a matter of three or four newspapers, which are bound in 1-month volumes—be made available to me as soon as possible with the help of the Tribunal.

THE PRESIDENT: What do you say about the withdrawn number of the *Daily Telegraph*? You haven't yet indicated why it would be relevant.

DR. HORN: On the 30 or 31 of August 1939, an edition of the *Daily Telegraph* was withdrawn because it contained extensive details of the contents of the memorandum which the then Reich Foreign Minister, Von Ribbentrop, had read to the British Ambassador, Henderson, in Berlin. It is asserted—also by the Prosecution—that Ribbentrop read this note to

Henderson so rapidly that the latter was unable to understand the essential points. From the issue of the *Daily Telegraph* of 31 August 1939, it will thus appear to what extent Ambassador Henderson was in a position to understand Ribbentrop's statements or the oral presentation of that memorandum as Von Ribbentrop read it. I therefore ask that this number of the *Daily Telegraph* be procured, and I am convinced that the Prosecution is able to obtain this issue by the means at their disposal but not available to us.

SIR DAVID MAXWELL-FYFE: My Lord, this is the first time that I have heard of this withdrawn copy apart. . .

THE PRESIDENT: The first time you have heard there was any copy withdrawn?

SIR DAVID MAXWELL-FYFE: I have never heard it except from Dr. Horn that there was a copy withdrawn, and I shall probably have to investigate the matter.

I only want to say one thing, that of course Dr. Horn has just made one point about the question between this defendant and Sir Nevile Henderson. It is the case for the Defendant Göring, as expressed in Dr. Stahmer's interrogatories, that the Defendant Göring had caused the contents of this memorandum to be given unofficially to Mr. Dahlerus behind the Defendant Ribbentrop's back. That is the case which he is making in the interrogatories, so that it by no means follows that Sir Nevile Henderson's account of the interview was wrong, even if an account of the document had come out.

I don't want to make a point of the memory of Sir Nevile, but shall investigate this matter, which I have just heard now for the first time.

DR. HORN: May I add for the fuller information of the Tribunal that the Defendant Göring made the memorandum available to Ambassador Henderson only at a considerably later date. It is, therefore, of decisive importance when and whether Henderson acquired knowledge of this memorandum and whether it happened in good time so that he could still communicate it to the Polish Government within the proper time.

May I ask therefore for the procurement of this most important edition of the *Daily Telegraph*.

THE PRESIDENT: Thank you, Dr. Horn.

We will continue with the evidence against the Defendant Keitel.

DR. NELTE: Mr. President, may I be allowed to make a remark preliminary to the discussion about the evidence submitted for Defendant Keitel. I hope the discussions about the various applications for evidence

will thereby be considerably shortened. From my written application you will see that in respect to the majority of the witnesses one main subject of evidence recurs again and again, namely, the position of Defendant Keitel as Chief of the OKW and in his other official functions, his personality, particularly, also his relations to Hitler, and the clarification of the chain of command within the Armed Forces.

I shall present evidence that the idea of the public and the Prosecution regarding the personality of the Defendant Keitel, his scope, and his activities is incorrect. No name has been so frequently mentioned in the course of this proceeding as that of the Defendant Keitel. Every document which dealt in any way with military matters was identified with the OKW, and the OKW, in turn with Keitel. The defendant believes, and I think with some justification. . .

THE PRESIDENT: The Tribunal appreciates the general points which you will probably want to argue on behalf of the Defendant Keitel when you come to make your final speech, but it does not appear to the Tribunal to be necessary that you should do so now.

DR. NELTE: I mention it only to make possible a comprehensive appraisal of all witnesses offered for the presentation of evidence. I think Sir David shares this opinion with me—he already discussed it with me on Saturday—and it was my intention to expound in a preliminary way the subject of evidence which otherwise had to be presented in five or six different cases.

THE PRESIDENT: Do you mean, Dr. Nelte, that you will be able to deal with all your witnesses in one series of observations?

Could you help us, Sir David?

SIR DAVID MAXWELL-FYFE: I think I can help.

Apart from the witnesses who are codefendants that are mentioned by Dr. Nelte, whom of course the Tribunal has already provided, Dr. Nelte asks for Field Marshal Von Blomberg, General Halder, General Warlimont, and the Chief Staff Judge of the OKW, Dr. Lehmann. The Prosecution have no objection to these witnesses, because they are called to deal with the position of the Defendant Keitel as head of the OKW.

With regard to the witness Erbe, who is, I think, a civil servant called on a specific point as to his position in the Committee for Reich Defense. . .

THE PRESIDENT: Have the interrogatories already been granted?

SIR DAVID MAXWELL-FYFE: Yes; we have always said that interrogatories would be sufficient and he should not be called as an oral witness.

Then with regard to the next witness, Roemer, whom Dr. Nelte wishes to call to say that the decree for the branding of Soviet Russian prisoners of war was announced by mistake and retracted at once on the order of Keitel, that is obviously relevant to one matter in the case, and we don't object to that.

We don't object to General Reinecke, who is called on various matters relating to prisoners of war.

With regard to Mr. Romilly, so long as it is confined to interrogatories which have been allowed, and he is not called orally, we have no objection.

My friend, M. Champetier de Ribes, will have a word to say about Ambassador Scapini. I have asked him to deal with that matter in French.

Then we come to two witnesses, Dr. Junod and Mr. Petersen. At the moment the Prosecution cannot see how these witnesses are needed in addition to General Reinecke. And of course they would object if the purpose of the testimony is to show that the Soviet Union did not treat its prisoners of war properly. If that is the purpose, they would object.

Then the calling of Dr. Lammers has been granted by the Tribunal.

Then finally, there are three witnesses who are all called in order to show that at discussions between Hitler and the Defendant Keitel, two stenographers had to be present. The Prosecution do not regard that as a very vital part of the case, and if Dr. Nelte will produce an affidavit from one of these gentlemen, then the Prosecution are not in a position—and do not desire—to dispute the point. Frankly, if I may say so, and with the greatest respect, we are not at all interested in that point, and therefore will be content with an affidavit if produced.

If I might summarize—and I hope I am merely trying to help Dr. Nelte—the only matters which, as far as the Prosecution are concerned, require further discussion is the matter of what the French Delegation will have to say about Ambassador Scapini, and my objection to Dr. Junod and Mr. Petersen, and my suggestion as to an affidavit for the last three witnesses. There is very little between us, if I may say so, with respect to Dr. Nelte's witnesses; on the whole they seem to the Prosecution to be obviously relevant and in that case we make no objection.

There is one rather sad fact with regard to the witness Blomberg, of which I think Dr. Nelte has been informed. I understand that Field Marshal Von Blomberg is very ill at the moment and cannot be brought into court, so that I am sure, Dr. Nelte, the Defendant Keitel will be the first to accept some method of getting his evidence which will not necessitate that fact.

DR. NELTE: I thank Sir David for his kindness, by which my task has been made easier.

I should like to state in addition that in respect to the witness, Dr. Erbe, I shall put written questions. To the witness Petersen I have already submitted written questions, and on the answers received depends whether I shall call him in person. As to witness Junod, I believe I may say that his examination is relevant because the Soviet Prosecution has submitted that an offer to apply the Geneva Convention had been rejected by Keitel. Dr. Junod is to be examined as a witness that, by order of the OKW Department of Prisoners of War, he contacted the Soviet Union in order to secure the application of the Geneva Convention but that this could not be brought about. I believe that if only General Reinecke is to be examined as a witness on this question, it could perhaps be objected that he, as chief of the Department of Prisoners of War, cannot give sufficient testimony. Neither can General Reinecke testify to what Dr. Junod actually did. Consequently I ask that this witness be approved. As far as the stenographers are concerned, I ask approval to submit an affidavit.

As to Ambassador Scapini, I should merely like to point out that he was the permanent representative of the French Vichy Government and that he was particularly concerned with the question of caring for prisoners of war in Germany. I believe that this is adequate reason for considering him relevant. To be sure, I did not know his address, and hope that the French Prosecution can help me in that regard.

M. AUGUSTE CHAMPETIER DE RIBES (Chief Prosecutor for the French Republic): We see no objection to hearing the former Ambassador Scapini, if his testimony can in our opinion have the slightest bearing on the search for truth; but the very reasons which Dr. Nelte gives for the calling of this witness seem to me to prove the complete absence of relevance of this testimony. The former Ambassador Scapini, says the honorable representative of the Defense, could point out and say that he freely exercised his control in the prisoner-of-war camps and moreover that these prisoners of war had a representative, but this we are quite willing to grant to the Defense. It is perfectly true that Germany had consented to allow the former Ambassador Scapini—who we know was wounded in the war of 1914 and blinded—to visit the camps of prisoners and hear the French prisoners of war though he could not see them.

But the question is not to find out whether the Germans had been willing to allow a blind inspector to visit the camps. The only question presented by the Indictment is whether, in spite of the visits of this inspector and in spite

of the presence of a special representative in the camps, there did not occur in these camps acts contrary to the laws of war.

On this point the former Ambassador Scapini could surely give no answer, for obviously nothing happened in his presence. This is why the French Prosecution considers that the testimony of the former Ambassador Scapini would shed no light in this search for truth.

DR. NELTE: It was not known to me that Ambassador Scapini was blind. Not he himself, but rather the delegation of which he was head, made regular inspections of the prisoner-of-war camps for French soldiers. It is certain that in prisoner-of-war camps things happened which violated the Geneva Convention, but the question at issue here is that the Defendant Keitel and the OKW, as the supreme authority, did—or at any rate, tried to do—all that they, as highest authority, had to do.

The OKW had no command jurisdiction in the individual camps. It had only to issue instructions as to how prisoners of war were to be treated and had to permit the protecting powers to visit the camps.

THE PRESIDENT: Would interrogatories be satisfactory, supposing we thought it proper to administer them to Mr. Scapini?

DR. NELTE: An interrogation in Nuremberg? Could Ambassador Scapini be heard in Nuremberg?

THE PRESIDENT: I was asking whether interrogatories would be satisfactory. I imagine Mr. Scapini is not in Nuremberg. Written interrogatories, I mean, of course, where I have mentioned them.

DR. NELTE: I ask for a ruling on whether the written questions which I first should like to put will be sufficient or whether another ruling will be necessary. So I assume that first I shall interrogate Ambassador Scapini in writing and on his answer it will depend whether. . .

THE PRESIDENT: Yes, in writing. Will that be satisfactory to you, M. Champetier de Ribes?

M. CHAMPETIER DE RIBES: Yes, that will be quite satisfactory.

THE PRESIDENT: I think perhaps we might adjourn now, Dr. Nelte, until a quarter past 2.

[*The Tribunal recessed until 1415 hours.*]

Afternoon Session

THE PRESIDENT: I think, Dr. Nelte, you had really finished with your witnesses, had you not?

DR. NELTE: Yes, I think so. I must only reserve the right on what I may have to state, after the Soviet Prosecution have finished presenting their case—whether I still may wish to call this or that witness. As to the documents I should like to put a few questions which are of particular interest for me—rather for the Defendant Keitel.

THE PRESIDENT: Certainly.

DR. NELTE: The Tribunal knows my main subject of evidence. In order to prove that in many cases the Prosecution is wrong in assuming the OKW and the Defendant Keitel to be responsible, I can refer to a great many documents which have been presented by the Prosecution.

I take it that these documents are not to be submitted by me as evidential material, as they have already been put in. I ask the Tribunal for examination of these documents and for a ruling that in my pleadings on behalf of the defendant I may refer to such documents without having to submit or quote them.

I should like to add that the Tribunal, having been informed about the structure of the Armed Forces or parts of them and about the competencies of the various commands, will itself be able to judge which of the documents submitted are not suitable for supporting the allegations of the Prosecution regarding the responsibility of the Defendant Keitel.

I am also convinced that the Tribunal, in its findings, will examine carefully any document relevant to the question of guilt, even if the Defense does not submit such documents, and even if the Defense cannot submit a comprehensive presentation in view of the extremely large number of documents—there are thousands relating to the Defendant Keitel—and even if the Defense cannot deal with all these documents in the final speeches.

Furthermore, I should like to submit to the Tribunal another question which is important for the presentation of evidence on behalf of the Defendant Keitel and which is of great importance.

During the session of 1 February 1946, the French Prosecutor made the following statement, and I quote:

> "Chapter 4 and the last will bear the heading, 'The Administrative Organization of Criminal Action'. . . . for the fourth chapter I

might point out that the French Delegation examined more than 2,000 documents, counting only the original German documents of which I have kept only about 50."

According to the opening address of the United States Chief Prosecutor, there can be no doubt that these 50 documents were selected merely from the point of view of incriminating the defendant. On 11 February, if I remember correctly, I addressed myself to the French Prosecution with a request to place at my disposal for examination the remaining 1,950 documents, which the French Prosecution did not use.

To date I have received no answer. The Tribunal will appreciate the difficulties of my position. I know there are documents there which I am sure contain also exonerating facts. Yet I am not able to specify these documents. I beg the Tribunal, therefore, for a ruling in this matter—that the Prosecution should place at my disposal those documents for my perusal.

THE PRESIDENT: With reference to these particular documents that you are asking for, are you going to say anything about them?

DR. NELTE: I do not know the contents of these documents. I know only that the French Prosecution have these 2,000 documents. . .

THE PRESIDENT: Well, if you wish to deal with that now, I will ask the French Prosecutor to answer what you have said.

DR. NELTE: If Your Honor pleases, I leave it to the Tribunal whether they wish to examine this question or whether it can be dealt with now.

THE PRESIDENT: Well, I think we had better hear from the French Prosecutor now.

M. CHARLES DUBOST (Deputy Chief Prosecutor for the French Republic): A certain number of documents of doubtful origin were in our hands at the time that we were beginning to prepare our prosecution. We have eliminated all documents which could not bear serious critical examination. We undertook a critical task and rejected all those that were considered to be insufficient proof. At the end of this task about fifty documents remained which have been referred to by my colleagues and which appeared relevant. These 50 documents have, moreover, not all been accepted by the Tribunal, which has rejected some, and if I remember rightly, 3 or 4 of whose origin we were not quite sure. In these conditions, it is absolutely incorrect to say that we have kept 1,950 documents from the Defense.

We handed over to the Court, and therefore to the Defense, the 50 documents which in themselves seemed to us to have sufficient probative value.

If I understand this request of the Defense they wish the Court to ask to have handed to them documents of which some have been rejected by the Court itself as not having sufficient probative value or as not being sufficiently authenticated. The Tribunal will decide whether this request should be granted. As far as I am concerned, I must oppose this application with all my might because it would mean taking into account documents which did not offer a sufficiently authentic character for the examination we made, and which the Tribunal itself also made when we submitted to it some of these documents.

THE PRESIDENT: Yes, but M. Dubost, the position is this: There were a large number of documents which the Counsel for the French Prosecution said that they had examined; and the French Prosecution, in the exercise of their discretion, thought it unnecessary to refer to more than a certain number of them; but it is only the French Prosecution which has exercised their discretion about those documents, and what Dr. Nelte is asking is to see them for the purpose of seeing whether there is anything in the documents which assists his case. Would the French Prosecution have any objection to that? I mean—it may be that some of the documents are no longer in the possession of the French Prosecution, but those that are in their possession, would the French Prosecution object to Dr. Nelte's seeing those?

M. DUBOST: May I remind the Tribunal that the documents which we rejected were not rejected as useless in the beginning, but as not presenting sufficient guarantee as to their origin, as to the conditions under which we obtained them and as to their probative value.

The Tribunal will no doubt remember that a certain number of these documents were rejected by the Court itself. Those which we did not consider are of the same character as those documents which were rejected. We did not submit them because we could not tell you where, when, and how they had been discovered. For the most part, they are documents that fell into the hands of combat troops in battle, and under the terms of jurisprudence do not offer sufficient guarantee to be retained.

Insofar as they are still in my possession I am ready to communicate them to Defense Counsel, it being clearly understood that they will not attach to them any higher merit, any higher value than I did.

THE PRESIDENT: That may very well be. I think that all Dr. Nelte wants is to see any documents which you have brought to see whether he can find anything in them that he thinks may help the case of the defendant for whom he appears, and I understand you would not have any objection to his doing that.

M. DUBOST: I would only answer the Defense Counsel that some of those documents were rejected by your Tribunal when I presented them.

THE PRESIDENT: Well, of course, it would not apply to documents which have been rejected by the Court. Very well. We will not decide the matter now. We will consider it.

DR. NELTE: Would the Tribunal announce its decision regarding the first question which I brought up, namely, whether it is sufficient that I refer to documents which have been presented by the Prosecution without submitting them myself.

THE PRESIDENT: Yes, Sir David?

SIR DAVID MAXWELL-FYFE: On that point I would like to support Dr. Nelte's suggestion. If a document has already been put in, I should have thought it was right and convenient that Counsel for the Defense could comment on it without putting it in again, and should have full right of comment.

THE PRESIDENT: I think that I have said on a variety of occasions that any document which has been put in evidence, or a part of which has been put in evidence, can, of course, be used by the Defense in order to explain or criticize the part that has been put in. It may be that as a matter of informing the Tribunal as to the document, it may be necessary to have part of the document, which has not been put in evidence, put in now in order that it may be translated.

SIR DAVID MAXWELL-FYFE: I do not know whether it would be convenient if I indicated to Dr. Nelte the views of the Prosecution on his list of documents, or whether he would like to develop it himself. I can quite shortly do that if it would be convenient.

THE PRESIDENT: I think it would shorten things if you would.

SIR DAVID MAXWELL-FYFE: A considerable number of the documents in the list fall into that category which has just been mentioned. Documents 3 to 9, 17 and 29, 30 and 31 all appear to be in, and therefore Dr. Nelte may comment in accordance with your ruling.

Then there are a number of documents which are affidavits, either of defendants or intended witnesses: Documents 12, 13, 22, 23, 24, 25, and 28.

The Tribunal may remember that in the case of the witness, Dr. Blaha, my friend, Mr. Dodd, adopted the practice of asking the witness, "Is your affidavit true?" and then reading the affidavit to save time. The Prosecution have no objection to Dr. Nelte's pursuing that course, should he so desire; but, of course, where a witness is going to be called as a witness, he will have to verify his affidavit on oath, in the submission of the Prosecution.

THE PRESIDENT: One moment. You mean that, if the witness is here, you have no objection to Dr. Nelte's reading the affidavit and the witness being then liable to cross-examination?

SIR DAVID MAXWELL-FYFE: The witness will say, "I agree; I verify the facts that are in my affidavit."

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: It might save considerable time in the examination-in-chief, and we should all be prepared to co-operate in that.

THE PRESIDENT: Then, is Dr. Nelte agreeable to that course? Is that what he means?

DR. NELTE: Entirely.

THE PRESIDENT: Possibly, Sir David, if the affidavit were presented to the Prosecution, they might be able to say that they did not wish to cross-examine. That would save the witnesses being here or being brought here.

SIR DAVID MAXWELL-FYFE: It might be in the case of Dr. Lehmann. I think all the other cases are either defendants or witnesses with regard to whom there are certain points which the Prosecution would like to ask.

Then there are three documents to which there are no objections to their being used: 18, 26, and 27.

That leaves a number of documents as to whose use I am not quite sure at the moment, but it may be that Dr. Nelte will explain how he wishes to use them, and that may remove the difficulty of the Prosecution. If the Tribunal will be good enough to look at 1 and 2, 1 is an expert's opinion on state laws concerning the Führer state, and the importance of the Führer order, and Document 2 is an order of the Führer, Number 1.

If it is desired to use these so as to controvert Article 8 of the Charter, the Prosecution will object. That is a question of superior orders.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: If they are only used to explain the backgrounds as a matter of history, that may be a different matter. Now, the next one is Document 10—a need for a ministry of rearmament, taken from. . .

THE PRESIDENT: Even so, Sir David, in your submission, ought we to accept the opinion of an expert on such a point?

SIR DAVID MAXWELL-FYFE: No, Your Honor. We do not at all. I am afraid that my second remark really applied to the order of the Führer. That might be used as a background or it might be used for purposes of mitigation or explanation of how a thing took place, but I respectfully agree that the

expert's opinion on state laws cannot be used with regard to the jurisdiction of the Tribunal. Of course, the law of any other state may be a question of fact as far as the Tribunal is concerned just as it would be a question of fact in an English court: "What is the law of another state?" As I say, I want to reserve emphatically the position of Article 8 with regard to these two documents.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Now, Documents 10 and 11 deal with rearmament in other countries. I do not want to prevent the Defense using illustrations, but again I reserve the position most emphatically that rearmament in other countries cannot be an excuse for aggressive war and would be irrelevant on that point.

Now, 15 and 16 refer to books by Major General Fuller and Major General Temperley, who are both ex-officers, who were journalists during this period. As far as any question of fact that is stated in these books, if Dr. Nelte will let us know what the passage is, we shall see whether we could admit it, but the general views of Major General Fuller and Major General Temperley we would submit to be irrelevant.

Then, 19, 20, and 21 are books about Austria. Again the Prosecution reserves the position that the earlier state of opinion in Austria with regard to an Anschluss is irrelevant when considering the question of the aggressive action in breach of the Treaty of 1936 which took place in 1938.

I think, My Lord, that I have now dealt with all the documents and, as I say, they fall into these four groups; with regard to three of which there is nothing really between us in principle, and with regard to the fourth, the Prosecution wants to reserve these various points which I have mentioned. Again I want to make clear that the Prosecution does not object to Dr. Nelte's obtaining any of these books for the purpose of preparing his case, but we want them to make clear at the earliest opportunity what their position is with regard to their use.

DR. NELTE: With respect to the first three categories, the Prosecution agrees with me that I can confine myself to the last category which begins with Documents 1 and 2. One of the fundamental questions of this Trial, which at first glance appears a purely legal problem, is the question of the so-called Führer state (Führerstaat) and Führer order (Führerbefehl). This question has, however, important actual significance here at this Trial, also of a factual importance. For instance, the Defendant Keitel, as a result of his particular position, was to the utmost degree affected by this Führer state principle and acted accordingly as he was continuously in personal contact

with the incarnation of this principle, namely, Hitler. It is not as if Article 8 of the Charter remained unaffected by it. It will, however, so I assume, be possible to prove that Article 8 of the Charter is not applicable here.

As to the Führer Order Number 1, Document Number 2, the Tribunal itself will, upon hearing the order, be able to judge whether it bears any relevance. This order, Führer Order Number 1, from Keitel Document Book Number 1, reads:

> "a) No one is to have any knowledge of secret matters which do not fall within his sphere.
>
> "b) No one is to obtain more information than he needs for the fulfillment of the task set him.
>
> "c) No one is to receive information earlier than is necessary for the duties assigned to him.
>
> "d) No one is to pass on to subordinates more secret orders or at an earlier date than is indispensable for the attainment of the purpose."

Document Number 1, that is, the expert opinion on the Führer state and Führer order, in connection with this Führer Order Number 1, is to serve as proof for the fact that there can be no question of conspiracy in the sense of the Indictment. Therefore, I request the Tribunal to admit those two documents as relevant. Documents Number 10 and Number 11, and also to a certain degree, Number 16, are submitted as proof that the principles which the Defendant Keitel, as a soldier and a German, considered to be important, namely, rearmament up to a point of securing a respectable position for Germany among the council of nations, were not only postulated by the German people, but also appreciated and approved by important persons abroad. This subject is to be proved by submission of articles by a British, a French, and an American author, military men, all of whom hold a high reputation for their writings on military matters. Among these is the article "Total War," by Major General Fuller, my Document 15, as well as the book by the British Major General Temperley, *The Whispering Gallery of Europe*. Mr. Fuller, for instance, writes in his article, that:

> "It is nonsense to state that he"—Hitler—"wanted war. War could not bring him the rebirth of his nation. What he needed was an honorable, secure peace."

The point to be proved here is that any aggressive intentions would of themselves be incompatible with the pronouncements of Hitler and the leading Nazis, if one believes in their sincerity. The defendant believed in

the sincerity of these pronouncements and to this end he referred to the opinion of important persons abroad.

I think those are the documents to which the Prosecution raised certain objections.

THE PRESIDENT: You have not mentioned 19 to 21, which documents are said to reveal a certain state of opinion in Austria.

DR. NELTE: Yes. Those documents—Number 19, "The Cultural and Political Importance of the Anschluss," and Document 20, "The Way Toward the Anschluss," and the third, "The Anschluss in the International Press," dated 1931—are to prove the defendant could assume, and was justified in so doing, that the overwhelming majority of Austrian people welcomed the Anschluss with Germany. These are articles and memoranda of the Austro-German Peoples Union, the chairman of which was the Social Democrat Reichstag President Loebe.

THE PRESIDENT: That concludes the documents, does it not?

DR. NELTE: I should like to make only one additional application to the Tribunal, which refers to documents which I have been unable to mention earlier since they were not submitted until the sitting of 22 February. I shall now submit this application. It refers to 11 documents, all of which were presented during the Friday sitting in order to prove the complicity of Keitel in the destruction during the retreat and in regard to forced labor of prisoners of war and civilian population. From the contents of these documents submitted by the Prosecution, it becomes apparent that, according to evidence I have already offered, a large number of the accusations of the Prosecution are to be attributed to the fact that every document which dealt in any way with military matters was simply charged to the OKW and Keitel.

THE PRESIDENT: Dr. Nelte, as I understand it, all these documents have already been put in evidence.

DR. NELTE: Yes.

THE PRESIDENT: Well, then they fall into the category to which Sir David agreed. They could be touched on by you.

DR. NELTE: That is correct.

THE PRESIDENT: There is no need to make any fresh application in connection with them.

DR. NELTE: When I made this additional application I had not yet received Sir David's consent. Besides this seems to be a particularly singular and convincing case because, on one day, 11 documents were submitted, all

of which were used as accusations against Keitel, but which all showed by their contents that they do not apply to him or the OKW.

THE PRESIDENT: One moment. There is only one other thing that I wanted to ask you. You asked at an earlier stage for the evidence from Ambassador Messersmith and Otto Wettberg and in both, cases the Tribunal granted you interrogatories. I do not know whether you are withdrawing your application in respect to those cases or whether you have seen the answers to the interrogatories.

DR. NELTE: I have, in accordance with the suggestion, sent those interrogatories to Ambassador Messersmith as well as to Otto Wettberg. Depending on the reply I shall receive from those two witnesses, I shall or shall not submit them.

THE PRESIDENT: You have submitted the one for Otto Wettberg, have you?

DR. NELTE: Yes, but I have not received it back.

THE PRESIDENT: Very well. The Exhibit Number 1, would you explain a little bit more what Number 1 is going to be? It appears to be the opinion of an expert witness on the meaning of the Führer precept. Is that what you intend?

DR. NELTE: Yes. It is an article in the field of constitutional law on the structure and significance of what is known as the Leader State (Führerstaat).

THE PRESIDENT: Very well. Yes, Colonel Smirnov.

CHIEF COUNSELLOR OF JUSTICE L. N. SMIRNOV (Assistant Prosecutor for the U.S.S.R.): May it please Your Honors, it is my duty to submit to the Tribunal evidence on the last count of the Indictment. "Crimes against Humanity" are dealt with in Count Four of the Indictment, and by Article 6, and particularly Subparagraph C of Article 6, of the Charter.

I shall submit evidence of crimes which the Hitlerites committed on the territories of the temporarily occupied areas of the Soviet Union, Poland, Yugoslavia, Czechoslovakia, and Greece.

The Crimes against Humanity—just as the other crimes of the German fascists for which evidence has been submitted to the Tribunal by my colleagues—originated in the criminal nature of fascism, in its endeavors to dominate the world by predatory seizure of whole states in the East and in the West, and by enslavement and mass extermination of people. These crimes were put into effect by adoption of the cannibalistic theories of German fascism.

Elements forming the concept of Crimes against Humanity are to be found in nearly all the criminal acts of the Hitlerites. For instance, a considerable amount of probative facts in corroboration of the gravity of the crimes committed by the German fascists has already been submitted to the Tribunal during the presentation of the Count concerning War Crimes against the civilian population.

The criminal violation by the Hitlerites of the laws and customs of war, as well as the mass extermination of prisoners of war, are some of the gravest Crimes against Humanity. At the same time, the concept Crimes against Humanity is considerably broader in scope than any definition of German fascist crimes, of which proofs have been hitherto submitted to the Tribunal.

Together with the arrival of German forces and the appearance of the swastika on official buildings, life of the inhabitants of the temporarily occupied eastern European countries seemed to stop. The merciless fascist machine tried to force them to be deprived of all that which, as a result of centuries of human development, had become an integral part of humanity.

Thus, death hung over them constantly, but on their way to death they were forced to pass through numerous and agonizing phases, insulting to human dignity, which constitute, in their entirety, the charge entitled in the Indictment "Crimes against Humanity."

Attempts were made to force them to forget their own names by hanging a number around their necks or by sewing a classification mark on their sleeves. They were deprived of the right to speak or to read in their mother tongue. They were deprived of their homes, their families, their native country, forcibly deported hundreds and thousands of kilometers away. They were deprived of the right to procreate. They were daily scoffed at and insulted. Their feelings and beliefs were jeered at and ridiculed. And, finally, they were deprived of their last right—to live.

The numerous investigations noted not only the state of extreme physical exhaustion of the victims of German fascist atrocities; they also usually mentioned the state of deep moral depression of those who, by the hazards of fate, escaped the fascist hell.

A long period of time was necessary for these victims of German fascism to return once again to a world of normal conceptions and activities and to man's conventions for human society. All this is very hard to express in legal formula, but, in my opinion, it is very important in the Indictment of the major war criminals.

I ask the Tribunal to refer to the report of the Polish Government which has already been submitted to the Tribunal as Exhibit Number USSR-93 (Document Number USSR-93). The quotation which I should like now to read is on Page 10 of the document book. On Page 70 of the Russian text of this report, there is a quotation from the statement of Jacob Vernik, a carpenter from Warsaw, who spent a year in the extermination camp of Treblinka 2. Sometimes the official German documents refer to "Treblinka 2" as "Treblinka B," but it is one and the same. This was one of the most terrible centers for mass extermination of people, created by German fascists. In my statement, I shall submit to Your Honors evidence connected with the existence of this camp.

This is what Vernik said in presenting a report on Treblinka to the Polish Government; a report which, as he stressed in his foreword, was his only reason "to continue his pitiful life":

> "Awake or asleep I see terrible visions of thousands of people calling for help, begging for life and mercy.
>
> "I have lost my family, I have myself led them to death; I have myself built the death chambers in which they were murdered.
>
> "I am afraid of everything, I fear that everything I have seen is written on my face. An old and broken life is a heavy burden, but I must carry on and live to tell the world what German crimes and barbarism I saw."

The persons who came to Treblinka entered, as I said, the ante-chamber of death. But were they the only victims of this fate? An analysis of probative facts connected with the crimes of the German fascists irrefutably testifies to the fact that the same fate was shared not only by those who were sent to special extermination camps, but also all those who became the victims of these criminals in the temporarily occupied countries of Eastern Europe.

I ask the Tribunal's permission to bring in evidence a short quotation from a document already submitted to the Tribunal as Document Number USSR-46—the report of the Extraordinary State Commission of the Soviet Union on the crimes committed in the city and region of Orel. In the text of this document there is a special communication of a famed Russian scientist, a doctor, the President of the Academy of Medical Science and member of the Extraordinary State Commission of the Soviet Union, Academician Burdenko. The Tribunal will find this communication on Page 14 of the document book, Paragraph 6:

> "The scenes I had to witness"—says Burdenko—"surpassed the wildest imagination. Our joy at the sight of the delivered people was dimmed by the expression of stupor on their faces.
>
> "This led one to reflect—what was the matter? Evidently the sufferings they had undergone had stamped upon them equality of life and death. I observed these people during 3 days. I bandaged them, I evacuated them, but their physical stupor did not change. Something similar could be noticed during the first days on the faces of the doctors."

I shall not, Your Honors, waste time in drawing attention to the long and well-known extracts from *Mein Kampf* or the *Myth of the Twentieth Century*. We are interested, in the first place, in the criminal practices of the German fascist fiends.

I have already said above, that death constantly hung over the people who became the victims of fascism. Death could come unexpectedly, together with the appearance in one or another place of a Sonderkommando; but at the same time, a death sentence would be pronounced for any act in these special decisions so mockingly called German fascist "laws."

I and other members of the Soviet Prosecution already have given numerous examples of these terroristic laws, directives, and decrees of the German fascist authorities. I do not wish to repeat myself, but I beg the Tribunal's permission to quote one of these documents as it concerns all the temporarily seized eastern territories.

The only justification for the publication of this document for its author, the Defendant Alfred Rosenberg, is that these temporarily occupied districts were populated by non-Germans. This document is a characteristic evidence of the persecution of people for racial, national, or political motives. I beg the Tribunal to enter in the record, as Exhibit Number USSR-395 (Document Number USSR-395), the photostat of the so-called third decree supplementing the penal directives for the Eastern territories which was issued by Alfred Rosenberg on 17 February 1942. Your Honors will find this document on Pages 19 and 20 of the document book. I shall read in full, beginning with Paragraph 1:

> "The death penalty, or, in lesser cases, penal servitude will be inflicted upon: Those who undertake to use violence against the German Reich or against the high authority established in the occupied territories; those who undertake to commit violence against a Reich citizen or a person of German nationality for his or her belonging to this German nationality; those who undertake to

use violence against a member of the Wehrmacht or its followers, the German police including its auxiliary forces, the Reich Labor Service, a German authority or institution, or the organizations of the NSDAP; those who appeal or incite to disobedience of orders or directives issued by the German authorities; those who with premeditation damage the furniture of German authorities and institutions or things used by the latter for their work or in the public interest; those who undertake to assist anti-German movements or to maintain the organizational connection of groups prohibited by the German authorities; those who participate in or incite hostile activity and thus reveal anti-German mentality or who by their behavior lower or injure the authority or the welfare of the German State and people; those who premeditatively commit arson and thereby damage German interests in general or the property . . .”

THE PRESIDENT: Have you read this before?

MR. COUNSELLOR SMIRNOV: I checked the transcript, and I do not think that this has been read into the record.

THE PRESIDENT: Very well.

MR. COUNSELLOR SMIRNOV: It may be that similar orders were read; maybe those of Frank or some other orders. They are all alike. In any case I could not find any mention of this document in the transcript.

I continue:

“. . . damage German interests in general or the property of a Reich citizen or persons of German nationality.”

Paragraph 2 is very characteristic:

“Furthermore, the death penalty and, in lesser cases, penal servitude is to be inflicted upon: Those who agree to commit any punishable action as foreseen by Paragraph 1; those who enter into serious negotiations on that subject; those who offer their services to commit such an action or accept such an offer; or those who possess credible information on such an action or its intention at a moment when the danger can still be averted, and willfully refrain from warning the German authorities or the menaced person in due time.

“Paragraph 3. An offense not coming under Paragraphs 1 and 2 is to be punished by death, even if this penalty is not provided for by the general German criminal laws and by decrees of German authorities, if the offense is of a particularly base type or for other

reasons is particularly serious. In such cases the death penalty is also permissible for juvenile hard criminals.

"Paragraph 4. (1) If there is insufficient justification for turning the case over to competent courts-martial, the special courts are competent. (2) The special instructions issued for the Armed Forces are not hereby affected."

I skip Paragraph 5.

This decree of Rosenberg's was only one link in the chain of crimes committed by the leaders of the German fascism directed toward exterminating the Slav peoples.

I pass on to the first part of my statement, which is entitled, "Extermination of Slav Peoples." In this part I shall show how this criminal purpose of the Hitlerites to exterminate the Slav peoples was carried out. I shall quote data from the report of the Yugoslav Government, which is to be found on Page 56 of the Russian text or on Page 76, Paragraph 3, document book:

"Apart from the thousands of Yugoslavs who died in battle, the occupants exterminated at least one and a half to two million people, mostly women, children, and aged persons. Of the 15 million prewar Yugoslav population, in the relatively short period of 4 years, almost 14 percent of the entire population was exterminated."

In the report of the Czechoslovak Government, on Pages 36 and 37 of the Russian text, there is proof of a plan conceived by the Hitlerite criminals for the forceful expulsion of all Czechs and the settling of German colonists in Czechoslovakia. The report quotes an excerpt from a statement of Karl Hermann Frank, who admitted the existence of this plan and declared that he, Frank, had compiled a memorandum in which he objected to a similar plan. I quote the excerpt from the statement of Karl Hermann Frank, which the Tribunal can find on Page 37 in the document book, fourth paragraph.

"I considered this plan senseless as, in my opinion, the vacuum created by these measures would have seriously upset the vital functioning of Bohemia and Moravia for various reasons of geopolitical, traffic, industrial, and other character; and the immediate filling of this vacuum with new German settlers was impossible."

In Poland a regime of extermination of the Slav population was put into effect by diverse criminal methods, among which driving people to an extreme state of exhaustion by excessive labor and subsequent death from

hunger, was most prevalent. The criminals quite consciously embarked upon the extermination of millions of people by hunger, which is attested by a number of documents already quoted by me and my colleagues in part, namely, the diary of Hans Frank.

I shall quote a few short extracts from this document. Here is an excerpt concerning the minutes of a conference held by the Governor General on 7 December 1942 in Kraków. The Tribunal will find the passage I wish to quote on Page 89 of the document book, in the first column of the text, last paragraph:

> "Should the new food supply plan be put into effect, it means that for the city of Warsaw and its surroundings alone 500,000 people will no longer receive food relief."

And here is another short excerpt from the minutes of a governmental conference held on 24 August 1942. The Tribunal will find it on Page 90 of the document book, first paragraph of the text. Dr. Frank states:

> "With all the difficulties which arise from the illness of workers, or the breaking down of your co-operatives, you must always bear in mind that it is much better if a Pole collapses than if the Germans are defeated. The fact that we shall be condemning 1,200,000 Jews to death by starvation should be mentioned incidentally. Of course, if the Jews do not die from starvation, it is to be hoped that anti-Jewish measures will be expedited in the future."

The third short quotation is an excerpt from the minutes of a labor conference held by the political leaders of the Labor Front of the NSDAP in the Government General, on 14 December 1942. The Tribunal will find it on the reverse of Page 89 of the document book, second column, second paragraph:

> ". . . we are faced with the following problem: Shall we be able, as from February, to exclude from general food supply 2 million persons of non-German nationality or not?"

In his preliminary speech, the Chief Prosecutor of the U.S.S.R., while speaking of Crimes against Humanity, referred to the notes of Martin Bormann. The notes of Martin Bormann were presented to the Court under Exhibit Number USSR-172 (Document Number USSR-172) in particular. The Chief Prosecutor of the U.S.S.R. quoted the following lines, which the Tribunal can find on Page 97 of the document book, last paragraph:

> "In summing up, the Führer once more stated: The least German workman and the least German peasant must always stand

economically 10 percent higher than any Pole."

How were things in reality? I should like to show that, with full approval, the Defendant Frank put these Hitler orders into effect in Polish territory. I beg the Tribunal to take for evidence an original German document.

Among the other fascist institutions carrying out various pseudo-scientific experiments, the German criminals created a special institute for economic research. This institute issued a document entitled, "What the Polish Problem Means for War Economy of Upper Silesia."

The fascist "scientific" institute decided to make such investigations in order to clarify the reason why the output of Polish workers became considerably reduced.

Two short excerpts will testify to the aims of this investigation better than anything else. On Page 39 of this original document we read—the Tribunal will find the passage I wish to quote on Page 101, of the document book, second paragraph. I submit this document as Exhibit Number USSR-282 (Document Number USSR-282). I begin the quotation which is on Page 101 of the document book, second paragraph.

> "This investigation is in no way to be construed as propaganda to arouse pity."

On Page 149 of the quoted document—the Tribunal will find this on Page 101, third paragraph, of the document book—it is said:

> "We raise our voices not to defend the Poles, but to protect the war production for the Armed Forces."

Quoting these two short excerpts characterizing the aims and nature of this investigation, I further quote a few excerpts which show the status of the Polish worker and the practical realization by the Defendant Frank of the above-mentioned directives of Hitler. I quote on Page 38 of the original of the document, which corresponds to Page 101, Paragraph 7 of the document book:

> "Information concerning the situation of the Polish population and considerations as to which measures would be the most suitable in this connection disagree on many points; but there is general agreement on one point, which can be summed up here in three words: The Poles are starving! Already some passing observations corroborate these conclusions. One of our investigators visited a war production plant during the lunch recess. The workers are standing or sitting apathetically, warming themselves in the sun,

and here and there smoking. The investigator reports that of 80 persons, only one has a piece of bread for lunch. The others, although all working 10 to 12 hours a day, have nothing."

I pass to Page 72 of the original, which corresponds to Page 102 of the document book; there is this quotation.

"Observations made in the factories prove that the present rations of the Polish workers do not allow them enough food to take with them to work. In many cases, the workers do not even have a piece of bread. When some do bring breakfast, it is only coffee and one or two pieces of dry bread or raw potatoes; at the worst time, they did not even have this, but raw carrots, which were then roasted on a stove during work."

I continue my quotation on Page 150 of the same document:

"In this connection it could be stated that on visiting the mines, it appeared that nearly 10 percent of the Polish workers went to work underground with only dry bread, or raw potatoes cut in slices which they warmed afterwards on a stove."

The institute began its "scientific calculations" with a comparison of the calories received by the Poles in Upper Silesia and the calories received by the German population.

I shall not quote large excerpts from the document, but will limit myself to short facts only. I start on Page 63 of this report, which corresponds to Page 102, last paragraph of the document book:

"Comparison of the number of calories received by the Poles in Upper Silesia with the number of calories allocated to the German population indicates that the Poles receive 24 percent less than the Germans. This difference reaches 26 percent on food ration cards of nonworking Poles. For youths from 14 to 20, the difference in rations allocated to Germans and to Poles reached almost 33 percent. However, it must be stressed that this only applies to working youths over 14.

"The difference between what Polish and German children from 10 to 14 receive is even more striking. The difference here is not less than 65 percent. The looks of these underfed youths already testify to this. In a similar way Polish children under 10 receive up to 60 percent less than German children.

"If on the other hand the doctors state that the food conditions of the babies are not so unfavorable, it is only an imaginary

contradiction. As long as a mother nurses her child, the child gets everything from that source. The consequences of the underfeeding are felt in this period not by the child but by the mother. Her health and working capacity are impaired considerably from the undernourishment."

I continue on Page 178 of the original which corresponds to Page 103, Paragraph 2 in the second document book:

"In all categories the Polish youth in comparison with the German is more wretched. The difference in rations of the Poles and Germans reaches 60 percent."

Extracts from the report of the German Labor Front cited in this investigation also offer some interest. Particularly on Page 76 are quoted excerpts from the report of the German Labor Front, dated 10 October 1941, after a visit to one of the coal mines in Poland:

"It was established that daily in various villages Polish miners fall from exhaustion. . . . As the workers constantly complained of stomach pains, doctors were consulted, who answered that this was a symptom of undernourishment."

I would conclude the description of the Polish workers' physical condition drawn by the German criminals themselves, and, what is more, by the "learned" criminals, by a short quotation from the same report which the Tribunal will find on Page 106, Paragraph 6 of the document book:

"The management of the factories constantly stresses that it is no longer possible by threats of deportation to concentration camps to incite to work underfed people incapable of physical effort. Sooner or later there comes a day when the weakened body can no longer work."

There is also in this document a descriptive sketch of the legal status of the Polish worker during the German occupation which bears no possibility of double interpretation. This descriptive sketch is all the more valuable because, as was already stressed above, the authors of the investigation report expressly emphasized that "all humanitarian tendencies whatsoever were alien to them."

I begin the quotation of the produced document on Page 127 which corresponds to Page 110, second paragraph of the document book:

"The law does not recognize any legal claim of any member of the Polish nation in any sphere of life. Whatever is granted a Pole is done voluntarily by the German masters. This legal situation is

perhaps most clearly mirrored in 'the Pole's lack of possession in the eyes of the law.' In the administration of justice Poles are not permitted to conduct their cases before a court. In criminal procedure the viewpoint of obedience dominates. The execution of legal regulations is in the first place the task of the police, who can decide at their discretion or refer individual cases to the courts."

According to an order, dated 26 August 1942 Polish as well as German workers were obliged to take out insurance against illness, accidents, and disability. The deductions from the wages for this purpose were larger for the Poles than for the German. However, the German workers profited by this insurance, whereas, in actuality, the Poles were deprived of it.

As proof of this I shall present to the Tribunal two short excerpts from the same investigation report which Your Honors will find on Page 111 in the document book, Paragraph 4. It corresponds to Page 134 of the original text of the investigation report quoted above:

"Insurance against accidents, which is incumbent on the trade unions, involved particularly stringent measures for the Poles. The recognition of disability caused by an accident is much more limited than in the case of Germans. Disability for the loss of an eye is 30 percent for a German and 25 percent for a Pole. The payment of a subvention depends on 33⅓ percent disability."

I continue my quotation on Page 135 of the original document, that is to say, on Page 111, last paragraph of the document book:

"The most stringent measures are provided for the dependents of fatally injured persons. The maximum a widow can receive is half of that granted by the insurance to Germans—and this only in case she has to support four children under 15 years of age, or is herself an invalid.

"The restriction on the rights of Poles is illustrated by an example: A German widow with three children receives 80 percent of the yearly salary of her fatally injured husband; from an annual income of 2,000 marks she receives 1,600 marks per year, but a Pole in a similar situation would receive nothing."

The major German fascist war criminals not only sent into the temporarily occupied Eastern territories soldiers and the SS, but specially appointed fascist "scientists," "consultants in economic problems," and all sorts of "investigators" followed after. Some of them were detached from Ribbentrop's office; some others were sent by Rosenberg.

I beg the Tribunal to enter into the record as evidence one of these documents. I submit it under Document Number USSR-218. I mean the report of the representative attached by the Ministry of Foreign Affairs to the command of the 17th Army, Captain Pfleiderer, and addressed to his colleague Von Rantzau from the information service of the Ministry of Foreign Affairs. These documents were discovered by units of the Red Army on the Dirksen estate in Upper Silesia.

On the basis of a reading of these documents, it can be concluded that in 1941-42 Pfleiderer made a trip covering the following route through the occupied territories on the route Yaroslavl in the Ukraine, Lvov, Tarnopol, Proskurov, Vinnitza, Uman, Kirovograd, Alexandria, and Krementshoug on the Dnieper.

The purpose of this trip was to study economic and political conditions in the occupied territories of the Ukraine. That the author of this document was also completely free of so-called humanitarian tendencies, can be seen from the short excerpt from his report dated 28 October 1941, where Pfleiderer writes—the Tribunal will find this quotation on Page 113, second paragraph of the document book. I quote only one line:

> ". . . there is the urgent necessity to press out of the country everything to secure the food supply of Germany."

But even with such proclivity to cruelty and rapacity, Pfleiderer evidently was abashed by the conduct of his compatriots to the extent that he deemed it necessary to bring it to the attention of the highest authorities of the Ministry of Foreign Affairs. I quote the report of Pfleiderer which is entitled:

> "Conditions for the Guarantee of Supply and for Producing the Largest Possible Food Surplus in the Ukraine.
>
> ". . . 3) Frame of mind and living conditions of the population by the end of October 1941."

The Tribunal will find this part on Page 114, third paragraph of the document book:

> "The frame of mind of the population generally became worse a few weeks after the occupation of the territory by our troops. The reason for it? We display . . . inner hostility and even hatred toward this country, and arrogance toward the people. . . . The third year of war and the necessity of wintering in an unfriendly country causes many difficulties, but they must be surmounted with courage and self-discipline. We must not work off our discontent over this country on the population. . . . How often it

happened that, acting against the rules of psychology and committing mistakes that we could easily have avoided, we lost all sympathy of the population. The people cannot understand the shooting of exhausted prisoners of war in villages and larger localities and the leaving of their bodies there. As the troops are entrusted with a broad authority for self-provisioning, the *kolkhozes* along the main roads and near the larger towns for the most part lack pedigree cattle, seeds, seed potatoes (Poltava). Evidently, the supplying of our own troops stands first; however, the system of supply in itself is not immaterial: Psychologically, requisitioning the last hen is as unreasonable as it is economically unreasonable to kill the last pig or the last calf."

I continue my quotation, Paragraph 3, Page 115 of the document book:

"The population . . . is without leadership. It stands apart and feels that we look down on it, that we see sabotage in their tempo and methods of work, that we do not take any steps to find a way to an understanding."

A similar document is the document submitted as Exhibit Number USSR-439, which was graciously given to us by our United States colleagues. It was registered by the American Prosecution as Document Number 303-PS, but was not filed. It is a political report of the German professor, Doctor Paul W. Thomsen, written on the forms of the State University of Posen Biological Paleontological Institute and was indexed by the author himself, "Not for publication." Your Honors will find this document on Page 116 of the document book. This document also introduces us into this field of complete lawlessness and tyrannical arbitrariness toward the local population of the temporarily occupied districts of the Soviet Union. These observations were made by this fascist professor during his trip through the temporarily occupied territories of the Soviet Union "from Minsk to the Crimea."

I refer to two short excerpts from this document. The quotation which I have read into the record testifies to the absence of any humanitarian tendencies on the part of that author and if Paul Thomsen brought back from his trip only "the most depressing impression" that is only further proof of the depths of cruelty and brutality to which the German fascists were willing to go. The Tribunal will find these excerpts on Page 116 of the document book. I begin the quotation. . .

THE PRESIDENT: We will adjourn now.

[*The Tribunal adjourned until 26 February 1946 at 1000 hours.*]

SIXTY-EIGHTH DAY

Tuesday, 26 February 1946

Morning Session

THE PRESIDENT: I wanted to explain the Tribunal's decision with reference to General Halder and General Warlimont.

Would Dr. Nelte kindly come to the Tribunal?

I wanted to ask you, Dr. Nelte, whether you were the only one of the defendants' counsel who wished to call General Halder and General Warlimont?

DR. NELTE: No, besides myself, so far as I know, my colleagues Dr. Laternser, Professor Dr. Kraus, and Professor Dr. Exner have called both General Halder and General Warlimont.

THE PRESIDENT: Very well, I understand.

Then the Tribunal's decision is this: The Tribunal ordered, when the Soviet prosecutor wished to put in the affidavits of these two generals, that if they were put in, the witnesses must be produced for cross-examination. But in view of the fact that defendants' counsel have asked to call these witnesses themselves, the Tribunal is willing that the defendants' counsel should decide whether they prefer that those two generals should be produced now, during the Prosecution's case, for cross-examination, or should be called thereafter during the defendants' case for examination by the defendants, in which case, of course, they would be liable to cross-examination on behalf of the Prosecution.

But it must be clearly understood, in accordance with the order which the Tribunal made the other day—either yesterday or the previous day, I forgot which it was—that these witnesses, like other witnesses, can only be called once, and when they are called, each of the defendants' counsel who wishes to put questions to them must do so at that time.

Now, if there were any difference of opinion among defendants' counsel, one defendant's counsel wishing to have these two generals produced now during the Prosecution's case for cross-examination, and other defendants' counsel wishing to have them called hereafter as witnesses on their behalf

during the course of their case, then the Tribunal consider that in view of the order which they have already made, Generals Halder and Warlimont ought to be produced and called now. And the same rule would apply then. They could only be called once, and any questions which the other defendants' counsel wish to be put to them should be put to them then. But the decision as to whether they should be called now or whether they should be called during the course of the defendants' case is accorded to defendants' counsel.

Is that clear?

DR. NELTE: I request to hear the decisions of the various Defense Counsel at the beginning of the afternoon session. . .

THE PRESIDENT: Yes, certainly, certainly. You can let us know during the afternoon session, at the beginning of the afternoon session, what the decision of defendants' counsel is.

DR. NELTE: Thank you.

THE PRESIDENT: Yes, Colonel Smirnov.

MR. COUNSELLOR SMIRNOV: I continue the quotation of the political report of Professor Paul Thomsen, which was already submitted at yesterday's afternoon session to the Tribunal. Your Honors will find it on Page 116 of the document book. I start quoting—and quote only two short excerpts from this political report:

> "I consider it is my duty, although I am only here in the East on a specific scientific mission, to add a general political outline to my actual reports. I must admit, openly and in all honesty, that I return home with the most grievous impressions.
>
> "In this fateful hour of our nation every mistake we make may result in the most disastrous consequences. A Polish or a Czech problem can be crushed because the biological forces of our people are sufficient for that purpose.
>
> "Remnants of people like Estonians, Lithuanians, and Letts have to adapt themselves to us or they will perish. Things are quite different in the immense Russian area, of vital necessity to us as a basis for raw materials."

Here I interrupt my quotation and continue on Page 117 of the document book, Paragraphs 10 and 11—I quote:

> "I do not dare to voice an opinion on the economic measures, such as, for instance, the abolition of the free market in Kiev, which has been taken as a heavy blow by the population, since I am in no position to observe the entire situation. The 'sergeant major

attitude,' the beatings and shouting in the streets, the senseless destruction of scientific institutions which is still going on as strong as ever in Dniepropetrovsk, should cease immediately and be punished severely.

"Kiev, 19 October 1942; Professor Dr. Paul W. Thomsen."

The German fascist theory of Germanization, already well known to the Tribunal, announced that not the people but the territories were to be germanized.

I shall submit evidence to the Tribunal that a similar Hitlerite crime was to have been committed in Yugoslavia. This crime could not be perpetrated because of the liberation movement which flared up all over Yugoslavia.

I quote a short excerpt from the statement of the Yugoslav Government, which is on Page 68, Paragraph 7 in the document book:

"Immediately after the entry of the German troops into Slovenia, the Germans began to put into effect their long premeditated plan for the Germanization of the annexed regions of Slovenia. It was perfectly clear to the leading Nazi circles that a successful Germanization of Slovenia could not be realized unless the greater part of the nationally and socially conscious elements had previously been removed; and in order to weaken the resistance of the mass of the people towards the Nazi authorities engaged in the task of Germanization, it would be essential to lessen them numerically and destroy them economically.

"The German plan foresaw the complete removal of all the Slovenes from certain regions of Slovenia, and their repopulation by Germans"—Germans from Bessarabia and so-called "Gottscheer" Germans."

I omit a passage and continue:

"A few days after the seizure of Slovenia, central offices were organized for resettlement control. The headquarters staff was established in Maribor (Marburg on the Drava) and Bled (Veldes).

"At the same time, on 22 April 1941, a 'Decree for the Strengthening of German Folkdom' was published. The immediate aim of this decree was the confiscation of property of all persons and institutions antagonistically inclined towards the Reich. Naturally, all those, who in accordance with the aforesaid plan were to be deported from Slovenia, were included in this category.

> "The Hitlerites proceeded to the practical realization of this plan. They arrested a large number of persons registered for deportation to Serbia and Croatia. The treatment of the arrested persons was extremely cruel. Their entire property was confiscated in the interest of the Reich. Numerous assembly points were organized and practically turned into concentration camps, in Maribor, Zelie, and other localities."

As regards the treatment of arrested persons in these points, the statement of the Yugoslav Government reads as follows—the members of the Tribunal will find this passage on Page 69, Paragraph 4, of the document book:

> "The internees were left without food; in unhygienic conditions; the personnel of the camp subjected them to bodily and mental torture. All the camp commanders and personnel belonged to the SS. Among them were Germans from Carinthia and Styria who hated anything connected with Slovenia in particular, and Yugoslavia in general."

The following sentence is typical:

> "The members of the so-called Kulturbund"—Cultural Union —"particularly distinguished themselves for their cruelty."

In corroboration of this Hitlerite crime, I submit to the Tribunal, as Exhibit Number USSR-139 (Document Number USSR-139), a letter from the German Command in Smeredov, addressed to the Yugoslav quisling, Commissioner Stefanovitch, ordering him to report what the possibilities were for transferring to Serbia a large number of Slovenes. Your Honors will find this document on Page 119 of the document book.

In the report of the Yugoslav Government, Page 49 of the Russian text, which corresponds to Page 59, Paragraph 7, of the document book of the Tribunal, it is stated that the Germans primarily intended to transfer 260,000 Slovenes to Serbia. However, the realization of this plan met with a number of difficulties. In this connection I should like to quote a paragraph from the report of the Yugoslav Government:

> "But in view of the fact that the transportation to Serbia of such a very large number of Slovenes has encountered a great many difficulties, negotiations were opened shortly afterwards between the German authorities and the quisling Oustachi administration in Zagreb concerning the transit of the expelled Slovenes through Croatian territory and the resettling of a certain number of these

Slovenes in Croatia proper, while the Serbs in Croatia were deported from the country."

I submit to the Tribunal, as Exhibit Number USSR-195 (Document Number USSR-195), the minutes of a conference held on 4 June 1941 at the German Legation in Zagreb and presided over by SA Obergruppenführer Siegfried Kasche, German Minister in Zagreb. These minutes, in the Serbian translation, were seized in the archives of the Refugee Commission of the so-called Government of Milan Neditch. They give the subject matter of the conference, that is, "The Expulsion of the Slovenes from Germany to Croatia and Serbia, as well as of the Serbs from Croatia to Serbia." The Tribunal will find this document on Page 120 of the document book. The passage in question literally reads as follows:

"The conference was approved by the Reich Ministry for Foreign Affairs by Telegram Number 389, dated 31 May. The Führer's approval for the deportation was received by Telegram Number 344, dated 25 May."

We are thus able to prove that the direct responsibility for this crime against humanity rests on the Defendant Von Ribbentrop.

We gather, at the same time, from the report of the Yugoslav Government, that the deportation of a considerable number of Slovenes to Germany was put into effect. I quote a paragraph from the report of the Yugoslav Government, which Your Honors will find on Page 70, last paragraph of the document book. I begin the quotation:

"Shortly afterwards the deportation itself began. In the morning German trucks would arrive in the villages. Soldiers and Gestapo men, armed with machine guns and rifles, broke into the houses and ordered the inhabitants to leave, each man being allowed to take with him only as much as he could carry. The unfortunate people were given only a few minutes in which to quit and they were forced to leave all their property behind them. The trucks drove them to the Roman Catholic Trappist monastery of Reichenberg. The transports started from the monastery. Each transport consisted of 600 to 1,200 persons to be taken to Germany. The district of Bregiza was almost completely depopulated, the district of Krshko up to 90 percent; 56,000 inhabitants were deported from these two districts. Over and above this 4,000 were deported from the communities of Zirkovsky and Ptuya."

I omit one paragraph and continue:

"They were forced to perform the very hardest tasks and to live under the most horrible conditions. The mortality rate assumed enormous proportions in consequence. The harshest penalties were applied for the slightest offense."

I shall not enumerate other passages in the report of the Yugoslav Government in connection with the same subject. I do not quote this document; I merely ask the Tribunal to accept as evidence the supplementary official report of the Yugoslav Government which I am submitting as Document Number USSR-357.

Similar crimes were committed by the German criminals on the territory of occupied Poland. I quote a few excerpts from the official report of the Polish Republic. Your Honors will find the passage I wish to quote on Page 3, Paragraph 3 of the document book. The passage is in Subparagraph A and is entitled, "The Germanization of Poland":

"Clear indications concerning the program are found in a publication distributed among members of the National Socialist Party in Germany in 1940. It contained the principles of German policy in the East. Here are some quotations from this document:

" 'In a military sense the Polish question has been settled, but from the point of view of national policy it is only now beginning for Germany. The national political conflict between the Germans and Poles must be carried forward to a degree never yet seen in history.

" 'The aim which confronts German policy in the territory of the former Polish State is twofold: Firstly, to see that a certain portion of space in this area is cleared of the alien population and colonized by German nationals; secondly, by imposing German leadership, in order to guarantee that in that area no fresh conflagrations should flare up against Germany. It is clear that this aim can never be achieved with, but only against, the Poles.' "

I interrupt this quotation and continue on Page 15 of the report of the Polish Republic, which corresponds to Page 5, Paragraph 5 of the document book. This part is entitled, "The Colonization of Poland by German Settlers." I begin the quotation:

"The policy, in this respect, was clearly expressed by the official German authorities. In the *Ostdeutscher Beobachter* of 7 May 1941 the following proclamation is printed:

"For the first time in German history we can exploit our military victories in a political sense. Never again will even a centimeter of

the earth which we have conquered belong to the Pole."

Such was the plan. The facts which were put into practice were the following:

"Locality after locality, village after village, hamlets and cities in the incorporated territories were cleared of the Polish inhabitants. This began in October 1939, when the locality of Orlov was cleared of all the Poles who lived and worked there. Then came the Polish port of Gdynia. In February 1940 about 40,000 persons were expelled from the city of Posen. They were replaced by 36,000 Baltic-Germans, families of soldiers and of German officials.

"The Polish population was expelled from the following towns: Gnesen, Kulm, Kostian, Neshkva, Inovrotzlav. . ."—and many other towns.

"The German newspaper *Grenzzeitung* reported that in February 1940 the entire center of the city of Lodz was cleared of Poles and reserved for the use of future German settlers. By September 1940 the total number of Poles deported from Lodz was estimated at 150,000.

"But it was not only that the persons living in these places were ordered to leave—they were forbidden to take their property with them; everything was to be left behind. The German newcomers took the place of the Poles evicted from their homes, business shops, and farms. By January 1941 more than 450,000 Germans had been settled in this manner."

I omit the next part of this report which I wished to quote and I would request the Tribunal only to pay attention to the part entitled, "Germanization of Polish Children." This is a short quotation. Just two small paragraphs:

"Thousands of Polish children (between the ages of 7 and 14) were ruthlessly torn from their parents and families and carried off to Germany. The purpose of this most brutal measure was explained by the Germans themselves in the *Kölnische Zeitung* Number 1584, 1940 issue. We read:

" 'They will be taught German. They will be inculcated with the German spirit so that later they can be brought up as model German boys and girls.' "

In order to explain the methods adopted by the German fascists in the execution of their cannibalistic plan for the extermination of the Soviet people—peaceful citizens of my motherland, women, children, and old people—I request the Tribunal to call and question witness Grigoriev, Jacob Grigorievitch, a peasant from the village of Pavlov, village soviet of Shkvertovsk, region of Porkhovsk, district of Pskov. He has arrived from the district of Pskov, a district near Leningrad and, according to my information, is now in the courtbuilding. I ask the permission of the Tribunal to examine this witness.

THE PRESIDENT: Yes, certainly.

[*The witness Grigoriev took the stand.*]

THE PRESIDENT: What is your name?

JACOB GRIGORIEV (Witness): Jacob Grigoriev.

THE PRESIDENT: Will you take this oath:

I—Jacob Grigoriev—citizen of the Union of the Soviet Socialist Republics—summoned as witness in this Trial—do promise and swear—in the presence of the Court—to tell the Court nothing but the truth—about everything I know in regard to this case.

[*The witness repeated the oath in Russian.*]

THE PRESIDENT: You may sit down.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, in which village did you live before the war?

GRIGORIEV: In the village of Kusnezovo, Porkhov region, district of Pskov.

MR. COUNSELLOR SMIRNOV: In which village were you overtaken by the outbreak of war?

GRIGORIEV: In the village of Kusnezovo.

MR. COUNSELLOR SMIRNOV: Does this village currently exist?

GRIGORIEV: It does not exist.

MR. COUNSELLOR SMIRNOV: Please tell the Tribunal what happened.

GRIGORIEV: On the memorable day of 28 October 1943, German soldiers suddenly raided our village and started murdering the peaceful citizens, shooting them, chasing them into the houses. On that day I was working on the threshing floor with my two sons, Alexei and Nikolai. Suddenly a German soldier came up to us and ordered us to follow him.

THE PRESIDENT: Wait a minute, wait a minute. When you see the light on that desk there or here, it means you are going too fast. You

understand?

GRIGORIEV: I understand, yes.

THE PRESIDENT: Very well.

MR. COUNSELLOR SMIRNOV: Please speak slowly, Witness. Continue, please.

THE PRESIDENT: You said you were working with your two sons in the field.

GRIGORIEV: Yes; my own two sons.

MR. COUNSELLOR SMIRNOV: Continue.

GRIGORIEV: We were led through the village to the last house at the outskirts. There were 19 of us, all told, in that house. So there we sat in that house. I sat close to the window and looked out of it. I saw German soldiers herd together a great number of people. I noticed my wife and my 9-year-old boy. They were chased right up to the house and then led back again—where to, I did not know.

A little later three German machine gunners came in, accompanied by a fourth carrying a heavy revolver. We were ordered into another room. So we went, all 19 of us, and were lined up against a wall, including my two sons, and they began shooting at us from their machine guns. I stood right up to the wall, bending slightly.

After the first volley I fell to the floor, where I lay, too frightened to move. When they had shot all of us they left the house. When I came to, I looked round and saw my son Nikolai who had been shot and had fallen, face downwards. My second son I could not find anywhere.

Then, when some time had passed, I began to think how I could escape. I straightened my legs out from under the man who had fallen on me and began to think how I could get away. And instead of that, instead of planning my escape, I lost my head and called out, at the top of my voice, "Can I really go now?" At that moment my small son, who had remained alive, recognized me.

MR. COUNSELLOR SMIRNOV: That would be your second son?

GRIGORIEV: The second. The first had been killed and was lying by my side. My little son called out, "Daddy, are you still alive?"

MR. COUNSELLOR SMIRNOV: He was wounded?

GRIGORIEV: He was wounded in the leg. I calmed him down: "Do not fear, my small son. I shall not leave you here. Somehow or other, we shall get away from here. I shall carry you out."

A little later the house began to burn. Then I opened the window and threw myself out of it, carrying my little boy who had been wounded in the leg. We began to creep out of the house, hiding so that the Germans could not see us, but on our way from the house we suddenly saw a high fence.

We could not move the lattice apart so we began to break it up. At that moment we were noticed by the German soldiers and they began to shoot at us. Then I whispered to my little son to hide while I would run away. I was unable to carry him and he ran a short distance and hid in the undergrowth, while I ran off. I ran a short distance and then jumped into a building near the burning house.

There I sat for a while and then decided to run farther on. So I escaped into a nearby forest, not far from our village, where I spent the night. In the morning I met Alexei N. from the neighboring village, who told me, "Your son, Aljosha, is alive; he started to crawl to the neighboring village."

Then on the second day, from the same village, Kuznetzov, I met the boy Vitya who had escaped from Leningrad and was living in our village during the time of the occupation. He had also been saved by a miracle. He escaped from the fire. He told me what had happened in the second hut where my wife and son had been taken.

There matters were carried out as follows: The German soldiers, having driven the people into the hut, opened the door into the passage and proceeded to shoot from their machine guns across the threshold.

According to Vitya's words, people who were still half alive were burning, including my little boy, Petya, who was only 9 years old. When he ran out of the hut he saw that my Petya was still alive. He was sitting under a bench, having covered his ears with his little hands.

MR. COUNSELLOR SMIRNOV: How old was the oldest inhabitant of this village destroyed by the Germans?

GRIGORIEV: The oldest inhabitant, a woman aged 108 years, was Ustinia Artemieva.

MR. COUNSELLOR SMIRNOV: Tell me, Witness, how old was the youngest victim murdered by the Germans?

GRIGORIEV: Four months.

MR. COUNSELLOR SMIRNOV: How many villagers were destroyed all told?

GRIGORIEV: Forty-seven, excluding those who were saved by a miracle.

MR. COUNSELLOR SMIRNOV: Why did the Germans destroy the population of your village?

GRIGORIEV: The reason was not known.

MR. COUNSELLOR SMIRNOV: And what did the Germans themselves say?

GRIGORIEV: When a German soldier came to our threshing floor we asked him, "Why are you killing us?" He replied, "Do you know the village of Maximovo?" This is the village next to our village community. I said, "Yes." Then he told me, "This village of Maximovo is kaput—the inhabitants are kaput, and you too will be kaput."

MR. COUNSELLOR SMIRNOV: And why kaput?

GRIGORIEV: "Because," said he, "partisans were hiding in your village." But his words were untruthful because we had no partisans in the village; nobody indulged in any partisan activities since there was nobody left. Only old people and small children were left in the village; the village had never seen any partisans and did not know who these partisans were.

MR. COUNSELLOR SMIRNOV: Were there many adult men in your village?

GRIGORIEV: There was one man, 27 years old, but he was a sick man, half-witted and paralytic. We had only old men and small children. All the rest of the men were in the Army.

MR. COUNSELLOR SMIRNOV: Please tell us, witness, were the inhabitants of your village alone in suffering this fate?

GRIGORIEV: No, they were not alone. The German soldiers shot 43 persons in Kurysheva, 47 in Vshivova, and in the village of Pavlovo, where I now live, they burned 23 persons. And in a number of villages where, according to our village community, there were some four hundred inhabitants, they shot all the peaceful citizens, both young and old.

MR. COUNSELLOR SMIRNOV: Please repeat that figure. How many persons were destroyed in your village community?

GRIGORIEV: About four hundred people in our village community alone.

MR. COUNSELLOR SMIRNOV: Please tell us, who remained alive in your family?

GRIGORIEV: In my family only I and my boy remained alive. In my family they shot my wife, in her sixth month of pregnancy, my son Nikolai, aged 16 years, my youngest boy, Petya, aged 9 years, and my sister-in-law—my brother's wife—with her two infants, Sasha and Tonya.

MR. COUNSELLOR SMIRNOV: I have no further questions to ask this witness, Mr. President.

THE PRESIDENT: Do any of the other prosecutors wish to ask the witness any questions? Do any of the defendants' counsel wish to ask the witness any questions? The witness may retire.

[*The witness left the stand.*]

MR. COUNSELLOR SMIRNOV: Mr. President, I pass on to the next count of my statement, the discrimination against the Soviet people.

Discrimination against the Soviet population was the usual method of the Hitlerite criminals. It was carried out by the criminals continuously and everywhere.

In this part of my presentation I shall refer to the documents of the German criminals themselves, which have only now been obtained and placed at the disposal of the Soviet Prosecution. They were seized by the Extraordinary State Commission of the Soviet Union in the prisoner-of-war camp at Lamsdorf.

I submit to the Tribunal as Exhibit Number USSR-415 (Document Number USSR-415), a communication of the Extraordinary State Commission on the crimes committed by the German Government and the German Supreme Command against Soviet prisoners of war in the camp of Lamsdorf. A number of original documents of the German fascist criminals, discovered in the camp archives are attached to the report.

I shall be able to submit some of these documents to Your Honors. Their value consists in the fact that they prove that even in the murderous regime established in one of the largest and most cruel of the German concentration camps, the criminals, true to the cannibalistic principles of their theories, shamelessly discriminated against Soviet nationals.

I shall quote a few brief excerpts from the report of the Extraordinary State Commission. The passage, Your Honors, to which I refer, you will find on Page 123 of the document book, Paragraph 4. It sets forth the general characteristics of the camp. I quote:

> "Subsequent to investigations made, the Extraordinary State Commission proved that in Lamsdorf, in the district of the town of Oppeln, there existed, from 1941 to May 1945, a German stationary camp, Number 344.
>
> "In 1940-41 this camp contained Polish prisoners of war; from the end of 1941 Soviet, English, and French prisoners of war began to come in."

I omit the next two sentences and continue the quotation:

> "The prisoners of war were deprived of their outer clothing and boots. Even in winter they had to go barefoot. No fewer than 300,000 prisoners of war passed through the camp during the years of its existence, including 200,000 Soviet and 100,000 Polish, English, French, Belgian, and Greek prisoners.
>
> "The prevalent method for the extermination of Soviet prisoners in Lamsdorf camp was the sale of the captives to German undertakings for work in various German firms where they were mercilessly exploited until, their strength completely lost, they died of exhaustion.
>
> "In contrast to the numerous German labor exchanges, where Sauckel's representatives sold enslaved Soviet citizens by retail to German housewives, a wholesale business in internees was organized in Lamsdorf camp where the captives were formed into labor commands. There were 1,011 such labor commands in the camp."

When presenting the subsequent documents, I should like to ask the Tribunal to understand correctly the statements in corroboration of which I am submitting evidence.

I do not in the least wish to say that the regime established by the Germans for British, French, or other prisoners of war was at all distinguished for humanity or kindness and that, alone, the Soviet prisoners of war were exterminated by the camp administration by various criminal methods.

Not at all. Lamsdorf Camp factually pursued its object, which was the extermination of prisoners of war regardless of their nationality or citizenship. Nevertheless, even in this death camp, in these most grievous conditions created for prisoners of war of all nationalities, the German fascists, committing crimes against humanity and faithful to the principles of their theories, created particularly excruciating conditions for the people of the Soviet.

I shall submit to the Tribunal, in a few brief excerpts, a series of documents taken from the archives of this camp and presented to the Tribunal in the original version. All these documents point to the manifest discrimination against Soviet prisoners of war, carried out by the camp administration pursuant to orders of the Reich Government and of the Supreme Command of the Armed Forces.

I submit to the Tribunal as Exhibit Number USSR-421 (Document Number USSR-421), a memorandum on the utilization of the labor of Soviet prisoners of war, addressed by the chief of the prisoner-of-war department for the 8th Military District for the administration of industrial concerns to which the prisoners of war were sent.

I request the Tribunal to accept this document as evidence. It is submitted in the original. I quote Point 10 of this memorandum. Your Honors will find the passage quoted in the last paragraph of Page 150 of the document book. I begin the quotation:

> "The following directives have been issued for the treatment of Russian prisoners of war:
>
> "The Russian prisoners of war have all passed through the school of Bolshevism, they must be looked upon as Bolsheviks and treated as such. According to their own instructions they must, even in captivity, struggle actively against the state which has captured them. Therefore, we must from the very beginning treat all Russian prisoners of war with ruthless severity, if they give us the slightest cause for so doing.
>
> "Complete separation of prisoners of war from the civilian population must be carried out strictly, in work as well as during recreation.
>
> "Civilians attempting, some way or another, to approach the Russian prisoners of war, to exchange ideas with them, to hand them money, food supplies, *et alia*, will be arrested without warning, questioned, and handed over to the police."

I further quote the introduction to this memorandum. Your Honors will find it on Page 149 of the document book, Paragraph 2:

> "The High Command of the Armed Forces has issued directives regulating the utilization of Soviet prisoner-of-war labor. According to these directives the utilization of Russian prisoners of war could be tolerated only if carried out under far harsher conditions than those applied to prisoners of war of other nationalities."

Thus the instructions for a specially cruel regime, to be applied to Soviet prisoners of war merely because they were Soviet people, were not the result of any arbitrary action on the part of the Lamsdorf Camp administration. They were dictated by the Supreme Command of the Armed Forces. In drafting this memorandum, the Lamsdorf Camp administration was only carrying out direct orders from the Supreme Command.

I quote two more, fairly characteristic points from the memorandum. I quote Point 4, which Your Honors will find on Page 149 of the document book, last paragraph. I begin the quotation—it is a very brief one:

> "In contrast to the increased requirements for the safeguarding of the Russian billets, these—from the viewpoint of comfort—must be reduced to the most modest requirements."

I shall endeavor to explain later on what this means. I shall next quote Point 7, which Your Honors will find on Page 150 of the document book, Paragraph 3. I begin the quotation:

> "The food rations for Russian prisoners of war at work will differ from the rations allocated to prisoners of other nationalities. More detailed information on this subject will be given later."

Such was the memorandum addressed to the industrialists to whose concerns the Soviet prisoners of war were sent to work as slaves.

I submit to the Tribunal Exhibit Number USSR-431 (Document Number USSR-431), which is another memorandum about guarding the Soviet prisoners of war. The document is submitted in the original and I request the Tribunal to accept it as evidence into the record.

I ask the permission of the Tribunal to quote a few brief excerpts from this document. First I quote that part of the document which proves its origin. The first page of the text indicates it is an appendix to a "Directive of the OKW—General Office, Armed Forces, POW Section." Next follow number and document, which are not so important. I now read the introduction to this memorandum, which is on Page 150 of the document book:

> "For the first time in this war the German soldier is faced with an adversary who is educated both in a military and in a political sense, whose ideal is communism and who sees in National Socialism his very worst enemy."

I omit the next paragraph and continue:

> "Even in captivity, the Soviet soldier—however harmless he may appear outwardly—will seize every occasion to show his hatred for all that is German. We must reckon with the fact that the prisoners will have received suitable instructions on their behavior if captured and imprisoned."

My colleague, Colonel Pokrovsky, has already denounced the absurdity of these so-called special instructions and I therefore do not consider it necessary to dwell on this passage. I continue:

"It is therefore absolutely essential, when dealing with them, to exercise the greatest caution and prudence, and to nourish the deepest suspicions."

The following directives were issued to the guard on watch over the Soviet prisoners:

Firstly—ruthless action at the slightest sign of resistance or disobedience. Merciless use of firearms to break any resistance. Escaping prisoners to be shot at immediately, without challenge, with firm intent to hit. "Without challenge" is characteristic.

I omit the two following paragraphs and quote the second part, Point 3 of the memorandum, which Your Honors will find on Page 153, Paragraph 2 of the document book. From this Subparagraph I quote three lines:

"Kindness is out of place, even when dealing with willing and obedient prisoners of war. They will ascribe it to weakness and draw their own conclusions from your kindness."

I omit Point 4 and end my quotation from this document on Subparagraph 5 of the memorandum—Your Honors will find this passage on Page 153, last paragraph of the document book:

"5. Never must the apparent inoffensiveness of the Bolshevik prisoner of war tempt you to deviate from the above-mentioned instructions."

I have, a very short time ago, quoted Point 4 of the memorandum for the industrial, regarding the utilization of the work of Soviet prisoners. It stated that the requirements respecting billets for the Soviet captives should, from the viewpoint of living facilities, be of a minimum nature.

The meaning of this will be clear to Your Honors from a report of the Chief of Army Equipment and Commander of the Reserve Army, dated 17 October 1941, addressed to the acting corps commanders and to the administrative authorities of military districts.

I submit this document as Exhibit Number USSR-422 (Document Number USSR-422). This too is presented in the original and I beg that it be entered as documentary evidence into the record. It was issued in Berlin and dated as far back as 17 October 1941. I quote one paragraph of the text. Your Honors will find this paragraph on Page 154 of the document book. I begin the quotation:

"Subject: Quarters for Soviet prisoners of war.

"At a conference held on 19 September 1941 at the office of the Chief of Army Equipment and Commander of the Reserve Army

(V-6), it was decided that by the construction of several tiers of superimposed wooden bunks in lieu of bedsteads, a RAD"—Reich Labor Service—"barrack for 150 prisoners could be built according to specifications for Soviet prisoners' permanent barracks to hold 840 prisoners in permanent billets."

I shall not quote the remainder of this document since I consider this paragraph sufficiently clear in itself.

I request the Tribunal to accept two documents in evidence which are also presented in the original. They testify to the fact that the extermination, in the camp, of Soviet prisoners of war was practiced for political reasons. It was the practice of murder.

I shall first submit, as Exhibit Number USSR-432 (Document Number USSR-432), an order addressed to Camp Number 60. The document is in the original and I request that it be added to the record as evidence. Your Honors will find the paragraph which I wish to quote on Page 155 of the document book.

THE PRESIDENT: The Tribunal will adjourn now.

[*A recess was taken.*]

MR. COUNSELLOR SMIRNOV: I shall quote one passage only of the document already submitted. The passage which I ask the permission of the Tribunal to read is on Page 155. Point 4 of the order runs as follows:

"Behavior at the shooting or serious wounding of a prisoner of war. (Legal Officer)

"Every case of shooting or serious wounding of a prisoner of war should be reported as a special occurrence. If you are dealing with British, French, Belgian, or American prisoners of war you should also act in accordance with instructions of the OKW, Code Number F-24."

This order was dated 2 August 1943.

But on 5 November 1943 another order followed, which changed even this arrangement where the Soviet prisoners of war were concerned. I request the Tribunal to accept in evidence the document which I am submitting as Number 433, pertaining to Camp Number 86. From this document I quote one paragraph only, that is, Paragraph 12:

"The shooting of Soviet prisoners of war. (Legal Officer)

"The shooting of Soviet prisoners of war and other fatal accidents need no longer be reported by phone to the Prisoner of War

Commander as an 'unusual occurrence.' "

In certain cases, the Supreme Command of the German Armed Forces agreed to the payment of a miserably small sum for the work done by the prisoners of war, but here too the Soviet prisoners of war were placed in conditions which were twice as bad as those of the prisoners of other nationalities.

To confirm this, I request the Tribunal to accept in evidence a directive of the Supreme Command of the German Armed Forces dated 1 March 1944. The document will be submitted as Exhibit Number USSR-427 (Document Number USSR-427).

I request that the Tribunal attach it as evidence to the documentation of the case. From this document I shall quote two sentences only. These sentences Your Honors will find on Page 274 of the document book:

> "Prisoners of war working all day will receive for one full working day the following basic salary: Non-Soviet prisoners of war, RM 0.70; Soviet prisoners of war, RM 0.35."

The second sentence is at the end of the document, on Page 275 of the document book, last paragraph:

> "The minimum daily wage for non-Soviet prisoners will consist of 0.20 RM, and 0.10 for Soviet prisoners of war."

Here I end my quotation from this document.

If other prisoners received from the German fascist murderers the right to a few breaths of fresh air a day, the Soviet people were deprived of even this privilege. I request the Tribunal to accept in evidence an original order, Exhibit Number USSR-424 (Document Number USSR-424), referring to Camp Number 44. I request the permission of the Tribunal to quote one sentence from Paragraph 7, entitled, "Walks for Prisoners of War." I begin to quote:

> "In special cases, when prisoners of war, engaged on work, have their living quarters at the same place where they work and therefore have no access to the open air, they should be allowed to be taken out into the fresh air in order to maintain their working strength."

I further request the Tribunal to accept as evidence the original order addressed to Camp Number 46. This document is submitted as Exhibit Number USSR-425 (Document Number USSR-425). I would remind the Tribunal that the directive ruling the preceding order, "Walks for Prisoners of War," was listed under Point 7.

I cite one sentence from Point 10 of Order Number 46. This Point 10 is also entitled, "Walks for Prisoners of War," and the basis for this point is Order Number 1259, Part 5, of the Chief of the Section for Prisoner-of-War Affairs, dated 2 June 1943. I quote one sentence:

> "In complement to Point 7 of the order addressed to Camp Number 44, dated 8 June 1943, it is explained that the order does not apply to Soviet prisoners of war."

I further request the Tribunal to accept in evidence the original request of the labor office of Mährisch-Schönberg. This request concerns the utilization of prisoners of war for nonagricultural work. I quote two sentences from this document. The passage which I have asked permission to quote is on Page 160 of the document book. I begin the quotation:

> "The replacement of 104 English prisoners of war from Labor Brigade for Prisoners of War E 351, currently employed in the Heinrichsthal paper mills, by 160 Soviet prisoners of war, has been rendered necessary by the labor shortage which has developed in this factory. An additional allocation of English prisoners, to raise the number to the required figure of 160, is impossible, since after the last check of camp conditions, undertaken a few months ago by competent Wehrmacht authorities, it was decided that billets in the camp were only sufficient for 104 English prisoners of war, whereas the same space would accommodate 160 Russian prisoners of war without any difficulties whatsoever."

I request Your Honors' permission to quote one more document, namely Directive Number 8 regarding this camp, dated 7 May 1942. It is entitled, "The Utilization of Soviet Prisoners of War for Work."

I submit this document in the original as Exhibit Number USSR-426 (Document Number USSR-426), and I request that it be added as evidence to the record of the Trial.

I quote the section entitled, "Measures for the restoration of full working capacities." I think that the boundless cynicism and the cruelty of this document require no further comment:

> "The Soviet prisoners of war are, almost without exception, in a state of acute malnutrition, which currently renders them unfit for a normal output of work."

The General Staff of the German Armed Forces was particularly concerned over two questions: Firstly, with blankets for Soviet prisoners of war, and secondly, in what form the mercilessly murdered Soviet victims of

the concentration camps should be buried. Both questions found their solution in one document.

I submit it to the Tribunal as Exhibit Number USSR-429 (Document Number USSR-429), and request that it be added as evidence to the record. Your Honors will find it on Page 162 of the document book. This is a directive of the 8th Military District, dated 28 October 1941. I begin the quotation:

> "Re: Soviet Russian prisoners of war. The following arrangements were decided during a conference of the OKW:
>
> "1. Blankets. The Soviet Russians will receive paper blankets, which they will have to manufacture themselves, in the form of quilts, from paper tissue, filled with crumpled paper and similar material. The material will be procured by the OKW."

The second part, as Your Honors will notice, is as follows—the heading reads, "Burial of Soviet Russians":

> "Soviet prisoners of war are to be buried naked, without a coffin, wrapped in packing paper. Coffins will be used only for transports. In the labor commands the burial will be attended to by the competent authorities. Burial expenses will be met by the competent M-Stalag for prisoners of war. The stripping of the bodies will be done by the camp guards. Signed: by order, Grossekettler."

But not only the administration of the military district was concerned with the methods for burying Soviet prisoners of war; the Ministry of the Interior was also concerned with this question, and an urgent letter was addressed to the camp specially marked, "Not for publication in the press, even in excerpts."

I request the Tribunal to accept this document in evidence as Exhibit Number USSR-430. The members of the Tribunal can find this passage on Page 276 of the document book. I quote a few sentences from this fairly voluminous document—five sentences. I begin to quote:

> "For the transport of the bodies (procurement of vehicles) offices of the Wehrmacht should be contacted. For transportation and burial a coffin is not to be requested. The bodies should be completely wrapped up in paper, preferably in oiled paper, tarpaulin, corrugated paper, or some other suitable material. Both transportation and burial should be done unostentatiously. When many corpses come in at the same time, burial should take place in a common grave. The corpses should be laid at the usual depth,

side by side, not overlapping each other. As a site for the burial a distant part of the cemetery should be chosen. Any burial service and any decoration of the graves should be disallowed."

I omit the following sentence: "It is necessary to keep expenses as low as possible."

But even in the special organizations of German fascism, specially created for the extermination of human life, the criminals still continued in their policy of racial and political discrimination. Actually, this discrimination could mean one thing only, namely, that one part of the camp prisoners came to their inevitable end, death, more rapidly than the other part.

And the criminals even tried to make the inevitable end more of a torment for those of their victims whom they, following the Nazi man-hating theories, designated as subhumans or considered capable of active resistance.

I request the permission of the Tribunal to read into the record one paragraph from a document already submitted as Exhibit Number USSR-415. This is a report of the Extraordinary State Commission of the Soviet Union on the "Crimes at Lamsdorf Camp" and the quotation will testify to the extent of the criminal Hitlerite activities. It concludes the presentation of evidence regarding this camp. Your Honors will find the passage in question on Page 146 of the document book, Paragraph 3. I quote:

"According to the findings of the special commission during the existence of the Lamsdorf Camp, the Germans tortured to death more than 100,000 Soviet prisoners of war. Most of these died in the mines, in the various economic enterprises, or during transportation back to the camp. Some were crushed to death in the dugouts, many were killed during the evacuation of the camp. Forty thousand prisoners of war were tortured to death in the Lamsdorf Camp proper."

Mr. President, the Soviet Prosecution begs to present one more witness, Doctor Kivelisha. He is a physician and his evidence is particularly important in establishing that there existed a special regime for Soviet prisoners of war in the camps. The Soviet Prosecution requests your permission to question this witness.

THE PRESIDENT: Yes, Colonel Smirnov.

[*The witness Kivelisha took the stand.*]

THE PRESIDENT: What is your name?

DR. EUGENE ALEXANDROVICH KIVELISHA (Witness): Kivelisha, Eugene Alexandrovich.

THE PRESIDENT: Will you repeat this oath after me: I, and then state your name—a citizen of the Union of Soviet Socialist Republics—summoned as witness in this Trial—do promise and swear—in the presence of the Court—to tell the Court nothing but the truth about everything I know in regard to this case.

[*The witness repeated the oath.*]

THE PRESIDENT: You may sit down, if you wish. Will you spell your name; will you spell your surname?

KIVELISHA: It is K-i-v-e-l-i-s-h-a.

THE PRESIDENT: Please, Colonel Pokrovsky.

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): What was your position in the ranks of the Red Army at the time of the attack on the Soviet Union by Hitlerite Germany?

KIVELISHA: At the time of the attack on the Soviet Union by Hitlerite Germany I was junior physician in the 305th Regiment of the 44th Rifle Division.

COL. POKROVSKY: Did your unit of the 305th Regiment of the 44th Rifle Division take part in battles against the Germans?

KIVELISHA: Yes, our 305th Regiment of the 44th Rifle Division participated in the battles from the first day of the war.

COL. POKROVSKY: On what date and under what circumstances were you captured by the Germans?

KIVELISHA: I was captured by the Germans on 9 August 1941, in the district of the City of Uman, in the Kirovograd region. I was captured at the moment when our unit and two Russian armies to which our unit belonged were surrounded by the Germans after prolonged fighting.

COL. POKROVSKY: What do you know about the treatment applied by the Germans to Red Army soldiers who were captured by the Hitlerite troops? What was the position of these prisoners of war?

KIVELISHA: I know only too well every form of barbarous mockeries applied to the Russian prisoners of war by the Hitlerite authorities and the Army, for the reason that I was a prisoner of war myself, for a very long time.

On the day I was captured, I was sent in convoy in a large column of prisoners of war to one of the transient camps. En route, talking to the prisoners with whom I marched—I stress the fact that this was on the very

first day—I learned that the greater part of the prisoners had been captured 3 or 4 days before the small group to which I myself belonged.

During these 3 or 4 days the prisoners had been kept in a shed, under a reinforced German guard and were given nothing at all to eat or drink. Later, when we passed through the villages, the prisoners, on seeing wells and water, passed their tongues over their parched lips and made involuntary swallowing movements when their eyes fell on the water.

Later on in the same day we finished the march toward nighttime and the column of prisoners, 5,000 strong, was billeted in a farm yard where we had no possibility of resting after the long journey, and we were forced to spend the night in the open. This continued on the following day, and on this day too we were deprived of food and water.

COL. POKROVSKY: Was there no case when the prisoners, passing by water tanks or wells, stepped two or three paces out of line and tried to get at the water themselves?

KIVELISHA: Yes, I remember a few such cases and shall tell you of one particular incident which occurred on the first day of our march. It happened like this:

We were passing the outskirts of a little village. The peaceful civilian population came to meet us, and tried to supply us with water and bread. However, the Germans would not allow us to approach the citizens, nor would they let the population approach the column of prisoners. One of the prisoners stepped 5 or 6 meters out of the column, and without any warning was killed by a German soldier shooting from a tommy gun. Several of his comrades rushed to help him thinking that he was still alive, but they too were immediately fired on without warning. Some of them were wounded and two of them were killed.

COL. POKROVSKY: Was that the only incident you witnessed, or, during your transfer from one place to another, did you observe other cases of a similar nature?

KIVELISHA: No, this was not an individual occurrence. Almost every transfer from one camp to another was accompanied by the same kind of shootings and murders.

COL. POKROVSKY: Did they shoot only the prisoners of war, or were measures of repression adopted toward the peaceful citizens as well, toward the citizens who had tried to give bread and water to the captives?

KIVELISHA: Measures of repression were applied not only to the prisoners of war; they were also applied to the peaceful citizens. I remember once, during one of our transfers, a group of women and children attempted

to give us bread and water, like the others, only the Germans would not allow them to come anywhere near us. Then one woman sent a little girl, about 5 years old, evidently her daughter, to the prisoners' column. This little child came quite close to the place where I had passed and when she was five or six steps away from the column, she was killed by a German soldier.

COL. POKROVSKY: But perhaps the prisoners of war didn't need the food which the population tried to give them; perhaps they were sufficiently well fed by the German authorities?

KIVELISHA: The prisoners of war on the transfer marches suffered from hunger to an exceptional extent. The Germans provided no food whatsoever en route from one camp to the other.

COL. POKROVSKY: So that these gifts from the local population were the only practical means possible to sustain the strength of the soldiers in German captivity?

KIVELISHA: Yes.

COL. POKROVSKY: Did the Germans shoot them?

KIVELISHA: You understand me correctly.

COL. POKROVSKY: In which prisoner-of-war camps were you interned? Name some of them.

KIVELISHA: The first camp in which I was interned was in the open, in a field, in the district of the small hamlet of Tarnovka. The second camp was situated on the site of a brick yard and former poultry farm on the outskirts of the town of Uman. The third camp was situated in the suburbs of Ivan-Gora. The fourth camp was situated on the territory pertaining to the stables of some military unit or other in the region of the town of Gaisen. The fifth camp was in the region of the small garrison town of Vinnitza. The sixth camp was in the suburbs of the small town of Dzemerinka and the last camp, where I stayed the longest time, was in the village of Rakovo, 7 kilometers from the town of Proskurov, in the Kamenetz-Podolsk district.

COL. POKROVSKY: So that you yourself, from your own personal experience, could realize the state of affairs prevalent in this series of camps?

KIVELISHA: Yes, in all the camps I was personally and completely acquainted with all the conditions.

COL. POKROVSKY: Are you a physician by profession?

KIVELISHA: I am a physician by profession.

COL. POKROVSKY: Tell the Tribunal how matters stood insofar as medical attention and food for the prisoners of war were concerned in the camps you have just enumerated.

KIVELISHA: When I was transported under convoy to the camp near the hamlet of Tarnovka, I was, for the first time and in company with other Russian doctors, separated from the rest of the prisoners' column, and sent to the so-called infirmary.

This infirmary was in a shed with a concrete floor, without any equipment for the care of the wounded. And on this concrete floor lay a large number of wounded Soviet prisoners, mostly officers. Many had been captured 10 to 12 days before my arrival at Tarnovka. During all that time they had received no medical attention although many of them were in need of surgical aid, with simultaneous and frequent dressings and a number of drugs.

They were systematically left without water; food too was administered without any system at all; at least, at the time of my arrival in the camp there was no equipment to prove that food had ever been prepared or cooked for these wounded soldiers.

There were about 15,000 to 20,000 wounded in Uman Camp where I found myself on the second day after my arrival in Tarnovka. They were all lying in the open, dressed in their summer uniforms and a great many of them were incapable of moving.

Food and water were supplied to them in the same way as to the other captives in the camp. There they lay, without any medical attention, their dust-covered dressings soaked in blood, often in pus. Dressings, surgical instruments, equipment for an operating theater just did not exist in the camp at Uman.

In Gaisen prisoners of war, sick and wounded, were herded into one of the stables. This stable had no wooden floors and lacked every facility for human habitation. The prisoners of war were lying on the earthen floor, and here, too, as in the preceding camp, they did not have even an iota of medical attention. As before, dressings, drugs, and surgical instruments were unobtainable.

COL. POKROVSKY: You mentioned the Uman Camp. Look at this photograph and tell me, is it a photograph of one of the camps where you were interned?

KIVELISHA: I see on this photograph the camp which was situated in the grounds of the brick yard at the city of Uman. I know this picture very well.

COL. POKROVSKY: I must report to the Tribunal that the photograph I have just shown the witness is a photograph of Uman Camp and was submitted by me to the Tribunal as Exhibit Number USSR-345. It shows the camp concerning which witness Bingel has already testified.

[*Turning to the witness.*] This means that you recognize Uman Camp situated in the grounds of the brick yard from this photograph?

KIVELISHA: Yes, in the grounds of the brick yard. It is a part of the camp.

COL. POKROVSKY: What was the prevailing regime in Uman Camp? Tell us just the main points, very briefly.

KIVELISHA: Almost all the captives in the camp were kept in the open air. The food was extremely bad. In the grounds of the Uman Camp, where I spent 8 days, twice a day a few fires would be lit out of doors and a thin pea soup was cooked in vats over these fires.

There was no special routine for distributing food to the prisoners of war, and the boiled soup would then be set down amongst the whole mass of people. No control whatsoever was exercised over the distribution. The starving prisoners rushed up in the hope of obtaining even a minute portion of this thin, unsalted soup, cooked without fat and served without bread.

Disorder and crowding arose. The German guards, all armed with clubs as well as with rifles and automatic guns, beat up all the prisoners of war within range of their blows for the purpose of maintaining order. The Germans would often intentionally set down a small barrel of soup among a great number of people, and once again, to restore order, they would beat up the absolutely innocent people with laughter, oaths, insults, and threats.

COL. POKROVSKY: Please tell me, Witness: In the camp situated in the village of Rakovo, was the quality of the food better or was it approximately the same as in other camps? And how did the food situation affect the health of the prisoners?

KIVELISHA: In the camp of Rakovo the food was exactly the same in quality as that of the other camps where I had been previously interned. It consisted of beets, cabbage, and potatoes frequently served half-cooked. Owing to this poor quality of food the prisoners developed severe gastric trouble accompanied by dysentery, which rapidly exhausted them and resulted in a very high rate of mortality from hunger.

COL. POKROVSKY: You talked about the guards often beating the prisoners on the slightest provocation and time and again without any provocation at all.

KIVELISHA: Yes.

COL. POKROVSKY: What kind of traumatic lesions did the prisoners receive as a result of these beatings? Were there any cases of severe traumatic injuries caused by heavy beatings or did the whole matter result in a few kicks only?

KIVELISHA: In Rakovo Camp I was in the so-called hospital, where I worked in the surgical section. Frequently, after dinner or supper in the hospital, prisoners were brought in with most grievous physical injuries. I frequently had to do all I could to help people who were so terribly injured by these beatings that they would die without regaining consciousness.

I remember a second case when two prisoners were beaten over the head with some hard object till the brains oozed out from the gaping head wound. I remember yet another incident, only too well, when an athlete from Moscow had an eye knocked out with a whip. The athlete then contracted meningitis and died soon after.

COL. POKROVSKY: How high was the mortality rate among the prisoners of war in Rakovo Camp?

KIVELISHA: The history of Rakovo Camp can be divided into two periods. There was the first which lasted about 2 years and ended in November 1941. At that time the number of prisoners was not very great and consequently the rate of mortality was not so high. Then there was the second period, from November 1941 to March 1942, at which time I was in Rakovo myself. During this second period the mortality rate was exceptionally high: there were days when 700, 900, and even 950 persons died in the camp.

COL. POKROVSKY: What disciplinary measures were there in Rakovo Camp and for what reasons were the prisoners punished? Do you know?

KIVELISHA: Yes. I know that there was, in the camp grounds, a cell for prisoners condemned to solitary confinement. Prisoners of war guilty of attempting to escape from the terrible conditions created for them in captivity, or with offenses such as stealing food products in the kitchen, were locked up in this cell.

It was in the cellar; it had a cement floor and windows with iron bars instead of panes. The prisoner was stripped to the skin, deprived of food and water, and locked up in solitary confinement for 14 days. I do not know of a single case where a prisoner survived this confinement; all of them died in that particular cell.

COL. POKROVSKY: Evidently the conditions which you have described to the Tribunal increased the number of persons suffering from exhaustion.

KIVELISHA: Yes.

COL. POKROVSKY: Did this condition result in a decreased number of prisoners capable of working? Did their number decrease; what was done to those prisoners who could not work?

KIVELISHA: An immense number of prisoners were kept, in Rakovo Camp, in stables which were quite unfit for human beings to live in during the winter period. At first everybody was made to work. I can safely say that most of this work was entirely aimless, since it consisted in pulling down houses and then paving the camp grounds with bricks from the demolished buildings. After some time, when severe gastric troubles had set in, troubles which I have already mentioned, fewer and fewer prisoners came out to work.

Many of them, who had lost all control of their movements, never even left the stables for the appointed meal times, and if a great many people were discovered to have lost their strength, a so-called quarantine was established. In such a stable all the exits and entries would be blocked and the patients would be completely isolated from the outer world. Having kept them locked up for 4 or 5 days on end, the stable would be opened and the dead brought out by the hundreds.

COL. POKROVSKY: Can you tell us, Witness, on what medical or sanitary work you and the other doctors were employed in the camp by the Germans?

KIVELISHA: In the camps we were not employed by the Germans on any work connected with the prisoners. All the Germans were interested in was the separation of people who could work from those of the prisoners who were incapable of working. We could not render the prisoners any purely medical services because of the conditions in which we ourselves existed.

COL. POKROVSKY: Did your duties in any of these camps include sanitary supervision? And what exactly was understood by sanitary supervision?

KIVELISHA: The duties of sanitary supervision were entrusted to us in the camp of the town of Gaisen. It only meant that we, the captured military doctors, had to be on duty in the vicinity of the general latrine in the camp, which was nothing more than a ditch dug for this purpose, and as and when the ditch was filled up with excrement, we were forced to clean up the ground.

COL. POKROVSKY: The doctors?

KIVELISHA: Yes, the doctors.

COL. POKROVSKY: Did you really consider this function as a form of sanitary supervision, or did you consider it as straightforward mockery by the Germans at the expense of the captured Soviet army doctors?

KIVELISHA: I consider that it was straightforward mockery at the expense of the captured Soviet doctors.

COL. POKROVSKY: Mr. President, I have no more questions to ask this witness.

THE PRESIDENT: Have any of the other prosecutors got any questions to ask?

COL. POKROVSKY: No, Sir.

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

DR. LATERNSER: Witness, you have stated that in August 1941 . . .

THE PRESIDENT: Will you kindly announce your name for whom you appear.

DR. LATERNSER: Dr. Laternser, Defense Counsel for the General Staff and the OKW.

Witness, you have just stated that in August 1941 you were brought to captivity in the district of Uman. Do you know whether the Germans had taken many prisoners at that time?

KIVELISHA: Yes, I do know. About 100,000 prisoners were captured at that time.

DR. LATERNSER: Do you know whether German troops had advanced very rapidly into Russian territory at that time?

KIVELISHA: I cannot say anything about this. The German armies moved very rapidly, but before our units were surrounded we fought obstinately and we retreated, fighting, right up to 9 August.

DR. LATERNSER: How great was the number of prisoners in the column in which you marched?

KIVELISHA: Four thousand to five thousand persons.

DR. LATERNSER: When did you first get any food from the German troops?

KIVELISHA: I personally, and for the first time, received food from the German troops when I reached the town of Uman.

DR. LATERNSER: How much time had passed between the moment you were captured and your first meal?

KIVELISHA: When I was first fed I had been a prisoner of war for about 4 or 5 days.

DR. LATERNSER: You were a Red Army doctor and must have been quite aware that the feeding of armies is not so simple a matter.

KIVELISHA: I could not imagine this, especially as the Germans had then at their disposal time and many possibilities for supplying the prisoners of war with food. Further, to my previous statements I shall again repeat that if the German authorities were unable to provide the prisoners of war with food, the peaceful population did everything in their power to feed the Russian prisoners. However, obviously neither the German authorities nor the German Command issued any instructions on this matter.

I have already reported that no opportunity was given for friendly relations between the prisoners of war and the peaceful citizens. On the contrary, any persons who tried to bring food to the prisoners or any prisoner who accepted the food from the citizens was promptly shot.

DR. LATERNSER: But you can certainly imagine that it must have presented immense difficulties if, as you have just testified, 100,000 prisoners had been taken at that time in the area of Uman?

KIVELISHA: Not all the prisoners of war were concentrated at Uman at one and the same time. There were several stationary and permanent camps, only several of them were at Uman.

DR. LATERNSER: I was not speaking about the food problem in Uman Camp. We are still talking about the feeding during the first days after their capture.

KIVELISHA: When I was brought into captivity I was not singled out in any way from among the other prisoners of war. I was fed and I was supplied in exactly the same way as all the others. I was one of the general crowd and the general column of the prisoners of war. The German Command made no distinction in the first days of captivity.

DR. LATERNSER: But you will have to admit that there were certain difficulties connected with food supplies which would arise if quite unexpectedly a column, such as yours, 5,000 men strong, had to be fed by rapidly advancing troops.

KIVELISHA: Even if the German Command had been faced with this particular difficulty, the problem could always have been solved by allowing the prisoners to accept the food products which the peaceful population, the Soviet citizens, were offering them.

DR. LATERNSER: We shall talk about that immediately. You say you were in a column of 5,000 prisoners. Can you tell me how strong the guard

was, the German guard, under whom this column of 5,000 marched?

KIVELISHA: I cannot state the exact figures. But there were a great many German machine gunners. The column was too drawn out in length and I am unable to state the figure.

DR. LATERNSER: I understand that you cannot give the exact figures. But can you describe to the Tribunal how great the distance was between individual guards marching alongside the column?

KIVELISHA: The distance would be as follows: two or three soldiers, walking in a row, would march approximately five or six steps behind a second row of the same number.

DR. LATERNSER: Thus, every 50 to 60 meters, on either side of the column, or perhaps only on one side of the column, German troops marched in groups of two and three soldiers, as you say, or have I not understood you correctly?

KIVELISHA: Not 50 to 60 meters; 5 to 6.

DR. LATERNSER: Were the guards elderly men or were there younger soldiers among them?

KIVELISHA: They were soldiers of the German Army. They were of every age.

DR. LATERNSER: Were the Russian prisoner-of-war columns informed, before they started, that they would be shot if they left the ranks?

KIVELISHA: I have already said, and I repeat once again, there were no warnings.

DR. LATERNSER: Not even when the column set off?

KIVELISHA: No.

THE PRESIDENT: Perhaps it would be a good time to break off till 2 o'clock.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

THE PRESIDENT: The Tribunal has made its decision upon the witnesses and documents to be called and produced on behalf of the first four defendants and that decision will be communicated as soon as possible this afternoon to counsel for those defendants and will also be posted in the Defendants' Information Center.

Secondly, an application was made some time ago by the Chief Prosecutor for France with reference to the calling of two additional witnesses. The Tribunal would wish that if it is desired to call any witnesses after closing the case on behalf of any of the chief prosecutors, that a written application should be made to the Tribunal for the calling of such witnesses, and the Tribunal also desires me to draw the attention of Counsel for the Prosecution and Counsel for the Defense to the terms of Article 24, Subsection (e), which refers to rebutting evidence. In the event of Counsel for the Prosecution or Counsel for the Defense wishing to call rebutting evidence when the proper time comes, after the case for the Prosecution and the Defense has been closed, such application to call rebutting evidence must be made to the Tribunal in writing.

SIR DAVID MAXWELL-FYFE: My Lord, I wonder if the Tribunal would allow me to say something on a matter on which I promised to get information yesterday.

Your Lordship will remember that Dr. Horn asked for a withdrawn edition of the *Daily Telegraph* of the 31st of August 1939, and I promised the Tribunal that I should make inquiries. I had a telegram from the *Daily Telegraph*, which I received this morning, and it says:

> "No edition of the *Daily Telegraph* withdrawn on 31 August 1939 or any other day thereabouts. The *Telegraph* of the 31st gave a brief paragraph saying meeting Henderson-Ribbentrop had taken place but without details.
>
> "On 1st September carried summary of Germany's 16 points for Poland as broadcast by the German radio. Actual text of the note did not appear until September 2, when extracted from the Foreign Office White Paper of all relevant documents."

I thought it was only right, as I had promised to get the information, that I should put it before the Tribunal, and I propose to send a copy of that to Dr. Horn.

THE PRESIDENT: Thank you, Sir David. I think that may necessitate a slight variation in the order which the Tribunal was proposing to make.

DR. NELTE: Regarding the question of Generals Halder and Warlimont as witnesses, Mr. President, permit me to ask you to answer one question; namely, to tell me if the Court has decided yet that the Generals Halder and Warlimont, whom I have named as witnesses, and whose relevancy has been admitted by the Prosecution, will be approved as witnesses for Keitel so that we can count with certainty on their appearing in the proceedings.

THE PRESIDENT: Yes, certainly. What I meant to state this morning was that the Defense Counsel should decide whether they wanted to have them to cross-examine them now or call them as witnesses on behalf of one or other of the defendants, and therefore that was a decision that the Defense Counsel would be able to call them on behalf of one of the defendants if they determined to do so.

Therefore they can be called for Keitel, unless, of course, they were called before. If the Defendant Göring wanted to call them then they would have to be examined on behalf of Keitel when they were called for Göring, because of the fundamental rule that a witness is only to be called once.

DR. NELTE: Very well. I wish to state that the Defense Counsel who are interested in the interrogation of Generals Halder and Warlimont are agreed that these generals should be called in the course of the presentation of evidence by the Defense.

THE PRESIDENT: Yes, very well.

Colonel Smirnov . . . I beg your pardon. Dr. Laternser.

DR. LATERNSER: I have a few more questions to ask this witness.

Witness, you said this morning that for rest during their march to the camp the four or five thousand Russian prisoners were accommodated in a stable. Was this stable roofed?

KIVELISHA: It was the usual type of country cow shed, and since the farm had previously been evacuated, the shed had not been cleaned for a very long time and was in a state of complete neglect. And if we add to this state of neglect the fact that it had been pouring with rain all that day, we must also add that it was half-swamped in soft mud. It was quite impossible to settle down in the stables and barns since they were filled with left-over manure, so that all the people stayed out of doors.

DR. LATERNSER: Was it possible in this case to accommodate these prisoners in a better way?

KIVELISHA: It is very difficult for me to answer that question, for I am not at all acquainted with the locality where I was captured, and, on the

other hand, we were brought to this village late at night and I do not know whether there were more convenient places where the prisoners could have been quartered.

DR. LATERNSER: That is to say, on this evening when you entered this village, you yourself saw no possibility for better accommodations?

KIVELISHA: It is not because I did not see better quarters, but because it was night and I could not therefore observe the village, although it was a rather large village and it seems to me that there was a sufficient number of large houses where 5,000 to 6,000 people might have easily been billeted more conveniently for the night.

DR. LATERNSER: I shall have one last question. You said that in the prisoner camp you were not employed in your capacity as a physician. Did the German prisoner-of-war administration ever place any medical supplies at your disposal so that you could treat your sick comrades?

KIVELISHA: In the first stages, when we were being evacuated step by step from one camp to another, we received no medical equipment at all from the Germans; but subsequently when I was in a stationary camp, Stalag 305, medical equipment was issued, though never in sufficient quantities to meet the requirements of all the wounded.

DR. LATERNSER: I have no further questions.

HERR LUDWIG BABEL (Counsel for the SS and the SD): I have only one question. The witness has stated that the stable was evacuated. What do you mean by that term?

KIVELISHA: By that I mean that all the cattle in the stable had been driven off beyond the zone of military operations.

HERR BABEL: By whom was this done?

KIVELISHA: It was done by the citizens of the village we had entered and who had retreated eastwards, together with Red Army units who had not been surrounded as we were.

HERR BABEL: That is to say, the cattle had been brought back to Russian territory?

KIVELISHA: From this village, yes.

HERR BABEL: Thank you.

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

Witness, were any SS units used for guarding the prisoners of war whilst you were prisoner of war?

KIVELISHA: In the camp of Rakovo; in the district of the town of Proskurov, where I was interned most of the time, the convoying of labor Kommandos was carried out by young German soldiers who, at that time, were named the SS.

THE PRESIDENT: Was that a stationary camp?

KIVELISHA: Yes, it was a stationary camp.

THE PRESIDENT: But SS units were not used to guard you until you got to that stationary camp?

KIVELISHA: I cannot say anything definite on the subject, since I did not know the distinctive insignia of the German Army.

THE PRESIDENT: Colonel Smirnov, do you want to ask anything in re-examination?

MR. COUNSELLOR SMIRNOV: I have no further questions to ask the witness.

THE PRESIDENT: Then the witness can retire.

[*The witness left the stand.*]

MR. COUNSELLOR SMIRNOV: May I continue, Mr. President?

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: I request the Tribunal to accept as one of the proofs of the Hitlerite crimes perpetrated in the prisoner-of-war camps certain documents which I should like to submit to the Tribunal at the request of our honorable British colleagues. The Soviet Prosecution does this all the more readily in that it considers this documentation of the British Prosecution of essential importance in establishing the criminal contravention by the major Hitlerite war criminals of the laws and customs of war accepted by all civilized nations for the treatment of prisoners of war.

I would ask the Tribunal to add to the documentation of the Trial the documents of the British Delegation, which I have presented as Exhibit Number USSR-413 (Document Number UK-48) regarding the cruel murder of 50 prisoners of war, officers of the Royal Air Force, who were captured while attempting to escape en masse from Stalag Luft III at Sagan and shot after their capture by the German criminals in the night of 24-25 March 1944.

These documents consist of an official record of the Hitlerite crimes, signed by Brigadier Shapcott, representative of the British Armed Forces, and the attached minutes of the court of inquiry held in Sagan by order of the senior British officer in Stalag Luft III and forwarded to the protecting power.

Included with these documents are the statements of the following Allied witnesses: Wing Commander Day, Flight Lieutenant Tonder, Flight Lieutenant Dowse, Flight Lieutenant Van Wymeersch, Flight Lieutenant Green, Flight Lieutenant Marshall, Flight Lieutenant Nelson, Flight Lieutenant Churchill, Lieutenant Neely, P. S. M. Hicks.

The material evidence is also corroborated by statements taken from the following Germans: Generalmajor Westhoff, Oberregierungs und Kriminalrat Wielen, Oberst Von Lindeiner.

There is also a photostatic copy attached of the official list of those who perished, handed over by the German Foreign Office to the Swiss Diplomatic Mission in Berlin, and the report of the representative of the protecting power during his visit to Stalag Luft III on 5 June 1944.

I shall briefly summarize the circumstances of this infamous crime of the Hitlerites by quoting from the report of Brigadier Shapcott. Your Honors will find the passage which I am about to quote on Page 163, Paragraph 2 of the document book. I begin:

> "On the night of 24-25 March 1944, 76 R.A.F. officers escaped from Stalag Luft III at Sagan in Silesia where they had been confined as prisoners of war. Of these, 15 were recaptured and returned to the camp, 3 escaped altogether, 8 were detained by the Gestapo after recapture. Of the fate of the remaining 50 officers the following information was given by the German authorities. . . ."

The following information was given by the German authorities who stated that these 50 officers were shot, allegedly while attempting to escape. Actually this statement was the customary routine lie of the Hitlerites, since the very thorough investigation carried out by the British military authorities proved indubitably that the British R.A.F. officers had been vilely murdered after recapture by the German police.

I submit evidence to this effect and quote the report presented by the British Prosecution. It was ascertained that this crime was committed by order of Göring and Keitel. The passage which I wish to submit to the Tribunal is on Page 168 of the document book, Russian text.

THE PRESIDENT: Yes, Dr. Nelte?

DR. NELTE: The Tribunal will recall that the question of hearing the witness Major General Westhoff has already played a role here once before. The Prosecution at the time—I do not have the document here now—submitted a report regarding the interrogation of Major General Westhoff;

that is to say, the Tribunal, upon my objection, refused to have this document read in Court.

I do not know whether, as the prosecutor is now speaking of the testimony of Major General Westhoff, it concerns the same document which the Tribunal previously refused to admit or whether it concerns a new document which I do not know as yet. I draw your attention to the fact that General Westhoff is here in person; in other words, he could be called as a witness on this question.

MR. COUNSELLOR SMIRNOV: Permit me to say, Mr. President . . .

THE PRESIDENT: Colonel Smirnov, you have heard what Dr. Nelte said. As I understood it—I am not sure if I got the name right—but he referred to General Westhoff's evidence which has been tendered, and which had been rejected because the Tribunal thought that if that evidence was to be given, General Westhoff ought to be called. Is it right that the document you are putting in has got nothing to do with General Westhoff at all, has it?

MR. COUNSELLOR SMIRNOV: Westhoff is mentioned in only one part of the official British report.

THE PRESIDENT: But it is not a report made by General Westhoff, is it?

MR. COUNSELLOR SMIRNOV: That is perfectly correct. I am now submitting an official British report to the Tribunal. Only one passage in the text of the official British report mentions Major General Westhoff, but this mention has nothing to do with the interrogatory of Major General Westhoff which will be brought up later.

MR. G. D. ROBERTS (Leading Counsel for the United Kingdom): My Lord, perhaps I might assist in this matter—because I am partly responsible for that report—with the kind indulgence of my learned friend, my Russian colleague.

My Lord, the document which is now about to be read is a British official government report under Article 21 of the Charter, and the original is properly so certified. My Lord, it is quite true that General Westhoff's name is mentioned in the report, but it is quite a different document to the document which my French colleagues tendered and which the Tribunal rejected in evidence. It is an official government report.

MR. COUNSELLOR SMIRNOV: That is just what I have been saying, Your Honor. This is an official report of the British Government.

THE PRESIDENT: One moment, Colonel Smirnov.

Mr. Roberts—I just wish to speak to Mr. Roberts, Dr. Nelte—why do you say that it is an official government report so as to come within Article

21 of the Charter?

MR. ROBERTS: Because the original has been handed in and it has been certified by Brigadier General Shapcott of the Military Department of the Judge Advocate General's office. I think you have the original.

THE PRESIDENT: Yes, I have the original. Mr. Roberts, to whom was it made, this report?

MR. ROBERTS: My Lord, it was made in connection with the collection of evidence for this Tribunal. As Your Lordship sees, it is headed, "German War Crimes. Report on the Responsibility for the Killing of 50 R.A.F. Officers," and then it starts to say—then it states the sources on which the material has been based. Your Lordship will see on the last page of the report the appendix, "Material upon which the foregoing report is based":

> "1. Proceedings of Court of Inquiry held at Sagan. . . . 2. Statements of the following Allied witnesses. . . . 3. Statements taken from the following German. . . . 4. Photostat copy of the official list of dead, transmitted by the German Foreign Office to the Swiss Legation. . . . 5. Report of the Representative of the Protecting Power on his visit to Stalag Luft III on 5th June 1944."

THE TRIBUNAL (Mr. Biddle): Mr. Roberts, was this made for the Tribunal or for the War Crimes Commission?

MR. ROBERTS: It was made for this Trial.

THE TRIBUNAL (Mr. Biddle): Made for this Trial?

MR. ROBERTS: For this Trial.

THE TRIBUNAL (Mr. Biddle): By a general in the Army?

MR. ROBERTS: Yes, My Lord.

THE TRIBUNAL (Mr. Biddle): And he reported to whom?

MR. ROBERTS: My Lord, it was then submitted to the British Delegation for this Trial.

THE TRIBUNAL (Mr. Biddle): You mean the Prosecution?

MR. ROBERTS: Yes, My Lord.

THE TRIBUNAL (Mr. Biddle): So this is the report of a British general made to the British Prosecution?

MR. ROBERTS: My Lord, I would not quite, with respect, accept the phrase "report of a British general." I would say "a report of a government department." It is signed and certified by a British general.

THE TRIBUNAL (Mr. Biddle): Yes.

MR. ROBERTS: My Lord, I submit most respectfully that My Lords may exactly read in Article 21: "The Tribunal shall take judicial notice of official governmental documents and reports of the United Nations. . . ."

My Lord, I submit that this is clearly an official governmental document, a report made by a department of the Army in London, a government department, for the purpose of this Trial.

THE TRIBUNAL (Mr. Biddle): Then any evidence that was collected and sent in by the government will be official evidence.

MR. ROBERTS: I think that is so under Article 21, that is, as I read it and as I respectfully submit to Your Lordship.

THE PRESIDENT: Do you wish to add anything, Dr. Nelte?

DR. NELTE: Yes, I should like to make a few further remarks.

It is, in other words, a report which was drawn up on the basis of testimony by witnesses, among whom, as I understand, was also Major General Westhoff. I do not challenge the official character of this document, or that you can and must accept it as evidence under the terms of the Charter. But it seems to me that another question is involved here, namely, the question of better evidence. If a witness, who is at the disposal of the Court, could be eliminated by including his testimony in an official report, then the taking of evidence would not comply with the Tribunal's desire that it should represent the best method to discover the truth.

The witness is at your disposal; the report does not contain literally what he said, but simply a conclusion the accuracy of which is subject to doubt, whereas it need not remain in doubt. But I believe the Defense must also have an opportunity in their turn, to hear and examine a witness, if it is as easily possible as in this case.

THE PRESIDENT: But Dr. Nelte, supposing that one of the witnesses who had been examined by one of the committees set up by the government had not made a report to the government at all, but an affidavit or something of that sort; and that had been offered to the Court and the witness had been available, the Court might very possibly have refused to entertain that affidavit or report. But if that report was the foundation for a government report or for a government official document, then, by Article 21, the Tribunal is directed to entertain such a report.

Therefore, the fact that the Tribunal has already said that they wouldn't have some private affidavit or report of General Westhoff unless General Westhoff were called, is not relevant at all. It is a question whether they ought to entertain a report which you admit comes within Article 21.

DR. NELTE: I do not doubt that Your Lordship's view is correct. I should merely like to bring up the question whether, when one has two different types of evidence, namely, the report and the possibility of examining a witness, it should not be taken into consideration to question the witness, not in order to correct the official report, but in order to clarify what the witness actually said, because from the report we cannot know what he actually said.

This question is, as you will understand, of tremendous importance for the Defendant Keitel, who allegedly issued an order to shoot the escaped fliers and if a witness who could clarify this question is available, this witness should be heard instead of an official report which already actually contains an evaluation.

THE PRESIDENT: But in the first place this report does not proceed only or even substantially upon the evidence of General Westhoff. There are a number of other origins of the report, and the second thing is that the whole object of Article 21 was to make government reports admissible and not to necessitate the calling of the witnesses upon whose evidence they proceeded.

DR. NELTE: The other witnesses were interrogated on all other matters, namely, the shooting. . . The other witnesses who were mentioned were questioned on other facts. On the question of whether Keitel issued such an order at all, General Westhoff is the only one mentioned in the report.

THE PRESIDENT: Would you repeat that? I do not have my earphones on.

DR. NELTE: I said, in that report other witnesses are also mentioned but, as far as I know, they did not make a statement on the question of whether or not Keitel issued an order to shoot the fliers. Westhoff was the only one among the witnesses listed who could and did make a statement on that question.

THE PRESIDENT: Do you wish to say anything further in argument upon the admissibility of the document?

DR. NELTE: No.

THE PRESIDENT: Colonel Smirnov.

MR. COUNSELLOR SMIRNOV: It appears to me, Mr. President, that that part of the document which refers to Major General Westhoff occupies merely one paragraph, namely, Paragraph 7, of the document in question. This part deals with the initial stage of the perpetration of the crime, namely, with the stage of the conception, the stage of the planning of the crime.

The document also speaks of other stages in the commission of this crime. Moreover, it is an official document, presented according to Article 21 of the Charter. It seems to me that I have thereby said all that is necessary, Mr. President.

THE PRESIDENT: Do you wish to say anything further, Dr. Nelte?

DR. NELTE: No, thank you. I merely ask the Court to decide; in that case I should have to request that General Westhoff be admitted as a witness to testify that the conclusion drawn in this report does not correspond with what he said.

DR. EGON KUBUSCHOK (Counsel for Defendant Von Papen and for the Reich Cabinet): May I make a few legal remarks, a few generally legal remarks regarding Article 21 of the Charter?

In all criminal procedure of every country we find the primary principle of oral court proceedings. Only if this cannot be carried out are part of the proceedings, so to say, transferred outside the court. In most codes of criminal procedure of the various countries we have a provision similar to that of Article 21 of the Charter that previous decisions of a court should not be re-examined in new proceedings, but that such decisions should be binding.

In this Trial the Charter extends this provision further to cases which obviously, because of their scope, should not be further discussed here. Therefore the decision that government reports should be considered as evidence is clearly taken up in Paragraph 21. It is clear to every jurist that this provision in itself is to an extent a flaw in proceedings because through it certain rights are lost to the defendants. On the other hand one cannot, of course, ignore the argument that there is subject matter which, because of its extent, cannot be practically discussed in a trial in which the time is limited.

Paragraph 21 of the Charter therefore gave the Tribunal the possibility of accepting such reports as valid evidence. But this provision is not compulsory for the Tribunal. So far as I can see from the German text before me it is provided that the Tribunal should accept these reports, but it does not say that the Tribunal must do so. Therefore it is in every case left to the discretion of the Tribunal whether the nature of the report makes it advisable to accept such a report in evidence.

We now have here a rather striking case which, in my opinion, clearly shows that the Tribunal can make use of its discretion and reject this document. The Defense have taken the position that this subject of evidence could be taken care of by a witness. The examination of the witness would have provided the Defense with the right of cross-examination.

Since, for tactical reasons inherent in the nature of the Trial, the witness will not be called, the subsequent transfer of his evidence into a government report means curtailing the right of the defendant to cross-examination, and is thus contrary to the corresponding article of the Charter.

DR. STAHMER: It was not until today that the accusation was made that Göring knew of or ordered the execution of these fliers. I could not take this act into consideration when I recently offered my evidence, because I did not know of it; and I must, therefore, reserve the right to call additional witnesses on this question.

MR. COUNSELLOR SMIRNOV: May I say a few words, Mr. President?

THE PRESIDENT: On the question of the admissibility?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President.

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: I consider the arguments put forward by the second Defense Counsel as entirely incomprehensible from a legal point of view since he introduces certain numerical and quantitative criteria into the legal nature of the evidence. According to this Counsel, Article 21 of the Charter deals only with evidence of crimes committed on an enormous scale, but cannot touch crimes of a smaller caliber.

To me, viewing the matter from a legal point of view, this argumentation appears rotten from the root upwards and I consider that Article 21 of the Charter applies, *in toto*, to any crime committed by the Hitlerites, regardless of the fact if they be committed on a very large or on a slightly smaller scale. That is all I wish to say, Mr. President.

THE PRESIDENT: The Tribunal will adjourn.

[*A recess was taken.*]

THE PRESIDENT: Mr. Roberts, the Tribunal would like to know where these appendices which are referred to in Paragraph 9 of the report are.

MR. ROBERTS: I think they are in the Tribunal now, in the charge of the Officer of the Court.

THE PRESIDENT: They are in the court now? You can undertake, I suppose, to produce them all if they are not any of them there?

MR. ROBERTS: My Lord, most certainly. I understood the whole of the material is not necessary—the original, of course—but I understood the whole of the material to be there, all in the original, of course.

THE PRESIDENT: Yes. Then the Tribunal decides that the document will be admitted, and the Tribunal will summon, if he is available—and we think he is—General Westhoff; and that will be, in effect, granting the defendants' application to call General Westhoff, and also to call the officer mentioned in Paragraph 3(b) of the appendix, whose surname appears to be Wielen. I do not know whether you know where he is.

MR. ROBERTS: I will make inquiries and I can assure the Tribunal that we will do everything in our power to get the witnesses that are required for the defense, namely, General Westhoff, who is in Nuremberg, I understand, and General Wielen. I am not certain where he is, but I will find out.

THE PRESIDENT: Very well.

PROFESSOR DR. HERBERT KRAUS (Counsel for Defendant Schacht): Mr. President, you made a remark during the session with which the Defense Counsel are very much concerned. If we understood this remark, it was said that private affidavits would not be accepted by the Tribunal. Considering the fact that we must offer our evidence now, this question of affidavits is very urgent. That is why I am forced to clarify that question. The Defense Counsel has. . .

THE PRESIDENT: Dr. Kraus, I do not think I said that affidavits could not be admitted. What I said was, it might be that affidavits would not be admitted, if the witness was available to give direct evidence. That is the rule which we have enforced throughout the Trial.

DR. KRAUS: Yes, I understand you, Mr. President, to say that in principle we may offer affidavits, whether certified by notary public or by a lawyer or whether bearing only the signature of the person who makes the statement. These are the three forms we have: The simple letter written with the statement, "I declare under oath." The second type is that in which the signature has been certified by a lawyer; and the third type is the one which has been declared before and certified by a notary public.

We have procured many documents of that kind, in order to expedite matters, and we would like to know whether or not we may expect to present them as evidence in order to avoid the calling of witnesses.

THE PRESIDENT: I think that in all probability the matter will be considered when you present the applications for giving evidence by affidavit. We have, today, in dealing with the first four defendants, allowed, in a variety of instances, interrogatories to be administered to various witnesses where it appeared appropriate that that should be done in order to save time. No doubt the same rule will apply when you come to submit your applications.

DR. KRAUS: Thank you.

THE PRESIDENT: Colonel Smirnov, would it be more convenient to you to go on with your presentation now on this document which we have admitted, or do you wish to present a film?

MR. COUNSELLOR SMIRNOV: Mr. President, I would like to finish the presentation of this proof, that is, to read into the record the passages from the document I have quoted.

THE PRESIDENT: Very well; but the Tribunal, I think, desire that these two witnesses, Major General Westhoff and Wielen, whatever his rank may be, should be produced for examination as soon as possible afterwards. I don't mean this afternoon, because that would not be possible, but, if possible, tomorrow.

MR. COUNSELLOR SMIRNOV: If you will allow me, I shall request the representative of the British Delegation to reply to this question.

THE PRESIDENT: Mr. Roberts, Colonel Smirnov was saying he would ask you to answer, because I was saying that the Tribunal would like to have the witnesses called as soon as possible after the report was read.

MR. ROBERTS: Westhoff we know about, so I heard, Sir, and I am trying to make inquiries now where Wielen is. If Your Lordship will give me a few minutes I will try to find out where Wielen can be located.

THE PRESIDENT: Yes.

MR. ROBERTS: But I shall have to leave the Court, then, My Lord.

THE PRESIDENT: One minute, please.

Colonel Smirnov, would not it be equally convenient to go on with the film now in order that the report, when it is presented, can be presented as close as possible to the evidence of the witnesses?

Otherwise, supposing Mr. Roberts is unable to locate Wielen this afternoon, it might be that if you read the report now, there might be a week possibly—or even more—between the reading of the report and the evidence of the witness. Is it possible to go on with the film now?

MR. COUNSELLOR SMIRNOV: What we are showing the Tribunal cannot be called a film in the full sense of the word. It is a series of photographic evidence, of photographs taken by the Germans themselves on the site where the crimes were committed, which were then rephotographed and transferred to a reel. It is not a film—it is a photo-document. We are presenting these photo-documents as Exhibit Number USSR-442 (Document Number USSR-442), and we are presenting only one part of these photo-documents. The fact of the matter is that the Government of

Yugoslavia presented photo-documents for every section of the report. We have excluded the part dealing with the other sections and show only that part which deals with Crimes against Humanity. Thus, only a section of the documents is being shown to the Tribunal. May I show these photo-documents?

[*The photographic document was then projected on the screen.*]

MR. COUNSELLOR SMIRNOV: May I continue with the presentation of the documentary evidence?

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: Mr. President, in order to allow the British Prosecution to settle the question as to when the two witnesses will be summoned before the Tribunal, I take the liberty of passing to the next part of my statement. Have I your permission to do so?

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: I pass on to that part which deals with the persecution of the Jews, Page 37 of the text. The excessive anti-Semitism of the Hitlerite criminals, which assumed a perfectly zoological aspect, is only too well known. I shall not quote from the so-called theoretical works of the major war criminals—from Himmler and Göring to Papen and Streicher. In the Eastern European countries all the anti-Semitism of the Hitlerites was put into full effect and mostly in one way only—in the physical extermination of innocent people.

The United States Prosecution, in its own time, submitted to the Tribunal one of the reports of a special German fascist organization, the so-called Einsatzgruppe A, which was submitted as Exhibit USA-276 (Document Number L-180). Our American colleagues submitted this particular report which covered the period up to 15 October 1941. The Soviet Prosecution submits another report of this criminal German fascist organization, covering a further period of time and which might almost be considered as a continuation of the first document, namely the report on Einsatzgruppe A, from 10 October 1941 to 31 January 1942. I submit to the Tribunal a photostatic copy of this report as Exhibit Number USSR-57 (Document Number USSR-57). I request the permission of the Tribunal to read into the record a very brief excerpt from Chapter 3 of the report of Einsatzgruppe A, entitled "The Jews," and I would invite the attention of the Tribunal to the fact that the data presented in this report refer exclusively to one organization—Einsatzgruppe A. I quote one paragraph from Page 170 of the document book:

> "The systematic task of purging the East was, according to fundamental orders, the liquidation of the Jews to the fullest possible extent. This objective has been practically realized, with the exception of Bielorussia, by the execution of 229,052 Jews. . . . The surviving Jews in the Baltic provinces are urgently needed for work, and have been quartered in ghettos."

I interrupt the quotation and read two further excerpts from a subparagraph, "Estonia," on Page 2 of the Russian text, which corresponds to Page 171, Paragraph 2 of your document book. I begin the quotation:

> "The execution of the Jews, insofar as they were not indispensable for working purposes, was carried out gradually by forces of the Sipo and the SD. At present there are no Jews left in Estonia."

I quote a few brief excerpts from the subparagraphs entitled "Latvia." I quote one line from the last paragraph on the second page of the Russian text, Page 171, Paragraph 5 of the document book. I begin:

> "When the German troops entered Latvia, there were still 70,000 Jews left there."

I break off the quotation and read one line on Page 3, Paragraph 2 of the Russian text, Page 171, last paragraph of the document book:

> "By October 1941 the Sonderkommandos had executed about 30,000 Jews."

I again break off and continue with the following paragraph:

> "Further executions were later carried out. Thus, for instance, 11,034 Jews were executed on 9 November 1941 in Dünaburg. In the beginning of December 1941, as a result of an operation carried out in Riga and following the order of the Higher Chief of the SS and Police, 27,800 persons were executed, and in mid-December 1941, in Libau, 2,350 Jews were executed. At present there are in ghettos, besides the Jews from Germany, about 2,500 Latvian Jews in Riga, about 950 in Dünaburg, and about 300 in Libau."

THE PRESIDENT: Can you tell me where these figures come from? Are they in an official report, or are they German figures?

MR. COUNSELLOR SMIRNOV: These are the data published by the Germans themselves. This particular document was discovered in the Gestapo archives. It was brought out of Latvia by troops of the Red Army. I request Your Honors to take note that this document covers only the period between 16 October 1941 and 31 January 1942. This is therefore not

conclusive data but merely data connected with one German operational group during this particular period of time.

Have I your permission to proceed, Mr. President?

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: I quote one line only from the subparagraph entitled "Lithuania," which is on Page 173 of the document book, Paragraph 3:

> "In numerous individual operations, 136,421 persons were liquidated all told."

I request the Tribunal to allow me to quote in greater detail from the next subparagraph of the "A" group report, entitled "White Ruthenia." I quote the last paragraph on Page 5 of the Russian text; Page 174, last paragraph, of the document book:

> "The final and definite liquidation of the Jews remaining in the territory of White Ruthenia, after the arrival of the Germans, presented certain difficulties. As a matter of fact, it is precisely in this territory that the Jews constitute a high percentage of specialists and are indispensable for lack of other reserves. Moreover, Einsatzgruppe A took over the territory only after the hard frosts had set in, a fact which hampered the carrying out of the mass executions very seriously indeed. A further difficulty consists in the circumstance that the Jews are scattered all over the territory. Bearing in mind the fact that distances are vast, road conditions bad, transportation and petrol lacking, and the forces of the Security Police and SD insignificant, the executions could be carried out only by a maximum effort. Nevertheless, 41,000 Jews have already been shot. This figure does not include the persons executed by former Einsatzkommandos."

I interrupt once more and proceed to read from the following paragraph —this corresponds to Page 175, Paragraph 2 of the document book. I begin the quotation:

> "The Chief of Police in White Ruthenia, despite the difficult situation, has been given orders to solve the Jewish question as soon as possible. All the same, this calls for about two months' time, according to the weather.
>
> "The distribution of the remaining Jews in special ghettos of White Ruthenia is nearing its end."

In order to show how mass executions of the Jews by the German criminals were carried out, I present to the Tribunal as Exhibit Number USSR-119(a) (Document Number USSR-119(a)) a photostatic copy, certified by the Extraordinary State Commission of the Soviet Union of an original German document. This is the conclusive report of the commander of one of the companies of the 12th Regiment of Police, which carried out the mass extermination of the Jews assembled in the ghetto of the town of Pinsk. On 29 and 30 October 1942, the criminal elements from the 15th Regiment of Police murdered 26,200 Jews in Pinsk. This is how Company Commander Sauer described the crime. I shall not quote the document *in toto* since it is rather long, but I shall quote a few excerpts. The passage I am about to read—and I ask the Tribunal's permission to read it into the record—is on Page 177 of your document book, Paragraph 3. I begin the quotation:

> "The ordered encirclement of the districts was accomplished at 0430 hours; owing to the personal investigations made by the commanders and to the manner in which the secret was kept, the encirclement was carried out in the shortest time imaginable and it was impossible for the Jews to flee.
>
> "The combing of the ghetto was to begin at 0600 hours, but owing to the darkness it was postponed for another half-hour. The Jews had noticed the proceedings and began to assemble voluntarily in all the streets. With the aid of two Wachtmeister (Staff Sergeants) it was possible to bring several thousand Jews to the assembly point within the very first hour. When the remaining Jews realized what was coming, they too joined this column, so that the screening planned by the SD at the assembly point could not be carried out in view of the enormous multitude which had gathered. (For the first day of the comb-out only one to two thousand persons had been counted on.) The first comb-out ended at 1700 hours without any incident. About 10,000 persons were executed on this first day. That night the company was standing by, ready for action, in a soldiers' club.
>
> "On 30 October 1942 the ghetto was combed a second time. On 31 October it was combed for the third time and on 1 November for the fourth time. About 15,000 Jews were rounded up, all told. Sick Jews and children left behind in the houses were executed on the spot in the yard of the ghetto. About 1,200 Jews were executed in the ghetto."

I request the permission of the Tribunal to allow me to continue quoting the second page of the document which corresponds to Page 178 of the document book, Paragraph 6. I quote two points from the section "Experiences." I begin to quote:

> "3) Where there are no cellars and a considerable number of persons are huddled together in the small space between the floor and the ground, these places must be broken into from the outside, or else police dogs sent in (one police dog, Asta, put up a remarkably good performance in Pinsk), otherwise a hand grenade should be thrown in, after which the Jews invariably come out into the open."

I further quote Point 5:

> "We recommend persuading half-grown persons to disclose these hiding places by promising to spare their lives. This method has fully justified its application."

This example of this police regiment, which I have just read into the record, is typical of the methods applied for the extermination of Jews who had been rounded up in the ghetto. But the German fascist invaders did not always apply this method when proceeding to the extermination of the peaceful Jewish population.

Another, similarly criminal device was the assembling of Jews in a given spot under the pretext of transferring them to some other locality. The assembled Jews would then be shot. I submit to the Tribunal an original poster which had been put up in the town of Kislovodsk by Kommandantur Number 12. Your Honors will find the text (Document Number USSR-434) quoted on Page 180. I shall quote some extracts from this poster which is a comparatively long one. I start with the first part:

> "To all Jews! For the purpose of colonizing sparsely populated districts of the Ukraine, all Jews residing in Kislovodsk and all Jews who have no permanent abode are ordered to present themselves on Wednesday, 9 September 1942, at 5 a. m. Berlin time (6 a. m. Moscow time), at the goods' station in Kislovodsk; the transport will take off at 6 a. m. (7 a. m. Moscow time).
>
> "Every Jew is to bring luggage not exceeding 20 kilograms in weight, including food for a minimum of 2 days. Further food will be supplied by the German authorities at the railway stations."

I omit the next paragraph and only quote one line:

> "Also subjected to transfer are the Jews who have been baptized."

I break off the quotation at this point.

In order to ascertain what happened to the Jewish population in the town of Kislovodsk—the same happened to the Jews in many other towns—I would request the Tribunal to refer to the contents of a document which has already been submitted to the Tribunal as Exhibit Number USSR-1 (Document Number USSR-1). It is a report of the Extraordinary State Commission of the Stavropol region.

The part which I wish to read, in brief, is on Page 187 of your document book. It states there that the 2,000 Jews who had assembled at the Kislovodsk station were sent to the station of Mineralniye Vody and shot in an antitank trench 2½ kilometers distant from the town. Here too, thousands of Jews, transferred from the towns of Essentuki and Piatigorsk, were shot on the same site.

In order to show the extent of the criminal extermination of the peaceful Jewish population in Eastern Europe, I now refer to the contents of reports received from the governments of the respective Eastern European countries, which have already been submitted to the Tribunal.

I quote a report of the Polish Government, on Page 136 of the Russian text of this document. I begin the quotation:

> "The official statistical yearbook of Poland, in 1931, estimates the number of Jews at 3,115,000.
>
> "According to unofficial figures collected in 1939 there were in Poland 3,500,000 Jews.
>
> "After the liberation of Poland the Jews in that country numbered less than 100,000, and 200,000 Polish Jews are still in the U.S.S.R.
>
> "Thus, about 3 million Jews perished in Poland."

In Czechoslovakia, as seen from the data published on Pages 82-83 of the Russian text of the report, the Jews numbered 118,000. At present, in the entire country, they number only 6,000 all told. Of the total number of 15,000 Jewish children, only 28 have returned.

THE PRESIDENT: Can we leave off here?

[*The Tribunal adjourned until 27 February 1946 at 1000 hours.*]

SIXTY-NINTH DAY

Wednesday, 27 February 1946

Morning Session

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, I wonder if the Tribunal would allow me to make a very short explanation as to the source of the document with regard to Stalag Luft III which the Tribunal discussed yesterday.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: The position was that when evidence for this Trial was being collected, each government that might be concerned was written to and asked if they would produce government reports, and they have produced government reports which have been put before the Tribunal by the various sections of the Prosecution.

The document with regard to the shooting of the prisoners in Stalag Luft III was a British Government report of the same type. It was compiled from various information, which is included in the appendices; that information included the interrogation of General Westhoff, which had been sent to the United Nations War Crimes Commission as thousands of other documents were sent, for that Commission to consider whether any action should be taken from the matters disclosed.

That document was then sent from the United Nations War Crimes Commission to the British Government and dealt with as part of the material on which the British Government report was based. The British Government report is certified by myself to be a Government report, and I have specific authority from His Majesty's Government in Britain to perform such certification. It is very short, and it might be convenient if I read it so that it appears in the record. I have the copy, which was sent to me on the official Cabinet paper, purporting to be signed by Sir Edward Bridges, the Secretary to the Cabinet. The original was sent to the Attorney General, and the document is jointly to us both; but there is no doubt as to its authenticity; and the original can be produced, if necessary. The document reads:

> "His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland has authorized the Right Honorable Sir Hartley Shawcross, K. C., M. P., the Chief Prosecutor for the United Kingdom, appointed under Article 14 of the Charter, annexed to the agreement dated the 8th day of August 1945, and the Right Honorable Sir David Maxwell-Fyfe, K. C., M. P., the Deputy Chief Prosecutor for the United Kingdom, to certify those documents to be produced at the trial of war criminals before the International Military Tribunal which are documents of His Majesty's Government in the United Kingdom."

My respectful submission is, therefore, that on my certification the document becomes a governmental document within Article 21, and it is thereupon a mandatory injunction to the Tribunal that it shall take judicial notice of such a document. At that point the document, in my respectful submission to the Tribunal, should be taken into evidence. And it is then, of course, a matter for the Defense, if they wish to call any witness, to make such application as they desire and for the Tribunal to rule on it.

But as a point of construction, I respectfully submit that once a document is certified as a government document, as all these government reports are, the Charter enjoins the Tribunal to take judicial notice of them.

THE PRESIDENT: Sir David, the Tribunal did admit the document yesterday; but they are glad of your explanation. Nothing in the order that they made is in any way inconsistent with what you have now said.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases.

MR. COUNSELLOR SMIRNOV: May I continue, Mr. President?

THE PRESIDENT: Yes, Colonel Smirnov.

MR. COUNSELLOR SMIRNOV: Your Honors, I would like to recall to you certain figures which I mentioned yesterday afternoon. I am speaking about the number of Jews who were exterminated in Poland and Czechoslovakia. I allow myself to remind the Tribunal that the figures I mentioned yesterday, which were based on the report of the Polish Government, show that 3 million Jews in Poland have been exterminated. In Czechoslovakia out of 118,000 Jews only 6,000 remain.

I would now like to pass on to the report of the Yugoslav Government and will quote one paragraph, which the Tribunal will find on Page 75 of the document book, third paragraph:

> "Out of 75,000 Yugoslav Jews and about 5,000 Jewish emigrées from other countries who were in Yugoslavia at the time of the

attack—that is to say, out of a total number of about 80,000 Jews —only some 10,000 persons survived the German occupation."

I beg the Tribunal to call to this Court a witness who will confirm these data. He is Abram Gerzevitch Suzkever, a Jewish writer, who together with his family became a victim of the German fascist criminals who had temporarily occupied the territory of the Lithuanian Soviet Republic. I beg the Tribunal to allow me to question this witness.

[*The witness, Suzkever, took the stand.*]

THE PRESIDENT: What is your name?

ABRAM GERZEVITCH SUZKEVER (Witness): Suzkever.

THE PRESIDENT: Are you a Soviet citizen?

SUZKEVER: Yes.

THE PRESIDENT: Will you repeat after me: I—and mention your name —citizen of the Union of Soviet Socialist Republics—summoned as a witness in this Trial—do promise and swear—in the presence of the Court— to tell the Court nothing but the truth—about everything I know in regard to this case.

[*The witness repeated the oath in Russian.*]

THE PRESIDENT: You may sit down, if you wish.

MR. COUNSELLOR SMIRNOV: Please tell me, Witness, where did the German occupation find you?

SUZKEVER: In the town of Vilna.

MR. COUNSELLOR SMIRNOV: You stayed in this town for a long time during the German occupation?

SUZKEVER: I stayed there from the first to nearly the last day of the occupation.

MR. COUNSELLOR SMIRNOV: You witnessed the persecution of the Jews in that city?

SUZKEVER: Yes.

MR. COUNSELLOR SMIRNOV: I would like you to tell the Court about this.

SUZKEVER: When the Germans seized my city, Vilna, about 80,000 Jews lived in the town. Immediately the so-called Sonderkommando was set up at 12 Vilenskaia Street, under the command of Schweichenberg and Martin Weiss. The man-hunters of the Sonderkommandos, or as the Jews called them, the "Khapun," broke into the Jewish houses at any time of day or night, dragged away the men, instructing them to take a piece of soap and

a towel, and herded them into certain buildings near the village of Ponari, about 8 kilometers from Vilna. From there hardly one returned. When the Jews found out that their kin were not coming back, a large part of the population went into hiding. However, the Germans tracked them with police dogs. Many were found, and any who were averse to going with them were shot on the spot.

I have to say that the Germans declared that they were exterminating the Jewish race as though legally.

On 8 July an order was issued which stated that all Jews should wear a patch on their back; afterwards they were ordered to wear it on their chest. This order was signed by the commandant of the town of Vilna, Zehnpfennig. But 2 days later some other commandant named Neumann issued a new order that they should not wear these patches but must wear the yellow Star of David.

MR. COUNSELLOR SMIRNOV: And what does this yellow Star of David mean?

SUZKEVER: It was a six-pointed patch worn on the chest and on the back, in order to distinguish the Jews from the other inhabitants of the town. On another day they were ordered to wear a blue band with a white star. The Jews did not know which insignia to wear as very few lived in the town. Those who did not wear this sign were immediately arrested and never seen again.

On 17 July 1941 I witnessed a large pogrom in Vilna on Novgorod Street. The inciters of this pogrom were the forenamed Schweichenberg and Martin Weiss, a certain Herring, and Schönhaber, a German Gestapo chief. They surrounded this district with Sonderkommandos. They drove all the men into the street, told them to take off their belts and to put their hands on their heads like this [*demonstrating*]. When that order had been complied with, all the Jews were driven along into the Lukshinaia prison. When the Jews started to march off, their trousers fell down and they couldn't walk. Those who tried to hold up their trousers with their hands were shot then and there in the street. When we walked in a column down the street, I saw with my own eyes the bodies of about 100 or 150 persons who had been shot in the street. Blood streamed through the street as if a red rain had fallen.

In the first days of August 1941 a German seized me in the Dokumenskaia Street. I was then going to visit my mother. The German said to me, "Come with me, you will act in the circus." As I went along I saw that another German was driving along an old Jew, the old rabbi of this street, Kassel, and a third German was holding a young boy. When we

reached the old synagogue on this street I saw that wood was piled up there in the shape of a pyramid. A German drew out his revolver and told us to take off our clothes. When we were naked, he lit a match and set fire to this stack of wood. Then another German brought out of the synagogue three scrolls of the Torah, gave them to us, and told us to dance around this bonfire and sing Russian songs. Behind us stood the three Germans; with their bayonets they forced us toward the fire and laughed. When we were almost unconscious, they left.

I must say that the mass extermination of the Jewish people in Vilna began at the moment when District Commissar Hans Fincks arrived, as well as the referant, or reporter on the Jewish problems, Muhrer. On 31 August, under the direction of District Commissioner Fincks and Muhrer. . .

THE PRESIDENT: Which year?

SUZKEVER: 1941.

THE PRESIDENT: Go on.

SUZKEVER: Under the direction of Fincks and Muhrer, the Germans surrounded the old Jewish quarter of Vilna, taking in Rudnitskaia and Jewish Streets, Galonsky Alley, the Shabelsky and Strashouna Streets, where some 8 to 10 thousand Jews were living.

I was ill at the time and asleep. Suddenly I felt the lash of a whip on me. When I jumped up from my bed I saw Schweichenberg standing in front of me. He had a big dog with him. He was beating everybody and shouting that we must all run out into the courtyard. When I was out in the courtyard, I saw there many women, children, and aged persons—all the Jews who lived there. Schweichenberg had the Sonderkommando surround all this crowd and said that they were taking us to the ghetto. But, of course, like all their statements, this was also a lie. We went through the town in columns and were led toward Lutishcheva Prison. All knew that we were going to our death. When we arrived at Lutishcheva Prison, near the so-called Lutishkina market, I saw a whole double line of German soldiers with white sticks standing there to receive us. While we had to pass between them they beat us with sticks. If a Jew fell down, the one next to him was told to pick him up and carry him through the large prison gates which stood open. Near the prison I took to my heels. I swam across the River Vilia and hid in my mother's house. My wife, who was put in prison and then managed to escape later on, told me that there she saw the well-known Jewish scientist Moloch Prilutzky, who was almost dead, the president of the Jewish Society of Vilna, Dr. Jacob Wigotzky, and the young Jewish historian, Pinkus Kohn.

The famous artists Hash and Kadisch were lying dead. The Germans flogged, robbed, then drove away all their victims to Ponari.

On 6 September at 6 o'clock in the morning thousands of Germans, led by District Commissar Fincks, by Muhrer, Schweichenberg, Martin Weiss, and others, surrounded the whole town, broke into the Jewish houses, and told the inhabitants to take only that which they could carry off in their hands and get out into the street. Then they were driven off to the ghetto. When they were passing by Wilkomirowskaia Street where I was, I saw the Germans had brought sick Jews from the hospitals. They were all in blue hospital gowns. They were all forced to stand while a German newsreel operator, who was driving in front of the column, filmed this scene.

I must say that not all the Jews were driven into the ghetto. Fincks did this on purpose. He drove the inhabitants of one street to the ghetto and the inhabitants of another street to Ponari. Previously the Germans had set up two ghettos in Vilna. In the first were 29,000 Jews, and in the second some 15,000 Jews. About half the Jewish population of Vilna never reached the ghetto; they were shot on the way. I remember how, when we arrived at the ghetto. . .

MR. COUNSELLOR SMIRNOV: Just a moment, Witness. Did I understand you correctly, that before the ghetto was set up, half the Jewish population of Vilna was already exterminated?

SUZKEVER: Yes, that is right. When I arrived at the ghetto I saw the following scene: Martin Weiss came in with a young Jewish girl. When we went in farther, he took out his revolver and shot her on the spot. The girl's name was Gitele Tarlo.

MR. COUNSELLOR SMIRNOV: Tell us, how old was this girl?

SUZKEVER: Eleven. I must state that the Germans organized the ghetto only to exterminate the Jewish population with greater ease. The head of the ghetto was the expert on Jewish questions, Muhrer, and he issued a series of mad orders. For instance, Jews were forbidden to wear watches. The Jews could not pray in the ghetto. When a German passed by, they had to take off their hats but were not allowed to look at him.

MR. COUNSELLOR SMIRNOV: Were these official orders?

SUZKEVER: Yes, issued by Muhrer.

MR. COUNSELLOR SMIRNOV: Were they posted?

SUZKEVER: Yes, they were posted in the ghetto. The same Muhrer, when he visited the ghetto, went into the shops where the Jews were working for him and ordered all workers to fall down on the ground and bark like dogs. On Atonement Day in 1941 Schweichenberg and the same

Sonderkommando broke into the second ghetto and seized all the old men who were praying in the synagogues and drove them to Ponari. I remember when Schweichenberg went to the second ghetto and the man-hunters seized the Jews.

MR. COUNSELLOR SMIRNOV: Who were these hunters?

SUZKEVER: The soldiers of the Sonderkommando who seized the Jews and whom the population called the hunters.

MR. COUNSELLOR SMIRNOV: So they were soldiers of the Sonderkommando, whom the population called hunters?

SUZKEVER: Yes, that is so. These hunters dragged the Jews out of the cellars and tried to drive them to Ponari. But the Jews knew that nobody returned alive and did not want to go. Then Schweichenberg began to shoot at the inhabitants of the ghetto. I remember that there was a big dog at his side; and when this dog heard the shots, it jumped at Schweichenberg and began to bite his throat like a mad dog. Then Schweichenberg killed this dog and told the Jews to bury it and to cry over its grave. We really cried then—we cried because it was not Schweichenberg but the dog that had been buried.

At the end of December 1941 an order was issued in the ghetto which stated that the Jewish women must not bear children.

MR. COUNSELLOR SMIRNOV: I would like you to tell us how, or in what form, this order was issued by the German fascists.

SUZKEVER: Muhrer came to the hospital in Street Number 6 and said that an order had come from Berlin to the effect that Jewish women should not bear children and that if the Germans found out that a Jewish woman had given birth, the child would be exterminated.

Towards the end of December in the ghetto my wife gave birth to a child, a boy. I was not in the ghetto at that time, having escaped from one of these so-called "actions." When I came to the ghetto later I found that my wife had had a baby in a ghetto hospital. But I saw the hospital surrounded by Germans and a black car standing before the door. Schweichenberg was standing near the car, and the hunters of the Sonderkommando were dragging sick and old people out of the hospital and throwing them like logs into the truck. Among them I saw the well-known Jewish writer and editor, Grodnensky, who was also dragged and dumped into this truck.

In the evening when the Germans had left, I went to the hospital and found my wife in tears. It seems that when she had had her baby, the Jewish doctors of the hospital had already received the order that Jewish women must not give birth; and they had hidden the baby, together with other

newborn children, in one of the rooms. But when this commission with Muhrer came to the hospital, they heard the cries of the babies. They broke open the door and entered the room. When my wife heard that the door had been broken, she immediately got up and ran to see what was happening to the child. She saw one German holding the baby and smearing something under its nose. Afterwards he threw it on the bed and laughed. When my wife picked up the child, there was something black under his nose. When I arrived at the hospital, I saw that my baby was dead. He was still warm.

On the next day I went to my mother in the ghetto, and I found her room empty. A prayer book was still open on the table and a glass of tea, not yet touched. I learned that in the night the Germans had surrounded this house, seized all the inhabitants, and driven them off to Ponari. In the last days of December 1941 Muhrer gave a present to the ghetto. A carload of shoes belonging to the Jews executed at Ponari was brought into the ghetto. He sent these old shoes as a gift to the ghetto. Among them I recognized my mother's.

Shortly afterwards the second ghetto was liquidated, and the German newspaper in Vilna announced that the Jews from this district had died of an epidemic.

On 23 December 1941, in the night, Muhrer came and distributed among the population 3,000 yellow tickets, the so-called Ausweise. Those who had these tickets were allowed to register their relatives; that meant some 9,000 persons. At that time about 18 to 20 thousand people lived in the ghetto. Those who had these yellow tickets went to work the next day; and the others, who remained in the ghetto without these tickets and did not want to go to their death, were slaughtered in the ghetto itself. The rest were driven away to Ponari.

I have a document which I found after the liberation of the town of Vilna, concerning the Jewish clothing from Ponari. If this document interests you I can show it to you.

THE PRESIDENT: Do you have the document?

MR. COUNSELLOR SMIRNOV: I do not know of this document either, Mr. President.

SUZKEVER: [*Continuing.*] This document reads as follows—I will read only a few lines. . .

[*The witness read the document in German, and only part of it was translated. It was later identified as Document USSR-444.*]

MR. COUNSELLOR SMIRNOV: Witness, as you have read this document, you must hand it over to the Tribunal, as otherwise we cannot

judge this document.

SUZKEVER: Certainly.

THE PRESIDENT: Will you tell us first of all where the document was found?

SUZKEVER: I found this document at the district commissioner's building in Vilna, in July 1944, when our city was already liberated from the German invaders.

THE PRESIDENT: Where did you say it was found?

SUZKEVER: In the building of the District Commissar in Vilna on the Gedemino Street.

THE PRESIDENT: Was that the building occupied by the Germans?

SUZKEVER: Yes, it was the headquarters of the German District Commissioner of Vilna. Hans Fincks and Muhrer lived there.

THE PRESIDENT: Well, read the part of the document you were reading just now; we did not hear it.

SUZKEVER: Certainly.

> "To the District Commissioner at Vilna: Pursuant to your order, the old Jewish clothing from Ponari is at present being disinfected by this establishment and delivered to the administration of Vilna."

THE PRESIDENT: Will you hand it in, please?

MR. COUNSELLOR SMIRNOV: Please, Witness, I am interested in the following question: You said that at the beginning of the German occupation 80,000 Jews lived in Vilna. How many remained after the German occupation?

SUZKEVER: After the occupation about 600 Jews remained in Vilna.

MR. COUNSELLOR SMIRNOV: Thus, 79,400 persons were exterminated?

SUZKEVER: Yes.

MR. COUNSELLOR SMIRNOV: Your Honors, I have no further questions to ask of the witness.

THE PRESIDENT: Does any other Chief Prosecutor want to ask any questions?

SIR DAVID MAXWELL-FYFE: No questions.

MR. DODD: No questions.

THE PRESIDENT: Does any member of the defendants' counsel wish to ask any questions? No? Then the witness can retire.

[*The witness left the stand.*]

Yes, Colonel Smirnov.

MR. COUNSELLOR SMIRNOV: Mr. President, I would like to modify the plan of my statement and leave out just now that chapter of my statement which is entitled, "Religious Persecutions," to which I shall come back a little later. I would now like, with your permission, to take up that part of my statement which is entitled, "Experiments on Living Persons." It is on Page 47 of the Russian text.

Before reading this part of my statement, I would like to quote a few short extracts from a document which has not as yet been read into the record by our United States colleagues, because the main part of this document refers to experiments which were described in detail by the United States Prosecution with the help of other documents. This document is registered under Document Number 400-PS (Exhibit Number USSR-435). It refers to experiments by Dr. Rascher. It is submitted to the Tribunal as a photostat copy, which includes a series of documents. I quote two paragraphs only from this Document Number 400-PS. These two paragraphs testify to the predilection of Dr. Rascher for the Auschwitz Camp. This extract is on Page 149 of the document book, last paragraph:

> "It would be simpler if I were soon transferred to the Waffen-SS and could visit the Auschwitz Camp with Neff, where I could, by a series of large scale experiments, solve the problem of reviving people who had been frozen on land. For these experiments Auschwitz is in every respect better adapted than Dachau, for the climate is colder there and, as the camp area is larger, less attention will be attracted. The victims yell when they are being frozen.
>
> "If it is agreeable to you, esteemed Reichsführer, to have these experiments—so important for our land forces—quickly carried out at Auschwitz (or in Lublin or any other Eastern camp), I would respectfully beg you to give the necessary orders in the near future so that we could yet profit by the last cold, winter weather. With most obedient greetings I am, in sincere gratitude, Heil Hitler, your always devoted servant, S. Rascher."

I would like to remind the Tribunal that this special interest of Dr. Rascher in the Auschwitz Camp—I remind the Tribunal that Auschwitz was the central section of the camp situated near the town of Oswieczim—was not accidental. In Auschwitz cruel experiments on live persons were carried

out on a scale greatly exceeding all that was done in Dachau or other concentration camps of the Reich.

Our Exhibit Number USSR-8 (Document Number USSR-8) has already been added to the file of the case. It is the report of the Extraordinary State Commission of the Soviet Union on the monstrous crimes of the German Government in Oswieczim. The introductory part of this report contains the following excerpt, which the members of the Tribunal will find on Page 196 of the document book. I read one paragraph only:

> "Special hospitals, surgical blocks, histological laboratories, and other departments were set up in the camp. But they were intended not for the treatment but for the extermination of people. Here German professors and doctors carried out mass experiments on men, women, and children who were in perfectly good health. They carried out experiments on sterilization of women, on castration of men, experiments on children, artificial infection with cancer, typhus, and malaria, of masses of people who were afterward subjected to observation. They tested the action of poisonous substances on living persons."

I would like to stress that experiments on the sterilization and castration of women and men were carried out on a particularly large scale. Whole blocks in the camp were especially designated for experiments using particularly effective methods of sterilization and castration.

I will read two short excerpts from the report of the Extraordinary State Commission, which the Tribunal will find on the back of Page 196 of the document book, Paragraph 5. I quote:

> "Experiments on women were carried out in the hospital blocks of the Oswieczim Camp. Up to four hundred women were detained simultaneously in Block 10 of the camp, and experiments on sterilization were carried out on them by means of X-rays and subsequent removal of the ovaries, experiments in engrafting cancer in the neck of the uterus and forced abortion, and on testing countermeasures against injuries to the uterus by X-ray."

I omit three sentences and proceed with the quotation:

> "In Block 21"—that is another block, the women's block was Number 10—"mass experiments on castration of men were carried out for the purpose of studying the possibility of sterilization by X-ray. The castration itself was carried out some time later after the X-ray process. These experiments on X-raying and castration were carried out by Professor Schumann and Dr. Dering. It

frequently happened that after treatment by X-ray, one or both testicles of the subject were removed for examination."

I beg the Tribunal to allow me, in order to show the extent of these experiments, to read short excerpts from the testimony of the Dutch Doctor De Vind. It is contained in the Exhibit Number USSR-52 (Document Number USSR-52) already presented to the Court. I will not read the testimony in full but will just quote the statistics, which the Tribunal may find on the back of Page 203 of the document book, last paragraph, first column. I repeat that these numbers refer only to one block, Block 10. The following women were interned in this block:

"Fifty women of different nationalities who arrived in March 1943; 100 Greek women who arrived in March 1943; 110 Belgian women who arrived in April 1943; 50 French women who arrived in July 1943; 40 Dutch women who arrived in August 1943; 100 Dutch women who arrived on 15 September 1943; and 100 Dutch women who arrived one week later; and finally 12 Polish women."

I will quote a further excerpt from the statement of the Dutch Doctor De Vind, which has also been submitted previously to the Tribunal as Exhibit Number USSR-52 (Document Number USSR-52), I quote that part of the statement in which he speaks of experiments carried out by a certain Professor Schumann on 15 young girls. Your Honors will find this excerpt on Page 204 of the document book, first column of the text, third paragraph:

"Professor Schumann (a German). These experiments were carried out on 15 girls of 17 to 18 years of age, including Shimmi Bella, from Salonika (Greece) and Buena Dora, from Salonika (Greece). Only a few of them survived; but unfortunately they are still in the German hands, and we have consequently no objective data on these brutal experiments. However, the following has been established beyond doubt: The girls were placed between two plates within the field of ultra-short waves; one electrode was placed on the abdomen and the other on the buttocks. The focus of the rays was directed on the ovaries which were consequently burned out. As a result of the irregular dosage, serious burns appeared on the abdomen and on the buttocks. One girl died of these terrible sufferings; the other girls were sent to Birkenau to the medical unit or to working kommandos.

"A month later they were returned to Oswieczim, where they were subjected to two operations for checking the results; one,

longitudinal, the other, a horizontal incision. The reproductive organs were removed for study. As a result of the destruction of hormones, the girls completely changed in appearance and resembled old women."

With this I end the quotation.

Experiments on sterilization of women and castration of men were carried out in Oswieczim on a mass scale beginning in 1942, and some time after the sterilization the men were castrated for a special study of the tissues.

You can find a confirmation of this fact in the report of the Extraordinary State Commission of the Soviet Union on Oswieczim, where numerous statements of individual internees who underwent such operations have been quoted. The Tribunal will find the excerpt which I wish to read on Page 197 of the document book, second paragraph, second column of the text. I quote two paragraphs:

"Valigura, who was subjected to such experiments, stated:

" 'A few days after I had been brought to Birkenau, I believe it was in the first days of December 1942, all the young men from 18 to 30 years of age were sterilized by X-raying the scrotum. I myself was among those sterilized. Eleven months later, that is to say, on the 1st of November 1943, I was castrated. Together with me on that same day 200 men were sterilized.'

"Witness David Sures, from the town of Salonika (Greece), stated the following:

" 'Toward July 1943 I myself and 10 other Greeks were placed on some kind of list and sent to Birkenau. There we were stripped and subjected to sterilization by X-rays. A month later we were summoned to a central section of the camp where all those sterilized underwent an operation of castration.' "

I believe that it was not by accident that the experiments on people began with sterilization and castration. This was a quite natural result of the theories of German fascism, interested in lowering the birthrate of those people whom they considered to be vanquished. It was a part of Hitler's depopulation technique; and in confirmation of this I would now like to quote a very short excerpt from Rauschning's book, *The Voice of Destruction*, which has already been submitted to the Tribunal. This extract has not yet been read into the record, and the Tribunal will find it on Page 207 of the document book.

Hitler said to Rauschning:

> "And by 'destruction' I do not necessarily mean extermination of these people—I shall simply take systematic measures to prevent their procreation."

I skip the next three sentences and quote one more sentence:

> "There are many means by which a systematic and comparatively painless extinction of undesirable races can be attained, at any rate without blood being shed."

This excerpt is on Page 137 of the original book.

Sterilization and castration became a criminal practice of the Hitlerites in the occupied territories in Eastern Europe. I beg the Tribunal's permission to draw its attention to two of these documents.

THE PRESIDENT: Colonel Smirnov, perhaps that would be a convenient time to break off.

The Tribunal would like to know how long you think you will take before you conclude your statement.

MR. COUNSELLOR SMIRNOV: I believe, Mr. President, that I will finish the presentation of evidence today.

I would like the Tribunal to allow me to question three more witnesses today and I still have about one hour of reading. But it is very difficult for me to determine the time exactly, as that sometimes depends on other factors, known to you, which may force me to change my intentions.

THE PRESIDENT: We will adjourn now for 10 minutes.

[*A recess was taken.*]

MR. COUNSELLOR SMIRNOV: I ask the permission of the Tribunal to draw its attention to two very short German documents, which are submitted under Exhibit Number USSR-400 (Document Number USSR-400) in photostats certified by the Extraordinary State Commission of the Soviet Union. They are two communications from Lieutenant Frank, head of a Security Police division, regarding the conditions under which a gypsy woman, Lucia Strasdinsch had the right to reside in the town of Libau.

> "Libau, 10 December 1941.
>
> "Security Police Post, Town of Libau; to the Prefect of the Town of Libau.
>
> "It has been decided that the Gypsy Lucia Strasdinsch will be allowed to take up residence here again only on the condition that

she submits to being sterilized. She is to be informed accordingly and a report on the result is to be rendered to this office.

"Frank, Lieutenant, Security Police and O. C. Security Police Station."

The second document is a memorandum from the Prefecture of Libau, H. Grauds, to the head of the Security Police Post. The text:

"I herewith return your letter of 10 December 1941 regarding the sterilization of the Gypsy Lucia Strasdinsch and beg to report that this person was sterilized in the local hospital on 9 January 1942. Pertinent letter Number 850 of 12. 1. 42 from the hospital is attached."

In order to show the extent of the experiments which were performed on live persons, I would ask Your Honors to turn to the report of the Extraordinary State Commission on Oswieczim. The extract which I should like to quote, the members of the Tribunal may find on Page 197 of the book of documents, first column, second paragraph. It is stated there that a statistical report by the commandant of the camp has been discovered in the archives of the camp. This report is signed by the deputy commander of the camp, Sella. It has a column under the heading, "Internees designated for experiments." This column reads as follows; "Women subject to experiments: on 15 May 1944—400, on 15 June—413, on 19 June—348, and so on."

I would like to conclude this chapter on experiments on live persons, by the following: I would like to quote the memorandum of the judicial and medical report, an excerpt of which is in the report on Oswieczim Camp. The members of the Tribunal may find the passage which I should like to quote on Page 197 of the document book, first column, Paragraph 5. I omit the part which refers to sterilization and castration because I think that this question has been sufficiently elucidated. I will quote only Points 4, 6, and 7 of the memorandum, indicating that in Oswieczim:

"Researches were carried out with various chemical preparations of German firms. According to the testimony of one German physician, Dr. Valentin Erwin, there was a case where the representatives of the chemical industry of Germany, a gynecologist, Glauber, from Königshütte, and a chemist, Gebel, bought from the administration of the camp 150 women for such experiments."

I omit Point 5 and I quote Point 6:

"Experiments on men by applying irritant chemical substances on the skin of the calf in order to create ulcers and phlegmons.

"7) A series of other experiments—artificial infection with malaria, artificial insemination, and so forth."

I omit the next three pages of my statement which give the particulars of these experiments. I would like only to draw the attention of the Tribunal to other crimes perpetrated by the German doctors and, in particular, to the extermination of patients in mental hospitals. I am not going to quote all the examples which the Tribunal will find in the report of the Extraordinary State Commission but will dwell on one crime only, which was perpetrated in the town of Kiev. I quote a paragraph from the report of the Extraordinary State Commission on the town of Kiev, which the members of the Tribunal will find on Page 212 of the document book, first column, Paragraph 6:

"On 14 October 1941 an SS detachment under the leadership of the German garrison physician Rikowsky, entered the mental hospital. The Hitlerites drove 300 patients into one building, kept them there without food and water, and then shot them in a gully of the Kirilov wood. The remaining patients were exterminated on 7 January, 27 March, and 17 October 1942."

In the subsequent part of the Extraordinary State Commission's report a statement is quoted, a statement made by Professor Kapustianski, by a woman doctor Dzevaltovska, and the nurse Troepolska. I submit to the Tribunal as Exhibit Number USSR-249 (Document Number USSR-249) the photostat of this testimony, and I request that it be included in the files of the case as evidence. I am quoting some of the extracts from this document:

"During the German occupation of the city of Kiev, the Kiev Psychiatric Clinic had to experience tragic days, which culminated in the complete ruin and destruction of the hospital. A crime was committed against the unfortunate mentally sick people, the like of which had not been known in history up to this time."

I omit the next part and I quote further on:

"In the course of the years 1941-42, 800 patients were killed."

I omit the next two paragraphs and I read on:

"On 7 January 1942 the Gestapo came to the hospital. They posted guards everywhere in the grounds of the hospital. To enter or leave the hospital was forbidden. A representative of the Gestapo requested the selection of the incurably sick people to be sent to Zhitomir."

I skip the next sentence.

> "What was in store for the sick people was carefully concealed from the medical staff. After that, special cars arrived at the hospital. The sick people were pushed into them, some 60 to 70 persons into each car. Everyone could see these atrocities which were perpetrated in front of the ward windows. The patients were pushed into the cars and murdered there. Their corpses were thrown out on the spot. This awful deed went on for two days, during which 365 patients were exterminated. The patients who had not completely lost their minds soon realized the truth. There were heart-rending scenes. Thus, a young girl, patient Y, in spite of all of the efforts of the doctor, understood that death was awaiting her. She came out of the ward, embraced the doctor, and quietly asked him, 'Is this the end?' Pale as death, she went to the car and, refusing any assistance, climbed inside. The entire staff was told that any criticism or any expression of displeasure would be completely out of place and would be regarded as sabotage."

I shall quote one more sentence from this report:

> "It is a characteristic detail that these murders—unprecedented by their abomination—were committed on Christmas Day, when Christmas trees were being distributed to the German soldiers; and the inscription 'God is with us' sparkled on the belts of the executioners."

Herewith I end my quotation.

I think it possible to omit the following four pages of my speech because they deal with similar cases of the murder of mental patients in other parts of the country. Similar methods were used for these murders as those used in Kiev. I will request the Tribunal to accept as evidence the photostats of three German documents, certified by the Extraordinary State Commission, which testify to the fact that special standard forms of documents were worked out for the report on the murder of the insane by the German fascists.

I submit these documents. The first document is submitted as Exhibit Number USSR-397 (Document Number USSR-397.) The members of the Tribunal may find it on Page 218 of the document book. I am quoting the text of the document:

> "To the Registrar's office in the Town of Riga:"

I omit the next paragraph.

"I hereby certify that 368 incurably insane patients, whose names appear on the annexed list, died on 29 January 1942."—Signed —"Kirste, SS Sturmbannführer."

The second document is submitted as Exhibit Number USSR-410 (Document Number USSR-410). This is a report of the head of the Security Police and SD in Latvia, Number 357/42g, dated 28 May 1942. I am quoting the one paragraph from this document:

"I hereby certify that 243 incurably insane patients, whose names appear on the enclosed list, died on 14 April 1942."—Signed —"Kirste, SS Sturmbannführer."

The third document is submitted as Exhibit Number USSR-398 (Document Number USSR-398). This is a report by the head of the Security Police and SD, Latvia, dated 15 March 1943. I will read into the record the one paragraph of this document:

"I hereby certify that 98 incurably insane patients, whose names appear on the enclosed list, died on 22 October 1942."—Signed —"Kirste, SS Sturmbannführer."

I think I can also omit the next one and a half pages of my statement; but I would request the Tribunal to accept as evidence the following document without reading it, as proof of the experiments carried out on live persons. I submit as Exhibit Number USSR-406 (Document Number USSR-406) the data about the experiments carried out in another camp, the Ravensbrück Camp. It contains the results of the investigation by the Polish State Commission. The photographs contained therein are very characteristic and I need not comment on them.

I would now request the Tribunal's permission to summon as witness a Polish woman, Shmaglevskaya, to have her testify regarding only one question, the attitude of the German fascists toward the children in the concentration camps. Would the President permit the calling of this witness?

THE PRESIDENT: Yes, certainly.

[*The witness, Shmaglevskaya, took the stand.*]

THE PRESIDENT: Will you first of all tell me your name?

SEVERINA SHMAGLEVSKAYA (Witness): Severina Shmaglevskaya.

THE PRESIDENT: Will you repeat this oath after me: I hereby swear before God—the Almighty—that I will speak before the Tribunal nothing but the truth—concealing nothing that is known to me—so help me God, Amen.

[*The witness repeated the oath.*]

MR. COUNSELLOR SMIRNOV: Tell me, Witness, were you an internee of Oswieczim Camp?

SHMAGLEVSKAYA: Yes.

MR. COUNSELLOR SMIRNOV: During what period of time were you in the camp of Oswieczim?

SHMAGLEVSKAYA: From 7 October 1942 to January 1945.

MR. COUNSELLOR SMIRNOV: Do you have any proof that you were an internee of this camp?

SHMAGLEVSKAYA: I have the number which was tattooed on my arm, right here.

MR. COUNSELLOR SMIRNOV: That is what the Oswieczim inmates call the "visiting cards"?

SHMAGLEVSKAYA: Yes.

MR. COUNSELLOR SMIRNOV: Tell me, please, Witness, were you an eyewitness of German SS men's attitude toward children?

SHMAGLEVSKAYA: Yes.

MR. COUNSELLOR SMIRNOV: Will you please tell the Tribunal about this?

SHMAGLEVSKAYA: I could tell about the children who were born in the concentration camp, about the children who were brought to the concentration camp with the Jewish transports and who were taken directly to the crematories, as well as about those children who were brought to concentration camps and there interned. Already in December 1942 when I went to work about 10 kilometers from Birkenau. . .

MR. COUNSELLOR SMIRNOV: Excuse me. May I interrupt you? Then, you were in the Birkenau section of the camp?

SHMAGLEVSKAYA: Yes, I was in the Camp Birkenau, which is a part of the Oswieczim Camp, which was called Oswieczim Number 2.

MR. COUNSELLOR SMIRNOV: Please go on.

SHMAGLEVSKAYA: I noticed then a woman in the last month of pregnancy. It was obvious from her appearance. This woman, together with the others, had to walk 10 kilometers to the place of work and there she toiled the whole day, shovel in hands, digging trenches. She was already ill and she asked the German superintendent, a civilian, for permission to rest. He refused, laughed at her, and together with another SS man, started beating her. He scrutinized her work very strictly. Such was the situation of all the women who were pregnant. And only during the very last minutes

were they permitted to stay away from work. The newborn children, if Jewish, were immediately put to death.

MR. COUNSELLOR SMIRNOV: Pardon me, Witness, what do you mean by "were immediately put to death"? When was it?

SHMAGLEVSKAYA: They were immediately taken away from their mother.

MR. COUNSELLOR SMIRNOV: When the transport arrived?

SHMAGLEVSKAYA: No, I am speaking of the children who were born in the concentration camps. A few minutes after delivery the child was taken from the mother, who never saw it again. After a few days the mother had to return to work. In 1942 there were no special blocks in the camp for the children. At the beginning of 1943, when they started to tattoo the internees, the children born in the concentration camps were also branded. The number was tattooed on their legs.

MR. COUNSELLOR SMIRNOV: Why on the leg?

SHMAGLEVSKAYA: Because the child is very small and there was not enough room on their tiny arms for the number, which contained five digits. The children did not have special numbers but bore the same numbers as the grown-ups; that is to say, they were given serial numbers. The children were placed in a special block and after a few weeks, sometimes after a month, they were taken away from the camp.

MR. COUNSELLOR SMIRNOV: Where to?

SHMAGLEVSKAYA: We were never able to find out where these children were taken. They were taken away all the time this camp existed; that is to say, in 1943 and 1944. The last convoy of children left the camp in January 1945. These were not only Polish children, because, as you know, in Birkenau there were women from all over Europe. Even today we don't know whether these children are alive.

I should like, in the name of all the women of Europe who became mothers in concentration camps, to ask the Germans today, "Where are these children?"

MR. COUNSELLOR SMIRNOV: Tell me, Witness, did you yourself see the children being taken to gas chambers?

SHMAGLEVSKAYA: I worked very close to the railway which led to the crematory. Sometimes in the morning I passed near the building the Germans used as a latrine, and from there I could secretly watch the transport. I saw many children among the Jews brought to the concentration camp. Sometimes a family had several children. The Tribunal is probably aware of the fact that in front of the crematory they were all sorted out.

MR. COUNSELLOR SMIRNOV: Selection was made by the doctors?

SHMAGLEVSKAYA: Not always by doctors; sometimes by SS men.

MR. COUNSELLOR SMIRNOV: And doctors with them?

SHMAGLEVSKAYA: Yes, sometimes, by doctors, too. During such a sorting, the youngest and the healthiest Jewish women in very small numbers entered the camp. Women carrying children in their arms or in carriages, or those who had larger children, were sent into the crematory together with their children. The children were separated from their parents in front of the crematory and were led separately into gas chambers.

At that time, when the greatest number of Jews were exterminated in the gas chambers, an order was issued that the children were to be thrown into the crematory ovens or the crematory ditches without previous asphyxiation with gas.

MR. COUNSELLOR SMIRNOV: How should we understand that? Were they thrown into the ovens alive or were they killed by other means before they were burned?

SHMAGLEVSKAYA: The children were thrown in alive. Their cries could be heard all over the camp. It is hard to say how many there were.

MR. COUNSELLOR SMIRNOV: Nevertheless, there was some reason why this was done. Was it because the gas chambers were overworked?

SHMAGLEVSKAYA: It is very difficult to answer this question. We don't know whether they wanted to economize on the gas or whether there was no room in the gas chambers.

I should also add that it is impossible to determine the number of these children—like that of the Jews—because they were driven directly to the crematory, were not registered, were not tattooed, and very often were not even counted. We, the internees, often tried to ascertain the number of people who perished in gas chambers; but our estimates of the number of children executed could only be based on the number of children's prams which were brought to the storerooms. Sometimes there were hundreds of these carriages, but sometimes they sent thousands.

MR. COUNSELLOR SMIRNOV: In one day?

SHMAGLEVSKAYA: Not always the same. There were days when the gas chambers worked from early morning until late at night.

I should also like to tell you about the children—and their number is large—who were interned in concentration camps. At the beginning of 1943 Polish children from Zamoishevna arrived at the concentration camp with their parents. At the same time Russian children from territories occupied by

the Germans began to arrive. The Jewish children were added to these. In smaller numbers, one could also meet Italian children in the concentration camp. The conditions were as difficult for the children as for adults; perhaps even more onerous. These children didn't receive any parcels because there was no one to send them. Red Cross packages never reached the internees. In 1944 a great number of Italian and French children arrived at the concentration camp. All these children suffered from skin diseases, lymphatic boils, and malnutrition; they were badly clad, often without shoes, and had no possibility of washing themselves.

During the Warsaw uprising captured children from Warsaw were brought to the concentration camp. The youngest of the children was a little 6-year-old boy. The children were quartered in special barracks. When the systematic deportation of internees from Birkenau to the interior of Germany commenced, these children were used for heavy labor. At the same time there arrived in the concentration camps the children of Hungarian Jews, who had to work together with the children who were brought after the Warsaw uprising. These children worked with two carts which they had to pull themselves to transport coal, iron machines, wood for floors, and other heavy things from one camp to the other. They also labored at dismantling barracks during the liquidation of the camp. These children remained in the concentration camp until the very end. In January 1945 they were evacuated and had to march to Germany on foot under conditions as difficult as those of the front, under an SS guard, without food, covering about 30 kilometers a day.

MR. COUNSELLOR SMIRNOV: During this march the children died of exhaustion?

SHMAGLEVSKAYA: I wasn't in the group where there were children, as I managed to escape on the second day after this evacuation march.

I should also like to add a few words regarding the methods of demoralization of the people who were interned in concentration camps. Everything that we had to suffer was the result of a whole system for degrading human beings.

The concentration camp cars in which the internees were transported had previously been used for cattle. When the transports were about to move the cars were nailed shut. In each one of these cars there was a great number of people. The convoy of SS men never considered that human beings have physical needs. Some of these people happened to have necessary pots with them, and they often had to use them for physical needs.

For some time I worked at the store, where kitchen utensils of internees were brought.

MR. COUNSELLOR SMIRNOV: Do you mean that you worked in the warehouse where the belongings of these who were murdered were brought. Did I understand you correctly?

SHMAGLEVSKAYA: No, only the kitchen utensils of people who arrived at the concentration camps were brought to this warehouse.

MR. COUNSELLOR SMIRNOV: These things were taken away from them?

SHMAGLEVSKAYA: What I want to say is that in some cases the kitchen utensils and pots contained remains of food, and in others there was human excrement. Each of the workers received a pail of water, and had to wash a great number of these kitchen utensils during one half of the day. These kitchen utensils, which were sometimes very badly washed, were given to people who had just arrived at the concentration camp. From these pots and pans they had to eat, so that often they caught dysentery and other diseases from the first day.

THE PRESIDENT: Colonel Smirnov, I don't think the Tribunal wants quite so much of the detail with reference of these domestic matters.

MR. COUNSELLOR SMIRNOV: The witness was called here with a view to describing the attitude of the Germans toward the children in the camps.

THE PRESIDENT: Will you keep her to the part of her testimony which you wish to bring out?

MR. COUNSELLOR SMIRNOV: Tell me, Witness, can you add anything else to your description of the attitude of the Germans towards the children in the camp? Have you already told us about all of the facts which you know regarding this question?

SHMAGLEVSKAYA: I should like to say that the children, as well as the adults, were also subjected to the system of demoralization and degradation through famine. Often starvation caused the children to look for potato peels in garbage heaps.

MR. COUNSELLOR SMIRNOV: Tell me, Witness, do you certify in your testimony, that sometimes the number of carriages remaining after the murder of the children amounted to a thousand per day?

SHMAGLEVSKAYA: Yes, sometimes there were such days.

MR. COUNSELLOR SMIRNOV: Mr. President, I have no further question to ask of the witness.

THE PRESIDENT: Do any of the chief prosecutors wish to ask any questions?

[*There was no response.*]

Do any of the defendants' counsel wish to ask any questions?

[*There was no response.*]

Then the witness can retire.

[*The witness left the stand.*]

MR. COUNSELLOR SMIRNOV: Mr. President, I should like to take up the next section of my presentation which deals with the organization, by German fascism, of secret centers for the extermination of people. These cannot even be considered concentration camps because the human beings in these places rarely survived more than 10 minutes or 2 hours at the most. Out of all these terrible centers, organized by the German fascists, I would submit to the Tribunal evidence on two such places, that is to say, on Kwelmno center (Kwelmno is a village in Poland) and on the Treblinka Camp. In connection with this I would ask the Tribunal to summon one witness, whose testimony is interesting, because he can be considered a person who returned from "the other world," for the road to Treblinka was called by the German executors themselves "The Road to Heaven." I am speaking of the witness Rajzman, a Polish national, and I beg the Tribunal's permission to bring this witness here for examination.

THE PRESIDENT: It is just a quarter to 1 now, so we had better have this witness at 2 o'clock. We will adjourn now.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

THE PRESIDENT: The Tribunal has been informed that the witness who was referred to yesterday, Wielen, is in a prisoner-of-war camp or in prison near London, England; and he can, therefore, be brought over here to be examined at short notice. The Tribunal, therefore, wishes defendants' counsel to make up their minds whether they wish Colonel Westhoff and this man Wielen to be brought here during the Prosecution's case for them to cross-examine those witnesses or whether they prefer that they should be brought when the defendants are presenting their case. But, as I have stated with reference to all witnesses, they can only be called once. If they are examined as part of the Prosecution's case, then all the defendants must exercise their rights, if they wish to do so, of interrogating the witnesses at that time. If, on the other hand, the defendants' counsel decide that they would prefer that these witnesses should be called during the defendants' case, then similarly, the witnesses will be called only once, and the right of examining them must then be exercised.

At the same time, the statement or the report which was presented yesterday and which the Tribunal ruled was admissible, will be read in the course of the Prosecution's case at such time as the Prosecution decide.

DR. NELTE: Mr. President, may I be allowed to postpone making a statement until after discussion with my colleagues. I hope this will be possible in the course of the afternoon.

THE PRESIDENT: I understand you want to consult the other defendants' counsel before you let us know. Very well; you will let us know at your convenience. Go on, Colonel Smirnov.

MR. COUNSELLOR SMIRNOV: Mr. President, I should like to proceed with the interrogation of the witness.

[*The witness Rajzman took the stand.*]

THE PRESIDENT: What is your name?

SAMUEL RAJZMAN (Witness): Rajzman, Samuel.

THE PRESIDENT: Will you repeat this oath after me: I hereby swear before God—the Almighty—that I will speak before the Tribunal—nothing but the truth—concealing nothing of what is known to me—so help me God, Amen.

[*The witness repeated the oath.*]

THE PRESIDENT: You may sit down.

MR. COUNSELLOR SMIRNOV: Witness Rajzman, will you please tell the Tribunal what was your occupation before the war?

RAJZMAN: Before the war I was an accountant in an export firm.

MR. COUNSELLOR SMIRNOV: When and under what circumstances did you become an internee of Treblinka Number 2?

RAJZMAN: In August 1942 I was taken away from the Warsaw ghetto.

MR. COUNSELLOR SMIRNOV: How long did you stay in Treblinka?

RAJZMAN: I was interned there for a year—until August 1943.

MR. COUNSELLOR SMIRNOV: That means you are well acquainted with the rules regulating the treatment of the people in this camp?

RAJZMAN: Yes, I am well acquainted with these rules.

MR. COUNSELLOR SMIRNOV: I beg you to describe this camp to the Tribunal.

RAJZMAN: Transports arrived there every day; their number depended on the number of trains arriving; sometimes three, four, or five trains filled exclusively with Jews—from Czechoslovakia, Germany, Greece, and Poland. Immediately after their arrival, the people had to leave the trains in 5 minutes and line up on the platform. All those who were driven from the cars were divided into groups—men, children, and women, all separate. They were all forced to strip immediately, and this procedure continued under the lashes of the German guards' whips. Workers who were employed in this operation immediately picked up all the clothes and carried them away to barracks. Then the people were obliged to walk naked through the street to the gas chambers.

MR. COUNSELLOR SMIRNOV: I would like you to tell the Tribunal what the Germans called the street to the gas chambers.

RAJZMAN: It was named Himmelfahrt Street.

MR. COUNSELLOR SMIRNOV: That is to say, the "street to heaven"?

RAJZMAN: Yes. If it interests the Court, I can present a plan of the camp of Treblinka which I drew up when I was there, and I can point out to the Tribunal this street on the plan.

THE PRESIDENT: I do not think it is necessary to put in a plan of the camp, unless you particularly want to.

MR. COUNSELLOR SMIRNOV: Yes, I also believe that it is not really necessary.

Please tell us, how long did a person live after he had arrived in the Treblinka Camp?

RAJZMAN: The whole process of undressing and the walk down to the gas chambers lasted, for the men 8 or 10 minutes, and for the women some 15 minutes. The women took 15 minutes because they had to have their hair shaved off before they went to the gas chambers.

MR. COUNSELLOR SMIRNOV: Why was their hair cut off?

RAJZMAN: According to the ideas of the masters, this hair was to be used in the manufacture of mattresses for German women.

THE PRESIDENT: Do you mean that there was only 10 minutes between the time when they were taken out of the trucks and the time when they were put into the gas chambers?

RAJZMAN: As far as men were concerned, I am sure it did not last longer than 10 minutes.

MR. COUNSELLOR SMIRNOV: Including the undressing?

RAJZMAN: Yes, including the undressing.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, were the people brought to Treblinka in trucks or in trains?

RAJZMAN: They were brought nearly always in trains, and only the Jews from neighboring villages and hamlets were brought in trucks. The trucks bore inscriptions, "Expedition Speer," and came from Vinegrova Sokolova and other places.

MR. COUNSELLOR SMIRNOV: Please tell us, what was the subsequent aspect of the station at Treblinka?

RAJZMAN: At first there were no signboards whatsoever at the station, but a few months later the commander of the camp, one Kurt Franz, built a first-class railroad station with signboards. The barracks where the clothing was stored had signs reading "restaurant," "ticket office," "telegraph," "telephone," and so forth. There were even train schedules for the departure and the arrival of trains to and from Grodno, Suwalki, Vienna, and Berlin.

MR. COUNSELLOR SMIRNOV: Did I rightly understand you, Witness, that a kind of make-believe station was built with signboards and train schedules, with indications of platforms for train departures to Suwalki, and so forth?

RAJZMAN: When the persons descended from the trains, they really had the impression that they were at a very good station from where they could go to Suwalki, Vienna, Grodno, or other cities.

MR. COUNSELLOR SMIRNOV: And what happened later on to these people?

RAJZMAN: These people were taken directly along the Himmelfahrtstrasse to the gas chambers.

MR. COUNSELLOR SMIRNOV: And tell us, please, how did the Germans behave while killing their victims in Treblinka?

RAJZMAN: If you mean the actual executions, every German guard had his special job. I shall cite only one example. We had a Scharführer Menz, whose special job was to guard the so-called "Lazarett." In this "Lazarett" all weak women and little children were exterminated who had not the strength to go themselves to the gas chambers.

MR. COUNSELLOR SMIRNOV: Perhaps, Witness, you can describe this "Lazarett" to the Tribunal?

RAJZMAN: This was part of a square which was closed in with a wooden fence. All women, aged persons, and sick children were driven there. At the gates of this "Lazarett," there was a large Red Cross flag. Menz, who specialized in the murder of all persons brought to this "Lazarett," would not let anybody else do this job. There might have been hundreds of persons who wanted to see and know what was in store for them, but he insisted on carrying out this work by himself.

Here is just one example of what was the fate of the children there. A 10-year-old girl was brought to this building from the train with her 2-year-old sister. When the elder girl saw that Menz had taken out a revolver to shoot her 2-year-old sister, she threw herself upon him, crying out, and asking why he wanted to kill her. He did not kill the little sister; he threw her alive into the oven and then killed the elder sister.

Another example: They brought an aged woman with her daughter to this building. The latter was in the last stage of pregnancy. She was brought to the "Lazarett," was put on a grass plot, and several Germans came to watch the delivery. This spectacle lasted 2 hours. When the child was born, Menz asked the grandmother—that is the mother of this woman—whom she preferred to see killed first. The grandmother begged to be killed. But, of course, they did the opposite; the newborn baby was killed first, then the child's mother, and finally the grandmother.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, does the name Kurt Franz mean anything to you?

RAJZMAN: This man was deputy of the camp commander, Stengel, the biggest murderer in the camp. Kurt Franz was known for having published in January 1943, a report to the effect that a million Jews had been killed in Treblinka—a report which had procured for him a promotion from the rank of Sturmbannführer to that of Obersturmbannführer.

MR. COUNSELLOR SMIRNOV: Witness, will you please tell how Kurt Franz killed a woman who claimed to be the sister of Sigmund Freud. Do you remember this incident?

RAJZMAN: A train arrived from Vienna. I was standing on the platform when the passengers left the cars. An elderly woman came up to Kurt Franz, took out a document, and said that she was the sister of Sigmund Freud. She begged him to give her light work in an office. Franz read this document through very seriously and said that there must be a mistake here; he led her up to the train schedule and said that in 2 hours a train would leave again for Vienna. She should leave all her documents and valuables and then go to a bathhouse; after the bath she would have her documents and a ticket to Vienna. Of course, the woman went to the bathhouse and never returned.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, why was it that you yourself remained alive in Treblinka?

RAJZMAN: I was already quite undressed, and had to pass through this Himmelfahrtstrasse to the gas chambers. Some 8,000 Jews had arrived with my transport from Warsaw. At the last minute before we moved toward the street an engineer, Galevski, an old friend of mine, whom I had known in Warsaw for many years, caught sight of me. He was overseer of workers among the Jews. He told me that I should turn back from the street; and as they needed an interpreter for Hebrew, French, Russian, Polish, and German, he managed to obtain permission to liberate me.

MR. COUNSELLOR SMIRNOV: You were therefore a member of the labor unit of the camp?

RAJZMAN: At first my work was to load the clothes of the murdered persons on the trains. When I had been in the camp 2 days, my mother, my sister, and two brothers were brought to the camp from the town of Vinegrova. I had to watch them being led away to the gas chambers. Several days later, when I was loading clothes on the freight cars, my comrades found my wife's documents and a photograph of my wife and child. That is all I have left of my family, only a photograph.

MR. COUNSELLOR SMIRNOV: Tell us, Witness, how many persons were brought daily to the Treblinka Camp?

RAJZMAN: Between July and December 1942 an average of 3 transports of 60 cars each arrived every day. In 1943 the transports arrived more rarely.

MR. COUNSELLOR SMIRNOV: Tell us, Witness, how many persons were exterminated in the camp, on an average, daily?

RAJZMAN: On an average, I believe they killed in Treblinka from ten to twelve thousand persons daily.

MR. COUNSELLOR SMIRNOV: In how many gas chambers did the killings take place?

RAJZMAN? At first there were only 3 gas chambers, but then they built 10 more chambers. It was planned to increase this number to 25.

MR. COUNSELLOR SMIRNOV: But how do you know that? Why do you say, Witness, that they planned to increase the number of gas chambers to 25?

RAJZMAN: Because all the building material had been brought and put in the square. I asked, "Why? There are no more Jews." They said, "After you there will be others, and there is still a big job to do."

MR. COUNSELLOR SMIRNOV: What was the other name of Treblinka?

RAJZMAN: When Treblinka became very well known, they hung up a huge sign with the inscription "Obermaidanek."

MR. COUNSELLOR SMIRNOV: What do you mean by "very well known"?

RAJZMAN: I mean that the persons who arrived in transports soon found out that it was not a fashionable station, but that it was a place of death.

MR. COUNSELLOR SMIRNOV: Tell us, Witness, why was this make-believe station built?

RAJZMAN: It was done for the sole reason that the people on leaving the trains should not be nervous, should undress calmly, and that there should not be any incidents.

MR. COUNSELLOR SMIRNOV: If I understand you correctly, this criminal device had only one purpose—a psychological purpose of reassuring the doomed during the first moments.

RAJZMAN: Yes, exclusively this psychological purpose.

MR. COUNSELLOR SMIRNOV: I have no further questions to ask this witness.

THE PRESIDENT: Does any of the other chief prosecutors wish to ask any questions?

[*There was no response.*]

Do the defendants' counsel wish to ask any questions?

[*There was no response.*]

Then the witness can retire.

[*The witness left the stand.*]

MR. COUNSELLOR SMIRNOV: I should like to submit to the Tribunal a very short excerpt from a document which is submitted as an appendix to the Polish Government report. I mean an affidavit. . .

THE PRESIDENT: Colonel Smirnov, have you got any more witnesses?

MR. COUNSELLOR SMIRNOV: Yes, I still have a request to call one more witness on the last count of my statement. In connection with the presentation of evidence on this last count I would request the Tribunal's permission to summon as witness the Archdeacon of Leningrad Churches and Rector of the Leningrad Seminary, the Permanent Dean of Nikolai Bogoiavlensky Cathedral in Leningrad, Nikolai Lomakin.

THE PRESIDENT: Very well, and you will be able to include his evidence today and conclude your statement; is that right?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President. I should like to read another short excerpt from this report of the Polish examining magistrate, which I have submitted to the Tribunal (Document Number USSR-340). I shall read only that excerpt which demonstrates the scale of the crimes. The number of victims murdered at the Treblinka Camp, according to the Polish magistrate's estimate, is about 781,000 persons. At the same time he mentions that the witnesses interrogated by him testified to the fact that when the clothes of the internees were sorted out, they even found British passports and diplomas of Cambridge University. This means that the victims of Treblinka came from every European country.

I should like further to quote, as proof of the existence of another secret extermination center, the depositions of Wladislav Bengash, the district examining magistrate in the city of Lodz, made before the Chief Commission for the Investigation of German Crimes in Poland. This testimony is also an official appendix to the Polish Government report. I should like to read two excerpts from this statement which would give us an idea of the methods of extermination practiced in the village of Helmno. The two paragraphs are on the back of Page 223 of the document book:

> "In the village of Helmno there was an abandoned mansion surrounded by an old park—the property of the state. Nearby . . . there was a pine forest with a nursery and dense undergrowth. At this point the Germans built an extermination camp. The park was closed in by a high wooden fence, and one could not see what was going on in the park nor in the house itself. The inhabitants of the village of Helmno were all evacuated."

I interrupt the quotation and pass on to Page 226 of the document book, first paragraph. I quote:

> "The whole organization set up for the extermination of people was so cunningly devised and carried out that right up to the last moment the next transport of doomed persons could not guess the fate of the group which had preceded them. The departure of transports—consisting of 1,000 to 2,000 persons—from the village of Sawadki to the extermination camp and the extermination of the arrivals lasted until 2 o'clock.
>
> "The cars loaded with Jews arrived in the camp and stopped before the mansion. A representative of the Sonderkommando made a short speech to the new arrivals. He assured them that they were going to work in the East. He promised them just treatment by the authorities and adequate food and, at the same time, instructed them to take a bath before leaving, while their clothing was disinfected. From the courtyard the Jews were then brought to a big warm room on the second floor of the mansion. There they had to undress, and, clad in underclothes only, they went downstairs, passed through a corridor with signs such as 'To the medical officer' and 'To the bath' on the walls. The arrow which showed the way 'To the bath' pointed toward the exit. The Germans told the Jews who came out into the yard that they would go to the bath in a closed car; and, true enough, a large car was brought up to this door so that the Jews coming out of the house found themselves on a ladder leading straight inside the car. The loading of the Jews into the car lasted a very short time. Police were on guard in the corridor and near the car. With blows and shouts they forced the Jews to enter the car, stunning them, so that they could not attempt any resistance. When all the Jews were piled inside the car, the doors were carefully locked, and the chauffeur switched on the motor, so that those in the car were poisoned by the exhaust gas."

I consider it unnecessary to quote that part of the report which testifies that the car in question was the "murder van" already well known to the Court.

I will just quote one sentence from Page 10 of this document, Paragraph 3:

> "Thus, at least 340,000 men, women, and children, from newborn babies to aged persons, were exterminated in Helmno."

I believe that I can end here that part of my statement which concerns the secret exterminating centers. And now I pass on to the part of my statement dealing with religious persecutions.

In the Soviet Union as well as in the occupied countries of Eastern Europe, the German fascist criminals brought shame upon themselves by their mockery of the religious feelings and faith of the people, by persecuting and murdering the priesthood of all religious creeds. In proof of this I shall read a few excerpts from the pertinent reports of the various governments.

On Page 70 of the Russian text, which corresponds to Page 80 of the document book, we find the description of the persecution of the Czech Orthodox Church by the German fascist criminals. I quote only one paragraph:

> "The hardest blow was directed against the Czech Orthodox Church. The Orthodox parishes in Czechoslovakia were ordered by the Berlin Ministry for Church Affairs to leave the jurisdiction of Belgrade and Constantinople dioceses and to become subordinate to the Berlin bishop. The Czech Bishop Gorazd was executed together with two other priests of the Orthodox Church. By a special order of the Protector Daluege, issued in September 1942, the Orthodox Church of Serbian-Constantinople jurisdiction was dissolved on Czech territory, its religious activity forbidden, and its property confiscated."

On Page 69 of the same report, which corresponds to Page 79 of the document book, in the last paragraph, there is a description of the persecutions of the Czech National Church, which was persecuted by the German fascists, according to the report, "Just because of its name, because of its sympathy for the Hus movement, the democratic constitution, and because of the role it played in founding the Czech Republic." The Czech national church in Slovakia was prohibited and its property confiscated by the Germans in 1940.

The Protestant church in Czechoslovakia was also persecuted. The excerpt which I would like to read may be found on Page 80 of the document book, Paragraph 2:

> "The Protestant churches were deprived of the freedom to preach the Gospel. The German Secret State Police watched carefully to see that the clergy observed the restrictions imposed on it. Nazi censorship went so far as to prohibit the singing of hymns which praised God for liberating the nation from the enemy. Some

passages from the Bible were not allowed to be read in public at all. The Nazis strongly opposed the promulgation of certain Christian doctrines, especially those which proclaimed the equality of all men before God, the universal character of Christ's Church, the Hebraic origins of the Gospel, et cetera. Any reference to Hus, Ziska, the Hussites, and their achievements, as well as to Masaryk and his doctrines, were strictly forbidden. Even religious text books were confiscated. Church leaders were especially persecuted. Scores of ministers were thrown into concentration camps, among them the general secretary of the Christian Student Movement in Czechoslovakia. One of the assistants of their president was executed."

On Page 68 of this report we find information as to the persecution of the Catholic Church in Czechoslovakia. This excerpt is on Page 79 of the document book, second paragraph. I quote a short excerpt:

"In the territory annexed to Germany after the Munich Pact a number of Czech priests were robbed of their property and expelled. . . . Pilgrimages to national shrines were prohibited in 1939.

"At the outbreak of the war 437 Catholic priests were among the thousands of Czech patriots arrested and sent to concentration camps as hostages. Venerable church dignitaries were dragged to concentration camps in Germany. It was a common thing to see on the road near the concentration camps a priest, dressed in rags, exhausted, pulling a cart, and behind him a youth in the SS uniform, whip in hand."

The believers and clergy in Poland also suffered most ruthless persecution. I quote short excerpts from the Polish Government report, which the members of the Tribunal will find on Page 10 of the document book:

"By January 1941 about 700 priests were killed; 3,000 were in prisons or in concentration camps."

The persecution of the clergy began immediately after the capture of Polish territory by the Germans, according to Page 42 of the Polish report:

"The day after the occupation of Warsaw the Germans arrested some 330 priests. . . . In Kraków the closest collaborators of Archbishop Sapieha were arrested and sent to Germany. The Reverend Canon Czeplicki, 75 years of age, and his assistant were executed in November 1939."

The report of the Polish Government quotes the following words of Cardinal Hlond:

> "The clergy were persecuted very violently. Those who were permitted to stay were subjected to humiliation, were paralyzed in the exercise of their pastoral duties and were stripped of parochial benefices and of all their rights. They were entirely at the mercy of the Gestapo. . . . It is like the Apocalyptic vision of the *Fides Depopulata*."

On the territory of the Soviet Union the persecution of religion and clergy took the form of sacrilegious desecration of churches, destruction of shrines connected with the patriotic feelings of the Russian people, and the murder of priests.

I beg the Tribunal to call the witness of the Soviet Prosecution, the Archdean of the churches of the City of Leningrad, the Very Reverend Nikolai Ivanovitch Lomakin.

[*The witness Lomakin took the stand.*]

THE PRESIDENT: Would you tell me your name?

THE VERY REVEREND NIKOLAI IVANOVITCH LOMAKIN (Witness): Nikolai Ivanovitch Lomakin.

THE PRESIDENT: Is it the practice for you to take an oath before giving evidence or not?

LOMAKIN: I am an Orthodox priest.

THE PRESIDENT: Will you take the oath?

LOMAKIN: I belong to the Orthodox Church, and when I entered the priesthood in 1917 I took the oath to tell the truth all my life. This oath I remember even to the present day.

THE PRESIDENT: Very well. You can sit, if you wish.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, are you the Archdean of the Churches of the City of Leningrad? Does that mean that all the churches in that city are subordinate to you?

LOMAKIN: Yes, all the churches are directly subordinate to me. I am obliged to visit them periodically to inspect their condition and the life of the parish. I must then make my report to His Grace the Metropolitan.

MR. COUNSELLOR SMIRNOV: The churches of the Leningrad region were also under your authority?

LOMAKIN: They are not subordinated to me at the present time, but during the siege of Leningrad by the Germans and the occupation of the Leningrad region they were under my authority.

MR. COUNSELLOR SMIRNOV: After the liberation of the Leningrad region from the German occupation, were you obliged to visit and inspect the churches throughout the region on the request of the Patriarch?

LOMAKIN: Not by request of the Patriarch, but by request of the Metropolitan Alexei, who was then at the head of the Leningrad Eparchy.

MR. COUNSELLOR SMIRNOV: Please speak more slowly.

LOMAKIN: Not by request of Patriarch Alexei—the Patriarch was then Sergei—but by request of Metropolitan Alexei, who administered the Eparchy and later became Patriarch of Moscow and all Russia.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, where were you during the siege of Leningrad?

LOMAKIN: I was all the time in Leningrad.

MR. COUNSELLOR SMIRNOV: If I am not mistaken, you were decorated with the medal "For the Defense of Leningrad"?

LOMAKIN: Yes, on my birthday I was awarded this high government medal for my participation in the heroic defense of Leningrad.

MR. COUNSELLOR SMIRNOV: Tell us, Witness, at the beginning of the siege of Leningrad, at which church did you officiate?

LOMAKIN: At the beginning of the siege I was in charge of the Georgievsky Cemetery—I was rector of the church of the cemetery of St. Nicholas.

MR. COUNSELLOR SMIRNOV: It was, therefore, a cemetery church?

LOMAKIN: Yes.

MR. COUNSELLOR SMIRNOV: Maybe you will be able to relate to the Tribunal the observations you made during your office in this church?

LOMAKIN: Yes, of course.

MR. COUNSELLOR SMIRNOV: Will you please.

LOMAKIN: In 1941 and at the beginning of 1942 I was rector of the cemetery church, and I witnessed certain tragic scenes which I should like to relate in detail to the Tribunal.

A few days after the treacherous attack on the Soviet Union by Hitlerite Germany I witnessed the rapid increase of masses for the dead. The dead were mostly children, women, and old people—victims of the air raids on the city by German planes—peaceful citizens of our town. Before the war the number of dead varied from 30 to 50 persons a day, but during the war this number rose quickly to several hundred a day. It was physically impossible to bring the bodies inside the church. Long rows of boxes and coffins with remnants of the victims stood outside the church; the horribly

mutilated bodies of Leningrad's peaceful citizens—victims of barbarous air raids of the German planes.

Side by side with the increasing number of funeral masses for the deceased, there grew up the practice of saying the so-called requiems in absence. The faithful could not bring to the church the bodies of their relatives or friends, as they lay buried under the ruins and the debris of the houses destroyed by the Germans. The church was each day surrounded by masses of coffins—100, 200 coffins—over which one priest used to sing a funeral service.

Forgive me—it is difficult for me to speak of all this, for as the Tribunal already knows, I lived through the whole siege. I, myself, was dying of hunger. I saw the terrible, uninterrupted air raids of the German planes. I was hurt several times.

In the winter of 1941-42 the situation of besieged Leningrad was particularly terrible. The ceaseless air raids of the Luftwaffe, the shelling of the city, the lack of light, of water, of transportation, of sewerage in the city, and finally the terrible starvation—from all this, the peaceful citizens of the town suffered privations unique in the history of mankind. They were indeed heroes, who suffered for their country, these innocent, peaceful citizens.

Together with all that I have just told you, I could describe other terrible scenes which I witnessed during the period when I was the rector of this cemetery church. The cemetery was very often bombed by German planes. Please imagine the scene when people who have found eternal rest—their coffins, bodies, bones, skulls—all this is thrown out on the ground. Tombstones and crosses lay scattered in disorder, and people who had just suffered the loss of their kin, had to suffer once more seeing the huge craters made by bombs sometimes on the very spot where they had just buried their relatives or friends, had to suffer once more, knowing that they had no peace.

MR. COUNSELLOR SMIRNOV: Tell us, Witness, during the period of hunger, in what proportion did the number of burial services at this cemetery church increase?

LOMAKIN: I have already said that as a result of the terrible conditions imposed by the siege, as a result of the nonstop air raids, as a result of the shelling of the city, the number of burial services reached an incredible figure—up to several thousand a day. I would especially like to relate to the Tribunal the facts which I observed on 7 February 1942. A month earlier, quite exhausted by hunger and the long walk from my house which I had to the church every day, I fell ill. Two of my assistant priests replaced me.

On 7 February, on the Parents' Saturday before the beginning of Lent I came for the first time since my illness to my church. A horrifying picture was before my eyes. The church was surrounded by piles of bodies, some of which even blocked the entrance. These piles numbered from 30 to 100 bodies. They were not only at the church door, but also around the church. I witnessed people, exhausted from starvation, who, in their desire to bring the bodies of their relatives to the cemetery, would fall down themselves and die on the spot beside the body. Such scenes I witnessed quite frequently.

MR. COUNSELLOR SMIRNOV: Witness, will you please answer the following question: What damage was done to the Leningrad churches?

LOMAKIN: Your Honors, as I have already reported to you, my duty as Archdean of these churches was to observe from time to time the condition of the churches in the city and to report in detail to the metropolitan. The following were my personal observations and impressions:

The Church of the Resurrection on Griboiedov Canal, which is a very remarkable artistic church, was very seriously damaged by shelling from the German enemy. The domes were destroyed, the roofs pierced by shells, numerous frescos were either partly damaged or entirely destroyed. The Holy Trinity Cathedral in the Ismailovskaya Fortress, a memorial ornamented by beautiful artistic friezes commemorating the heroic siege of Izmailovskaya Fortress, was severely damaged by systematic shelling and bombing by the Germans. The roof was broken in. All the sculpture was broken; only a few fragments remained.

MR. COUNSELLOR SMIRNOV: Tell us, Witness, how many churches were destroyed and how many were severely damaged in Leningrad?

LOMAKIN: The Church of the Serafimov Cemetery was almost completely destroyed by artillery fire; this church was not only hit by shells, but great damage was caused to it by air raids. The Luftwaffe caused great damage to churches. I must first of all mention two churches which suffered most from the Leningrad siege. To begin with, the Church of Prince Vladimir, where, by the way, I have the honor of officiating at the present time. In 1942 from February until the first of July, I was rector of this church; and I should like to acquaint Your Honors with the following very interesting but terrible incident which occurred on Easter Eve of 1942.

On Easter Saturday, at 5 p. m. Moscow time, the Luftwaffe carried out a mass raid over the city. At 5:30 two bombs fell on the southwestern part of the Church of Prince Vladimir. The faithful were at that moment waiting to approach the picture of our Lord's interment. There was an enormous mass of faithful, who wished to fulfill their Christian duty. I saw some 30 persons

lying wounded in the portico and in different places about the church. They lay helpless for some time, until we could give them medical aid.

It was a scene of utter confusion. People who had had no time to enter the church tried to run away and hide in the air-raid ditches, while the others who had entered scattered in terror against the walls of the church, awaiting death. The concussion of the bombs was so heavy that for some period of time there was a constant fall of shattered glass, mortar, and pieces of stucco. When I came down from a room on the second floor, I was quite astounded by the scene before me. People flocked around me:

> "Little father, are you alive? Little father, how can we understand this? How can we believe what was said about the Germans—that they believe in God, that they love Christ, that they will not harm those who believe in God? Where is their faith then, if they can shoot about like this on Easter eve?"

I must add that the air-raid lasted right through the night until Easter morning; this night of love, this night of Christian joy, the Resurrection Night, was turned by the Germans into a night of blood, a night of destruction, and a night of suffering for innocent people. Two or three days passed. In the Church of Prince Vladimir—it was obvious to me, as rector—and in other churches and cemeteries the victims of the Luftwaffe Easter raid appeared: women, children, and aged. . .

MR. COUNSELLOR SMIRNOV: Tell us, Witness, you also visited the Leningrad region to verify the condition of the churches. Were you not a witness to. . .

THE PRESIDENT: Colonel Smirnov, if your examination is going on, I think perhaps we'd better adjourn now for 10 minutes.

[*A recess was taken.*]

THE PRESIDENT: Dr. Nelte, can you let the Tribunal know what your wishes are about General Westhoff and Wielen?

DR. NELTE: In reply to the suggestion by the Court, as to calling the witnesses Westhoff and Wielen, I should like to make the following statement after discussion with my colleagues:

First, we abstain from calling both witnesses at this stage of the proceedings provided that the Prosecution also abstains at present from reading out Documents RF-1450 and USSR-413 at this stage of the Trial. Second, I call General Westhoff as witness; and I gather, from the Court's suggestion, that this witness has been allowed.

THE PRESIDENT: Yes, certainly.

Mr. Roberts, could Sir David attend here in the course of a short time, do you think?

MR. ROBERTS: He is at the Chief Prosecutors' meeting now, but I can get him in a few moments if there is a question which I couldn't answer on his behalf.

THE PRESIDENT: Well, I think perhaps it will be best if he were here. It is only a question, really, as to whether the document should be read.

MR. ROBERTS: Well, I am told the meeting has just ended. I didn't quite get what Your Lordship said.

THE PRESIDENT: I said that the question was whether the document is to be read by the Prosecution. Dr. Nelte, as I understand it, was suggesting that perhaps the Prosecution would forego their right to read the document.

MR. ROBERTS: My Lord, speaking for myself, I feel quite certain that so far as the British Delegation is concerned we should not forego reading that document. We do put it forward, or our Russian colleagues put it forward, as a very cold-blooded murder of brave men; and we are most anxious that the document should be read.

THE PRESIDENT: Yes.

DR. NELTE: Mr. President, I have not made it a condition that the documents should not be submitted at all, but only at this stage of the proceedings.

THE PRESIDENT: Yes, but you see, the Prosecution want it read as part of the Prosecution case. If it is postponed until your case begins, it will not be read as part of the Prosecution case.

DR. NELTE: I think that the Prosecution, when cross-examining the witness, could present the documents they want to submit now.

THE PRESIDENT: Well, we can't get Wielen over here tomorrow, and the case of the Prosecution, we hope, will close tomorrow.

DR. NELTE: Yes, Mr. President.

THE PRESIDENT: Therefore, the document must be read tomorrow. We will then get General Westhoff and Wielen over for you at any time that is convenient to you.

DR. NELTE: I think the Prosecution has reserved the right to adduce, at any time during the proceedings, other charges and documents. This follows from the Indictment. It therefore seems to me that the Prosecution, without prejudice to its case, could postpone the presentation of this charge until I have examined the witness.

GENERAL RUDENKO: I should like to add something to what my colleague, Mr. Roberts, has said. The point is that the document presented to the Tribunal was put at our disposal by the British Delegation and was submitted by us in accordance with Article 21 of the Charter. This document, being an irrefutable proof, can be read into the record or not, in accordance with the decision of the Tribunal of 17 December 1945.

If the Defense, as Sir David already stated this morning, intends to oppose this document by summoning witnesses, it is their right. This is what I wanted to add to Mr. Roberts' statement.

MR. ROBERTS: Perhaps Your Lordship would allow me to add one thing. The Tribunal has ruled that this document is admissible, and it has been admitted, as I understand; and therefore, I would submit that it ought to be read as part of the Prosecution case, or perhaps it might be equally convenient after the discussion on organizations.

THE PRESIDENT: Well, yes, I see that Sir David has just come into court.

Sir David, I think the view the Tribunal take is that it is a matter for the Prosecution to decide when they put in this document; and if they wish to put it in now, or as Mr. Roberts suggested, after the argument on organizations, they are at liberty to do so. Then these witnesses can be called at a later stage when the defendants' counsel wish them to be called.

SIR DAVID MAXWELL-FYFE: My Lord, I entirely agree with what I am told Mr. Roberts has put forward. We consider that this document ought to be put in as part of the case for the Prosecution. If it will be of any assistance to counsel for the defendants, I shall be glad to take up the matter of the time that shall be fixed, after the organizations; but the reading of the document certainly should be part of the Prosecution's case.

THE PRESIDENT: The document may be read, then, at the end of the Prosecution's case.

SIR DAVID MAXWELL-FYFE: Yes.

May I apologize to the Tribunal for being absent. There was other business, connected with the Trial, in which I was engaged.

THE PRESIDENT: Certainly.

Then, Dr. Nelte, the Tribunal would like you to let us know when you wish those witnesses called, so that we can communicate with London in order that the witness, Wielen, may be brought over here.

DR. NELTE: As to when exactly during my presentation the witnesses should appear I cannot say, for I cannot say when the stage for the presentation of my witnesses will be reached. I think the Court is in a better

position to judge when it will be my turn for the presentation of evidence. In the course of the examination of those witnesses who will be granted to me, I shall also question this witness.

THE PRESIDENT: Dr. Nelte, you see these witnesses not only affect your client, but they affect the Defendant Göring and the Defendant Kaltenbrunner; and therefore, what the Tribunal wish is that you, in consultation with Dr. Stahmer and counsel for Kaltenbrunner, should let the Tribunal know what would be the most appropriate time for those two witnesses to be called, so that time may be given for summoning Wielen here and letting the prison authorities know about Westhoff.

DR. NELTE: We spoke about that and have agreed that the witnesses be called during my presentation.

I just understand from Sir David that we are all agreed that the documents be presented after the case against the organizations.

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: May I continue my questioning, Mr. President?

THE PRESIDENT: Continue, yes.

MR. COUNSELLOR SMIRNOV: I have one last question to put to you, Witness. Tell me, when you left the city to go into the country to inspect the churches, did you sometimes witness instances of derision of religion and desecration of churches?

LOMAKIN: Yes, I did.

MR. COUNSELLOR SMIRNOV: Would you be kind enough to relate this to the Tribunal?

LOMAKIN: In June 1943, by order of Metropolitan Alexei, I went to visit the district of Old Peterhof and Oranienbaum. From personal observations and from my conversations with the members of the church I learned the following, which I know to be true, and which was all corroborated later on when New Peterhof was freed from the German occupation. All that I shall now relate may be verified by inspection.

In Old Peterhof soon after the Germans occupied New Peterhof, exactly within 10 days, all churches were destroyed by the enemy's artillery fire and aircraft. At the same time the Luftwaffe and German artillery forces timed their raids so that not only would the churches be demolished, but the peaceful worshipers who sought refuge there from the fighting and the artillery fire would be killed as well.

All the churches in Old Peterhof, namely the Znamenskaya Church, the Holy Trinity Cemetery Church, and the small Church of Lazarus attached to it, the church museum at the Villa of Empress Maria Feodorovna, the Serafimovskij Church and the church of the military cemetery—all these were destroyed by the Germans. I can state with certainty that under the ruins of the Cemetery Church of the Holy Trinity and the Lazarus Church, in their crypts, as well as in the cemetery tombs and vaults of the Znamenskaya Church, up to 5,000 persons perished.

The Germans wouldn't let the survivors come outside. It is easy to picture the sanitary conditions and the general state of the people confined in those church crypts—air fouled by the breathing and excrements of these unfortunate people, frightened to death. They fainted, they grew dizzy, but their slightest attempt to leave the church and come out into fresh air was punished by shots from the inhuman fascists.

Much time has already passed since that time, but I remember especially well one instance which a close relative of the people about whom I am now going to speak related to me. A little girl came out of the crypt of Trinity Church for a breath of fresh air; she was immediately shot by a German sniper. The mother followed in order to pick her up, but she also fell down bleeding at the side of her child. The citizen Romashova, who related this to me, is still alive, and I have seen her many times—she recalls this incident with horror. And many were the incidents of that kind.

MR. COUNSELLOR SMIRNOV: Tell me, Witness, in the other districts of the Leningrad region did you ever witness the desecration of shrines and sacred objects?

LOMAKIN: Yes, for example in Pskov. Pskov presented a horrible picture of ruins and devastation. I feel that I must recall to Your Honors that Pskov is a museum city, a shrine of the Orthodox faith, ornamented by numerous churches, and situated on the Velikaya River and its tributaries.

In that city, there were no less then 60 churches of various sizes and various denominations. Of these 39 were not only priceless monuments of church architecture of high artistic value, with beautiful icons and frescos, but also wonderful historical monuments, reflecting all the greatness and century-old multiform history of the Russian people. The Kremlin (walled city)—the Cathedral of the Holy Trinity. . .

MR. COUNSELLOR SMIRNOV: Well, what did the Germans do to those churches?

LOMAKIN: That is just what I want to relate. The Kremlin—the whole Holy Trinity Cathedral, with its remarkable altar screen, was plundered by

the German soldiers. Everything was carried out of it as well as out of all the other churches in the city. You won't find even a single tiny icon left, not a single church vestment or sacramental vessel—all has been taken away by the Germans. The Cathedral of the Holy Trinity—I speak again of this Cathedral. I almost paid with my life for my visit there. Just half an hour before my arrival a mine exploded right in front of the altar gates. The gates were destroyed; the altar was blood-spattered. Before my own eyes I saw three of our Soviet soldiers who had perished in the explosion, right in front of the altar.

Mines were also laid in other places. I could give another interesting detail. Pskov was liberated in August 1944, but on Epiphany, in January 1946, another mine exploded, killing two persons. Likewise the church of St. Vasili-on-the-Hill was also mined. There a mine was laid at the very entrance to the church. In all the churches the abundance of all kinds of refuse, dirt, bottles, cans, *et cetera*, was strikingly noticeable. The Cathedral of St. John's Monastery was turned by the Germans into a stable. In another church, the Church of the Epiphany, they set up a wine cellar. In a third church I saw a depot of fuel—coal, peat, *et cetera*. But why speak of individual churches? Wherever we turn, our hearts bleed at the spectacle of all the suffering, all the plunder, brought about by people who shouted all over Europe about their culture, who despised mankind, while some proclaimed their belief in God. What kind of faith is theirs!

MR. COUNSELLOR SMIRNOV: Mr. President, I have no more questions to ask the witness.

LOMAKIN: I should like to ask the Prosecutor's permission to say a few more words about what happened in Leningrad.

MR. COUNSELLOR SMIRNOV: With regard to that, you must ask the Tribunal.

LOMAKIN: I am slightly diverging from the usual order. I beg your permission, Your Honors.

THE PRESIDENT: Very well.

LOMAKIN: The Church of Nikolai Bogoiavlensky is the Cathedral of Leningrad. The present Patriarch Alexei lived at this church during the siege. Since I served there from July 1942 to the end of the war, I witnessed on numerous occasions artillery fire directed at the cathedral. One wonders what kind of military objectives those heroic warriors could seek in our holy church! On high feast days or ordinary Sundays immediately the artillery would begin fire. And what a fire! In the first week of Lent in 1943, from the early morning and until late at night, neither we, the clergy, nor the

worshipers praying in the church could possibly leave it. Outside was death and destruction. With my own eyes I saw some fifty persons—I don't know exactly how many—members of my congregation, killed right near the church. They tried to leave in haste before the "all clear" signal, and death met them near the church. In this sacred cathedral I had to bury thousands of peaceful citizens torn to pieces, victims of the predatory raids of the air force and artillery. An ocean of tears was shed here during the memorial services. During one of the bombardments His Grace, our Metropolitan Alexei, escaped death by a hair's breadth, as several shell fragments smashed his cell.

I should just like to add, not wishing to take up too much of your time, that it is a remarkable thing that most of the intensive artillery fire on Leningrad always took place on feast days; the houses of God, tramway stops, and hospitals were put under fire, and destroyed with all means. The homes of peaceful citizens were bombed.

It would take too long, Your Honors, to relate everything which I have seen during these grim war days of blood and sorrow of the Leningradians. But I just want to say in conclusion that the Russian people and the people of Leningrad have fulfilled their duty to their fatherland to the very end. In spite of the heavy artillery fire and raids of the Luftwaffe there was organized efficiency and order, and the Orthodox Church shared this suffering. By prayer and preaching of God's word, she brought consolation and gave courage to the hearts of the faithful. She has laid an unsparing sacrifice on the altar of the fatherland.

MR. COUNSELLOR SMIRNOV: I have no more questions to ask the witness, Mr. President.

THE PRESIDENT: Do any of the other members of the Prosecution wish to ask any question?

[*Each indicated that he had no question.*]

Do any of the defendants' counsel wish to ask any questions?

[*Each indicated that he had no question.*]

Then the witness can retire.

[*The witness left the stand.*]

MR. COUNSELLOR SMIRNOV: May I say a few words by way of concluding my report?

THE PRESIDENT: You may, certainly.

MR. COUNSELLOR SMIRNOV: Your Honors, in his note of 6 January 1942 the People's Commissar for Foreign Affairs of the U.S.S.R. declared

that the Soviet Government considered it their duty to inform the "entire civilized world and all honest people throughout the world" of the monstrous crimes committed by the Hitlerite bandits.

In the battles of this war, the greatest ever fought by men, millions of honest people achieved victory over fascist Germany. The will of millions of honest people created this International Tribunal for the purpose of judging the main criminals of war. Behind him each representative of the Prosecution feels the invisible support of these millions of honest people, in whose name he accuses the leaders of the fascist conspiracy.

The honor of concluding the presentation of the evidence submitted by the Soviet Prosecution has fallen to my lot. I know that at this very moment millions of citizens of my country and with them millions of honest persons throughout the world await a just and speedy verdict. Your Honors, may I conclude with this.

MR. DODD: May it please the Tribunal, I have a few matters that will take just a very few minutes, with respect to the record.

In the course of the presentation of the 23rd day of November 1945, pertaining to the economic aspects of the conspiracy, certain documents were read from; but they were not formally offered in evidence. At the time, the Tribunal indicated that sufficient time had not been allowed Counsel for the Defense to make an examination of these documents, and we did not offer them and said instead that we would make them available in the defendants' Information Center. We did so, and they have been there all of the time since. They should be offered formally and, as the extracts were read, there is no necessity for going through that again. They are as follows:

The first one referred to in the record was one bearing the Document Number EC-14, which we offer as Exhibit USA-758. Extracts from this document were quoted on Page 297 of the record (Volume II, Page 233).

The next one is Document Number EC-27, which we offer as Exhibit Number USA-759. Extracts from this document were quoted on Pages 279 and 280 of the record (Volume II, Page 221).

The third one is Document Number EC-28, which we offer as Exhibit Number USA-760. Extracts from this document were quoted on Page 275 of the record (Volume II, Pages 218, 219). On that page the document was erroneously referred to as USA Exhibit 23, but the correct number is Exhibit Number USA-760.

Document Number EC-174 was quoted from on pages 303 and 304 of the record (Volume II, Page 238). We offer that as Exhibit Number USA-761.

Document Number EC-252—extracts from it were quoted on Page 303 of the record (Volume II, Page 238). We offer it as Exhibit Number USA-762.

Document Number EC-257—extracts from this document were quoted on Page 303 of the record (Volume II, Page 237). We offer it as Exhibit Number USA-763.

Document Number EC-404—we summarized and quoted from this document on Pages 291 and 292 of the record (Volume II, Page 229). We now offer it as Exhibit Number USA-764.

Document Number D-157 was read from, on Page 288 of the record (Volume II, Page 227), and we now offer it as Exhibit Number USA-765.

Document Number D-167 was summarized and extracts were quoted from it on Page 298 of the record (Volume II, Page 234), and we offer it as Exhibit Number USA-766.

Document Number D-203—extracts from it were quoted on Pages 283 to 286 of the record (Volume II, Pages 224-226), and we offer it as Exhibit Number USA-767.

Document Number D-204, which was quoted from on Pages 286 and 287 of the record (Volume II, Pages 226-227), is offered as Exhibit Number USA-768.

Document Number D-206—extracts from this paper were quoted on Pages 297 and 298 of the record (Volume II, Page 234), and it is offered as Exhibit Number USA-769.

Document Number D-317—extracts were quoted from it on Pages 289 and 290 of the record (Volume II, Page 227), and we offer it as Exhibit Number USA-770.

Now in addition to these documents, Lieutenant Bryson, who presented the case for the Prosecution against the individual Defendant Schacht, offered in evidence Documents EC-437 and 258 in their entirety, on the condition that the French and Russian translations subsequently be filed with the Tribunal. Now, EC-437 was assigned as Exhibit Number USA-624 and EC-258 was assigned as Exhibit Number USA-625, and the Tribunal ruled on Page 2543 of the record (Volume V, Page 129) that the documents would be received in their entirety only after the translations had been completed. Copies of these documents in all four languages have been filed with the Tribunal and in the defendants' Information Center, and that was done a few weeks ago and in accordance therefore with the ruling of the Tribunal. We now offer these documents in evidence in their entirety, and we assume that

they will retain the numbers Exhibit Number USA-624 and Exhibit Number USA-625.

Also in the trial brief on the individual responsibility of the Defendant Schacht, which was recently submitted to the Tribunal and to the defendants' counsel, reference is made to a few documents which have not already, or heretofore, been offered in evidence. I think there is no necessity for taking the time of the Tribunal to read from these documents, and instead we have had pertinent extracts made available in German, French, Russian, and English; copies in all the four languages have already been distributed to the Tribunal and placed in the defendants' Information Center. They are these documents, and we ask that they be received in evidence:

They are: Document Number EC-384, which we offer as Exhibit Number USA-771; Document Number EC-406, offered as Exhibit Number USA-772; Document Number EC-456, offered as Exhibit Number USA-773; Document Number EC-495, offered as Exhibit Number USA-774; Document Number EC-497, offered as Exhibit Number USA-775; and in addition an interrogation of the Defendant Schacht, dated 11 July 1945, which is one of those referred to in the trial brief as Exhibit Number USA-776; and, finally, with respect to this economic aspect of this person, we respectfully ask that the secret minutes of the meeting of the ministers, dated 30 May 1936, which are included in the set of documents, Number 1301-PS, and assigned Exhibit Number USA-123, be received in evidence in their entirety. These minutes have been made available to the Tribunal and the defendants' counsel in all four languages.

I also wish to refer to Document Number 1639-PS, which we offer as. . .

DR. KRAUS: The Prosecution has just made the motion to accept in supplementary evidence a number of documents concerning the Defendant Schacht. These documents are contained in a supplementary volume which we received after the special case against the Defendant Schacht had been finished, even a considerable time afterwards.

I do not intend to protest against this procedure; but in my opinion this procedure, if admitted by the Court, has some consequences for Defense Counsel. If this procedure is approved, we ought also to be permitted to offer evidential material on behalf of our clients after this case has been concluded and until the end of the entire presentation of evidence, if we feel that such evidential material, that is, mainly documents, should still be submitted on behalf of our clients.

It is necessary that we should be in a position also to present witnesses later on, and I should like to ask the Tribunal for clarification of this.

THE PRESIDENT: Yes, Dr. Kraus, the Tribunal thinks that the Prosecution are entitled to apply, as they have applied, to have these documents admitted in evidence and, similarly, that the defendants will be entitled to apply to have any evidence which they wish offered in evidence even after the individual defendants' case has come to an end.

DR. KRAUS: Thank you, Sir.

MR. DODD: Now I wish to refer to the document bearing our Number 1639-PS, which we wish to offer as Exhibit Number USA-777. For the benefit of the Tribunal, this document is entitled *Mobilization Book for the Civil Administrations* and is the 1939 edition. It was published in February —or put out in February 1939, over the signature of the Defendant Keitel as Chief of the OKW. It is classified "top secret" and was distributed in 125 copies to the highest Reich Ministries, as well as to the Army, Navy, and Air Force.

In its original German the document runs to some 150 pages. We have had translated into English, Russian, and French Pages 2 to 18, which give the essential text of the document. It appears from statements in the document itself that the *Mobilization Book* had previously been issued and was revised annually. This particular book which we introduce, or offer to introduce, was effective the 1st day of April 1939 and thus was the operative basis, we say, for the mobilization calendar at the time the Nazis launched their aggression against Poland. However, we wish to relate it back primarily to that part of the record dealing with the Nazi plans and preparations for aggression, because the *Mobilization Book*, or such a *Mobilization Book*, had been in effect for years prior to 1939.

Secondly, we say it fits in with the secret Nazi Defense Laws of 1935 and 1938, which are contained in Documents 2261-PS and 2194-PS, introduced before the Tribunal as Exhibits USA-24 and 36 respectively.

Thirdly, it is another clear indication, we submit, of the Nazi plans and preparations for aggressive war. That portion of the Prosecution's case dealing with Nazi preparations for aggression was presented by Mr. Alderman of the American prosecution staff at the morning and afternoon sessions of the Tribunal on 27 November 1945 and may be found at Pages 399 to 464 of the record (Volume II, Pages 303-347).

Inasmuch as this document has been translated into all four languages, we assume that it is not necessary to read it into the record; but we do wish to quote, however, directly two extracts—rather, we will withdraw that. They are included in the translation and I see no necessity for reading it into the translation system.

This document was also, I might say, referred to by the Chief Prosecutor for the United States in his opening address, and it is the only document therein referred to which has not been offered formally to the Tribunal in evidence.

Thirdly, I should like to take up one other matter. I wish to move to strike out one piece of evidence offered by an American member of the Prosecution.

[*Mr. Dodd then quoted the evidence in question.*]

THE PRESIDENT: Has the Defendant Rosenberg's counsel any objection to this being struck out of the record?

DR. THOMA: I have no objection, Sir.

THE PRESIDENT: Then it will be struck out.

MR. DODD: I have only one last matter, which I am sure I can conclude before the usual recess time.

In the course of the presentation of the individual case against the Defendant Ribbentrop, our distinguished colleague Sir David Maxwell-Fyfe, the Deputy Chief British Prosecutor, introduced Document Number 3358-PS as Exhibit GB-158. This was on the 9th day of January 1946 and may be found at Page 2380 of the record (Volume V, Page 17).

This document is a German Foreign Office circular dated the 25th day of January 1939, and it is on the subject of the "Jewish Question as a Factor in German Foreign Policy in the Year 1938." Sir David read portions of this document into the record, including the first sentence of the full paragraph appearing on Page 3 of the English translation of the document.

I have discussed the matter with Sir David, and he has very graciously agreed that we might ask the permission of the Tribunal to add two more sentences to the quotation which he read, because we feel, and Sir David feels with us, that the additional two sentences which follow immediately the sentence which he read add something to the proof with reference to the persecution of the Jews as related to Crimes against Peace. It is desired, therefore, by the Prosecution that the entire paragraph on Page 3 of the English translation of this document be considered as in evidence by the Tribunal, and in accordance with the ruling of the Tribunal generally made as to other such situations we submit now an English, German, French, and Russian translation of that entire paragraph to obviate the necessity for reading it; and the original, of course, is in the German language.

It is a very brief paragraph, but I don't think that the Tribunal would care to have me read it, even to take a minute or two. It is in the record. There are only two additional sentences. It does not wrench anything from the text; in

our opinion, it only adds a little to the proof. If you would like to have it read, I can do so.

THE PRESIDENT: Yes, I think we would.

MR. DODD: The sentence read by Sir David reads as follows:

> "It is certainly no coincidence that the fateful year 1938 brought nearer the solution of the Jewish question simultaneously with the realization of the 'idea of Greater Germany,' since the Jewish policy was both the basis and consequence of the events of the year 1938."

That is the end of the sentence, and that is what was quoted by Sir David on the 9th day of January, at Page 2380 (Volume V, Page 17). We wish to add the following, beginning right after that sentence:

> "The advance made by Jewish influence and the destructive Jewish spirit in politics, economy, and culture paralyzed the strength and the will of the German people to rise again, perhaps even more than the political antagonism of the former Allied enemy powers of the World War."

And this second sentence which follows immediately, as well:

> "The curing of this malady of the people was therefore certainly one of the most important prerequisites for exerting the force which, in the year 1938, resulted in the consolidation of the Great German Reich against the will of the world."

We felt that that would add something to our proof with respect to this persecution of the Jews. Those are the only matters I have to bring up with reference to the record.

THE PRESIDENT: Some time ago I wrote to Mr. Justice Jackson on behalf of the Tribunal, asking whether a list of the persons who formed the German Staff could be submitted to the Tribunal. Has that been done?

MR. DODD: I am familiar with that communication. I recall Mr. Justice Jackson's showing it to me. If it has not, it shall be directly. It may have been overlooked.

THE PRESIDENT: I had a letter back from Mr. Justice Jackson saying that it should be done.

MR. DODD: Yes, I recall it.

THE PRESIDENT: And the Tribunal will be glad for you to verify that it has been done.

MR. DODD: I am afraid I must say that if it hasn't been done, it is probably my fault. I recall the Justice's handing it to me, and I think I passed

it to Colonel Taylor's organization, but I will check up on it directly and see that it is delivered.

THE PRESIDENT: It will be an appropriate time for it to be done, I should think, during the course of the argument on the organizations, if it hasn't been done.

MR. DODD: Very well.

THE PRESIDENT: Yes, and an affidavit accompanying it, showing how it has been made up.

MR. DODD: Very well, Your Honor.

Lieutenant Margolies tells me that he thinks it has been sent in 2 days ago, but he is not certain.

THE PRESIDENT: He thinks it has been done?

MR. DODD: He thinks so, but we will look into it.

THE PRESIDENT: Yes, very well.

Then tomorrow morning at 10, Counsel for the Prosecution will be ready, will they, to argue the case of the organizations which they have asked the Tribunal to be declared criminal under Article 9 of the Charter?

MR. DODD: The Prosecution is prepared to be heard tomorrow morning at 10 o'clock on that.

THE PRESIDENT: And counsel for the various organizations are prepared to argue against that? So that is understood that at 10 o'clock tomorrow the Tribunal will sit for that purpose and will continue until the argument is concluded.

DR. KUBUSCHOK: The Counsel for the organizations are prepared, according to the Tribunal's suggestion, to join in the discussion of the new argument to be put forward by the Prosecution tomorrow. The Prosecution has helped us by making available to us a copy of the factual points which so far had not been submitted as a basis of the Indictment.

According to the Tribunal's suggestion not only these factual points would be discussed tomorrow but also new legal questions which have arisen recently, inasmuch as they have bearing on the scope and relevancy of the evidence. The Defense Counsel for the organizations would be obliged if the Prosecution would beforehand make available to us the speech they are going to give on legal questions tomorrow so that we are in the position to answer immediately.

THE PRESIDENT: I don't know, but we haven't had any copy of any written argument presented to us. I don't know whether Counsel for the Prosecution would say whether they have any written argument?

MR. DODD: Well, Sir David can speak much better for himself. What I was going to say is what I said previously, that I am informed that he has already presented his outline both to the Tribunal and to counsel.

Mr. Justice Jackson is still working on his remarks, and while he did hope to submit a draft, late communications received only this morning from interested persons in the War Department have made it necessary for him to work right up to now, and therefore we think that the practical difficulty results in not having a prepared statement to submit.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, I have prepared two appendices which endeavor to cover the first two points in the Tribunal's statement of January, the elements of criminality and the connected defendants mentioned in Article 9 of the Charter. I arranged that copies in German should be given to all the Defense Counsel. I hope everyone has got a copy. I have also arranged that copies be submitted to the Tribunal.

I have added to that an addendum showing the references to the transcript, and in some cases to the documents, on each of the points, and I am afraid that is in English; but it is reference to paragraphs, so it shouldn't be difficult for the Defense Counsel to fit it into their document.

I am afraid that it would be impossible to give a copy of the Justice's speech and mine. What I intended to add was largely on the facts which I have endeavored to put before the Defense Counsel already, but if the Defense Counsel for the organizations would care to hear informally what is the sort of general line, I should be very pleased to tell them, if it would be any help. I want to help in every way I can.

THE PRESIDENT: Yes, very well. We will now adjourn.

[*The Tribunal adjourned until 28 February 1946 at 1000 hours.*]

SEVENTIETH DAY

Thursday, 28 February 1946

Morning Session

DR. HORN: Mr. President, on Monday, when I wished to give my reasons for the application to call Winston Churchill as witness, the Tribunal asked me to submit this in writing so that the Tribunal could make a decision.

The decision that Winston Churchill should not be called as witness was, however, made already on the 26th of February, before the Tribunal received my written application. I assume a mistake has been made, and I ask the Tribunal to reconsider the question in the light of the reasons set out in my written application.

THE PRESIDENT: The Tribunal will reconsider the matter.

Mr. Justice Jackson. Did you propose, Mr. Justice Jackson, to argue first on the question of the organizations?

JUSTICE ROBERT H. JACKSON (Chief Counsel for the United States): If that is agreeable to the Tribunal, that's definitely our . . .

We are taking up, as I understand it, the deferred subject of the rules which should guide in determining the criminality of organizations, partly upon our initiative and partly an response to the questions propounded by the Tribunal.

The unconditional surrender of Germany created for the victors novel and difficult problems of law and administration. Being the first such surrender of an entire and modernly organized society, precedents and past experiences are of little help in guiding our policy toward the vanquished. The responsibility implicit in demanding and accepting capitulation of a whole people certainly must include a duty to discriminate justly and intelligently between the opposing elements of that population, which bore dissimilar relations to the policies and conduct which led to the catastrophe. This differentiation is the objective of those provisions of the Charter which authorize this Tribunal to declare organizations or groups to be criminal.

Understanding of the problem with which the instrument attempts to deal is essential to its interpretation and application.

One of the sinister peculiarities of German society at the time of the surrender was that the state itself played only a subordinate role in the exercise of political power, while the really drastic controls over German society were organized outside of the nominal government. This was accomplished through an elaborate network of closely knit and exclusive organizations of selected volunteers, both bound to execute without delay and without question the commands of the Nazi leaders.

These organizations penetrated the whole German life. The country was subdivided into little Nazi principalities of about 50 households each, and every such community had its recognized Party leaders, Party police, and its undercover, planted spies. These were combined into larger units with higher ranking leaders, executioners, and spies, the whole forming a pyramid of power outside of the law, with the Führer at its apex, the local Party officials constituting its broad base, which rested heavily on the German population.

The Nazi despotism, therefore, did not consist of these individual defendants alone. A thousand little Führers dictated; a thousand imitation Görings strutted; a thousand Schirachs incited the youth; a thousand Sauckels worked slaves; a thousand Streichers and Rosenbergs stirred up hate; a thousand Kaltenbrunners and Franks tortured and killed; a thousand Schachts and Speers and Funks administered and supported and financed this movement.

The Nazi movement was an integrated force in every city and county and hamlet. The party power resulting from this system of organizations first rivaled and then dominated the power of the state itself. The primary vice of this web of organizations was that they were used to transfer the power of coercing men from the government and the law to the Nazi leaders. Liberty, self-government, and security of person and property do not exist except where the power of coercion is possessed only by the state and is exercised only in obedience to law. The Nazis, however, set up this private system of coercion outside of and immune from the law, with Party-controlled concentration camps and firing squads to administer privately decreed sanctions.

Without responsibility to law and without warrant from any court, they were enabled to seize property and take away liberty and even take life itself. These organizations had a calculated part—and a decisive part—in the barbaric extremes of the Nazi movement. They served primarily to exploit mob psychology and to manipulate the mob. Multiplying the number of

persons in a common enterprise always tends to diminish the individual's sense of moral responsibility and to increase his sense of security. The Nazi leaders were masters of that technique. They manipulated these organizations to make before the German populace impressive exhibitions of numbers and of power, which have already been shown on the screen. They were used to incite a mob spirit and then riotously to gratify the popular hates they had inflamed and the Germanic ambition they had inflated.

These organizations indoctrinated and practiced violence and terrorism. They provided the systematized, aggressive, and disciplined execution throughout Germany and the occupied countries of the plan for crimes which we have proven. The flowering of this system is represented in the fanatical SS General Ohlendorf, who told this Tribunal without shame or trace of pity how he personally directed the putting to death of 90,000 men, women, and children. No tribunal ever listened to a recital of such wholesale murder as this Tribunal heard from him and from Wisliceny, a fellow officer of the SS. Their own testimony shows the SS responsibility for the extermination program which took the lives of 5 million Jews—a responsibility that that organization welcomed and discharged methodically, remorselessly, and thoroughly. These crimes with which we deal are unprecedented, first because of the shocking number of victims. They are even more shocking and unprecedented because of the large number of people who united their efforts to perpetrate them. All scruple or conscience of a very large segment of the German people was committed to the keeping of these organizations, and their devotees felt no personal sense of guilt as they went from one extreme to another. On the other hand, they developed a contest in cruelty and a competition in crime. Ohlendorf, from the witness stand, accused other SS commanders whose killings exceeded his of "exaggerating" their figures.

There could be no justice and no wisdom in an occupation policy of Germany which imposed upon passive, unorganized, and inarticulate Germans the same burdens as upon those who voluntarily banded themselves together in these powerful and notorious gangs. One of the basic requirements both of justice and of successful administration of the occupation responsibility of our four countries is a segregation of the organized elements from the masses of Germans for separate treatment. That is the fundamental task with which we must deal here. It seems beyond controversy that to punish a few top leaders but to leave this web of organized bodies in the midst of postwar society would be to foster the nucleus of a new Nazidom. These members are accustomed to an established chain of centralized command. They have formed a habit and

developed a technique of both secret and open co-operation. They still nourish a blind devotion to the suspended, but not abandoned, Nazi program. They will keep alive the hates and ambitions which generated the orgy of crime we have proven. These organizations are the carriers from this generation to the next of the infection of aggressive and ruthless war. The Tribunal has seen on the screen how easily an assemblage that ostensibly is only a common labor force can in fact be a military outfit training with shovels. The next war and the next pogroms will be hatched in the nests of these organizations as surely as we leave their membership with its prestige and influence undiminished by condemnation and punishment.

The menace of these organizations is the more impressive when we consider the demoralized state of German society. It will be years before there can be established in the German State any political authority that is not inexperienced and provisional. It cannot quickly acquire the stability of a government aided by long habit of obedience and traditional respect. The intrigue, obstruction, and possible overthrow which older and established governments always fear from conspiratorial groups is a real and present danger to any stable social order in the Germany of today and of tomorrow.

Insofar as the Charter of this Tribunal contemplates a justice of retribution, it is obvious that it could not overlook these organized instruments and instigators of past crimes. In opening this case I said that the United States does not seek to convict the whole German people of crime. But it is equally important that this Trial shall not serve to absolve the whole German people except 21 men in the dock. The wrongs that have been done to the world by these defendants and their top confederates were not done by their will and their strength alone. The success of their designs was made possible because great numbers of Germans organized themselves to become the fulcrum and the lever by which the power of these leaders was extended and magnified. If this Trial fails to condemn these organized confederates for their share of the responsibility for this catastrophe, it will be construed as their exoneration.

But the Charter was not concerned with retributive justice alone. It manifests a constructive policy influenced by exemplary and preventive considerations.

The primary objective of requiring that the surrender of Germany be unconditional was to clear the way for a reconstruction of German society on such a basis that it will not again threaten the peace of Europe and of the world. Temporary measures of the occupation authorities may by necessity, and I mean no criticism of them, have been more arbitrary and applied with less discrimination than befits a permanent policy. For example, under

existing denazification policy, no member of the Nazi Party or its formations may be employed, in any position—other than ordinary labor—in any business enterprise, unless he is found to have been only a nominal Nazi. Persons in certain categories whose standing in the community is one of prominence or influence are required to be, and others may be, denied further participation in their businesses or professions. It is mandatory to remove or exclude from public office and from positions of importance in quasi-public and private enterprises persons falling within about 90 specified categories, deemed to consist of either active Nazis, Nazi supporters, or militarists. Property of such persons is blocked.

Now, it is recognized by the Control Council, as it was by the framers of this Charter, that a permanent long-term program should be based on a more careful and more individual discrimination than was possible with sweeping temporary measures. There is a movement now within the Control Council for reconsideration of its whole denazification policy and procedure. The action of this Tribunal in declaring, or in failing to declare, an accused organization criminal has a vital bearing on this future occupation policy.

It was the intent of the Charter to utilize the hearing processes of this Tribunal and its judgment to identify and condemn those Nazi and militaristic forces that were so strongly organized as to constitute a continuing menace to the long-term objectives for which our respective countries have spent their young lives. It is in the light of this great purpose that we must examine the provisions of this Charter.

It was obvious that the conventional litigation procedures could not, without some modification, be adapted to this task. No system of jurisprudence has yet evolved any satisfactory technique for handling a great number of common charges against a great multitude of accused persons. The number of individual defendants that fairly can be tried in a single proceeding probably does not greatly exceed the number now in your dock. Also, the number of separate trials in which the same voluminous evidence as to a common plan must be repeated is very limited in actual practice. Yet, adversary proceedings of the type in which we are engaged are the best assurance the law has ever evolved that decisions will be well-considered and just. The task of the framers of the Charter was to find some way to overcome the obstacles to practicable and early decision without sacrificing the fairness implicit in hearings. The solution prescribed by the Charter is certainly not faultless, but not one of its critics has ever proposed an alternative that would not either deprive the individual of all hearing or contemplate such a multitude of long trials that it would break down and be

impracticable. In any case, this Charter is the plan adopted by our respective governments and our duty here is to make it work.

The plan which was adopted in the Charter essentially is a severance of the general issues which would be common to all individual trials from the particular issues which would differ in each trial. The plan is comparable to that employed in certain wartime legislation of the United States, dealt with in the case of *Yakus versus United States*, in which questions as to the due process quality of the order must be determined in a separate tribunal and cannot be raised by a defendant when he is defending on indictment. Those countries which do not have written constitutions and constitutional issues may find it difficult to follow the logic of that decision, but essentially the plan was to separate general issues relative to the order as a whole from specific issues which would arise when an individual was confronted with a charge of guilt.

The general issues under this Charter are to be determined with finality in one trial before the International Tribunal, and in that trial every accused organization must be defended by counsel and must be represented by at least one leading member, and other individuals may apply to be heard. Their applications may be granted if the Tribunal thinks justice requires it. The only issue in this trial concerns the collective criminality of the organization or group. It is to be adjudicated by what amounts to a declaratory judgment. It does not decree any punishment either against the organization or against individual members.

The only specification as to the effect of this Tribunal's declaration that an organization is criminal is contained in Article 10, which, if you will bear with me, I will read:

> "In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military, or occupation courts.
>
> "In any such case the criminal nature of the group or organization is considered proved and shall not be questioned."

Unquestionably, it would have been competent for the Charter to have declared flatly that membership in any of these named organizations is criminal and should be punished accordingly. If there had been such an enactment, it would not have been open to an individual, who was being tried for membership, to contend that the organization was not in fact, criminal. But the framers of the Charter, acting last summer at a time before the evidence which has been adduced here was even available to us, did not

care to find organizations criminal by fiat. They left that issue to determination after relevant facts were developed by adversary proceedings. Plainly, the individual is better off because of the procedure of the Charter, which leaves that finding of criminality to this body after hearings at which the organization must, and the individual may, be represented. It is at least the best assurance that we could devise, that no mistake would be made in dealing with these organizations.

Under the Charter, the groups and organizations named in the Indictment are not on trial in the conventional sense of that term. They are more nearly under investigation as they might be before a grand jury in Anglo-American practice. Article 9 recognizes a distinction between the declaration of a group or organization as criminal and "the trial of any individual member thereof." The power of the Tribunal to try is confined to "persons," and the Charter does not expand that term by definition, as statutes sometimes do, to include other than natural persons. The groups or organizations named in the Indictment were not as entities served with process. The Tribunal is not empowered to impose any sentence upon them as entities. For example, it may not levy a fine upon them even though they have property of the organization, nor convict any person because of membership.

It is also to be observed that the Charter does not require subsequent proceedings against anyone. It provides only that the competent national authorities shall have the right to bring individuals to trial for membership therein.

The Charter is silent as to the form that these subsequent trials should take. It was not deemed wise, on the information then available, that the Charter should regulate subsequent proceedings. Nor was it necessary to do so. There is a continuing legislative authority, representing all four signatory nations, competent to take over where the Charter leaves off. Legislative supplementation of the Charter, of course, would be necessary in any event to confer jurisdiction on local courts, to define their procedures, and to prescribe different penalties for different forms of activity.

Fear has been expressed, however, that the Charter's silence as to future proceedings means that great numbers of members will be rounded up and automatically punished as a result of a declaration that an organization is criminal. It also has been suggested that this is, or may be, the consequence of Article II, 1(d) of Control Council Act Number 10, which defines as a crime "membership in categories of a criminal group or organization declared criminal by the International Military Tribunal." A purpose to inflict punishment without a right of hearing cannot be spelled out of this Charter and would be offensive to both its letter and its spirit. And I do not

find in Control Council Act Number 10 any inconsistency with the Charter. Of course, to reach all individual members would require numerous hearings, but they will involve only narrow issues. Many persons will have no answers to charges if they are carefully prepared; and the proceedings should be expeditious, nontechnical, and held in the locality where the person accused resides, and, incidentally, may be conducted in two languages at most.

And I think it is clear that before any person is punishable for membership in a criminal organization, he is entitled to a hearing on the facts of his case. The Charter does not authorize the national authorities to punish membership without hearing—it gives them only the right to "bring individuals to trial." That means what it says. A trial means there is something to try.

The Charter denies only one of the possible defenses of an accused; he may not relitigate the question in a subsequent trial whether the organization itself was a criminal one. Nothing precludes him from denying that his participation was voluntary and proving that he acted under duress; he may prove that he was deceived or tricked into membership; he may show that he had withdrawn or he may prove that his name on the rolls is a case of mistaken identity.

The membership which the Charter and the Control Council Act make criminal, of course, implies a genuine membership involving the volition of the member. The act of affiliation with the organization must have been intentional and voluntary. Legal compulsion or illegal duress, actual fraud or trick of which one is a victim has never been thought to be the victim's crime, and such an unjust result is not to be implied now. The extent of the member's knowledge of the criminal character of the organization is, however, another matter. He may not have known on the day he joined but may have remained a member after learning the facts. And he is chargeable not only with what he knew but with all of which he was reasonably put on notice.

There are safeguards to assure that this program will be carried out in good faith. Prosecution under this declaration is discretionary. If there were purpose on the part of the Allied Powers to punish these persons without trial, it would have been already done before this Tribunal was set up, and without waiting for its declaration. We think that the Tribunal will presume that the signatory powers which have voluntarily submitted to this process will carry it out faithfully.

The Control Council Act applies only to categories of membership declared criminal. This language on the part of the Control Council

recognizes a power in this Tribunal to limit the effect of its declaration. I do not think, for reasons which I will later state, that this should be construed or availed of to try any issue here as to subgroups or sections or individuals which can be tried in later proceedings. It should, I think, be construed to mean, not the sort of limitation which must be defined by evidence of details, but limitations of principle such as those I have already outlined, such as duress, involuntary membership, or matters of that kind, which the Tribunal can recognize and deal with without taking detailed evidence. It does not require this Tribunal to delve into evidence to condition its judgment to apply only to intentional and voluntary membership. This does not supplant later trials by the declaration of this Tribunal but guides them.

It certainly cannot be said that such a plan—such as we have here for severance of the general issues common to many cases from the particular issues applicable only to individual defendants for litigation in separate tribunals specially adapted for the different kinds of issues—is lacking in reasonableness or fair play. And while it presents unusual procedural difficulties, I do not think it presents any insurmountable ones. I will discuss the question of the criteria and the principles and the precedents for declaring collective criminality before coming to the procedural questions involved. The substantive law which governs the inquiry into criminality of organizations is, in its large outline, old and well settled and fairly uniform in all systems of law. It is true that we are dealing here with a procedure which would be easy to abuse and one that is often feared as an interference with liberty of assembly or as an imposition of guilt by association. It also is true that proceedings against organizations are closely akin to the conspiracy charge, which is the great dragnet of the law and rightly watched by courts lest it be abused.

The fact is, however, that every form of government has considered it necessary to treat some organizations as criminal. Not even the most tolerant of governments can permit an accumulation of private power in organizations to a point where it rivals, obstructs, or dominates the government itself. To do so would be to grant designing men a liberty to destroy liberty. The very complacency and tolerance, as well as the impotence, of the Weimar Republic towards the growing organization of Nazi power spelled the death of German freedom.

Protection of the citizen's liberty has required even free governments to enact laws making criminal those aggregations of power which threaten to impose their will on unwilling citizens. Every one of the nations signatory to this Charter has laws making certain types of organizations criminal. The Ku Klux Klan in the United States flourished at about the same time as the Nazi

movement in Germany. It appealed to the same hates, practiced the same extra-legal coercions, and likewise terrorized by the same sort of weird nighttime ceremonials. Like the Nazi Party it was composed of a core of fanatics, but it enlisted the support of respectabilities who knew it was wrong but thought it was winning. It eventually provoked a variety of legislative acts directed against such organizations as organizations.

The Congress of the United States also has enacted legislation outlawing certain organizations. A recent example was on the 28th of June 1940, when the Congress provided that it shall be unlawful for any person, among other things, to organize or help to organize any society, group, or assembly of persons to teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence, or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

There is much legislation by states of the American Union creating analogous offenses. An example is to be found in the act of California dealing with criminal syndicalism, which, after defining it, makes criminal any person who organizes, assists in organizing, or is, or knowingly becomes, a member of such organization.

Precedents in English law for outlawing organizations and punishing membership therein are old and consistent with the Charter.

One of the first is the British India Act Number 30, enacted in 1836, which, among other things, provides:

> "It is hereby enacted that whoever shall be proved to have belonged, either before or after the passing of this Act, to any gang of thugs, either within or without the territories of the East India Company, shall be punished with imprisonment for life with hard labor."

And the history is that this was a successful act in suppressing violence.

Other precedents in English legislation are the Unlawful Societies Act of 1799, the Seditious Meetings Act of 1817, the Seditious Meetings Act of 1846, the Public Order Act of 1936, and Defense Regulations 18(b). The latter, not without opposition, was intended to protect the integrity of the British Government against the fifth-column activities of this same Nazi conspiracy.

Soviet Russia punishes as a crime the formation of and membership in a criminal gang. Criminologists of the Soviet Union call this crime the "crime of banditry," a term altogether appropriate to these German organizations.

General Rudenko will advise this Tribunal more in detail as to the Soviet law.

French criminal law makes membership in subversive organizations a crime. Membership of the criminal gang is a crime in itself. My distinguished French colleague will present you more detail on that.

Of course, I would not contend that the law of a single country, even one of the signatory powers, was governing here, but it is clear that this is not an act or a concept of a single system of law, that all systems of law agree that there are points at which organizations become intolerable in a free society.

For German precedents, it is neither seemly nor necessary to go to the Nazi regime, which, of course, suppressed all their adversaries ruthlessly. However, under the Empire and the Weimar Republic German jurisprudence deserved respect, and it presents both statutory and juridical examples of declaring organizations to be criminal. Statutory examples are: The German Criminal Code enacted in 1871. Section 128 was aimed against secret associations, and 129 against organizations inimical to the State. A law of March 22, 1921, against paramilitary organizations. A law of July 1922 against organizations aimed at overthrowing the constitution of the Reich.

Section 128 of the Criminal Code of 1871 is especially pertinent. It reads:

> "The participation in an organization, the existence, constitution, or purposes of which are to be kept secret from the government, or in which obedience to unknown superiors or unconditional obedience to known superiors is pledged, is punishable by imprisonment."

It would be difficult to draw an act that would more definitely condemn the organizations with which we are dealing here than this German Criminal Code of 1871. I recall to your attention that it condemns organizations in which obedience to unknown superiors or unconditional obedience to known superiors is pledged. It is exactly the sort of danger and menace with which we are dealing.

Under the Empire various Polish national unions were the subject of criminal prosecutions. Under the Republic, in 1927 and 1928, judgments held criminal the entire Communist Party of Germany. In 1922 and 1928, judgments of the courts ran against the political leadership corps of the Communist Party, which included all of its so-called body of functionaries. This body of functionaries in that organization corresponded somewhat in their powers to the Leadership Corps of the Nazi Party, which we have accused here. The judgment against the Communist Party rendered by the

German courts included every cashier, every employee, every delivery boy and messenger, and every district leader. In 1930 a judgment of criminality against what was called "The Union of Red Front Fighters" of the Communist Party made no distinction between leaders and ordinary members.

Most significant of all is the fact that on the 30th of May 1924 judgment of the German courts was rendered that the whole Nazi Party was a criminal organization. Evidently there was a lack of courage to enforce that judgment, or we might not have been here. This decision referred not only to the Leadership Corps, which we are indicting here, but to all other members as well. The whole rise of the Nazi Party to power was in the shadow of this judgment of illegality by the German courts themselves.

The German courts, in dealing with criminal organizations, proceeded on the theory that all members were held together by a common plan in which each one participated, even though at different levels. Moreover, fundamental principles of responsibility of members as stated by the German Supreme Court are strikingly like the principles that govern our Anglo-American law of conspiracy. Among the statements by the German courts are these:

That it is a matter of indifference whether all the members pursued the forbidden aims. It is enough if a part exercised the forbidden activity.

And again, that it is a matter of indifference whether the members of the group or association agree with the aims, tasks, means of working, and means of fighting.

And again, that the real attitude of mind of the participants is a matter of indifference. Even if they had the intention of not participating in criminal efforts, or hindering them, this cannot eliminate their responsibility from real membership.

Organizations with criminal ends are everywhere regarded as in the nature of criminal conspiracies, and their criminality is judged by application of conspiracy principles. The reason why they are offensive to law-governed people has been succinctly stated by an American legal authority as follows, and I quote from *Miller on Criminal Law*:

> "The reason for finding criminal liability in case of a combination to effect an unlawful end or to use unlawful means, where none would exist, even though the act contemplated were actually committed by an individual, is that a combination of persons to commit a wrong, either as an end or as a means to an end, is so much more dangerous, because of its increased power to do

wrong, because it is more difficult to guard against and prevent the evil designs of a group of persons than of a single person, and because of the terror which fear of such a combination tends to create in the minds of the people."

The Charter in Article 6 provides that:

"Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

That, of course, is a statement of the ordinary law of conspiracy. The individual defendants are arraigned at your bar on this charge of conspiracy which, if proved, makes them responsible for the acts of others in execution of the common plan.

The Charter did not define responsibility for the acts of others in terms of "conspiracy" alone. The crimes were defined in nontechnical but inclusive terms, and embraced formulating and executing a common plan, as well as participating in a conspiracy. It was feared that to do otherwise might import into the proceedings technical requirements and limitations which have grown up around the term "conspiracy." There are some divergencies between the Anglo-American concept of a conspiracy and that of either French, Soviet, or German jurisprudence. It was desired that concrete cases be guided by the broader considerations inherent in the nature of the problem I have outlined, rather than to be controlled by refinements of any local law.

Now, except for procedural difficulties arising from their multitude, there is no reason why every member of any Nazi organization accused here could not have been indicted and convicted as a part of the conspiracy under Article 6, even if the Charter had never mentioned organizations at all. To become voluntarily affiliated was an act of adherence to some common plan or purpose.

These organizations did not pretend to be merely social or cultural groups; admittedly, the members were united for action. In the case of several of the Nazi organizations, the fact of confederation was evidenced by formal induction into membership, the taking of an oath, the wearing of a distinctive uniform, the submission to a discipline. That all members of each Nazi organization did combine under a common plan to achieve some end by combined efforts is abundantly established.

The criteria for determining whether these ends were guilty ends are obviously those which would test the legality of any combination or

conspiracy. Did it contemplate illegal methods or purpose illegal ends? If so, the liability of each member of one of these Nazi organizations for the acts of every other member is not essentially different from the liability for conspiracy enforced in the courts of the United States against businessmen who combine in violation of the anti-trust laws, or other defendants accused under narcotic-drugs acts, sedition acts, or other Federal penal enactments.

Among the principles every day enforced in courts of Great Britain and the United States in dealing with conspiracy are these sweeping principles:

No formal meeting or agreement is necessary. It is sufficient, although one performs one part and other persons other parts, if there be concert of action and working together understandingly with a common design to accomplish a common purpose.

Secondly, one may be liable even though he may not have known who his fellow conspirators were or just what part they were to take or what acts they committed, and though he did not take personal part in them or was absent when the criminal acts occurred.

Third, there may be liability for acts of fellow conspirators although the particular acts were not intended or anticipated, if they were done in execution of the common plan. One in effect makes a fellow conspirator his agent with blanket authority to accomplish the ends of the conspiracy.

Fourth, it is not necessary to liability that one be a member of a conspiracy at the same time as other actors, or at the time of the criminal acts. When one becomes a party to a conspiracy, he adopts and ratifies what has gone before and remains responsible until he abandons the conspiracy with notice to his fellow conspirators.

Now, those are sweeping principles, but no society has been able to do without these defenses against the accumulation of power through aggregations of individuals.

Members of criminal organizations or conspiracies who personally commit crimes, of course, are individually punishable for those crimes exactly as are those who commit the same offenses without organizational backing. The very essence of the crime of conspiracy or membership in a criminal association is liability for acts one did not personally commit, but which his acts facilitated or abetted. The crime is to combine with others and to participate in the unlawful common effort, however innocent the personal acts of the participants, considered by themselves.

The very innocent act of mailing a letter is enough to tie one into a conspiracy if the purpose of the letter is to advance a criminal plan. And we have multitudinous examples in the jurisprudence of the United States where

the mailing of a letter brought one not only within the orbit of the definition of crime, but within Federal jurisdiction.

There are countless examples of this doctrine that innocent acts in the performance of a common purpose render one liable for the criminal acts of others performed to that same end.

This sweep of the law of conspiracy is an important consideration in determining the criteria of guilt for organizations. Certainly the vicarious liability imposed in consequence of voluntary membership, formalized by oath, dedicated to a common organizational purpose and submission to discipline and chain of command, cannot be less than that vicarious liability which follows from informal co-operation with a nebulous group, as is sufficient in case of a conspiracy.

This meets the suggestions that the Prosecution is required to prove every member, or every part, fraction, or division of the membership to be guilty of criminal acts. That suggestion ignores the conspiratorial nature of the charge against organizations. Such an interpretation also would reduce the Charter to an unworkable absurdity. To concentrate in one International Tribunal inquiries requiring such detailed evidence as to each member or as to each subsection would set a task not possible of completion within the lives of living men.

It is easy to toss about such a plausible but superficial cliché as that "one should be convicted for his activities and not for his membership." But this ignores the fact that membership in Nazi bodies was an activity. It was not something passed out to a passive citizen like a handbill. Even a nominal membership may aid and abet a movement greatly.

Does anyone believe that the picture of Hjalmar Schacht sitting in the front row of the Nazi Party Congress, which you have seen, wearing the insignia of the Nazi Party, was included in the propaganda film of the Nazi Party merely for artistic effect? The great banker's mere loan of his name to this shady enterprise gave it a lift and a respectability in the eyes of every hesitating German. There may be instances in which membership did not aid and abet organizational ends and means, but individual situations of that kind are for appraisal in the later hearings and not by this Tribunal.

By and large, the use of organizational affiliation is a quick and simple, but at the same time fairly accurate, outline of the contours of a conspiracy to do what the organization actually did. It is the only workable one at this stage of the Trial. It can work no injustice because before any individual can be punished, he can submit the facts of his own case to further and more detailed judicial scrutiny.

While the Charter does not so provide, we think that on ordinary legal principles the burden of proof to justify a declaration of criminality is, of course, upon the Prosecution. It is discharged, we think, when we establish the following:

1. The organization or group in question must be some aggregation of persons associated in identifiable relationship with a collective, general purpose.

2. While the Charter does not so declare, we think it implied that membership in such an organization must be generally voluntary. This does not require proof that every member was a volunteer. Nor does it mean that an organization is not to be considered voluntary if the Defense proves that some minor fraction or small percentage of its membership was compelled to join. The test is a commonsense one: Was the organization on the whole one which persons were free to join or to stay out of? Membership is not made involuntary by the fact that it was good business or good politics to identify one's self with the movement. Any compulsion must be of the kind which the law normally recognizes, and threats of political or economic retaliation would be of no consequence.

3. The aims of the organization must be criminal in that it was designed to perform acts denounced as crimes in Article 6 of the Charter. No other act would authorize conviction of an individual and no other act would authorize conviction of the organization in connection with the conviction of the individual.

4. The criminal aims or methods of the organization must have been of such a character that its membership in general may properly be charged with knowledge of them. This again is not specifically required by the Charter. Of course, it is not incumbent on the Prosecution to establish the individual knowledge of every member of the organization or to rebut the possibility that some may have joined in ignorance of its true character.

5. Some individual defendant must have been a member of the organization and must be convicted of some act on the basis of which the organization was declared to be criminal.

I shall now take up the subject of the issues, as we see it, which are for trial before this Tribunal, and some discussion of those which seem to us not to be for trial before this Tribunal.

Progress of this Trial will be expedited by a clear definition of the issues to be tried. I have indicated what we consider to be proper criteria of guilt. There are also subjects which we think are not relevant before this Tribunal,

some of which are mentioned in the specific questions asked by the Tribunal.

Only a single ultimate issue is before this Tribunal for decision. That is whether accused organizations properly may be characterized as criminal ones or as innocent ones. Nothing is relevant here that does not bear on a question that would be common to the case of every member. Any matter that would be exculpating for some members but not for all is, as we see it, irrelevant here.

We think it is not relevant to this proceeding at this stage that one or many members were conscripted if in general the membership was voluntary. It may be conceded that conscription is a good defense for an individual charged with membership in a criminal organization, but an organization can have criminal purpose and commit criminal acts even if a portion of its membership consists of persons who were compelled to join it. The issue of conscription is not pertinent to this proceeding, but it is pertinent to the trials of individuals for membership in organizations declared to be criminal.

Also, we think it is not relevant to this proceeding that one or more members of the named organizations were ignorant of its criminal purposes or methods if its purposes or methods were open or notorious. An organization may have criminal purposes and commit criminal acts although one or many of its members were without personal knowledge thereof. If a person joined what he thought was a social club, but what in fact turned out to be a gang of cutthroats and murderers, his lack of knowledge would not exonerate the gang considered as a group, although it might possibly be a factor in extenuation of a charge of criminality brought against him for mere membership in the organization. Even then, the test would be not what the man actually knew, but what, as a person of common understanding he should have known.

It is not relevant to this proceeding that one or more members of the named organizations were themselves innocent of unlawful acts. This proposition is basic in the entire theory of the declaration of organizational criminality. The purpose of declaring criminality of organizations, as in every conspiracy charge, is punishment for aiding crimes, although the precise perpetrators can never be found or identified.

We know that the Gestapo and the SS, as organizations, were given principal responsibility for the extermination of the Jewish people in Europe, but beyond a few isolated instances, we can never establish which members of the Gestapo or SS actually carried out the murders. Most of them were concealed by the anonymity of the uniform, committed their

crimes, and passed on. Witnesses know that it was an SS man or a Gestapo man, but to identify him is impossible. Any member guilty of direct participation in such crimes, if we can find and identify him, can be tried on the charge of having committed the specific crimes in addition to the general charge of membership in a criminal organization.

Therefore, it is wholly immaterial that one or more members of the organizations were themselves allegedly innocent of specific wrongdoing. The purpose of this proceeding is not to reach instances of individual criminal conduct, even in subsequent trials, and therefore such considerations are irrelevant here.

Another question raised by the Tribunal is the period of time during which the groups or organizations named in the Indictment are claimed by the Prosecution to have been criminal. The Prosecution believes that each organization should be declared criminal for the period stated in the Indictment. We do not contend that the Tribunal is without power to condition its declaration so as to cover a lesser period of time than that set forth in the Indictment. The Indictment is specific as to each organization. We think that the record at this time affords adequate evidence to support the charge of criminality with respect to each of the organizations during the full time set forth in the Indictment.

Another question raised by the Tribunal is whether any classes of persons included within the accused groups or organizations should be excluded from the declaration of criminality. It is, of course, necessary that the Tribunal relate its declaration to some identifiable group or organization. The Tribunal, however, is not expected or required to be bound by formalities of organization. In framing the Charter, the use was deliberately avoided of terms or concepts which would involve this Trial in legal technicalities about juristic persons or entities.

Systems of jurisprudence are not uniform in the refinements of these fictions. The concept of the Charter, therefore, is a nontechnical one. “Group” or “organization” should be given no artificial or sophistical meaning. The word “group” was used in the Charter as a broader term, implying a looser and less formal structure or relationship than is implied in the term “organization.” The terms mean in the context of the Charter what they mean in the ordinary speech of people. The test to identify a group or organization is a natural and commonsense one.

It is important to bear in mind that while the Tribunal has, no doubt, power to make its own definition of the groups it will declare criminal, the precise composition and membership of groups and organizations is not an issue for trial here. There is no Charter requirement and no practical need for

the Tribunal to define a group or organization with such particularity that its precise composition or membership is thereby determined.

The creation of a mechanism for later trial of such issues was a recognition that the declaration of this Tribunal is not decisive of such questions and is likely to be so general as to comprehend persons who, on more detailed inquiry, will prove to be outside of it.

Any effort by this Tribunal to try questions of exculpation of individuals, be they few or many, would unduly protract the Trial, transgress the limitations of the Charter, and quite likely do some mischief by attempting to adjudicate precise boundaries on evidence which is not directed to that purpose.

THE PRESIDENT: Would this be a convenient time for you to break off for a few moments?

MR. JUSTICE JACKSON: Yes, Sir.

[*A recess was taken.*]

MR. JUSTICE JACKSON: The Prosecution stands upon the language of the Indictment and contends that each group or organization should be declared criminal as an entity and that no inquiry should be entered upon and no evidence entertained as to the exculpation of any class or classes of persons within such descriptions. Practical reasons of conserving the Tribunal's time combine with practical considerations for defendants. A single trial held in one city to deal with the question of excluding thousands of defendants living all over Germany could not be expected to do justice to each member unless it was expected to endure indefinitely. Provision for later local trials of individual relationships protects the rights of members better than possibly can be done in proceedings before this Tribunal.

With respect to the Gestapo, the United States and, I believe all of my colleagues consent to exclude persons employed in purely clerical, stenographic, janitorial, or similar unofficial routine tasks. As to the Nazi Leadership Corps we abide by the position taken at the time of submission of the evidence, that the following should be included: The Führer, the Reichsleiter, main departments and office holders, the Gauleiter and their staff officers, the Kreisleiter and their staff officers, the Ortsgruppenleiter, the Zellenleiter, and the Blockleiter, but not members of the staff of the last three officials.

As regards the SA, it is considered advisable that the declaration expressly exclude: (1) Wearers of the SA Sports Badge; (2) the SA-controlled home-guard units, which were not, as we view it on the evidence,

strictly a part of the SA, and there also be excluded the National Socialist League for Disabled Veterans and the SA Reserve, so as to include only the active parts of that organization.

The Prosecution does not feel that there is evidence of the severability of any class or classes of persons within the organizations accused which would justify any further concessions, and that no other part of the named groups should be excluded. In this connection, we would again stress the principles of conspiracy. The fact that a section of an organization itself committed no criminal act, or may have been occupied in technical or administrative functions, does not relieve that section of criminal responsibility if its activities contributed to the over-all accomplishment of the criminal enterprise. I should like to discuss the question of the further steps to be taken procedurally before this Tribunal.

Over 45,000 persons have joined in communications to the Tribunal asking to be heard in connection with the accusations against organizations. The volume of these applications has caused apprehension as to further proceedings. No doubt there are difficulties yet to be overcome, but my study indicates that the difficulties are greatly exaggerated.

The Tribunal is vested with wide discretion as to whether it will entertain an application to be heard. The Prosecution would be anxious, of course, to have every application granted that is necessary, not only to do justice, but to avoid appearance of doing anything less than justice. And we do not consider that expediting this Trial is so important as affording a fair opportunity to present all really pertinent facts.

Analysis of the conditions which have brought about this flood of applications indicated that their significance is not proportionate to their numbers. The Tribunal sent out 200,000 printed notices of the right to appear before it and defend. They were sent to Allied prisoner-of-war and internment camps. The notice was published in all German language papers and was repeatedly broadcast over the radio. Investigation shows that the notice was posted in all barracks of the camps, and it also shows that in many camps it was read to the prisoners, in addition. The 45,000 persons who responded with applications to be heard came principally from about 15 prisoner-of-war and internment camps in British or United States control. Those received included an approximate 12,000 from Dachau, 10,000 from Langwasser, 7,500 from Auerbach, 4,000 from Staumühle, 2,500 from Garmisch and several hundred from each of the others.

We have made some investigation of these applications, as well as of the sending out of the notices, and we would be glad to place any information that we have at the disposal of the Tribunal.

An investigation was made of the Auerbach Camp in the United States zone, principally to determine the reason for these applications and the method by which they came. That investigation was conducted by Lieutenant Colonel Smith Brookhart, Captain Drexel Sprecher, and Captain Krieger, all of whom are known to this Tribunal.

The Auerbach camp is for prisoners of war, predominantly SS members. Its prisoners number 16,964 enlisted men and 923 officers. The notice of the International Military Tribunal was posted in each of the barracks and was read to all inmates. All applications to the Tribunal were forwarded without censorship of any kind. Applications to defend were made by 7,500 SS members.

Investigation indicates that these were filed in direct response to the notice, and that no action was directed or inspired from any other source within or without the camp. All who were interrogated professed that they had no knowledge of any SS crimes or of SS criminal purpose, but they expressed interest only in their individual fate, rather than any concern to defend the organization.

Our investigators report no indication that they had any additional evidence or information to submit on the general question of the criminality of the SS as an organization. They seemed to think it was necessary to protect themselves to make the application here.

Turning then to examination of the applications, these, on their face, indicate that most of the members do not profess to have evidence on the general issue triable here. They assert almost without exception that the writer has neither committed nor witnessed nor known of the crimes charged against the organization. On a proper definition of the issues such an application is insufficient, on its face, to warrant a personal intervention.

A careful examination of the notice to which these applications respond will indicate, I believe, that the notice contains no word which would inform a member, particularly if he were a layman, of the narrowness of the issues which are to be considered here, or that he will have a later opportunity, if and when prosecuted, to present personal defenses. On the other hand the notice, it seems to me, creates the impression, particularly to a layman, that every member may be convicted and punished by this Tribunal and that his only chance to be heard is here. I think a careful examination of these notices will bear out that impression and a careful examination of the applications will show that they are in response to that impression.

Now, among lawyers there is usually a difference of opinion as to how best to proceed and this case presents no exception to that; there are different

ideas. But I shall advance certain views as to how we should proceed from here to obtain a fair and proper adjudication of these questions. In view of these facts we suggest a consideration of the following program for completion of this Trial as to organizations:

1. That the Tribunal formulate and express in an order the scope of the issues and the limitations on the issues to be heard by it.

2. That a notice adequately informing members as to the limitation of the issues and the opportunity later to be individually tried be sent to all applicants and published in the same manner as the original notice.

3. That a panel of masters be appointed, as authorized in Article 17(e) of the Charter, to examine applications and to report those that are insufficient on their own statements and to go to the camps and supervise the taking of any relevant evidence. Defense Counsel and Prosecution representatives should, of course, attend and be heard before the masters. The masters should reduce any evidence to deposition form and report the whole to this Tribunal, to be introduced as a part of its record.

4. The representative principle may also be employed to simplify the task. Members of particular organizations in particular camps might well be invited to choose one or more to represent them in presenting evidence.

It may not be untimely to remind the Tribunal and the Defense Counsel that the Prosecution has omitted from evidence many relevant documents which show repetition of crimes by these organizations in order to save time by avoiding cumulative evidence. It is not too much to expect that cumulative evidence of a negative character will likewise be limited.

Some concern has been expressed as to the number of persons who might be affected by the declarations of criminality which we have asked.

Some people seem more susceptible to the shock of a million punishments than to shock from 5 million murders. At most the number of punishments will never catch up with the number of crimes. However, it is impossible to state, even with approximate accuracy, the number of persons who might be affected by the declaration of criminality which we have asked.

Figures from the German sources seriously exaggerate the number, because they do not take account of heavy casualties in the latter part of the war, and make no allowance for duplication of membership which was large. For example, the evidence is to the effect that 75 percent of the Gestapo men also were members of the SS. We know that the United States forces have a roughly estimated 130,000 detained persons who appear to be members of accused organizations. I have no figure from other Allied forces. But how

many of these actually would be prosecuted, instead of being dealt with under the denazification program, no one can foretell. Whatever the number, of one thing we may be sure: It is so large that a thorough inquiry by this Tribunal into each case would prolong its session beyond endurance. All questions as to whether individuals or subgroups of accused organizations should be excepted from the declaration of criminality should be left for local courts, located near the home of the accused and near the source of evidence. The courts can work in one or at most in two languages, instead of four, and can hear evidence which both parties direct to the specific issues.

This is not the time to review the evidence against each particular organization which, we take it, should be reserved for summation after the evidence is all presented. But it is timely to say that the selection of the six organizations named in the Indictment was not a matter of chance. The chief reasons they were chosen are these: Collectively they were the ultimate repositories of all power in the Nazi regime; they were not only the most powerful, but the most vicious organizations in the regime; and they were organizations in which membership was generally voluntary.

The Nazi Leadership Corps consisted of the directors and principal executors of the Nazi Party, and the Nazi Party was the force lying behind and dominating the whole German State. The Reich Cabinet was the facade through which the Nazi Party translated its will into legislative, administrative, and executive acts. The two pillars on which the security of the regime rested were the Armed Forces, directed and controlled by the General Staff and High Command, and the police forces—the Gestapo, the SA, the SD, and the SS. These organizations exemplify all the evil forces of the Nazi regime.

These organizations were also selected because, while representative, they were not so large or extensive as to make it probable that innocent, passive, or indifferent Germans might be caught up in the same net with the guilty. State officialdom is represented, but not all the administrative officials or department heads or civil servants; only the Reich Cabinet, the very heart of Nazidom within the government, is named. The Armed Forces are accused, but not the average soldier or officer, no matter how high-ranking. Only the top policy makers—the General Staff and the High Command—are named. The police forces are accused—but not every policeman, not the ordinary police which performed only the normal police functions. Only the most terroristic and repressive police elements—the Gestapo and SD—are named. The Nazi Party is accused—but not every Nazi voter, not even every member, only the leaders. And not even every Party official or worker is included; only “the bearers of sovereignty,” in the

metaphysical jargon of the Party, who were the actual commanding officers and their staff officers on the highest levels.

I think it is important that we observe, in reference to the Nazi Party, just what it is that we are doing here and compare it with the denazification program in effect without any declaration of criminality, in order to see in its true perspective the indictment which we bring against the Nazi Party.

Some charts have been prepared. This is a mere graphic representation of the proportions of persons that we have accused, and which we ask this Tribunal to declare as constituting criminal organizations.

In the first column are the 79 million German citizens. We make no accusation against the citizenry of Germany. The next is the 48 million voters, who at one time voted to keep the Nazi Party in power. They voted in response to the referendum. We make no charge against those who supported the Nazi Party, although in some aspects of the denazification program the supporters are included. Then come the 5 million Nazi members, persons who definitely joined the Nazi Party by an act of affiliation, by an oath of fealty. But we do not attempt to reach that entire 5 million persons, although I have no hesitation in saying that there would be good grounds for doing so; but as a mere matter of practicality of this situation it is not possible to reach all of those who are technically and perhaps morally well within the confines of this conspiracy. So the voters are disregarded, the 48 million, the 5 million members are disregarded, and the first that we propose to reach are the Nazi leaders, starting with Blockleiter, which are shown in the last small block, and piled together, amounting to the fourth block on the diagram.

It is true that we start with the local block leader, but he had responsibilities—responsibilities for herding into the fold his 50 households, responsibilities for spying upon them and reporting their activities; responsibilities, as this evidence shows, for disciplining them and for leading them. No political movement can function in the drawing rooms and offices. It has to reach the masses of the people and these block leaders were the essential elements in making this program effective among the masses of the people and in terrorizing them into submission.

I submit that on this diagram the accusation which we bring here is a moderate one reaching only persons of admitted leadership responsibilities and not trying to reach people who may have been beguiled into following in an unorganized fashion.

We have also accused the formations, Party formations, such as the SA and the SS. These were the strong arms of the Party. These were the

formations that the Blockleiter was authorized to call in to help him if he needed to discipline somebody in his block of 50 houses.

But we do not accuse every one of the formations of the Party, nor do we accuse any of the 20 or more supervised or affiliated Party groups, Nazi organizations in which membership was compulsory, either legally or in practice, such as the Hitler Youth and the Student League. We do not accuse the Nazi professional organizations, although they were Nazi dominated, like the civil servants' organization, the teachers' organization, and the National Socialist lawyers' organization, although I should show them as little charity as any group. We do not accuse any Nazi organizations which have some legitimate purpose, like welfare organizations. Only two of these Party formations are named, the SA and the SS, the oldest of the Nazi organizations, groups which had no purpose other than carrying out the Nazi schemes, and which actively participated in every crime denounced by the Charter and furnished the manpower for most of the crimes which we have proved.

In administering preventive justice with a view to forestalling repetition of the Crimes against Peace, Crimes against Humanity, and War Crimes, it would be a greater catastrophe to acquit these organizations than it would be to acquit the entire 22 individual defendants in the box. These defendants' power for harm is past. They are discredited men. That of these organizations goes on. If these organizations are exonerated here, the German people will infer that they did no wrong, and they will easily be regimented in reconstituted organizations under new names, behind the same program.

In administering retributive justice it would be possible to exonerate these organizations only by concluding that no crimes have been committed by the Nazi regime. For these organizations' sponsorship of every Nazi purpose and their confederation to execute every measure to attain these ends is beyond denial. A failure to condemn these organizations under the terms of the Charter can only mean that such Nazi ends and means cannot be considered criminal and that the Charter of the Tribunal declaring them so is a nullity.

I think my colleagues, who have somewhat different aspects of the case to deal with, would like to be heard on this subject.

THE PRESIDENT: Mr. Justice Jackson and Sir David Maxwell-Fyfe, the Tribunal thinks the most convenient course would be to hear argument on behalf of all the chief prosecutors and then to hear argument on behalf of such of the defendants' counsel as wish to be heard, and after that the Tribunal will probably wish to ask some questions of the chief prosecutors.

MR. JUSTICE JACKSON: That will be very agreeable to us.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, Mr. Justice Jackson has dealt with the general principles under which the organizations named in the Charter should, in the view of the Prosecution, be dealt with. It is not my purpose to repeat or even to underline his arguments. My endeavor is to comply with Paragraph 4 of the statement of the Tribunal made on the 14th of January of this year. This involves:

(a) Summarizing, in respect of each named organization, the elements which, in our opinion, justify the charge of their being criminal organizations. For convenience I shall refer to these as the elements of criminality.

(b) Indicating what acts on the part of individual defendants in the sense used in Article 9 of the Charter justified declaring the groups or organizations of which they are members to be criminal organizations. Again for convenience, I shall refer to such defendants in the wording of the Charter, as connected defendants.

(c) I shall submit that what I have put forward in writing under (a) and (b) will form the necessary summary of proposed findings of fact under the Tribunal's third point.

May I say one word about the mechanics of the position? I thought that it would be convenient if the Tribunal and the Defense Counsel had copies of these suggestions before I address the Tribunal. In pursuance of this, copies have been given to the members of the Tribunal, of course to the court interpreters, and copies in German have been provided for counsel for the organizations and also for counsel for each of the individual defendants.

For the convenience of the Tribunal and of counsel, I have circulated two addenda, which contain further references to the transcript and documents on a number of points in the original appendices. These addenda are compiled under the numbers of paragraphs and, although they are in English, should be readily usable by Counsel for the Defense. The result is that there is the summary in Appendices (A) and (B), which I put in, and full reference in all the points in the summary to the transcript and in some cases to documents.

It is my intention not to read in full all the matters contained in my Appendix (A) and Appendix (B) but to indicate how they fit in with the conception of the Prosecution on this aspect of the case. I shall, of course, be only too ready to read any portions which may be convenient to the Tribunal.

I think it would be best to start from the essential *probanda* which Mr. Justice Jackson has indicated, and perhaps the Tribunal will bear with me while I repeat his five points:

1. The organization or group in question must be some aggregation of persons, (a) in some identifiable relationship, (b) with a collective general purpose. That was Mr. Justice Jackson's first test.

2. Membership in such organization must be generally voluntary, although a minor proportion of involuntary members will not affect the position.

3. The aims of the organizations must be criminal in the sense that its objects included the performance of acts denounced as crimes by Article 6 of the Charter.

4. The criminal aims or methods of the organization must have been of such a character that a reasonable man would have constructive knowledge of the organization which he was joining; that is, that he ought to have known what type of organization he was joining.

5. Some individual defendants, at least one, must have been a member of the organization and must be convicted of some act on the basis of which a declaration of the criminality of the organization can be made.

I do not think that I can avoid applying these tests to each of the organizations, but I conceive that this can be done with brevity, and I therefore propose to deal with the organizations *seriatim*.

I take first the Reichsregierung. Under Appendix B of the Indictment this group is defined as consisting of three classes:

1. Members of the ordinary cabinet after the 30th of January 1933. The term "ordinary cabinet" is in turn used as meaning: (a) Reich ministers that is, heads of departments; (b) Reich ministers without portfolio; (c) State ministers acting as Reich ministers, (d) other officials entitled to take part in meetings of the cabinet.

The second division is members of the Council of Ministers for the Defense of the Reich.

The third division, members of the Secret Cabinet Council.

It is submitted that, on the evidence placed before the Tribunal, there is no doubt that the first of Mr. Justice Jackson's points, Point 1, is complied with in that there is an identifiable relationship with a collective general purpose, and that this organization is generally voluntary, within Point 2.

The aims of the organization are set out in Paragraph 4 of Section A of my Appendix A and the broad submission of the Prosecution is shown in

Paragraph 2. Perhaps, as that is short, I might be allowed to read it:

> "Owing to their legislative powers and functions the members of the Reichsregierung gave statutory effect to the policy of the Nazi conspirators and collectively formed a combination of persons carrying out the executive and administrative decisions of the Nazi conspirators."

The Prosecution apply that general submission to the crimes constituted by Article 6 of the Charter in Paragraphs 5, 6, 7, and 8 of that appendix. If the Tribunal would like me to deal further with these paragraphs I should be pleased to read and comment on any that are desired.

When it is remembered that the Reichsregierung possessed policymaking, legislative, administrative, and executive powers and functions, and that many of its members held at the same time important positions in the Party and in governmental activities outside the cabinet, enormous political power was concentrated in this group. As I said, the Reichsregierung implemented and gave statutory effect to the program of the conspirators.

If the Tribunal will be good enough to turn to my Appendix B they will see that 17 of the 21 defendants before the Court were members of the Reichsregierung. The Prosecution have submitted an enormous body of evidence against these 17 defendants, and they now submit that it is sufficient to say that these 17 defendants should be convicted under each count of the Indictment, and therefore under each portion of Article 6 of the Charter, and that they form the connected defendants with the Reichsregierung, under Mr. Justice Jackson's Point Number 5.

The acts which I have mentioned and which are set out in Paragraph 4 of my Appendix A and the other paragraphs are of such a character that no one in a ministerial capacity could fail to have constructive knowledge of their nature and intent.

I now pass to the Leadership Corps of the Nazi Party. Mr. Justice Jackson has indicated that the conspirators required wide instruments of support. Hitler boasted of the complete domination of the Reich and of its institutions and of its organizations, internally and externally, by the National Socialist Party.

In the Nazi Party, based on the Führerprinzip, its policies and operations were determined not by the membership as a whole but by the corps of bearers of sovereignty and their staff. These leaders were all political deputies, obliged to support and carry out the doctrines of the Party. At every level regular and frequent conferences were held to discuss questions

of policy and working measures. The leaders held the Party together, but they also kept the entire populace firmly in the grip of the conspirators through the control of the descending hierarchy of leaders.

The Prosecution submit that all these leaders are within the organization which they claim to be criminal, and as Mr. Justice Jackson pointed out the staffs of the Reichsleiter, Gauleiter, and Kreisleiter, which are set out in the volumes of the *National Socialist Organization Yearbook* as being in these positions.

The Tribunal will note that we have omitted the staffs of the more junior Hoheitsträger, as Mr. Justice Jackson has pointed out. On that the Prosecution again says that there is no doubt that Points 1 and 2 of Mr. Justice Jackson's criteria are complied with, and they indicate in Paragraphs 1, 2, 3, and 4 of Section B of my Appendix A the elements of criminality; they indicate in my Appendix B the defendants who are involved; and in a latter portion of Appendix B they submit that from the position of these defendants as members of the Leadership Corps and in the Government and the Nazi Party, and further, from the close interconnection between the Government of the Reich and the Party, it is clear that the Leadership Corps is a criminal organization connected with all the crimes charged against all the defendants in the Indictment, including those who were in the Leadership Corps and elaborated before the Tribunal in the individual presentations.

The Nazi Party is the core of the conspiracy and criminality alleged, and the defendants are the core of the Nazi Party. Again the Prosecution say that no one living in Germany and taking part in the management, which in this case means literally the ordering of the Nazi Party, could fail to have constructive knowledge of the intentions of its leaders and the methods of carrying these out. This inner circle is in a different position from even the best-informed opinion outside Germany.

I now pass to the SS, including the SD. The Prosecution respectfully remind the Tribunal of the statements regarding the composition of the SS and its history, set out shortly in Appendix B of the Indictment, on Page 36 (Volume I, Page 81) of the English text. The Prosecution stands by these statements, which it submits are clear. I do not intend to read them at the present moment.

The Tribunal has heard in the case regarding the SS—the transcript Pages 1787 to 1889 (Volume IV, Pages 161-230)—and the case regarding concentration camps—Pages 1399 to 1432 (Volume III, Pages 496-518)—and also the evidence as to the Defendant Kaltenbrunner, of which the reference is given in the addendum. They have also heard in the cases of the

French and Soviet delegations additional mountains of evidence with regard to the SS. It is submitted that there is no difficulty on the first three of Mr. Justice Jackson's points, and that the criminality of the SS has been proved several times over.

On the fourth point I venture to submit the submission in Paragraph 4 of Section C of my Appendix A, that the crimes of the SS were committed, first, on such a vast scale, and, secondly, over such a vast area that the criminal aims and methods of the SS, which have staggered humanity since this Trial opened, must have been known to its members. It was difficult to drive from one city of Germany to another without passing near to a concentration camp, and every concentration camp contained its SS crimes. In my Appendix B the Tribunal will find the members of the SS who are defendants set out, and, in the second part, a summary of the crimes of the Defendant Kaltenbrunner. The Prosecution gives to him a sinister particularity, while relying also on the crimes of the other defendants who were members.

DR. OTTO PANNENBECKER (Counsel for Defendant Frick): May I point out that in the appendix the Defendant Frick has apparently been included by mistake; among the offices held by the Defendant Frick this is not listed as one of them.

THE PRESIDENT: What do you mean? Do you mean not a member of the SS?

DR. PANNENBECKER: The appendix says that Frick was a member of the SS. This is not the case, and he has also made a statement to this effect in his affidavit.

DR. SEIDL: In the appendix just read out by the prosecutor the Defendant Frank too is included as a member of the SS. Already earlier in the Trial the American prosecutor submitted Document 2979-PS as Exhibit Number USA-7. This document shows that at no time was Frank a member of the SS or, as is asserted in the Indictment, an SS general.

Furthermore I should like to point out to the Tribunal that several months ago, when the Indictment was lodged against the SS as a criminal organization, the name of the Defendant Frank was not mentioned. May I therefore take it that in the drawing up of this appendix a mistake has been made?

DR. THOMA: I should like to make the same statement as that made by my colleague Doctor Seidl on behalf of the Defendant Rosenberg. In Appendix A, which lists the indicted elements, Rosenberg is shown as a

member of the SA. He was never a member of the SA, and he has already made a statement to this effect in the course of an interrogation.

SIR DAVID MAXWELL-FYFE: The defendants will have the opportunity of disproving these allegations, which are all contained in the Indictment; but in view of what has been said, I shall personally check the matter myself.

I proceed to deal with the Gestapo. Again, the Tribunal will find the construction and history of the Gestapo set out in Appendix B of the Indictment, and the criminality alleged is set out in Paragraphs 1, 2, and 3 of Section D of my appendix. The second addendum, the Tribunal may care to note, gives the most detailed references to each of these alleged acts of criminality. And the Prosecution submit that from these points which are mentioned it is clear that the first four of Mr. Justice Jackson's points are complied with. The provisions of Articles 7 and 8 of the Charter, in the submission of the Prosecution, make it impossible for the Defense to rely on the official background of the Gestapo, and therefore, as I say, we submit that this clearly comes within the first four of Mr. Justice Jackson's points. If the Tribunal will refer to my Appendix B they will see that the Defendants Göring, Frick, and Kaltenbrunner are alleged to be members, and in the latter part of that appendix we allege, as is the fact, that the crimes of these defendants were committed in their capacities as responsible chiefs of this organization.

Then we come to the SA. I again refer to Paragraphs 1 and 2 of Section E of my Appendix A, and I ask the Tribunal to note that, apart from the correct statement of its phases and periods of activity, each of the elements of criminality contained references to the transcript where these matters are proved. I remind the Tribunal of Mr. Justice Jackson's statement, which shows that the Prosecution have omitted all connected bodies—even including those who had only been members of the reserve—about which there can be any argument, even a sentimental argument, as to their full connection.

It might be convenient if I reminded the Tribunal of these sections.

THE PRESIDENT: We will adjourn now.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

SIR DAVID MAXWELL-FYFE: If the Tribunal please, before the Tribunal adjourned, I was about to mention again the bodies on the fringe of the SA, which the Prosecution did not seek to have included in the organizations:

First, wearers of the SA Sports Badge. The Tribunal may remember that Colonel Storey explained that they were not strictly members. He wanted to have that point quite clear. Secondly, SA Wehrmannschaften, who were internal defense or home-guard units, controlled by the SA but not members of the SA. Thirdly, SA members who were never in any part of the SA other than the reserve. Fourthly, the NSKOV, the National Socialist League for Disabled Veterans, who were apparently incorporated in the SA; but from the names that have been given—and the membership—we do not ask for their inclusion.

In Appendix B the Tribunal will find the eight defendants alleged to be connected with the SA, and it is alleged by the Prosecution that the connection of the SA with the conspiracy was so intimate that all the acts of the Defendant Göring would justify the declaration asked for.

I now pass to the sixth and last group or organization, the General Staff and High Command of the German Armed Forces. As in this case the Prosecution has drawn an arbitrary line, I may perhaps be allowed to recall briefly its constitution.

If the Tribunal will be good enough to look at Appendix B of the Indictment, under this heading, Page 37 of the English text (Volume I, Page 84), they will see that the first nine positions enumerated are special command or chief-of-staff positions. There were 22 holders of these positions between February 1938 and May 1945, of whom 18 are living. The 10th position, of Oberbefehlshaber, includes 110 individual officers who held it. The whole group varied from a membership of 20 at the beginning of the war to about 50 in 1944 or 1945—that is, at any one time.

I remind the Tribunal, however, that the conjoining of these positions is not artificial in reality, because on Page 2115 (Volume IV, Page 399) and the following pages of Colonel Telford Taylor's presentation—and I refer especially to Pages 2125 and 2126 (Volume IV, Pages 407, 408)—it will be seen how the holders of the positions enumerated met in fact and in the flesh. This, in our submission, clearly comes within the interpretation of "group" in the Charter which, as Mr. Justice Jackson pointed out, has a

wider connotation than "organization"; and we submit that you cannot hold men in the top command against their will. It would be impossible for them to carry on such work on such a condition.

Under Section F of my Appendix A, read with the first addendum, there will be found not only the references in the transcript but the references to the captured documents which prove, out of the mouths of the members of this group, the criminality alleged against them under each part of Article 6 of the Charter. These documents also show their actual knowledge and therefore, *a priori*, their constructive knowledge of the nature of the act.

In my Appendix B the five defendants involved are set out; and in the latter part of that appendix the connection of the group, and especially of the Defendants Keitel and Jodl, is emphasized. It is submitted that these facts prevent any difficulty being encountered with regard to this group on any of the five criteria which we say should guide the Tribunal.

Finally, may I repeat that, in our respectful submission, the facts contained in Appendices A and B, which are before the Tribunal in writing, clearly indicate the findings of fact for which the Prosecution ask.

My friend, M. Champetier de Ribes, will address the Tribunal.

M. CHAMPETIER DE RIBES: May it please the Tribunal, Mr. President and Gentlemen, I shall be careful not to add anything to the very complete statements of Mr. Justice Jackson and Sir David Maxwell-Fyfe.

In agreement with my fellow prosecutors, I should like respectfully to draw the Tribunal's attention only to two clauses of French domestic law which deal with questions comparable to those which we are considering today—and in connection with which I believe the French legislature has had to solve some of the problems with which the Tribunal is concerned—and especially to reply to the question put by the Tribunal, namely, the definition of the criminal organizations.

I shall merely mention Article 265 of the French Penal Code which lays down the general principle of the association of criminals by enacting that:

> "Any organized association, whatever its structure or the number of its members, any understanding made with the object of preparing or committing crimes against persons or against property, constitutes a crime against public peace."

But I should like to draw the attention of the Tribunal to this fact, that in the course of the last few years France has had occasion to apply this general principle to organizations which greatly resemble those which we are asking you to declare criminal.

It is known indeed, Gentlemen, that Nazism is a contagious disease, the ravages of which threaten to go beyond the borders of the countries which it has definitely contaminated. Thus, during the years 1934 to 1936 diverse groups had been formed in France which, following the example of their German and Italian models, were organized with the intention of substituting themselves for the legal government in order to impose in the country what they called "order" but which was in reality only disorder.

The French Republic in 1936 did what the Weimar Republic ought to have done. The law of 10 January 1936, promulgated on 12 January in the *Official Gazette*, which I submit to the Tribunal, and a translation of which was given to the Defense, decreed the dissolution of these groups and enacted severe penalties against their members. With the Tribunal's permission, I shall read the first two clauses of this law:

> "Article I. By decree of the President of the Republic in session with the Cabinet all associations or *de facto* groups shall be dissolved which:
>
> "1. Might provoke armed demonstrations in public thoroughfares;
>
> "2. Or which, with the exception of societies for military preparation sanctioned by the Government and societies for physical education and sport, might by their structure and their military organization have the character of a fighting group or a private militia;
>
> "3. Or which might aim at jeopardizing the integrity of the national territory or at attempting to alter by force the republican form of government.
>
> "Article II. Any person who has taken part in the maintenance or the reconstitution, direct or indirect, of the association or group as defined in Article I, will be punished by a term of 6 months' to 2 years' imprisonment and a fine of 16 to 5,000 francs."

The Tribunal will observe, in the first place, that by imposing severe penalties on members of these associations for the mere fact of having taken part "in the maintenance or the reconstitution, direct or indirect, of the association," the law of 10 January 1936 has recognized and proclaimed the criminal character of the association.

The Tribunal will observe, in the second place, that neither the Penal Code nor the law of 10 January 1936 is concerned with giving an exact definition of the association nor with the question as to whether the incriminated association constitutes a moral entity or a legal entity having a legal existence. Article 265 of the Penal Code includes in its condemnation

not only any association, which means a legal entity, but also condemns any agreement entered into with the object of preparing or committing crimes. And the law of 10 January also mentions any association, or any *de facto* group. Thus the law of 10 January in the same way as Article 265 of the Penal Code, speaking of agreements entered into or *de facto* groups, does not seek to define criminal organizations by law and refers to the commonly accepted meaning and implication of the words "group" or "organization" as we today ask you to define them.

In the same way, after the liberation of our country, the French Government concerned itself with pursuing and punishing bad citizens who, even without offending against an existing penal statute, had been guilty of definite antinational activity; and issued the decree of 26 August 1944, promulgated in the *Official Gazette* of 28 August. This decree, after having given a very general definition of the offense, defined its extent by enumerating the essential facts which it comprises.

Thus, Article I of the decree of 26 August 1944 states that the crime of national unworthiness is constituted by the fact of having participated in a collaborationist organization of any kind, and more especially one of the following: le Service d'Ordre Legionnaire (Legion of Order), la Milice (Militia), the group called "Collaboration," la Phalange Africaine (African Phalanx), and so on.

The decree of 26 August 1944 is much less concerned with defining the punishable offense than with enumerating the criminal organizations to which the fact of having adhered voluntarily constitutes the crime of national unworthiness; and whether these organizations or these groups are legally constituted organizations or simply agreements entered into, as mentioned in Article 265 of the Penal Code, or merely *de facto* groups, as stated in the law of 1936, the decree does not define, it enumerates, the organizations which are considered to be criminal. That is what we are asking you to do with respect to the German organizations mentioned in the Indictment.

We are not asking you to condemn without having heard these men who, on the contrary, will be able to put forward their personal means of defense before a competent tribunal. We are asking you only to declare criminal, as was allowed by the French laws of 1936 and 1944, *de facto* groups without which it would have been impossible for one man in a few years to cause a great civilized nation to sink to the lowest depths of barbarity, the more hateful because it was scientific. It is the shame of our time that the mastery of technique should have placed new methods at the disposal of ancient

barbarity, so true is it that technical progress is of no avail unless accompanied by moral progress.

Your sentence will signify for all nations in the world, and for the good of Germany herself, that above human liberties there exists a moral law which imposes itself upon nations just as well as upon individuals whether they be isolated or in groups and that it is criminal to violate that moral law.

GEN. RUDENKO: Your Honors, let me tell you first of all that I accept the principle which has been expressed by my respected colleagues Justice Jackson and Sir David Maxwell-Fyfe, the principle with regard to the criminality of the organizations. It seems to me that to clarify this question it is necessary to distinguish clearly two interwoven problems: First, the problem of the material law, just what organizations and what individual members or groups of individual members can be considered criminal; and also the problem of objective law, what evidence, what documents, what witnesses, and in what order these can be presented to agree, to declare, or to deny the criminality of this or that organization.

First of all, as to the question of material law, it is necessary to emphasize that the question of the criminal responsibility of an organization does not stand before the Tribunal and never did; neither does the question of the individual responsibility of the various members of an organization, except those who are among the defendants today or the various groups of these organizations, stand before the Tribunal. The Charter of the Tribunal provides as follows: According to Article 9, the examination or the trial of any individual member of this or that group or of any organization is within the jurisdiction of the Tribunal. It is within the jurisdiction of the Tribunal to declare this or that organization criminal if one of the defendants belongs to the organization.

Thus, we speak here about declaring an organization criminal, and the Charter definitely provides the legal consequences of declaring an organization criminal. As the Tribunal declares this or that group or organization criminal, then the competent national authorities of the signatory powers have a right to bring to trial before the national military tribunals and occupational tribunals members of organizations. In this case the criminal nature of the organizations is considered clear and cannot be contradicted. (Article 10 of the Charter.)

Consequently the Charter provides two legal results of declaring an organization criminal: First, the right, but not the obligation, of the various national tribunals to bring to trial members or organizations which the Tribunal declared criminal; and second, the obligation of the national

tribunals to consider an organization criminal if such an organization was so declared by the International Military Tribunal.

In such a manner, the result of declaring an organization criminal by the International Military Tribunal does not automatically mean that all members of the organization will also be declared criminal by the national tribunals; neither does it mean that without exception all members of such an organization must be brought to trial. The question of individual guilt and of individual responsibility of the separate members of the criminal organizations is wholly, and without exception, within the jurisdiction of the national tribunal.

As has already been pointed out, in Article 10 of the Charter, the Tribunal limits the jurisdiction of the national tribunal in just one way. The national tribunal cannot deny or cannot argue the criminality of any organizations which have already been declared criminal.

My colleague, Justice Jackson, has already tendered valuable information about the legal codes of the respective countries concerning the question of responsibility. Under English-American law, French law, and also the Soviet legal code, it is provided that membership in an organization which has criminal aims makes an individual liable. There are two legal decrees on the subject—in U.S.S.R. penal code, Articles 58-11 and 59-3. These laws provide for the responsibility of members of criminal organizations. They are considered criminals, not only for committing crimes, but also for belonging to an organization which is considered criminal. The very fact of belonging to an organization, the law states, makes a person liable to prosecution. The law does not require formal proofs to decide if a person is a member of a criminal organization. A person can be a member of a criminal organization even though he does not formally belong to the organization. The evidence is all the more exhaustive if a person is formally put on the list of the membership of a criminal organization. However, the formal membership of a criminal organization is not the only basis of criminal responsibility of a person. A member of the organization should know what is the nature of the organization, what are its objectives. It is immaterial whether an individual member knew all directives, all acts of the organization or whether he knew personally all other members.

One cannot help noting that on the basis of the general principles of the law, especially in connection with the practice of fascist Germany, where a whole network of criminal organizations functioned, established by the usurpers of the supreme powers, the responsibility of individual members of

the organization does not necessarily imply that they were aware of the penalties attaching to the acts committed by the organization.

On the basis of the legal code, especially in fascist Germany, where there existed a whole series of organizations established by the usurpers of powers now considered criminal, it is impossible to demand that every member be acquainted with all the actions and all the members and all the directives of the organization.

May I now pass on to the next problem. It appears to me that there is a certain degree of complexity attached to the problem of the criminal organizations. There is very extensive correspondence by members of various organizations, that has been submitted to the Tribunal on the subject of these organizations. Such abundance of discussion comes from an incorrect interpretation of legal proceedings if an organization is declared criminal. As long as we know the fact that the question of the individual responsibility of the individual members is fully within the jurisdiction of the various national courts, the general question of whether the organization is declared criminal or not is much easier to follow.

According to the Charter, on the question of declaring an organization criminal the Tribunal will decide in connection with individual defendants. Article 9 states that in examining the materials with regard to each defendant the Tribunal can have the right to declare—and so on. Therefore, the conclusion is that the facts which decide the solution of the question as to whether an organization is or is not criminal, consist of whether there is before us today among the defendants a representative of this or that organization. It is well known in the present Trial that all the organizations which the Prosecution want to be declared criminal are represented on the bench of the defendants. For that reason alone there has passed through the hands of the Tribunal a great deal of material and evidence relating to the criminal nature of the organizations which these defendants have represented that can be used by the Tribunal to draw a conclusion as to the criminal character of various organizations. Under such conditions the necessity of calling special witnesses to testify about this or that organization can take place only as a source of supplementary and even eventual evidence. And even then the Tribunal has stated in Article 9 that it is up to the Tribunal to acquiesce in or to refuse the calling of witnesses or the introduction of supplementary evidence. It is impossible to deny the possibility or the necessity of supplementary evidence with regard to any criminal organization. The Charter of the Tribunal states very definitely that after the indictment has been made, the Tribunal will do that which it considers necessary with regard to the Prosecution’s request for declaring

this or that organization criminal. Any member of an organization has a right to request that the Tribunal permit him to be heard on whether the organization was criminal. However, this was introduced into the Charter of the Tribunal for the sake of justice. It now appears that this article is used for other purposes. If what has been provided for in Article 9 extends widely enough and if it already provides for calling witnesses with regard to the criminality of this or that organization, in substance the evidence submitted by the prosecutors of the four countries has already given enough exhaustive reasons for the Tribunal to recognize the organizations indicated in the Indictment as criminal. At the same time it seems expedient that the Tribunal should publish Article 10 of the Charter explaining that to declare an organization criminal does not necessarily lead to an automatic bringing to trial of all members of that organization without exception. It means that all questions about bringing any member to trial and about the responsibility of individual members will be decided by the national tribunals.

This is all I wanted to state, in addition to what has been stated by my colleagues.

THE PRESIDENT: Have the defendants' counsel arranged among themselves in what order they wish to be heard?

DR. KUBUSCHOK: As counsel for the Reichsregierung, which has first place in the Indictment as a "criminal organization," I have, according to the decision of the Court, the duty of presenting my opinion in regard to the presentation of evidence. Since, in so doing, I have to discuss general points of view which affect in the same way all the six organizations under Indictment, it is probable that my statements will in the main constitute the opinion of other defendants' counsel. However, they reserve for themselves the right to express particular and supplementary opinion.

The Defense understand the decision of the Court of 14 January 1946 to mean that at this stage of the procedure the Defense should not produce detailed arguments against the Indictment as it has been lodged by the Prosecution and as it has been explained today, also against the concept of criminal organizations in the sense of the Charter or against other hypotheses of a declaration of criminality, but should only express their opinion on the question of what evidence is relevant and how the evidence shall be presented. Therefore, I shall speak about the basic questions only insofar as this seems necessary today in this particular connection. First of all, I shall speak about the contents and the effect of the requested verdict.

The six organizations under Indictment are, according to the request of the Prosecution, to be declared criminal organizations in their entirety. A

request of that kind and the proceedings pertaining to it would represent something unprecedented in the jurisprudence of all states.

As we know, this request is not uninfluenced by the fact that, contrary to other nations, in England and even more so in the United States, even companies and corporations as such can be prosecuted in some cases for reasons of expediency. This is a legal development called for by the dominant position which companies and corporations have acquired, above all, in economic life. This position made their punishment seem desirable in certain cases. They were affected by this punishment, however, only to the extent to which they could be affected in their economic sphere, that is to say, by the imposition of fines. This also concerns only definite offenses, mostly in the field of administrative law.

The American Chief Prosecutor and the other chief prosecutors have cited a large number of precedents, even from German jurisprudence, in which organizations are said to have been declared criminal. In these precedents—and that is the decisive factor—the defendants convicted as criminals were always individual persons, never organizations as such. But a criminal procedure such as this one would have to deal most seriously with the organizations as such, as well as with all the members who are not indicted personally that is—I now refer to Law Number 10 of the Allied Control Council—would have to pronounce the most severe sentence, the sentence of death; such a procedure has never before in the history of jurisprudence been either discussed or applied.

The organizations under Indictment are organizations which differ greatly in their structure. I do not have to discuss further today whether they always represented an organically constructed unit. For this Trial the essential thing is that the organizations under Indictment have been dissolved by a law of the Military Government, and therefore, no longer exist. What still exists are only the individual former members who, therefore, in reality are the actual defendants and have simply been brought together under the name of the former organization as a collective designation.

But independent of this question of the nonexistence of the organizations, it can be seen from the outcome of the procedure that this is indeed a collective procedure against the individual members of the organization, and this for the following reasons:

First, to declare an organization criminal means the outlawing and branding as criminal, not only of the organization as such, but, above all, of each individual member. Such a declaration, therefore, means a final sentencing of each individual member to a general loss of honor. This effect

of the outlawing and branding is unavoidable and ineradicable, especially if that verdict is spoken by so important a court as the International Military Tribunal before the forum of the world public. The effect of the outlawing would apply to each member of the organization and would cling to him, regardless of whether the subsequent proceedings, as provided for in Article 10 of the Charter, were carried out against the individual members or not.

Second, in respect to legal procedure, the verdict that has been asked for provides the possibility of a criminal penalty for each individual member of the organization. In the subsequent proceedings, according to Article 10 of the Charter, the criminal character of the organization will be considered conclusively determined.

In execution of this, Law Number 10 of the Allied Control Council, of 20 December 1945, has in the meantime been issued. According to this law the mere fact of having been a member of an organization which has been declared criminal by the International Military Tribunal renders liable to punishment as a criminal each individual member. Penalties ranging from the highest fines to compulsory labor for life and the death penalty are provided.

The proceedings according to Law Number 10 are concerned only with determining membership and bases the punishment on this. In these proceedings only grounds for personal exoneration, such as irresponsibility, error, or coercion can be discussed. But these concern only the membership as such and will apply only in a very few cases.

Whatever concerns the character of the organization, the criminal aims and actions of members of the organization, especially the individual member's knowledge of these—all these are matters which will not be discussed in the proceedings any more according to Law Number 10. In the proceedings against the organizations a binding declaration has been made. Therefore, the proceedings against the organizations anticipate the biggest and most important part of the proceedings against every individual member, while the subsequent proceedings, according to Law Number 10, to all intents and purposes only draw conclusions.

In connection with the question of the effect of the verdict, the numerical aspect should also be touched upon.

The SA at the beginning of the war in 1939 had about 2.5 million active members, to which should be added, let us say, 1 to 2 million, representing those who during the preceding 18 years, either quit the SA or had to leave because of their military service; therefore, in all, up to 4.5 million.

As far as the SS is concerned, my colleagues have not yet been able to give a final estimate. It will have to be considered that the Waffen-SS alone had an active membership of several hundred thousand men at any given time. If we take into account the losses due to the war, which were very considerable but which to a certain extent were assessed in the proceedings, we find in the case of the SS as well that the figure runs into millions.

The Leadership Corps always had, after 1933, a fixed membership of about 600,000 to 700,000 members. Changes in the official personnel were very frequent. We have to take into account that the membership changed at least twice during the entire period, so that here also the complete figure will be about 2 million.

The entire figure covered by these proceedings is therefore very large. The reduction which the Tribunal has today thought fit to make would not reduce that number to any very large extent. Basically, it will certainly make no difference whether this very large number which I have just mentioned will include a half, a third, or a quarter of the adult male population of Germany. If we consider the war losses among these age groups, we can say with great certainty that the Indictment will actually include a very considerable part of the adult male German population.

I shall speak now about the concept "criminal organization." The necessary condition for an organization's being declared criminal is the criminal character, as appears in Article 9, Paragraph 2, of the Charter. The Charter does not interpret either the concept "criminal character" or that of "criminal organization." If we ask by means of which legal system this gap in the Charter should be filled, then, according to the general principle of *lex loci*, German law first of all has to be considered. But that is of no avail, because these two concepts, according to every legal code in the world, also represent a *terra nova* in criminal law. Here, too, the Defense reserve for themselves the right to express their considered opinion at the time of the final pleadings.

In any case, we are of the opinion that because of its already-mentioned, far-reaching consequences the declaration asked for can be made justly and fairly within the framework of the validity of the Charter only if: (1) the original purpose—that is, the constitution or the Charter of the organization —was directed to the commission of crimes in the sense of Article 6 of the Charter, and if this purpose was known to all members; or (2) in case the original purpose of the organization was not criminal, if all members during a certain period of time knowingly participated in the planning and perpetration of crimes in the sense of Article 6 of the Charter. Here, also, it is necessary that the development should have been such that these crimes

represent typical actions of the organization, for only then can we speak of a criminal nature as applicable to an organization as well as to an individual human being.

According to this interpretation, the concept "criminal organization" in the sense of Articles 9 to 11 of the Charter is in large part identical with the concept "criminal conspiracy" which plays an important role in the former German and Italian criminal law; also with the concept "conspiracy," with or without action for its execution, in English or American common law; also with the concept "Mordkomplott" (conspiracy for the purpose of committing murder) in the sense of Paragraph 49-b of the German Penal Code; and, finally, with the concept of a "Common Plan or Conspiracy" in the sense of Article 6 of the Charter, here also with or without action for its execution.

All these penal codes have in common that judgment can be delivered only against those persons who have taken part in the criminal organization knowing its purpose.

In my opinion, negligence cannot be sufficient when passing judgment subjectively because of the general principle that in cases of serious crimes —and in this case the penalty may be death—there must always be full proof, and that negligence cannot be sufficient. Therefore, as a matter of principle, it has to be required in these present proceedings that an organization under Indictment can be declared criminal only if it has been ascertained that: Firstly, the aims of the organization were criminal in the sense of Article 6 of the Charter, and, furthermore, that all members at least knew of these criminal aims. This is also necessary for the reason that, as has just been said, this Trial before the International Military Tribunal represents the essential main part of the criminal proceedings which will ascertain the guilt of each individual member of the organizations.

Justice does not permit that those members who did not possess the aforementioned knowledge and who are therefore innocent be included in a verdict. And this will not lead to that consequence mentioned by Justice Jackson, namely, that a rejection of the verdict would mean a triumph for those who are guilty. I am of the opinion that the guilty ones, regardless of their number, should be brought to punishment. Despite all considerations of expediency, the issue should not be that along with the guilty ones an enormous number of innocent persons also be punished.

Therefore, to come to the core of the question, this is to be regarded as relevant. The relevancy and admissibility of evidence depends on a definition of the criminal organization and of its criminal character. On the basis of my definition I contend that the following points are relevant:

(a) That the organizations, according to their constitution or statutes, did not have a criminal composition and did not pursue any criminal aims in the sense of Article 6 of the Charter.

(b) That within the organization, or in connection with it, crimes in the sense of Article 6 were not, or at least not continuously, committed during a certain period of time.

(c) That a certain number of members had no knowledge of any possible criminal constitution or criminal purpose, or the continuous commission of crimes according to Article 6, and that they also did not approve of these facts.

(d) That a certain number of members or certain closed independent groups joined these organizations under compulsion, or pressure, or as the result of deception, or by order from higher authorities.

(e) That a certain number of members without any action on their part became members of these organizations through the bestowal of honorary membership.

Since I know that the questions to be decided represent a *terra nova* in the field of criminal law, I believe that in the course of the presentation of evidence we shall receive many other suggestions. Therefore it will be expedient if the Tribunal at the present stage of the Trial do not bind and limit themselves by a final definition. I ask rather that evidence be admitted to the greatest extent. In conclusion I come to the question of how the presentation of evidence can be carried out in practice and how the legal hearing of the member can be made possible according to Article 9, Paragraph 2, of the Charter.

The principles valid in criminal procedure in all countries allow every defendant before the court certain rights. The most important principles are the principle of direct oral proceedings and the right to defense and to a legal hearing. Since, according to my statements, the real defendants are the members of the organizations, these rights must be accorded to every member of the organization. In spite of this basic point of view, which will be discussed in still greater detail in our final pleadings, and with all legal reservations, the Defense do not overlook the fact that for all practical purposes that is impossible within the framework of this Trial. A solution must be found, since the Prosecution have lodged the Indictment of the organizations on the basis of the Charter in its present form.

This leads to the necessity of carrying out the proceedings, whereby the aim of all people taking part in the Trial can be only that of finding the best possible solution by getting as close as possible to the universal and, in our

opinion, inviolable points of view. In this connection the Defense in the same way as the Prosecution are gladly aware of their duty to work constructively towards a decision by the Tribunal.

If, now, the enormous number of people who are affected by the Indictment gives rise to tremendous difficulties which prevent a reasonable solution of this problem, an adequate basis for judgment of the aims of the organizations, as well as of the actions and the subjective attitude of the individual member of the organization, must nevertheless be found.

In order to make any headway in these proceedings, an attempt must be made to attain a result in respect to the collective membership by fixing certain types. We do not fail to recognize the great difficulties which confront the passing of a just sentence when a typical aspect is taken as the basis for judgment. Every attempt to attain, on the basis of a large number of individual witnesses to be brought before the Court, a clear picture of that which is typical would be unavailing. The only way, in our opinion, is to separate the presentation of individual evidence, in respect to time and place, from this Tribunal.

One way of achieving this would be an exact interrogation of the individual members at the places where—this would apply to most of the organizations—at present large numbers of them are being kept in internment in the various camps. We believe that the best way to investigate individual cases, and the one most suitable to the Court, would be to assign this work to one or more suitable spokesmen in each camp, that is to say, of course, under the supervision and with the assistance of the Defense Counsel or their assistants, and then bring these spokesmen before the Court as witnesses so that they may give a picture of the activity and attitude of the individual members.

We believe that the way to get as clearly and conscientiously presented a picture as possible would be for these spokesmen to get from the inmates of the camps affidavits about the main points of Indictment which have been specified by the Prosecution. The spokesmen could then, as witnesses, say under oath what percentage, on the basis of these affidavits of the individual inmates of the camps, had taken part in the criminal actions mentioned in the Indictment or had known anything about them. Certainly there are certain difficulties connected with this which will also have to be considered.

In order to get a true picture, one will have to relieve the individual inmates of the suspicion that through a truthful testimony submitted to the Prosecution they might be offering material which could be used against them personally.

We consider it therefore necessary that insofar as these affidavits are to be presented to the Court as documentary evidence, the Prosecution should make a statement that this material will not be used for the purpose of criminal proceedings against persons. This statement would naturally not involve any immunity for individual members; but the individual inmate of the camp would be assured that the affidavit made by him under oath does not establish his guilt as far as future criminal proceedings are concerned.

If the Prosecution do not want to accept this proposal, there would still be the possibility, without submitting these documents, of using the testimony of the spokesmen, who could give information as to the percentage of the people who took part or did not take part in criminal activities or plans.

THE PRESIDENT: Since you have not finished, I think we had better adjourn for 10 minutes.

[*A recess was taken.*]

DR. KUBUSCHOK: Before the recess I referred to a suggestion for getting information about the actions and the attitude of the members by means of typical facts. I continue.

This taking of evidence would have, for practical purposes, to extend to a sufficient number of camps in all the zones of occupation. From the results of this taking of evidence a conclusion could then be drawn, on the basis of what is found to be typical, as to the criminal activity and attitude of the individual member of the organization, and at the same time, a conclusion as to whether or not the organization had a criminal nature.

If the Prosecution are in agreement with the Defense so far, I believe that I have perhaps found in this way a means of collecting the relevant evidence, including all positive and negative elements.

To whatever extent the hearing of inmates of camps does not suffice, which might be true of the one organization or the other, the hearing of members of the organization who are not in custody might have to be considered. Here, too, a proper way could probably be found which would likewise make possible and easier the execution of the tasks of the Tribunal.

DR. SERVATIUS: I, too, should like to take a stand on the questions now being discussed before the Court. I am not at present in a position to take a stand on the profound and well-presented statements which Justice Jackson has made here. I should not like to make a brief and less carefully thought-out answer, but the Court will understand that I and a number of my

colleagues desire to put our case after studying the material and the laws. Perhaps the Tribunal will give us the opportunity to do this very shortly.

I should like now to take a stand on these questions along more technical lines, in order to fulfill my duty and on behalf of the Defense to take a clear stand on these clear questions.

In the first question it was asked what evidence is to be admitted and what particular evidence should be presented here in the main trial before this Tribunal.

The answer is this, that all evidence is relevant which is of significance for the determination of criminality. If one examines the concept "criminal" it is seen that there is no factual situation as defined by criminal law, nor can there be any, for it is not a question of determining the factual elements but rather of a judgment as to whether an act is criminal in the same way as judgment as to whether something is good or bad. Consequently, the Charter does not oblige the Tribunal to pass sentence and declare such-and-such to be criminal, but rather it states that the Tribunal "may" pass such a sentence, but not that it "must" reach such a decision.

It can thus be seen that the Tribunal is here confronted with a task which is basically different from the activity of a judge. A judge is obliged, when certain facts determined by law are put before him, to pass sentence, but this Tribunal is to determine the culpability of a set of facts, on the basis of which the judge will later pass sentence.

Such a task is, however, that of a legislator and not of a judge. The Tribunal here determines what is deserving of punishment and thereby creates a law. In this way the Tribunal also creates that basis for the procedure which Justice Jackson mentioned in a former address of his—the basis for procedure in the subsequent individual trials.

It is this basis for procedure which the legislator gives to the judge who is to deliver judgment. In such a case the burden of proof is likewise reversed, as Mr. Justice Jackson also has constantly mentioned. It is as if a thief were before the court—his objection that theft is not punishable, that "possession is theft," would be questioned.

That the activity of this Tribunal is legislative can also be seen from the fact that, without setting up the Tribunal, the signatory powers could just as successfully have determined that all members of organizations could be brought before a court because of their membership.

Law Number 10 of the Allied Control Council, that has often been mentioned today, corroborates this interpretation, since it constitutes the law for carrying out the skeleton law expected of this Tribunal. The examples of

the criminal nature of the organizations that have been given here in Mr. Justice Jackson's address today show again and again that it is a question of laws and not of judgments.

It is also characteristic of the legislative function, that in all discussions considerations of expediency take first place and Justice Jackson asked in a previous statement that the verdict should provide the means to proceed against the members of the organizations.

It is seen that the Court must deal with *de lege ferenda* considerations on an ethical basis. But it must be proved that the members of the organizations are punishable, and "punishable" is equivalent to "criminal."

In order to determine the factual elements, the judge brings evidence. As legislator, the Tribunal must collect the material for legislation. The judge can, on the basis of the legally proscribed criteria, easily determine what is relevant as proof of these criteria and what he therefore must admit as proof.

It is characteristic that such a determination here in this matter makes for difficulties. The legislator proceeds differently from the judge. He studies the facts to see if they deserve punishment, and for him all those facts are relevant which are of significance for the contents of his law.

In this matter he must have an over-all picture of the entire problem and must take into consideration both the good and bad aspect of the matter to be judged.

The basic principle of justice is that only the guilty be punished. If the legislator wishes to achieve this, he must examine whether only guilty people will be affected by his laws. He must therefore also investigate the objections which any person affected by his law might make. The innocent person is protected in this way, that in the individual case the guilt of the individual must be proved unless the legislator actually has in mind responsibility without guilt.

Every killing of a human being is punishable, but whether the person is guilty has to be proved. He can avail himself of the so-called objection that the death was not intentional. If the legislator does not want to permit such an objection, then he must himself examine the material that leads to such an extraordinary measure. The extent of the material to be examined, that is, the taking of evidence, depends on the contents of the law that is to be passed. Inasmuch as in the subsequent individual trials all objections remain open, the Tribunal does not have to concern itself with them. But the Tribunal must consider to what extent the innocent person in the individual trial will have legal guarantees which protect him from an unjust punishment.

It is absolutely necessary for the Tribunal also to examine every submission which the individual member cannot bring in the subsequent proceedings.

In anticipation of these powers of the Tribunal, it has already been determined by Law Number 10 mentioned above that every member can be punished. Thereby these punishments, of which we have heard in the previous speeches, have already been determined. It thus appears as if the Tribunal could only pass a judgment *en bloc* without having any right to modify it, and consequently without possessing any influence on the legal effect of its verdict. But such a concept is in contradiction to the basic idea of the Yalta Conference, which was that of transferring to the Tribunal the legislative powers of the signatories, with the express purpose of vindicating this principle of justice, namely, that only the guilty be punished, on the basis of examination of the facts through the hearing of the members in question. Consequently the Tribunal must have a right to determine in individual cases the basic conditions for punishability, and to determine the objections which should remain open to the individual, and the Tribunal must also be able to limit the effect of its judgment by regulation of the punishments.

I believe that Mr. Justice Jackson expressed an opinion today which does not contradict this.

According to the sense of the Charter, the Tribunal is not permitted to transfer its responsibility to the individual courts by simply leaving for all practical purposes the decision to these courts which because of their composition may have quite different legal views.

The members of the organizations have been granted that very right to be heard here before the International Military Tribunal and particularly because of the significance of the judgment, which in all cases contains a grave moral condemnation. To what extent then should the Tribunal concern itself with the material for this taking of evidence? I believe that the Tribunal, in order to determine what is deserving of punishment, must investigate that which is typical, while the purely individual can be left to the subsequent proceedings.

This separation of the typical from the individual, however, is not easy, for the submission of the members often has a double significance. Thus the submission of a member that he did not know about the criminal nature of the organization could mean, on the one hand, that such purpose never existed, or, on the other hand, that the member had no knowledge of that purpose which was really there. The first is an objection which concerns the organization, the second a purely personal objection.

On the basis of these arguments I should like to answer the Tribunal's first question as follows:

The factual elements of criminality as defined by criminal law cannot be found here; the determination of criminality is the determination of punishability as a legislative task of the Tribunal. Examination of evidence in the procedural sense is in reality the examination of the legislative material including the objections of the members of the groups and organizations. To what extent the Tribunal itself must examine the material depends on the scope and the effect which it intends to give and which it is able to give to the verdict. Only that which is not typical and which is not of importance as far as *de lege ferenda* considerations are concerned, only that can be left to the individual trials.

To Questions 2 and 3: Under Point 2 and 3 the Tribunal puts a question regarding the limiting of the groups of members and the limiting of the length of time of the criminality. Both questions touch the same problem, namely, whether such a limitation is dependent on a motion on the part of the Prosecution, or whether the Tribunal itself can limit the contents of its verdict.

I believe Mr. Justice Jackson today expressed the opinion that the Tribunal has the power to make such a limitation. But, as regards the political leaders, the Prosecution reserve to themselves the right, in the case of a limitation of the groups of members as proposed by them, later to introduce other trials against these members who are now being excluded or to take other measures.

However, such a right is not given to the Prosecution in the Charter. It also stands in contradiction to the natural powers of the Tribunal of including in its decision an acquittal—a power which cannot be eliminated by reservation made by the Prosecution. The evidence material to be examined also cannot be limited through such a limitation as proposed, for the judgment delivered on the indicted organizations must include these organizations as a whole. It is not permissible to seize upon merely the unhealthy elements of groups during a period which was not typical and still declare the organization criminal.

That which is to be considered a group or an organization does not depend on the discretion of the Prosecution, as is also seen in Article 9, Paragraph 1, of the Charter, according to which the criminal character must stand in some relationship to the acts of one of the main defendants. This can only be understood to mean that the membership of the organization must be influenced by the actions of one of the major defendants at a given time. However, this is not for the Prosecution but for the Tribunal to decide.

Accordingly, I should like to answer Questions 2 and 3 as follows:

Question 2: A limiting of the incriminating period does not depend on a motion of the Prosecution. The Tribunal itself can and must limit the length of time, if the organizations or groups were not deserving of punishment throughout the whole period of their existence. If the actions of the main defendant, as a member of the organization, were not incriminating during the whole period of the existence of the organization, then such a limitation must follow.

Question 3: For the limiting of the groups of members the same applies as for the limiting of the period of time.

The Tribunal can, on the basis of its own powers, limit the effect that its verdict will have in the case of all groups and organizations. It must undertake this limitation, if the actions of the main defendant in his capacity as a member of the organization are not to incriminate certain groups of members. A limitation of the Indictment or of the effect of the verdict does not limit the evidence material which is the basis of the judgment.

These were the remarks I wanted to make in answer to the questions of the Tribunal. I should like now merely to take a stand on a question that has also been brought up today, namely, the application for a legal hearing, if the Tribunal permit me to discuss this question. According to Article 10 of the Charter, every member of an organization can be brought to trial, if the organization has been declared criminal. The decision is left up to the Tribunal. The essential task of the Tribunal is the hearing of the members. Without this hearing a sentence is not possible. That is the basic condition without which the proceedings cannot be carried out. So far, the Defense has about 50,000 applications from the millions of members. In order that the Tribunal should not draw the false conclusion that the overwhelming majority of those affected admit their guilt by remaining silent, I must emphasize that such guilt will be most passionately denied by all those affected.

I shall therefore go into the reasons why so few applications have been submitted, and I shall show that this is not the fault of those affected or the result of negligence. Not a lack of interest or disrespect of the Court but rather certain clear facts are responsible for this lack of response.

The announcement in the press and over the radio at the beginning of the proceedings regarding the right to be heard was made at a time when there were practically no newspapers in the destroyed cities and radios were a rarity.

In addition, because of the paper shortage, it was made in small print and for the most part was simply not understood. The Tribunal ordered an announcement to be made in the internment camps, where a great number of the people affected are concentrated. To what extent this announcement actually was made, I have not yet been able to determine. Mr. Justice Jackson showed various documents this morning and from them I shall be able to inform myself. The fact that so few applications have been made gives cause for concern. But even those people who have obtained knowledge of their right have apparently not been able as yet to make applications to the Court. At the time of the announcement there was no postal service between the various zones, and there are still no postal connections with Austria, where there are probably tens of thousands of men in custody.

In the announcement to the organizations, because of the lack of postal facilities, two additional ways were provided for submitting these applications. Both of them proved to be insufficient and are the main reason why we have so few applications. Those members who are not in custody were to submit their applications through the nearest military office.

I know of no case in which an application was made in this way. The attempt to use this procedure failed because of the lack of co-operation on the part of the offices. I could give an example of this.

The interned members were to submit their applications through the commanding officer of their camp. Only in the case of a few camps, weeks and months after the beginning of the Trial, were applications, which had been made in November, received, and even then only from some of the camps in the American and British zones and from a camp in the United States. From the Soviet, Polish, and French zones, as well as from Austria and other camps in foreign countries where there are camps, no applications have as yet been received, so far as I know. I shall leave it to the Tribunal to form its opinion of these facts.

The uniformity of the circumstances shows, however, that it cannot be the fault of the members of the organizations. Of the many difficulties I should like to give only one striking example, which will give an insight into the situation. In one camp about 4,000 members of various organizations asked in November 1945 to be permitted to make use of their right. A few days ago I was told in the camp by a guard officer that at that time no applications were permitted since those in custody, according to the rules of the camp, could not communicate with anyone outside the camp. An army order would have been necessary for transmissions of the applications, but there was no such order and present restrictions were strictly adhered to.

Another reason for the nonarrival of applications is the fact that those concerned feared certain disadvantages. There was the fear that the CIC would take action against the applicants because of their applications. This fear was inspired particularly by the fact that the announcement of the right to make applications was accompanied by the notice that the applicants would not be granted immunity of any kind. The effect of this is seen particularly in the case of those members not in custody, from whom only very few applications have been received, and these very often submitted anonymously or under false names.

It would be welcome if the Tribunal could inform the public that such fears are without foundation, and that the participation of all is sought so that a false decision can be avoided. Thereby the inadequacy of the present procedure for making applications would be remedied.

From all this it can be seen that the first stage of the making of applications has already shown itself to be so inadequate that the legal hearing is a mere illusion. But even those applications that have been received are, with a few exceptions, worthless, and for the following reasons: On the basis of the applications the Tribunal is to decide whether persons should be heard. But for practical purposes this can happen only if these applications state the reasons. Such reasons are either entirely lacking in the applications or they are useless. An application without contents or an application which contains in the main mere asseverations and figures of speech can form no basis for a decision.

Some of the applications do not even mention the official function of the member in the organization or his civilian profession. This faulty sort of application can obviously be traced back in the case of the men in custody to an order issued by the camp commander which permitted only collective or group applications or prescribed certain forms to be followed. All those affected, whether in custody or not, were not able to set out their reasons intelligently, because those accused know only that their organization is said to have been criminal, but they do not know in what this criminality consists. Insofar as detailed statements were made, in single cases, they are based on assumptions.

In order to relieve the situation, Defense Counsel have visited various camps known to them to clear up the matter and to get practical information. I shall not go into the difficulties which had to be overcome. I do not want to discuss the limitation placed on the length of time that we could stay in the camp and similar things; but I must mention that the visits to the camps have been without success insofar as I have not yet received the sworn affidavits and the other written statements of the members made subsequent to our

visit, although I know that in one case they were handed over to the camp commander.

In these circumstances the fact is that today, 3 months after the beginning of the Trial, the technical basis for the procedure for hearing the members is not yet in existence. Defense Counsel for the large organizations are also hardly in a position to make up for this delay in a short period of time. On the other hand, the actual material is extremely comprehensive, as in the case of the political leaders, where there are about fifteen to twenty categories, such as the Workers' Front, Propaganda Section, Organization Section, and so forth, which must be examined as to their functions and as to their criminal character. None of this can be neglected, and even the appearance of a less careful treatment must be avoided. I shall not discuss the difficulties which confront the Defense Counsel as a result of the fact that Defense Counsel now for the first time learn from the Prosecution of certain legal questions.

The members in custody are particularly interested that their case be decided quickly. Nevertheless, I am compelled by prevailing conditions to make a motion, namely, that the proceedings against the groups and organizations that are to be declared criminal be separated from the main trial and be carried out as a special subsequent trial. This motion is also compatible with the particular nature of the trial as I discussed it at the beginning of my remarks.

I should like to add to my motion a suggestion as to how the legal hearing might be made possible. This proposal of mine is occasioned by the proposal made this morning for carrying out the hearing by means of a "master," that is, I assume, a legal officer of the Allied armies.

I cannot object too energetically to this suggestion. In my opinion, it is one of the main rights of a Defense Counsel to collect his own information, and it is the right of every defendant to speak with his counsel. It would be incomprehensible that the Allies, who are concerned with the prosecution, should at the same time work for the Defense. One cannot expect that an officer, despite any amount of objectivity, could be so objective in his feelings that he would give information to the defendant and have an understanding of the latter and his feelings.

My proposal is this: That each camp should have a German lawyer who receives his information from the main Defense Counsel and instructs the members interned in the camp and collects information. Then, in a relatively short period of time, a selection of material can be made by the Defense Counsel—a selection of the persons who can appear here as well as of the material that can be submitted of the latter and his feelings.

In the proposal made here this morning by the Prosecution I see an elimination of the Defense Counsel, and I should have to ponder a long while as to what stand I, on behalf of the Defense, would take to such a proposal.

DR. RUDOLF MERKEL (Counsel for the Gestapo): Regarding the general questions concerning the admissibility of declaring an organization criminal, the technical procedure for the submission of evidence, and the criminal character of the organizations in general, I refer to what my colleagues Dr. Kubuschok and Dr. Servatius have said. I have just a few additional statements to make.

Regarding the question of applications, I can say from my own experience that it has seemed strange to me, too, that the length of time between the formulation of applications in the individual camps and the arrival of these applications in the hands of the Defense is so extremely long.

To mention one example, a few days ago we received applications from a camp in Schleswig-Holstein, some of which were drawn up in November and December. I, myself, in order to get information, sent letters to the camps. I sent them 5, 6, and 7 weeks ago and I have so far received no answer.

In Camp Hersbruck, for example, I know that in November an application for a hearing, with reasons given in detail, is said to have been sent by members of the SS and Gestapo to the Defense Counsel—this has been confirmed to me by reliable sources. Neither the Defense Counsel of the SS nor I have received this application.

Very few applications have been received from members of the Gestapo. In my opinion one of the reasons is that the far greater number of internees doubtless do not know that they are being represented and defended in this Trial, for the announcement sent to the camps was made in November of last year. Defense Counsel for the organizations were not appointed until the decision of 17 December 1945. The correctness of my opinion can be seen conclusively, I believe, from the following: About three weeks ago in a German newspaper, the *Neue Zeitung*, an article appeared regarding this question of the organizations and in this article it states, word for word: "The organizations, as is, of course, well-known, are not represented in the Nuremberg Trial." Thus, if not even the press knows of the fact that Defense Counsel for the organizations have been sitting here in the front row for months and have often spoken here from the lectern, what can one expect the individual internees, who are living in camps hermetically shut off from

contact with the rest of the world, to know about the facts of the Defense? That is what has to be said on this point.

I, also, by the way take the point of view that the question whether the organizations in their entirety can be indicted here is an absolute *terra nova* in the history of jurisprudence and that it is something which in its extent and its scope and in its effects shakes the very foundations of jurisprudence. In addition, as has been mentioned, organizations are to be judged which ceased to exist almost a year ago. In the criminal procedure of all civilized countries it is a basic condition that the defendant still be alive; proceedings cannot take place against a dead defendant.

According to Mr. Justice Jackson's statements today, the organizations of the Gestapo and SS, for example, are to be held responsible for the liquidation of the Jews in the East; and it is pointed out that because of the death of millions of Jews and the impossibility of determining who the individual perpetrators were, the organizations as such must be judged in order that the guilty be punished. Of course, the Defense holds the conviction and takes the point of view that the guilty must be punished, but only the guilty. It is a fact, for example, that an Einsatzgruppe of the SD, whose task it was to solve the Jewish problem in the East, contained on the average only about 250 members of the Gestapo. Considering the total number of 45,000 to 50,000 members of the Gestapo, this figure is thus a very small one. In the case of a general verdict against, for instance, the Gestapo, more than 45,000 people would be affected who had absolutely nothing to do with this matter. I refer to the example of a mass murderer who cannot be captured, and whose whole family is taken into custody in his stead and condemned.

In view of the very important statements which have been made today by the Prosecution regarding the question of the organizations, I ask the Tribunal for permission, after the record has been received, to state my attitude, if necessary, to just a few other points today; first of all, to the question of the time during which the Gestapo is to be considered criminal. In this connection I must assert that at least until the year 1939 the Gestapo was a lawful, legally established institution. It is also true that the Indictment refers to crimes which can be charged to the Gestapo only after the autumn of 1939, that is, after the beginning of the war.

Today the Prosecution have furthermore excluded secretarial and office workers from the Indictment. I am in agreement with this. It is in accordance with the motion made by me already in December. I submit further that not only the secretarial and office personnel but also all other employees be excepted, because the reason for dropping the charges against the office

personnel is doubtless that the Prosecution are convinced that this office personnel had nothing to do with the crimes of which the Gestapo is accused.

It should also be considered whether the administrative officials of the Gestapo, who represented about 70 percent of the personnel of the Gestapo, should be excluded from the Indictment. All of the 500 applications received so far are from such administrative officials. These officials were trained only in the field of administration. They had neither the training nor the knowledge for the making of criminal investigators. They could not be used for the execution of any criminal actions, because they had no executive power. They were active only in matters of personnel and finance—personnel matters such as the appointment of officials, promotions, dismissals, and so forth; matters of finance such as the administering of budget funds, figuring out and compiling salary and wage lists, renting of offices, *et cetera*. These are all things which have nothing to do with executive power, and especially not with the crimes imputed to the Gestapo by the Prosecution. In my opinion these people are just as entitled to exemption as the secretarial and office personnel, who have already been exempted by the Prosecution.

I should like to touch briefly on one other point of view, that is, the question of voluntary joining of an organization—a question which has played an important role. On 7 June 1945 Mr. Justice Jackson, in his statement to the President of the United States, said, among other things, the following: Units such as the Gestapo and SS were fighting units and consisted of volunteers—people especially suited for and fanatically inclined to the plans of violence of these units. To what extent that is true of the SS, I do not know. As far as the Gestapo is concerned, it certainly is not true, for the Gestapo was a State organization founded by the Defendant Göring on the basis of the law of 23 April 1933. It was a police authority just as was the Criminal Police whose duty it was to track down crimes or the Regular Police who were responsible for controlling traffic. The personnel consisted mostly of life-long career officials, some of whom had been in the police service many years before the creation of the Gestapo, and who, when this police organization was created and in the ensuing years, were ordered to, detailed to, or transferred to this police authority. According to the German law affecting civil servants these officials were obliged to follow such orders. They had never come voluntarily to the Gestapo. At the most there might perhaps have been 1 percent who were voluntary members; but 99 percent of the members were forcibly ordered on the basis of this law.

That is what I have to say at the moment. I should like, however, to reserve for myself the right to speak some time later about today's discussions.

THE PRESIDENT: Yes, certainly. We will adjourn now.

[*The Tribunal adjourned until 1 March 1946 at 1000 hours.*]

SEVENTY-FIRST DAY

Friday, 1 March 1946

Morning Session

THE PRESIDENT: At the conclusion of the argument on the organizations, which the Tribunal anticipates will finish before the end of today's session, the Tribunal will adjourn into closed session. Tomorrow morning at 10 o'clock the Tribunal will sit in open session for consideration of the applications for witnesses and documents by the second four defendants. Will the defendant's counsel who was in the middle of his argument now continue? Dr. Merkel, had you finished?

DR. MERKEL: Yes, Sir.

DR. MARTIN LÖFFLER (Counsel for the SA): May it please the Tribunal: The objections and misgivings expressed yesterday by the Defense regarding the criminal proceedings against the six accused organizations are particularly applicable when judging the SA.

No other organization is so much exposed to the danger of a sentence contrary to our sense of justice as is the SA. I ask the Tribunal's permission to submit the reasons for this fact.

The demand of the Prosecution that the SA should be declared a criminal organization affects at least 4 million people at a conservative estimate. The limitation according to groups approved yesterday by Justice Jackson was gratifying and welcome; but it will have no appreciable effect on the numbers since the groups eliminated yesterday, the armed SA units and the bearers of the SA Sports Badge, were not full members of the SA. The only persons so far eliminated, therefore, are the SA Reserves. As no limitation according to time was made, these criminal proceedings will include everyone who ever belonged to the SA, even for a very short time, during the 24 years between its establishment in 1921 and its dissolution in 1945, that is to say, during a period of almost a quarter of a century.

We heard yesterday from the Prosecution that the criminal acts charged to the organizations are the same as those charged to the main defendants, namely, Crimes against Peace, crimes against the laws or customs of war,

and Crimes against Humanity, as well as participation in the common conspiracy.

If we now contemplate the possible participation of these 4 million former SA men in these four important categories of crime, we get the following picture:

Crimes against the laws or customs of war are not charged to the SA. It is true that the Prosecution presented an affidavit saying that the SA also took part in guarding concentration camps and prisoner-of-war camps and in supervising forced labor; but, according to the presentation of the Prosecution, this did not occur until 1944 within the framework of the total war raging at that time, and it has not been charged that this activity of the SA involved any excesses or ill-treatment.

In none of the atrocities reported here by witnesses and documents did the SA with its 4 million members participate. The few offenses against humanity charged to the SA by the Prosecution and committed by individual members in the course of almost a quarter of a century can in no way be compared with the serious crimes against humanity of which we have heard here.

The occupation of the trade-union buildings by the SA, adduced by the Prosecution as another point, took place on the order of Reichsleiter Ley, who used the SA for this operation, and this happened after the seizure of power.

Even the Prosecution did not assert that any outrages, ill-treatment, or excesses occurred when this operation was carried out. The fact that in connection with the seizure of power in the spring of 1933 individual excesses occurred, and that the American citizens Rosemann and Klauber, according to the affidavits submitted by the Prosecution, were beaten on this occasion is certainly regrettable. However, such excesses on the part of individual persons are unavoidable in organizations comprising millions of people and, considered by themselves, are hardly proper grounds for declaring the entire organization criminal.

The participation, finally, of the SA as guard troops in concentration camps is, according to the presentation of the Prosecution, restricted to single exceptions and ended anyway in 1934. The commandant of the Concentration Camp Oranienburg, according to the presentation of the Prosecution, was an SA Führer. However it is not asserted that he committed any atrocities.

The second case, the ill-treatment of prisoners in the camp of Hohnstein by SA and SS members in 1934 led to criminal proceedings and the SA men

guilty were sentenced to imprisonment of up to 6 years.

As a last individual act there remains the participation of the SA in the excesses during the night of 10 and 11 November 1938, when the windows of Jewish stores were broken and the synagogues were burned. Here, too, the plan and the order did not originate with the SA. The SA was simply commissioned by the highest Party leadership to carry out this order. Finally if we consider that during the political struggles of 1921 to 1933 the old SA was involved in brawls—often purely defensive—with political opponents and that it did not develop into an organization with millions of members until after the seizure of power, we arrive at the following conclusion, expressed in figures:

On the basis of the presentation of the Prosecution at most 2 percent of all the indicted former SA members participated in punishable individual actions; 98 percent of the 4 millions, according to their conviction, kept their hands clean of any such punishable individual acts.

Here, too, the Prosecution will not want to insist that the excesses of these 2 percent considered by themselves should brand the entire organization as criminal. These 98 percent, that is in round numbers 3,900,000 former SA members, must nevertheless defend themselves here against the charge of having participated in the preparation of the war of aggression or in the planning or execution of the common conspiracy, or, formulated more strongly, against the charge of having belonged to organizations which pursued these criminal purposes.

What is the result if we apply the definition of the criminal nature of an organization as formulated yesterday by Justice Jackson and Sir David Maxwell-Fyfe?

The SA members will acknowledge that the criteria under Points 1 and 2 as defined yesterday are also true for the SA, namely, that the SA was an aggregation of numerous persons with collective aims and a membership which was voluntary in principle. However, they will strenuously deny the application of the Criteria 3, 4, and 5. Point 3 requires that the organization pursued objectively criminal aims in the sense of Article 6 of the Charter. The millions of members, if testifying here, would state that neither in the programs nor in the speeches of their leaders had they been called upon to pursue such criminal aims or methods. Whether the leaders of the SA pursued such criminal aims in secret or not these people are not in a position to judge. Whether such criminal aims were pursued secretly by the leadership of the SA can be determined only by the Tribunal, and only now when the archives have been opened, witnesses can testify, and the documents are laid open to the Court.

Now, Point 4 of the Prosecution's definition, if I understood Justice Jackson correctly yesterday, requires, beyond this, as an element of crime involving subjective guilt, that the aims and methods of this organization were of such character that a reasonable, normal man may properly be charged with knowledge of them.

I should like at this point to emphasize particularly that I, in agreement with my colleagues, do not consider this definition an adequate protection, since it means that a member may be punished even if he did not recognize the criminal nature of the organization but ought to have recognized it by application of reasonable care. I know of no system of penal law in any modern civilized state which holds that negligence, even of a gross or serious nature, is sufficient to constitute guilt of an infamous common crime, that is, of a crime belonging to the group of severest offenses. A crime of this category can be committed only with intention. Perhaps the Prosecution can later discuss this question on the basis of their knowledge of the particulars of Anglo-Saxon and other foreign legal systems.

This point seems of particular importance to me because—if it is neglected—there is the danger that the judges, particularly the Anglo-Saxon judges, will apply the political standards of their countries to German conditions. The sober political instinct that is characteristic of the citizens of England and America is nonexistent in the Germans. We are a politically immature people, credulous, and consequently especially susceptible to political misguidance. The Court should not overlook this dissimilarity when passing its judgment on the good faith of the individual members of the organizations. According to the impressions which the Defense of the SA has received to date from its visits to camps and from numerous letters, the majority of SA members are convinced that they did not belong to any criminal organization. Among other reasons are the following subjective ones:

It was generally known and has been specifically stated in the *Organization Book* of the Party—Document 1893-PS, Page 365—that only a person whose character was unobjectionable could join the SA. It is further stated verbatim, and I quote: "Unobjectionable reputation and no criminal record." The members of the SA maintain that they know of no case in which a gang of criminals or conspirators required in their statutes similar conditions for membership.

Part of the essence of a conspiracy is the idea that its criminal aims be kept secret from its opponents. An organization of several millions is, by its very nature, not suited to carrying out a plot. The leaders of the SA emphasized in numerous addresses that they wanted to maintain peace under

all circumstances. They pointed out that Germany would be rather a danger to European peace if she were without defense and arms in the heart of Europe and that being in a state of preparedness was the best guarantee for securing future peace in Europe. The simple members point again and again to the fact that foreign powers gave diplomatic recognition to the leaders of National Socialism. They consider this fact not simply an act of "international courtesy" but are convinced that foreign governments would not have entered into relations with the German Government if that German Government had consisted of open criminals.

I might mention a particularly characteristic example: the Indictment against the SA is substantiated by a number of documents. These are Documents 2822- and 2823-PS. According to these documents, as early as May 1933 Lieutenant Colonel Auleb, a deputy of the Reich War Ministry of that time, was detailed to the high command of the SA in order to assure liaison between the heads of the two organizations. But the whole affair is treated as strictly secret, and it is ordered that Auleb should wear the SA uniform for the purpose of "camouflage." How, I ask, should or could a simple SA member have known anything of such affairs? I have mentioned here only a few points put forward by SA members which, in the opinion of the Defense, do not constitute unfounded subterfuges, but which show that the majority of these people never thought of participating in a criminal conspiracy.

Also the fifth criterion set up yesterday by the Prosecution to define a criminal organization—the close connection between the main defendants and the SA—is in the case of no organization so difficult to prove as in the case of the SA. This may, at first, sound surprising; of the main defendants here, six were high-ranking members of the SA. Nevertheless, a closer scrutiny shows that there were no close connections at all. Except for Göring, none of the main defendants ever exercised command authority over the entire SA. The rank which these main defendants had in the SA was an honorary rank; and, so to speak, merely decorative. Consequently, the Prosecution has mentioned only Göring's connection with the SA in its recent list of the criminal elements. But even Göring's connection with the SA curiously enough is very slight and is actually confined to a period of three quarters of a year—that is—9 months, namely, from February 1923 to 9 November 1923, that is to say, 23 years ago. Göring was never, as stated in Appendix A of the Indictment, Reichsführer of the SA. That is an error. Rather, in February 1923 Göring was commissioned to take over the command of the then existing Party group for the protection of meetings—the so-called Sturmabteilung. Göring led the SA until the November Putsch

of 9 November 1923. On that day his command power over the SA came to an end and was never revived. Later Göring was given by Hitler honorary command of the unit Feldherrnhalle. He was the honorary commander, not the active commander of this unit. I believe the difference between honorary and active command of a regiment is known in all states. I do not have to give any further explanation. Honorary command has a purely decorative significance.

The task which the SA had to carry out under Göring in the year 1923 was the protection of meetings. Anyway, it cannot be charged that at that time the SA, in co-operation with Göring, already planned the crimes stated in Article 6 of the Charter or that these aims could have been anticipated at that time in any tangible form. Neither can it be charged that Göring ever made use of the SA after 1923 for carrying out any criminal plan. The man who led the SA from 1930 to 1934, Ernst Röhm, was an embittered opponent of Göring's. After his death the SA was led by Victor Lutze from 1934 to 1943 and from 1943 until its dissolution, by Wilhelm Schepmann.

According to Article 9, Paragraph 1, of the Charter, an organization can be declared criminal only in connection with any act of which a main defendant may be convicted. From a legal and factual point of view I have the gravest doubts as to whether the facts of the case in 1923, as described by me, are sufficient to comply with the requirements of the Charter as far as the SA is concerned. This could be done only if the Tribunal had reason now to pass sentence on Göring's activity as leader of the SA group for protecting meetings 23 years ago, including the November Putsch, as a special crime. This, however, would be at variance with the fact that this entire action was settled with legal effect by the amnesty of the democratic Reich Government, whereby the matter was, at the time, disposed of in this fashion.

May it please the Tribunal, if it is a fact in the case of any organization, then certainly it is a fact in the case of the SA, that its being listed among the criminal organizations is contrary to the real picture. Large circles abroad, particularly those who were forced to leave Germany in 1933, knew nothing of the complete change of structure which the SA underwent during the following years. The foreign countries heard at every Reichstag session the traditional song, "The SA Marches," while, as a matter of fact, the SA had long since lost all political influence and had been transformed *en masse* into an association with a huge membership, the very size of which rendered it harmless as far as conspiracy was concerned and which showed all the characteristics of the so-called German club-mindedness. I refer in full here to the statements made by Colonel Storey, himself, in his speech for the

Prosecution. This is on Page 1546 of the Court's Record (Volume IV, Page 138). The organization through which the SA was then eliminated from political life was, as is well known, the SS, and this happened on the occasion of the so-called Röhm Putsch in 1934. That, indeed, the SA and SS always confronted each other like rival brothers is a fact which, in the interest of truth, should not remain unmentioned. For all these reasons the SA is judged on a completely different basis, even by German opponents of National Socialism; and this has already led to contradictory results, the speedy elimination of which by the Prosecution or the Court would be highly desirable.

At this opportunity the following facts should be pointed out: The SA, up to the higher ranks, is not, as a matter of principle, subject to arrest, which is at variance with probably all the other organizations. The new denazification law which recently came into force after thorough consultation between German circles and the Military Government and which is now the law in force throughout the entire American Zone, regards all SA members of a rank lower than that of Sturmführer neither as active Nazis nor much less as criminals. According to the electoral procedure now in force in the American Zone of Occupation, which recently was the basis for elections in thousands of German communities under the directives of the Military Government, the ordinary SA members, insofar as they were not Party members, were not only permitted to vote, but were also eligible for election. The same people who are before the Court accused of serious crimes may at the same time, according to the law in force, be elected as community councillors, and, in fact, are being so elected.

I talked personally about two weeks ago to an SA man and asked him whether, following the notice of the Court, he had reported here for interrogation. He declared that he saw no reason for doing that, because in the meantime he had been elected and approved as community councillor.

The regulations of Law Number 30, regarding the application of the German community order of 20 December 1945, namely, Articles 36 and 37, which show that SA men are eligible for election, also confirm the fact, which is known in Germany, but apparently not in foreign countries, that an ordinary Party member had—only by comparison, naturally—a more active political position than the completely uninfluential SA member. Whoever was a Party member before 1937 cannot vote, and whoever at any time was a Party member cannot be elected.

A comparison of Party members, who are not indicted here, and SA members, who are indicted here, shows the following facts:

If at the time of National Socialism one was politically incriminated or suspected one could, without difficulty, become an SA member but under no circumstances a Party member, because in regard to Party membership—and even ordinary Party membership—much higher political qualifications were required than in the case of SA members. There were certainly many SA members who joined this organization only to escape to some extent the persecution they had to expect because of their incriminating political record in the past.

May it please the Tribunal, I have tried by means of these examples to show the extraordinary danger existing in the particular case of the SA, if all its members, including its millions of ordinary SA men, are legally declared criminals by the Tribunal. I am sorry I cannot share the opinion expressed yesterday by Justice Jackson that the verdict sought from this Court would be a purely declaratory one with no penalties involved. On the contrary I know that hundreds and thousands of SA members, who were simple followers and were not even Party members, have been dismissed from their positions, and their future and their existence will depend on the verdict of this Court. A declaratory judgment of this Court is sufficient to make them outlaws and to exclude them from positions and professions in the future. Therefore the members of the SA are correct in pointing out that they are denied the right of judicial hearing. There is no direct evidence and no direct trial. A court does not decide the fate of lifeless creatures of the law or formal organizations that have long since ceased to exist; it passes judgment on living human beings, and no court should forego the opportunity of seeing in person those whom it is trying. A good judge is always a good psychologist and soon can tell what kind of person is on trial—whether he is a criminal or somebody who has been deceived and misled.

No law on earth since time immemorial ever allowed the passing of judgment against an organization instead of against its single members. The laws and precedents quoted yesterday by the Prosecution regarding criminal gangs and conspiracy certainly recognize to a large extent the collective responsibility for acts of accomplices, but two requirements must be fulfilled there too: Firstly, the member must know that he is party to a criminal conspiracy or criminal association; secondly, the indictment is not directed against the conspiracy as such, and the conspiracy will not be judged, but the persons of the individual participants. It is the conviction of the Defense that the Charter did not intend to stand in contradiction to these legal principles of all states.

The late President Roosevelt, whom Justice Jackson named the spiritual father of the Charter, has in his great speeches, particularly in those of 25

October 1941 and 7 October 1942, stated clearly that the leaders and instigators shall be called to account. Permit me, Mr. President, to read two sentences from the speech by President Roosevelt taken from the official collection, *Speeches and Essays by President Roosevelt*, published on order of the government of the United States.

I quote from the speech of 25 October 1941:

> "Civilized peoples long ago adopted the basic principle that no man should be punished for the deed of another."

The second quotation is from the speech of President Roosevelt on 7 October 1942, and I quote:

> "The number of persons eventually found guilty will undoubtedly be extremely small compared to the total enemy populations. It is not the intention of this Government or of the Governments associated with us to resort to mass reprisals. It is our intention that just and sure punishment shall be meted out to the ringleaders responsible for the organized murder of thousands of innocent persons and the commission of atrocities which have violated every tenet of the Christian faith."

In addition to these fundamental objections to such a separation of the proceedings there is also an important technical objection. If the Tribunal passes a declaratory judgment against the organizations, as requested, all these millions of members of the organizations will automatically become outlaws pending the definite legal decision in the subsequent trials. Until that date every individual is under serious suspicion of being a criminal, since it is questionable whether he will succeed in exonerating himself in the subsequent trial. Since, however, an individual person, without such exoneration will probably not be able to return to his profession—and will also be excluded from the ranks of honorable citizens until he is exonerated—the right to have such a subsequent trial should not be denied to him. I believe that Justice Jackson will agree with me in this. But if, as desired by the Prosecution, 7 million members of organizations, according to a conservative estimate, are affected by the declaratory judgment of the Tribunal and thus temporarily become outlaws, then millions of subsequent trials will have to take place. We shall have to assume that in the course of 1 year, perhaps 100,000 trials can be completed. I believe that this is a very optimistic estimate, as our German courts will not be able to participate; it is well known that they are completely overworked since they have now only a small portion of their former personnel. Of these millions of cases, the courts will probably have to deal first with those of the most criminal nature.

The accused, whose existence is at stake, will defend themselves during the subsequent trials with all legal means at their disposal. There is the danger that the really innocent people will have to wait for many years, even for decades, before they will have an opportunity to rehabilitate themselves through a process of exoneration. I believe that it would have been possible to find some sort of solution. For instance, if the Control Council had passed a law to the effect that, since there is the suspicion that offenses and crimes against peace and humanity have been committed with the aid of these organizations, the courts have the right and the duty to try those of whom it can be proved that they participated in these crimes as principals or accessories in some way or other—if such a formula could be found, then I believe that both the Prosecution and the Defense would consider that a just solution. The effect would be limited to those who are actually guilty. The Defense objects in no way to the punishment of those who are actually guilty, provided that their guilt is determined in regular unobjectionable proceedings.

Should the Court, however, adhere to a verdict against the organizations, as requested by the Prosecution, then I request for all the reasons adduced, arising as they do from the presentation of the Prosecution and from the impressions made by those applications which have been filed, that judgment not be passed against the entire SA. The point of view brought forward by Justice Jackson in the case of the other organizations, namely, that in the face of so many murders and atrocities the individual members of an organization can no longer be determined as perpetrators, this point of view, noteworthy as it is, does not apply to the SA. The few excesses which, according to the presentation of the Prosecution, took place here, happened in Germany in public. The perpetrators are known. Some regional courts have already opened proceedings of this kind. I have heard, for example, that the city of Bamberg has opened proceedings against the destroyers of the synagogue there and against the perpetrators of the action of 10 and 11 November 1938.

But should the Tribunal be of the opinion that judgment is nevertheless to be passed against the SA as an organization, then I ask the Tribunal as far as possible to make use of the right to provide certain limitations in regard to periods of time and categories of members, as both the Prosecution and the Defense agree that the Tribunal has the power to make such limitations.

Very important distinctions are to be made here, first as to the different periods of time. The SA men who joined the SA after the seizure of power in 1933 joined an organization that on its face bore the stamp of approval by the state. Admittedly not even a state authority can declare crimes against

humanity legal; but when weighing the degree of guilt and the severity of the penalty it is, nevertheless, of considerable importance whether the perpetrator acted outside the bounds of the laws in force and committed offenses against the positive law, or whether his acts, although they may offend a higher moral order, are not contrary to the laws of his country. Therefore an exemption should be made at any rate of all those SA members who joined after 1933, and who can be proved to have had no part in the events of 10 and 11 November 1938.

In regard to categories, I urgently request, in the interest of justice, a double limitation:

1. Simple SA members up to the rank of Sturmführer should be exempted at any rate and, if possible, very soon. I mentioned previously why this appears imperative in the interests of justice, at least in the American Zone. Perhaps—and I should welcome this tremendously—Justice Jackson would have the kindness to pay special attention to this matter once more. The idea of such limitation is also supported by the fact that it would considerably reduce the numbers by eliminating the simple followers; and in this way the technical difficulties, which seem almost insurmountable, would also be considerably simplified.

2. It was gratifying that the Prosecution yesterday agreed to separate proceedings against the SA Wehrmannschaften, the bearers of the SA Sports Badge, and the members of the SA Reserve—or rather, to exempt them altogether. In the interest of equality and justice as recognized by the law and by this Tribunal, it would be fair to separate from the SA all those special sport units which had only a loose organizational connection with the SA. These are the Navy SA (Marine-SA) and the Cavalry SA (Reiter-SA).

There are a number of applications before the Court, and it is well known in Germany to everybody involved that these particular units were exclusively devoted to their respective sports, namely, sailing and rowing on the one hand, and horsemanship and holding of tournaments on the other hand. When in 1933 the Party came to power, it attempted to take charge of all sport activities in Germany. Consequently, the various navy clubs and the so-called country riding clubs became affiliated with the Party, but both clubs had hardly anything to do with the political SA, even after their regrouping. Only their chiefs were, according to the organizational system, subordinate to the SA. They are very well suited for separate proceedings because they constituted a completely closed group within the SA.

None of the main defendants present here was ever a member of one of these sport groups. Members of the Cavalry SA feel that they are at a particular disadvantage because the Prosecution has not indicted the NS

Kraftfahrkorps (National Socialist Motor Corps) and the NS Fliegerkorps (National Socialist Flier Corps), which is perfectly justified, since it is known that they were by nature sport organizations. The NS Kraftfahrkorps and the NS Fliegerkorps were, however, until the year 1934, exactly like the Reiterkorps, sport divisions of the SA. The NS Kraftfahrkorps succeeded in gaining organizational independence since 1934 or 1935, due to the political influence of its leader Hühnlein. The NS Fliegerkorps also succeeded in doing so. The NS Reiterkorps, however, did not have such influence and merely succeeded in 1936 in being recognized as an independent NS Reiterkorps; but it still remained formally connected through its leadership with the SA, since Litzmann, the Chief of the Reiterkorps, was subordinate to the Chief of the SA. For this purely formal reason about 100,000 farmers and farmhands who enjoyed education in horsemanship through these country riding clubs are indicted here. It can be proved that they never took part in politics or in any activities against Jews or people of other beliefs. Likewise a pursuit of militaristic aims is out of question in the case of the Cavalry SA. Already after the First World War it was evident that the horse had no further role in war. This charge would rather be in point as far as the Kraftfahrkorps and the Fliegerkorps are concerned. The Prosecution stated correctly that these organizations were by nature predominantly sport organizations.

For this reason I should be grateful to the Prosecution if they would once more examine the cases I have mentioned in order to find out whether or not the same conditions exist in this case as in the case of the SA Reserve and the armed SA units.

As the last group I mention the SA university units (SA Hochschulstürme), because they were almost without exception obligatory organizations for those students who would not have been admitted to the state examinations without a record of activity in such organizations. The same thing applies to the SA health units (SA Sanitätsstürme), which represented an obligatory activity for many physicians who were applying for positions.

I should like to correct myself on one point, because it has been called to my attention that I wanted to set a time limit for those SA members joining after 1933. I should have said, “after 30 January 1933,” the day of the seizure of power.

In conclusion, I should like to say a few words about the hearing of SA members. Most of the members of the SA are free. If only a few so far have written to the Court, this is almost exclusively due to the fact that, since the SA in this country is generally considered inoffensive, they can hardly

imagine that a Court with the experience and the high standing of this Tribunal could reach a decision which would differ from public opinion. Should the Court, however, adhere to its conception of the SA, then I should like to support the suggestion made yesterday by the Prosecution to the effect that the notice be published once more for the members to make an effort to defend their interests. However, I share the opinion of counsel for the Leadership Corps, that it would not serve the interests of the proceedings if the direct contact between the Defense Counsel and his client were destroyed. In the case of the SA men who are free, a technically simple method could be used by having the main Defense Counsel in Nuremberg appoint deputies, preferably lawyers, in every province, for example, Baden, Bavaria, and Württemberg. The provincial press should make mention of these men. Every individual member of an organization could, with the help of these lawyers, answer by means of an affidavit those questions which the Court has found to be relevant.

In a very gratifying manner the American Chief Prosecutor stated yesterday, if I understood him correctly, that in the trial of the organizations, because of its fateful importance for millions of people, the principle of justice is much more important than the question of speedy proceedings. I should therefore like to join in the request made by Counsel for the Leadership Corps, that the trial of the organizations, which is to be regarded from different points of view, be separated from the trial of the main defendants.

Members of the Tribunal, I am at the conclusion of my remarks. I should like, however, to reply to the words, words worth heeding, spoken by Justice Jackson yesterday at the beginning of his address. He said that for the first time in history a modern state had completely collapsed, and that this surrender created for the victorious nations completely novel problems; that one of the most important tasks was to destroy the structure of those organizations and to prevent this country forever from waging wars of aggression or carrying out pogroms. All people of good will must sincerely welcome this aim and support Justice Jackson. It is, however, questionable whether the right way toward that end is to defame all members of organizations as such, involving millions of people.

I ask the Tribunal to consider that there is hardly a family in this country which did not have near relatives in some one of these organizations at some time. The organizations are dead, the system of terror and falsehood has disintegrated, millions of misled and deceived people have turned away from their leaders and seducers. But if they find themselves ostracized and

stigmatized along with them the effect might easily be the opposite of that which we all hope for.

Justice Jackson correctly pointed out in his speech yesterday that the Control Council will possibly change the method of denazification used so far, which has been rather mechanical, and make it more individual. Present experience that mechanical treatment evokes the feeling of injustice and thereby a false solidarity, might contribute to this. The millions of simple misled camp followers of the organizations would consider such a verdict an act of revenge rather than a manifestation of justice. The ringleaders, however, could conceal their actual guilt behind the backs of millions of people. The educational and corrective effect of a verdict as well as the idea of just atonement would consequently be weakened.

THE PRESIDENT: The Tribunal will adjourn now for 10 minutes.

[*A recess was taken.*]

DR. LÖFFLER: I ask the Tribunal that I be permitted to make one more remark.

In my previous request I did not ask for the exemption of one particular group, namely, the Stahlhelm; this was only because, according to my information, the Stahlhelm was transferred in its entirety to the SA Reserve after the seizure of power and therefore, in my opinion, is included in the declaration made yesterday by Justice Jackson exempting the SA Reserve.

HERR BABEL: May it please the Tribunal, I should have considered it appropriate in the interest of a speedy trial that the Defense not answer the inquiries of the Tribunal and reply to the arguments of the Prosecution until they have received in writing the extensive and important arguments of the Prosecution and are thereby in a position to deal with the whole complex of problems comprehensively and conclusively.

Since a number of Defense Counsel for the organizations have already spoken, I feel prompted to do the same, insofar as I am in a position to do so at this time and consider it necessary and appropriate.

The Tribunal desire to have a discussion in order to define the legal concept of the criminal organization and desire in particular to examine the question of which qualifying elements of a factual nature are necessary in order to declare an organization criminal. The Defense believe that a final and basic definition of this concept, which is entirely new to any legal system, can be given only at the end of the proceedings by means of a special hearing of evidence after all necessary factual information has been collected and examined.

The Prosecution have already presented a definition, which, however, raises very serious objections, because it is derived from legal ideas which have grown in countries other than Germany, under different conditions and circumstances, and which involve far less important legal consequences than those now considered by the Tribunal, the public opinion of the world, the German people and jurisprudence, and jurisdiction in general.

The organizations now indicted are mostly large mass organizations, without aims and ideas of their own, organizations whose Party-political aims and purposes and Party activities developed to national dimensions.

A just and pertinent definition can be found for these organizations only on the basis of the evidence to be presented concerning the nature and aims of these organizations and the knowledge, intentions, and activities of their members. Considering the basic difference of the organizations which have been and are now being investigated, it is more than questionable whether it will be possible to take the legal basis applied so far to single cases as a basis for proceedings against political organizations comprising millions of people.

The Prosecution and the Defense are probably agreed that the Indictment is actually not directed against the organizations, which do not exist any more anyhow, but in fact against the former membership. Likewise the opinion seems to be held unanimously that the Tribunal as a matter of principle will give the members an actual opportunity, not only a theoretical one, to be heard on the question of the criminal character of the organizations; that follows all the more since, according to Law Number 10, the possibility seems to be excluded that the members may make essential objections in regard to the organizations and their own person during the subsequent individual trials. If the Tribunal does not measure the responsibility of the entire organization on the basis of the responsibility of the individuals comprising it, the danger of collective liability arises, which would create such a degree of injustice affecting individuals in such a way that it would be much worse than the justly attacked Sippenhaftung of the Third Reich, which in a criminal way aimed at involving innocent members of the family in proceedings taken against any one of its members.

In order to define a criminal organization, evidence and information as to the knowledge, intentions, and actions of the members of the organizations must be provided; similarly, before convicting individuals, either singly or in the mass, justice and human dignity alike demand that they should each be informed of the indictment and should each have an opportunity to be heard in his own defense. This requirement is imperative in view of the serious legal consequence threatening the members of the

organizations in case of a verdict against them, such as loss of property, long-term imprisonment, and even the death penalty.

Last but not least, the hearing of all members of the organizations is also necessary because the unrestricted compilation of judicial evidence appears to be inevitable in order to work out the legal definition of criminal character.

The Defense do not ignore the fact that, considering the scope of the Trial, these basic demands are confronted with tremendous difficulties. The scope of the Trial, however, should not reduce the thoroughness of the procedure but, on the contrary, should increase it.

May it please the Tribunal, there are businessmen who are owners of several firms. If, now, the owner uses one of these firms to commit criminal acts, can we say that the other firms and their employees are also criminal? On the basis of this principle, I consider it necessary to point out which organizations, according to the reasons given by the Prosecution so far, are affected by the Indictment as units of the SS. They are:

1. The General SS—strength at the beginning of the war, about 350,000 men. This number includes the variety of special units like cavalry, motor, information, music, and medical units.

2. The Waffen-SS, of which, at the end of the war, there were still under arms about 600,000 men. In the over-all number of Waffen-SS must be included about 36 divisions of the combat troops and a large number of reserve units of the reserve of the Armed Forces, as well as all those who were discharged from the Waffen-SS or who left in some other way. The verdict in this Trial would also affect the honor of the dead and the fate of their surviving relatives, so that the dead also will have to be included in this number which demonstrates the far-reaching significance of this Trial. Consequently, the total number of members of the Waffen-SS, especially when including those discharged as unfit for war service, would be many times larger than the figure representing the final strength.

On the basis of investigations under way the Defense will submit still more accurate figures, unless this is to be done by the Prosecution, which in my opinion ought to submit to the Court the information necessary for a verdict.

3. The Death's-Head Units—before 1939, about 6,000 men.

4. SS troops for special employment, including the Adolf Hitler Bodyguard—before 1939, about 9,000 men.

5. Honorary Führer of the SS, whose number will probably turn out to be very large, as, for instance, the Farmer Leaders (Bauernführer) of the Reich

Food Estate down to the District Farmer Leaders (Kreisbauernführer) were for the most part appointed honorary Führer of the SS. Similar conditions prevail with respect to the chiefs of several branches of the state administration, who were often made honorary Führer of the SS without any initiative on their part and without being able to do anything about it. Likewise many leaders of the Reich Veterans' League received honorary ranks in the SS.

6. The "supporting members" of the SS, among whom were also many non-Party members; their number is not yet known but it is certainly very considerable.

7. SS Front Line Auxiliaries of the Reich Post Office.

8. SS Construction Units.

9. SS Front laborers.

10. The entire Regular Police, to which belonged:

(a) The Municipal Police of the Reich with several special units, such as traffic squads, accident squads, information, cavalry, police dog squads, radio, and medical units; (b) the Gendarmerie with innumerable stations and posts, distributed all over the country, even in the smallest villages, which had rendered service without essential changes since Napoleon's time—the motorized Gendarmerie supervised traffic; (c) the Municipal Police of smaller communities; (d) the Water Police; (e) the Fire Police; (f) the Technical Auxiliary Police Units, the Technical Emergency Service. . .

THE PRESIDENT: Dr. Babel, you are going rather fast if you want us to take down these categories.

HERR BABEL: Mr. President, I shall submit a copy to the Tribunal.

THE PRESIDENT: Personally, I prefer to understand the argument when I hear it.

HERR BABEL: I repeat: (f) the Technical Emergency Service, the Compulsory, Industrial, and Voluntary Fire Brigades; (g) Police and Gendarmerie Reserves; (h) the Air Raid Police, with security and auxiliary service; (i) the Town and Country Guard.

Further, there belonged to the Regular Police a great many central institutions, such as the State Hospital for Police, the Police Officers' Schools, the Technical Police School, the Police Sports and Cavalry Schools, Police and Gendarmerie Schools, the Water Police School and the Reich Fire Brigade School, the Driving and Traffic Schools, the Air Raid Precautions Teaching Staff, the School and Experimental Station for Police Dogs, and the Horse Depot of the Police.

In 1942 all the above-named units of the Regular Police, including the police troop units, totaled about 570,000 men. If we follow the presentation of the Prosecution, then all the groups, institutions, and organizations enumerated so far belong to the SS.

11. All those units of the Security Police which did not belong to the separately indicted Gestapo and SD, that is, offices and officials of the Criminal Police.

12. The Volksdeutsche Mittelstelle.

13. The Offices of the Reich Commissioner for the Preservation of German Nationality.

14. National Political Institutes.

15. The Lebensborn Association.

16. The SS women auxiliaries.

All these groups, institutions, and suborganizations were under the administration and jurisdiction of the SS.

By way of summary, the Defense estimate the group of persons indicted as SS members at several millions. The verdict, however, will also affect the members of the families of all SS members, at least indirectly, so that additional millions will be affected personally, morally, and financially. Since, besides the SS, the mass organizations of the SA and the Leadership Corps are also indicted, a verdict against the indicted organizations would amount to a considerable part of the German nation's being considered criminal.

According to Law Number 10 of the Control Council, of 20 December 1945, every member may be subject to any penalty, including the death penalty, merely because he was a member of an organization which has been declared criminal.

The question put to discussion by the Court as to what objections can be made in this collective Trial and what objections can be made later in the individual trials has, in my opinion, been decided already by Law Number 10 to the effect that in the individual objections of a defendant, for example, ignorance of the criminal aims of the organization, cannot be given any consideration.

It is, therefore, necessary that evidence in this present Trial should be admitted to the widest extent possible. It should be made possible for the Defense to rebut, by means of evidence of the factual situation at the date of the respective act, the conclusions drawn by the Prosecution retrospectively from individual acts and facts.

When evidence on behalf of the individual defendants was submitted, the Tribunal declared its readiness to admit evidence if there is only the slightest degree of relevancy. Considering the significance of the decision of this Court for the millions of people affected and for their families, it appears to be an absolutely necessary condition that evidence be admitted to the largest extent possible in order to permit a just verdict, to clarify the facts, and especially to find out to what extent members of the SS participated in any criminal acts according to Article 6 of the Charter.

To clarify the question of whether it is permissible to conclude from the fact of the extent of the indicted actions, as maintained by the Prosecution, that the members of the SS had knowledge of these actions, it will also be necessary to admit evidence to the widest extent possible about the question as to whether or not and, if so, to what extent the members of the SS knew of these actions, as well as evidence of the facts which prove that the members of the SS, like the majority of the German people, did not know anything about these matters, owing to the precautions taken to keep them secret.

The discussions initiated by the Tribunal make it necessary to anticipate essential parts of the final pleadings. A ruling by the Tribunal on the question of evidence would at this time signify a ruling by the Tribunal on an essential part of its future decisions, without any hearing of the evidence on the objections of the Defense having taken place. The Charter has a gap, insofar as it has not defined the facts which qualify an organization as criminal. This gap cannot be filled by admitting evidence only in a certain direction. By doing so the Tribunal would anticipate an essential part of its final verdict.

According to what I have said, I believe that it will be necessary for the evidence to include all elements which might influence the decision of the question as to whether the organization of the SS was criminal. This, however, would hardly be possible within the framework of this Trial which, according to the Charter, is to be conducted as expeditiously as feasible. Therefore, I consider it necessary to separate the procedure against the SS and the SD from the trial of the individual defendants.

On 15 January 1946, partly for other reasons, I made a motion for separation. As far as I know, no ruling has yet been given. I repeat this motion as follows:

Judging from the course of the Trial and the procedure up to now, I have come to the opinion that the Indictment against the organizations of the SS and the SD—for which I have been appointed Defense Counsel by an order of the International Military Tribunal of 22 November 1945—and probably

against the other indicted organizations also, cannot be dealt with within the framework of this Trial for factual and legal reasons.

1. So far as the legal aspect is concerned, I restrict myself to a few brief points reserving for myself the right to present additional arguments at a later date:

(a) The International Military Tribunal has no jurisdiction. To this point I should like to remark that a few days ago I learned from a newspaper article that the objection of lack of jurisdiction has already been raised during the session of 20 November 1945 and has been overruled by the Court. I asked for a copy of the record of 20 November 1945—and also of the following days—but I have not received it to date. Therefore, I could not take note either of the motion and the reasons given or of the decision of the Tribunal and its reasons.

(b) A criminal procedure against an organization is not possible or permissible, especially against an organization which has been dissolved.

(c) To appoint a Defense Counsel for a dissolved organization, that is, for something non-existing, is not possible and admissible.

2. As to the facts, I am compelled to make more detailed statements in support of my motion.

On 19 November 1945 I was told orally that the International Military Tribunal intended my nomination as counsel for the organization of the Leadership Corps. After discussion I declared in writing my agreement to take over the obligatory defense. On 20 November 1945 I was told orally that I should take over the defense of the organizations of the SS and SD. On 21 November 1945 I was told orally that I had been appointed counsel for the SS and SD, and that I would receive the written appointment very soon. On 23 November 1945 I received the letter of appointment, dated 22 November 1945, and in the English language, and a few days later I received the German translation which I had requested. This letter, in the translation which I received, reads as follows:

> "Pursuant to the direction of the International Military Tribunal you are hereby appointed to serve as counsel in the case of *United States et al. v. Göring et al.* for the members of the defendant organizations, the Schutzstaffeln der Nationalsozialistischen Arbeiterpartei (commonly known as the SS) and the Sicherheitsdienst (commonly known as the SD), who may make application to the General Secretary under the order of the International Military Tribunal attached hereto."

A few days later a file was handed to me with about 25 letters addressed to the General Secretary of the International Military Tribunal, partly from members of the SS and partly from relatives of such members. When I asked about my position and the position of these applicants in the Trial, I was told orally that these applications were to be submitted by me to the Tribunal in proper form.

On 23 November 1945 there was a conference, during which a number of questions and suggestions were brought up concerning the position and rights of these members of the indicted organizations, who had applied for and been granted leave to be heard, and of the defense counsel provided for them.

From 28 November 1945 until 11 December 1945 I was not able to obtain the applications filed by members of the SS and SD although I asked for them several times each day. At that time about 25 applications were handed to me each day, upon request, and I had to return them in the evening of the same day. I was told every time that the Tribunal needed them and that they had not yet been returned. When I received the folder again on 11 December 1945 the number of petitions had increased considerably.

By notice of 10 December 1945, according to the German translation which I received on 11 December 1945, the Tribunal made known its view that a member of an indicted organization who has applied to be heard on the question of the criminal character of the organization is not to be considered a defendant but will have the individual status of a witness only, although he will be permitted to give evidence; furthermore, that counsel representing any group or organization may, for this group or organization, exercise the rights accorded by the Charter to counsel for individual defendants.

After a closed session of the Court on 11 December 1945, in which counsel for the indicted organizations also took part, the Tribunal by notice of 17 December 1945—of which I did not receive a German translation until a few days later—directed that the respective counsel, that is, counsel for the organizations, should represent only the indicted groups and organizations and not individual applicants.

Not until this date was the extent of my duties unambiguously stated and defined.

THE PRESIDENT: The Tribunal would like to know what your application now is. The object of this session is to have an argument from Counsel for the Prosecution and Counsel for the Defense in order that the legal questions with reference to these organizations should be clear, and

what your personal experience during November and December of 1945 has to do with it the Tribunal is unable to see.

HERR BABEL: Mr. President, before I started reading this motion, I pointed out that already on 15 January of this year I made a motion to separate the procedure, and to my knowledge no ruling has yet been given. I have tried to repeat in part the reasons for this motion which I made at the time. If the Court does not think it desirable or necessary, I shall refrain from doing so.

THE PRESIDENT: I don't see any relevance in what you have been reading to us now, either to the question of whether there should be a separate trial or to any other questions with reference to the criminal organizations.

HERR BABEL: Mr. President, under these circumstances I shall not read those further arguments, which may be known to the Court from my written motion, and I shall come to the conclusion of what I still wish to say.

THE PRESIDENT: Dr. Babel, the Court will, of course, consider the suggestion which has been made, I think, by other counsel for the organizations as well as the suggestion which I understand you are now making, that it is necessary to have a separate trial. The Court will consider that. But what you have been saying to us does not appear to me to have any relevance to that.

HERR BABEL: Mr. President, in my former motion I merely wanted to point out the difficulties I had—since I was still alone and had no assistance—before I was in a position to devote myself to my real assignment; for that reason also, in my opinion, my motion for separating the trial was well founded at that time. Part, or the greater part, of what I said then has been repeated now. What I have read just now, and the remainder of my motion, might have more significance today, but I shall refrain from reading it, since the question of the separation of the trial has already been brought up and argued by others. Therefore, for the rest, I can also join in the arguments brought forward by my colleagues in this regard. In this connection I should like to point out that on 19 January 1946 I made a motion to be relieved of the defense of the SD because of conflicting interests.

I believe I ought to call this to your attention as I do not plead today for the SD, because I have been waiting for a ruling on my motion. I reserve for myself the right to make further statements after I receive a copy of the record of 28 February, in particular on the question of the membership of individuals and groups of persons in the SS, on the definition of the lines of demarcation between the SS and the governmental sector, on limitations as

to periods and organizations, on the question of voluntary membership, on limitation of responsibility for other reasons according to criminal law, and on the jurisdiction of the SS courts.

In view of the tremendous amount of work which I had to do so far, I have to this date not yet been able to take a stand on all these points. I wish to make the remark that the suggestions made by the Prosecution and several of the Defense Counsel as to the presentation of evidence seem untenable to me. They would entail a considerable restricting of the Defense. To carry them out seems to be impossible also for reasons of time.

This concludes my argument.

THE PRESIDENT: The Tribunal will now adjourn.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

THE PRESIDENT: The Tribunal has decided to alter the order of procedure, and they will therefore not sit in open session tomorrow but sit in closed session tomorrow, Saturday; and sit on Monday in order to hear the applications for witnesses and documents by the next four defendants in order.

Now, there is another counsel for the organizations to be heard, is there not?

DR. LATERNSER: The main subject of the discussion which, by request of the Tribunal, has taken place today and yesterday is the question as to what is relevant evidence in the case against the indicted organizations.

As a preliminary question the concept of the criminal organization in particular must be clarified. Consequently it is not the task of counsel for the organizations to plead in detail; that should be reserved for the later final address by Defense Counsel, but rather the subject of discussion is definitely limited, as far as the Defense is concerned, to the above-mentioned question of the relevancy of evidence and also to certain fundamental issues which must be touched upon in order to judge the relevancy of evidence.

According to the sequence provided by the Indictment, our colleague Dr. Kubuschok spoke first as defense counsel for the Reich Government. In his address he dealt with the general issues in compliance with Point Number 1 of the decision of the Tribunal of 14 January 1946. In order to avoid unnecessary repetition, I should like to make the legal arguments of my colleague Kubuschok, to their full extent, part of my own argument. At the same time I submit the request that the Tribunal pay particular attention to the contents of these arguments presented yesterday.

With regard to the definition of the concept "criminal organization," I should like to make a few short remarks and additional statements. It is obviously a well-considered provision of the Charter that the Tribunal can declare the indicted organizations criminal; it is thus not obliged to do so but can exercise its free and conscientious judgment.

If the Tribunal comes to the conclusion that the declaration of the group as criminal can or has to lead to impossible, untenable, and unjust consequences, then the rejection of the Prosecution's demand would as a matter of course be mandatory.

It has already been stated by those who have just spoken what grave legal consequences would result, as far as the members are concerned, from

a declaration of the criminality of the groups and how the undoubtedly vast number of innocent members would also be affected by that declaration. As far as these consequences for the members are concerned, it cannot be emphasized strongly enough that all the members of the groups and organizations will be affected directly by a declaration of criminality, insofar as by the verdict of the Tribunal it would irrefutably be established that they are accused of a crime, namely, the crime of having belonged to a group or organization which has been declared criminal. That this membership is a crime already follows clearly from Articles 10 and 11 of the Charter. In Article 10 it is stated that the competent courts of the individual occupation zones have the right to put all members on trial because of their membership in groups or organizations which have been declared criminal.

It is further enacted that in those trials the criminal nature of the group or organization shall not be questioned. Thus, the members can be indicted because of membership in the group or organization; and, if every indictment before a court can, of course, deal only with a crime, then it is already established that membership in the group or organization is a crime. Furthermore, in Article 11 of the Charter membership in a group or organization declared criminal is specifically designated a crime. That follows from the very words of the article, which reads: ". . . with a crime other than of membership in a criminal group or organization. . . ."

In the same way in the law of 20 December 1945, issued to implement the Charter, membership in a group or organization declared criminal is specifically declared a crime. Consequently the finding of the criminal character of the group or organization by the Tribunal will state with immediate effect that all members, because of their membership in the group or organization, have committed a crime, and this must necessarily lead to untenable consequences.

It is not correct to say that these members can exculpate themselves in the subsequent trials before the individual military courts. If mere membership in the organization is defined as a crime, they can take exception to the charged guilt only by declaring that they were not members of the group or organization.

If Justice Jackson is of the opinion that in the subsequent trials they could plead that they had become members under duress or by fraud, the admissibility of this plea nevertheless seems to be highly questionable.

Justice Jackson himself pointed out that a plea of personal or economic disadvantages cannot serve as grounds for duress. What other kind of duress could be considered relevant? According to German criminal law only physical coercion would be left for consideration, and that only for the

period of its duration. In this case also fear of personal or economic disadvantage is no ground for exculpation as far as remaining in the group or organization later on is concerned.

Thus a member of a group or organization declared criminal has in the subsequent trial only the possibility of pleading certain extenuating circumstances which might influence the degree of penalty. The question is now whether, according to the principles of justice, these inevitable consequences are tolerable; so far as innocent members are concerned, this question can be definitely answered only in the negative.

Justice Jackson is further of the opinion that there probably are no innocent members of the organizations concerned, because it is simply incomprehensible to sound common sense that anyone joined the indicted groups or organizations without having known from the very beginning, or at least very soon after, what aims and methods these groups and organizations were pursuing.

This point of view may appear comprehensible to the retrospective observer, after the crimes charged to the groups and organizations have collectively been brought to light. That the mental attitude of the members to the aims and tasks was or could have been entirely different at that time cannot be doubted by anyone.

If one were to subscribe to Justice Jackson's interpretation, then the provision of Article 9 of the Charter providing for a hearing of members on the question of the criminal character of the organizations would make no sense at all. It would then be entirely superfluous to admit any sort of evidence in respect to this, and it would furthermore be unnecessary to discuss the criminal character, as the Tribunal itself has suggested.

If we follow the Prosecutor's line of thought that, according to sound common sense, it is obvious that all the members took part in the crimes mentioned in Article 6 of the Charter, then the provisions regarding the Common Plan or Conspiracy would suffice altogether as grounds for prosecuting and punishing these members who, without exception, are to be considered guilty. In this case the structure of the declaration of criminality and the stipulation of its consequences would in no way have been necessary.

From the following deliberation it is to be inferred that the declaration of the criminality of the organizations is not necessary and can be dispensed with altogether.

Justice Jackson declared that, of course, no one intended an indictment of the innumerable members of the groups and organizations, which would

result in a flood of trials which could not possibly be dealt with in one generation. What will be done is to seek out and find only those who are actually guilty and have them brought to trial.

Thus it is not in any way necessary to create such a large circle of members through the declaration of criminality and to select the guilty from this circle. This selection can take place without creating this circle. That in a group or organization of many members there were obviously a number of innocent members is a fact of common experience which cannot be disputed, and this thought is taken into consideration not only by the Charter, but also by the Prosecution in that they want to exempt from one of the organizations the category of those with low-grade routine tasks, obviously because of the conviction that these had nothing to do with crimes, for otherwise they would have been members of or participants in the criminal conspiracy.

Besides this category, however, a number of other members come into consideration whom one cannot speak of as guilty in the legal sense of the term; for instance, those people who did not give any thought at all to the aims of the group. All these people would of necessity not only be dishonored by a declaration of the criminality of the group or organization but, if indicted, would also be punishable because of mere membership. Incidentally it might be mentioned that eventually their economic existence would be menaced or destroyed because of their membership in the group or organization and the defamation brought about by the declaration of criminality.

But again it must be asked whether all these consequences have been weighed and can be justified in view of the basic principle of all criminal law systems, according to which only the guilty are to be punished, and in view of the principle of substantive justice. That ought to be answered in the negative all the more if these members who would necessarily be affected by the verdict of the Tribunal were not granted any legal hearing in this Trial.

It has already been pointed out that granting a legal hearing to the vast majority of the members is unfeasible for technical reasons. Thus the unique situation arises that the Tribunal would pass verdict on all those members without knowing whether or not numerous innocent members would be affected thereby.

If Justice Jackson further pointed out that the issue under dispute is nothing new, but can be found in the penal codes of all other states and in particular also in Germany, this view likewise can in no wise be supported.

The German laws and precedents quoted are of a character entirely different from the structure of the Charter.

In Germany, as in almost all other states, the punishment of groups and organizations is not known at all, only the punishment of individuals is known. No German judgment has yet been passed by which a group or organization as such was subjected to penalty or was declared criminal. It is very well possible, though, that in the trials against members of criminal organizations the criminal character of the organization was stated in the opinion. This statement, however, had effect only on the convicted members and not on other members who were neither indicted nor convicted.

The provisions quoted of Articles 128 and 129 of the German Penal Code are provisions which corroborate exactly the view of the Defense, because they threaten only the participants in an illegal association with penalties and not the association itself. Also, the French laws quoted deal merely with the threat of punishment for participation and membership in certain associations with punishable pursuits. A possibility for declaring the association itself criminal is not to be found in these legal sources either.

The French Prosecutor quoted, first of all, Articles 265 and 266 of the Penal Code. The first provision forbids the forming of associations with a punishable pursuit; the second subjects only the participants to penalty. Likewise, the French law concerning armed groups and private militia, of 10 January 1936, provides only for the punishment of the participants. The same is true of the other law quoted, that of 26 August 1944, which provides only for individual responsibility. None of the above-mentioned laws allows the punishment of organizations. Consequently, they can support only the legal view of the Defense.

If in England and America—as exceptions—associations as such can be punished, that can be done only on account of certain groups of offenses and only to the effect that either the dissolution of the corporation may be pronounced or fines imposed. Naturally in such proceedings it is a necessary condition for the Prosecution and the Defense that the corporation as such be represented during the proceedings by its functionaries and representatives and be able to defend itself; whereas in this Trial the groups and organizations as such are summoned before the Court, although they do not exist any longer and although their functionaries are absent.

It has never been the case in any country that groups and organizations are declared guilty or criminal and that on the basis of this declaration of the Court all members of the groups or organizations can be or must be indicted and punished because of their mere membership. This is the completely

novel and odd feature which stands in contrast to the existing law of any country.

I believe it is permissible to say that neither England nor America would ever be willing to pass such a law for their own population. If all this proves that the declaration of criminality demanded must automatically result in grave and completely untenable consequences as demonstrated, then the demand of the Prosecution should be denied in the name of justice. The Charter, which in no way obliges the Tribunal to make such a declaration, would also not be violated thereby. In this way an injustice which could only injure the integrity of the judgment of the Tribunal in the eyes of our contemporaries and of posterity would be avoided.

My arguments lead to the following conclusion:

1. The Tribunal should, because of the legal arguments presented, as a matter of principle, refuse to declare any group or organization criminal; it is within the Tribunal's power to do so.

2. If this is not done, the concept of the criminal organization must be so defined that the innocent members are protected from serious consequences. This can be done only by means of a definition, as suggested yesterday by my colleague, Kubuschok. Accordingly, those subjects of evidence proposed by him should also be admitted if they are not *a priori* irrelevant because of the fact that, for legal reasons, the Prosecution's demand of a verdict against the groups and organizations cannot be granted. It is necessary that the following additional evidence be admitted for the group of the General Staff and the OKW, which I represent:

(1) The group included under the designation "General Staff and OKW" is not such a group and is not an organization. My explanation of this subject of proof is as follows:

(a) Justice Jackson is of the opinion that the concept of "group" is more comprehensive than that of "organization," that it does not have to be defined but can be understood by common sense. To this I must object that those who occupied the highest and the higher command posts represent the heads of a military hierarchy as it is to be found in every army in the world. There was no relationship whatsoever evident among the members of this group. Nor can such relations be assumed merely because of the official connections between the various offices or because of the channels which actually existed. Moreover, since the circle of people whom the Prosecution wish to include in this group is admittedly composed in a completely arbitrary way, simply on the basis of official positions occupied within a period of 8 years, there is no evident tie which could justify the assumption

of the existence of a group. But to form a group it is absolutely necessary to have some connecting element in addition to the purely official contact between offices.

(b) Aside from the Chiefs of the General Staffs of the Army and the Air Force, none of the individual persons in the group belonged to the General Staff. The German General Staff of the Army and the Air Force—the Navy had no admiral staff—was headed by the Chief of the General Staff and consisted of the General Staff officers who acted as operational assistants to the higher military leaders. For these reasons the designation or name given by the Prosecution to this fictitious group under indictment is false and misleading as well.

(2) The following subject of evidence, in addition to those advanced by my colleague, Kubuschok, should be admitted for the group of the General Staff and OKW: The holders of the offices forming the group did not join a group voluntarily, nor did they remain in it voluntarily. The admission of this subject of evidence is necessary for the following reasons: Justice Jackson stated yesterday that joining a group, or membership in it, must be voluntary. This condition is not present in the case of the group which I represent. The vast majority of the indicted higher military leaders had come from the Imperial Army and Navy; all of them had served in the Reichswehr long before 1933. They did not join any group, but were officers of the Armed Forces and got their positions, which they were not at liberty to choose, only on the basis of their military achievements. They also were not at liberty to withdraw from these positions without violating their duty of military obedience.

(3) All evidence is to be admitted which refers to the charge against the group of the General Staff and the OKW as contained in the summary of arguments. Evidence on these points could be presented in the following way:

(1) A number of people concerned should make sworn affidavits from the contents of which conclusions could be drawn regarding the typical attitude of a certain number of those involved. (2) Some typical representatives of the group ought to testify before this Court about the subjects of evidence submitted. (3) Every other sort of evidence having some probative value should be admitted to the extent necessary.

We request that this evidence should be admitted at present to a full extent for the time being without prejudice to a subsequent decision on the weight of this evidence, just as Justice Jackson suggested the same thing on 14 December 1945 with regard to the evidence offered by the Prosecution,

for at present a binding decision on the relevancy of the evidence offered cannot be reached.

Whether this evidence is necessary at all and whether or not and to what extent it is relevant depends on the following: (1) Whether the Tribunal, following the arguments of justice and fairness as submitted and by authority of the power given it, will decline to declare these groups and organizations criminal. (2) Or, if this is not done, in what way it defines the concept of criminal groups and organizations. These two points cannot be definitely decided at present, since there is still a great deal to be said about these thoroughly difficult and significant and completely novel problems, as well as about the impressive address delivered by Justice Jackson. One of my colleagues has undertaken to work out a comprehensive memorandum on all these problems and questions which will be ready in about two or three weeks. I request that additional arguments pertaining thereto be reserved for me and my colleagues at that time.

One last point: The Tribunal ought also to reach a ruling as to what is to be done about the last word for the organizations.

THE PRESIDENT: Mr. Justice Jackson, the Tribunal would be glad to hear you in reply.

MR. JUSTICE JACKSON: I think there is not much that I care to say in reply, but there are one or two points which I would like to cover. It has been suggested that there be a separation of the trial of the issues as to the organizations from the Trial now pending. I think that is impossible under the Charter. I think the Trial must proceed as a unit. Of course, it is possible to take up at separate times different parts of the Trial, but the jurisdiction conferred by Article 9 for the trial of organizations is limited.

It is at the trial of any individual member, of any group, *et cetera*, that this decision must be reached and it must be in connection with any act of which the individual may be convicted. So I think that any separation, in anything more than a mere separation of days or separation of weeks of our time, is impossible.

I find some difficulty in understanding the argument which has been advanced by several of the representatives of the organizations that there would be some great injustice in dishonoring the members of these organizations or branding the members of these organizations with the declaration of criminality. I should have thought that if they were not already dishonored by the evidence that has been produced here, dishonor would be difficult to achieve by mere words of the declaration. It isn't we who are dishonoring the members of those organizations. It is the evidence in this

case, originating largely with these defendants, that may well bring dishonor to the members of these organizations. But the very purpose of this organizational investigation is to determine that part of German society which did actively participate in the promulgation of these offenses and that those elements may be condemned; and, of course, if it carries some discredit with it, I think we must say that the discredit was not originated by any of our countries; the dishonor originated mainly with those in this dock, together with those whom the fortunes of war have removed from our reach.

There seems to be some misunderstanding as to just what we mean, or at least we do not agree as to what is to be meant by treating these organizations as generally voluntary. The test which has been advanced by the counsel for the organizations would, it seems to me, completely nullify any practicable procedure.

Now let us contrast the Wehrmacht and the SS to get at what I mean by regarding an organization as generally voluntary. The Wehrmacht was generally a conscript organization, but it may have had a good many volunteers in it. I do not think we would be justified, because there were volunteers, in calling the Wehrmacht a voluntary organization. The SS, on the other hand, was generally a voluntary organization, but it did have some conscripts, and I do not think it would be any more just to carry the SS into the class of conscript organizations because of a few members than it would to classify the Wehrmacht as *voluntary* because of a few members. In other words, in neither case would we be justified in allowing, as we might say, the "tail to wag the dog." It is a question of the general character of the over-all organization that decides what these organizations are.

Now, of course, if the Tribunal saw fit to say that its declaration was not intended to apply to any groups, sections, or individuals who were conscripts, that is one thing. I have no quarrel with that. From the very beginning I have insisted that of course we were not trying to reach conscripts. But if you sit here week after week determining who is a conscript and just where that principle leads, that, I think, would be quite apart from what we ought to do here.

A great deal of argument is addressed to the fact that proof is lacking—or that here should be stronger proof—that these organizations' real criminality was known to the members; and the inference seems to be that we must prove that every member—or, at least—that we cannot hold members who did not know this criminal program on the part of these organizations. I think this gets into a question, perhaps, of the sufficiency of proof rather than one of principle, but it seems to me again that we have the common sense division.

If someone organized a literary society for the study of German literature and accumulated some funds and had a home, a house, and some of the defendants became its officers and secretly diverted its funds to a criminal purpose, while all the time to the public it was presenting only the appearance of being a literary society, it might very well be that a member should not be held unless we proved actual knowledge. Or, if a labor union, ostensibly for the purpose of improving the welfare of its members, has its funds or properties or the prestige of its name diverted by those who happened to gain control of it to criminal purposes, then you have a situation where the members might not be chargeable with knowledge.

But when I speak of knowledge sufficient to charge members, as I did, I do not mean the state of mind of each individual member. That would be an absurd test in any court of law. In the first place, it is never a satisfactory thing to explore the state of mind of an individual; and, in the second place, it is impossible to explore the state of mind of a million individuals. So we might as well drop this from consideration, if that were to be the test.

But let us look at this over-all program. How did these few men who were the heads of this Nazi regime kill 5 million Jews, as they boast they did? Now, they didn't do it with their hands; and it took disciplined, organized, systematic manpower to do it. That manpower wasn't casually assembled. It was organized, directed, and used. Can the killing of 5 million Jews in Europe be a secret? Weren't the concentration camps known in every one of our countries? Were they not a byword in every land in the world—the German concentration camps—and yet we have to hear that the German people themselves had no knowledge about it.

Our public officials were protesting against the slaughter of Jews diplomatically and in every other way, and yet we are told this was a secret in Germany. The name of the Gestapo was known throughout the world, and there isn't a man among counsel who would not have turned white if, in the night at his door, someone rapped and said he was representing the Gestapo. The name of that organization was known—unless we are to assume that it was singularly secret in Germany, but known to the rest of the world.

That sort of thing bears on this question of what men who joined these organizations ought to know. There was no declared and ostensible purpose of the SS, SA, and several of these organizations, except to carry into effect the Nazi program. They would make themselves masters of the streets.

The story is all in the evidence, and I won't go on to repeat it. The program was an open, notorious program, and these were the strong-arm organizations. So it seems to me that we get down to the situation where, as Chief Justice Taft once said to the Supreme Court of the United States on a

somewhat similar question: “We as judges are not obliged to close our eyes to things that all other men can see.” And this was notorious and open.

It is a little hard, if Your Honors please, for an American patiently to listen to the arguments made here again and again, that there is some plan here to punish with death penalties or extremely severe penalties people who innocently got caught in this web of organizations. If there were the slightest purpose to go through Germany with death we wouldn’t have bothered to set up this Tribunal and stand here openly before the world with our evidence. We were not out of ammunition when the surrender took place, and the physical power to execute anyone was present.

These powers have voluntarily, in their hour of victory, submitted to the judgment of this Tribunal the question of the criminality of these organizations. And it seems to me a little trying on the patience of representatives of those powers to be told that in back of this is some purpose to wreak vengeance on innocent people. I think it is difficult for those who have survived this Nazi regime to understand how reluctant we are to kill any human being. It is a commentary on the state of mind that survived this Nazi regime, rather than upon us.

Control Council Act Number 10—I don’t know whether Your Honors have copies of that—Control Council Act Number 10, does make membership in the categories which may be convicted a crime, and I think it ought to. It ought to be sufficient to bring before a Tribunal inquiring into the detail of each individual any individual as a member, and that is all that we have here in a declaration, in substance, an indictment which enables you to put the individual on trial.

It is true that the punishment may include a death penalty, and so long as the death penalty is imposed by any society for anything, the penalty of death ought to follow in some of these cases; the SS men who were responsible for the destruction of the Warsaw Ghetto, for example, or SS men who are shown to have been responsible for the top planning, even though they did not actually participate.

But I call your attention to the fact that in Provision Number 3 of Act Number 10 the slightest penalties are also provided. The restitution of property wrongfully acquired is one of the penalties that may be imposed. The deprivation of some or all civil rights is another. And during this period of reconstruction of German society, those minor penalties may very well be imposed upon people who entered into these organized plans. If not, you have the situation that the people who organized themselves to force this Nazi program, first on the German people and then on the world, are treated exactly the same as the German who was the victim of it. Now, isn’t it our

duty as occupying powers of a prostrate country to draw some distinction between those who organized to bring on this catastrophe and those who were passive and helpless in the face of overwhelming power?

Counsel for one of the defendants has already shown that, in administering the affairs, an SA man has been made a councillor in one of the districts. There is no purpose, because a man happened to get into the SA, to take his life or to take his property or to condemn him to hard labor for life. There is a purpose to have the basis for bringing these people in for what the military people call a "screening" and find out what kind of people they are and what they have been up to.

This Control Council Act—while I am frank enough to say I would not have drafted it in the language it is drafted in—this Control Council Act leaves, in the first place, discretion as to whether prosecutions will take place, in the hands of the occupying powers. I do not share the fears of counsel that millions—I have forgotten how many millions it was estimated—would be brought to trial. I know that the United States has worries enough over manpower to bring to trial 130,000, so we do not want to bring to trial millions. And it is for that reason that we have consented to the exclusion of some of these categories where it seemed we could exclude them very safely without jeopardizing the over-all program of dealing with these people.

Now, I want to make clear why it is that we do not want to go, in this Trial, into this question of each of these many subdivisions of these Nazi organizations and the functions of each. You have heard some of them named. They are innumerable. Some of them existed a short time and then disappeared.

The trial of each of these subdivisions would take—I would not venture to say how long. We do not want to see this Court trivialized. This is not a police court. This was not set up to be a police court; and this is a police court function, after this Court has laid down the general principles, to take up the case of individuals or of many individuals and to determine whether they are within or outside the definition.

I do not know whether a mounted group of SS men are any less dangerous than an unmounted group. I had always associated the equestrian art with warfare, but I do know it will take a long time to determine it.

I do not know whether SS motorcycle mounted traffic officers are less dangerous than those who do not have motorcycles, or were less criminal, but I should have a suspicion that the greater the mobility, the more active the group was in carrying out these widespread offenses.

I do not know about the physicians. I do not think it is up to us to try it in this case, but I suspect that a medical corps meant there might be some casualties; and this thing isn't innocent on its face, as it appears. This will require a great deal of evidence, if we go into each of these things, and it seems to me that it would be out of keeping with the character of this Tribunal to go into that kind of question.

It is not necessary to go into the group any more than it is the individual, and if you go into the group I know of no reason why you should not go into the individual, because if the group is within the general contour, each one member of that group is entitled to his hearing before he is condemned. It may very well be that the occupying authorities will decide that the whole group is not worth prosecuting. We have no illusions about this thing. We are never going to catch up with all the people who are guilty, let alone prosecuting the innocent. If they are prosecuted, however, it may very well be that the group would be treated together in some way, so that there could be a single determination as to each group.

In any event, since each individual has to have a hearing, there can be no point in having a hearing for subgroups between the individual and the principal organization that we ask to have declared guilty.

If there were any point in our fully trying this question and deciding just who is in and who is out of the circle of guilt, there would be no reason why the Charter would not have given you power to sentence. There would be no reason for further trials.

It seems to me that we must look at this matter somewhat in the light of an indictment. It is true it is an accusation against all members of the group. It has no effect unless it is followed by a trial and a conviction, any more than an indictment that is never followed by a trial would have effect. The effect of the declaration is that the occupying power may bring these individual members to trial. Administrative considerations will enter into it —the degree of connection. It may very well be that it will be decided that those who were mere members and not of officer rank of any capacity should not be punished. We cannot say just what will be necessary.

Frankly, I do not know just what manpower is going to be available for the United States' part in the follow-up of these trials. There are difficulties which I do not underestimate, but I do know that the idea that this means a wholesale slaughter or a wholesale punishment of people in Germany is a figment of imagination and is not in accordance with either the spirit of this Trial or the purpose of the Charter.

I think that is all that I care to say unless the Tribunal has some question, which I will be glad to answer.

THE PRESIDENT: Mr. Justice Jackson, there are one or two questions I should like to put up to you.

First of all, in your submission, do the words in Article 11 have any bearing, the words at the end of Article 11, where it is provided that "such court"—in the last three lines—"may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activity of such groups or organizations." Do the words "for participation in the criminal activity of such groups or organizations" add anything to the definition of the word "membership" in Article 10?

MR. JUSTICE JACKSON: I do not think they add anything. Frankly, the wording of this article has bothered me as to just what it does mean, since no punishment is imposed by this Tribunal at all for participation in the activities of the group. The purpose of the language was to make clear that the punishment for an individual crime, if one committed a murder individually or was guilty of aggressive warfare planning, is not to interfere with the punishment for being a member of a criminal organization or *vice versa*, to make clear that they are not mutually exclusive. But the language I am not proud of.

THE PRESIDENT: Secondly, would an individual who was being tried before a national court be heard on the question whether, in fact, he knew of the criminal objects of those groups?

MR. JUSTICE JACKSON: Well, I think he would be heard on that subject, but I do not think it would be what we in the United States would call a complete defense. It would perhaps be a partial defense or mitigation. I should think that the tribunal might well—the court trying it—might well have felt that he should have known under the circumstances what his organization was, despite his denial that he did not; and that his denial, if believed, will weigh in mitigation rather than in complete defense. In other words, I do not believe that you can make as a decisive criterion of guilt the state of mind of one of these members where you have no power whatever, no ability whatever, to controvert his statement of that state of mind. I think you have to have some more objective test than his mere declaration.

THE PRESIDENT: Then I understood you to say that it was not for the Tribunal to limit or define the groups which were to be declared criminal; but, as the Charter does not define them, isn't it necessary for the Tribunal to define what the group is?

MR. JUSTICE JACKSON: I think it is necessary for the Tribunal to identify the groups which it is condemning, sufficiently so that it would afford a basis for bringing the members to trial for membership. I do not think it is necessary to define the exact contours of guilt. It is defined in reference to membership rather than in terms of guilt or innocence. That is to say, it may be that there is some little section of the SS that on trial would be said to be not guilty of participating in the crimes of the organization. I do not think it is up to this Tribunal to take evidence, because if you take evidence as to some you must as to all, to separate out those elements. The SS is a well-known organization. Its contour is easily defined by membership, and within those contours it does not seem to me necessary to make exceptions.

THE PRESIDENT: But if there were to be an essential distinction on the question of criminality between the main body of the SS and, for instance, the Waffen-SS, would it not be the duty of the Tribunal to make that distinction?

MR. JUSTICE JACKSON: I do not think that would be necessary. I think when the member was brought to trial—one may be a conscript and still have remained in on a voluntary basis, or he may have gone beyond his duty as a conscript. I do not think it is necessary at this stage of the proceeding, where the individual is not here, to eliminate him. I do think that the principle that acts performed under conscription are not within the condemnation of the Tribunal is quite a different thing.

THE PRESIDENT: Is it possible for this Tribunal to limit the powers of the national courts under Article 10 by either defining the group or giving a definition of the word "membership" in Article 10?

MR. JUSTICE JACKSON: Well, if Your Honor pleases, I think every tribunal in its judgment has a right to include, in its judgment, provisions which will prevent its abuse. And I do not think this Tribunal is lacking in power to protect its decision against distortion or abuse. I take it that is the question rather than the question of if the national courts brought these persons to trial and paid no attention to the declaration—I do not suppose that there would be any power in this Tribunal to stop them from doing it. But I assume you mean as a consequence of this declaration, and I think that the declaration can be circumscribed or limited. I certainly would insist that the Court had inherent power to protect its judgment against abuse.

THE PRESIDENT: Do you think this Court could direct the national court to take any particular defenses into consideration?

MR. JUSTICE JACKSON: I do not know that it could put it in just that way, but I suppose it could define the categories in a way that the declaration would not reach any except those included within it. In other words, I think the declaration that this Tribunal will make is within this Tribunal's control. When you get away from the declaration, I think you would have no control over the national courts. But insofar as they relied on the declaration, you would have power to control the effect of the declaration, provided the effect was not inconsistent with the provisions of the Charter.

THE PRESIDENT: You did, I think, make some suggestions for obtaining such evidence as you thought was necessary. Do you wish to add anything to that?

MR. JUSTICE JACKSON: I have nothing to add to that, Your Lordship. I realize that the defendants' counsel have great difficulty in getting evidence, great difficulty in communication. I have it myself—great difficulty in getting letters delivered, great difficulty in all of these things. But I will state to this Tribunal categorically—I do not know what camp it is that was referred to yesterday as substantially refusing counsels' application to see their clients—but so far as the American Zone is concerned, counsel, if they are properly cleared to go there, will be given every facility to get every kind of evidence that is available in that camp. If they are there at mealtimes they will be fed, and if they are there at night they will be sheltered. We will put everything in their way to help them that is possible.

Of course, there are security problems involved, and counsel cannot just walk into a camp and make himself at home. He will have to be cleared in advance so that he meets the security requirements; but there is no purpose to obstruct, and there is every purpose to assist.

THE PRESIDENT: Thank you.

THE TRIBUNAL (Mr. Biddle): Mr. Justice Jackson, I should like to ask you a few questions. Some of them will be somewhat repetitious of what the President has already said. You will excuse me if I repeat one or two of those. Most of them are directed for the purposes of this argument, which, I take it, is to form some kind of definition of the organizations, which may, of course, not be final but will at least give us a view of what should be relevant to the defendants' making up their cases. So the questions are addressed to that, rather than any ultimate theory of definition.

You said that you would suggest excluding clerks, stenographers, and janitors in the Gestapo. Well, now, if we accepted that, would we not be obliged to exclude such categories from other criminal organizations?

MR. JUSTICE JACKSON: Not at all, Your Honor. I think there is a difference between a concession by the Prosecution and the necessity for the Tribunal's making a decision.

It might appear logical that if we conceded clerks, stenographers, and janitors of the Gestapo were not to be included, that no clerks, stenographers, or janitors should be included. It does not follow. The relationships in different organizations differ.

From what we know about the Gestapo situation, we are satisfied that clerks, stenographers, and janitors in that organization ought not to be included, and we do not want to waste any time on it.

THE TRIBUNAL (Mr. Biddle): Was the reason for that, that those clerks would not have had knowledge of what was going on in the Gestapo?

MR. JUSTICE JACKSON: I do not think either that they had sufficient knowledge, in general, to be held or that they had sufficient power to do anything about it if they did.

Now, this question of dealing with minor people—and it is one of the questions that the Court inevitably gets into, if it undertakes to draw these lines itself rather than letting them be drawn administratively by what we choose to prosecute—is illustrated by just this sort of thing.

One of the difficulties with the Court is that it tries to be logical, and ought to be logical perhaps. I have always thought that was the great merit of the jury system, that juries do not have to be, and in prosecuting we do not have to be. It may look illogical to exempt small people in one organization and not in another, but there were differences in them.

For example—I think it is in evidence; if not, it will be—it was pointed out at one meeting by the Defendant Göring that chauffeurs to certain officers had profited to the extent of half a million Reichsmark from Jewish property that they had gotten their hands on. Now, I suppose ordinarily you would say that a chauffeur for an official was not a man who had much discretion and not a man who was expected to know much about what his employer was doing, but you have a great deal of difference in their relations to these men.

So far as I am concerned, I want to make perfectly clear—and I think it will be assumed—the United States is not interested in coming over here 3,500 miles to prosecute clerks and stenographers and janitors. That is not the class of crime, even if they did have some knowledge, that we are after, because that is not the class of offender that affects the peace of the world. I think there is little reason to fear that that sort of person—unless there is some reason to feel that some guilty connection exists beyond merely

performing routine tasks—will be prosecuted in as big a problem as we have on hand here.

THE TRIBUNAL (Mr. Biddle): But in spite of that, you would include them in the SS, let us say?

MR. JUSTICE JACKSON: I would not exclude them.

THE TRIBUNAL (Mr. Biddle): I take it that would include them.

MR. JUSTICE JACKSON: If they were members, they would be included; if they were merely employees, that is something different; but if they took the oath and became a part of the SS organization, I think they stand in a different relation to the employed clerks of a government agency.

THE TRIBUNAL (Mr. Biddle): Now, somewhat along those same lines, you stated, in trying to define what a criminal organization was, that its membership must have been—I am quoting your words—"generally voluntary" and its criminal purpose or methods open and notorious and "of such character that its membership in general may properly be charged with knowledge of them."

Now I am going to ask you a question which is somewhat repetitious of what the President asked you, but perhaps you can specify a little more. Would it not be inconsistent with that test which you suggest for criminality, if we decline to consider whether any substantial segment of the organization—I mean a section or segment might comprise a third of the whole organization or even more, like the Waffen-SS within the general SS—was either conscripted, which is one test, or ignorant of the criminal purpose? Because if such a substantial segment could be shown to be innocent under these tests, would it not be necessary either to decline a declaration on that ground—that the criteria were not generally satisfied as to the accused organization—or else to exclude the innocent segments from the deposition of the criminal organization?

Now, that is a rather involved question but it seems to me, if the test is the knowledge or assumed knowledge, that evidence that a very large segment did not and probably could not have had knowledge would be relevant and would be relevant not only for the purposes of evidence, but for the purposes of definition?

MR. JUSTICE JACKSON: Well, I think you have at least two ideas in the question that must be dealt with separately. The first is that conscription and knowledge, to my way of thinking, present a very different problem.

As to conscription, as I said before, I think, if the Tribunal saw fit to condition its judgment not to apply to conscripted members of any organization, I shall have no quarrel with it. I have always conceded we did

not seek to reach conscripted men. If the overwhelming power of the state puts them in that position, I do not think we should pursue them for it.

If the Tribunal says that the Waffen-SS must be excluded because it was conscripted, that raises a question of fact.

THE TRIBUNAL (Mr. Biddle): Yes.

MR. JUSTICE JACKSON: And it raises a question of fact that we would be 3 weeks trying and that is what I want to avoid, because there were Waffen-SS and other Waffen-SS and there were different periods of time and there were different conditions; and we get into a great deal of difficulty if we undertake to apply the principle that the conscript is not to be punished; and that, it seems to me, is what is properly left to the future course, the question as to whether an individual or a number of individuals comes within that principle. In other words, I think this Court should lay down principles and not undertake what I call "police court administration" of those principles as applied to individuals.

THE TRIBUNAL (Mr. Biddle): May I interrupt you for a moment on the first point? I take it, then, that you would think it appropriate to express a general limitation with respect to conscription in the declaration, but not to designate to whom that applies?

MR. JUSTICE JACKSON: I would have no objection to such a designation as far as I am concerned. Now, the other question is a question of knowledge, which is infinitely more difficult. We do not want to set up a trap for innocent people. We are not so hard up for somebody to try that we have to seek and to catch people who had no criminal purpose in their hearts; but there can be no doubt that every person affiliated with this movement at any point knew that it was aimed at war and aggressive war. There can be no doubt that they knew that these formations under the Nazi Party were maintaining concentration camps to beat down their political opposition and to imprison Jews and the terrible things that were going on in these camps.

To ask us to prove individual knowledge or to ask us to accept the man's own statement of his state of mind is to say that there can be no convictions, of course. It seems to me that the scale of this crime and the universality of it, going on all over Germany, concentration camps dotting the landscape, and the vast population, is sufficient to charge with knowledge the principal organizations of the Nazi Party which were responsible for those things. The test that I think applies as to knowledge is not what some member now on the witness stand may say he knew or did not know; but what, in the light of

the conditions of the times, he ought to have known—what he is chargeable with.

THE TRIBUNAL (Mr. Biddle): Wouldn't it follow from that that there was no taking of any evidence on what was generally known?

MR. JUSTICE JACKSON: Well, I think the proof of what was going on establishes the point as to chargeability with knowledge.

THE TRIBUNAL (Mr. Biddle): Do you claim that the defendants should not be permitted to give any evidence as to that which was generally known with respect to what was going on?

MR. JUSTICE JACKSON: To what was generally known, I do not think the defendant's denial that he knew what was going on has any materiality.

THE TRIBUNAL (Mr. Biddle): That was not my question. My question was whether a witness could be permitted to testify that the acts of the particular organizations were not generally known to its members. Would you exclude that evidence?

MR. JUSTICE JACKSON: I certainly would, and if I heard it I would not believe it; but perhaps my . . .

THE TRIBUNAL (Mr. Biddle): Excuse me. Although on your test of knowledge, you wouldn't permit the defendants to meet that test?

MR. JUSTICE JACKSON: I should say that that is just exactly the situation, that the Court would take judicial notice, from the evidence that is in, that this was a thing that must have been known in Germany; and I would not think that it would be permissible for a citizen of the United States to testify that he did not know the United States was at war, a fact of which he is chargeable with knowledge; and it seems to me that the magnitude of these things is so equally established and the repeated daily connection between the organizations and this criminal program is so equally clear.

THE TRIBUNAL (Mr. Biddle): Mr. Justice Jackson, I only have two or three more questions. One is directed to the General Staff. Does the particular date when an individual accused—I beg your pardon—when an individual assumed one of the commands listed in Appendix B of the Indictment have any bearing on whether he is a member of the organization? Now, I am going to bring that question down to the General Staff.

MR. JUSTICE JACKSON: Perhaps I should warn you of this—that I am not a military man. I have not specialized on that subject and I shall want to refer your question to someone whose knowledge is more reliable than mine.

THE TRIBUNAL (Mr. Biddle): I shall ask the question directed to you as a lawyer and not an expert in military matters. Assume that one of these

individuals became an army group commander after the wars of aggression had been planned, proposed, initiated—roughly, that would be after 1942; let us say, after Pearl Harbor—and had reached the stage when Germany was on the defensive; is his acceptance of a command at that date sufficient to make him a member of the organization?

MR. JUSTICE JACKSON: I should think it would.

THE TRIBUNAL (Mr. Biddle): The reason I asked you that, Mr. Jackson, is that I thought you had rather indicated in your opening address that the starting of the war was the essence of the crime rather than the waging of war, and I was wondering whether in that case there would be any difference which we should consider?

MR. JUSTICE JACKSON: Well, I think when one joins, he ratifies what has gone before, and it would seem to me that when he came into the picture at that point, it was a ratification of all that had gone before on the ordinary principles of conspiracy.

Now I think it is a difficult question, whether a man had not had any prior connection with the Nazi Party—if you take the example of a man who disapproved all that the Nazi Party had done, who never became a member of it, who stood out against it and publicly his position was clear, and he took no part in the war until the day his country was being invaded and he said, "I don't care what happened before; my country is being invaded and I shall now go to its defense," I would have difficulty convicting that man. I do not know such a man.

THE TRIBUNAL (Mr. Biddle): Mr. Justice Jackson, there is only one more question I should like to address in connection with Law Number 10. I am a little puzzled myself on Law Number 10, the Control Council Law of December 20—I think that was the date. You spoke of one reason for declaring the organizations criminal and bringing persons into the Control Council for screening. I take it they can do that easily without any help on our part.

MR. JUSTICE JACKSON: That is right.

THE TRIBUNAL (Mr. Biddle): Now, you said something very interesting. You said the act would not have been so, if you would have drafted it. How would you have drafted it, if that is not an improper question?

MR. JUSTICE JACKSON: Well, I think I would not have made these penalties of this act apply to all of the crimes. You have one lumping of a whole list of crimes which, to my mind, range from the very serious to the

very minor. Then you have applicable to all of those crimes, penalties from death down to deprivation of the right to vote in the next election.

THE TRIBUNAL (Mr. Biddle): For instance, you would not have made the death penalty applicable to the members of the SA who might have resigned in 1922?

MR. JUSTICE JACKSON: I would not; and I think that in that way I would have been more explicit with the penalties. Like the Mikado, I would try to make the punishment fit the crime, rather than leave it wide open.

THE TRIBUNAL (Mr. Biddle): Mr. Justice Jackson, what defenses do you think are expressly permitted under the Control Council Law? Don't we have to assume that the members of the Tribunal will permit certain defenses or are any defenses expressly permitted?

MR. JUSTICE JACKSON: No; no defense is expressly permitted. I take it that any defense which goes to the genuineness of membership, as the volition of the individual, duress, fraud—and by duress I mean legal duress—I do not think that the fact that it is good business, that the man's customers may leave him if he does not join the Party—that is not duress; but anything which goes to the genuineness of his membership.

THE TRIBUNAL (Mr. Biddle): Only one more question. If the Tribunal were of the view that a declaration of criminality of the organization is an essentially legislative matter, as suggested by some of the defense lawyers, rather than a judicial one—if we were of that view, would it be appropriate for the Tribunal to consider the legislative authority of the Control Council, to make such a declaration, which undoubtedly we could do in exercising that discretion which is conferred on us under Article 9 of the Charter?

MR. JUSTICE JACKSON: I would not think so, Your Honor. I think that this Tribunal was constituted by the powers for the purpose of determining on the record—after hearing the evidence, after knowing the facts—determining what organizations were of such a character that the members ought to be put to trial for membership.

The fact that some other group which does not have hearing processes and which is not constituted as this might, either administratively or some other way, reach that same result, I do not think is a proper consideration. I should think it was rather a way of avoiding the duty—there are other ways of doing it, but this is the way our governments have agreed upon. I should think it would not be a proper consideration.

Of course, you could punish these members without anything. We have them in our power and in our camps. But our governments have decided

they want this thing done after a full consideration of the record, and in this matter I think that. . .

THE TRIBUNAL (Mr. Biddle): But you have no doubt of the power of the Control Council to do it, irrespective of what we do, do you?

MR. JUSTICE JACKSON: I do not know of any limitations on the power of the Control Council. There is no constitution. It is a case of the victor and the vanquished, and I think that is one of the reasons why, however, we should be very careful to observe the request of our governments to proceed in this way. In a position where there was no restraint on their power except their physical power, and mighty little of that today, they have voluntarily submitted to this process of trial and hearing, and it seems to me that nothing should be done, by us as members of the legal profession at least, to discredit that process or to avoid it.

THE TRIBUNAL (Mr. Biddle): Those are all the questions I have to ask.

THE TRIBUNAL (Professeur Donnedieu de Vabres, Member for the French Republic): I would like to ask Mr. Jackson a few details on the consequences of the declaration of the criminality of an organization. Suppose an individual belonging to one of the organizations classified as criminal—for instance, an SS man or a member of the Gestapo—is brought before the military jurisdiction of an occupying power. According to what has been said so far, he will be able to justify himself by proving that his membership in the group was a forced membership. He was not a volunteer and if I have understood correctly, he will also be able to justify himself by proving that he never knew of the criminal purpose of the association. That, at least, is the interpretation which has been adopted and defended by the Prosecution, and which we consider exact.

But I suppose that the tribunal in question has a different conception. I suppose that it considers the condemnation of the individual who was a member of the criminal organization, obligatory and automatic. Strictly speaking, the interpretation which has been advocated by Mr. Jackson is not written in any text. It does not appear in the Charter. Consequently, by virtue of what texts would the tribunal in question be obliged to conform to this interpretation?

MR. JUSTICE JACKSON: The control of the future tribunal is the control of the effect of the declaration of this Tribunal. This Tribunal's effect, when brought before a subsequent tribunal, is defined by the Charter, and it has only the effect that the issue as to whether the organization is criminal cannot be retried. There could be no such thing as automatic

condemnations, because the authority given in the Charter is to bring persons to trial for membership.

It would, of course, be incumbent on the prosecutor on ordinary principles of jurisprudence to prove membership. I think proof that one had joined would be sufficient to discharge that burden, but then the question could be raised by the defendant that he had defenses, such as duress, force against his person, threats of force, and would have to be tried; but the Charter does not authorize any use of the declaration of this Tribunal except as a basis for bringing members to trial.

THE TRIBUNAL (M. De Vabres): If I am not mistaken, the authority of the International Military Tribunal will be imposed on the respective jurisdictions of the states, and will oblige them to adopt the interpretation in question. But in that case I conclude that, in the opinion of the Chief Prosecutor, Mr. Jackson, the judgment of the International Military Tribunal, the judgment which we shall pass, will have to contain a precise definition of this subject. Mr. Jackson said, however, a few moments ago, in agreement I think with Mr. Biddle, that the statute of the Charter permits us to define a criminal organization. Our judgment would not only contain a determination of the groups which we consider criminal, but also a definition of a criminal organization; and in the same way there would be precise definitions concerning the cases of irresponsibility, for example, the case of forced membership. There would be precise definitions which the tribunals of the respective states would be forced to respect. Do I understand Mr. Jackson's thought correctly?

But, in that case, the question I ask is the following, and it is somewhat similar to that of Mr. Biddle: Briefly, would it not mean conferring on our judgment a certain legislative character? We are not an ordinary court, since we are adopting provisions, such as the definition of a criminal organization, which are generally included in a law, and at the same time our judgment contains provisions which limit the cases of individual responsibility. That is to say, in brief, we are to a certain extent legislators, as it was argued yesterday.

MR. JUSTICE JACKSON: I think that is true, that there is in this something in the nature of legislation or of the nature of an indictment. You may draw either analogy. But I do not see anything about that, as I understand it, which complicates the problem. In the United States we have a strict separation of legislative from judicial power, but there is nothing in that matter which controls this Tribunal, and whether you draw the analogy of an indictment in which you are accusing by your finding, your declaration, or whether you draw the analogy of legislation, it would be

equally valid as the act of the Four Powers, since they are not required to withhold any power from the Tribunal.

THE TRIBUNAL (M. De Vabres): Yes, yes. The question which I have just asked seems to be of theoretical interest only. This is, however, the practical consequence which I should consider, which I should be tempted to draw, and on which I would like to hear your opinion:

If we have some legislative power, in that we are able to limit the indicting of persons and admit causes of irresponsibility or excuses, does this absolutely exclude our limiting at the same time the punishment?

Earlier, Mr. Biddle and Mr. Jackson were considering Article 10, and Mr. Jackson expressed some criticism concerning the penalties, which are not individualized penalties, since they can extend as far as the death penalty, as far as capital punishment.

There are, of course, some crimes for which capital punishment seems justified, such as Crimes against Humanity. But is it not going too far, to consider imposing the death penalty as the maximum for a crime which in France would perhaps be considered purely "material"—the crime of belonging to a criminal organization? Would it not be too severe for us to impose the death penalty? And might not the International Military Tribunal be forced to reduce unduly the notion of a criminal organization, precisely because we consider the possibility of this penalty being too severe? In other words, does Mr. Jackson absolutely exclude for the International Military Tribunal the power to fix a penalty, or at least a maximum penalty, for the crime of belonging to a criminal organization?

MR. JUSTICE JACKSON: I should not think that it was within the proper sphere of the Tribunal to deal with the question of penalties, for the reason that no power to sentence anyone other than the defendants on trial is given to this Tribunal; I mean, no power to sentence for membership in the organizations. Therefore, I think no incidental power to control penalties is given, but the power to declare an organization criminal does, incidentally, confer power to determine what that organization is, and I have not been disposed to question the power of the Tribunal to carry that definition to great detail, although I would question the wisdom of it.

The power, however, of sentence for membership is not even remotely conferred upon the Tribunal, and I would think that that would be a rather drastic expansion of its power.

THE TRIBUNAL (M. De Vabres): Those were the only questions I wished to ask.

THE PRESIDENT: We will adjourn for 10 minutes.

[*A recess was taken.*]

THE PRESIDENT: Sir David, did you want to add a reply or did you come in order that we might ask you some questions?

SIR DAVID MAXWELL-FYFE: First, if the Tribunal will allow me, there are three or four points on which I should like to add a word.

The first point that Dr. Kubuschok made was that the procedure of asking for a declaration against the organizations was objectionable for two reasons: First, because it was founded on the limited phenomenon in Anglo-Saxon jurisprudence, that a corporation may be convicted in certain limited spheres; and secondly, that the organizations were in fact dissolved some time ago.

I think it is important to stress that that is not the legal conception which underlies this portion of the Charter. It is really based, in my submission, on a doctrine found in most systems of law, either *res adjudicata* or the conception of the judgment *in rem* as opposed to the judgment *in personam*. That is, that it is in the general and public interest that litigation on a particular point should not be interminable, and that, if the appropriate tribunal has come to a decision on a point of general interest and importance, that point should not thereafter be litigated many times.

It is the essential view of the Prosecution here that this Tribunal, having had the advantage of evidence dealing with the whole period and functioning of the Nazi conspiracy, is the appropriate and, indeed, the only suitable tribunal for deciding the question of criminality. It is a prospect which would be quite impracticable and beggars the imagination as to time to consider that every military government or military court should decide one after the other the question of criminality of great organizations like these. And therefore we have in the Charter adopted the procedure that that preliminary question will be decided once and for all by this Tribunal.

The fact that the organizations have been administratively dissolved is irrelevant. What is important is, what was the nature of the organizations when they did function? And that is the issue which the Tribunal has to determine. And we submit and indeed say that it is a clear implication, if not indeed expressly within the words of Article 9, that it must be at the trial of the individual defendants that the question of this criminality should be decided, and we say that apart from considerations of practicality the wording of Article 9 is a clear guide against separation of these issues as suggested by two or three of the Defense Counsel.

I only want to add one word about what has been said on the argument on Law Number 10. Dr. Kubuschok made the point that this procedure really

acted entirely against the individual. There are at least two answers: The first, which I have endeavored to give, as to the legal concept behind the idea of a declaration, and the second, the one which has been canvassed before the Tribunal, as to the rights of defense. May I say that, in my submission, membership in an organization is a question of fact and therefore these defenses of duress, fraud, or mistake—to take three examples—must clearly be permissible and good defenses on that question of fact. The third is that every document such as the Charter—the same would apply to every piece of legislation—always contemplates intelligent and reasonable administration in carrying out its requirements, and it would be, in my submission, idle to take the view that where you have a permissive enactment like Law Number 10—and it is clearly permissive as to prosecution—intelligent administration should prosecute every one who could be prosecuted under the act.

In our candid proverb, hard cases make bad law; and in my submission, it would be wrong to decide or interpret on an extremely unlikely hard case.

I want, if I may, to say just one or two words on the argument so interestingly put forward by Dr. Servatius and mentioned a few moments ago by the learned French judge.

In my submission there is no legislative function for this Tribunal whatsoever. There is a clearly judicial function, and I want to make it quite clear; I do not qualify it by "quasi-judicial" or any qualification at all. It is a simple judicial duty. The first portion of that duty is to define what is criminal. In my submission, as Mr. Justice Jackson argued yesterday, that presents no difficulties. It occurs in Article 9, three articles after Article 6, and "criminal" in that context means an organization whose aims, objects, methods, or activities involved the committing of the crimes set out in Article 6.

When "criminal" has been defined, it is a matter of judicial weighing of evidence to decide whether there is evidence of these crimes being committed by the organization or being the aim or object of the organization, as I have stated. But I respectfully ask the Tribunal to hesitate long before it accepts the argument of Dr. Servatius that this Tribunal should decide the interpretation of "criminal" on its own *a priori* basis, to use Dr. Servatius' own words, of politics and ethics. That would be introducing a new, dangerous, and unchartered factor into the Trial. There is, in my submission, a clear line of guidance for the judicial approach, and nothing in the Charter to support the *prima facie*, unexpected idea that a body established as a tribunal should delegate to itself legislative powers.

Again, if I may add just one word as to the conclusions which Dr. Kubuschok drew on the question of criminality as a ground for deciding the relevancy of evidence, his first conclusion was that the organization in question, according to its constitution or charter, did or did not have a criminal aim or purpose.

I accept, of course, the test of aim and purpose, but I do not accept the limitation as to charter or constitution. The criminal aim or purpose may be shown by the declarations or publications of the leaders of the organizations, and also, as I submitted, by its course of conduct in method and action. I agree with Dr. Kubuschok that aim or purpose is the first test, but I do not agree with his limitation as to establishing it.

His second point was that crimes under Article 6 were not committed within or in connection with the organization or were not committed continuously over a period. The first part of that would seem fairly clear, that, if the crimes were not committed within or in connection with the organization, the organization is obviously in a very favorable position. But I first answer the second part by saying that it does not come into the picture of this case that there is any instance of isolated crimes with regard to every organization. The crimes alleged are, in fact, spread over the period alleged in the Indictment, but I suggest that the adoption of such a criterion does not really help. One comes back to the first point of Dr. Kubuschok, that aims or purposes, as disclosed by declarations, methods, or activities, are the primary and most important tests.

Then, the third point that Dr. Kubuschok made was that an appreciable number of members had no knowledge of the criminal aims or of the continuous commission of crimes. I endeavored to stress, as did Mr. Justice Jackson, that the Prosecution's test is constructive knowledge. That is, ought a reasonable person in the position of a member to have known of these crimes? And that really is the answer, in my respectful submission, to the relevancy of individual knowledge of one particular member.

It is only too true that during the period under discussion a very large number of people made a habit of sticking their heads in the sand and endeavoring to abstain from acquiring knowledge of things that were unpleasant. In my respectful submission, that sort of conduct on the part of a member would not help him at all, and the only answer to that is to adopt the test which we have suggested: Ought a person in that position reasonably to have known of the commission of the crimes?

Dr. Kubuschok's fourth point is that an appreciable number of members or certain independent groups joined the organization under compulsion or illusion or superior orders. Shortly we answer that by saying that that is only

relevant to the defense of an individual member in the subsequent proceedings, and, of course, it is only a defense where he can show that he has taken no personal part in the criminal acts.

Then, the last point which Dr. Kubuschok made was that an appreciable number of members were honorary members. Again we say that that is only relevant to the defense of the individual member, and it does not really alter or increase the defenses open to him.

The only other point of Dr. Kubuschok's which I do think requires mention is that in considering how evidence could be presented, he said that certain rights of defense are universal. The first of these which he claimed was direct oral testimony, and he said that each individual defendant should have this right. He then admitted that that was practically impossible and suggested as a solution that we must typify, that is, that representatives of groups in the various camps should make affidavits showing what percentage took part in criminal actions or knew about them.

I want to point out to the Tribunal that it is expressly laid down in the Charter that members of the organization are entitled to apply to the Tribunal for leave to be heard, but the Tribunal shall have power to allow or reject the application. As a point of construction no less than of sense, there would have been no point in giving the Tribunal the power to reject the application, if it were implicit that everyone should have the right to be heard.

The answer is that the Tribunal has complete discretion to decide what line and what course shall be taken to procure the evidence. The Prosecution, through Mr. Justice Jackson, has indicated that it makes no objection to any reasonable form of collecting relevant evidence. What the Prosecution objects to is evidence being tendered on the issue before the Tribunal which is only relevant to the question of individual innocence or guilt of the member.

My Lord, I could have dealt, and indeed was prepared to deal, with a number of points raised by the other Counsel for the Defense. I hope they would not think that it is any disrespect to their arguments that I have not dealt with them, but I know that the Tribunal wishes to ask certain questions, and I do not want to trespass on that time. I only want to deal with one point, because it kills with one stone two birds that have flown against our argument in this case.

It will be remembered that when I dealt with the SA yesterday, Dr. Seidl —and I am sorry he is not here—raised the question that the Defendant Frank was not a member of the SA; and Dr. Löffler, in dealing with the SA

today, raised the question that its activities no doubt did not really extend after 1939, and not importantly after the purge in 1934.

I find an interesting quotation from the semi-official publication, *Das Archiv*, for April 1942, and as it is very short and deals with these points I venture to read it to the Tribunal, so that it may appear on the record. At Page 54 it says:

> "SA Unit, Government General. At the order of the Chief of Staff of the SA, there took place the foundation of the SA unit, Government General, whose command Governor General SA Obergruppenführer Dr. Frank took over."

I only quote that to finish my argument to show, as indeed all the evidence shows, that with regard to the SA, no less than any other of the organizations, the Prosecution have provided evidence of crimes reaching over the period which they have stated.

I deliberately have cut out anything further that I might say, My Lord, because I do not want to shorten unduly the time, if the Tribunal wishes to ask me any questions.

THE PRESIDENT: I think there is only one question that I should like to ask you. As I understand it, you say that the Prosecution have proved facts from which one must conclude that every reasonable person who joined any of these organizations would know that they were criminal.

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: You would agree, would you not, that proof of any fact which went to contradict the facts from which you have presumed knowledge of criminality could be proved by the Defense?

SIR DAVID MAXWELL-FYFE: Certainly. If the Defense sought to prove, to take an extreme example, that the conduct of the SS with regard to, first of all, concentration camps and, secondly, killing Jews and political commissars on the Russian front, was done in such a way, despite the vast territory over which these crimes have been proved to have been carried on, was done in such a way that nobody knew about it—if there was relevant evidence on that point, then they could call it, on the general point that it was not a matter of imparted constructive knowledge, but of memory.

THE PRESIDENT: I only asked you that question because there were certain observations by Mr. Justice Jackson, which did not seem altogether to accord with the answer which you have just given.

SIR DAVID MAXWELL-FYFE: I think that, as I understood Mr. Justice Jackson, he was saying that it might not be relevant to prove that one

member did not know of the crimes, and I thought that our two approaches really did fit in with each other.

THE PRESIDENT: Yes.

THE TRIBUNAL (Mr. Biddle): I take it then, Sir David, that you would say that evidence with respect to general knowledge by any very substantial segment of an organization would be relevant, would it not?

SIR DAVID MAXWELL-FYFE: Well, I think it would be relevant if it were not absurd. I mean, a disclaimer of knowledge of certain acts may be so absurd that the Tribunal should not take the time of inquiring into it.

THE TRIBUNAL (Mr. Biddle): That would apply to any evidence, of course. But my point was: You have said that evidence with respect to general knowledge over a whole organization would clearly be relevant.

SIR DAVID MAXWELL-FYFE: Certainly.

THE TRIBUNAL (Mr. Biddle): And now I ask you whether that would be true with respect to any substantial segment of an organization such as the Waffen-SS.

SIR DAVID MAXWELL-FYFE: I am trying to relate it to the practical position. That is where I find it very difficult.

Now, to take your example, it is difficult to imagine. Let us take four divisions that were very well known: the Totenkopf, the Polizei, Das Reich, or the 12th Panzer Division. I should have thought that, as a matter of discretion, if it were sought to show that these divisions, about which there is so much evidence as to their participation in crime, did not know of the crimes, the Tribunal would be right in rejecting that.

THE TRIBUNAL (Mr. Biddle): Well, the question would come up more whether the acts of the members of certain divisions were known generally throughout the whole Waffen-SS, would it not?

SIR DAVID MAXWELL-FYFE: With the greatest respect, I find it very difficult to see how the knowledge or absence of knowledge of a particular division in the Waffen-SS could affect the question of criminality of the SS as a whole.

THE TRIBUNAL (Mr. Biddle): Well, again, I am not asking you as to knowledge in a particular division; I am asking you as to general knowledge, throughout the entire Waffen-SS, of the acts of a particular unit.

SIR DAVID MAXWELL-FYFE: Well, if someone is prepared to say, “I knew every division of the Waffen-SS, and in my opinion no one in the Waffen-SS had any knowledge or had any opportunity of knowing of the

crimes," then the evidence would be admissible. Its weight would be so negligible that, I should submit, it would not detain the Tribunal long.

But I concede that if someone is prepared, laying the proper ground for his evidence, to say, "I can speak; I have the grounds for and the opportunity of speaking on the general position," then I do not see how the Tribunal could exclude it.

THE TRIBUNAL (Mr. Biddle): The matter is very practical because we have to advise Counsel for the Defendants what material they can introduce, and do that very soon.

SIR DAVID MAXWELL-FYFE: Certainly.

THE TRIBUNAL (Mr. Biddle): Now let me ask you a few other questions.

On what basis, Sir David, do you contend that the Reich Cabinet was a criminal organization as of January 30, 1933, when, if I remember correctly; there were only three members of the Nazi Party who were in the Cabinet: Göring, Hitler, and Frick? Do you think that if three out of a very much larger number, some twenty odd, could be said to be part of a criminal organization, that makes the entire Cabinet criminal?

SIR DAVID MAXWELL-FYFE: Certainly, on the facts. It must be remembered that Hitler had refused to take office as vice chancellor during the months before that, before the date that you put to me. He had refused on the ground that, as vice chancellor, he would not be in a position to carry out his Party program. On that basis the Defendant Von Papen and Hitler negotiated, and Hitler came into power on the 30th of January. It is the case for the Prosecution that those who formed part of that Cabinet knew that they were forming part of a cabinet in which Hitler was going to work out his program, as has been declared on so many occasions. That is the first point. Secondly, it is the case for the Prosecution that the Defendant Von Papen did join in introducing the Nazi conspirators into the Government with that knowledge and with the purpose of letting them have their way in Germany. And the same must apply—it has not been investigated to the same extent, because they are not defendants—to the industrialists and the Party, who were acting with them in the Cabinet. They must be taken to have known, just as Gustav Krupp knew and supported, just as Kurt von Schröder knew and supported, the aims of the Nazis whom they introduced and co-operated with in the Government.

Thirdly, the personalities of the Nazis in the Government—Hitler himself, and the Defendants Göring, Frick, and Dr. Goebbels, who I think became Propaganda Minister either at the same time or very shortly

afterwards—show that these people, they have shown it by their acts, were not persons to take second place. They introduced at once the Führerprinzip into operation in the states, and these other people in the Cabinet at that time accepted the Führerprinzip and united in placing Hitler and the Defendant Göring and the other conspirators in the position of power and authority which enabled them to carry out their monstrous crimes that are charged against them.

I will give you one other reference. It was within a few months of that period that the Defendant Schacht became Plenipotentiary for War Economy and began the preparations for the economic side of the creation of Germany's war potential.

For all these reasons I submit that the actions of the Reich Cabinet at that date were deliberate. The same applies to the Defendant Von Neurath; it is the whole case of the Prosecution, as to the case against Von Neurath, that he sold his respectability and reputation to the Nazis in order to help them buy with that reputation and respectability a position of power in Germany, with the conservative circles in Germany, and with the diplomatic circles in Europe with whom he came in touch. For all these reasons, Your Honor, I submit that the Reichsregierung at that time was thoroughly infected with the criminality which we suggest in this case.

THE TRIBUNAL (Mr. Biddle): In relation to the political leaders, let me ask you this, Sir David:

In your opinion, would it be necessary to establish the responsibility of political leaders of lower grades to show that, as a group, they were informed of plans to wage aggressive war or to commit War Crimes or Crimes against Humanity? In other words, I take it there is some obligation to show that information. Does that rest simply on the fact that these crimes were being perpetrated, or is there any evidence of that information?

SIR DAVID MAXWELL-FYFE: There is evidence—and if I might just indicate the kind of evidence there is—on the first stage of the acquisition of totalitarian control in Germany, which is the first stage in the conspiracy, that is, apart from the Party program, there are the extracts from the Hoheitsträger magazine. You remember, Hoheitsträger are all the political leaders. On the anti-Semitic part of that there are documents, which are Exhibit USA-240 (Document Number 3051-PS) and Exhibit USA-332 (Document Number 3063-PS), which are shown in the transcript at Pages 1621 and 1649 (Volume IV, Pages 47 and 66). On the question of war crimes against Allied airmen you will remember that a document was circulated to Reichsleiter, Gauleiter, Kreisleiter, with instructions that Ortsgruppenleiter were to be informed verbally with regard to the lynching of Allied airmen.

That document is Document Number 057-PS, shown in the transcript at Page 1627 (Volume IV, Page 50). And that the hint was taken by at least one Gauleiter is shown by Document L-154, Exhibit USA-325, at Page 1628 (Volume IV, Page 51).

Then, there is a Himmler order to senior SS officers, to be passed orally to the Gauleiter, that the police are not to interfere in the clashes between Germans and aviators. That is Document Number R-110, Exhibit USA-333, shown at Page 1624 (Volume IV, Page 49). Then there is a declaration by Goebbels inciting the people to murder Allied airmen, which is shown at Page 1625 (Volume IV, Page 50). Similarly, with regard to foreign labor, there is a telegram from Rosenberg to the Gauleiter asking them not to interfere with the confiscation of certain companies and banks.

There is Jodl's lecture to Reichsleiter and Gauleiter at a later stage. There is an undated letter from Bormann to all Reichsleiter and Gauleiter, informing them that the OKW had instructed guards to enforce obedience of prisoners of war refusing to obey orders, if necessary, with weapons.

THE TRIBUNAL (Mr. Biddle): Sir David, if I may interrupt you for a moment. I was familiar with the evidence with respect to the Gauleiter and Reichsleiter. My question, you will remember, was addressed to the lower levels, the Blockleiter.

SIR DAVID MAXWELL-FYFE: Well, I think one can summarize it that even as far as lower levels are concerned you have the four points: You have *Mein Kampf*, the *Party Program*, *Der Hoheitsträger*, and the fact that conferences were constantly held throughout the organization.

As I say, I have dealt with the evidence on the Jews, the lynching of Allied airmen, and I think I mentioned the letter from Bormann to the Reichsleiter, Gauleiter, and Kreisleiter about assisting in increasing the output of prisoners of war. And there is an instruction from Bormann down to the Kreisleiter about the burial of Russian prisoners of war. There is a decree for insuring the output of foreign workers that goes down towards the Gruppenleiter.

All these matters are in evidence, and we submit that there is particular evidence on practically every point. And on the general point, as I said, you have these publications, coupled with the evidence that conferences were held, apart from the general Führerprinzip which would, and did, make the Zellenleiter and the Blockleiter the final weapon in order to ensure that the people acted in accordance with the leader's wishes.

THE TRIBUNAL (Mr. Biddle): Let me ask you just two questions, and then I will finish with regard to the SA. Would you say that a member of the

SA who had joined, let us say, in 1921, and resigned the next year, was guilty of conspiring to wage aggressive war and guilty of War Crimes?

SIR DAVID MAXWELL-FYFE: Yes, in this sense. If I may recall, I answered a question that you were good enough to put to me a day or two ago as to when the conspiracy started. A man who took an active and voluntary part as a member of the SA in 1921 certainly, in supporting the Nazi Party, was supporting the published program of the Party which had the aims which you have just put to me.

That is certainly put clearly in Article 2 of the Party Program as the getting rid of the dictate of Versailles and the Anschluss, getting the Germans back to the Reich, which, of course, is only a polite way of saying destroying Austria and Czechoslovakia.

Therefore, that man had these aims in view.

With regard to War Crimes, I respectfully repeat the answer that I put to you the other day, that it was an essential tenet of the Nazi Party that they should disregard the life and safety of any other people who stood in the way of the securing of their ambitions. A person who deliberately joins an organization with that aim, and with that aim getting more and more clearly related to practical problems as week succeeded week, was taking part in a first essential step of involving mankind in the miseries that we have seen; because it is that tenet, applied to every facet of human life and human suffering, which has caused the crimes which this Tribunal is investigating.

THE TRIBUNAL (Mr. Biddle): Well, I can see how you might say that with respect to conspiracy in War Crimes, but I want to be perfectly clear also that you say, on the substantive crime of committing War Crimes, that a man joining the SA in 1921 and leaving in 1922 would have committed those War Crimes in the beginning of 1939.

SIR DAVID MAXWELL-FYFE: If you put to me the substantive War Crimes, I respectfully remind you that under Article 6 the last words are:

> "Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in the execution of such a plan."

Under the Charter, in my respectful submission, that is enough to make them responsible for the crimes.

THE TRIBUNAL (Mr. Biddle): Now only one other question. What do you contend was the function of the SA after the Röhm purge?

SIR DAVID MAXWELL-FYFE: The function was still to support all Nazi manifestations in the life of Germany. You remember that Dr. Löffler

was careful to except—very frankly and fairly he excepted the 10th of November 1938. The SA—and I gave another example how they were formed in the Government General—we have also given examples, which I think you will find in my appendix, of the participation—limited participation, but still a participation—in the War Crimes and Crimes against Humanity.

But the main point of the SA after that time was to show that here were 3 million people who had come into the organization which had provided the force to bring the Nazis into power, and it had the forceful size needed to bring the Nazis into power in those days. They were then joined by 2½ million people, which brought their numbers up at that time very high. They went down again later on, but they were high in 1939, and they provided a great immoral force behind the Nazi Party. They provided strong support and were ready on all occasions; whenever a demonstration had to be staged, the SA were there to give their support. They were an essential instrument for maintaining the Nazi control over the German Reich.

THE TRIBUNAL (Mr. Biddle): I take it, then, that the function, in your opinion, did not change in substance after the purge? Would you say that?

SIR DAVID MAXWELL-FYFE: The aim did not change. It did not need to do half as much, because, of course, by the end of 1933 all the other political parties were broken. Part of the SA's original task, as I think Dr. Löffler put it, had been to safeguard the Defendant Göring when he was making a speech—I should have put it that it was to prevent the other people from having a free run when they made speeches—and to deal with the clashes between the various groups. That was unnecessary, because all political opposition had been destroyed. Therefore they became rather—I forget the exact term—a sort of cheer leader or a collection of people who would always be ready to give vociferous support.

You must have heard, Your Honor, of the meetings coming over the wireless with regulated cheers. It became more supporting, rather than dealing with opposition, but essentially the aim was the same, to keep the grip.

THE PRESIDENT: Dr. Dix, it is now nearly quarter past 5. Do you think that this discussion can be closed this evening before 6 o'clock?

DR. RUDOLPH DIX (Counsel for Defendant Schacht): Mr. President, I believe I can finish in 5 minutes.

THE PRESIDENT: All right. Do the other prosecutors wish to add anything?

GEN. RUDENKO: I would like to make a few short remarks, Mr. President.

THE PRESIDENT: How long do you think you will be, General Rudenko?

GEN. RUDENKO: I think about 10 minutes; no more.

THE PRESIDENT: Does the French prosecutor wish to add anything?

THE TRIBUNAL (M. De Ribes): I have nothing to add.

THE PRESIDENT: Dr. Dix, what I really want to know is whether there is any prospect of our finishing this discussion tonight. General Rudenko wishes to speak for about 10 minutes, and if the defendant's counsel—of course, you will understand that a discussion of this sort, an argument of this sort, cannot go on forever; and in the ordinary course one hears counsel on one side and counsel on the other side, and then a reply; one does not go on after that. Do you know how many of the defendants' counsel want to speak?

DR. DIX: Mr. President, I know that.

THE PRESIDENT: I think probably the best thing would be if we were to adjourn now and to sit in open session tomorrow, and then we shall probably be able to conclude this argument in about an hour tomorrow. Do you agree with that, General Rudenko?

GEN. RUDENKO: I agree.

THE PRESIDENT: Do defendants' counsel think we shall be able to conclude it in about an hour tomorrow morning?

[*Several counsel nodded assent.*]

THE PRESIDENT: Very well; we will adjourn now and sit at 10 o'clock tomorrow morning.

[*The Tribunal adjourned until 2 March 1946 at 1000 hours.*]

SEVENTY-SECOND DAY

Saturday, 2 March 1946

Morning Session

THE PRESIDENT: General Rudenko.

GEN. RUDENKO: Your Honors, permit me to make a few supplementary remarks concerning the criminal organizations, a problem to which the Tribunal has devoted much attention in the last few days.

I consider it essential, in the first instance, to clarify completely the legal aspect of this problem. There is in the Charter of the Tribunal a marked absence of any statement to the effect that the recognition of an organization as being of a criminal nature would automatically entail the bringing to trial and, further, the condemning of all the members of these organizations. On the contrary, the Charter contains a definite indication of an opposite nature. Article 10 of the Charter, repeatedly quoted at this Trial, states that the national courts have the right, though not the obligation, to bring to trial members of organizations declared as criminal. Consequently, the question of the problem of the trial and the punishment of individual members of criminal organizations lies exclusively within the scope of the national tribunals.

The legal sovereignty of every country that has adopted the Charter of the Tribunal is thus limited in one respect only: The national courts cannot deny the criminal character of an organization, once it has been declared to be criminal. The Tribunal can impose no further limitation on the legal sovereignty of the contracting parties.

Therefore, Justice Jackson has stated here—and with reason—that the recognition of an organization as being of a criminal nature and therefore automatically entailing the mass condemnation of all its members, is a mere figment of the imagination; I would add, that has not sprung from legal grounds but from some entirely different source.

It appears to me that this legal problem is also based on a definite misunderstanding. One of the Counsel for the Defense, Dr. Servatius, was speaking here of the legislative authority of the Tribunal. The authority of

the International Military Tribunal, organized by four states in the interests of all freedom-loving peoples, is enormous; but, of course, this Tribunal, as a legal organization, does not and cannot possess any legislative authority. When solving the problem of the criminal character of an organization, the Tribunal is only exercising the right entrusted to it by the Charter, that is, to solve independently the question of the criminality of the organizations. Of course, the verdict of this Tribunal, when coming into force, acquires the value of a law, but that is the value attached to any of the verdicts of the courts once it has been delivered.

Counsel for the Defense Kubuschok has stated here that the decision of the Charter with regard to the criminal organizations is a legal innovation. This, to a certain extent, is true. The innovation consists in the Charter of the International Military Tribunal and all its articles, whose creation, *per se*, is an innovation in the first instance. But should the Defense consider it possible to deplore this fact, I would consider it opportune to remind them of the causes of these legal innovations.

The very evil deeds committed by the defendants and their associates, deeds hitherto unknown in the history of mankind, have, of necessity, imposed new legislative measures for protecting the peace, the liberty, and the lives of the nations against criminal attempts. Moreover, the states which created this Tribunal and all peace-loving people remain invariably faithful to the ideals of law and to the principles of justice. Therefore, responsibility for participation in criminal organizations will be established only when personal guilt has been proved. In reality, the national courts will decide the problems of individual responsibility.

A few words now on the tactical side of the problem: It has been stated here that several detachments of the SS did not follow any criminal objective. It is difficult, Your Honors, to find within the fascist machinery neutral organizations which did not follow criminal objectives. Thus, the Defense Counsel for the SS, Mr. Babel, mentioned the existence of a research department for dog breeding within the SS. It would appear that this was an organization of general utility. It seems, however, that the learned dog breeders in this organization were engaged in training hounds to attack human beings and to tear their appointed victims to pieces. Can we isolate these dog breeders from the SS?

In Danzig another scientific research institute was engaged in the preparation of soap from human fat. Perhaps we should exonerate these soap boilers as well from all criminal responsibility?

At this point two practical suggestions have been put forward by the Defense Counsel: The isolation, as a separate activity, of the case of the

criminal organizations and the establishment in the various camps of a Defense organization having as its purpose the collection of information and evidence. In practice, however, both proposals would create insoluble difficulties for the Tribunal in the execution of the immense task imposed upon it by the nations.

This task is precisely formulated in the Charter which instructs the Tribunal to solve the problem of the investigation of concrete facts concerning members of these organizations. Therefore an appeal to the Tribunal to isolate and consider the case of the criminal organizations as an independent activity is tantamount to an appeal to the Tribunal to infringe the articles of the Charter.

Article 9 of the Charter decides the problem of the criminal organizations when investigating the case of any one particular member, but it also has one other meaning for the Trial. It shows, as I have already mentioned, that the fact on which the statements and the solution of the question of the criminality of the organization are based is the presence in the dock of the accused representatives from the corresponding organizations. As is known, in the present case all the organizations which the Prosecution suggests should be considered as criminal are represented in the dock.

There is evidence in this case which amply suffices to admit the criminality of these organizations. Therefore the calling of special witnesses, capable of giving evidence on these organizations, can appear only as a supplementary source of evidence. I am bringing these matters to a close, Your Honors, and in closing I cannot omit one argument of the Defense. It was stated here by the Defense that as a result of the admission of the criminality of these organizations millions of Germans, members of these organizations, would be brought to trial. Together with my colleagues of the Prosecution I am not of this opinion, but there is something more I would like to say.

By this reference to hypothetical millions the Defense is attempting to hinder the progress of justice. However, before us, the representatives of the nations who have borne the burden and the suffering of the struggle against Hitlerite aggression, before the conscience and consciousness of all freedom-loving people, appear other figures, other millions of victims irrevocably lost, tortured to death in Treblinka, Auschwitz, Dachau, Buchenwald, Maidanek and Kiev. It is our duty to spare no effort to crush the criminal system directed by the fascist organizations against humanity. Your Honors, the extent of the crimes committed by the Hitlerite brigands cannot be imagined. However, we are not blinded by sentiments of revenge

and have no intention of destroying the entire German people in retaliation. But justice does not permit us to swerve and thus give free play to the committing of new crimes.

We are deeply convinced that the Tribunal will unswervingly follow the path towards a just and rapid verdict and that it will, in full measure, chastise those whose crimes have shattered the earth.

THE TRIBUNAL (Mr. Biddle): General Rudenko, may I ask you a few questions?

General Rudenko, you remember that Mr. Justice Jackson suggested certain tests that we should use before we found an organization criminal, whether the tasks and the purpose of the organization were open and notorious, in order to show that the members knew what they were doing.

Now, if we find that any organization is criminal we would necessarily find, I presume, on that test, that its actions were open and notorious. Now, if a member of that organization found to be criminal was then tried by one of the national courts, I suppose under that finding he would not have any right to show that he did not know about it, because we would have found that the knowledge was so open and notorious that he must have known, so he could not raise as a defense that he had no knowledge of the criminal acts, could he?

GEN. RUDENKO: That is quite true. But we are bearing in mind the fact that the national courts investigating the problem of the individual responsibility of individual members of the organizations will, of course, proceed from the principle of individual guilt, since, naturally, we cannot exclude the possibility that in the organization of the SA, which fundamentally and in an overwhelming majority was aware of its criminal purpose, there might yet be individual members who might have been lured into the organization, either by deception or by some other reasons, and have been unaware of its criminal purpose.

THE TRIBUNAL (Mr. Biddle): But that would not be any defense to him, would it? He could not say he had no knowledge, because we would have already found that the knowledge was so open and notorious that he must have known.

GEN. RUDENKO: Why? I personally proceed from the standpoint that if the national court investigates the case of members who plead ignorance of the criminal purpose of the organization to which they belonged, the national court must examine these arguments submitted in their defense and estimate them accordingly.

THE TRIBUNAL (Mr. Biddle): How could they consider that, if we make a rule that the activities of the organization are so notorious that he must have known? How can he then say he did not know?

GEN. RUDENKO: I still maintain the point of view, and I still interpret and understand the Charter to mean that the judgment of the International Military Tribunal should determine and decide the question of the criminal character of the organizations, but where the question of individual responsibility and guilt of every member of this organization is concerned, the decision falls exclusively within the competence of the national courts. It is therefore extremely difficult to foresee all the possible individual cases and the eventualities which might arise when investigating a category of individual defendants.

You yesterday submitted a question to Sir David Maxwell-Fyfe concerning a member of the SA who had joined the organization in 1921 and left a year later. These, of course, are special cases and I cannot state how numerous they are; they are unavoidable, and when we come to the question of the extent of his information, the reasons for his entering and the reasons for his leaving this organization, when we come to estimate the value of his actions, it seems to me that it should be done by a national court which will examine the findings of the defense and appreciate them accordingly.

THE TRIBUNAL (Mr. Biddle): Can you say now what defense he would have before the national court, except the defense that he was never a member? Does he have any other defenses so far as we know? Does the Law Number 10 permit him any other defenses?

GEN. RUDENKO: It is difficult for me, at the present moment, to say what arguments the members of these organizations may put forward, for were I to speak, it would be on assumption. But I, for instance, consider, that the argument produced—if produced—which might be considered sufficient to exonerate this member of the organization would be that he had been coerced into joining.

THE TRIBUNAL (Mr. Biddle): May I ask you two more questions.

You used the expression that any evidence given by the defendants would be merely supplementary. That expression is not known to our law, and I would be very interested in your telling us what you meant by supplementary evidence. I do not know what the term means.

GEN. RUDENKO: I did not put it that way. This is perhaps an inaccuracy of translation. What I did say, speaking of questions connected with further investigations of the matter of the criminal organizations, was

that this investigation should be carried out together with the investigation of the case of any one member of this organization, inasmuch as representatives of those criminal institutions are now in the dock. But I do say that this is already conclusive material for the recognition, or the denial, of the criminal nature of this organization.

But the Tribunal can, of course, consider this evidence as inadequate, or, shall we say, the Defense may consider that further supplementary evidence may be needed. In this connection, I consider that the calling of witnesses capable of submitting special evidence on the problem of the criminal or non-criminal character of these organizations may be presented to the Tribunal as supplementary evidence.

THE TRIBUNAL (Mr. Biddle): One other question on the SA, which I asked Sir David yesterday.

What do you consider was the function of the SA after the Röhm Purge, or, to put it a little differently, what criminal act do you believe the SA was engaged in?

GEN. RUDENKO: I consider that the SA after the Röhm incident committed the same criminal acts as the other organizations of Hitlerite Germany. I wish in confirmation of this evidence to refer to facts like the seizure of the Sudeten territory. As is well known, detachments of the SA played an active part in this affair.

All the subsequent events which occurred in Germany in connection with the Jews and, later, in the territories seized by Germany—Czechoslovakia and others—these criminal events took place with the connivance of this organization—the SA.

THE TRIBUNAL (Mr. Biddle): Thank you.

THE PRESIDENT: Does the Prosecutor for the French Republic wish to say anything?

THE FRENCH PROSECUTOR: No.

DR. DIX: I have, as counsel for the Defendant Schacht, an indirect interest in the question of the criminality of the group Reich Cabinet (Reichsregierung) because Schacht was a member of the Reich Cabinet. I want to point out, however, at the very beginning that I do not want to make detailed statements now either of a legal nature or in regard to the facts of the case. I shall do that rather at the time of my concluding speech.

What I want and seek now, and for which I ask the support of the Tribunal, is a clarification and amplification of those answers which Mr. Justice Jackson and Sir David Maxwell-Fyfe gave yesterday to your questions, Mr. Biddle.

I should like to point out that it is, of course, clear to me that I have no right to ask any questions of the members of the Prosecution. Formally speaking, I could at the most ask the Tribunal to supplement the questions which were put yesterday by the Tribunal. I believe, however, that this formal objection has no practical significance, because I am convinced that Sir David, who will see the pertinence of my request to have his answer extended, will be prepared to amplify the answer given to the question by Mr. Biddle without discussing the theoretical question, whether he is under any obligation to do so.

Sir David Maxwell-Fyfe was asked yesterday whether he considers the Reichsregierung, that is to say, the Reich Cabinet, as it was composed on 30 January 1933, in view of the then relatively small number of National Socialist cabinet members, criminal even at that time and if so, whether he is of the opinion that this hypothetic criminal character was at that time discernible to other people.

Sir David answered this question of Mr. Biddle's in the affirmative and based this answer (1) on the contents of the Party program and (2) on the fact that already at that time the Leadership Principle had been set forth in the program.

I should like to ask if Sir David would supplement his answers along the following lines: Does Sir David really mean to say that the Leadership Principle as such, that is to say, purely as an abstract theory, is not only to be rejected politically or for other reasons but is also to be considered criminal? I want to make it understood that I am speaking about the abstract principle, without considering any factual developments in the ensuing period of time.

Concerning his second answer, that the Party program occasions him to declare that even at that time the Reich Cabinet is to be considered criminal and was recognizable as such, this answer—not directly in response to Mr. Biddle's first question put in the course of further questions addressed to him by the Tribunal—he added to and substantiated by declaring that the aim expressed in the Party program of eliminating the Treaty of Versailles and the announcement therein of the desire for the annexation of Austria were the criminal points in this program.

May I ask Sir David to state, first, whether these two points of the Party program, that is to say, the abrogation of the Treaty of Versailles and the Anschluss, were with the exception of the Leadership Principle, the only points of the Party program which caused him to consider that program criminal, that is, to consider a government criminal which knew that program? Secondly, I should like to ask whether he really wants to put forward the opinion that an attempt to attain a revision or an abrogation in a

peaceful fashion, that is, by way of negotiations, of a treaty found to be oppressive, very oppressive, by a nation, can be considered criminal.

Furthermore, I should like to ask him to state whether, considering the great democratic principle of the right of self-determination of nations and considering the history of the annexation movement in Austria itself—and I remind him of the plebiscite of 1919 when this Anschluss was demanded by, one may safely say, 100 percent of the Austrian population—he as a politician would consider a political party or a political program criminal which aimed at reaching this goal in a peaceful fashion. And here I should like to stress, again in order not to be misunderstood, that the later development and everything which actually happened and anything which might not have happened in accordance with the Party program is to be left out of consideration and only the Party program as such taken into consideration. Upon that, of course, the sense of his answer depended when he said, "Yes, the Party program is the basis of the criminal character."

Now, finally, to come to the end, it would be consistent with the logical course of my explanations, to wait until Sir David has decided on this question, an answer to which I should like to request from Sir David and also from Mr. Justice Jackson, who is not here today. . .

THE PRESIDENT: [*Interposing.*] Dr. Dix, the Tribunal will, of course, consider anything that you have said insofar as it refers to matters of principle, but they do not think that this is the proper time for Counsel for the Defense to pose questions to counsel for the Prosecution. The matter has already been fully dealt with, and the Tribunal do not propose to ask any further questions of the Prosecution unless the Prosecution wish to say anything in answer to what you have to say.

DR. DIX: Your Lordship, that was what I took the liberty of saying at the beginning. I realize that it is Sir David's free will and decision as to whether he cares to comply with my request to add to his answer to the questions posed by Mr. Justice Jackson. That I have to leave to him.

I have only a short question, which is intended to prevent our misunderstanding each other. It is always well not to be misunderstood.

I remember—but I may be mistaken, and that is why I wish to ask Sir David what Mr. Justice Jackson declared as his opinion—that he did not consider the Party program, as such, criminal. As I have said, this is what I remember. I did not take any notes on it, because it did not strike me particularly at that time, since I considered it self-evident. Therefore I may be mistaken. But if my memory is correct, I should like to ask Sir David to

state whether there is any uniform attitude on the part of the Prosecution toward this point.

THE PRESIDENT: Dr. Dix, the Tribunal asked the Prosecution to present their arguments in principle on the question of these organizations, and they wished also to hear counsel for the organizations in order that these matters should be cleared up, with a view to any possible evidence which might have to be given. They have heard counsel for all four prosecutors. They have asked them questions which they thought right to ask them in order to clear up any points. They have heard counsel for all the organizations and they have heard Counsel for the Prosecution in reply. They do not propose to ask any further questions of the Prosecution at this stage. Of course Counsel for the Prosecution and Counsel for the Defense will be fully heard at a later stage.

DR. DIX: I have come to the end of my statement. I leave it to the Court and Sir David as to whether he wants to answer these questions now.

DR. SEIDL: Mr. President, I should like to give a short explanation to the question as to which of the indicted organizations, the Defendant Frank belonged. Is that possible at this moment?

THE PRESIDENT: Dr. Seidl, the Tribunal do not think this is an appropriate time for any of the counsel for individual defendants to go into matters connected with the charges against the organizations. They will, of course, be heard in the course of their own defense, but this is not the appropriate time. This is only a preliminary discussion for the purpose of clarifying the issues which relate to the organizations.

DR. SEIDL: Yes, but I should like to use this opportunity to clarify a mistake which slipped in the day before yesterday. The day before yesterday I protested against the statement that the Defendant Frank was a member of the SS and this seems to have been translated incorrectly.

THE PRESIDENT: But Dr. Seidl, won't it appear in the shorthand notes? You have not seen the shorthand notes yet?

DR. SEIDL: I have not seen the transcript yet, but I believe that by error "SS" was translated as "SA." The Defendant Frank has never denied that he was an SA Obergruppenführer. What I wanted to point out is only that the statement in the Indictment that he was an SS general is not correct and also that the statement in Annex B about the nature of the criminal element is not pertinent, because it is said there that he was an SS general. But I attach importance to the fact that the Defendant Frank has never denied that he was an SA Obergruppenführer.

THE PRESIDENT: Very well, but you will have an opportunity to develop the whole case of Frank when your turn comes.

DR. SEIDL: Yes, but the question is merely this, as to whether the Defendant Frank was a member of the SS or not. As long as the Prosecution do not present any definite proof of the membership of the Defendant Frank in the SS, I have to contradict this statement. I do not believe that it is the task of the Defense to prove that the Defendant Frank was not a member of the SS. I am convinced that, on the other hand, this is one of the tasks of the Prosecution.

THE PRESIDENT: Very well; I have heard what you said.

DR. SERVATIUS: Dr. Servatius, for the Leadership Corps. . .

THE PRESIDENT: Dr. Servatius, the Tribunal are prepared to hear counsel for the organizations very shortly in the rebuttal, but only very shortly, as otherwise we may go on interminably.

DR. SERVATIUS: I do not want to make a speech, but merely to speak for about 5 minutes, in order to define my attitude towards a few matters of evidence. First, I have two questions to ask concerning the limitation of the proceedings to certain groups of members. I should be grateful if the Prosecution could give a statement as to whether the exception of certain parts of the organizations, as has taken place, is a final one or whether other procedures and steps are being held in reserve. This was stated originally in reference to the Leadership Corps. Concerning the limitation of the proceedings to certain groups of members in reference to the Leadership Corps, I do not wish to make any further motion inasmuch as that limitation has already been effected. I should be glad, however, if a decision could still be reached concerning the women. The female technical aides who were employed in the offices cannot, in my opinion, be included in the staffs. At any rate, they do not belong to the Leadership Corps, although they worked with the staffs. These women themselves are of this opinion, and also the officers in the camps shared this opinion. Accordingly not a single application for leave to be heard has been made by any woman in the British zone.

I presume it is known that women, as a matter of principle, were kept away from politics in the National Socialist State; and therefore, they can hardly be connected with the crimes stated in Article 6.

Now I should like to speak about two points concerning questions of evidence. As every profession creates the tools which it needs, so the jurist creates concepts to solve his problems. These concepts are not created for their own sake; thus the concept of the criminal organization shall serve to

call guilty persons to account who would otherwise possibly evade this responsibility of theirs. In establishing the Charter the procedure was this, that one did away with the traditional structure of the state in order to reach the individual organs. But in order to be able to seize these organs, one brought them together again through the concept of the guilt of conspiracy. In this way, however, only a relatively small circle can be reached, since its members would have to be bound to each other by means of an agreement. In order to enlarge this circle by means of legal technique, the concept of a criminal group or organization was created. This organization is involved in the agreement of conspiracy only at the very top, while the members automatically, without their own knowledge, are included in the conspiracy. Such a definition of the concept of a criminal organization is justifiable only insofar as it is useful in getting hold of the really guilty persons and only the guilty ones.

In order to define the limits of this concept, I should like to discuss two further points concerning the determination of guilt and therefore necessarily relevant to the question of admissibility of evidence. First, there is the question of the members' lack of knowledge of this criminality—the lack of knowledge resulting from secrecy—and then the attitude of the members after they had recognized the offenses being committed. In my opinion, the examination of guilt cannot be dismissed by pointing to the alleged knowledge of foreign countries about the real conditions. In foreign countries a propaganda was effective which exaggeratedly brought these things to light. In Germany all these facts remained secret, since because of their very nature they had to be secret—for instance, what was going on in the extermination camps—and because they had to be kept secret for political reasons. Moreover, the things which have become known here were so unimaginable that even in Germany one could not have believed them, had they become known during the war. It must be relevant to determine not whether a single individual member had no knowledge, but that 99 percent of the individual members acted in good faith. In this case, the organization is not criminal, but there could have been a criminal in it. If this is determined, then the legal construction of the criminal organization is superfluous and thereby false. The legal concepts existing until now will then be sufficient for bringing the guilty to trial.

The next viewpoint: The criminal nature or the criminal character of which the Charter speaks shows that that must be something which concerns the entire organization, and that it must be a continuous state of affairs. Individual acts which were rejected as wrong by the organization or the overwhelming majority of its members cannot establish the criminal

character of the organization. The attitude of all the members to the incriminating acts is therefore of decisive importance and thus of evidentiary relevancy.

We do not need the concept of the criminal organization in order to punish individual criminals whose acts were rejected by the majority. Among such individual cases, in organizations which comprise millions of members, there may be cases in which smaller or even larger groups or merely certain local districts took part.

I believe that it is really a major task of the Tribunal to define, with the objectivity of the judge, the nature of this guilt as applied to the entire organization. I am of the opinion that the points I have mentioned, the secrecy of these facts and the attitude of the members after gaining knowledge, must form the basis for the collecting of evidence.

THE TRIBUNAL (Mr. Biddle): I want to ask some questions.

Dr. Servatius, I would like to ask you—and I will ask other counsel for the organizations—whether in general you accept the definition of criminal organizations suggested by Mr. Justice Jackson, which is found on Pages 19 and 20 of his statement? You will remember that he made five general tests. Now, in order to determine what evidence should be taken, we must determine what is relevant. Now, the test of what is relevant depends on a general definition of what is common to all organizations for that purpose. Now, do you or could you now say whether in a general way you accept those tests for the purpose of taking evidence?

DR. SERVATIUS: I have not yet thought about that and have not had a chance to discuss it with my colleagues. I should be grateful if we would be given such an opportunity. Perhaps this afternoon a representative of the Defense Counsel for the organizations could report to the Court about this.

THE TRIBUNAL (Mr. Biddle): Let me ask you another question. What, in your mind, are the tests that should be applied for the purpose of taking evidence?

DR. SERVATIUS: I did not quite understand the question.

THE TRIBUNAL (Mr. Biddle): I said that Mr. Justice Jackson had suggested a definition from which the relevancy of certain evidence could be established. Now, have you got any suggestion to offer for that same purpose?

DR. SERVATIUS: I should not like to commit myself without having spoken to my colleagues. It is a question of great importance which I should not like to deal with by myself.

THE TRIBUNAL (Mr. Biddle): Yes, but it is the basis of this entire argument. The very purpose of the argument was to develop that.

DR. KUBUSCHOK: In the course of yesterday's debate the problem was discussed as to whether the task set before the Tribunal by the Charter can be considered a legislative act. The question was brought up as to whether, if we answer the preliminary question in the affirmative, the Court has the possibility of giving any binding instructions to the national court which has to try individuals, according to Law Number 10. That concerns, above all, the extent of the examination of the guilt of the individual member and the limitation of the scope of punishment for minor cases. I believe that if we follow up this deliberation we shall be led from a play upon words into a labyrinth when it comes to the practical application. Actually the task given the Court is not a legislative act. It is not a procedural innovation, if the national court in subsequent proceedings is bound by the previous decision of this Tribunal. Such cases are quite plausible and legally admissible. If elsewhere in criminal procedure a criminal court is bound by a previous decision, say of an administrative court, we consider these cases quite in order and unobjectionable. Likewise a criminal court could, for instance, be bound in judging a case of embezzlement to wait for the previous decision of the civil court as to whether the object embezzled was the property of somebody else.

Here, too, nobody would think that the civil judge was undertaking an act of legislation. That another court's decision is binding on the criminal court and is the premise for its sentence does not in any way mean that the author of the criminal code has not completed his legislative task and that this has now to be done by the court which takes the preceding decision. In my opinion we therefore do not have to consider this point any further, for Article 9, Paragraph 1, of the Charter demands of the Tribunal a clear and unequivocal decision of the question whether the organization is criminal or not.

More cannot be read either into the Charter or into Law Number 10. Yesterday Sir David defined his attitude to the five points which were submitted by me for consideration as to relevancy of evidence. In regard to the two last points he raised the objection that they were to be dealt with in the subsequent trials envisaged by Law Number 10. It was a question of the grounds for exonerating persons—for instance, coercion, deception, *et cetera*. I want to avoid repetition and point out only the following: It is quite correct that the question of coercion and deception and other reasons for the exoneration of persons be discussed in subsequent trials. In connection with this, Sir David also called the attention of the Court to a really noteworthy

problem—that is, the problem of a deception by the state, that is, a problem of mass suggestion. This is really a very important problem. It affects many members, as far as their joining is concerned. But it leads to the broadest deduction as to the guilt of the entire membership and the character of the total organization.

We have therefore to pay particular attention as to how the problem of deception on the part of the state affected the member and thereby was characteristic of the organization. All grounds for the exoneration of persons are therefore also to be examined by the Tribunal in judging the question of the character of the organization. Furthermore, evidence must be taken on the broadest basis.

If the Tribunal were to make any limitation now, there would be the possibility that later, at the end of the Trial, in contrast to its present opinion, it might consider as relevant material now excluded.

In yesterday's debate the importance of the question was discussed, in regard to the proposed declaration of criminality, as to what should be considered as constituting knowledge on the part of the single member. Sir David here applied the standard of a person of average intelligence and wants to consider as guilty anybody who was above that standard.

I have already recently explained that in regard to laws threatening such a severe punishment as in this case, all systems of penal law require that willful intent on the part of the perpetrator be proved. Offenses of negligence are punishable only in exceptional cases, and then only with minor penalties. At any rate in a case of an offense by negligence it must be clear to the offender that he is under an obligation to examine his action from the point of view of penal law. Law Number 10—and now in connection with it the proposed verdict of this Court—represents an ex post facto law.

In the case of the main defendants the Prosecution have justified the deviation from the generally recognized principle *nulla poena sine lege* on the ground that they themselves did not act in accordance with this principle and cannot, therefore, base themselves on it now. This, however, does not in any way apply to the organizations, quite apart from the question whether this argument can be accepted at all.

At any rate, however, in considering the element of negligence one should also not overlook the fact that the obligation to exercise attention differs in the case of *ex post facto* laws from what it would be in the case of existing laws.

In this connection I should like to refer to the fact that the question of whether the statutes of the Party organizations were illegal or not has often been examined already, even earlier, at the time of the Weimar Republic. Political considerations definitely favored such a declaration. Apparently, legal considerations at that time did not let the carrying out of such a procedure seem practical. What measure should we then apply to the individual member's ability to judge such matters, if the legal problem is so difficult and lends itself so very much to discussion?

The Prosecution has restricted the motion so as to exclude the auxiliary workers in the case of the Gestapo. The reason for this can only have been that in the case of these members knowledge cannot be assumed to be self-evident. I ask that the conclusions drawn in this individual case be applied to the members of other organizations. Should not the individual member of an organization comprising millions who had far less contact with the executive organ than did an auxiliary worker of the Gestapo—should not this member be judged much more favorably, as far as knowledge is concerned, than this group which has been excepted?

Are we not in particular obliged to use the best methods possible to inform ourselves as to the knowledge or lack of knowledge of the individual member? Sir David, in discussing the problem of negligence, suddenly spoke of an ostrich policy. But here we have to consider that the person who sticks his head into the sand in order not to see has actually seen something and therefore does not want to see any more. It is quite different in the case of this member who from the sources at his disposal can gain no knowledge of individual actions; who, in particular, has no knowledge of whether possibly only. . .

THE PRESIDENT: Forgive my interrupting you, but the Tribunal have already heard and listened with attention to your interesting argument, and the argument that they now are prepared to listen to is only a very short argument in rebuttal. As I have already pointed out, it seems to me that the greater part of what you are now saying is what you have already said. We cannot go on hearing these arguments at great length.

DR. KUBUSCHOK: Since I have arrived at the end of my remarks, I should like in conclusion just to introduce one point of view which concerns the defense of the Reich Cabinet. The number of members of the Reich Cabinet is very limited. One half are in the defendants' dock. Is it really necessary to consider the other half cumulatively as an organization, since the small number of those concerned makes possible an individual trial, with all the legal guarantees given therein? To this extent I should like to refer to the remarks made by my colleague, Dr. Laternser, who mentioned the

provision of the Charter that the Tribunal is not compelled to reach a decision but that for reasons of expediency it can refrain from doing so.

THE PRESIDENT: Mr. Biddle wants to ask you some questions.

THE TRIBUNAL (Mr. Biddle): I have just one question. Will you listen to this very carefully?

If the Tribunal find that an organization was being used for a criminal purpose, and certainly, with respect to some organizations, there is ample evidence that might justify such a finding, why, then, would the Tribunal not be justified in holding that organization as a criminal organization insofar as it was composed of persons who had knowledge that it was being so used and voluntarily remained members of the organization? In other words, the definition would state that it consisted of members who had actual knowledge that the organization was engaged in the commission of crime.

DR. KUBUSCHOK: The organization cannot be separated from the total number of its members. The declaration of criminality in connection with Law Number 10 is to affect each individual member. The task of the Tribunal would not be fulfilled if it limited that task and excluded from the organization unspecified individuals. In the task which I have mentioned we cannot overlook the practical purpose, and that will not be guaranteed if such a limitation is made.

THE TRIBUNAL (Mr. Biddle): I will ask just one more question. I do not think you have answered my question. I will put it very simply again.

How would that definition be unfair to any individual?

DR. KUBUSCHOK: If only a limited circle of persons in connection with the organization is branded as criminal, this necessarily results in an injustice to the other members of the organization. The declaration naturally affects the name of the entire organization, and, therefore, the declaration of criminality affects each individual member, even if one tries to limit the definition.

THE TRIBUNAL (Mr. Biddle): Thank you.

THE PRESIDENT: I think in view of the time we had better adjourn for 10 minutes.

[*A recess was taken.*]

DR. LATERNSER: Mr. President, it was not my intention to make statements today about the concept of the criminal organizations, because I believe that my statements of yesterday on this point were comprehensive. I should merely like to state briefly my attitude to the second question put by Mr. Biddle to my colleague, Kubuschok.

The second question, if I understood it correctly, was as follows: Why is it unfair to the individuals who were members of an organization, or why can it be unfair to them, if this organization is declared criminal? This declaration of the criminality of an organization is certainly unfair to all those members who had no knowledge of any supposedly criminal purpose and aims. For in this question one has to. . .

THE TRIBUNAL (Mr. Biddle): You misunderstood the question, I think; so, to save time—the question was a very simple one. I do not want to go into it unless you want to. I will repeat it again. I said this: If an organization was being used for criminal purposes—and I added that there was very great evidence that such was the case in certain instances—why would it not be proper to hold it a criminal organization insofar as it was composed of persons who had knowledge that it was being so used and voluntarily remained members? Of course, that would exclude from the organization everybody who did not have knowledge that it was engaged in criminal purposes.

DR. LATERNSER: Then I did not understand the question quite correctly, and further statements in regard to these questions, which have now been settled, are unnecessary.

DR. LÖFFLER: I should like first of all to correct a misunderstanding. Sir David stated yesterday in his reply that I had admitted that the SA had participated in the 10th and 11th of November 1938. I emphasize expressly that I stated that only 2 percent of the SA at the most were involved in individual actions, and that obviously applies to this event as well. This example occasions me to underscore what my colleague, Servatius, has previously stated about taking into consideration the so-called mistake of an organization, in a case where an organization deviates from its path and commits an error—which should be avoided. The 98 percent who did not participate, as well as the 2 percent who did participate there, with few exceptions, all regarded this action with aversion and disgust and were not inwardly in agreement with it.

It is therefore an error on the part of the Indictment if on the basis of this single event, on the basis of this exceptional case, general conclusions are drawn as to the general character of the organization. For it is rightfully protested that the very rejection of this action is a proof that this is an exception to the general tendency of the organization.

If, then, it is asserted as a second point that the SA was also concerned with concentration camps, that is also a further typical proof of the false conclusion to which one can come in the case of judgment against the organizations. Of 4 millions there were 1,000 men at the most, that is, only

0.5 percent. The remaining 3,999,000 had no knowledge of this, and this can be proved. No one will wish to claim that the fact that 0.5 percent were involved in something about which the others knew nothing at all allows a conclusion to be drawn as to the question of criminal character. But this small percentage, as such, is not an answer to the question which is being raised at this point. Rather we are, as before, of the opinion that the explanation which was made by attorney Kubuschok absolutely covers the criminal character as formulated by the Defense, if the basic conditions are met, as set down by attorney Kubuschok in agreement with all defense counsel for the organizations. On the basis of this formulation, that question which Justice Biddle previously put to counsel for the various organizations can readily be answered.

I should like to emphasize that yesterday Mr. Justice Jackson made the suggestion that, instead of having countless witnesses, experts be heard on the subject of what willful intent can be assumed in the case of the single organizations. I should like to oppose this emphatically. One cannot hear any witness or any expert who can tell the Court what, so to speak, that "common sense" was on the basis of which the question is to be judged—what knowledge the single members had.

The members, as far as intelligence is concerned, vary greatly. There are those of average intelligence and there are less intelligent members of the organizations. If a judgment is to be passed here which also affects less intelligent members of the organizations and condemns them, then it is a basic principle of law that this should not be done on the basis of what the intelligent members of the organizations might and could have known; that would be an injustice to the average persons and the less intelligent. Not even the average persons can be taken as a basis, since this would be an injustice to the still less intelligent, who would be included in and affected by this judgment.

In conclusion I should like to point out that yesterday's debate on the question of the effect of the judgment which this Court is to pass confirmed in full measure the fears of the Defense Counsel. Mr. Justice Jackson declared that this judgment would have the character of a declaration. This is not compatible with the statement which Lieutenant General Clay, the Deputy Military Governor of the American occupied zone, made yesterday in an interview for the *Neue Zeitung*, the American paper for the German population. I should like to quote a sentence from the latest issue which refutes Justice Jackson's opinion. Lieutenant General Clay declares in regard to the question of the fate of these interned in the United States zone of occupation:

> "The decision of the Nuremberg Tribunal will decide what will happen to them. Their number is at present 280,000 to 300,000. Should the International Tribunal at Nuremberg, however, consider all the members of the indicted National Socialist organizations war criminals, then the number will be increased to 500,000 or 600,000."

The declaration made by Justice Jackson yesterday that no mass retribution is intended could be made only in reference to the present standpoint of his Government. But there is no guarantee that other governments will not take another stand or that his Government, which is not bound to Justice Jackson's opinion, will not alter its stand.

I should like to conclude with this remark: Justice Jackson mentioned the shock which the combination of the Charter and decision desired by the Prosecution—in connection with Law Number 10—has been to the Defense. I believe that the effect of this shock is not confined to the Defense alone but affects all people who are interested in justice, for if the combination of these various laws gives the national courts the opportunity to call millions of members of organizations to account—among whom, as Justice Jackson also could not deny yesterday, there are innocent people—and if punishments for mere membership ranging from a fine to the death sentence are provided, then it is the duty of the Defense to point out that the procedure here obviously threatens to deviate from the basis of law and will necessarily lead to arbitrary action.

If Justice Jackson then in answer to this refers to the effect of shock in connection with the death of many Jews, one can say that those things happened outside the law and in the name of force. This Charter and this Tribunal, however, want to do away with force and put justice in its place. But justice must be clear and it must be sure.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the Tribunal said earlier that certain questions had been asked of me. I am perfectly prepared to answer the three questions if the Tribunal desire their time to be occupied by my so doing.

THE PRESIDENT: I don't think the Tribunal wish to hear any further arguments unless you particularly want to answer anything.

SIR DAVID MAXWELL-FYFE: I did not intend to argue at all. It was only that Dr. Dix put two questions to me on which he asked my view, and Dr. Servatius one, but I am in the hands of the Tribunal. I do not want it to be thought that the Prosecution are not prepared to answer the questions.

THE PRESIDENT: If you can answer them shortly, we should be quite glad to hear them.

SIR DAVID MAXWELL-FYFE: The first question that Dr. Dix asked me was to clarify what I had said about the Führerprinzip in relation to the Reichsregierung. I can answer that in two sentences. I said that, in addition to the ordinary support which members of the Reichsregierung in 1933 gave to Hitler under the Führerprinzip, they entrusted their consciences and wills to him and adopted completely his points of view.

In order that Dr. Dix may be under no misapprehension with regard to his client, the case for the Prosecution may be put in the words of Dr. Goebbels, one of the conspirators, on the 21st of November 1934, in conversation with Dr. Schacht:

> "I assured myself that he absolutely represents our point of view. He is one of the few who accepts the Führer's position entirely."

The second point was on the question of the Party program in relation to the Treaty of Versailles and the Anschluss. Dr. Dix asked me to deal with those who desired to effect the aims of the Party program in a peaceful way. The Prosecution say that does not arise, that the Party program must be considered in the background of Hitler and other publications as to the use of force and also as to the existing state of things in the relationship of Germany with the Western Powers and also of treaty obligation to Austria and Czechoslovakia.

The third question that was put to me was by Dr. Servatius, about the Leadership Corps. You will remember, My Lord, that in the statement of the Tribunal the Prosecution were asked, if they were making any limitation, to make it now. That is contained in the statement of the Tribunal. The limitation which we have made—that is, only including the staff in the case of the Reichsleitung, Gauleitung, and Kreisleitung, and excluding the staff in the case of the Ortsgruppenleiter, Zellenleiter, and Blockleiter—is the view to which the Prosecution adhere and which has been agreed upon by the different delegations. I wanted Dr. Servatius to know that that was the position. I don't intend to repeat the reasons for it which were given by my friend, Mr. Justice Jackson.

THE PRESIDENT: There is only one thing I should like to say. I think it might be useful to the Tribunal, if you have them, to let us have copies of the British statutes to which Mr. Justice Jackson referred and also of certain judgments of the German courts—if you have copies available.

SIR DAVID MAXWELL-FYFE: They will be found for the Tribunal and the Tribunal will receive them within the shortest possible time.

THE PRESIDENT: Mr. Dodd, I understand that you have an affidavit which you wish to put in with reference to the High Command?

MR. DODD: Yes, we do have it. We located this affidavit on Thursday; the Tribunal had inquired about it on the afternoon of the day before—on Wednesday, I believe it was. We have prepared for the Tribunal a list of the offices comprising the German General Staff and High Command as defined by the Indictment in Appendix B. The list was compiled from official sources in the Admiralty Office of Great Britain, the War Office of Great Britain, and the Air Ministry of Great Britain, and supplemental information was obtained from senior German officers, now prisoners of war in England and in Germany. The list is attached to this affidavit, as we intended to submit it this morning to the Tribunal; and the affidavit describes the source from which this information was obtained and it points out that the list does not purport to be exhaustive or necessarily correct in every detail. It is, however, substantially a complete list of the members of the General Staff and of the High Command and of the High Command group, and on the basis of this compilation there appear to have been a total of 131 members, of whom 114 are thought to be living at the present time. I wish to offer the list formally, together with this affidavit, as Exhibit Number USA-778 (Document Number 3739-PS), I ask that it be accepted without reading. However, of course, if the Tribunal would like it read over the public address system, I should be glad to do so.

THE PRESIDENT: No, I do not think you need read it over. Copies have been given to the Defense?

MR. DODD: Yes, they have, Your Honor. They have been given to the Defense.

THE PRESIDENT: Very well. Thank you.

MR. DODD: Colonel Smirnov, if Your Honor pleases, is prepared to read the document with reference to Stalag Luft III. If the Tribunal would like, we will have him do so.

THE PRESIDENT: I think that might perhaps be done on Monday morning.

MR. DODD: Very well.

THE PRESIDENT: The Tribunal will now adjourn.

[*The Tribunal adjourned until 4 March 1946 at 1000 hours.*]

SEVENTY-THIRD DAY

Monday, 4 March 1946

Morning Session

MR. COUNSELLOR SMIRNOV: Sir, a few days ago the Tribunal issued instructions concerning the expedience of reading into the record the official British report on the responsibility for the slaying of 50 officers of the Royal Air Force coincidentally, as far as possible, with the proposed interrogatory of General Westhoff and the senior criminal counsel, Wielen. May I read into the record some of the more essential passages from this report of the British Government? I shall read into the record those parts of the document which, on the one hand, testify to the general character of this criminal act and, on the other hand, establish the responsibility for the crime.

THE PRESIDENT: Colonel Smirnov, you are offering the document, are you, as evidence? You are seeking to put the document in evidence?

MR. COUNSELLOR SMIRNOV: This document has already been presented in evidence and has already been accepted by the Tribunal. I wished only to read into the record certain extracts from this document. It has been submitted as Exhibit Number USSR-413 (Document Number UK-48).

THE PRESIDENT: Very well.

MR. COUNSELLOR SMIRNOV: I am quoting Paragraph 1 of the official British report:

> "1. On the night of 24-25 March 1944, 76 R.A.F. officers escaped from Stalag Luft III at Sagan in Silesia, where they had been confined as prisoners of war. Of these, 15 were recaptured and returned to the camp, 3 escaped altogether, 8 were detained by the Gestapo after recapture. Of the fate of the remaining 50 officers the following information was given by the German authorities:
>
> "(a) On 6th April 1944, at Sagan, the acting commandant of Stalag Luft III (Oberstleutnant Cordes) read to the senior British officer (Group Captain Massey) an official communication of the German High Command that 41 officers (unnamed) had been shot, 'some

of them having offered resistance on being arrested, others having tried to escape on the transport back to their camp.'

"(b) On 15th April 1944, at Sagan, a member of the German camp staff (Hauptmann Pieber) produced to the new senior British officer (Group Captain Wilson) a list of 47 names of the officers who had been shot.

"(c) On 18th May 1944, at Sagan, the senior British officer was given three additional names, making a total of 50.

"(d) On or about 12th June 1944, the Swiss Minister in Berlin received from the German Foreign Office, in reply to his enquiry into the affair, a note to the effect that 37 prisoners of British nationality and 13 prisoners of non-British nationality were shot when offering resistance when found or attempting to re-escape after capture. This note also referred to the return of urns containing the ashes of the dead to Sagan for burial."

The official German version—the official version of the German authorities—indicated that these officers were shot allegedly while attempting to escape. As a matter of fact, as definitely proved by the documentation of the investigation carried out by the British authorities, the officers were murdered—and murdered by members of the Gestapo on direct orders from Keitel and with the full knowledge of Göring.

I shall, with your permission, read into the record in confirmation of this fact two paragraphs—or rather two points—from the official British report, that is, Point 7 and Point 8:

"7. General Major Westhoff at the time of the escape was in charge of the general department relating to prisoners of war, and on 15th June 1945 he made a statement in the course of which he said that he and General Von Graevenitz, the inspector of the German POW organization, were summoned to Berlin a few days after the escape and there interviewed by Keitel. The latter told them that he had been blamed by Göring in the presence of Himmler for having let the prisoners of war escape.

"Keitel said, 'Gentlemen, these escapes must stop. We must set an example. We shall take very severe measures. I can only tell you that the officers who have escaped will be shot; probably the majority of them are dead already.' When Von Graevenitz objected, Keitel said, 'I do not care a damn; we discussed it in the Führer's presence and it cannot be altered.' "

Point 8: I begin the quotation of the official British report:

"Max Ernst Gustav Friedrich Wielen was then the officer in charge of the Criminal Police (Kripo) at Breslau, and he also made a statement, dated 26th August 1945, in the course of which he said that as soon as practically all the escaped R.A.F. officers had been recaptured he was summoned to Berlin where he saw Arthur Nebe, the Chief of the Kripo head office, who showed him a teleprint order signed by Kaltenbrunner, which was to the effect that on the express order of the Führer over half of the officers who had escaped from Sagan were to be shot after their recapture. It was stated that Müller had received corresponding orders and would give instructions to the Gestapo. According to Wielen the Kripo, who were responsible for collecting and holding all the recaptured prisoners, handed over to the Gestapo the prisoners who were to be shot, having previously provided the Gestapo with a list of the prisoners regarded by the camp authorities as 'troublesome.' "

I would also ask the Tribunal's permission to read into the record that part of the text of the official report of the British Government which deals with the methods of investigation in regard to individual officers. This documentation has been systematized and divided into three parts. I take the liberty of reading into the record the data of the findings referring to the three separate parts. I quote Page 3 of the Russian text, beginning from Paragraph 2:

"Flight Lieutenants Wernham, Kiewnarski, Pawluk, and Skanziklas.

"On or about 26th March 1944 . . .

THE PRESIDENT: Colonel Smirnov, are you going to read now some of the evidence upon which the report is based?

MR. COUNSELLOR SMIRNOV: Mr. President, I should like to read out only from the text proper and particularly those parts of the report which testify to the methods of investigation applied in the case of individual officers. I should like to begin reading from the paragraph dealing with the three groups of officers.

THE PRESIDENT: Paragraph 4?

MR. COUNSELLOR SMIRNOV: Yes.

THE PRESIDENT: Very well.

MR. COUNSELLOR SMIRNOV: "On or about the 26th of March 1944 these officers were interrogated at the police station in Hirschberg and were then moved to the civil gaol in that town. On

the morning of 29th March Pawluk and Kiewnarski were taken away and later in the day Skanziklas and Wernham left. Both parties were escorted, but their destination was unknown. They have not been seen since and the urns later received at the Stalag showing their names bear the date 30th March 1944."

And now the next group of British officers:

"Squadron Leader Cross, Flight Lieutenants Casey, Wiley, and Leigh, and Flight Officers Pohe and Hake.

"Between 26th and 30th March 1944 these officers were interrogated at the Kripo headquarters in Görlitz and then returned to the gaol there. During the interrogation Casey was told that 'he would lose his head,' Wiley that 'he would be shot,' and Leigh that 'he would be shot.' Hake was suffering from badly frostbitten feet and was incapable of traveling for any distance on foot. On 30th March the officers left Görlitz in three motor cars accompanied by 10 German civilians of the Gestapo type. The urns later received at the Stalag bear their names and show them to have been cremated at Görlitz on 31st March 1944.

"Flight Lieutenants Humpreys, McGill, Swain, Hall, Langford, and Evans; Flight Officers Valenta, Kolanowski, Stewart, and Birkland.

"These officers were interrogated at the Kripo headquarters in Görlitz between 26th and 30th March. Swain was told that 'he would be shot,' Valenta was threatened and told that 'he would never escape again.' Kolanowski was very depressed after his interview. On 31st March these officers were collected by a party of German civilians, at least one of whom was in the party which had come on the previous day. The urns later received at the Stalag bore their names and show them to have been cremated at Liegnitz on a date unspecified."

I wish to draw the attention of the Tribunal to the fact that similar data also relate to different groups of British officers slain by the Germans in Stalag Luft III.

The following page of the text includes identical data relating to Flight lieutenants Grisman, Gunn, Williams, and Milford, Flight Officer Street and Lieutenant McGarr. Similar information is given concerning Flight Lieutenant Long, Squadron Leader J. E. Williams, Flight Lieutenants Bull and Mondschein, and Flight Officer Kierath. The same information is given with reference to Flight Officer Stower, Flight Lieutenant Tobolski, Flight

Officer Krol, Flight Lieutenants Wallen, Marcinkus, and Brettell, Flight Officer Picard and Lieutenants Gouws and Stevens, Squadron Leader Bushell and Lieutenant Scheidhauer, Flight Officer Cochran, Lieutenants Espelid and Fugelsang, Squadron Leader Kirby-Green and Flight Officer Kidder, Squadron Leader Catanach and Flight Officer Christensen, and Flight Lieutenant Hayter.

I shall, with your permission, read into the record one more paragraph from this official report. I refer to Paragraph 6 of the official British report and also to Paragraph 5, because it is of essential importance.

THE PRESIDENT: I was going to suggest you should read Paragraph 5.

MR. COUNSELLOR SMIRNOV: I am going to read Paragraph 5 of the British text:

> "According to the evidence of the survivors there was no question of any officers having resisted arrest or of the recaptured officers having attempted a second escape. All were agreed that the weather conditions were against them and that such an attempt would be madness. They were anxious to be returned to the Stalag, take their punishment, and try their luck at escaping another time.
>
> "6. The Swiss representative (M. Gabriel Naville) pointed out on 9th June 1944 in his report on his visit to Sagan that the cremation of deceased prisoners of war was most unusual (the normal custom being to bury them in a coffin with military honors) and that was the first case known to him where the bodies of deceased prisoners had been cremated. Further it may be noted that if, as the Germans alleged, these 50 officers who were recaptured in widely scattered parts of Germany had resisted arrest or attempted a second escape, it is probable that some would have been wounded and most improbable that all would have been killed. In this connection it is significant that the German Foreign Office refused to give to the protecting power the customary details of the circumstances in which each officer lost his life."

Those are the parts of the official report of the British Government which I had the honor to communicate to the Court.

THE PRESIDENT: I think it would perhaps be better if you also read the appendix so as to show the summary of the evidence upon which the report proceeded, Paragraph 9.

MR. COUNSELLOR SMIRNOV: I refrained from reading the appendix because it had already been read in due course by Sir David Maxwell-Fyfe. I

shall read it once more with pleasure:

> "9. The appendix attached hereto gives a list of the material upon which this report is based. The documents referred to are annexed to this report.
>
> "Appendix.
>
> "Material upon which the foregoing report is based:
>
> "(1) Proceedings of court of inquiry held at Sagan by order of the senior British officer in Stalag Luft III and forwarded by the protecting power.
>
> "(2) Statements of the following Allied witnesses: (a) Wing Commander Day, (b) Flight Lieutenant Tonder, (c) Flight Lieutenant Dowse, (d) Flight Lieutenant Van Wymeersch, (e) Flight Lieutenant Green, (f) Flight Lieutenant Marshall, (g) Flight Lieutenant Nelson, (h) Flight Lieutenant Churchill, (i) Lieutenant Neely, (k) P. S. M. Hicks.
>
> "(3) Statements taken from the following Germans: (a) Major General Westhoff, (b) Oberregierungsrat und Kriminalrat Wielen (two statements), (c) Oberst Von Lindeiner.
>
> "(4) Photostat copy of the official list of dead transmitted by the German Foreign Office to the Swiss Legation in Berlin on or about 15 June 1944.
>
> "(5) Report of the representative of the protecting power on his visit to Stalag Luft III on 5 June 1944."

THE PRESIDENT: Then, for the purposes of the record, you had better read in the signature and the department at the bottom.

MR. COUNSELLOR SMIRNOV: The document is signed by H. Shapcott, Brigadier, Military Deputy, and is certified by the Military Department, Judge Advocate General's Office, London, 25 September 1945.

THE PRESIDENT: Colonel Smirnov, so far as the Russian Chief Prosecutor is concerned, does that conclude the case for the Prosecution?

MR. COUNSELLOR SMIRNOV: Yes.

THE PRESIDENT: Thank you.

DR. NELTE: Mr. President, Paragraph 9 of the report which has just been read by the Prosecution mentions the documents which served as a basis for it and says that they are attached to the report. The individual documents on which the report is based are listed in the appendix. I ask the Tribunal to decide whether Document USSR-413 satisfies the requirements

of Article 21 of the Charter, since the material on which it was based, and which is expressly mentioned in the report, has not been produced along with it. I request that the Prosecution be asked to make the appendix available to the Defense as well.

THE PRESIDENT: Dr. Nelte, do you mean that you have only had the report made by the Brigadier and have not seen any part of the other evidence upon which the report proceeds?

DR. NELTE: Mr. President, the Tribunal decided during an earlier phase of this Trial . . .

THE PRESIDENT: [*Interposing.*] Yes, but I did not ask you what we had decided. I asked what you had received. Have you received from the Prosecution the whole of this document or only the report made by the Brigadier?

DR. NELTE: Only the report, without the appendix.

THE PRESIDENT: Well, the Tribunal certainly intended that the whole of the document should be furnished to defendant's counsel, and that must be done so that you may have all the documents before you.

DR. NELTE: But that has obviously not been done. The appendix expressly mentions statements made by Major General Westhoff and by Oberregierungsrat Wielen. I am not acquainted with either of these statements. They were not attached to the report.

THE PRESIDENT: You must have them. The Prosecution must see that the whole of this document is furnished to the Defense Counsel.

SIR DAVID MAXWELL-FYFE: Certainly, My Lord. I do not think the whole of it has been copied, but if Dr. Nelte will let us know if he wants the whole of it, or a part, we will co-operate the best way we can. The last thing we desire is that he should not have it. We want him to have everything he wants.

THE PRESIDENT: Well, Sir David, will you inform the Tribunal whether the Prosecution have now concluded their case.

SIR DAVID MAXWELL-FYFE: Yes, My Lord. That is the conclusion of the case for the Prosecution.

THE PRESIDENT: Very well. Then we will now proceed with the applications for witnesses and documents by the second four of the defendants: Kaltenbrunner, Rosenberg, Frank, and Frick.

DR. KURT KAUFFMANN (Counsel for Defendant Kaltenbrunner): The Defendant Kaltenbrunner wishes to call a number of witnesses whom I will name now. First, Professor Dr. Burckhardt.

SIR DAVID MAXWELL-FYFE: My Lord, if the Tribunal approves, we will adopt the same procedure as was done on the first four defendants.

With regard to the three Swiss witnesses, Burckhardt, Brachmann, and Meyer, the interrogatories were granted on the 15th of December and submitted on the 28th of January. The Prosecution considered that the interrogatories were rather on the vague side and suggested that they might be made more precise. The Prosecution have no objection to interrogatories in principle, and I am sure that there would not be much difference between Dr. Kauffmann and the Prosecution as to the form. That applies to the first three witnesses.

THE PRESIDENT: We are informed that none of these three witnesses has been located yet.

SIR DAVID MAXWELL-FYFE: Well, I respectfully agree, My Lord. That is the position of the Prosecution, that we have no objection in principle to these interrogatories, and if we can help the Court in any way to locate the witnesses, we should be glad to do so.

THE PRESIDENT: When were the interrogatories furnished to the Prosecution?

SIR DAVID MAXWELL-FYFE: The 28th of January, My Lord.

THE PRESIDENT: And were the Prosecution's objections communicated to the Defense Counsel shortly afterwards, or when?

SIR DAVID MAXWELL-FYFE: I am sorry, I am afraid I have not got that date, My Lord.

THE PRESIDENT: Wouldn't the most sensible course be for the Prosecution to try to agree upon a suitable form of interrogatory whilst the General Secretary is continuing his inquiries to find the witnesses?

SIR DAVID MAXWELL-FYFE: Yes. Well, if Dr. Kauffmann will communicate with me, I have no doubt that we could agree on a form that would be mutually acceptable.

THE PRESIDENT: Very well.

DR. KAUFFMANN: Mr. President, I think there is no need for me to repeat the individual questions which I have listed in the interrogatory. There are 19 of them. I do not think that I need repeat them now.

THE PRESIDENT: No, certainly not.

DR. KAUFFMANN: The fourth witness is the former German Minister in Belgrade, Neubacher. At present he is in the internment camp Oberursel near Frankfurt, in American custody.

SIR DAVID MAXWELL-FYFE: No objection to this witness.

DR. KAUFFMANN: Does the Tribunal want me to specify the evidence?

THE PRESIDENT: Yes, if you would.

DR. KAUFFMANN: Neubacher will, in the opinion of the Defendant Kaltenbrunner, be able to testify that the order given by Hitler in October 1944 to stop the persecution of the Jews was really given at Kaltenbrunner's suggestion.

Furthermore, in the opinion of the defendant, he will be able to testify that when Himmler was appointed Chief of the Reichssicherheitshauptamt he put the defendant in charge of Amt III and VI. This seems to me to be important, since so far the Indictment has always been based on the defendant's definite connection with Amt IV, which is, indeed, borne out to a certain extent by the evidence. Neubacher is expected to be able to testify to this.

THE PRESIDENT: Dr. Kauffmann, if those are the questions which it is desired to interrogate Neubacher on, couldn't they be dealt with by interrogatories?

DR. KAUFFMANN: According to the information given to me by Kaltenbrunner, Kaltenbrunner attaches importance to the personal appearance of this witness for reasons which are easy to understand. I believe that Kaltenbrunner considers this witness one of the most important witnesses, and he would like to see this witness called.

THE PRESIDENT: Well, the Tribunal will consider that.

DR. KAUFFMANN: The next witness is Number 5, Wanneck, at present in American custody in Heidelberg.

SIR DAVID MAXWELL-FYFE: The Prosecution suggests that the witness Wanneck is cumulative. According to Dr. Kauffmann's application, he is going to deal with the point that the Defendant Kaltenbrunner was actually occupied mainly with the task of the intelligence service and that he objected to persecution of the Jews. That is already covered by Neubacher, and it is also covered by the cross-examination of the Prosecution's witness Schellenberg, who was the chief of Amt VI, which Dr. Kauffmann has set out in his note on the witness Neubacher, Number 4, as being one of the Intelligence Ämter.

DR. KAUFFMANN: I leave it to the Tribunal to decide whether this witness could be dealt with by means of an interrogatory. But I do consider the evidence material relevant in the case of Wanneck as well. In a certain sense it is cumulative, but some points in it go further. But I agree to an interrogatory.

The sixth witness is Scheidler.

THE PRESIDENT: Sir David, do you think it would be unreasonable to administer an interrogatory?

SIR DAVID MAXWELL-FYFE: No, My Lord. Generally I make no objection to interrogatories at all.

With regard to Scheidler, he was, as I understand the application, the Defendant Kaltenbrunner's adjutant, and as such the Prosecution would not make any objection. But I think it would be convenient if I were to draw the attention of the Tribunal to the fact that the next six witnesses, Numbers 6 to 11 inclusive, all deal with concentration camps, and numbers 6, 8, 9, and 11 deal with Mauthausen. I want to give Dr. Kauffmann warning that I shall ask for some selectivity among these six witnesses.

The Prosecution feel that the application for an adjutant is a reasonable one, but it will be reflected in objections to later witnesses.

DR. KAUFFMANN: The defendant naturally considers it important that the adjutant who served him for many years and who accompanied him on every single trip, as Kaltenbrunner told me himself, be called. He knows also, for instance, that the wireless message to Fegelein, which is part of the accusation, did not come from Kaltenbrunner and that his radiogram was never sent. He also knows that Kaltenbrunner had made all preparations for the Theresienstadt camp to be made accessible to the Red Cross. These are things which have not been mentioned by previous witnesses, but which shed some light on the person of the defendant.

THE PRESIDENT: You are speaking now of Scheidler?

DR. KAUFFMANN: Yes.

THE PRESIDENT: Sir David, the Tribunal would like you to deal with the whole of that group together, and then Dr. Kauffmann can answer what you say.

SIR DAVID MAXWELL-FYFE: With pleasure, My Lord.

The next witness is Ohlendorf, who was called as a witness for the Prosecution. The situation as I have found it is that Dr. Kauffmann did cross-examine the witness Ohlendorf on the Defendant Kaltenbrunner's responsibility on concentration camps on the 3rd of January of this year, at Page 2034 of the transcript (Volume IV, Page 335).

The witness Wisliceny, Number 12, who has not been cross-examined on behalf of Kaltenbrunner by Dr. Kauffmann, would be the natural person to deal with that point. But, of course, if Dr. Kauffmann has any special point for the recalling of Ohlendorf, he will tell the Tribunal.

That is the position.

THE PRESIDENT: Dr. Kauffmann, if you had the opportunity of cross-examining General Ohlendorf and actually availed yourself of the opportunity wasn't that the appropriate time for you to put any questions which you had on behalf of the Defendant Kaltenbrunner?

DR. KAUFFMANN: I should like to remind you that Kaltenbrunner was ill for more than 12 weeks and that I could get almost no information from him. At the session of 2 January the right of cross-examining the witnesses at a later date was expressly granted me by the Tribunal. I had, as the Court will remember, made a motion to adjourn, and then I was permitted to cross-examine the witnesses at a given time which would suit me.

That appears in the transcript of 2 January 1946.

As these witnesses have all been called in Kaltenbrunner's absence, I should like to cross-examine now in his presence. I am, however, prepared to forego the cross-examination, if I can talk to the witnesses beforehand. Perhaps it will not be necessary to call one or the other witness.

THE PRESIDENT: What do you mean by one or the other witness? Which is the other? Wisliceny?

DR. KAUFFMANN: Number 7, Ohlendorf, and then Number 11, Höllriegel, and Number 12, Wisliceny, also Number 14, Schellenberg. All these witnesses have been heard here, and Kaltenbrunner was ill at the time.

THE PRESIDENT: What do you say about it, Sir David?

SIR DAVID MAXWELL-FYFE: I should suggest that Dr. Kauffmann cross-examine Number 11, Höllriegel, and Number 12, Wisliceny, whom he has not cross-examined so far. And then, if there is any special point which remains to be dealt with by the witness Ohlendorf, Dr. Kauffmann can make a special application to the Court.

THE PRESIDENT: Yes. Well, the Tribunal would like to know what position you take about the defendants' counsel seeing these witnesses and discussing with them their evidence before they call them. I mean, there is a distinction between cross-examination when defendants' counsel cannot see them and calling them as their own witnesses when they can see them.

SIR DAVID MAXWELL-FYFE: Well, the Prosecution feel that they ought simply to cross-examine witnesses that have been called by the Prosecution, unless there are very special circumstances. I think that Dr. Seidl showed special circumstances with regard to the case that he mentioned of one witness in special relation to the Defendant Hess. But as a general rule, the Prosecution submit that witnesses that they have called should be cross-examined without prior consultation.

THE PRESIDENT: Well, Sir David, the Tribunal would like to know your view. Of course, we are not deciding the point now, but we should like to know your view as to whether it would be a proper course to allow the defendants' counsel to see the particular witness in the presence of a representative of the Prosecution, because it may be that that would lead to a shortening of the proceeding, because the defendants' counsel might after that not wish to cross-examine the witness any further.

SIR DAVID MAXWELL-FYFE: Well, I am afraid that would require discussions with my colleagues on each particular witness. I am afraid I have not covered that point; witnesses 11 and 12 were called by my American colleagues and although I take the general position which I put before the Tribunal, I have not discussed that point; but I shall be pleased to discuss it with them and perhaps to inform the Tribunal later on in the day.

Of course, you will appreciate the fact that there may be a special point relating to a special witness that may come up in this connection.

DR. KAUFFMANN: Perhaps I can explain this. The witness Ohlendorf was reserved for me for cross-examination. In accordance with an agreement made with the American Prosecution, I dispensed with a cross-examination of Ohlendorf and on this condition was allowed to speak to him. I think it would be quite fair if I could do the same with other witnesses. I forego the cross-examination and can speak to the witnesses beforehand. Perhaps one or the other will turn out to be unnecessary.

THE PRESIDENT: I am not quite sure that you understand the view being put to you, Dr. Kauffmann. The view is that when a witness is called on behalf of the Prosecution the defendants' counsel certainly have the right to cross-examine the witness, not to see the witness beforehand, but only to cross-examine him. If on the other hand they are entitled to call that witness as their own, then they are entitled to see him beforehand, which is. . .

DR. KAUFFMANN: Yes, that is what I mean. But if I am allowed to speak to the witness beforehand, then the Court will understand that I should like to avoid as far as possible the presence of a representative of the Prosecution, since the reasons which might cause me to forego the calling of a witness would then be known to the Prosecution. I think everyone will understand that, and I also think it is fair.

THE PRESIDENT: I wanted to clarify what the difference in view between you and the Prosecution is. The Prosecution said that when the witness was called for the Prosecution the right of the defendants is only to cross-examine. Can you help us further with respect to this group, Sir David?

SIR DAVID MAXWELL-FYFE: Certainly. With regard to Eigruber, Number 8, he is no longer in Nuremberg, and he is being held as a probable defendant in the case concerning Mauthausen Camp, which will be dealt with by a military court, and therefore the Prosecution suggests that in these circumstances, as he is one of this group dealing with concentration camps in general and Mauthausen in particular, he ought to be dealt with by interrogatories.

Then with regard to Höttl, Number 9, he deals with two aspects of one point, that is, that Kaltenbrunner on his own initiative ordered the surrender of the concentration camp of Mauthausen and that he took steps to induce Himmler to release people from concentration camps. These seem to be general points that again might be conveniently dealt with by interrogatories.

And the same applies to the witness Von Eberstein, who deals with the point that Kaltenbrunner is alleged not to have given an order to destroy the concentration camp at Dachau, and that he did not give an order to evacuate Dachau. The Prosecution suggest that these ought also to be interrogatories.

With regard to the next witness, Höllriegel, the Prosecution make no objection to further cross-examination, and respectfully suggest to the Tribunal that he will be able to deal with the question of Mauthausen, which is one of the main questions that this whole group of witnesses is called to deal with.

DR. KAUFFMANN: [*Interposing.*] Maybe I can say something so that. . .

THE PRESIDENT: [*To Sir David Maxwell-Fyfe.*] Are you in agreement with Number 12, in the same group?

SIR DAVID MAXWELL-FYFE: Number 12 is not in the same group, because he deals with the question of Kaltenbrunner's relations with Eichmann and with reports he received regarding the action against the Jews. We have no objection to this witness being called for cross-examination, as Dr. Kauffmann did not cross-examine him.

THE PRESIDENT: Yes, Dr. Kauffmann?

DR. KAUFFMANN: Concerning the witness Eigruber, Number 8, may I point out that this witness is here in Nuremberg. However, I agree that interrogatories be sent. The subject of the evidence itself seems to me decidedly relevant, for what Eigruber is supposed to testify is neither more nor less than the fact that the concentration camp at Mauthausen was directly supervised by Himmler through Pohl and the commander of the

camp. Kaltenbrunner denies the possession of exact knowledge regarding Mauthausen. The witness Höttl. . .

THE PRESIDENT: You were in error in saying he was here in town. Sir David said he has been removed from Nuremberg for the purpose of trial by a military court. So perhaps you would not object to interrogatories in that case.

DR. KAUFFMANN: Yes. The witness Höttl is, in my opinion, an important witness. As we know, Kaltenbrunner is also accused of having participated in the conspiracy against the peace. Here I intend to prove that Kaltenbrunner conducted an active peace campaign ever since 1943. An important name in this connection is Mr. Dulles. He is, according to Kaltenbrunner, the late President Roosevelt's confidential agent. Mr. Dulles was in Switzerland. According to Kaltenbrunner, meetings between them constantly took place with this object. I believe that this subject of evidence is relevant.

THE PRESIDENT: You mean that you want Dr. Höttl in person, not by way of interrogatories?

DR. KAUFFMANN: Yes, if I may ask for that.

THE PRESIDENT: The Tribunal will consider that.

DR. KAUFFMANN: Witness Number 10, General of the Police Von Eberstein, is called to prove that the statement of another witness by the name of Gerdes is untrue. The Tribunal will perhaps remember that the Prosecution submitted an affidavit by a man named Gerdes who was an important figure in Munich. He was the confidential agent of the former Gauleiter of Munich. In his affidavit, Gerdes accuses Kaltenbrunner of ordering the destruction of Dachau through bombing. Kaltenbrunner emphatically denies that.

THE PRESIDENT: That is a matter which could be clearly dealt with by interrogatories, whether or not Kaltenbrunner did give an order to destroy a concentration camp, or an order to evacuate Dachau. Surely those are matters which admit of proof by interrogatories.

DR. KAUFFMANN: I agree. The same problem arises in connection with the next witness, Number 11, the witness Höllriegel, who has already been heard. Am I to have the opportunity of speaking to this witness before he is cross-examined? Kaltenbrunner denies that he ever saw gas chambers, *et cetera*.

THE PRESIDENT: Dr. Kauffmann, isn't Number 11 really cumulative to Number 6, whom you particularly wanted to call?

DR. KAUFFMANN: Yes, Mr. President, certainly.

THE PRESIDENT: Anyhow, the Tribunal will consider the question whether you ought to be given the right merely to cross-examine or to recall as your own witness, with reference to Numbers 11 and 12.

DR. KAUFFMANN: Yes. Just a word about witness Number 12. Eichmann, as is well known, was the man who carried out the whole extermination operation against the Jews, and Kaltenbrunner's name has been mentioned in connection with this operation. Kaltenbrunner denies it. For that reason I consider Wisliceny a relevant witness.

THE PRESIDENT: That concludes that group. What about the other ones, Sir David? Are they in the same category?

SIR DAVID MAXWELL-FYFE: Not quite, but I think it might be convenient if I deal with them.

Dr. Mildner, Number 13, is sought to testify that Kaltenbrunner did not authorize the chief of the Gestapo to sign orders for protective custody or internment, and I should submit that in view of the previous evidence, of Scheidler and Number 4, Neubacher, Dr. Mildner's evidence is cumulative and that interrogatories would suffice.

As to Schellenberg, Number 14, I have already said that the Prosecution make no objection to his recall for cross-examination.

Finally, Dr. Rainer. We do object to that request, because the object of his testimony, that Kaltenbrunner recommended to the Gauleiter of Austria not to oppose the advancing troops of the Western Powers and not to organize Werewolf movements, is in our submission irrelevant to the issues before this Tribunal.

THE PRESIDENT: Yes. Dr. Kauffmann?

DR. KAUFFMANN: The witness Dr. Mildner, Number 13, is here in Nuremberg, in custody. I have asked to call this witness because he has submitted an affidavit containing certain accusations against Kaltenbrunner which Kaltenbrunner denies. I do not think that an interrogatory can clear up these difficulties.

Now, Number 14 . . .

THE PRESIDENT: Dr. Mildner had submitted an affidavit?

DR. KAUFFMANN: Yes, Sir. There is a reference in the Indictment to an affidavit made by Dr. Mildner. I believe it was on 3 January. The witness' name was mentioned in connection with the charges against Kaltenbrunner. There are one or two affidavits. . .

THE PRESIDENT: But if the affidavit has not been produced to the Court, what have we got to do with it? We have not seen it, at least in my

recollection. You know about it, Sir David?

SIR DAVID MAXWELL-FYFE: I have not been able to trace this affidavit of Dr. Mildner's. I do not remember it, but I will willingly check the reference that Dr. Kauffmann has given.

THE PRESIDENT: Of course, if the Prosecution have used the affidavit, then you would have no objection to the witness being called for cross-examination?

SIR DAVID MAXWELL-FYFE: Well, in general, no. The reason why I am rather surprised is that usually that point has been taken when it is sought to use the affidavit. The Defense Counsel involved has asked for the production of the witness—but I will have it looked into, this particular point; but in general the Tribunal may take it that unless we put forward a special point, where an affidavit has been given, and where we have not argued to the Court previously, it is a very good case for the witness's being brought here, if it is convenient.

THE PRESIDENT: I did not understand that Dr. Kauffmann was saying that the affidavit had actually been put in by the Prosecution, but there was some reference made to it. Is that right, Dr. Kauffmann?

DR. KAUFFMANN: It would not take me long to look it up. I have the files for 3 January here.

THE PRESIDENT: Dr. Kauffmann, we will give you an opportunity for looking that up. We will adjourn now for 10 minutes.

[*A recess was taken.*]

DR. KAUFFMANN: The name of Mildner appears in the transcript of 2 January, not in the form of an affidavit but in the form of a letter written by a third person and this letter is only mentioned in connection with Mildner's name; it is not an affidavit. I should like to request that Mildner be interrogated in writing.

Now turning to witness Number 15 . . .

THE PRESIDENT: Fourteen?

DR. KAUFMANN: We have already dealt with Number 14.

THE PRESIDENT: Oh, you have already dealt with that? Very well, then 15.

DR. KAUFFMANN: Witness Number 15 is Rainer, who was a Gauleiter. I should like to request that this witness be heard as well. He is in Nuremberg. The subject of the evidence seems important to me. In the case against Kaltenbrunner, he is not expressly charged with the contrary; but if

we are dealing with peace and violations of peace, an effort on the part of the defendant to prove that he has done everything in his power to prevent further bloodshed seems to me relevant.

THE PRESIDENT: Would an interrogatory satisfy you for that witness?

DR. KAUFFMANN: Yes, My Lord.

THE PRESIDENT: Yes.

DR. KAUFFMANN: I have not yet submitted any documents, Mr. President. Later on, I may present some affidavits, but, as I have not yet received them, I cannot present them at the moment.

THE PRESIDENT: The Tribunal understands, Dr. Kauffmann, that you wish to reserve for yourself the right to apply to put in documents at a later stage.

DR. KAUFFMANN: Yes, I request that.

THE PRESIDENT: The Tribunal will consider that and let you know when they make the order.

Yes, Dr. Thoma?

SIR DAVID MAXWELL-FYFE: Dr. Thoma suggests that we deal with the document list.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: On the first six documents, which are quotations from various books on philosophy, the Prosecution submit that they are irrelevant to the question of the ideology propounded by the Defendant Rosenberg, which the Prosecution make part of the case against him.

Of course, if the purpose is merely that Dr. Thoma would quote from such books in making his speech, and if he would let us know the passages he wants to quote so they can be dealt with mechanically, we do not make any anticipatory objection.

I think that takes us up to Number 6—which are purely general books on philosophy. The Prosecution view with some dismay all these books being put in evidence and the Prosecutors having to read them.

I think I have made the position quite clear that if Dr. Thoma wishes to use them to illustrate the argument, and if he lets us know the passage, we make no general objection, but we object to their being put in as evidence, as not being relevant to the matters before the Court.

DR. THOMA: I do not think that it is possible without a consideration of world philosophy before Rosenberg's time to understand the morbid psychological state of the German people after their defeat in the first World

War. Unless this psychological condition is appreciated, it is impossible to understand why Rosenberg believed that his ideas could help them. I am extremely anxious to show that Rosenberg's theories were representative of a phase of contemporary philosophy taught in similar form by many other philosophers both at home and abroad. I am extremely anxious to refute the charges made against Rosenberg's ideology as degenerate and—I must quote the expression—a "smutty ideology." I have to bear in mind that the members of the Prosecution, especially M. De Menthon, who has made a special study of the National Socialist ideology, made the very natural mistake of confusing the extravagances and abuses of this ideology, usually dubbed "Nazism," with its real philosophic content. The French Revolution of 1789 was in the same way, I believe, represented by neighboring peoples as a disaster of the first magnitude, and all the rulers in Europe were called upon to fight against it.

I believe that the Court was specially impressed by M. De Menthon's statements, which represented the Nazi ideology as having no spiritual value and described it as a dangerous doctrine. I think we must allow the possibility of its being taught in other countries as well at that time. I should like, therefore, to ask permission to present the philosophical systems of the time in question, by which I mean the views expressed by other philosophers on Rosenberg's main concepts, especially the question of blood or race, the soil as a fact of nature and as political and economic living space. Science declares that these ideas are based on the irrational presentation of natural and historical facts. They cannot be dismissed for that reason as unscientific, although they may be disturbing to rationalism and humanism.

I should like, in particular, to prove that these ideas have been respected and developed by rational and empirical science on account of their significance, and that they have been put into practice by other countries in their policy—a fact which I think is important. I need only remind you of the U.S.A. immigration laws, which also give preference to particular races.

SIR DAVID MAXWELL-FYFE: As I understand Dr. Thoma, he wants to use the teachings of other philosophers as illustrations and arguments. If he is going to quote from them, then all that the Prosecution ask is that he tell us which passages he is going to quote, but we suggest that it is not relevant for us to go into an examination of, say, M. Bergson's book as a matter of evidence.

It is a perfectly clear distinction, and I suggest that Dr. Thoma will be well able to develop the point which he has just put with the limitation which I have just suggested.

THE PRESIDENT: Dr. Thoma, the Tribunal would like to know what it is that you actually propose. Are you proposing to put in evidence certain passages from certain books and that the Tribunal should read them or are you simply asking for the production of books so that you may consult them, read them, and then incorporate in your argument certain ideas which you may gather from the books?

DR. THOMA: I ask the Tribunal to note—officially, at least—the contents of the books which I shall submit. I shall not read all these quotations from the books, but I shall ask the Tribunal to note the outlines. I think it is important for the Tribunal to have the passages quoted from these books actually before them, so that they may have a clear picture of the philosophical—and particularly of the ethical situation—of the German people after their defeat in the World War.

THE PRESIDENT: But the books are not books of any legal authority. You can only cite, surely, to a court of international law, books that are authorities on international law. You can, of course, collect ideas from other books which you can incorporate in your argument. You cannot cite them as authorities.

DR. THOMA: Gentlemen, by submitting quotations from the works of well-known philosophers who presented ideas similar to Rosenberg's, I propose to prove that this ideology is to be taken quite seriously. In the second place I want to prove that those features of Rosenberg's ideology which have been branded as immoral and harmful are extravagances and abuses of this ideology; and in my opinion it is most important for the Tribunal to know from a consideration of the history of philosophy, that even the best ideas—such as the French Revolution—can degenerate. I should like to point out these historical parallels to National Socialism and to Rosenberg's ideology.

I also need these books to prove that Rosenberg was concerned only with the spiritual combating of alien ideology and that he was not in a position to protest any more energetically against the brutal application of his ideology in National Socialism, but that as a matter of principle he allowed scientific discussions of his works to proceed freely and never called in the Gestapo against his theological opponents.

He assumed that his ethnic ideas were not to be carried through by force, but that every people should preserve its own racial character and that intermingling was only permissible in the case of kindred races. He believed that this ideology was for the good of the German people and in the interest of humanity generally.

For these reasons I believe that the Tribunal, in order to have a vivid picture of the background of the development of National Socialism, should inform itself of the spiritual conditions of that time.

THE PRESIDENT: The Tribunal will consider the argument you have addressed to it.

SIR DAVID MAXWELL-FYFE: With regard to Document Number 7, that is, excerpts from certain books, the first five are from Rosenberg's own works, and the last is a book by another author on Hitler.

Again I submit that if Dr. Thoma wants to support the thesis contained in the first half of his note—that "the Defendant Rosenberg does not see individual and race, individual and community, at contrast but represents the new romantical conception that the personality finds its perfection and its inner freedom by having the community of the racial spirit developed and represented within itself"—if Dr. Thoma will give any of the extracts from Rosenberg's works on which he bases that argument, then he can present them at whatever part of his case is convenient; and similarly, with regard to the specific points set out in the second part of his note—there again, if he will give the relevant extracts, they can be considered and their relevancy for the purpose of this Court dealt with when he introduces them in his presentation. But again I take general objection to the fact that either the Court or the Prosecution should read all these works and treat them as evidence. I developed that about the previous document.

DR. THOMA: Gentlemen, if I quote Rosenberg's actual words and ask the Tribunal to take official notice of them, I shall be in the fortunate position of being able to show that Rosenberg's philosophy and ideology differ basically from the extravagances and abuses which were attributed to him and to which he took exception.

I am in a position to show that it is clear from his works that Rosenberg intended the Leadership Principle to be restricted by a special council exercising an authoritative, advisory function. I shall also be able to show that the *Myth of the Twentieth Century* was a purely personal work of Rosenberg's which Hitler did not by any means accept without reserve. More especially, I am in a position to prove that Rosenberg, as his works will show, would have nothing to do with the physical destruction of the Jews and that, as far as his writings show, he took no part in the psychological preparations for war and that, as far as his writings show, he worked for a peaceful international settlement, especially between the four great European powers of the period. Therefore I beg the Tribunal to allow me to submit the real, genuine quotations from his writings as evidence material.

THE PRESIDENT: Dr. Thoma, the Tribunal will consider the whole question of the production of and the citation from these books.

SIR DAVID MAXWELL-FYFE: Number 8, My Lord, falls into a rather different field. The first 11 documents seem to be books and writings containing Jewish views of an antinational basis. The Prosecution reminds the Tribunal that the questions at issue are: Did the defendants as co-conspirators embark on a policy of persecution of the Jews; secondly, did the defendants participate in the later manifestations of that policy, the deliberate extermination of the Jews? Within the submission of the Prosecution, it is remote and irrelevant to these important and terrible accusations that certain Jewish writings, spread over a period of years, contained matters which were not very palatable to Christians.

DR. THOMA: Gentlemen, I should like to reply to this point as follows: I am not interested in showing that the Nazi measures against the Jews were justified. I am interested only in making clear the psychological reasons for anti-Semitism in Germany; and I think I am justified in asking you to listen to some quotations of this kind taken from newspapers, since they must by their very nature offend the patriotic and Christian susceptibilities of very many people.

I must go rather more deeply into this question, too, in order to show the reason for the existence of the so-called Jewish problem in history and religion and the reason for the tragic opposition between Jewry and other races. I should like to quote both Jewish and theological literature on the point.

THE PRESIDENT: The Tribunal will consider the question.

SIR DAVID MAXWELL-FYFE: My Lord, I think the Tribunal can take the remaining documents, 9 to 14, together. They seem to deal with specific and, if I may say so without the least intention of offense, more practical matters, in that they deal with the government of the Eastern territories, for which this defendant was responsible; and the Prosecution has no objection to my friend's using these documents in such a way as it seems fit to him.

DR. THOMA: I should like to mention the following points in connection with the documents:

I have had four additional documents allowed in part by the Tribunal. I have not been able to submit them, because they have not yet been handed over to me; but I would like to tell the Tribunal what they are: First, a letter written by Rosenberg to Hitler in 1924, containing a request by Rosenberg not to be accepted as a candidate for the Reichstag; second, a letter written by Rosenberg to Hitler in 1931 regarding his dismissal from the post of

editor in chief of the *Völkischer Beobachter*, the reason being that Rosenberg's *Myth of the Twentieth Century* created a tremendous stir among the German people. Rosenberg asked at the time that his work be considered a purely personal work, something which it actually was, and that if his writing was in any way detrimental to the Party, he would ask to be released from his position as editor of the *Völkischer Beobachter*; third, I should like to include a directive from Hitler to Minister for the Eastern Occupied Territories Rosenberg, dated June 1943, in which Hitler instructs Rosenberg to limit himself to matters of principle; fourth, an eight-page letter from Hitler to Rosenberg, written by hand and dating from the year 1925.

THE PRESIDENT: And the fourth one? Will you state the fourth one, the fourth document?

DR. THOMA: I am coming to that.

Point 4—a letter written by Hitler to Rosenberg in 1925, in which Hitler stated his reasons for refusing on principle to take part in the Reichstag elections. Rosenberg's view at that time was that the Party should enter the Reichstag and co-operate practically with the other parties.

I have just learned that this letter is dated 1923.

Gentlemen, this is something of decisive importance. From the very beginning, Rosenberg wanted the NSDAP to co-operate with the other parties. That could constitute the exact opposite of a conspiracy from the start. May I present to the Court a copy of my four applications?

SIR DAVID MAXWELL-FYFE: My Lord, these seem to be individual documents whose relevancy can be finally dealt with when Dr. Thoma shows their purpose in his exposition. I do not stress that the Tribunal need not make any final decision on them at the present time.

DR. THOMA: I should like to refer to the fact that I have already asked the General Secretary to admit these documents.

THE PRESIDENT: Dr. Thoma, have you the documents in your possession?

DR. THOMA: Yes, My Lord. The only documents that are lacking are the four I have just mentioned. They are still in the hands of the Prosecution.

THE PRESIDENT: They are in the hands of the Prosecution, are they?

DR. THOMA: Yes.

SIR DAVID MAXWELL-FYFE: I have not appreciated that. If Dr. Thoma wants the documents we will do our best to find them. The first time I heard of them, of course, was when Dr. Thoma started speaking a few

minutes ago. If the Prosecution have them or can find them, they will let Dr. Thoma have them or have copies of them.

THE PRESIDENT: May I ask you, Dr. Thoma, why it is that you have not put in a written application for these four?

DR. THOMA: I have made such a request, My Lord, several days or a week ago. I made the first request already in November.

THE PRESIDENT: For these four documents?

DR. THOMA: It is like this: The first two documents were granted me already in November or December 1945, but I have not as yet received them.

THE PRESIDENT: Very well, we will consider that. Well, that finishes your documents, does it not?

DR. THOMA: Yes.

SIR DAVID MAXWELL-FYFE: My Lord, with regard to the witnesses, it might be convenient if I indicated the view of the Prosecution on the, say, first six. The Prosecution has no objection to the first witness, Riecke, the State Secretary of the Ministry of Agriculture, or to Dr. Lammers, who is being summoned for a number of the defendants, or to Ministerialrat Beil, who was the deputy chief of the Main Department of Labor and Social Policy in the East Ministry.

With regard to the next one, Number 4, Dr. Stellbrecht, the Prosecution suggests that that is a very general matter which does not seem very relevant, and they say that Dr. Stellbrecht should be cut out, or at the most that that point be dealt with by a short interrogatory.

We also object to 5 and 6, General Dankers and Professor Astrowski. General Dankers is sought to say that certain theaters and museums of art in Latvia remained untouched, and that hundreds of thousands of Latvians begged to be able to come into the Reich.

There are papers about certain laws. The Prosecution submits that that evidence does not really touch the matters that are alleged against the Defendant Rosenberg and again they make objection.

Professor Astrowski, who is alleged to be the Chief of the White Ruthenian Central Council and whose whereabouts are still unknown, who was last in Berlin, is to be called to prove that the Commissioner General in Minsk exerted all efforts in order to save White Ruthenian cultural goods. There again the Prosecution says that that is a very general and indefinite allegation and, if the defendant and certain of his officials are called to give evidence as to his policy and administration, it is suggested that the witnesses 5 and 6 are really unnecessary.

I might also deal with Number 7, because the first seven witnesses are the subject of a note by Dr. Thoma. Number 7 is Dr. Haiding, who is the Chief of the Institute for German Ethnology, and it is sought to call him in order to prove that in the Baltic countries cultural institutions were advanced and new ones founded by Rosenberg. That witness, the Prosecution submits, falls into the same category as Dankers and Astrowski. But, with regard to him, if there is any general point, they say that he could be dealt with by interrogatories but certainly should not be called.

It is relevant for the Tribunal to read the note under Number 8 dealing with these witnesses. Dr. Thoma says:

> "The witnesses can present evidence for the refutation of the Soviet accusation that Rosenberg participated in the planning of a world ideology for the extermination of the Slavs and for the persecution of all dissenters."

The Prosecution submits that the three witnesses that they have suggested, coupled with the interrogatories, if necessary, in the case of Stellbrecht and Haiding, should cover these points amply.

DR. THOMA: I agree with Sir David that as far as Dr. Haiding and Dr. Stellbrecht are concerned an interrogatory will be sufficient. Regarding witnesses Numbers 5 and 6, I was interested in bringing in as witnesses people who actually lived in these countries and who have their personal impressions of Rosenberg's cultural activities; and I request that these witnesses be granted.

THE PRESIDENT: Very well, the Court will consider that.

SIR DAVID MAXWELL-FYFE: The witness Scheidt comes into the story of the Defendant Rosenberg's connection with Quisling, and this has been dealt with by interrogatories by the Defense and by certain cross-interrogatories by the Prosecution. This is obviously an important part of the case, and I suggest that the Tribunal does not decide as to the personal summoning of Scheidt until the answers to the interrogatories are before the Tribunal.

Number 10 is Robert Scholz, the department chief in the Special Staff of creative art, and roughly the evidence is to show that the defendant did not take the works of art for his personal benefit. The Tribunal ordered the alerting of this witness on the 14th of January, but on the 24th of January the application for this witness was withdrawn and it is now renewed by Dr. Thoma. If the Tribunal will look at the way in which it is put in Dr. Thoma's application, which is limited and guided by certain specific acts on which Mr. Scholz can speak—the Prosecution suggest that the Tribunal might think

the most convenient way was again to get a set of interrogatories on Mr. Scholz, and see how he can deal with the many individual points put to him.

DR. THOMA: Gentlemen of the Tribunal, the case of the witness Wilhelm Scheidt touches the question of Norway. Scheidt is the decisive witness as to the reports made by Quisling of his own volition without being invited to do so, either through the Amt Rosenberg for foreign policy or through the Reich Ministry for Foreign Affairs. I believe that a personal hearing, a cross-examination, of this witness Scheidt is extremely important, because he can give a great deal of detailed information which is decisive for the question of whether or not Hitler conducted a war of aggression against Norway.

I have been granted an interrogatory for the witness, Departmental Director Scheidt, and I have already taken steps to confer with the Prosecution in this connection. The witness Wilhelm Scheidt has not made an affidavit; but I must point out to the Tribunal that I should have to be present when the affidavit is made and that I should be allowed to question the witness myself, in common with the Prosecution. I should like to repeat my request to cross-examine this Wilhelm Scheidt as a witness.

THE PRESIDENT: Dr. Thoma, if the witness was granted to you as a witness to give evidence in court, it would not be necessary for you to have any representative of the Prosecution when you saw the witness wherever he might be. The advance of a witness would entitle you to see him yourself and to obtain proof of his evidence. Is that clear?

DR. THOMA: So far I have been granted only an affidavit. I have not been granted him as a witness as yet.

THE PRESIDENT: Yes, I only wanted to make clear to you the difference between interrogatories and being allowed to call a witness to give all the evidence. Of course, if you are submitting to written interrogatories, you would not see the witness; but if, on the other hand, you were going to call the witness as a witness or to present an affidavit from him, you would then be at liberty to see the witness before he made his affidavit or before he drew up his proof.

DR. THOMA: Then I should like to put the request that Wilhelm Scheidt be called as a witness.

THE PRESIDENT: I understand that you are making that request.

DR. THOMA: As far as Robert Scholz is concerned, I should like to point out to the Tribunal that Scholz was the director of the Special Staff entrusted with the practical application of measures to be taken for the safekeeping of works of art in both eastern and western districts and I should

like to draw the special attention of the Tribunal to the fact that a number of learned German experts were members of this Special Staff and that they did a great deal of very conscientious work in safeguarding, restoring, and protecting these works of art and in preserving them for posterity. The way in which this Special Staff did its work is of decisive importance, therefore, for a good many men. Robert Scholz knows every detail of the procedure. Robert Scholz can testify, in particular, to the fact that Rosenberg did not appropriate for himself a single one of the enormous wealth of art treasures that passed through his hands and that he kept a careful record of those that went to Hitler and Göring. He also knows that all these works of art—or, at least, the greater part of them—were left where they were at first, especially in the East, and were only brought to the Reich when it was no longer safe to delay.

I beg the Tribunal to hear this important witness.

THE PRESIDENT: Dr. Thoma, can you explain why the application was withdrawn on the 24th of January?

DR. THOMA: It was said then—I think by the British or American Prosecution—that the Special Staff would not be mentioned again during the proceedings. The French Prosecution, however, have now given detailed accounts of the looting of France; and so this witness is once more required.

THE PRESIDENT: That concludes your witnesses, I think?

DR. THOMA: I have one other request. I want to call a further witness, and I have already filed a request with the General Secretary for this witness, ministerial Subdirector Bräutigam. Bräutigam was Junior Assistant Secretary in the Ministry for the Occupied Eastern Territories, and he is to be called as a witness to prove that Rosenberg, in his capacity of Reich Minister for Occupied Eastern Territories, did not persecute the churches but granted freedom to all religious sects by the issue of an edict of tolerance; that, further, Rosenberg himself consistently opposed the use of force, supported a policy of promoting culture and represented the view that the peasant class should be strengthened and established on a healthy basis. Further—and this seems to me to be particularly significant—that very many letters and telegrams of thanks from the clergy in the Soviet Union arrived at the ministry for Occupied Eastern Territories addressed to Rosenberg. Gentlemen, if Dankers and Astrowski are not granted as witnesses, then I request permission to go back to Bräutigam.

And then I have one further witness. To show how Rosenberg behaved towards his academic opponents, I should like to call one of these academic opponents, to wit, Dr. Kuenneth, a university professor who wrote an

important book attacking the *Mythos*. He will testify that those who disagreed with Rosenberg's philosophy were not at all afraid of the Gestapo and that they had no cause to fear the Gestapo.

THE PRESIDENT: Yes. Sir David, did you want to review those last two?

SIR DAVID MAXWELL-FYFE: My Lord, in my submission these last two witnesses are not really relevant to the charges against this defendant which have been developed by the Prosecution. They are general witnesses, and if I may put it—I hope the Tribunal will not think it flippant to put it this way—they are really witnesses who say that the Defendant Rosenberg would not hurt a fly; we have often seen him doing it—not hurting flies. That really puts it quite briefly as to what this class of evidence amounts to, and I respectfully submit, on behalf of my colleagues, that that should not be the subject of oral evidence, and it should be disallowed; or if there is any special point raised, it should be dealt with by an affidavit.

THE PRESIDENT: Does the Indictment allege that he instigated the persecution of churches?

SIR DAVID MAXWELL-FYFE: The Indictment says that he took part in antireligious teaching. I am speaking from memory. That is one of the matters. And I think there was certain correspondence between him and the Defendant Bormann, which was directed towards his antireligious views. I do not remember at the moment that there was any evidence that he had personally participated in physical destruction of churches. That is my recollection.

My Lord, I am reminded that there is a general allegation in Appendix A that he authorized, directed, and participated in the War Crimes and Crimes against Humanity, including a wide variety of crimes against persons and property.

THE PRESIDENT: Very well; those matters will be considered.

DR. SEIDL: The first witness that I ask be summoned is Dr. Hans Bühler, State Secretary with the Chief of the Administration in the Government General. This witness is detained here in Nuremberg, pending trial; and he is the most important witness for the Defendant Dr. Frank. He is called for Dr. Frank's whole policy in the Government General, since he was head of the government during the entire period from the establishment of the Government General up to the end.

THE PRESIDENT: Sir David, have you got any objection to Dr. Bühler?

SIR DAVID MAXWELL-FYFE: No, I have not, My Lord. The only point that I want to make clear is that the Defendant Frank calls an

enormous number of witnesses from his own officials; he calls something like 15. And I am not going to object to Dr. Bühler; I am going to ask the Tribunal to cut down substantially the witnesses who were officials of the Government General. And it might help Dr. Seidl if I told him before the adjournment that my suggestion would be that the Tribunal would consider allowing Dr. Bühler, an affidavit from Dr. Von Burgsdorff, and that they might consider allowing Fräulein Helene Kraffczyk, the defendant's secretary, and Dr. Bilfinger, and Dr. Stepp, but not the succession of officials from the Government General.

THE PRESIDENT: Sir David, you say your suggestion is to allow Dr. Bühler?

SIR DAVID MAXWELL-FYFE: Dr. Bühler.

THE PRESIDENT: And affidavits from. . .

SIR DAVID MAXWELL-FYFE: Affidavits from Burgsdorff, allow Dr. Lammers—he is in the general list. . .

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Allow the private secretary, Fräulein Kraffczyk, Number 7, and allow Numbers 9 and 10.

THE PRESIDENT: What are the names?

SIR DAVID MAXWELL-FYFE: Dr. Bilfinger and Dr. Stepp.

THE PRESIDENT: Wait a minute.

SIR DAVID MAXWELL-FYFE: And if these are allowed, I should suggest that Numbers 13 to 20, who are various officials from the office of the Government General, should not be allowed. If I may say so, with the submission of the Prosecution, the height of irrelevancy will be Number 18, Dr. Eisfeldt, who is chief of the Forestry Department.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: I thought it might be convenient for Dr. Seidl to know what the views of the Prosecution were. Of course, if he has any suggestions of any alternatives we should be pleased to consider them.

THE PRESIDENT: We will continue with that after the adjournment, Dr. Seidl.

Before the Tribunal rises, before the adjournment, I want to say that the Tribunal will rise this afternoon at 3:30.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

THE PRESIDENT: Yes, Dr. Seidl.

DR. SEIDL: Mr. President, Your Honors, if I understand correctly, Sir David has no objection to the calling of the witnesses Dr. Hans Bühler, Dr. Bilfinger, and Fräulein Kraffczyk.

THE PRESIDENT: Yes.

DR. SEIDL: The second witness named by me is Dr. Von Burgsdorff, whose last appointment was that of Governor of Kraków. He is at present in the Moosburg Internment Camp, which means that he is close to Nuremberg.

The witness Dr. Von Burgsdorff is the only one of the nine governors whom I have named to the Court as a witness. Considering the importance of the position of the governors in the Government General and in view of the great difficulties which these governors had to overcome, it seems proper to me that the witness Dr. Von Burgsdorff should be heard personally by the Court and not by means of an interrogatory.

Is it necessary for me to read out the evidence material in detail now, or is it enough to refer to the application for evidence?

THE PRESIDENT: We have got it in writing, and we understand that, while Sir David suggests an affidavit, you want to insist upon his coming personally.

DR. SEIDL: Yes, Mr. President, since the Court approved the calling of this witness at an earlier date.

THE PRESIDENT: Yes.

DR. SEIDL: The next witness is Reich Minister and Chief of the Reich Chancellery Dr. Lammers. This witness has already been approved for the Defendant Keitel, so that no further discussion is necessary.

The fourth witness is State Minister Dr. Meissner. With regard to the fact that this witness is called in connection with evidence for which the witness Dr. Lammers was also named, I should like to ask the Tribunal to allow an interrogatory unless this witness is called for another defendant and can appear in person.

SIR DAVID MAXWELL-FYFE: My Lord, I did check that point as far as I could from my records, and I could not find that he was being called as a witness for any other defendant. And, as Dr. Seidl very fairly says in his

first sentence, Dr. Meissner is named for the same evidence material as the witness Dr. Lammers. That is my point.

THE PRESIDENT: Yes.

DR. SEIDL: The next witness is Dr. Max Meidinger, former Chief of the Chancellery of the Government General, who, like Dr. Von Burgsdorff, is in Moosburg. My written application shows that this witness held a very important appointment. He received all the correspondence of the administration of the Government General and is acquainted in particular with the substance, with suggestions and complaints addressed by the Defendant Dr. Frank to the central government authorities in Berlin, and in particular with the proposals which the Defendant Dr. Frank repeatedly made to the Führer himself.

The witness was likewise approved previously by the Tribunal, and I think that considering the vast knowledge of this witness—he worked in the Government General for several years—a personal hearing before this Court seems advisable.

THE PRESIDENT: You say he was approved. Was he not approved as one out of a group of which Frank was to choose three? There was a large group of witnesses.

DR. SEIDL: Yes, Mr. President. The witnesses Von Burgsdorff and Dr. Max Meidinger were chosen from this group. Those are the two witnesses who were selected from a group of 13.

THE PRESIDENT: Which was the other one?

DR. SEIDL: The other one was witness Number 2, Dr. Von Burgsdorff. Witness Number 6, whom I have named and whom I should like to have called in person, is the witness Hans Gassner. His last appointment was that of press chief of the Government General, and he is also in the Moosburg Internment Camp. He was named, along with some others, to give evidence that the Defendant Frank did not hear of the existence of the camp of Maidanek and the conditions prevailing there until 1944, and then only because the witness informed him of reports published by the foreign press.

The witness was also present—this is not stated in my application—when Dr. Frank told a press reporter that the forests of Poland would not be large enough to publish the death warrants. The witness will also be able to describe the interview in detail, to say what Frank meant by this remark, how he intended it to be understood, and what his reasons were for making the remark.

I may add that the Court likewise approved this witness at an earlier date. I may say also, generally speaking, that, according to the wishes of the

Tribunal, my applications for evidence will only indicate the general lines on which the witnesses are to be questioned and that I have consciously refrained from formulating the separate questions which I intend to put to the witness.

THE PRESIDENT: Sir David, will you express your view about Number 6?

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases, it seemed to the Prosecution that the second matter which Herr Gassner was desired to speak about, that the Defendant Frank learned from him only in 1944 about Maidanek, is really a matter about which no witness can be as satisfactory as the defendant himself. All the witness can say is, "I told the Defendant Frank about Maidanek, and it appeared to me that he did not know anything about it." Well, that is not, in the view of the Prosecution, satisfactory evidence.

The Court will be able to judge from the Defendant Frank himself when he has been cross-examined on that point. If it is desired that that interview should be before the Court, the Prosecution submit that it could be adequately dealt with by an affidavit or an interrogatory. Apart from that, the grounds are entirely general and again could be covered by a written statement.

THE PRESIDENT: Well, then, the next one Sir David has already expressed his views on.

DR. SEIDL: Yes, Mr. President.

The next witness is Helene Kraffczyk, the defendant's last secretary. If I understand correctly, there are no objections on the part of the Prosecution.

Witness Number 8 is General Von Epp, the last Reich Governor of Bavaria. He is at present in the internment camp at Oberursel. The statements to be made by this witness will be mainly concerned with the attitude of the Defendant Frank towards the concentration camps in 1933. As the witness is at present in the neighborhood of Frankfurt, I should be satisfied in this case with an interrogatory.

THE PRESIDENT: Yes, Sir David?

SIR DAVID MAXWELL-FYFE: Your Lordship will see that General Ritter von Epp seems to cover the same incident as Dr. Stepp. I said that I would not object to Dr. Stepp, but if Dr. Seidl wishes an interrogatory on some specific points from General Ritter von Epp, I should not make any objections.

DR. SEIDL: The next witness, Number 9, is Dr. Rudolf Bilfinger, late Oberregierungsrat and SS Obersturmbannführer in the Reich Security Main

Office. This witness is already here in Nuremberg. The Prosecution apparently has no objection to the hearing of this witness.

The next witness, Number 10. . .

SIR DAVID MAXWELL-FYFE: [*Interposing*] My Lord, I would just like to say one word about Dr. Bilfinger. I want the Tribunal to understand what the Prosecution have in mind. The general plan for these witnesses is to show from both ends the relationship between the Defendant Frank and the central agencies. The Prosecution thought that it was right that the defendant should be allowed to call two or three members of his own staff and a member from headquarters, who was in the position of Dr. Bilfinger, to give the other side of the picture. I just wanted the Tribunal to understand the plan on which we were working.

THE PRESIDENT: Yes.

DR. SEIDL: Number 10 is Dr. Walter Stepp, former chief judge of the highest regional court of appeal in Munich. He is at present in the internment camp at Ludwigsburg. If I understand Sir David correctly, he has no objection to the calling of this witness.

I should be glad if in this case I could submit to the Court an affidavit which is in my possession, and which will prove the veracity of these points. The reading of this affidavit would only take a few minutes, if the Court would permit me to call another witness instead, or if it would withdraw its objection to my calling another witness. . .

SIR DAVID MAXWELL-FYFE; I have to ask for some notice as to who the other witness is. I was stating that I had no objection to Dr. Stepp, because he speaks as to the Defendant Frank's position in relation to other people in Bavaria in earlier years. Of course I cannot speak on behalf of my colleagues and accept just another witness blindly until I know who the witness is and what he is going to say.

DR. SEIDL: The witness is Dr. Max Meidinger.

SIR DAVID MAXWELL-FYFE: I want to be as reasonable as possible. The reason that I had objected to Dr. Meidinger was because, as the Tribunal will see under Number 7, it is stated that Fräulein Kraffczyk is called for positive facts for which the witness Dr. Meidinger has already been named. It seemed to me that the private secretary is probably the most useful witness, but I am afraid that I cannot help Dr. Seidl any further. I have put my view, but I shall not say anything further against him. I am afraid that is as far as I can go on that point.

DR. SEIDL: The next witness, Number 11, is Von dem Bach-Zelewski, SS Obergruppenführer and general of the Waffen-SS, who has already been

heard by this Tribunal as a witness for the Prosecution. The Court has already at an earlier date granted permission for an interrogatory. In the meantime I have spoken to the witness. He has made an affidavit, which I shall submit instead of calling him in person.

SIR DAVID MAXWELL-FYFE: I should have thought that it would be most convenient if the witness Von dem Bach-Zelewski came back, and then Dr. Seidl could put any affidavit to him if he wanted. We might want to re-examine on the point. I do not know what is in the affidavit.

THE PRESIDENT: Was he cross-examined by Dr. Seidl?

DR. SEIDL: When the witness was heard here I had no opportunity to cross-examine him, and for that reason. . .

THE PRESIDENT: Why did you have no opportunity to cross-examine him?

DR. SEIDL: Because I did not know beforehand that he would be called by the Prosecution as a witness and had no opportunity to speak to the Defendant Frank about the questions which might have been put to this witness.

THE PRESIDENT: Well, we will consider whether the witness ought to be recalled for cross-examination or whether you will be allowed to call him yourself. The affidavit which you say he has made, has that been submitted to the Prosecution?

SIR DAVID MAXWELL-FYFE: I have not seen it, My Lord.

DR. SEIDL: No, Mr. President, my opinion on this point is the following. . .

THE PRESIDENT: When you saw Von dem Bach-Zelewski did you see him with a representative of the Prosecution?

DR. SEIDL: No, Mr. President, the General Secretary himself granted me permission to speak to the witness, and that was after the Court had already approved the use of an interrogatory.

THE PRESIDENT: But when the witness was called by the Prosecution and you had the opportunity of cross-examination, if you were not ready to cross-examine, you ought to have asked to cross-examine him at a later date. I mean if you were not able to cross-examine at that time, because you had not had any communication with the Defendant Frank on the subject, you ought to have asked to cross-examine at a later date.

DR. SEIDL: I could have made this application to the Court if I had thought that there was any reason for questioning the witness. I did not find

out until later that the witness possessed any vital information relevant to Frank's case.

THE PRESIDENT: Well, the Tribunal will consider the matter.

DR. SEIDL: May I perhaps add something to this point? The difficulty of a cross-examination is just this, that we do not learn of the intended calling of a witness by the Prosecution until the witness is led into the courtroom, and we do not know the subject of the evidence until the Prosecution start to examine the witness. It would have been much easier for us to cross-examine, if we had received information about the witnesses and the subjects of evidence as far in advance as the Prosecution—that is, as the Prosecution is informed about the witnesses for the Defense.

The next witness is witness Number 12, Von Palezieux. His last appointment was that of art expert in the Government General. In regard to this witness I should like to suggest that an interrogatory might be granted in this case too.

SIR DAVID MAXWELL-FYFE: If Dr. Seidl asks for an interrogatory, I have no objection. I just want to be clear that that is a written interrogatory. I do not want Dr. Seidl to be under a misapprehension.

THE PRESIDENT: You meant a written interrogatory, did you not, Dr. Seidl?

DR. SEIDL: Yes; I assume that in cases where a written interrogatory is admitted the submission of an affidavit is also admitted by the Court. The purpose is obviously to avoid bringing witnesses here and thus to save time.

The next witness is Number 13, Dr. Böpple. His last appointment was that of State Secretary in the administration of the Government General. He is now in the internment camp at Ludwigsburg near Stuttgart. This witness seems to me to be one of the most important because in the administration of the Government General he answered a number of questions which play an important part in the case against the Defendant Frank. I may refer to the details in my list of evidence and should like to add, above all, that this witness can give detailed information as to whether, during the 5 years of the Government General's existence, the industrial equipment of the area was exploited or whether in 1943 and 1944, as a result of transfers from the Reich, the Government General did not possess a considerably greater industrial potential than before.

SIR DAVID MAXWELL-FYFE: The Prosecution submit that, as is stated in the first sentence, Dr. Böpple is called for a number of facts of evidence for which Dr. Bühler has been already generally mentioned. Part of the evidence stated is the relationship with the Government General

agencies, and the remainder, as to the happenings in the Government General, can be dealt with by the witness already agreed to by the Prosecution.

DR. SEIDL: It is correct that some of the things which Dr. Böpple is to confirm are also to be testified to by Bühler. But in my opinion it cannot be denied that the subject of evidence for which I have named this witness is so important that one witness might not be sufficient to convince the Court.

I should like furthermore to point out the following: The witness Bühler was chief of the administration of the Government General. He has already been interrogated many times by the Polish Delegation as well. There is a danger that proceedings may be instituted against this witness as well, on account of the importance of the position he held. It is self-evident that under these circumstances every conscientious Defense Counsel should take into account the fact that the witness may try to shield himself when he answers certain questions; and considering the importance of the evidence, it seems proper that, in these difficult circumstances, the Defendant Frank be granted additional witnesses.

THE PRESIDENT: Sir David, in your suggestion, did you include any of the other witnesses who were cumulative to Bühler?

SIR DAVID MAXWELL-FYFE: I suggested an affidavit from Böpple and only Fräulein Kraffczyk on the general work of the Government General. The others, I think, are on the different points of the relationship with the central agencies.

THE PRESIDENT: Yes, I see.

DR. SEIDL: The next witness is Number 14, President Struve, whose last appointment was that of chief of the main labor department of the Government General. In other words, he was Minister for Labor in the Government General. Since both the United States Prosecution and the Russian Prosecution have made grave charges against the Defendant Dr. Frank on this very point of the alleged compulsory transfer of workers, it seems to me proper that one witness at least—the competent official—should be examined on the facts presented by the Prosecution so that he can say what orders he received on the subject from the Government General. Information as to the location of this witness has also been obtained. He is in an internment camp near Paderborn.

SIR DAVID MAXWELL-FYFE: I should suggest, My Lord, with great deference, that if Dr. Seidl would run through the other witnesses and show those to which he attaches special importance, it would be convenient for the Tribunal; and if Dr. Seidl would be good enough to say quite bluntly

whether he attaches importance to any of the others or if he does not, then it might be possible for the Prosecution to reconsider the elimination of all these witnesses; but the position at the moment is that there are requests for all sections, all departments of the Government General, and the Prosecution failed to see how these are necessary. If Dr. Seidl would indicate any special purpose that he attaches to any of them, then one might come back and consider President Struve again; but the position at the moment is that the Prosecution do not see how it really helps the case of the Defendant Frank that each one of the departmental chiefs should be called.

DR. SEIDL: It is not the case that all the officers or rather holders of office, were named as witnesses. A good many others could have been named. For instance, I have already said that out of nine governors, each of whom was in charge of 3 to 3½ million people, I have named only one: the witness Von Burgsdorff.

I have also foregone witnesses whom I had previously named—for instance, the various military commanders. If, however, the Prosecution wishes to know which witnesses I consider of special importance, I shall give the numbers of these witnesses.

They are, besides State Secretary Dr. Bühler, witness Number 2, Von Burgsdorff; Lammers has already been approved; further, the witness Dr. Max Meidinger; the witness Gassner, Number 6; the witness Number 7, Helene Kraffczyk; the witness Number 9, Bilfinger—he was not a member of the administration of the Government General; members of the Government General; Numbers 13, 14, 15, and 19. That does not mean, however, that I am willing to forego the witnesses which I have not mentioned. Witness Number 15, President Dr. Naumann, is an important witness because he was the chief of the main department for food and agriculture and can give us detailed information about the Defendant Dr. Frank's policy with regard to the feeding of the Polish and Ukrainian peoples and how he tried in particular, through the highest authorities of the Reich, to have the demands of the Reich reduced. The witness' address was not known until now, but I understand that the chief Polish public prosecutor, Dr. Sawicki, is supposed to know where he is at present. The next witness is Number 16, President Ohlenbusch, who is called mainly to testify to the cultural policy pursued by the Defendant Frank in the Government General. He is not, however, one of our most important witnesses; and I imagine that in his case an interrogatory would suffice.

The same applies to witness Number 17. Witness Number 18 is Dr. Eisfeldt whose last appointment was head of the main department of forestry, and who will testify to the forestry policy of the defendant and

especially—this seems to me an essential point—to the fact that there was so much trouble with the partisans in the Government General that it was in the interest of the Polish and Ukrainian people themselves to take strong measures against them. Witness Number 19 is President Lesacker, lately head of the main department of internal administration, whose last known place of residence was Bad Tölz. His present address may now have become known. Witness Number 20 is Professor Dr. Teitge, who, as my application shows, is to testify to the efforts made by the Defendant Dr. Frank in the field of public health.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, I have now had the advantage of hearing everything that Dr. Seidl has to say, and it seems to me that, so far as the witnesses from the Government General itself are concerned, the position is that Dr. Böpple, Number 13, does not add greatly to the general position which would be explained by Dr. Bühler and Dr. Von Burgsdorff and Fräulein Kraffczyk; that the witness Number 5, Dr. Meidinger, seems to deal with very much the same problems as President Struve, witness Number 14, and the witness Naumann, Number 15, and that, on reconsideration, I think the Prosecution would be prepared to agree that one of these witnesses, either Dr. Meidinger, or Dr. Struve, or Dr. Naumann, might well be called.

With regard to all the others, Dr. Ohlenbusch, Dr. Senkowsky, and Dr. Eisfeldt seem to speak about points that are really removed from the issues in this case, and Dr. Lesacker speaks on the general attitude of the defendant towards Poles and Ukrainians, which is covered by Dr. Bühler and Von Burgsdorff, and Meidinger, if he is granted; and the last witness, Teitge, seems again to speak on a really departmental point which is not a serious issue in the case. And, therefore, in trying to apply our own principle of recommending any witness where there is a real relevancy, the Prosecution would be prepared to go as far as I said in their recommendation, that, in addition to the witnesses that I have mentioned, they would suggest that either Dr. Meidinger or one of the witnesses Struve or Naumann should be called.

COL. POKROVSKY: I ask for permission to add a few words to that which has been said by my esteemed colleague, Sir David.

THE PRESIDENT: Yes.

COL. POKROVSKY: After listening very carefully to Dr. Seidl, I have come to the conclusion that we must ask you to take notice of our negative attitude towards a further summoning of the witness Von dem Bach-Zelewski. The Soviet Delegation fears that should the Tribunal deem it possible to grant Dr. Seidl's application—which, to my mind, appears

completely unfounded—then a very dangerous precedent would be created for the factual annulment of the basic decision already accepted by the Tribunal in this respect.

As far as I understand, the Tribunal are of opinion that every witness can and must be called once only for purpose of cross-interrogation. In reply to your question Dr. Seidl confirms that he was present here during the cross-examination by my colleague, Colonel Taylor, and myself. He saw and heard how the cross-examination was progressing. His reference to the fact that he did not have time enough to prepare for participation in this cross-examination appears to me unworthy of the slightest attention. He was in the same position as the rest of us. The Tribunal will remember that a number of the Defense Counsel participated in the cross-examination of the witness Von dem Bach-Zelewski. I see no reason why a different attitude should be adopted for Dr. Seidl's sake and I do not see why, to gratify a wish of Dr. Seidl, which, to me, is completely incomprehensible, the basic decision of the Tribunal should be changed concerning the repeated calling of witnesses for cross-examination.

This is what I wanted to add to the words of my respected colleague, Sir David Maxwell-Fyfe.

DR. SEIDL: Mr. President, I do not believe that the desire to hear an important witness is incomprehensible in itself, if the cross-examination is rendered difficult for reasons over which we have no control. In the first place, I have only asked the Court for permission to submit an affidavit from this witness to the Tribunal. If now the affidavit is such. . .

THE PRESIDENT: Are you dealing with Number 20?

DR. SEIDL: No, Sir. I am speaking about the witness Von dem Bach-Zelewski.

THE PRESIDENT: The Tribunal will consider what you said about it.

DR. SEIDL: May I now begin with the list of documents?

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents, Dr. Seidl asks for the correspondence between the Governor General and the Reich Chancellery. I have just verified that we do not have the other part of the correspondence. Of course, if any of it comes into our possession, we will be only too pleased to give it to Dr. Seidl. We do not have it, and we also do not have the personal files of the Defendant Frank in the Reich Security Main Office. The same applies to that—that if we do get possession we will let Dr. Seidl know at once.

THE PRESIDENT: Have the Prosecution any objection to the other documents which are asked for?

SIR DAVID MAXWELL-FYFE: I think that is all. The others are the diary. Dr. Seidl can comment on and call evidence as he desires as to the diary.

THE PRESIDENT: Yes, very well. Now counsel for the Defendant Frick.

DR. PANNENBECKER: Your Honors, the first witness I have named is Dr. Lammers, who has, however, already been approved for the Defendant Keitel. I believe, therefore, that I need make no statement on this point.

As my second witness I have named the former State Secretary of the Ministry of the Interior, Dr. Stuckart. He is one of the State Secretaries of the Ministry of the Interior, and he is in custody in Nuremberg. He was chief of the central office.

THE PRESIDENT: Is Dr. Stuckart being asked for by the Defendant Keitel?

SIR DAVID MAXWELL-FYFE: I think the explanation is that it was certainly thought that on the 9th of February this witness was to be so called by the Defendant Keitel, and on that basis he was approved in connection with the Defendant Frick. That is not directly my request to write it on the Defendant Keitel's final list.

THE PRESIDENT: You have no objection to him?

SIR DAVID MAXWELL-FYFE: I have no objection to him, Your Lordship.

THE PRESIDENT: Very well.

DR. PANNENBECKER: Mr. President, as witness Number 3 I have named General Daluege, who was formerly general of the Regular Police, and who is now in custody here in Nuremberg. He is informed especially about the attitude of the Defendant Frick to the anti-Jewish demonstration on 9 November 1938, and he also knows the relations between Frick and Himmler.

SIR DAVID MAXWELL-FYFE: I have no objection.

DR. PANNENBECKER: As witness Number 4 I have named Dr. Diels, who is now in an internment camp in the Hanover district. The witness was chief of the Gestapo in Prussia in 1933-1934. He is acquainted with the measures which the Defendant Frick, as Reich Minister of the Interior, decreed for the supervision of the provinces by the Reich, as well as about

the concentration camps, and also, in particular, about measures taken in individual cases and about conditions in the camps.

SIR DAVID MAXWELL-FYFE: I submit that this witness' evidence should be taken in writing. With regard to the earlier part, the Tribunal will have the advantage of the Defendant Göring who was concerned especially with the practices of the police in Prussia in 1933 and 1934, and with regard to the other points, as to the measures of the Defendant Frick, these are either laws or orders or administrative measures, which could be included, in the submission of the Prosecution, as being dealt with by written testimony supplemented by testimony of the Defendant Frick himself.

DR. PANNENBECKER: I should like to say something to that. I believe that it would be more practical to hear the witness here before the Court. We can then have a talk with him beforehand and find out the points on which he has detailed information, whereas in an interrogatory these things could not be discussed in detail.

THE PRESIDENT: We will consider that.

DR. PANNENBECKER: As witness Number 5 I have named the former police commissioner, Gillhuber. Gillhuber accompanied the Defendant Frick on all his official trips as his police guard. He therefore knows what trips Frick made and can therefore testify that Frick never went to the Dachau Concentration Camp, which contradicts the testimony given here by the witness Dr. Blaha.

SIR DAVID MAXWELL-FYFE: I have no objection, of course, to the Defendant Frick's dealing with that point. The only difficulty as to a witness of this sort is, I will say, the unfamiliarity with all of his travels, because if he is or was a bodyguard, he is almost certain to have periods of leave, and periods of interruption would occur. I should have thought that this could have been dealt with by affidavits, or an interrogatory, if necessary. When they are seen the matter could be reconsidered. But I would suggest at first stage the interrogatories, indicating in the witness' own account how often he was with the Defendant Frick and what interruptions would be most frequent in that period; therefore, it is for the Court to decide.

DR. PANNENBECKER: I agree with that, Mr. President.

SIR DAVID MAXWELL-FYFE: Now dealing with the next point, I have a suggestion to make in regard to the witness—the next witness, Denson. The point, as I understand it there, is that the Witness Blaha said before the Tribunal that Frick had visited Dachau, that it was, however, his evidence at the Dachau trial that Frick did not come to Dachau. I should say

the most satisfactory way in dealing with that is to get the shorthand notes of the Witness Blaha's evidence at the Dachau trial and put in a certified copy.

DR. PANNENBECKER: Agreed. I believe also that these notes. . .

SIR DAVID MAXWELL-FYFE: Actually we have a certified copy of the shorthand notes of Blaha's evidence here, and I also say in fairness to the witness that it does show he did say that at Dachau Frick visited the concentration camp, and I will show it to Dr. Pannenbecker whenever he likes.

DR. PANNENBECKER: As witness Number 7 I have named Dr. Messersmith. An affidavit from him has been read here by the Prosecution. An interrogatory has already been approved for this witness. We have not as yet received an answer. I should like for the time being to withhold the question as to whether a hearing of this witness in person seems necessary.

As an additional application I have also named the witness Dr. Gisevius.

SIR DAVID MAXWELL-FYFE: I should submit that Dr. Gisevius' evidence might also be reasonably dealt with directly in an affidavit in answer to interrogatories. He was consultant of the Reich Minister of the Interior under the Defendant Frick and supposedly went to Switzerland after 20 July 1944; he has exact knowledge of the responsibility and actual authority of the Defendant Frick to issue orders in police matters. I should think that such matters might be conveniently dealt with in an affidavit.

THE PRESIDENT: What do you say, Dr. Pannenbecker?

DR. PANNENBECKER: I should like to say that the Witness Dr. Gisevius is also required as a witness by the Defendant Schacht, as far as I know, about the events of 20 July 1944. I believe that this witness will have to appear in person for the Defendant Schacht. It would also be better if the witness could be heard here in person for the Defendant Frick. In case of necessity an affidavit would suffice.

THE PRESIDENT: There is one other point about it. You asked earlier for the return of Colonel Ratke. I think that you were told you could have him or Stuckart. Will you now leave him out of your application because you have Stuckart?

DR. PANNENBECKER: No, it was like this. I had named three witnesses for Dr. Blaha—Gillhuber, Ratke, and a third. We dropped Ratke when I got Gillhuber.

May I speak about the document book here?

THE PRESIDENT: Yes.

DR. PANNENBECKER: In order to give a general description of the Defendant Frick's character, I asked permission to refer to two books. One of them is a small book, *We Build the Third Reich*, which contains speeches made by Frick. I intend merely to quote short excerpts from these speeches in the course of my presentation of evidence. As regards the other book, *Inside Europe*, by John Gunther, I want to read here, too, only a short excerpt, one sentence about Frick.

Then I have offered further evidence material on the question of whether Frick intervened by means of restrictive decrees against arbitrary measures in imposing protective custody and have based my observations mainly on documents originally submitted by the Prosecution but not read in court. These documents I have listed simply under Number 2a-c.

I have further asked for permission to refer to the files of the police department of the Ministry of the Interior, where restrictive decrees issued by the Defendant Frick in regard to protective custody are also to be found.

With reference to his intervention in individual cases, I request permission to read a letter written to me by the former Reichstag Deputy Wulle. I have listed it under Number 3. The Prosecution has submitted an affidavit by Seger, in which the latter declares that Frick, as chairman of the Committee for Foreign Affairs of the Reichstag, had made statements on putting political opponents into concentration camps as early as December 1932. In Number 4 I have asked for the stenographic records of the Foreign Affairs Committee to prove that such a statement was never recorded and never made.

Number 5 concerns the records of the Dachau trial in regard to the Blaha incident already discussed.

Number 6 concerns an affidavit by the Witness Dr. Stuckart, which he made for the American Prosecution on 21 September 1945. I could just as well ask this witness about these questions when he is heard in person; but it would shorten the hearing if I could read this affidavit, which was made for the Prosecution.

With regard to Frick's position as Reich Protector of Bohemia and Moravia, I should like to submit the Prosecution's Document Number 1368-PS, which contains details of the limitations imposed on the Defendant Frick's powers as Reich Protector at the time of his appointment.

I have also made a supplementary application for Gisevius' book, *To the Bitter End*. I learned of this book through an extract published in the *Süddeutsche Zeitung* on 26 February 1946 which gave interesting details of the Röhm Putsch of 30 June 1934. This extract states that for the events of

30 June 1934, police power was assumed by Hitler and transferred to Göring and Himmler. The book will give further details in precisely this field, since Gisevius was at that time expert for police matters in the Reich Ministry of the Interior. I request the Tribunal, therefore, to refer to this book, which is not yet in my hands, or to assist me to procure a copy.

SIR DAVID MAXWELL-FYFE: I might say I do not think that there is much disagreement between Dr. Pannenbecker and the Prosecution. I might run through the documents asked for. In the book, *We Build the Third Reich*, if Dr. Pannenbecker will indicate the excerpts he is going to use, the Prosecution will have no objection to his quoting from them, and the same with regard to the quotations from Mr. Gunther's book, *Inside Europe*. To Paragraph 2 of the Document 779-PS and the excerpt from a newspaper, the Document 775-PS—to these there are no objections. The files of the police division are not in the hands of the Prosecution. If we do get any of them, then we shall let Dr. Pannenbecker know. As far as the letter from the former representative Wulle is concerned, there is no objection to that. I have not seen any letter yet, but there is no objection to it in principle.

With regard to Number 4, I think there is some misunderstanding there. That is Document L-83. The affidavit of Seger is before the Tribunal as Exhibit Number USA-234, and the statement referred to by Seger was that the Defendant Frick said to him, "Don't worry, when we are in power, we shall put all of you guys into concentration camps." This was alleged in the affidavit as said by Frick to Seger during the course of a conversation. It is not alleged to have been said in the Foreign Affairs Committee.

Then Number 5—I say I have the shorthand notes, and it will be shown to Dr. Pannenbecker. As to Number 6, I understand that Dr. Stuckart is going to be called. Of course, the affidavit can be put to him and he can verify its truth. The Document 1336-PS will be put at the disposal of the Defense and they can make such use of it as they can. That covers the documents. As to Dr. Gisevius' book, I understand that Dr. Pannenbecker has not a copy of that. Perhaps the Tribunal will see that a copy can be obtained for him. I do not know whether we have a copy. We will see what we can do and see that a copy is available.

DR. PANNENBECKER: As to Number 4, Dr. Seger, I still have a brief comment to make on Document 83. Perhaps an interrogatory could show whether or not Frick made the statement in question in his capacity as chairman of the Foreign Affairs Committee—in other words whether or not that statement is in the stenographic minutes.

SIR DAVID MAXWELL-FYFE: I understood that it was not in the minutes.

It would not be in the minutes because Dr. Seger alleges that it was made during the course of a conversation, and not in that committee.

DR. PANNENBECKER: Thank you.

THE PRESIDENT: The Tribunal will continue tomorrow morning at 10 o'clock, if possible, with the further applications for witnesses and documents, which the Tribunal understand have been lodged on Friday evening.

[*The Tribunal adjourned until 5 March 1946 at 1000 hours.*]

SEVENTY-FOURTH DAY

Tuesday, 5 March 1946

Morning Session

THE PRESIDENT: I have an announcement to make.

The attention of the Tribunal has been drawn by Dr. Hanns Marx, one of the German counsel appearing in this case for the Defense, to an article which was published in the newspaper *Berliner Zeitung* for February 2, under the heading, "A Defense Counsel." The article, which I do not propose to read, criticizes Dr. Marx in the severest terms for an error in his cross-examination of a witness when he deputized for Dr. Babel on behalf of the SS. The article suggested that in asking the question he did he was behaving most improperly, that he was expressing private and personal views under the guise of acting as counsel, and that his proper course was to remain silent in view of the character of the evidence.

The matter assumes a graver aspect still because the article goes on to threaten Dr. Marx with complete ostracism in the future and does so in language both violent and intimidating.

The Tribunal desires to say in the plainest language that such conduct cannot be tolerated. The right of any accused person to be represented by counsel is one of the most important elements in the administration of justice. Counsel is an officer of the Court, and he must be permitted freely to make his defense without fear from threats or intimidations. In conformity with the express provisions of the Charter, the Tribunal was at great pains to see that all the individual defendants and the named organizations should have the advantage of being represented by counsel; and the Defense Counsel have already shown the great service they are rendering in this Trial, and their conduct in this regard should certainly not leave them open to reproach of any kind from any quarter.

The Tribunal itself is the sole judge of what is proper conduct in Court and will be zealous to insure that the highest standard of professional conduct is maintained. Counsel, in discharge of their duties under the Charter, may count upon the fullest protection which it is in the power of the

Tribunal to afford. In the present instance the Tribunal does not think that Dr. Marx in any way exceeded his professional duty.

The Tribunal regards the matter as one of such importance in its bearing on the due administration of justice that they have asked the Control Council for Germany to investigate the facts and to report to the Tribunal.

That is all.

Sir David, the first application is for the Defendant Streicher. I call upon counsel for the Defendant Streicher.

DR. HANNS MARX (Counsel for Defendant Streicher): Mr. President, the Defendant Streicher is indicted under two counts: Firstly, that he was active in the planning and in the conspiracy for preparation of aggressive war; and secondly, Crimes against Humanity.

As far as the first point is concerned, the Defense does not think it necessary to offer any evidence because the Defendant Streicher, during the whole of this proceeding, was never mentioned in a single document; neither can it be proved that he took part in any of the intimate conferences with Hitler. In this respect I did not see fit to offer any proof. As to the second point, first of all I should like to call the wife of the Defendant Streicher, Frau Adele Streicher nee Tappe as witness.

SIR DAVID MAXWELL-FYFE: I wonder if it would be convenient for me to indicate the views of the Prosecution on these witnesses; there are only six of them. Then perhaps Dr. Marx could make his comments on my suggestions.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: The Tribunal will see that there are six witnesses, and if it would take them in my order, I would indicate the point of view of the Prosecution.

Number 3, Ernst Hiemer, was the editor in chief of *Der Stürmer*, and apparently the defendant's principal lieutenant.

Number 4, Wurzbacher, was an SA brigade leader in Nuremberg, and is alleged to be able to give evidence as to the speeches of the defendant.

Number 2, Herrwerth, was the defendant's chauffeur, and he is to speak on one point, namely, the defendant's annoyance at violence being used on the 10th of November 1938.

And Number 6, Dr. Strobel, who is a lawyer, is to speak on the same point, the disapproval expressed by the defendant in December 1938 of the measures taken in November.

Then there are two members of the defendant's family: Frau Streicher, who was his secretary from 1940 to 1945; and his son, Lothar Streicher.

The Prosecution would have no objection to Herr Hiemer, as the defendant's principal lieutenant, speaking, as suggested by Dr. Marx, on what Dr. Marx calls the Defendant Streicher's basic attitude to the Jewish question. There are a number of matters on which he is said to be able to speak, to which the Prosecution would object as irrelevant. However, the time for so doing is later.

Then, with regard to Herr Wurzbacher, he is said to have always been present at meetings where Streicher spoke, from the early days. To that also the Prosecution would not make objection, but they draw attention to the fact that in the earlier applications Herr Wurzbacher was said to be able to speak as to the boycott in 1933 and the events of November 1938. Therefore the Prosecution respectfully remind the Tribunal that he can speak on the events in 1938, and, in the view of the Prosecution, it is not necessary to have oral testimony to repeat that point. They therefore suggest that with regard to Herr Herrwerth, the defendant's chauffeur, who really speaks on one main point—that the defendant showed anger with regard to the events of 1938—an affidavit would be sufficient. They suggest the same course with regard to Dr. Strobel, the attorney who is mentioned.

With regard to Frau Streicher, Number 1, the Tribunal will see that it is said that Frau Streicher was the defendant's secretary during the period from May 1940 to May 1945. The gist of the case against this defendant refers, of course, to a much earlier period, both before and immediately after the rise to power.

The Prosecution suggest that the evidence which is desired from Frau Streicher is really a description of the life of the defendant during the war years, and they suggest that that, again, be covered by an affidavit.

That leaves Lieutenant Lothar Streicher, the eldest son of the defendant. If I may remind the Tribunal of how the matters mentioned in regard to him come into the case: In a report of the Göring commission on the question of corruption in regard to Aryanization, part of the report stated that this defendant paid a visit to three boys in prison, and that certain disgusting and cruel actions took place. The Prosecution, of course, submit that that is not really a matter relevant to the charges against the defendant, but they realize that it is a highly prejudicial matter; it has been read and a bad effect has resulted from that evidence. Therefore they feel it must be a matter for the Tribunal; and the Prosecution, having put in the report including that, ought not to take objection, except to point out that it is not strictly relevant. However, if the Tribunal feel that this defendant ought to have the advantage

of his son's counteracting that account of very unpleasant matters, the Prosecution would not take any objection, although they are bound to point out that it is not strictly relevant.

THE PRESIDENT: In the view of the Prosecution, would an affidavit be suitable in that case?

SIR DAVID MAXWELL-FYFE: Certainly, that is the line the Prosecution would suggest.

Therefore, if I may summarize, what I am suggesting is that the Prosecution would make no objection to Herr Hiemer and Herr Wurzbacher giving oral evidence, and to affidavits from the other witnesses.

DR. MARX: I beg to differ in a few respects with Sir David Maxwell-Fyfe. The Prosecution hold that the testimony to be given by Frau Adele Streicher would not be specially relevant. Opposing this I should like to state that this witness was for 5 years, that is from 1940 to 1945, close to the defendant, handled his entire correspondence, and knows what contacts Streicher had during the whole war.

The Defense is particularly anxious to prove that Streicher had no connection with any of the leading men of the State or Party while he lived in isolation in Pleikershof. There was no exchange of letters or opinions with Hitler, Himmler, Kaltenbrunner, or Heydrich, or any other leading personalities, whatever their names might be. Streicher was completely isolated and played no political role whatsoever; neither had he any authority. In view of this, I, as his counsel, cannot waive the evidence of this witness, as otherwise the vital interests of the Defendant Streicher would be prejudiced. I therefore suggest that my application to call Frau Streicher as witness before the Tribunal be granted, so that the pertinent questions may be put to her.

The same applies to the witness Herrwerth. It cannot be said that this witness can give information only on irrelevant matters or on an insignificant incident. On the contrary the incident in question is of decisive importance. This man Herrwerth was present on the night of 9 November 1938, when SA Group Leader Von Obernitz reported to the then Gauleiter Streicher that demonstrations against the Jewish population were being planned. He therefore knows from personal experience what passed between these two men, and that Streicher was opposed to this demonstration, because he considered such a demonstration to be entirely wrong.

Thus, in opposition to the Führer's will and order, Streicher kept himself aloof from this demonstration against the Jewish population. There can be no doubt that this incident is of particular importance. It is clear that the

behavior of Streicher, who at the time was already in bed and received Obernitz in his bedroom, corroborated the stand taken by his defense, I therefore submit that Fritz Herrwerth be called as witness before the Tribunal, so that he can be examined by me and, if necessary, also by the Prosecution.

As to the witness Hiemer, the Prosecution and I seem to be in agreement that he as well as Wurzbacher appear before the Tribunal. I may mention that Wurzbacher is now in the Altenstaedt Camp near Schongau, Camp Number 10.

As to the witness Lothar Streicher, the Defendant Streicher attaches particular importance to having it confirmed by this witness that what the Göring report mentions about the Defendant Streicher's indecent words or acts, when visiting the prison, is untrue.

If the Prosecution are prepared to state that they will drop this point and no longer use this report, then I would agree to refrain from calling this witness. Otherwise, I consider it my duty to insist on having this witness called before the Tribunal to vindicate my client's honor. An affidavit could not possibly meet this purpose, and I therefore ask that the application of the Defense be granted.

SIR DAVID MAXWELL-FYFE: On that last point, My Lord, I have indicated from the Prosecution that that incident is not relevant to the charges against the Defendant Streicher. The Prosecution, of course, produced the report and I thought I had made it clear to the Tribunal that it is one of these collateral matters that do come in, and the Prosecution for that reason would not oppose an affidavit from Lothar Streicher. But the main case of the Prosecution against this defendant is on the stirring up of and consistent incitement to persecution of the Jews. I do not think I can put it further than that. But I had hoped I had made clear that the incident was not one that was relevant upon any other issue. The report under discussion was on the Aryanization of Jewish properties, and that was a passage in the report. The report itself is relevant to persecution.

THE PRESIDENT: The Tribunal will consider that matter.

DR. MARX: Mr. President, may I make a few additional remarks?

This matter which is to be proved by Lothar Streicher forms a part of the Göring report and cannot therefore be dealt with separated from its context. The defendant contends that this Göring report originates from a man who wanted to harm him, who, after having received many favors from him, became his enemy and used this Göring commission, which was originally

meant for quite other purposes, to deal the defendant, whom he hated, a sudden blow.

It is a rather serious matter to say of a man that he indulged in sadism in the presence of other persons in a disgusting manner. That is why the defendant is so anxious to have the falsity of this allegation exposed here publicly. I therefore request once more that Lothar Streicher be brought before this Tribunal.

As to the last witness, Attorney Strobel, I would be very pleased to comply with Sir David Maxwell-Fyfe's wishes, but also in this case I am afraid I cannot do so.

Attorney Strobel's testimony is offered as proof for the following: Sometime, approximately three weeks after the events on the night of 9 November 1938, Streicher addressed a meeting of the Association of Lawyers at Nuremberg. At that public meeting of lawyers, Streicher defined his attitude to the events of 9 November 1938 and made it clear that he had been against the demonstration and the firing of synagogues. Attorney Strobel, as he said, was very surprised at the time that Streicher so openly took a stand against Hitler's order and made no secret of what he had said to Obernitz, that he would not take part in the demonstration and that he considered the whole thing to be a mistake.

Strobel's testimony may carry more weight than that of chauffeur Herrwerth, since in the case of the latter the Prosecution can hold against the Defense the fact that Herrwerth was an employee of the defendant and may therefore be inclined to take the defendant's side. This argument, however, does not apply to Attorney Strobel, as he, in a letter addressed to the Tribunal, wanted to express his aversion to the defendant and mentioned the meeting only incidentally.

Consequently, Strobel must be regarded as an impartial witness, whereas one might say of Herrwerth that he is perhaps not wholly disinterested. I therefore submit that Attorney Strobel also be called before the Tribunal in order to enable the Defense and, if necessary, also the Prosecution to put direct questions to this witness.

THE PRESIDENT: That concludes your witnesses, does it not? Now you can turn to the documents. No documents? Very well, the Tribunal will consider your applications.

DR. MARX: Mr. President, may I have a word please? Up to now it has not been possible for me to collect all the documents we need. There are a number of newspaper articles which I should like to submit to the Tribunal, and I ask for leave to submit the list of documents later on. I shall get in

touch with the Prosecution beforehand as to which documents should be discarded and which should be put in.

THE PRESIDENT: Yes, Dr. Marx, the Tribunal will have no objection to your getting in touch with the Prosecution with reference to documents later on, but you must understand that no delay can be permitted.

I call upon the Counsel for the Defendant Funk.

SIR DAVID MAXWELL-FYFE: If Dr. Sauter would allow me, I should like to say that, with regard to these applications, there is so little between the applications and the views of the Prosecution that it might shorten matters if I were to indicate the views of the Prosecution, and then Dr. Sauter could add anything he has to say. I could be extremely short, but I do not want to forestall Dr. Sauter if he has any objection.

THE PRESIDENT: Would that meet with your view, Dr. Sauter?

DR. FRITZ SAUTER (Counsel for Defendant Funk): That I present my applications now and that the Prosecution then reply?

THE PRESIDENT: I think Sir David meant that he should first indicate any objections which he has, and then you could explain your view.

DR. SAUTER: I quite agree, My Lord.

SIR DAVID MAXWELL-FYFE: If the Tribunal please, the witnesses fall into four groups. The first group is three witnesses from the Ministry of Economics, Numbers 1, 2, and 10 on the list. As I understand Dr. Sauter, he wishes to call Number 2, Herr Hayler, as an oral witness, and to have affidavits from the witnesses Landfried, Number 1, and Kallus, Number 10. The Prosecution have no objection to this course, except that with regard to the witness Landfried they may have some observation to make on the form of the interrogatories, which could no doubt be settled with Dr. Sauter, and then put to the Tribunal for their approval. Secondly, they want to reserve the right to apply for further cross-interrogatories. Apart from that, which I submit are really minor points, they agree with that suggestion.

The second group is two witnesses from the Reichsbank, Number 5, Herr Puhl, and Number 7, Dr. August Schwedler. Again, as I understand Dr. Sauter, he wants an affidavit in the form of answers to questions. The Prosecution have no objection to that, only again they reserve the right to apply for cross-interrogatories, if necessary; if the answers take a certain form, they might have to apply to the Court that the witness be brought for cross-examination. They simply want to reserve that right, but, of course, they cannot take up their position until they have seen the form of the answers.

Then, the third group consists of one witness, who is Dr. Lammers, who has been called by most of the defendants orally, and there is no objection to that, and the Prosecution suggest that Dr. Sauter will put his questions to Dr. Lammers when he is called by the other defendants.

Then, the fourth group is a general one. There is Herr Oeser, who is an editor, Number 6; Herr Amann, Number 8; and Number 9, Herr Roesen; and lastly, Number 4, Frau Funk. As I understand it, with regard to all these witnesses, Dr. Sauter wished either an interrogatory or an affidavit. The Prosecution make no objection to that, with the same understanding that they reserve their rights to put cross-interrogatories or to ask the Tribunal to summon any of them as witnesses if any point emerges. Subject to the reservation of these points, there is nothing between us, because the result is, if I have understood it all correctly, that Dr. Sauter is asking for two oral witnesses and eight sets of interrogatories.

THE PRESIDENT: Sir David, don't you draw any distinction between an affidavit and interrogatories?

SIR DAVID MAXWELL-FYFE: Well, I do, certainly. But, My Lord, Dr. Sauter has shown in the case of most of the witnesses the interrogatories which he is putting—apart from Dr. Lammers, who, of course, will be dealt with orally, because he is being produced as a witness. I understand that when Dr. Sauter says "affidavit" he means an affidavit in the form of answers to questions, such as those he has set out in the appendix.

THE PRESIDENT: Well, then, Sir David, so far as the Prosecution are concerned, they would take the line that you have suggested, meaning by an affidavit, interrogatories and, if necessary, cross-interrogatories?

SIR DAVID MAXWELL-FYFE: That is so.

THE PRESIDENT: Very well. Yes, Dr. Sauter?

DR. SAUTER: Mr. President, I am in agreement with the suggestions of the Prosecution as to the individual applications. As to the wording of the individual interrogatories I shall come to an agreement with the Prosecution.

THE PRESIDENT: Just one moment. Dr. Sauter, perhaps you could tell us, dealing, for instance, with Number 6—you say there, "I have in hand an affirmation from this witness with a supplement thereto." Does that mean answers to interrogatories, or does that mean an affidavit, a statement? Have you got the passage?

DR. SAUTER: Yes, I have an affidavit from this witness, Albert Oeser, Number 6, and this affidavit will be submitted to the Tribunal, together with my document book. I am already in possession of this affidavit.

THE PRESIDENT: Well, Sir David, that is not quite the same as interrogatories. I do not know whether you have seen the affidavit. I mean, it may be that at a later stage you would want to cross-examine or to put cross-interrogatories to that witness.

SIR DAVID MAXWELL-FYFE: Yes, that would be so, Your Honor. I must reserve the right, until I have seen the affidavit, to do that. The ones that are attached to Dr. Sauter's application are all in the interrogatory form, but where the document is in the form of a statement, the Prosecution would have to reserve these rights. Really, one cannot make any declaration until one has seen that.

DR. SAUTER: Mr. President, before I put in evidence this affidavit by the witness Oeser, Number 6, I shall, of course, pass it to the Prosecution so that they have ample time to decide as to whether they wish to cross-examine this witness. This goes without saying.

THE PRESIDENT: Where is that particular witness? Where is he?

DR. SAUTER: He is witness Number 6, My Lord.

THE PRESIDENT: Yes, but where is the man? Where is he at the present moment? Is he in Nuremberg or where?

DR. SAUTER: Witness Oeser is at Schramberg in the Black Forest, in Baden, near the Rhine. It is some distance from Nuremberg. Moreover, Mr. President, the points to which the witness is to testify are comparatively so insignificant that it would hardly be worth while to bring the witness himself to Nuremberg. I personally do not know the witness, but an acquaintance of mine mentioned him to me as a person who could give favorable information on the conduct of the Defendant Funk. Thus we got to know about witness Oeser and obtained from him an affidavit which I shall pass to the Prosecution in good time.

SIR DAVID MAXWELL-FYFE: With regard to the documents, My Lord, the first one is a biography of the Defendant Funk. The extracts were submitted as part of the Prosecution's case. I ask that Dr. Sauter intimate what passages he desires to use, and then the Prosecution can make such objections or comments as may or may not be necessary.

The second request is, I think, the same as we had yesterday, namely for the record of the Dachau trial and of the evidence of the witness Dr. Blaha. The American prosecutors will be pleased to show Dr. Sauter the report that they have of Dr. Blaha's evidence at that trial.

With regard to the speeches of the Defendant Funk, there again, if Dr. Sauter will intimate what they are and what he intends to use, the Prosecution will consider them. *Prima facie* they would be a relevant matter.

And with regard to Number 4, the copy of the newspaper with a report of the defendant's speech, that again would *prima facie* be relevant, and we shall look into it. It is very unlikely that there would be any objection, but we shall look into it; and, if necessary, deal with it when Dr. Sauter makes his presentation.

THE PRESIDENT: Has Dr. Sauter the newspaper?

DR. SAUTER: Mr. President, the newspaper mentioned under Number 4, and also the speeches mentioned under Number 3, are now in my possession. I shall not use the entire text of the speeches in my brief.

THE PRESIDENT: Then you would be prepared to indicate to the Prosecution the passages in your Document 1 and the passages in 3 and 4, which you wanted to use, so that they can have them translated?

DR. SAUTER: Yes, My Lord. I shall include in the Document Book from the book mentioned under Number 1 only a few—I think two or three—pages and from the speeches and newspaper articles only those passages which I am going to use, and submit these to the Prosecution in time for translation. As to the record of the Dachau trial, this request is settled by what the Prosecution stated yesterday regarding the Defendant Frick. I believe the Dachau stenographic report is already available. I shall peruse it, so that this matter is settled.

THE PRESIDENT: Very well. Then I call upon counsel for Dr. Schacht.

DR. DIX: I am very pleased to be able to tell the Tribunal that I believe I am in agreement with Sir David as to the compass of evidence to be submitted by me, especially as to those applications which I shall either withdraw or restrict. In order to facilitate matters, may I therefore first tell the Tribunal which applications on my list I withdraw and which ones I restrict, so that eventually those will be left which I maintain. I withdraw application Number 5 for the examination of Dr. Diels. I heard yesterday that Dr. Diels has been called for as witness in another application. Should the Tribunal grant yesterday's application and order Diels to appear, then I should like to reserve the right to examine. I myself shall, however, not apply for him.

Then I should like to call your attention to applications Number 6, Colonel Gronau; Number 7, Herr Von Scherpenberg; Number 8, State Secretary Carl Schmid; Number 9, Consul General Dr. Schniewind; Number 10, General Thomas of the armament staff; Number 11, Dr. Walter Asmus; Number 12, Dr. Franz Reuter; and Number 13, Dr. Berckemeyer. For all these witnesses I am willing to accept an affidavit. I quite realize that I have

to pass affidavits to the Prosecution and that the latter have the right to apply for these witnesses to be summoned for cross-examination.

The following witnesses, therefore, remain to be called before the Tribunal: Witness Number 1, Dr. Gisevius; witness Number 2, Frau Strünck; witness Number 3, the former Reichsbank Director, Vocke; and witness Number 4, the former Reichsbank Director, Ernst Huelse. In respect to these witnesses, I must insist on my application for their personal appearance. Schacht's defense cannot dispense with the oral examination of these witnesses. May I put forward my reasons in each case. The testimony of these witnesses is in no way cumulative. One witness knows things the other does not. Vocke and Huelse were Schacht's closest collaborators at the Reichsbank and at the International Bank at Basel. They know of events and developments which Schacht may not be able to recall in detail. The oral examination of these witnesses cannot therefore be replaced by interrogatories because he is no longer sufficiently versed to draw up the relevant questions. These witnesses must be informed of the theme of the evidence and be given the opportunity to make a comprehensive statement.

The same, namely that they still remember events in detail which Schacht no longer recollects, applies to Frau Strünck and Gisevius, who can testify particularly as to the plans for the various attempts on Hitler's life from 1938 to 1944.

This is all I have to say regarding my application for these witnesses.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, Dr. Dix and Professor Kraus were good enough to indicate to me and my colleagues yesterday their proposals which Dr. Dix suggested be put before the Tribunal. The Prosecution felt that by limiting all the witnesses to the first point and Point 2, Dr. Dix was making a reasonable suggestion. The Prosecution, of course, reserve all rights as to the relevancy of the various points set out as to these witnesses, but they felt that that, as I say, was a reasonable suggestion. On Numbers 3 and 4 it means that the Defense are limiting all the witnesses, on the general economic course of conduct of the defendant, and again the Prosecution felt that that was a reasonable suggestion. With regard to the others, the Prosecution must, as I have said—and Dr. Dix agreed—reserve all rights by way of cross-interrogatories or of asking that the witness should be summoned, but the Prosecution felt that they could be in a position really to decide what their rights and proper course should be only when they had seen the affidavits that were put in. That is the reasoning of the Prosecution in the matter.

THE PRESIDENT: As to documents, Dr. Dix?

DR. DIX: Regarding the documents, I should like to make it clear that wherever in my list I have referred to books, published speeches, and such like, especially under Number 2, this does not mean that I intend to present to the Tribunal long extracts from these books. Only short quotations will be made and these quotations will be. . .

[*The proceedings were interrupted by technical difficulties in the interpreting system.*]

THE PRESIDENT: The best course would be for us to adjourn now and then this mechanical defect will be remedied.

[*A recess was taken.*]

THE PRESIDENT: Just one moment, Dr. Dix. I have one or two announcements to make. In the first place, the application which has been made on behalf of the defendants for a separate trial of the organizations named under Articles 9 and 10 of the Charter is denied.

Secondly, with reference to the application made on behalf of counsel for the Defendant Bormann, the Tribunal have considered the application dated February 23, 1946, by Dr. Bergold, counsel for the Defendant Bormann, in which he asks that Bormann's case should be heard last, at the end of the cases of all the other defendants. The Tribunal have decided to grant this application.

The Tribunal also rule that the hearing of Dr. Bergold's applications on behalf of Bormann for witnesses and documents, in accordance with Article 24(d), shall not take place at the present time, when the Tribunal are hearing the applications of all the other defendants, but at a later date to be fixed within the next three weeks.

Thirdly, with reference to the business of the Tribunal, the Tribunal will sit in closed session after the conclusion of the applications on behalf of the four defendants who are being heard today. Tomorrow the Tribunal will continue the applications on behalf of the next four defendants, and on Thursday the Tribunal will hear the case on behalf of the Defendant Göring.

Yes, Dr. Dix.

DR. DIX: Before the recess, I was about to tell the Tribunal, as to Number 2 of the list of documents, that in my presentation I would confine myself to really important and quite short quotations, after having made them available to the Prosecution in our document book. This disposes of Number 2.

Number 1 consists of extracts from copies already submitted by the Prosecution. I shall give but one example, namely, the report by Ambassador

Bullitt to the Secretary of State in Washington. The Prosecution presented the last part of this report, in which they were interested, whereas I wish to reserve the right to present the first part, which deals with Schacht's peaceful intentions and his lack of political influence on Hitler, and which is therefore of importance to the Defense.

I now turn, to Number 3, Subparagraph (a), which is the Schacht memorandum to Hitler of 3 May 1935 concerning the legal rights of Jews, dissolution of the Gestapo, *et cetera*.

May I again ask the Prosecution to see to it as far as possible that this document, which has not been introduced so far, be procured together with Document 1168-PS, which at the time of Schacht's interrogation by Colonel Gurfein was produced. As I heard yesterday, the document has not yet been found, but perhaps Colonel Gurfein, who has already gone back, can assist us in this matter. These two documents are very important, as they constitute parts of a Schacht memorandum which can be understood and appreciated only in its entirety.

Furthermore, here is a letter addressed by Schacht to General Field Marshal Von Blomberg. It deals with restriction of armaments, et cetera, and its relevancy is, I think, obvious.

Still a word about Subparagraph (c). This is a Hitler memorandum of August 1936 regarding the Four Year Plan. This memorandum, in which Hitler reproaches Schacht most bitterly, even with sabotage, is of decisive importance to us. Contrary to what appears in the list, I am not in a position to produce a reliable copy of this memorandum, which under certain circumstances could replace the original. What I have is an extract, which in no way can be considered reliable and thus cannot be submitted to the Tribunal as evidence. In order to ascertain the exact contents of this memorandum, we must have the original. To my knowledge the original was among the files of the Dustbin Camp in the Taunus, and again I ask the Prosecution to assist in procuring it.

Then there is the letter written by Schacht to Göring in November 1942. Göring's answer was to dismiss Schacht for defeatism, or rather in consequence of this letter Schacht was dismissed for defeatism. A further consequence of this letter was that Göring excluded him from the Prussian State Council. A copy of this letter was last seen by Schacht in the possession of one Von Schlaberndorff, who worked with General Donovan, but who is no longer here. Where Schlaberndorff is now, I do not know. May I ask the Prosecution to assist us also in this matter. Furthermore, there is a telegram of January 1943 from Göring to Schacht, excluding him from the State Council.

As to Subparagraph (f), I have to ask the Russian Prosecution to assist us in procuring this item. It is made up of miscellaneous notes, records of Schacht's reflections, written soliloquies and letters, which were kept in a box at Schacht's country seat, Guehlen, near Lindow, Mark Brandenburg—that is in the Russian occupation zone. According to information received, this box has been confiscated by Soviet troops. I should be very much obliged to the Russian Delegation if they would do their utmost to procure the box with its contents.

The documents under Number 4 are already in our possession. I do not think it necessary to enumerate and comment on them here; they will be included in our document book and the Prosecution will then have the opportunity of making observations on their relevancy. That is all I have to say now regarding the documents.

SIR DAVID MAXWELL-FYFE: With the approval of the Tribunal I shall confine the very few remarks I have to make to Paragraph 3 of Dr. Dix' memorandum. With regard to the document for which Dr. Dix has made a request, it is not yet procured. I have asked my colleagues to make inquiries, but at the moment they cannot find certain of these documents, although a search has been made. For example, (a), the note handed to Hitler on the same day, is Document Number 1168-PS. Mr. Dodd tells me that an exhaustive search was made by the American Delegation two months ago, and they are convinced that that document is not in their possession, and the same applies to the Soviet Delegation regarding (e).

THE PRESIDENT: Who was the interrogator, Judge Gurfein?

SIR DAVID MAXWELL-FYFE: Colonel Gurfein is the one who started the American Prosecution, who conducted the interrogations at the earlier stages.

THE PRESIDENT: Where is he now?

SIR DAVID MAXWELL-FYFE: New York. That point has been borne in mind in the usual interrogations. If the document is used, it is very carefully referred to, and the American Delegation informs me that they took that line of search, and they had that in mind, and that they have not been able to find it. Similarly, in regard to Number (e), my Soviet colleagues told me that they have no trace of the document there mentioned.

THE PRESIDENT: You mean there is no reference, to that document in the interrogation conducted by Judge Gurfein?

SIR DAVID MAXWELL-FYFE: That is so, yes. They are unable to find any reference, I am told, going through the interrogation.

THE PRESIDENT: Have you any knowledge of any communication that has been sent to Judge Gurfein?

SIR DAVID MAXWELL-FYFE: I am not sure; he had gone when the search was made two months ago. I am sure that the American Delegation will look into that. What I was going to say in regard to Number (e) was that my Soviet colleagues informed me that no trace of this document has been discovered by the Russian authorities. With regard to the others, the Prosecution would like some further time to make further inquiries, and then they will report to Dr. Dix and to the General Secretary if anything can be done. With regard to the other documents, the ones which are referred to by Dr. Dix, and the many extracts, his plan is one which entirely suits the Prosecution if it suits the Tribunal.

THE PRESIDENT: I call on Counsel for the Defendant Dönitz.

FLOTTENRICHTER OTTO KRANZBÜHLER (Counsel for Defendant Dönitz): I should like to call the following witnesses: First, Judge Admiral Kurt Eckhardt. He was expert on international law in the Naval War Staff. He is to testify that the rules of international law were considered when the German U-boat war policy was laid down. This testimony is relevant in view of the documents submitted by the Prosecution, according to which the U-boat war was conducted without regard for international law.

SIR DAVID MAXWELL-FYFE: Again it might help Dr. Kranzbühler and the Tribunal, if I indicated the view of the Prosecution. They consider that Number 1, Admiral Eckhardt, and Number 2, Rear Admiral Wagner, and Number 4, Rear Admiral Godt, should not be the subject of objections; they do not make objections to these three. With regard to Commander Hessler, Number 3, it seems to the Prosecution that he is really cumulative to Rear Admiral Godt, as he ceased to be a U-boat commander at the end of 1941, before most of the material orders were issued. That is really the only point; as I said, we raise no objections to the other three. With regard to the second portion, the interrogatories, the interrogatory of Mr. Messersmith has been granted. With regard to the next three, Vice Admiral Kreisch, Captain Roesing, and Commander Suhren, these were granted on 14 February, and a slight error crept into the Prosecution's action which was purely mechanical. The Prosecution replied that they did not object in principle and did not wish to file cross-interrogatories; they objected to two of the questions to be addressed to Commander Suhren, Numbers 7 and 8. It was intended that the same objection to the same questions should be made with regard to the other two. It appears that the document only related to Commander Suhren, but in general there is no objection; with regard to Number 5, that has been done.

THE PRESIDENT: Well, Sir David, have those mistakes been rectified, in reference to 2 and 3?

SIR DAVID MAXWELL-FYFE: I am not quite sure. I want to mention that same objection, to narrow the issues of this objection to two of the interrogatories, and in connection with all three sets of interrogatories, I do not think this has been before the Tribunal so far as I know.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: And with regard to Captain Eck, that evidence has been taken on commission, and so there is no objection. Finally, with regard to Admiral Nimitz, the Prosecution do object to that application; that is a new application, and if the Tribunal will look at the grounds, they are that the United States submarines attacked all ships apart from the United States and Allied vessels without warning, and that the United States submarines attacked all Japanese ships without warning, at the latest from the time when it could be surmised that the Japanese ship would resist being taken as a prize. And third, that the United States submarines did not assist shipwrecked people in such waters where the submarine would have endangered herself through such assistance. The reason which Dr. Kranzbühler gives is that this testimony proves that the United States Admiralty made the same strategical and legal considerations in carrying out its submarine warfare. In the submission of the Prosecution this is irrelevant. That they followed the same legal considerations might have been done as retaliation, and if so, the question whether the United States broke the laws and usages of war is quite irrelevant; as the question before the Tribunal is whether the German High Command broke the laws and usages of war, it really raises the old problem of evidence directed to *tu quoque*, an argument which this Prosecution has always submitted throughout this Trial is irrelevant.

FLOTTENRICHTER KRANZBÜHLER: I shall confine myself to the points to which Sir David has raised objections.

First of all, witness Number 3, Commander Hessler. I do not consider his testimony to be cumulative. He is to testify as to when Order 154, which has been submitted by the Prosecution, was abrogated. This testimony is important because the Prosecution contend that the order of September 1942 need not have been issued at all but that it would have been sufficient to refer to the old Order 154. To counter this contention Hessler is to testify that Order 154 was no longer in force at that time.

Moreover, Captain Hessler, being on the staff of the U-boat commanders from 1941 on, instructed nearly all U-boat commanders putting to sea about

the orders issued, particularly the orders regarding treatment of shipwrecked persons. For these reasons, his testimony is, in my opinion, indispensable as a check on the statement of witness Moehle.

I now turn to the interrogatories for Numbers 2, 3, and 4: Admiral Kreisch, Captain Roesing, and Commander Suhren. I think that the objections of the Prosecution to two of the questions asked in my interrogatory can be dealt with only after these questions have been answered. I heard only today that objections would be raised, but I do not yet know on what grounds.

THE PRESIDENT: Have the Tribunal got the interrogatories and the objections of the Prosecution to Number 4?

FLOTTENRICHTER KRANZBÜHLER: The Tribunal have received only the interrogatories from me.

THE PRESIDENT: Have the Prosecution given us their objection to one question? This, I understand, was an objection that was made to the interrogatories put to Suhren, which should have been an objection to a particular question on the other two as well.

SIR DAVID MAXWELL-FYFE: Yes. It is very short. I will indicate it, if Dr. Kranzbühler will allow me.

The two questions were: "Is it known to you that in September 1942 German submarines saved shipwrecked people after torpedoing the British steamer *Laconia* and while doing so were bombed by an Allied plane?" Number 8, "Do you know whether this incident was the reason for the commander of the U-boat fleets issuing an order by which assistance at the risk of endangering one's own boat was prohibited, and for the declaration that this was not at variance with the laws of sea warfare?"

The objections—I will read them out: "Question 7. Objection is entered on the ground that this question is unnecessary and the facts are admitted."

"Question 8: Objection entered. It is not seen how the witness could possibly know the reason for the orders from the Defendant Dönitz."

These are the objections that were made.

THE PRESIDENT: Yes.

FLOTTENRICHTER KRANZBÜHLER: May I say something to this? I think that the officers mentioned can testify as to the reasons for the orders received by them from the commander of the U-boat fleet, because the events which led to the order of September 1942 were generally known among the U-boat commanders, and U-boat commanders in the various theaters of war may possibly have picked up the wireless messages sent to the U-boats concerned with the *Laconia* incident. That is all.

I now turn to the application regarding the interrogatory to be put to Admiral Nimitz. The stand taken by the Prosecution differs entirely from the conception on which my application is based. I in no way wish to prove or even to maintain that the American Admiralty in its U-boat warfare against Japan broke international law. On the contrary, I am of the opinion that it acted strictly in accordance with international law. In the United States' sea war against Japan, the same question arises as in Germany's sea war against England, namely the scope and interpretation of the London Submarine Agreement of 1930. The United States and Japan were also signatories to this agreement.

My point is that, because of the order to merchant vessels to offer resistance, the London Agreement is no longer applicable to such merchantmen; further, that it was not applicable in declared operational zones in which a general warning had been given to all vessels, thus making an individual warning unnecessary before the attack.

Through the interrogatory to Admiral Nimitz I want to establish that the American Admiralty in practice interpreted the London Agreement in exactly the same way as the German Admiralty, and thus prove that the German conduct of sea warfare was perfectly legal. The same applies to the treatment of shipwrecked persons in waters where the U-boat would endanger herself by rescue measures.

THE PRESIDENT: Yes, Dr. Kranzbühler.

FLOTTENRICHTER KRANZBÜHLER: I now turn to the documents.

THE PRESIDENT: If you are departing from Admiral Nimitz I should like to ask a question of Sir David.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases.

THE PRESIDENT: Sir David, I understood you to submit that these questions to Admiral Nimitz were entirely irrelevant?

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: Would it make any difference to your submission whether the German Navy had attacked merchant ships without warning in the first instance in the beginning of their war against England?

SIR DAVID MAXWELL-FYFE: Well, that of course would be a clearer breach of the treaty, as, at that time, there was no question of armament, so far as I am aware; and there was certainly no question that the German submarines thought that they were attacking armed vessels which were really ships of war. Then, of course, one comes to the position which the Prosecution developed in evidence, that, the German Navy having indulged in the beginning in that form of submarine warfare, the position changed,

and armament had to be installed in British ships. In my submission it would make a difference even if one takes the argument as Dr. Kranzbühler has put it now; he is saying that he is not alleging breaches of the laws and usages of war, but is relying on his interpretation of the London Agreement, that merchant ships that were armed could be attacked. It really becomes a very difficult matter if one is to construe these treaties by a sort of general investigation of the interpretation by various commanders. Within the point that Your Lordship put to me there is that very clear point which appears in our documents that the arming of merchant ships was the result of the attacks without warning which took place in the first months of the war.

THE PRESIDENT: But would you say that these questions to Admiral Nimitz are irrelevant because the United States came into the war in December 1941 when the sea warfare between Germany and England had developed to that stage, when attacks were being made without warning?

SIR DAVID MAXWELL-FYFE: That is so, My Lord. That is what I was saying. I am very grateful to Your Lordship for clarifying the argument that I wanted to make.

THE PRESIDENT: Is that clear to you, Dr. Kranzbühler? The argument which I understand Sir David is putting forward with reference to these interrogatories is that they are truly irrelevant because of the date at which the United States came into the war; a date when the sea war between England and Germany had, for reasons which must be investigated, arrived at the stage that submarines were attacking merchant vessels without warning, and merchant vessels were defending themselves against those attacks.

FLOTTENRICHTER KRANZBÜHLER: Yes, Mr. President. It is, however, my opinion that the conditions which developed in the sea war between Germany and England do not necessarily have a bearing on the measures applied in the sea war between the United States and Japan, as here an entirely different theater of war was involved, in which German forces did not operate. In my opinion, the directives for sea warfare in the East Asia theater of war should be based on the conditions prevailing there and not be derived from experiences made in the European theater of war.

THE PRESIDENT: Then the Tribunal will consider these arguments.

THE TRIBUNAL (Mr. Biddle): How can what any navy did show the proper construction of a law? It may show what a particular admiral thought about it, but how are we interested in knowing what one admiral or another admiral thought about the law? Isn't that for us to decide? How is that any evidence? Isn't that your point, Sir David?

SIR DAVID MAXWELL-FYFE: Yes.

THE TRIBUNAL (Mr. Biddle): How does that really throw any light on the meaning of a law?

FLOTTENRICHTER KRANZBÜHLER: I do not think that the principles for the conduct of sea war originate from one admiral, but that in view of their far-reaching implications they have become a matter for the government. It is recognized in international law that it springs not only from treaties, but also from acts of governments. May I give as an example that Mr. Justice Jackson in his first report to President Truman specially emphasized that international law is developed by acts of governments. Consequently, if the London Naval Agreement of 1930 did not originally imply that merchant vessels which had orders to resist were excluded, then acts to this effect on the part of the governments of all nations would have been instrumental in creating new international law to this end. I am therefore of the opinion that the attitude taken in this question by the United States as one of the greatest sea powers is decisive as to the interpretation of the London Agreement and hence as to the legality of Germany's conduct.

THE TRIBUNAL (Mr. Biddle): Do you claim that the London Agreement is ambiguous?

FLOTTENRICHTER KRANZBÜHLER: Yes.

THE TRIBUNAL (Mr. Biddle): What words in the London Agreement are ambiguous?

FLOTTENRICHTER KRANZBÜHLER: The term "merchant vessels."

THE TRIBUNAL (Mr. Biddle): You have not got the citation there, have you?

FLOTTENRICHTER KRANZBÜHLER: Which is it?

THE TRIBUNAL (Mr. Biddle): The phrase in the London Agreement which you claim is ambiguous.

FLOTTENRICHTER KRANZBÜHLER: I have not got it here, but I can give a fairly accurate quotation. It says that submarines are subject to the same rules as surface vessels in their conduct towards merchant vessels.

I shall later submit proof that the term "merchant vessel," even at the Washington Conference of 1922, was considered ambiguous, and that also in books on international law published later it had repeatedly been stressed that this term is ambiguous.

THE TRIBUNAL (Mr. Biddle): Dr. Kranzbühler, you want Admiral Nimitz to give us his opinion of his construction of the treaty, do you not? Isn't that the purpose of these interrogatories?

FLOTTENRICHTER KRANZBÜHLER: No, I do not want to hear Admiral Nimitz' opinion, but the policy pursued by the United States in its sea war against Japan.

THE PRESIDENT: The Tribunal will consider the arguments you have addressed to them, Dr. Kranzbühler.

FLOTTENRICHTER KRANZBÜHLER: I now turn to the documents. As I have just heard from Sir David, there are no objections on the part of the Prosecution. I do not know whether I need give my reasons for submitting the individual documents.

First of all, there are the war diaries and the standing orders of the Admiralty and of the commander of the U-boat fleet. They have already been admitted, and the Prosecution do not raise any objections.

Under Number 3, I ask for the "British Confidential Fleet Orders" and "Admiralty Merchant Shipping Instructions" of the British Admiralty to be produced.

SIR DAVID MAXWELL-FYFE: My Lord, this matter came up before the Tribunal in closed session on an application from Dr. Kranzbühler. I have not heard definitely from the British Admiralty whether they agreed to do this, but I have asked Dr. Kranzbühler if he will leave this matter over for 10 days in the hope that we may be able to meet him. If Dr. Kranzbühler will not press it for 10 days, I shall, of course, let him know as soon as I have any definite information.

THE PRESIDENT: Yes.

FLOTTENRICHTER KRANZBÜHLER: I agree to that. Under Number 4 I declare my intention to submit a number of statements and letters I have received from German U-boat commanders and officers, some of them through the General Secretariat. These statements contain items from the lecture given at Gydnia by the Commander-in-Chief of the Navy and referred to by witness Heisig, including the instruction of U-boat commanders by witness Moehle and the orders regarding the treatment of shipwrecked persons. I understand the Prosecution have no objections.

THE PRESIDENT: Have you got any objection, Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, many of these matters may have to be considered when the actual document is put before us. There are no class objections to them.

FLOTTENRICHTER KRANZBÜHLER: I should like to mention that I shall probably have to submit some further documents later, after I have spoken to Judge Admiral Eckhardt. May I again ask the Tribunal to allow

me as soon as possible to call this witness, who is particularly important for the defense of the methods employed in U-boat warfare.

THE PRESIDENT: Yes, I think the Tribunal would grant that, subject, of course, to there being no delay regarding further applications.

FLOTTENRICHTER KRANZBÜHLER: Yes.

THE PRESIDENT: The Tribunal will now adjourn.

[*The Tribunal adjourned until 6 March 1946 at 1000 hours.*]

SEVENTY-FIFTH DAY

Wednesday, 6 March 1946

Morning Session

THE PRESIDENT: I desire to announce a slight change in the order of business.

Dr. Stahmer has submitted a motion in writing, stating that he desired a little more time in the preparation of his documents and for other reasons would be grateful if the case of the Defendant Göring did not come on on Thursday, as announced.

The Tribunal realizes that the case of the first defendant to be heard may present some difficulties in getting the documents translated in time. As the Tribunal has announced that they would continue the hearing of the applications for witnesses until they are all completed, they will adhere to this decision. It is anticipated that this will give Dr. Stahmer one day more, but at the conclusion of the hearing of the applications for witnesses the case of the Defendant Göring will come on without further delay.

The Tribunal wishes to make it quite clear that no further applications for delay or postponement on the part of the defendants will be entertained, save in the most exceptional circumstances.

DR. SIEMERS: For the Defendant Raeder, I should like to apply first for a witness who will testify to the defendant's character.

SIR DAVID MAXWELL-FYFE: My Lord, if it would be convenient, I might first indicate the views of the Prosecution, and then Dr. Siemers can deal with this point.

The Prosecution has no objection to the following witnesses being called for oral testimony: Number 3, the retired Minister Severing; Number 5, Vice Admiral Schulte-Moenting; Number 6 has already been sought for and not objected to by the Prosecution—a witness for the Defendant Dönitz; Number 10, Admiral Boehm.

Then, with regard to the following witnesses the Prosecution suggest an affidavit as the suitable procedure: Number 2, Vice Admiral Lohmann. . .

THE PRESIDENT: Do you mean an affidavit or interrogatories?

SIR DAVID MAXWELL-FYFE: Well, in this case I should prefer an affidavit, because it is only a history of past events that is involved.

THE PRESIDENT: Very well. Affidavit in which case?

SIR DAVID MAXWELL-FYFE: In the case of Number 2—Lohmann.

Then with regard to Number 4—that is Admiral Albrecht—his evidence covers the same ground as Number 5. It might be that interrogatories would be more convenient, but that would be a matter for my friends to decide.

Then the next, Number 7. That is Dr. Süchting, who is an engineer, and it is desired to have him speak about the Anglo-German Naval Treaty and technical questions. The Prosecution suggest an affidavit there, because apparently it is desired that he speak on technical matters.

Number 8, Field Marshal Von Blomberg, I am told, is still ill. I think that Dr. Siemers has already submitted questions and has received the answers. He ought to be dealt with by interrogatories. That is probably the easiest thing for the Field Marshal and the most suitable.

THE PRESIDENT: Was that not suggested in the case of one of the other defendants?

SIR DAVID MAXWELL-FYFE: Von Blomberg, yes. I have a note that the Defense Counsel have submitted questions. I was not quite sure whether this was Dr. Siemers or another Defense counsel. I think it was Dr. Nelte, for Keitel.

THE PRESIDENT: I think so, yes. That is Number 8.

SIR DAVID MAXWELL-FYFE: Then the next one, Von Weizsäcker, who was the Secretary of State at the Foreign Office. He is asked for with regard to the *Athenia* case. At the moment I cannot see the point for which the Defense want this gentleman, but I suggest that if they get an affidavit from Weizsäcker we should know what he can speak about.

Then the other one is Number 14, Colonel Soltmann. It is desired to give the results of the interrogation of certain British prisoners of war at Lillehammer. It would appear that the object was merely to give further evidence which would be cumulative to the statements in the German *White Book*, and therefore the Prosecution suggest an affidavit.

There are two witnesses that the Prosecution think are in the border line between admissibility and affidavits. They are really, in the submission of the Prosecution, not relevant witnesses, but the Tribunal might like to consider the question. These are Number 1, a naval chaplain who really speaks as to the general moral and religious outlook of the Defendant

Raeder. That is, in the submission of the Prosecution, really irrelevant, and at the most it would be a matter for an affidavit. The position of the Prosecution is that it is really irrelevant, but it certainly should not be more than an affidavit, even if a different view was taken.

The other is Number 16, Admiral Schultze. He speaks as to an interview with the late Admiral Darlan, and the Prosecution submit that that is irrelevant; if there are any approaches to relevance—which the Prosecution have been unable to see—why then it could only be a matter for an affidavit.

The Prosecution submit that the following are unnecessary: Number 11. . .

THE PRESIDENT: Sir David, dealing with Number 16, would that not be more suitably dealt with by interrogatories? The Tribunal granted interrogatories on 9 February in that case, but I suppose they have not yet been produced.

SIR DAVID MAXWELL-FYFE: Which one was that?

THE PRESIDENT: Number 16.

SIR DAVID MAXWELL-FYFE: Yes. Well, if the Tribunal feel that it is a matter that should be explored, I agree that interrogatories would be suitable.

Then, My Lord, the ones that the Prosecution make objection to *in toto* are:

Number 11, Vice Admiral Bürckner, because he is cumulative to Numbers 5 and 10; Number 12, Commander Schreiber, because on 21 February Dr. Siemers said that he was willing not to call this witness if Number 5, Schulte-Moenting, was allowed; Number 13, Lackorn, who is a Norwegian merchant, who is supposed to speak of the Allied plans, without any means of knowledge being stated. This witness was temporarily given up on 21 February; Number 15, Alf Whist, who was Secretary of Commerce in the Quisling cabinet, as I understand the application. There is no indication why this witness should be competent to speak on the reputation of the Defendant Raeder; and Number 16 has been dealt with; Number 17 is Colonel Goldenberg, who was the interpreter at the meeting between the Defendant Raeder and Darlan. The Defendant Raeder gives evidence and Admiral Schultze answers an interrogatory. It will appear that that interview is well covered.

THE PRESIDENT: Yes, Dr. Siemers?

DR. SIEMERS: I thank Sir David for taking up the individual points, as a consequence of which I can, as I presume, count on the Tribunal's

approval of the points to which Sir David has agreed, without giving specific reasons.

THE PRESIDENT: The Tribunal thinks that the best course would be for you to go through the ones upon which Sir David has not agreed as to being called as oral witnesses, and then perhaps it may be necessary to deal with the ones where he has agreed. I would begin in the order in which he took them up—2, 4, 7, 8, 9—if that is convenient for you.

In the case of Number 2 he suggested an affidavit.

DR. SIEMERS: Number 2 is the Vice Admiral Lohmann. In this connection I refer to the last page of my brief, where I have discussed the documents under "III." There I have stated that I suggested to the British Delegation that we come to some agreement as to the figures with regard to the Treaty of Versailles and the Naval Treaty. The British Delegation has promised me that such an agreement may be possible and has in the meantime communicated with the British Admiralty in London on this matter. If, as I expect, an understanding is reached, I am agreeable to an affidavit from Vice Admiral Lohmann, for then he is to testify on only a few points. I ask, therefore, that he be approved for the time being, and I undertake not to call him if the agreement mentioned is reached with the Prosecution. If this understanding is not reached, the proof of some important figures would be very difficult, and I could not do without Lohmann who is well informed about the figures; otherwise, I could.

THE PRESIDENT: What do you say about that, Sir David?

SIR DAVID MAXWELL-FYFE: I have circulated Dr. Siemers' note and request for agreement to my colleagues, and I have also sent it to the Admiralty, and I hope that we may be able to give the information and probably to agree on these matters, but I am waiting to get that confirmed from the Admiralty in Britain; so I think if we could leave over the question of this witness until I see if I can get an agreement which will satisfy Dr. Siemers on the point. . .

THE PRESIDENT: Yes. Then if you cannot make the agreement, probably the witness would have to be called?

SIR DAVID MAXWELL-FYFE: Yes. I can let Dr. Siemers know whether there is any controversy on the point, whether I am going to challenge what he puts forward. If I am going to challenge it, obviously I should not object to the witness being called.

DR. SIEMERS: Under these circumstances, I shall be satisfied with the submission of an affidavit. I have written to Vice Admiral Lohmann, asking

him to answer the other brief questions; and regarding the main points the principles just stated by Sir David will be adhered to.

THE PRESIDENT: Very well.

DR. SIEMERS: Witness Number 4, Admiral Albrecht, was one of the closest collaborators of Grand Admiral Raeder. From 1926 to 1928 he was Raeder's Chief of Staff in Kiel; from 1928 to 1930, chief of the Navy personnel office of the OKM. From then on he was commanding admiral in Kiel, and finally Navy Group Commander East in 1939.

I should like to remark in this connection that in this last year he also joined, upon the suggestion of the Security Group commander, this organization, and from this point of view also he appears important to me. Admiral Albrecht has also, as I know, written directly to the Tribunal for this reason.

Albrecht has known the Defendant Raeder so long that he is well acquainted with his main ideas and thus orientated on the main charges of the Indictment. He has known Raeder's trend of thought since 1928, that is to say, from the time in which the charges against Raeder have their beginning. I ask that consideration be given to the tremendous charges which are brought against Raeder covering a period of 15 years. I cannot refute all the accusations with one or two witnesses. The differences among the testimonies are so great that in such a case one cannot speak of "cumulative."

Furthermore I ask that note be taken of the fact that so far I have been unable to talk to Vice Admiral Schulte-Moenting, who has been approved by the Tribunal and the Prosecution.

The Tribunal has also not yet informed me where Schulte-Moenting is. I presume that he is in a prisoner-of-war camp in England, but I do not know whether he will really be at my disposal, and whether I will be able to talk with him in time.

THE PRESIDENT: You are dealing with Admiral Konrad Albrecht, are you not? You are dealing with Number 4?

DR. SIEMERS: No; regarding Admiral Albrecht, we know that he is in Hamburg. I simply pointed out that it would not be cumulative if both Albrecht and Schulte-Moenting are heard by the Court.

THE PRESIDENT: You see, what Sir David was suggesting was an interrogatory in the case of Admiral Albrecht and an affidavit in the case of Admiral Schulte-Moenting.

SIR DAVID MAXWELL-FYFE: I will agree to Admiral Schulte-Moenting's being called orally.

THE PRESIDENT: I beg your pardon. I was mixing the numbers. Yes, that is right, to call the one and have interrogatories from the other. Have you any objection to that?

DR. SIEMERS: Yes, I request that I be allowed to call both witnesses because Schulte-Moenting is to testify about a later period and Albrecht about the earlier period that was immediately subsequent to the Versailles Treaty. The position of both is entirely different. In addition, as I have just pointed out, the Tribunal has not yet informed me whether I can with absolute certainty count on the witness Schulte-Moenting, whether he has been found, whether it is known where he is.

THE PRESIDENT: Our information is that Schulte-Moenting has not been located.

DR. SIEMERS: I have no information as yet.

THE PRESIDENT: One moment. I am not sure that is right. Yes, he has been located in a prisoner-of-war camp in the United Kingdom. At least I think so.

Yes, I have a document before me here which shows that he is in a prisoner-of-war camp in the United Kingdom.

DR. SIEMERS: I thank you very much. I did not know that. Under the circumstances I am prepared, in regard to Admiral Albrecht, to accept an affidavit or an interrogatory, provided Schulte-Moenting really appears.

Number 7, Dr. Süchting. In this connection Sir David suggests an affidavit in order to speed up the Trial. I am satisfied with an affidavit.

THE PRESIDENT: Yes.

DR. SIEMERS: Again, however, with the one reservation that the matter of the figures will be clarified between me and the British Prosecution, in accordance with my letter as already discussed in connection with Admiral Lohmann, I believe that Sir David is agreeable to this.

THE PRESIDENT: The Tribunal would like to know how you suggest that these questions of shipbuilding in connection with the German-English Naval Agreements of 1935 and 1937 are relevant to any charge made here.

DR. SIEMERS: The Defendant Raeder is accused of not having adhered to the Treaty of Versailles and the Naval Agreement. Such a treaty violation is mainly a question of the building of ships. Consequently I must demonstrate what could be built according to the Treaty of Versailles and the Naval Agreement and what actually was built and what thoughts and orders the Navy had in this connection. As I said, however, I shall be satisfied with an affidavit.

THE PRESIDENT: Very well, the Tribunal will consider the arguments on that.

DR. SIEMERS: Number 8, Field Marshal Von Blomberg. The Prosecution have suggested an affidavit or an interrogatory. In consideration of Von Blomberg's state of health, I am agreeable to this for the sake of simplicity. Since it does not involve any great number of questions, I suggest an affidavit.

Number 9, Ambassador Baron Von Weizsäcker. I submitted the application on 6 February and do not know thus far the position of the Tribunal. At the time of the *Athenia* case Weizsäcker was State Secretary in the Reich Ministry for Foreign Affairs. At that time, in September 1939, Weizsäcker spoke with the American Ambassador on the subject of the *Athenia*. Weizsäcker spoke with Hitler and with Raeder. He knows the details and must be heard on these details. I do not believe that an affidavit will suffice. First let me remark that I do not know where Weizsäcker is. But aside from that, the charge which has been made against the Defendant Raeder in the case of the *Athenia* is morally so grave that, although otherwise it might not be such an important point, I have to put particular stress on this point.

The British Delegation has given particular emphasis to the case of the *Athenia* and has made insulting attacks on the defendant in connection with this case. In the interest of the absolutely irreproachable life of my client I feel obliged to clarify this case completely. That can only be done by Weizsäcker.

THE PRESIDENT: Dr. Siemers, as far as the application goes, there is nothing to show, beyond the position of the suggested witness, that he knew anything about it at all. Under these circumstances would not interrogatories be the most appropriate course? You did not show whether he knew anything about it at all. All you say in your application is that he was State Secretary in the Reich Ministry for Foreign Affairs.

DR. SIEMERS: I may point out that I stated in my application that the witness is informed regarding the events connected with the *Athenia* case.

THE PRESIDENT: You say that he must know on the basis of his position as State Secretary.

DR. SIEMERS: The American Ambassador approached Weizsäcker immediately after the *Athenia* case in order to clarify the case. Thereupon Weizsäcker spoke with Raeder; however, only after he had already told the American Ambassador that no German submarine was involved. The question as to whether a German submarine was involved in the *Athenia*

case was settled only after the return of the German submarine. Prior to that the Defendant Raeder had not known of it either. The German submarine returned on 27 September; the sinking was on 3 September.

THE PRESIDENT: Did you state these facts about conversations between the American Ambassador and State Secretary Weizsäcker in one of your previous applications?

DR. SIEMERS: Yes, on 6 February I did submit the application, and also mentioned in general terms the *Athenia* case. I may add that Weizsäcker knows also the subsequent occurrences. Weizsäcker knows exactly that the Navy, and particularly the Defendant Raeder, had nothing, absolutely nothing to do with the article which the Propaganda Ministry published in the newspapers. Weizsäcker was just as outraged about this article as was the Defendant Raeder. But it is precisely this that the Prosecution charges against Raeder.

THE PRESIDENT: Well, the Tribunal will consider what you say.

DR. SIEMERS: Let me add that I have made a mistake. I just heard that Weizsäcker is still at the Vatican in Rome; in other words, it is known where he is.

THE PRESIDENT: Yes.

DR. SIEMERS: Number 14, Colonel Soltmann. As far as I know, Colonel Soltmann will be requested as a witness also by the Defendant Jodl, and an affidavit or an interrogatory has already been sent to him. I therefore concur with Sir David that an affidavit from Soltmann will suffice, subject to the consent, or the applications of the Defense Counsel for General Jodl.

THE PRESIDENT: He does not appear to have been located yet.

DR. SIEMERS: Yes—the witness Soltmann? I have given his address in my application.

THE PRESIDENT: Have you?

DR. SIEMERS: It is Falkenberg near Moosach in Upper Bavaria.

Number 16, Admiral Schultze is in Hamburg, and it is an easy matter to have him testify personally here in Nuremberg. The Prosecution have accused the Defendant Raeder of participating in the National Socialist policy of conquest. This accusation is unfounded. Raeder, both in Norway and in France, constantly directed his efforts towards bringing about peace; in other words, not towards the effecting of any final conquest of the countries. In this Raeder found himself in a strong opposition to Hitler, and only after much urging did Raeder succeed in enabling himself to negotiate with Darlan in Paris concerning the possible conclusion of a peace. I believe that such a positive intervention for a quick termination of the war with

France is important enough, in a trial like this, to have the witness testify personally. I cannot understand how Sir David, in view of his accusation, can say that this point is irrelevant. The Prosecution has constantly declared that the Defendant Raeder was agitating for war.

THE PRESIDENT: I do not believe that Sir David did say it was irrelevant. He suggested interrogatories.

DR. SIEMERS: I made a note that Sir David said the witness was irrelevant, but that he would, as a concession, agree to an affidavit.

THE PRESIDENT: Then I was wrong.

DR. SIEMERS: I simply wanted to make my position clear on the question as to whether or not this witness is irrelevant. I believe I have shown that he is relevant.

THE PRESIDENT: You want the witness? You would not agree to an affidavit or an interrogatory? Is that right?

DR. SIEMERS: I ask the Tribunal to hear Schultze as a witness here in Nuremberg, because, in my opinion in view of the principles of the Indictment, it is a vital point that Raeder's attitude toward the entire problem is shown by facts prevailing at that time, and not by present assertions and statements.

I come now to the witness to whom Sir David has objected, witness Number 11, Admiral Bürckner. I asked for him on 31 January. So far I have received no answer. I asked to be allowed to speak to the witness Bürckner in order to acquaint myself with the details. The interview is denied me so long as he has not been approved as a witness. In order to speak with him therefore I am dependent on his being approved first as a witness. Should it then prove that this evidence is cumulative, I am willing to forego the witness. I presume that Sir David is agreeable to this.

THE PRESIDENT: Sir David, the Tribunal does not quite understand why the counsel should not have seen this officer who is in prison in Nuremberg, subject of course to security.

SIR DAVID MAXWELL-FYFE: We have no objection to the counsel's seeing Admiral Bürckner. I think up to now the Prosecution have always taken the view that what Dr. Siemers wanted to see him about was not relevant. I do not think the Tribunal has ruled on that.

THE PRESIDENT: The view of the Tribunal is that Counsel for the Defense ought to be in touch with the witnesses before, in order to see whether they are able to give relevant evidence or not. They cannot give the evidence or the relevancy of it unless they know what the witness is going to say.

SIR DAVID MAXWELL-FYFE: No objection will be made, and Dr. Siemers can make arrangement, as far as the Prosecution are concerned, to see Admiral Bürckner at the earliest date he likes.

DR. SIEMERS: I am grateful to the Tribunal for clarifying this point. This point has made the work of the Defense Counsel extremely difficult. I have been waiting for more than a month to speak to Bürckner. For four weeks I have not been able to speak to Admiral Wagner for the same reason. I should like to speak to others also who are in the courthouse prison. They were all denied me because the Tribunal had not yet approved them as witnesses. I believe that the point is now clarified.

THE PRESIDENT: Go on, Dr. Siemers.

DR. SIEMERS: It is quite possible that, after speaking with the witness, I may not call him to the stand, particularly since I hear today that Schulte-Moenting can be called, and provided that Boehm is approved.

THE PRESIDENT: That who is approved?

DR. SIEMERS: Boehm, Number 10.

THE PRESIDENT: Oh, yes. That was Sir David's only objection to Number 11, was it not, that it was cumulative to 5 and 10?

DR. SIEMERS: Number 12, Captain Schreiber. Sir David has rightly pointed out that I have already stated the possibility that I may give up this witness. This still stands. If the witness Schulte-Moenting and the witness Boehm actually appear, the witness Schreiber is not necessary.

Number 13, the witness Lackorn, in Leipzig. Before the occupation of Norway Lackorn was on business in Oslo. He had nothing to do with the military. It was purely by accident that he learned, in the Hotel Bristol in Oslo, that the landing of English troops was imminent. This point is important because one can only judge the defendant's attitude toward the Norwegian undertaking if one considers the general situation of Norway. The general situation of Norway means, however, the relations of Norway with Germany, England, Sweden, and all the other countries adjacent to Norway. It is not proper, in such a decisive question, to state that only a small part is relevant. I am agreed, however, that the witness is not to be heard here. I have, therefore, while I was waiting for the decision of the Prosecution, written to the witness in order to obtain an affidavit. It is therefore agreeable to me if an affidavit only is submitted here. He need not be approved as a witness.

THE PRESIDENT: Sir David, you did not deal with that aspect of the matter, with an affidavit.

SIR DAVID MAXWELL-FYFE: Well, My Lord, I am afraid the view of the Prosecution is that the story, which apparently started in the bar of a hotel in Oslo, is not evidence which is really admissible, relevant, or of any weight in a matter of this kind. That is the view we have taken throughout.

THE PRESIDENT: Dr. Siemers, it appears from the application which is before us that you originally made a request for this witness on 19 January 1946, which appears to have been in perfectly general terms, and that the Tribunal ordered, on 14 February, that you should furnish supplementary details of the evidence which you wanted to obtain by calling this witness. Thereupon, on 21 February, you withdrew your application.

You now submit the application again without giving any details at all, simply saying that the witness had been in Oslo on business and received information there of the imminent landing of Allied forces in Norway. Well, that is a perfectly general statement, just as general as the original statement. It does not seem to comply with the orders of the Tribunal at all.

DR. SIEMERS: On 21 February I withdrew my application because of the basic point of view which I have also presented to the Court.

I have pointed out that, in my opinion, the Defense cannot be expected to give every single detail, when we have not for three months after we were consulted had the slightest word, not one word, about a single witness of the Prosecution. When we of the Defense have not had the opportunity even of taking a stand on the relevancy of their witnesses. . .

THE PRESIDENT: I have already pointed out on several occasions that the reason why the defendants' counsel have to submit applications for their witnesses is because they are unable to get their witnesses themselves and because they are applying to the Tribunal to get their witnesses for them and their documents for them. It is a work of very considerable magnitude to find and to bring witnesses to Nuremberg.

I understand from you that with reference to this witness you are trying now to get an affidavit from him.

DR. SIEMERS: Yes. At any rate I have been making the effort. Whether I shall receive the answer in time from Leipzig, which is in the Russian Zone, remains to be seen. In the meantime, in order to facilitate matters and to avoid delay, I have written to the witness Lackorn.

THE PRESIDENT: Yes.

DR. SIEMERS: I hope that an affidavit will be available in time.

For this reason I am willing to waive having him testify here.

THE PRESIDENT: If you get the affidavit, you will be able to give the Tribunal particulars of the evidence which the witness would give, and also

to show it to the Prosecution, who will then be able to say whether they wish to have the witness brought here for cross-examination.

DR. SIEMERS: Certainly.

THE PRESIDENT: Well, the Tribunal will consider this application.

DR. SIEMERS: Witness Number 15 is a Norwegian, Alf Whist, former Secretary of Commerce. By decision of the Court on 14 February he was rejected as irrelevant.

Whist can testify that the reputation of the German Navy in Norway was very good throughout the occupation, and that in Norway the complaints were directed exclusively against the civil administration and not against the German Navy. Whist knows definitely, as does every other Norwegian, that the Navy was not involved in a single illegal or criminal measure in Norway during the occupation.

If this is considered irrelevant, I presume that Sir David means that the Navy, during the occupation of Norway, behaved correctly. Of course this is a question that must be sharply distinguished from the question which I shall discuss later, that is, the question of the occupation and the attack on Norway. I am speaking now only of the time after the occupation had been carried out.

SIR DAVID MAXWELL-FYFE: The point of the Prosecution is this: That whatever the facts were, assuming for the moment that the facts were that the German Navy had behaved with meticulous correctness on every point, the view of Mr. Alf Whist, who was Secretary of Commerce in the Quisling cabinet in Norway, as to how the German Navy behaved would not have the slightest interest or relevance or weight with anyone. That is the view of the Prosecution.

DR. SIEMERS: I hoped that Sir David would make his position clear as to whether charges in this connection will be made against the Navy. Sir David speaks of the Germans in general. I draw attention to the fact that the entire administration in Norway was a civil administration, and that, in the Terboven jurisdiction, the Navy had nothing to do with this administration; if I have named a single witness where I might have named hundreds, I did this only to give the Tribunal a picture of how Admiral Boehm, the Navy, and Raeder conducted themselves.

THE PRESIDENT: The Tribunal will consider it, Dr. Siemers.

DR. SIEMERS: Thank you.

THE PRESIDENT: Then you have still Number 17, the interpreter.

DR. SIEMERS: Regarding Lieutenant Colonel Goldenberg, it is Sir David's point of view that he is unnecessary; if Admiral Schultze is

approved as witness, an affidavit from Goldenberg will suffice for me. A short affidavit appears to me to be important, because Goldenberg was present as an impartial interpreter at every conference which took place between Darlan and Raeder. An affidavit will suffice in this case.

THE PRESIDENT: I think you can pass now to your documents. I ought to call your attention to an observation at the end of your application, which is that you intend to summon one or more witnesses. Who are they?

DR. SIEMERS: The Tribunal has declared that the details about a witness have to be submitted a long time in advance only because the Tribunal must procure the witness. When it is a question of a witness who comes to Nuremberg on his own initiative, I should be obliged for a decision on the point in connection with my defense, as to whether or not the Tribunal will admit such a witness.

THE PRESIDENT: Dr. Siemers, I have stated one of the principal reasons why Defense Counsel have to make applications, and another principal reason is a necessity for expedition in this Trial—expedition and security. The question of security is important, and therefore we must insist on being told who the witnesses are that you wish to call, Dr. Siemers. Otherwise, you will not be able to call them.

DR. SIEMERS: Am I obliged to do this even when the witness is already in the building?

THE PRESIDENT: Certainly, because, as I have told you, there are 20 or 21 defendants in the dock; and we have to try and make this Trial expeditious and we therefore cannot allow them to call as many witnesses as they choose to call. But if it is a question of your not having the names of the witnesses in your mind at the moment, you can certainly specify them after a short delay, or tomorrow.

DR. SIEMERS: I shall submit information on this matter shortly. I do not want to name the witness before I have talked it over with him.

THE PRESIDENT: Dr. Siemers, the Tribunal has no objection to your applying in respect of other witnesses, provided that you do so by tomorrow.

DR. SIEMERS: Very well, I know that, at the moment, the witness in question is not in Nuremberg, so that I cannot talk to him at the moment. I ask the Tribunal to pardon me for being so cautious. The Tribunal will be cognizant of the fact that witnesses have been taken into custody. I cannot take the responsibility for somebody's being taken into custody because I named him as a witness. That is the reason. I shall, however, notify the Tribunal as soon as the witness is in Nuremberg and I have had a chance to speak to him. I shall do so within 24 hours. It is here a question of a

testimony which would take 10 minutes at the most of the Court's time. Therefore, I do not believe that this will burden the Tribunal too much.

THE PRESIDENT: Very well.

DR. SIEMERS: Then I should like to add that I can give the address of the witness Severing, retired Reich Minister. I received it yesterday by telegraph. Witness Severing is Number 3 and the Prosecution is agreeable to his being heard. I shall submit the address in writing to the General Secretary. He is in Bielefeld and can be reached without trouble.

THE PRESIDENT: Yes. If you give it to the General Secretary, that is all that is required. And now would probably be a convenient time to break off for 10 minutes.

MR. DODD: Your Honor. There is the matter of Admiral Bürckner. So far as we know, Dr. Siemers made one request about Admiral Bürckner some time ago, and at that time he was told, as I understand it, that Admiral Bürckner was to be called or that the Prosecution intended to call him as a witness, and that therefore we did not think it proper for him to talk to Admiral Bürckner until after we had called him as a witness.

Up to a very late date in this presentation of our case, we still had in mind calling Admiral Bürckner. I think some reference was made to him, as a matter of fact, before the Tribunal, with reference to the witness Lahousen. And it was for that reason that we told Dr. Siemers that we did not think he should talk to the witness until after he had testified or a decision had been made with reference to his testimony. But we have at all times tried to co-operate with the Defense and make available these people who are here in custody so that they may talk with them.

THE PRESIDENT: We will adjourn now for 10 minutes.

[*A recess was taken.*]

DR. SIEMERS: May I add something regarding the witnesses? Concerning witness Number 1, Marinedekan Ronneberger, I agree to use an affidavit as suggested by Sir David. Concerning the witness Bürckner, I would like to mention that Mr. Dodd's statement is based on an error. I am not permitted to speak to the witness, because he has not yet been approved by the Tribunal as my witness. No other reason was given.

THE PRESIDENT: We do not think any further discussion is necessary about this witness. I have already stated what the members of the Tribunal will act upon.

DR. SIEMERS: I did not understand whether Mr. Dodd agreed to my speaking with the witness Bürckner now.

THE PRESIDENT: I think he said so. He said the Prosecution have closed their case, and they now have no longer any objection to your seeing the witness.

DR. SIEMERS: Then one last remark. The Tribunal will have noticed that I have not requested any witness concerning naval warfare and submarine warfare. The reason is that I have agreed with Dr. Kranzbühler that Dr. Kranzbühler will deal with the entire complex of naval warfare and submarine warfare, although, in this respect, it not only affects Grossadmiral Dönitz, but also in a considerable degree Grossadmiral Raeder in his capacity as Commander-in-Chief of the Navy. Therefore, insofar as the interests of Grossadmiral Raeder are concerned in this matter, Dr. Kranzbühler will also represent him.

I should like to point out only that Dr. Kranzbühler's very important application regarding the questions to Admiral Nimitz not only affects Grossadmiral Dönitz but, in particular, Grossadmiral Raeder, and beyond that, the organization of the General Staff, insofar as the Navy is concerned.

May I pass to the documents now?

SIR DAVID MAXWELL-FYFE: With regard to Document Number 1, The War Diaries of the Seekriegsleitung and the B.d.U., Dr. Kranzbühler's assistant Dr. Meckel, has gone to London to work on these at the Admiralty.

With regard to Number 2, Weyer's *Navy Diary*, and Nautikus' *Navy Year Book*, there is no objection to Dr. Siemers having these. He will indicate in the ordinary way the passages he intends to use.

With regard to General Marshall's report of 10 October 1945, I cannot see the relevancy of it at the moment, but if Dr. Siemers will indicate which part he intends to use, it can be discussed when he actually presents it to the Tribunal.

Now Number 4, the British Admiralty documents, May 1939 to April 1940, which are wanted as to the preparations of landing in Scandinavia and Finland. Although, strictly, what is relevant is what was known to the Defendant Raeder, I shall make inquiries about these documents, and if the Tribunal will give me a short time, I hope to be able to report to the Tribunal upon them.

I want to make it clear that I cannot, of course, undertake to give details on Allied documents; but I hope to be able to produce some documents which may be helpful to the Tribunal, and deal with them authoritatively. I would rather not be pressed for details at the moment.

DR. SIEMERS: I agree with Sir David, I hope that I will receive the books which belong to Number 2 and Number 3 soon, because otherwise a

delay may be caused. The report of General Marshall of 10 October 1945 is, as far as I can judge from the excerpts, important for the reason that General Marshall adopts, on various points, an entirely different attitude from Justice Jackson's. I believe that a comparison of two such outstanding opinions is of sufficient importance to have the report of General Marshall also heard here. Concerning Number 4, I am waiting for the final decision of the Prosecution.

I have only one more request, and I ask to be excused, since, by error, I have not listed this Number 5. It is the following: The Prosecution has repeatedly presented quotations from the book *Mein Kampf* by Adolf Hitler and inferred from it that each one of the defendants who held a leading position as early as 1933 should have known from this book, even before 1933, that Hitler was contemplating the launching of aggressive wars. I noticed that the quotations in the document book which was presented in November are all taken from an edition which was published only in 1933. The edition of 1933, however, differs in many points from the original edition. Unfortunately, I am personally only in possession of an edition which was published after 1933. In order to check these questions, that is to say, in order to see what anybody could have read in this book in 1928, and not 1933, I ask the Prosecution to try to submit a copy of the first edition. As far as I know, the first edition was published in 1925, and the second in 1927, by the publishing firm of Franz Eher.

SIR DAVID MAXWELL-FYFE: We shall try to get an earlier edition, so that Dr. Siemers can compare the passages.

THE PRESIDENT: Are you going to deal with Page 2 of your document? Sir David, you have not dealt with this, have you?

SIR DAVID MAXWELL-FYFE: No. I assume, Your Lordship, that Dr. Siemers would, in due course, indicate what excerpts he was going to use. We could discuss when he presents them, whether the Prosecution have any objection.

THE PRESIDENT: Yes. You intended, Dr. Siemers, I suppose, to indicate the passages upon which you rely in your document book?

DR. SIEMERS: Yes.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: We have already discussed the point on Page 3, that is the question of tonnages built, and so on—I said I am making inquiries with regard to that.

THE PRESIDENT: My attention is drawn, Sir David, to Paragraph 4 B on Page 2. Are you suggesting that the Tribunal supply him with documents

on German policy without any further reservation?

SIR DAVID MAXWELL-FYFE: I am very sorry. It was an oversight. I took it that that was included in the words at the top of the page:

> "In addition, I shall submit documents and affidavits, some of which are already in my possession, and some of which I shall procure myself without having the assistance of the Prosecution."

I took it that Dr. Siemers had certain documents on German policy, and will indicate what passages he is going to use. I am very sorry I did not refer to that.

THE PRESIDENT: Does this part of the application mean that, with reference to all these documents, Dr. Siemers has them and does not wish any further action to be taken with reference to them?

DR. SIEMERS: Yes, Sir.

THE PRESIDENT: I call on counsel for the Defendant Von Schirach.

SIR DAVID MAXWELL-FYFE: Dr. Sauter suggests it would be convenient if I indicate the view of the Prosecution.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: May I ask the Tribunal to note that Dr. Sauter is asking for witnesses 1 to 8, except witness 5, as oral witnesses; that is, he is asking for seven oral witnesses, and Numbers 5 and 9 to 13 by way of affidavit.

The Prosecution suggest that, as far as oral witnesses are concerned, the defendant might have Number 1 or Number 2. that is, Wieshofer or Hoepken, because these witnesses appear to cover the same ground; that he might have Number 3, the witness Lauterbacher, who was Chief of Staff of the Reich Youth Leadership (Reichsjugendführung); and, also, that he might have Number 8, that is Professor Heinrich Hoffmann, who, I think, is Schirach's father-in-law—since the description of his evidence takes up nine pages of the application, he is obviously a very important witness.

Then the Prosecution suggest that there might be affidavits from Number 5, Scharizer, who was the deputy Gauleiter of Vienna; Number 11, who is Madame Vasso; Number 12, Herr Schneeberger; and Number 13, Field Marshal Von Blomberg.

The witnesses that the Prosecution find difficulty in perceiving the necessity for are: First of all, Number 4, Frau Hoepken—there are no details given in this application, except that she was secretary to Von Schirach; Number 6, the witness Heinz Schmidt, who apparently repeats part of the evidence of the witness Lauterbacher word for word; Number 7, Dr.

Schlünder, who also repeats the witness Lauterbacher word for word; and Number 9, Dr. Klingspor, who passes a personal view on the defendant, which, in the submission of the Prosecution, is not really helpful evidence; and finally, Dr. Roesen, Number 10, who speaks as to an isolated incident of kindness on the part of the defendant to the family of the musician Richard Strauss.

This is the position which the Prosecution take with regard to the witnesses.

DR. SAUTER: Your Honors, I have, in the case of Baldur von Schirach also, limited my evidence as much as possible. For a personal hearing, here before the Tribunal, I have proposed as witnesses, Numbers 1, 2, 3, 6, 7, and 8, and I must earnestly request you, Your Honors, to grant me these witnesses.

The difficulty, in the case of Schirach, as regards the presentation of evidence, is that evidence must be produced and offered for two entirely separate complexes. One is the activity of the Defendant Von Schirach in his capacity as Reich Youth Leader; and the second is his activity in Vienna, during the period from 1940 to 1945, in which he still exercised certain functions in Youth Leadership in addition to his main duties. Therefore, I need witnesses for both these activities of the Defendant Von Schirach.

In addition to this difficulty there is still another one. The Defendant Von Schirach was Reich Youth Leader, and that implied that practically without exception all his collaborators were relatively young people who during the second World War served a long time in the Army. Therefore it is quite possible that for a few years during the World War one witness might know nothing at all, because he did not work on the staff of the Defendant Von Schirach during this time; and that therefore, for this time, another collaborator of Schirach will have to be called upon, in order to give information on his activity.

Your Honors, in earlier written applications I had requested more witnesses, but I have omitted these additional witnesses right from the beginning in the application now submitted to you, in order to contribute thus, as far as I can, to expediting the procedure. But, Your Honors, these six witnesses that I have requested to have brought before the Tribunal I really must have granted me for, if a clear picture of Schirach's activities is to be gained, I cannot forego any one of them. I may also point out that all these six witnesses that I have listed under the numbers given, for the purpose of calling them, have already been approved by the Tribunal, so that the new approval will consist only of a repetition of your own earlier decision.

The witness Wieshofer, Your Honors, who is listed under Number 1, was from 1940 to 1945 adjutant of the Defendant Von Schirach; that is to say, during the period that covers the activity of the Defendant Von Schirach as Gauleiter of Vienna and Reichsstatthalter.

This collaborator, who was with the Defendant Schirach daily and who knew him very well, has been named by me particularly for the purpose of testifying—although, of course, he will also testify on other things—that Schirach, in his capacity as Gauleiter of Vienna, pursued an entirely different policy to that of his predecessor, the former Gauleiter Bürckel; that he, contrary to Bürckel, endeavored to establish correct relations with the Catholic Church, and that, with this aim in mind, he successfully influenced and instructed also his collaborators and subordinates. I say successfully, because these efforts by the Defendant Von Schirach to bring about satisfactory relations with the Catholic Church have also been repeatedly acknowledged on the part of the Church, as well as by the Catholic population of Vienna.

Besides, the witness Wieshofer will also corroborate that the Defendant Von Schirach had nothing at all to do with the deportation of Jews from Vienna; that this matter of the Jews was. . .

THE PRESIDENT: Do not Numbers 1 and 2, Wieshofer and Hoepken, really deal substantially with the same subject? Would it not be sufficient if one were called as a witness and if the other one gave evidence by interrogatory?

DR. SAUTER: I do not quite think so, Mr. President, because the witness Hoepken, who is listed under Number 2, was a collaborator of the Defendant Von Schirach as early as 1938, in the Reich Youth Leadership, and because he is supposed to give information especially about the activity of the Defendant Von Schirach as Reich Youth Leader and in particular also about his efforts to bring about understanding and friendship with the youth of other nations, such as, for instance, England and France. I believe, Your Honors, that with regard to the specific importance of these particular questions, the attitude of the Defendant Von Schirach in the naming of witnesses should be given recognition here, and that not one witness only, but both should be granted. I have submitted the addresses of both witnesses to the Tribunal. They are in a camp, and I believe, Your Honors, it is imperative to summon both witnesses to establish the facts.

THE PRESIDENT: I still do not follow what the essential difference is between the two.

DR. SAUTER: Mr. President, I have just pointed out that the witness Number 2, Hoepken, had a leading position in the Reich Youth Leadership, and that therefore the witness Number 2, Hoepken, is in a position to give information especially about the activity of the Defendant Von Schirach as Reich Youth Leader.

THE PRESIDENT: But Dr. Sauter, you stated that Wieshofer, Number 1, was adjutant to Schirach in his capacity as Reichsleiter of Education of Youth, so that he was in just as close contact with the defendant on the question of the education of youth as Hoepken.

DR. SAUTER: Yes, but youth education was Hoepken's main official task while the activity of the witness Wieshofer was limited mainly to the job of adjutant to the Defendant Von Schirach, primarily in his capacity as Gauleiter in Vienna. That is the main difference, and the witnesses who could provide information about his activity in Vienna are mainly the witness Wieshofer and, to a small extent, also Hoepken. But I need Hoepken, by all means, as I said, for the clarification of the activity of Schirach in the Reich Youth Leadership.

Mr. President, may I also point out that much is at stake for the Defendant Von Schirach, and that, from the point of view of the Court, it should really not make much difference, in a matter so important to Schirach, whether one witness or two witnesses are called.

Your Honors, I could have suggested perhaps four witnesses in the hope that two would then be granted. If now, in the name of the Defendant Von Schirach, I am proposing to call only two witnesses, I would not think it very just if one of these two witnesses should be denied.

THE PRESIDENT: The Tribunal will consider what you have said.

DR. SAUTER: Furthermore, Your Honors, in the third place, I have to request Hartmann Lauterbacher. If I have understood correctly, the Prosecution agree to this; therefore, I can be brief.

The witness Lauterbacher, who was Chief of Staff of the Reich Youth Leadership, is in a position to supply information especially about the fact that the Defendant Schirach in no way prepared the youth psychologically and pedagogically for the war, and by no means for an aggressive war. Furthermore, he can testify that the allegations of a Polish report—presented by the Russian Prosecution in one of the sessions during February, I believe on 9 February 1946—are definitely false. According to this report, the Hitler Youth had used spies and parachute agents in Poland. And this is false and the witness Lauterbacher will refute it. . .

THE PRESIDENT: Dr. Sauter, Sir David said he would not object to Number 3 being called as a witness, but what he did object to was 6 and 7, whom you are also asking for, as oral witnesses, because he said that they repeated what Lauterbacher said—Numbers 6 and 7, that is Schmidt and Schlünder.

DR. SAUTER: Mr. President, there again is the difficulty which I pointed out before. From the Polish Government report which was read by the Soviet Prosecution on 9 February 1946, it cannot be seen in what period these activities concerning the Hitler Youth agents and spies are to have taken place.

Now it may happen here that, if I have only one witness, it will be alleged that it was at some other time, perhaps at a time when this witness was in the Army; and that is why, in the interest of a complete clarification of these facts, I have asked to have witness Number 6 heard also. That is the witness Schmidt.

THE PRESIDENT: Well, if you say that, does it not appear that, with reference to Schlünder, his collaboration with the defendant extended from 1933 to 1945 and therefore if he were called or were to give an affidavit or an interrogatory, and Lauterbacher, who extends only from 1933 to 1940, you would cover the whole period and you could exclude Schmidt?

DR. SAUTER: If I understand you correctly, Mr. President, you are referring to an interrogatory in the case of Lauterbacher.

THE PRESIDENT: No, Sir David was prepared to have Lauterbacher called as a witness.

DR. SAUTER: Lauterbacher is to be called as a witness and Schmidt is to receive an interrogatory?

THE PRESIDENT: He said that Schmidt and Schlünder were cumulative. Then you said they did not relate to the same period, as I understood you, and that might raise a difficulty. So I pointed out to you that Number 7 related to the whole period, that is to say from 1933, beyond the period dealt with by Lauterbacher, and goes to 1945, and therefore, if he were called, that would cover the whole period, and if you called Lauterbacher and Schlünder and left out Schmidt. . .

DR. SAUTER: You mean that an interrogatory is to be obtained from Schmidt? I am agreeable to that.

THE PRESIDENT: The statements which you make with reference to Schmidt and to Schlünder are practically identical.

DR. SAUTER: Yes, only they refer to different periods, as each of them was in the Army. If one of them comes, he cannot say anything, of course,

about the time during which he served in the Army. He cannot give any information as to whether, during his military service, agents were used.

THE PRESIDENT: I do not know about that. You have stated that they were collaborators with the defendant from 1938 to 1945 in the one case, and from 1933 to 1945 in the other case, and therefore, if that is correct, they cannot have been in the Army; they cannot have taken an active part in the Army.

SIR DAVID MAXWELL-FYFE: I should be quite prepared to agree to the suggestion that Your Lordship put forward; that would then cover the whole period. If both Lauterbacher and Schlünder were called, it would dispense with the necessity for Schmidt.

DR. SAUTER: May I point out, Mr. President, that in any case I need Schlünder, who, by the way, was arrested a few weeks ago, because he was a specialist for physical training with the Reich Youth Leadership, and because, therefore, I want to prove, especially through Dr. Schlünder, that the education of the youth, as administered by the Defendant Von Schirach, was absolutely neither extraordinary nor militaristic. The Defendant Von Schirach has thus far, during the entire procedure in his interrogations. . .

THE PRESIDENT: I think, really, there is a substantial agreement between you and Sir David that Number 1 and Number 3 certainly should be called and that Number 7 might be called; but I do not know whether Sir David agrees that an affidavit or an interrogatory might be given by Number 6.

SIR DAVID MAXWELL-FYFE: I have no objection to that, My Lord.

THE PRESIDENT: That is substantially what you want, Dr. Sauter?

DR. SAUTER: Yes, Sir.

THE PRESIDENT: Very well; let us get on then.

DR. SAUTER: Your Honors, I have then, in addition, under Number 4, listed an affidavit by a witness, Maria Hoepken. I shall submit this affidavit, which is already in my possession, to the Tribunal and to the Prosecution, along with my document book, sufficiently in advance.

Then I have also affidavits in my possession, if I may mention that now, from two witnesses: Number 9, Dr. Klingspor, and Number 10, Dr. Roesen. The same thing applies here. The Tribunal and the Prosecution will receive these two affidavits in time, together with my document book.

Concerning Number 8, the witness Hoffmann, the Prosecution agree to having him called as a witness since this witness is here in Nuremberg. Therefore I believe that I do not have to make any detailed statements concerning this witness.

The same applies to Number 12 and Number 13. These are two witnesses: One a Gauobmann Schneeberger from Vienna, who, primarily, is to inform us on the attitude of the defendant on the question of foreign workers during the time of his activity as Gauleiter in Vienna; and Number 13, Field Marshal Von Blomberg, who is to inform us on the attitude of the Defendant Von Schirach on the question of the premilitary education of the youth, on the question of physical training, and on the question of patriotic education of youth. The Prosecution agree to interrogatories from these two witnesses—which I have already suggested myself.

And now, Your Honors, I come to the one figure on my list which is closest to the heart of my client and myself. It is Number 11; that is the application to examine a French woman by the name of Ida Vasso. Of this witness, Ida Vasso, we have heard in court for the first time when the Soviet Prosecution submitted a commission "Report on the Atrocities of the Fascist-German Invaders in the Lvov Area," as the title reads—Document Number USSR-6.

This document contains a sentence to the effect that a French woman, Ida Vasso, who was working in a children's home in Lvov, had reported that the Hitler Youth had committed special atrocities in Lvov. It was alleged that from the ghetto small children were sold; however, it was not revealed by whom and to whom these children were to have been sold; and yet, as a matter of course, it is the Hitler Youth who are said to have used these children as targets.

Your Honors, we are fully aware that such happenings would represent a quite extraordinary atrocity, and I can tell you that none of all the presentations of the Prosecution during the last three months has so distressed the Defendant Schirach, as has this statement. The Defendant Schirach has always, even in his earlier interrogations, maintained that he assumes full responsibility for the education and training of the German Youth, as directed by him; and that he is ready and willing, even as a defendant here, to explain to the Tribunal what principles guided him, what aims he had, and what successes he achieved. He has, for instance, never denied that this youth training was based on patriotism. . .

THE PRESIDENT: Dr. Sauter, you are only applying for witnesses now, are you not? You see, you agree in your application to an affidavit. . .

DR. SAUTER: I did not understand, Mr. President?

THE PRESIDENT: What I was pointing out to you was that this is only an application with reference to witnesses, and in your application you say,

"However, in consideration of the far distance of the witness from Nuremberg, I agree that at first an affidavit should be drawn up."

DR. SAUTER: Yes.

THE PRESIDENT: Sir David agreed that an affidavit should be drawn up. So you are in agreement, and I do not understand why we should be troubled with further application.

DR. SAUTER: However, Mr. President, I have added something to my application. I have written that a personal appearance of this witness before the Tribunal would be useful so that she can be questioned, because her testimony is important for the judging of the Hitler Youth as a whole. I have also added. . .

THE PRESIDENT: Your application states that you reserve that right. Well, you can prepare the affidavit and then send it out to the witness, and then you can see whether you want the witness for cross-examination. And Sir David agrees to that course.

DR. SAUTER: Mr. President, my client attaches so much importance to this particular case for the following reasons: The HJ, that is the Hitler Youth, which he led, comprised about 8 million members. It was therefore larger than. . .

THE PRESIDENT: But Dr. Sauter, the Tribunal quite understands why the defendant is interested in the matter. But it seems to them it would be perfectly satisfactory if an affidavit were drawn up and sent to the witness; and then you can see whether you want the witness, whose present location is unknown, brought here personally.

DR. SAUTER: Mr. President, my client noticed one thing in particular, that is, that among 8 million members only one single case of atrocities occurred, of which he never heard anything at all in the Reich Youth Leadership. However, I agree to the obtaining of an affidavit for reasons of expediency; but for just this case I must reserve the right to have the witness called, if the affidavit should be insufficient.

THE PRESIDENT: That deals with the witnesses, and we had better adjourn now.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents for which Dr. Sauter asked, the Prosecution take the usual line that there is no general objection to extracts being used, but at this stage they reserve their right to challenge admissibility of the extracts on the grounds of relevance.

They will have to look particularly closely at Number 9, the book entitled, *Look, the Heart of Europe*, and the commentary on it by the late Lord Lloyd George, but they can see that these are particularly matters which can be more conveniently dealt with when they have seen the document book and the extracts are before them.

DR. SAUTER: Mr. President, I can state my position regarding the documents very briefly. In the main, it is a question of books, speeches, and essays by the Defendant Von Schirach. These literary works are in my possession and I shall submit them to the Prosecution along with my document book. With the document book I shall submit to the Tribunal and the Prosecution the individual extracts which I propose to use as evidence, so that the Prosecution will still be able to make any statements it wishes with regard to the individual excerpts.

I believe that is all I have to say on that subject.

DR. SEIDL: Mr. President, on 28 February I made a supplementary motion on behalf of the Defendant Hess. I should be grateful if the Tribunal would inform me whether they wish to hear the argument in regard to this motion now or later, since I do not know whether the Tribunal have a translation of my motion in their hands.

THE PRESIDENT: The Tribunal have not seen the application yet, so I think you had better postpone making the argument until the Tribunal has seen the application.

DR. SEIDL: Very well, Mr. President.

DR. SERVATIUS: For the Defendant Sauckel I have suggested a number of witnesses and in my preliminary remarks on the list I have divided them into various groups.

The peculiarity of this evidence, as presented, lies in the fact that in this case a mosaic of smaller facts has to be clarified. In its case against Sauckel the Prosecution confined itself to the production of incriminating material

generally, and did not work out the full details about SS assignments carried out under the auspices of the Labor Service and similar matters.

Very few facts have been established at all with regard to Sauckel's sphere of activity generally. I am compelled, in consequence, to present his staff, his collaborators, and their spheres of activity. At first sight my list of witnesses may appear cumulative, but closer inspection shows that they represent different fields. Some of them are experts on Eastern affairs, others deal with the West or South. There is the question of direction of manpower, supplies, housing, and the authority exercised by individuals. The recruitment of workers in foreign countries comes under another head; and witnesses must be heard on this subject, too.

In Sauckel's case, the question of manpower is all-important and that of conspiracy is a secondary matter. I believe I can rely to a very great extent on the statements which may be expected from others among the accused and from their witnesses.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the Prosecution have endeavored to follow Dr. Servatius in considering the suggested witnesses under various heads.

The first witness, Ambassador Abetz, falls into a class by himself. The defendant's counsel wishes to call this witness on the question of agreements between him and Laval. The Prosecution submit that that cannot affect the position over, certainly, Occupied France, and suggested that this witness is really irrelevant to the main charges which have been made against the defendant. My French colleagues will, however, if Dr. Servatius desires it, let him know the effect of an interrogation of Ambassador Abetz with regard to this subject. I do not want to comment on it at the moment, because it is obviously a matter which Dr. Servatius should consider before any comment is made on it in court. But, if he will allow me to say so, I think it would be useful if he considered that point before any decision was come to.

Then, the next group are the witnesses 2 to 8. They all come from the Reich Ministry of Labor, and they are called to speak generally as to the defendant's attitude, the limitations on him as regards recruiting, and his personal dealings with offenders. The Prosecution suggest that it will be reasonable for Dr. Servatius to select the two best out of eight for oral testimony, and two more to give affidavits.

The next three, Numbers 9, 10, and 11, were members of the Defendant Sauckel's staff, who are sought to be called to give evidence as to his efforts

to obtain good conditions. Again, the Prosecution suggest a selection, and put forward one witness and one affidavit.

Number 12, the witness Hoffmann, is called for the purpose of saying that the DAF, the Deutsche Arbeitsfront, looked after the welfare of foreign workers by agreement with the late Dr. Ley. The Prosecution submit that that witness would be cumulative, and object to him, as that subject is already covered.

Then there are a series of witnesses, Numbers 13 to 18, who deal with the relations and liaison between the Defendant Sauckel and the DAF. These are substantially still on the same point, and the Prosecution suggest that one witness and one affidavit out of that group would be sufficient.

The next witness, Number 19, Karl Goetz, bank director, deals with the question of wages, and also of the transmission of money to their homes by foreign workers. The Prosecution suggest that that is the sort of material which might conveniently be dealt with by an affidavit or an interrogatory, according to Dr. Servatius' wishes.

Number 20, Beckurtz, deals with the special conditions of foreign workers at the Gustloff works. That subject has been thoroughly covered in general by previous witnesses, and the Prosecution suggest that this particular witness is cumulative.

With regard to Franz Seldte, from the Reich Ministry for Labor, he deals with the division of authority between Sauckel and Ley and the contention that Sauckel had nothing to do with labor from concentration camps. Again, the Prosecution suggest that an affidavit would show how far the witness Seldte is speaking merely of routine matters, such as orders and the like, and how far he is dealing with individual or personal matters. If he does in fact deal with individual and personal matters and interviews, then I suggest that Dr. Servatius could resume his application on that point.

The witness Darré, who was the former Reich Minister for Food and Agriculture, is sought in order to speak as to the defendant's efforts to get higher food rations for foreign workers, especially in Eastern areas. The Prosecution suggest that this witness also is cumulative, and it will indicate a number of other witnesses and documents which deal with this point.

As to Number 23, General Reinecke, there is no objection.

Number 24, Colonel Frantz, is sought to say that French prisoners of war were exchanged against voluntary workers. The Prosecution object on the ground of irrelevance.

As to Number 25, there is no objection to Dr. Lammers, who is being called by, I think, every defendant, or practically every defendant.

The next, 26, the witness Peuckert, again deals with the administrative position and executive apparatus of Sauckel, which has already been treated by witnesses at considerable length, and the Prosecution object to this as cumulative.

Number 27, Governor Fischer, Chief of Labor in the Government General, is called to say that Sauckel had made dealings with the SS in regard to resettlement. Again, if he is speaking as to rules and orders that were laid down, we suggest an affidavit.

As I understand it, the next witness, Dr. Wilhelm Jäger, is asked for cross-examination on his affidavit. That is Exhibit Number USA-202 (Document Number D-288), and the references in the transcript are 1322 to 1327 (Volume III, Pages 441-446) and 3057 (Volume V, Page 509). No request was made at this time, and I leave it to Dr. Servatius to explain his position before dealing with this point.

The next two, Dr. Voss and Dr. Scharmann, deal with the public health aspect of foreign workers. They deal with different districts. The Prosecution submit that that question could be dealt with by one affidavit.

As to the next three witnesses, 31, 32, and 33, I think the position is that Dr. Servatius wants one of the three to dispute certain evidence given by M. Dubost on 28 January that the defendant authorized the evacuation of Buchenwald. I have looked, at Pages 3466 to 3492 of the transcript (Volume VI, Pages 242-263), but I cannot find the evidence which Dr. Servatius has in mind, and perhaps he would be good enough to indicate it to the Tribunal.

With regard to 34, Skorzeny, who is called to prove that the defendant, as Gauleiter, had nothing to do with concentration camps, we make no objection.

With regard to Schwarz, to prove that the chart of the Party produced before the Tribunal was incorrect in one respect, we suggested that that be allowed.

With regard to Frau Sauckel, who is desired in order that she may speak as to the defendant's charitable disposition, irrespective of the Party, the Prosecution suggest that that is irrelevant to the issues before the Tribunal.

I think it is impossible in this case, My Lord, to leave the witnesses without asking the Tribunal to take a glance at the documents, because the two are interrelated.

There is an application for 97 sets of documents and in general they set out what we should call in England all the relevant statutory rules and orders, that is, the subsidiary legislation made with regard to the activities of this defendant. Frankly, I must say to the Tribunal that I have not had the

opportunity of reading the original orders. I have read only the summary which Dr. Servatius has been good enough to provide in his application. But, quite clearly, these documents cover again in the greatest detail the various problems with which the respective sets of witnesses to be called deal, and, in the submission of the Prosecution, they provide a good reason and a fair ground for some considerable limitation of the oral witnesses.

There are certain of the documents to which my colleagues and myself take considerable objection, and I might just state two or three of these.

Number 45 deals with the Reich law for sanitary meat inspection, and is presented to prove especially that the German civilian population also received meat graded as inferior, which therefore could not be considered inedible meat. If one has not the comparison of the caloric and other properties of the meat, it is going to be extremely difficult to get any benefit from the evidence, if one is going into that. It is unreasonably detailed for the inquiries before the Tribunal.

If the Tribunal would then turn to Numbers 80 and 81; Dr. Servatius wishes to prove certain Soviet orders, apparently for the purpose of showing that the Soviet methods of mobilization were contrary to the Hague convention and are therefore evidence that the Hague Convention had become obsolete. I submit that the two small examples of this evidence indicate that there would have to be extensive examination of the facts surrounding them and they could not be the basis of a sound argument that a convention had been abrogated. It is possible that in rare cases international agreements may be abrogated by conquest. But evidence of that kind would, in my respectful submission, not be the basis of such an argument.

Then come Numbers 90 and 91, which are files of affidavits. There again it is very difficult, without serious and prolonged consideration of the circumstances under which each affidavit was made, to assess the values of bundles of affidavits of that kind.

Number 92 is a film of foreign workers, and I suggest that it would be reasonable if the representatives of the Prosecution were shown that film first, before it is shown in court—I think that was the course that was taken with regard to the concentration camp film—because, of course, without going into arguments at the moment, the question of propaganda is a serious one which the Prosecution are bound to consider. I have expressly refrained from further comment, but I think the Tribunal will see the point that is in my mind, and will, I hope, consider that it is reasonable that we should see the film before we are asked to comment on it further.

I have taken only certain examples in the documents because obviously they will have to be considered in detail when we see the text, and the Prosecution have to reserve their rights as to objection. But I make the general point—and I hope the Tribunal will think that it is a fair point, and I hope Dr. Servatius will not think that I am decrying his work; I am emphasizing the industry and care which he has shown in doing it—that with this immense body of documentation the witnesses in this case will want careful pruning. That, as I have said, indicates our general view.

THE PRESIDENT: Before you deal with what Sir David said, Dr. Servatius, I ought to say, for the information of other defendants' counsel and other persons concerned, that the Tribunal proposes to adjourn today at 4 o'clock instead of 5 o'clock.

Sir David, I wanted to ask you: Throughout the discussion I think you referred to affidavits. Did you mean to particularize an affidavit as opposed to an interrogatory?

SIR DAVID MAXWELL-FYFE: No, My Lord. I did not. I am sorry. I really have not made that distinction. It is written evidence that I wish to refer to, either by affidavit or interrogatory, whichever Dr. Servatius wishes to have.

THE PRESIDENT: And one other question: In view of what you have said about the documents, would it not be a good thing for the Prosecution to have a little more time to consider the documents? And then perhaps they could give more help as to their view about the documents.

SIR DAVID MAXWELL-FYFE: That would be so, My Lord, but Your Lordship will appreciate that we have been under considerable pressure in the last few weeks and it is impossible to cover them all, but we should be glad of a little time to go into the documents.

THE PRESIDENT: Perhaps you could see Dr. Servatius about them after the adjournment some time.

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: And in the course of a day or two, let us know.

SIR DAVID MAXWELL-FYFE: Yes, we could do that.

THE PRESIDENT; Now, Dr. Servatius, will you deal with the witnesses?

DR. SERVATIUS: Witness Number 1, Ambassador Abetz. I name this witness to show Sauckel's subjective conception of the admissibility of the Arbeitseinsatz from the point of view of international law. On the basis of the treaties, and in the absence of any protest from the governments of other countries—notably France—he was entitled to assume that it was legitimate.

I am, however, willing to admit the witness Stothfang, who as Sauckel's deputy repeatedly negotiated with Laval. If he is admitted, I would renounce the witness Abetz. In other words, I am to forego witness Number 1 if I am permitted witness Number 9.

THE PRESIDENT: Yes, I see. What about witnesses 2 to 8?

DR. SERVATIUS: Witnesses from Sauckel's staff. It is difficult to dispense with any witness; and one witness is absolutely necessary for the graphic illustration of the way in which orders were carried out in practice. The Tribunal would find it very difficult to read through this enormous number of laws, and it is easier to hear witnesses on the essential points than to undertake the amount of reading involved. The witness Timm is the most important, as for all practical purposes he was in charge of the so-called Europa Amt which was responsible for the actual distribution of the labor forces.

THE PRESIDENT: One moment, Dr. Servatius. First of all, you will, no doubt, be calling the Defendant Sauckel himself?

DR. SERVATIUS: Yes, I should like to call him last, for he is a defendant and his statements are less valuable than that of a witness.

THE PRESIDENT: These witnesses will be corroborating his evidence about his administration. Under those circumstances, would not two of them, as Sir David suggested, out of eight, and two more affidavits be sufficient?

DR. SERVATIUS: From a legal point of view, the witness Beisiegel can be dispensed with, but the other witnesses are necessary because they have actual knowledge of the use of manpower abroad. So far, I have only one witness who can really speak on the use of manpower in the East. This witness should be able to describe the actual procedure followed; for laws have little meaning in themselves, if we do not know how they were applied. For the East, we have the witness Letsch—a highly important witness—and for the West, the witness Hildebrandt, who can testify how conditions gradually changed in France in consequence of the resistance movement.

The witness Kaestner could not be found, and I will dispense with him.

Witness Number 7, Dr. Geissler, is of the greatest importance because he can testify regarding inspections. The main point is at what period these workers were employed and what provision was made by Sauckel for their well-being in Germany. To ensure that Sauckel's regulations—which, I maintain, were models of their kind—were actually put into practice, a series of inspectorates existed. Witness Number 7, Geissler, was in charge of

the Reich inspectorate, a branch established by Sauckel. I consider him indispensable.

THE PRESIDENT: Why are not Number 3 and Number 8 cumulative?

DR. SERVATIUS: I named Number 8 in order to give special emphasis to the wage question. So far the Prosecution have not treated individual points in any very great detail. Otherwise I should find myself in difficulties owing to lack of evidence when the emphasis is transferred later to the question of wages. Only witness Number 8 can testify to this question. Witness Number 3 can testify regarding the regulations generally and in particular that Sauckel constantly improved conditions to the last, so that the situation of all foreign workers was considerably improved by legislation and continued to improve. This can be seen from all the regulations, which I have carefully collected for the purpose.

Witness Number 9, Dr. Stothfang, was Sauckel's consultant, his personal adviser, and conducted many negotiations, particularly with France. For this reason I have named him as a substitute for witness Number 1, Abetz. In particular he conducted negotiations over the restrictions of the so-called Weisungsrecht, the restriction, that is, Sauckel's right to recruit workers. From the very start of Sauckel's activities, it was clear that no official administering a zone would tolerate interference of this kind on Sauckel's part, that from a practical point of view it was impossible to tolerate it and his powers were promptly curtailed through parleys. Witness Stothfang will testify on that subject.

THE PRESIDENT: Why are 9 and 10 not cumulative?

DR. SERVATIUS: I will forego Number 10. I wish to say something on a rather different subject.

THE PRESIDENT: Yes.

DR. SERVATIUS: Witness Number 11 knows the conditions. He was the press expert, and if I must forego any witness, I would dispense with him rather than anyone else. He really does know, however, exactly what conditions were like. He wrote the book *Europa Works in Germany* and made the film, and can say that these pictures were not faked but are genuine photographs. For this reason he is important, as his testimony is supplementary to the book and the film.

The next witnesses belong to the Labor Front. The Labor Front was responsible for the welfare of all foreign workers, as well as for that of German workers. The situation never changed in that respect; and the witnesses can testify now to the way in which the regulations were carried

out in different cases, with regard to the construction of the camps, supplies, clothing, and everything else that took place.

Witness Number 13 would be the most important witness, but he has not been found. For this reason I attach special importance to witness Number 14, who worked with him. The witness Hoffmann was practically in charge and knows what conditions were in the camps.

Those were the witnesses who worked with Sauckel in liaison with the Labor Front. The other witnesses will testify as to the practical work done by the workers themselves.

The situation is this: Dr. Ley no longer appears here, so that the whole of Ley's field now becomes part of the case against Sauckel and forms a further charge against Sauckel unless the question is clarified. There are a good many charges and they must be clarified.

THE PRESIDENT: What is the difference between 15 and 16?

DR. SERVATIUS: 15 is a stenographer's error; 15 is identical with witness 12. Witness 16, Mende, of the head office is particularly important because he had to look after the organizations within the Labor Front.

THE PRESIDENT: You mean 15 comes out, does it?

DR. SERVATIUS: Yes, 15 comes out.

THE PRESIDENT: Yes.

DR. SERVATIUS: Witness 17, Dr. Hupfauer, can testify as to the origin of the code of regulations in general and about the direction in which Sauckel worked.

THE PRESIDENT: Why is not he cumulative with Number 14, whom you wanted to have instead of 13? The charge of inhumanity applies to both of them.

DR. SERVATIUS: Because witness 14 deals with the practical side, and witness 17 deals with the legislative side. Witness 18 was responsible for the practical application within the Labor Front. One must keep these various fields distinct from each other. Sauckel had a small office, which was incorporated into the Ministry of Labor. He issued regulations with the aim of steadily improving matters. I offer evidence that they were of social value and will prove on investigation to be irreproachable.

We then have to consider the other side of the question—the practical application, for which the Labor Front was responsible; and the recruitment. I have special witnesses to deal with these heads as well.

The next witnesses are members of Sauckel's specialist staff. Witness 19, Bank Director Goetz, can testify that billions of marks were transferred

to foreign countries for workers' wages.

Witness 20, Beckurtz, was manager of the Gustloff works and one of Sauckel's closest collaborators. He will confirm that the treatment and housing of workers in this very Gustloff factory was exemplary.

Witness 21 will testify as to the degree of authority exercised by Ley and Sauckel respectively. It is of great importance to know whether Sauckel himself was responsible or whether some other office was in charge of the practical side.

THE PRESIDENT: Why cannot this be dealt with by an affidavit or interrogatories?

DR. SERVATIUS: I shall be satisfied here with an affidavit. I have not yet spoken to the witness personally and for that reason I had to list him as a witness.

Witness 22, Reich Minister for Food and Agriculture. He will testify that from the moment Sauckel took up his appointment, he made every effort to improve conditions for foreign workers and that he continued to pay special attention to this point. That is of particular importance in view of the accusation that the foreign workers had been starved. Through it I shall be able to adduce evidence that the foreign workers were in part—I say in part—better off than German workers.

Witness 23. . .

THE PRESIDENT: He has already been granted to another defendant.

DR. SERVATIUS: Oh, I see. Then I can forego him.

The next witness has not yet been found. He will testify regarding the exchange of prisoners of war for French workers. I understand that Reich Minister Lammers has already been approved for other defendants.

Witnesses 26 and 27 are important because they can furnish information on the way in which workers were recruited in the Eastern territories. They can testify to the extent of Sauckel's powers, whether they were executive or otherwise, to the authority given to the police, and to what extent the organization was distinct from the SS. Witness 26 has not been found. Consequently, I shall have to confine myself to witness Number 27, Governor Fischer, who has been found and approved.

THE PRESIDENT: What about an affidavit for 27?

DR. SERVATIUS: I do not consider that I can forego calling him as a witness. It is of the utmost importance to have a witness who can say what conditions in the East actually were.

Witness 28, Dr. Jäger. We have a detailed affidavit, but it is extremely inaccurate. It has been submitted as Document Number D-288, Exhibit Number USA-202. I have also received the German translation.

THE PRESIDENT: Dr. Servatius, was it not the proper course to cross-examine Dr. Jäger when his affidavit was read?

DR. SERVATIUS: I assumed that it was accurate, as at that time I was not acquainted with conditions in the district in question. I have since made inquiries and can bring evidence to show that his statements were not only very much exaggerated, but in many cases actually false. The truth emerged by degrees on studying in detail some half dozen sworn statements which I obtained. Krupp had 60 camps. The witness deals with three or four of them at a time when the aerial war was at its peak—a fact which he does not mention. I do not anticipate much difficulty in proving his statements incorrect. I should like to reserve the right to submit further affidavits with which the witness can be confronted if he appears here in person, I also made an application, which has not yet been granted, for leave to make use of a number of medical reports made in these very factories, which in themselves prove that Dr. Jäger's testimony is inaccurate. My chief difficulty was to obtain possession of this evidence, hence the delay. Otherwise I should have submitted it sooner. I attach great importance to Dr. Jäger as a witness.

The next witnesses, Dr. Voss and Dr. Scharmann, will testify on the same subject, but each in connection with a different area. They have attended the camps as doctors and can testify that the conditions there were irreproachable and good. I could name many such doctors if I had the time and opportunity to look them up. I know both of these and they will confirm what conditions were really like.

THE PRESIDENT: If that is so, why can they not both give an affidavit about it?

DR. SERVATIUS: They are in a camp. It is difficult for me to contact them; it would be easier to bring the witnesses here. Perhaps Dr. Voss can appear here so that one of the witnesses can be heard.

The next three witnesses are named for this purpose.

SIR DAVID MAXWELL-FYFE: My Lord, since I gave the explanation, I have had a chance of comparing the English text with the French text, and it would appear that an error has crept into the English text, which says:

> "He seemed to be impressed and he gave an explanation of the gravity of the communication Shiedlauski had given. Shiedlauski

had given an order that no prisoner should remain in Buchenwald."

The French text is, if I may translate it:

"He seemed very embarrassed and an explanation was given. The Governor of Thuringia, Sauckel, had given the order that none of the detained persons should remain at Buchenwald."

So that apparently when I told the Tribunal that we could not find this reference, I was dealing with the English text, and it appears that there was such a reference in the French text. Since M. Dubost was calling the witness, the probability is that the French text is right, and as there is evidence that Sauckel had given this order, I think it is only fair that I should say that one witness should be permitted to deal with this point in the view of the Prosecution; it is, of course, a matter for the Tribunal.

DR. SERVATIUS: I agree with the Prosecutor and need only one of the three witnesses. Should none of the witnesses be found, I have in the document book an affidavit of one of Sauckel's sons who was also present at the conference.

Witness 34, Skorzeny, will testify to the general connection between the Gauleitung and the concentration camps; in other words, to what extent the Gauleitung, by virtue of its official position, had knowledge of what went on in the concentration camps.

Witness 35, Reich Treasurer of the NSDAP, Schwarz. This question has been settled. I have received my interrogatory with the answers.

Witness 36, Frau Sauckel, was previously approved by the Tribunal. I can see that certain objections might be raised but the essential point is this: Among other things, the witness repeatedly heard that the Defendant Sauckel was criticized for treating foreign workers too well and for manifesting an international rather than a nationalistic attitude. That is one point. The other point is that which concerns the conspiracy, namely, that Sauckel kept aloof and had very little intercourse with other members of the Party. He worked consequently on his own and knew very little about major developments in policy.

That concludes my remarks on the list of witnesses.

THE PRESIDENT: Dr. Servatius, you probably realize that you have asked for a very much larger number of witnesses than other counsel and I have, therefore, to ask you whom you regard as the most important witnesses. It may be that it will be necessary to limit the number, as you are aware that we are directed to hold an expeditious trial, and so would you

kindly give me the list of those witnesses whom you regard as the most essential.

DR. SERVATIUS: If I have time till tomorrow to think it over, I shall try to reduce the number. It is difficult because the field is so large. Also I did not receive a trial brief for Sauckel defining charges in detail, so that I must be prepared for all eventualities. I must define my position with regard to many points: food, wages, leave, workers, transport, illness and there are many aspects to which I must refer.

THE PRESIDENT: You will not forget that many of the defendants are concerned in various aspects and they have neither asked for nor been allowed this very large number of witnesses.

DR. SERVATIUS: May I turn to the documents now?

THE PRESIDENT: Well, I rather thought that perhaps Sir David was going to get in touch with you after the adjournment and perhaps you could then deal with the documents more successfully.

SIR DAVID MAXWELL-FYFE: I think that would be time usefully spent, My Lord, if the Tribunal would allow it.

THE PRESIDENT: Yes.

I call on Dr. Exner on behalf of the Defendant Jodl.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, Dr. Exner and Professor Jahrreiss were good enough to approach the Prosecution on this matter and put forward certain considerations, including the names of the witnesses to whom they attached the greatest importance, and over a considerable part of the field there is no difference between us. On certain matters there is a difference of principle, which I shall point out to the Tribunal in a moment, but the effect is, if I might run through the application, that the Prosecution will not offer any objections to General Winter, who speaks as to the organization of the OKW and the respective duties of the Defendants Keitel and Jodl. They will not offer objections to Major Professor Schramm, although the need for his evidence is perhaps not so obvious. On the other hand, with regard to Number 3, the evidence of Major Kipp, that the fettering or chaining of prisoners took place at Dieppe and as to the cause of the shooting-of-Commandos order, the Prosecution submit that these matters are irrelevant. With regard to Major Büchs, Dr. Exner tells me that he will be satisfied with interrogatories. The Prosecution do not object.

With regard to Number 5, General Von Buttlar, Professor Exner suggests that he should be a witness, and the Prosecution do not object.

With regard to Number 6, the Prosecution are content that there should be interrogatories.

With regard to Vice Admiral Bürckner, the Prosecution are prepared to take no objection.

Then with regard to Number 8, General Buhle, a questionnaire has been sent off.

With regard to Number 9, it is suggested that there should be interrogatories.

Number 10, interrogatories.

With reference to Numbers 11 to 21, the Tribunal has allowed an interrogation in each case, and in many cases a questionnaire has been sent off, and therefore the Prosecution could not object at this stage when action has been taken on the Tribunal's suggestion. That would mean that the Defendant Jodl would have four oral witnesses, apart from the interrogatories which have already been largely approved by the Tribunal. The objection of the Prosecution to Number 3 is maintained.

DR. EXNER: I should like, first of all, to mention Number 3, Kipp. The Prosecution have its objections to this witness. We need him to give information as to how the Hitler order of 18 October 1942, that is, the Hitler order regarding Commandos, originated. This order has been made the basis of a highly incriminating charge against Jodl and it is of great importance to hear how this order came to be given. It concerns the killing of Commandos dropped by planes or landed from boats. As I understand it, the objection to this witness and this subject generally is that it appears to concern for the most part the events of Dieppe, in consequence of which this order was admittedly issued. But we are not concerned with an exact portrayal of what actually happened at Dieppe. The witness Kipp is, in any case, unable to do so, since he was in the OKW and was not a witness of those events. We are concerned with something else, namely, the fact that certain reports were presented to the OKW which caused this order to be made. We are furthermore concerned with the following facts to which Kipp is in a position to testify.

When these reports about the events at Dieppe arrived, the Führer was enraged and ordered strict measures to be taken against these Commandos. Jodl refused to issue or draft the order as demanded by the Führer. When pressed, he said he did not know what reason he could give for that order.

Jodl then passed the matter to Major Kipp for investigation, as it was peculiarly complicated from a legal point of view and Kipp, being a professor of law, should know something about legal matters.

In addition, a kind of poll was held in Jodl's office in the Wehrmacht Operations Staff and the opinions of other offices on the matter in question were collected. Varying opinions were received from the Ausland Abwehr, the legal department, et cetera. As in the meantime 10 days had passed, Hitler lost patience, sat down and drew up the entire order himself, as well as a further decree, establishing the reasons for the order. Jodl, therefore, was not the author of this order. All that he did was to express his doubts regarding it. The story of the origin of the order of 28 October 1942, which, as I have said, has been made the basis of a grave accusation against Jodl, is of the utmost importance. Kipp will testify to it. Further, it has already been said that there is no objection to witness Number 5, Buttlar.

As to Number 4, I am satisfied with an affidavit or an interrogatory, but I must reserve the right to call him as a witness, should the interrogatory be inadequate or not clear. I hope, however, that this can be avoided.

Regarding witness Number 7, Vice Admiral Gottlieb Bürckner, I should like to point out that he is the same Admiral Bürckner who was the subject of discussion this morning in connection with the witnesses for the Defendant Raeder. Perhaps that will clear up the difficulty about Raeder.

Regarding Number 8, the interrogatory has already been sent out. We have, however, distinctly, reserved the right to resort to oral testimony should the interrogatory again prove unsatisfactory. Otherwise, I have nothing further to say on the subject and the Prosecution has no grounds for protest.

I have just received a note saying I was relying on the appearance of Büchs as a witness and therefore why did I not ask for him. This is on behalf of Göring, is it not? I shall have to leave the decision to the Tribunal. I had in fact intended to call Büchs as a witness and I only agreed to forego his personal appearance in the course of the discussion.

THE PRESIDENT: Which witness were you talking about?

DR. EXNER: Witness Number 4.

THE PRESIDENT: Do you say you are asking for him as an oral witness?

DR. EXNER: Göring has also asked for him as a witness.

THE PRESIDENT: Has he been allowed to the Defendant Göring?

DR. EXNER: He had counted on my calling him as a witness, on his being allowed and on being able to question him. He is here in Nuremberg. May I now turn to the documents?

THE PRESIDENT: Yes.

DR. EXNER: Regarding Points 1 and 4, the Prosecution has no objections. I take this to mean that I put into my document book an extract of the part I read. I submit the entire document to the Tribunal without a translation of anything except the part which I am going to read; and which deals with an important point which must be clarified. If I am dealing with a large document and I need to quote only one paragraph, it is sufficient if I submit the original document to the Tribunal in its entirety and include in my document book only the particular paragraph in question and its translation.

THE PRESIDENT: That is right.

DR. EXNER: Regarding Points 5 and 6, the Prosecution objects and I withdraw these two documents.

Point 7 is a curious one. That is Document Number 532-PS, submitted by the Prosecution and to which I made objection at the time. The document was removed from the record, and now I myself apply for this document to be submitted again. This is for the following reason: The document is an order that was submitted to Jodl in draft form. Jodl did not approve it, crossed it out, and sent it back without signing it. This draft was submitted by the Prosecution, and I objected to its being presented as if it were actually an order signed by Jodl. I want to submit it now in order to prove that Jodl, by making it impossible for this order to be carried out, deprived an illegal order of its effectiveness.

Regarding Points 8 to 15, the Prosecution also has no objection.

SIR DAVID MAXWELL-FYFE: Points 16 and 17 are the subjects of objection from the Prosecution. Point 16 relates to the English "Close Combat Regulations" of the year 1942, and 17 is the English order for the Operation Dieppe of the same year. With regard to the "Close Combat Regulations," the only relevance they could seem to have would be in relation to an objection to this form of training, and in the submission of the Prosecution it would be irrelevant on the question of the Commando order.

With regard to the question of shackling, I think the simplest way of dealing with it is to point out that the Prosecution, as my friend Mr. Dodd pointed out, have not introduced that matter into their case, and therefore it would appear that, the English order in question was not relevant. Apart from the two general objections, neither of these matters seems connected with points in the case.

I might just indicate Number 20, which is another objection that is on the same basis as the old document, which I think the Tribunal has had before—the implication of the German Foreign Office on breaches of international

law, and it is sought for, as the Tribunal will see, as evidence of the reports that were made to the High Command of the Wehrmacht, and that gave occasion to take reprisal measures.

Then a similar ground of objection applies to Number 21, a history of the White Russian partisan war, which is sought for as evidence that the danger of bandit warfare gave cause for undertaking sweeping countermeasures.

These objections can be all grouped together. They fall under the general objection to *tu quoque* evidence which the Prosecution has maintained throughout the Trial.

DR. EXNER: May I say something about this? As far as 16 and 17 are concerned, we just want to see these documents. We want to see them first in order to judge whether or not we want to submit them in evidence. I have stated so at the foot of the page.

As to irrelevance, we do not say that we regard these orders as illegal. But if for instance, in the "Close Combat Regulations," English soldiers are ordered to perform actions for which our soldiers are censured, it would constitute a discrepancy of some importance. For in that case it would be obvious that the British Government regarded such methods of warfare as legitimate. If, however, such methods are legitimate for them, they must also be legitimate in our case, since it is impossible to have two standards in these matters. In order to establish this, we wanted to see these "Close Combat Regulations." That is Number 18.

Number 19 is a similar case, but I can more readily understand that that was refused, as it may be a secret order. Number 20, the White Book. . .

THE PRESIDENT: Sir David did not deal with 19, did he? He only dealt with 16, 17, 20, and 21.

DR. EXNER: Yes. 18 and 19 have not been objected to.

THE PRESIDENT: As I understood it, his objection to 16 and 17 was that there was no complaint against the German forces, either with the reference to close combat or with reference to shackling, in the Indictment.

DR. EXNER: If these "Close Combat Regulations" should happen to include illustrations—there are actually pictures in there—of the shackling of prisoners and orders for doing so, one would be obliged to say that the British Government does not consider this kind of treatment illegal and that if it happens on our side we cannot be censured for it. It is difficult for me to estimate their importance to us, because I have not had these "Close Combat Regulations" in my own hands. If I had them, I could make my application.

I should like to know whether I have to include them in my evidence or whether there is no need.

No objection has been raised to 18 and 19. As to 20, these are the White Books already approved for Göring. Consequently, I need not ask for them myself.

Regarding Point 21, I am convinced that this cannot be settled with a charge of *tu quoque*. It is a Russian book, describing partisan warfare. The author of this book is a Russian who, himself, participated in partisan warfare for several years as chief of staff and he writes from personal experience.

We do not assert that the Russians did the same as we did, which would be a *tu quoque* argument; I should like to have this book for another reason. To understand and appreciate our regulations regarding partisans, one must know these partisans. One must have knowledge and experience of their methods, and be able to appreciate the danger which they represented. This Russian book describes all that, and is therefore important. The author himself, as stated, played an active part in the warfare carried on against the partisans.

In the Indictment it is stated, "The war against the partisans was simply an excuse for the annihilation of Jews, Slavs, and so on." This book shows that the war against the partisans was a real war and not an excuse on our part.

If the book is unobtainable, I ask permission to read the short account of the contents recently published in The Stars and Stripes. To conclude, it should be emphasized that the book was written by a Soviet Russian and for this reason cannot be assumed to have an anti-Russian bias.

Therewith I have concluded my presentation.

THE PRESIDENT: Sir David, the Tribunal would like to know what your argument is with reference to 21.

SIR DAVID MAXWELL-FYFE: I was opposing it for the reason that was given. The book is asked for as evidence that the danger of bandit warfare gave rise to undertaking sweeping countermeasures.

Now, broadly, the case for the Prosecution is that the countermeasures against partisans constituted atrocities, and evidence of that kind has been given. It is, in my submission, no defense to the committing of atrocities against partisans, of the kind given in evidence, that their warfare was of a great extent or very fiercely or bravely waged. This is just the *tu quoque* argument in its nakedness—because partisans fight you, therefore you can

burn their villages, shoot their women, and kill their children. That is the argument which we say is irrelevant and is inadmissible.

My Lord, I should like to say that I have no objection, if any of these documents can be obtained, to Dr. Exner's looking at the documents; on that point to which the Prosecution attached importance, I thought it right—and I know my colleagues desired it—that I should make our position clear.

THE PRESIDENT: That concludes your address, Dr. Exner, does it?

DR. EXNER: May I add something concerning the last point. I am, of course, perfectly aware that those atrocities, as described here, cannot be justified by the activities of the partisans, but the more violent the actions of the partisans became, the harsher—of necessity—were the German military countermeasures, so that there is, after all, a connection between these matters.

THE PRESIDENT: The Tribunal will consider your argument.

The Tribunal will now adjourn.

[*The Tribunal adjourned until 7 March 1946 at 1000 hours.*]

SEVENTY-SIXTH DAY

Thursday, 7 March 1946

Morning Session

THE PRESIDENT: I call on counsel for the Defendant Von Papen.

SIR DAVID MAXWELL-FYFE: If the Tribunal approves, I shall indicate the views of the Prosecution on the witnesses requested by Dr. Kubuschok.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: The first witness is Von Lersner and there is no objection. This witness is called to cover, among other things, the period of the coming into power of the Hitler Government, which is a time of material importance in the case against Von Papen.

If the Tribunal would consider the next three witnesses, there is a minor point: The witness Tschirschky was, as I understand it, Von Papen's private secretary from 1933 to February 1935. That is, he covered the period of the rise to power of the Nazi Party. And he also covers some of the Austrian period.

The next witness, Von Kageneck, is also a private secretary. He does not cover the period of the rise to power, but covers the whole Austrian period.

The next witness, Erbach, was counsellor at the Embassy in Vienna, that is, he covers the period 1934 to 1938.

The Prosecution has always been reluctant to oppose the calling of secretaries who could assist the memory of the defendant, but it did seem to us that the witness Tschirschky was cumulative both on the period of the rise to power and the Austrian period and that it would be sufficient to have interrogatories in that case. Therefore, the Prosecution, apart from that, would not object to Von Kageneck and Erbach.

THE PRESIDENT: That is, you suggest interrogatories for 2 and calling 3 and 4?

SIR DAVID MAXWELL-FYFE: Yes, My Lord, interrogatories, and calling of 3 and 4.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: And with regard to Number 5, the witness Kroll, the Prosecution submits that he is irrelevant. He is called for the period when the defendant was an ambassador in Turkey and he allegedly is able to say that Von Papen had no aggressive thoughts with regard to Russia. The Prosecution would submit that Von Papen is really the person who can speak on a matter like that, and the Prosecution has had no evidence as to any subversive activity of the Nazi Party in Turkey; which is the other point that this witness is said to speak on.

Then the next five witnesses, 6, 7, 8, 9, and 10: The Tribunal granted interrogatories and, so long as the matter is limited to interrogatories, the Prosecution will make no objection.

And Number 11, the Baroness De Nothomb: The Prosecution object to evidence on acts of intercession on behalf of members of the resistance movement, and individual acts of that kind, in the opinion of the Prosecution, are not really relevant to the matters before the Court.

With regard to Archbishop Gröber, if the Tribunal would not mind looking at Number 12 in the application, in the opinion of the Prosecution the matters raised by the questions are not relevant. The first is, "Were the Concordat negotiations between Germany and the Holy See brought about by Defendant Von Papen's own initiative?" The second part of this question is, in short, "Did Von Papen make efforts with Hitler regarding the conclusion of the Concordat?" Well, the Concordat was made, and what the Tribunal are really concerned with is the breaches of the Concordat, of which the Prosecution has given written evidence.

The second question—I am afraid that I do not understand that, and in its present form I submit that it is irrelevant, in addition to being vague—"Were the activities of the defendant directed by his positive religious attitude after the conclusion of the Concordat also?"

Then the third question: "Was the conclusion of the Concordat welcomed by the German Episcopate?" I don't think that really helps.

And fourth: "Did the Concordat give legal backing to the Church during the latter's religious struggles?" And, "Could the Church, in the end, fall back on the Concordat?"

The Concordat is there and speaks for itself, and, as I say, the issue in this case is the breaches of the Concordat, not its contents. So we object to Number 12.

Number 13, the witness Von Beaulieu—that is very short, if the Tribunal would be good enough to look at it:

"I shall submit an affidavit of the witness, which deals with the intervention of the defendant as President of the Union Club on behalf of Jews."

The Prosecution submit that the intervention in a racing club on behalf of some Jewish members is not really a relevant matter, even on the Jewish issue.

Number 14, the witness Josten—Dr. Kubuschok asks for the use of a statement which has been sent to the Tribunal. The Prosecution would prefer that to be in the form of an affidavit or interrogatory, if this is possible.

THE PRESIDENT: That is 14, is it?

SIR DAVID MAXWELL-FYFE: 14, My Lord, yes.

Then 15 is His Majesty, the King of Sweden. That is a new application and general in its scope. It is difficult to judge how much King Gustav could contribute, and, therefore, the Prosecution do not object to interrogatories.

THE PRESIDENT: Sir David, in 14 Dr. Kubuschok says that he requested that the statement made by the witness to the legal department of the Military Government headquarters, Düsseldorf, be furnished him. Are you objecting to that being furnished him?

SIR DAVID MAXWELL-FYFE: No, I thought that he had got it.

DR. KUBUSCHOK: I got it this morning.

SIR DAVID MAXWELL-FYFE: Dr. Kubuschok says that he received it today, this morning.

THE PRESIDENT: Are you objecting to his offering it as evidence?

SIR DAVID MAXWELL-FYFE: No, I only say that we should prefer it in the form of an affidavit or interrogatory, if that can be done. I do not make any great objection.

DR. KUBUSCHOK: In regard to the witnesses I should like to say the following: Witness Number 1, Baron Lersner—the Tribunal granted only an interrogatory at first. The prosecutor has today agreed to have the witness called before this Tribunal. I also ask very urgently that this witness be questioned before the Tribunal.

The witness was the president of the German peace delegation at Versailles. He is a very well known German diplomat, who since 1932 has worked very closely with the Defendant Von Papen. A man like Lersner had, of course, a particularly fine understanding for every policy of aggression. Therefore, it is very important that this co-worker of the Defendant Von Papen be heard and be allowed to tell us how he has observed the defendant

in his activities up to 1944. It is particularly important that Lersner, at the instigation of Defendant Von Papen, could go to Turkey.

THE PRESIDENT: Dr. Kubuschok, Sir David agreed, I think, with reference to Number 1.

DR. KUBUSCHOK: Yes, if the Tribunal also agrees, then the matter is taken care of.

The second witness, Tschirschky—Tschirschky was the private secretary of the defendant from 1933 to 1935, the first private secretary during the time that the defendant was Vice Chancellor. He is a man who was himself persecuted by the Gestapo and had to go into exile in 1935, where he still is. He is a man who can give exhaustive information on the whole period from 1933 to 1935 in regard to the external activity of the defendant and his personal attitude.

I believe that, especially for the time from the beginning of 1933, we shall not get a thorough picture if we do not hear this closest co-worker of the defendant personally. The other witnesses concern mostly different periods. Only in some cases do they overlap with the activity of this witness.

Number 5, Kroll. . .

THE PRESIDENT: Supposing that the Tribunal thought it right to grant you Number 2 as an oral witness, would it not be possible to dispense with one of 3 or 4 and have interrogatories from one of them and call the other one? They deal with somewhat the same period.

DR. KUBUSCHOK: We definitely need 3 for the following reasons:

Witness Kageneck was present when Hitler entrusted Papen with the Austrian mission. This is a very important point, since the Prosecution alleges that he was entrusted with this mission for those purposes of which he was accused. The witness will testify that Papen accepted the mission only after a clear guarantee concerning the purpose of the mission. Furthermore, Count Kageneck was also in Vienna after 1935, that is to say, from 1935 until the Anschluss, and for this period we should not have any other witness. Kageneck can also confirm a very important point, that is, that he was entrusted with taking diplomatic documents to Switzerland and safeguarding them there, since from these documents the documentary proof for the activity of the defendant in Vienna could be deduced. Therefore, in my opinion, the witness Kageneck also cannot be dispensed with.

If we can dispense with any witness, it would be witness Number 4, Erbach, in regard to whom I might then ask for permission to use an interrogatory, because here, too, questions are to be asked which the other witnesses cannot answer.

Witness Number 5, Minister Kroll—Papen is accused of a conspiracy for aggressive war. The Indictment is not limited in respect to time. For the largest part of the time in question, namely 1938 to 1944, Papen was in a position which would have been particularly designed for an activity directed at undermining the peace. Turkey was for a long time an important pillar in military and, therefore, political considerations. It is, therefore, of the greatest interest whether Papen used his position for any activity in the nature of such a conspiracy.

Moreover, I should like to bring proof of the opposite. The fact was that his activity was directed at preserving the peace and that he was, in particular, against any extension of the war by means of military measures against Russia, and was against every political measure for the destruction of the relations between Turkey and the Allied Powers.

The witness was, during the Turkish period, the closest co-worker of the defendant. He is, therefore, in a position to give us information about the entire period.

Baroness De Nothomb—I have asked in this case to be permitted to present an affidavit or interrogatory. I want. . .

THE PRESIDENT: Which number are you dealing with?

DR. KUBUSCHOK: Number 11.

THE PRESIDENT: You are not dealing with 6 to 10?

DR. KUBUSCHOK: No, we are in agreement about 6 to 10.

THE PRESIDENT: Very well, 11.

DR. KUBUSCHOK: Number 11, Baroness De Nothomb—in this case I asked for an interrogatory or for permission to submit an affidavit. The subject of the evidence is:

During the years 1940 to 1944 the defendant continuously supported the witness in her intervention on behalf of persecuted members of the French resistance movement. I want thereby to prove that the Defendant Von Papen shows again, in this case, that he was greatly interested in a peaceful shaping of German-French relations, and that during the war he always had in mind the postwar time, when the poison should be removed from these relations. The intervention on the part of the defendant was also a result of general humanitarian considerations. This is not without considerable importance in connection with the charge of conspiratorial activity.

Number 12, Archbishop Gröber—the Indictment asserts that the Defendant Von Papen used his position as a prominent German Catholic for a dirty business of deception, and that the conclusion of the Concordat, as such, was effected in the course of a policy directed against the Church; that

the conclusion of the Concordat was not intended seriously, as one could see from the later violations of the Concordat. Archbishop Gröber was, at the time of negotiations concerning the Concordat, at the Holy See. He was present during all the negotiations. He knows that the initiative for starting negotiations came from Von Papen himself, who did not get Hitler's approval until later. He knows that the draft which had been made by Von Papen for the Concordat was strongly disapproved by Hitler and that Papen was able to advance this draft only after long struggles. The witness knows the Defendant Von Papen very well. He also knows from what inner stand toward the Catholic question the defendant approached the matter of the conclusion of the Concordat. As an influential dignitary of the Church he can also judge the consequences of the Concordat. He is in a position to judge that the contents of the Concordat at a later time also were still a protection for Church interests; and from his knowledge of the personal relations of the defendant and all the relations of the Church in Germany, he can testify as to whether the defendant had anything at all to do with the violations of the Concordat.

THE PRESIDENT: Dr. Kubuschok, does witness Number 2 deal with the same subject? Where you say in your discussion of the subject of the evidence, that witness Number 2 accompanied the defendant to Rome to conclude the Concordat—can he testify that against Hitler's strong opposition he succeeded, at the last minute, in concluding the Concordat? At that time was the witness present at all the speeches?

DR. KUBUSCHOK: The witness Tschirschky was introduced into the negotiations concerning the Concordat by the defendant. It is very important, in my opinion, to examine also a witness who was present at the negotiations as representing the other side. In particular, this witness, Archbishop Gröber, could also express an opinion in regard to the later period, the violations of the Concordat. He can judge the entire situation from the point of the Church better than can the private secretary Tschirschky. He can also give an essentially more reliable picture of Von Papen's personality, which in this matter is very closely connected with his political activity. I have been very modest in my requests; but I should like to ask urgently, in this case, that an interrogatory or an affidavit by Archbishop Gröber be granted, for it is indeed clear that the accusation that a prominent German Catholic uses his position for evil purposes of deception is a very serious one, and the defendant also is very greatly interested in having this question clarified, within the framework of the Indictment and also beyond that.

Witness Number 13—an affidavit of Herr Von Beaulieu, who shall testify that the defendant, in his position as president of a very large and prominent German organization, intervened until the very end for the non-Aryan members, as this term was used at that time. Everything which is of importance in judging the Papen case lies, for the most part, in the sphere of the subjective. We will see very few actual actions in the Papen case. The accusations are, for the most part, based on the fact that he was present. It is, therefore, relatively difficult to bring proof and therefore the counterevidence must to a large extent be subjective in nature. To judge a person's character in its entirety, it is not unimportant to know what, for instance, his attitude was in 1938 toward the question of the treatment of Jews, for, if Papen here definitely deviated from a general line followed by Hitler and the Nazis, one will certainly be able to draw a conclusion as to whether he was really the faithful follower of Hitler which the Indictment tries to picture him.

Witness Number 14—I received the statement today. I have not yet had time to look through it. I shall submit either the statement or an affidavit which I shall try to get.

Number 15—a questioning of His Majesty King Gustav of Sweden, to be conducted in every way possible. This is a very important question. It touches a major point of the Defense, namely, in how far it was possible for a person not entangled in the ideas of Nazism to collaborate to a certain extent. To what extent could he hope, by his personal activity, to change things or at least to modify them? If, on the basis of the evidence submitted, we prove that Von Papen not only exhausted his means to serve this end within Germany, but also, beyond this, used his foreign political connections for this purpose, then this should, I believe, round out the picture of the character of the defendant in an important way. This strong activity in the interest of peace is such that, in my opinion, simply on the basis of such activities, the absolute falsehood and untenability of that charge of the Indictment that the defendant at any time could have approved of the aims of an aggressive policy within the framework of a conspiracy becomes apparent.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents, Numbers 1 to 8, the Prosecution asks Dr. Kubuschok to submit the extracts, and then we can consider the relevancy at that time. I think that Dr. Kubuschok has Number 9.

DR. KUBUSCHOK: I have in my possession only the photostat which I received from the Prosecution.

SIR DAVID MAXWELL-FYFE: I am sorry. I should have said he had a photostatic copy, but the Prosecution have certified the photostat. The original is not obtainable at present. If it comes into our possession we shall let Dr. Kubuschok see it.

The third point is that Dr. Kubuschok says that he may have to make a supplementary application after Herr Von Papen, Jr. returns. That is, of course, a matter for him and the Tribunal. The Prosecution make no objection.

THE PRESIDENT: With reference to 1 to 8, has Dr. Kubuschok got the books?

DR. KUBUSCHOK: Yes.

THE PRESIDENT: Very well. Then he will be prepared to specify what parts of them. . .

DR. KUBUSCHOK: Yes, Sir; yes, indeed. I should merely like to add one point to the list. Yesterday I received from the Prosecution a further report to Hitler by Von Papen at the time of his activity in Vienna—Number 9, also a report to Hitler. I have also received it in the form of a photostat. I shall also submit this report for purposes of evidence.

THE PRESIDENT: I call on counsel for the Defendant Seyss-Inquart.

SIR DAVID MAXWELL-FYFE: May we state our position?

May it please the Tribunal, with regard to this defendant, the position as to the first four witnesses is that they deal with the Austrian part of the case. On the 2d of December the Tribunal allowed this defendant a choice of four out of nine. He has chosen Glaise-Horstenau, who was a minister in the Austrian Government; Guido Schmidt, who was the Foreign Minister at the time of the Schuschnigg-Hitler-Ribbentrop interview; Skubl, who was the Police President and State Secretary for Security in Vienna; and Rainer, who is a well-known Nazi and who was afterwards Gauleiter of Carinthia.

The Prosecution have no objection to these witnesses.

Then we come to the Holland period, and the Prosecution have no objection to Wimmer and Schwebel, but they do object to Bolle's being called as an oral witness. The position is that he was refused by the Tribunal on the 26th of January. After the refusal interrogatories were submitted, but these seem to be almost entirely covered by the interrogatories administered to the witness Von der Wense, who is the second under the heading of affidavits. I think out of the 20 questions suggested for Bolle, there are only two that are not covered by Von der Wense, which are Numbers 17 and 18, and two others which seem to deal with very obvious points. So that is the objection with regard to Bolle, and the Prosecution submit that he would

really be cumulative and is unnecessary. They make no objection to Fischböck, who speaks on the Jews, financial administration, art treasures, and forced labor. They make no objection to Hirschfeld, who speaks about confiscations and destruction of factories and the food situation. So, on the oral witnesses, the only objection is regarding Bolle.

With regard to the affidavits there is no objection—or rather, they should be interrogatories. They were all granted by the Tribunal on the 26th of January, and under these circumstances the Prosecution make no objection to them.

THE PRESIDENT: Yes, Dr. Steinbauer.

DR. GUSTAV STEINBAUER (Counsel for Defendant Seyss-Inquart): Mr. President, Your Honors, my client, Dr. Seyss-Inquart, had at first asked for a large number of witnesses and then, at my advice, and according to the desire of the Tribunal, reduced this number considerably.

I ask that the witness, construction supervisor Bolle, be admitted before the Tribunal because in my opinion the objection made by the Prosecution, that this is a cumulative witness, is not quite correct. Bolle was, before the occupation, Director of the Port of Hamburg, and then during all the years of the occupation he was director of the transportation department in Holland.

In particular he can testify about the railroad and shipping strike in October 1944. This chapter of the history of the occupation is extraordinarily important, because this strike resulted in a blocking of traffic which led to an embargo. The Indictment asserts, moreover, that the causes of the later famine catastrophe in Holland, as we may call it, can in part be traced back to measures which the Defendant Seyss-Inquart took in October 1944. Quite understandably, the Armed Forces wanted to use the few means of transportation which were still functioning, for their own purposes. The very examination of the witness Bolle should prove, however, that Seyss-Inquart endeavored, insofar as possible, to mitigate the effects of the measures taken by the Wehrmacht in this matter. In an interrogatory this complex of questions could not be treated exhaustively.

I ask you, Gentlemen, to realize that we are dealing here with the examination of the administration of a kingdom of 9 million within a period of 5 years. If we read through the report submitted by the Dutch Delegation we see, in regard to the financial consequences, alone, that it is alleged that the damage, which had been brought about by the administration on the one hand and by the events of war on the other hand, in short, by the occupation of Holland by Germany, reaches a figure of 25,725,000,000 Dutch guilders,

to which, considering the difference in prices between 1938 and now, we have to add a margin of 175 percent.

I wish to point out that we are dealing here with the examination of administrative, legal, financial, and economic measures over a period of 5 years. I therefore believe that the request of the defendant that this witness be admitted is quite justified.

Concerning the affidavits, I took the liberty of making two more applications which have not yet been granted. This is on the last page, a very short affidavit by Baron Lindhorst-Hormann. He was formerly Commissioner of the Province of Groningen and should in particular be examined in regard to one point, in regard to the treatment of the so-called hostages in the hostage camp, and also in regard to the fact that none of these hostages was shot.

In addition to getting this affidavit, I have also asked that some official announcements be obtained, announcements by the Higher Police and SS Leader Rauter regarding the executions in order to prove who had done these things, that is, that the point of view of the defendant is that these regrettable measures were taken by the police and not by the civil administration.

I also intend to submit two affidavits which are already in my possession. One of them is an affidavit by a German judge, Kammergerichtsrat Rudolf Fritsch. In Seyss-Inquart's administration in Holland he was in charge of appeals. He can tell us how Seyss-Inquart handled this important chapter of jurisdiction.

Another affidavit which I have in my possession comes from a Dr. Walter Stricker. It is cited as Document Number 30. Dr. Walter Stricker was a lawyer in Vienna and emigrated in 1938 to Australia. He served in the Australian Army and, without my asking, he sent me an affidavit, notarized by an Australian notary public, in which he testifies about conditions in Vienna in the critical days of October and November 1938. I ask also that this affidavit be admitted. As to the documents, as I have already told Sir David, I shall submit an exact list.

THE PRESIDENT: One moment, before you deal with that. Sir David said that with reference to the affidavits, which are mentioned on Page 2, that these ought to be called interrogatories. I do not know whether you wish to ask particularly for affidavits, which are different from interrogatories.

DR. STEINBAUER: Yes, Sir.

THE PRESIDENT: You want affidavits?

DR. STEINBAUER: Interrogatories, Sir.

THE PRESIDENT: Would there be any objection to the affidavit from the lawyer in Australia being shown to the Prosecution, so that they may see whether they wish to put cross-interrogatories to that witness? Australia is too far away from here for him to be brought here for cross-examination.

DR. STEINBAUER: Certainly.

SIR DAVID MAXWELL-FYFE: I have just been handed that affidavit from the witness Stricker and also Number 6, on the Dutch questions, from Judge Fritsch; and if the same course could be taken with regard to that from Baron Lindhorst-Hormann, I shall be ready then to consider that, too.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: With regard to the rest of the documents in the usual course, I ask that the Defense make extracts and show them to us.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: There is one point I call to the attention of the Tribunal. It may be helpful that Number 28, Document Number D-571, is already in as Exhibit Number USA-112. I do not know if the Defense really wants Number 3. I shall not deal with it now, but the Prosecution will submit that it is really unnecessary and irrelevant, but I think that is a matter that we can more conveniently discuss when it comes up.

THE PRESIDENT: Yes. Then with reference to Number 2, under the heading concerning the Dutch question, will it be satisfactory if that is in the form of an affidavit and is submitted to you, so that you can put cross-interrogatories if you want to?

SIR DAVID MAXWELL-FYFE: That would be very satisfactory.

THE PRESIDENT: Dr. Steinbauer, have you got the affidavit mentioned in Paragraph 2 of the last heading?

DR. STEINBAUER: No, Sir; I have not received it yet. But I have requested that the Tribunal question the witness.

THE PRESIDENT: Could the interrogatories be in a more convenient form?

DR. STEINBAUER: Yes, Sir.

THE PRESIDENT: Then we need not trouble you further about the documents.

DR. STEINBAUER: I have only the request that, if possible, two books, which are not in my possession, be obtained: Document Number 8, Guido Zernatto, *The Truth about Austria*, and Number 9, the book *A Pact with*

Hitler—The Austria Drama by Martin Fuchs. I was told by Austrian people that both these books contain worthwhile information on clarifying the events in 1937 and 1938. Both books were, of course, prohibited in Austria during the Nazi regime and therefore I cannot get them.

The second book is also on the list presented by the French Prosecution, and from this I have learned that the book appeared in the publishing firm of Plon in Paris. Perhaps it is possible, with the assistance of the Prosecution, to get these books in time. All other documents I have in my possession.

THE PRESIDENT: Did you say Number 2? You said 8 and 9, but did you also say Number 2?

DR. STEINBAUER: Number 2, *Three Times Austria*, by Schuschnigg.

THE PRESIDENT: I thought you mentioned the third book. You said you have not got Numbers 8 and 9 and I thought you went on to mention a third one.

DR. STEINBAUER: No, Sir; only these two books.

THE PRESIDENT: Very well. Then, no doubt, the Prosecution will help you to get them.

SIR DAVID MAXWELL-FYFE: We will make inquiries, My Lord, and we will communicate with them.

THE PRESIDENT: Yes. I call on counsel for the Defendant Speer.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the Defendant Speer has asked for 22 witnesses, who are all to answer in writing. There are no oral witnesses. And he asked for 41 documents. He has also asked that the Court appoint a panel of experts to interrogate a number of witnesses on what are termed "economic questions." Now, I think it would be convenient if I summarize in four sentences the points of defense that appear on Page 26 and the following pages of the application, because if the Tribunal have these in mind it will make consideration of the witnesses easier.

There are four points. Number 1 is to show the responsibility of Speer. The Defendant Speer says that he was not responsible for the mobilization, allocation, or treatment of labor. The second point is to prove that his functions were merely technical and not political. The third point, to prove his actions to stop the importing of foreign labor and the treatment of concentration camp labor in the armament factories, which were his concern. The fourth point is his efforts, at the end of the war, to stop destruction in Germany and so to benefit the Allies and Germany after the war.

Now, of the witnesses, the following are from his own ministry, Numbers 1 to 6, 8, 10, and 12. The Prosecution submit that nine is rather a large number dealing with the position of the ministry. They are cumulative on many points and we should suggest that, if counsel would pick three, that that would cover that part of the case.

Now, the following witnesses, Numbers 15 to 21, are designed to show the attitude of the defendant at the end of war. There are a number of documents on this point, and again the Prosecution submit that that number of witnesses could be cut down to two or three.

Now, dealing with the remaining witnesses, Number 7, Field Marshal Milch, has already been allowed to Defendant Göring, so that point does not arise.

And Number 9, Dr. Malzacher, although not a member of the defendant's ministry, was in charge of armaments in the southeast, and would appear to be cumulative as to the members of the ministry.

Number 11 is the liaison officer between the ministry and the OKW and also appears cumulative, unless counsel could indicate any special point that escaped the Prosecution.

Number 13 is really cumulative of Number 12, speaking on a point on which Frau Kempf can speak.

Number 14 is the defendant's doctor, to speak on a period of illness. Again, unless there is some point that the Prosecution have not appreciated, they would have thought that the defendant and his secretary could speak on a period of illness.

Finally, Number 22, Gottlob Berger, is designated to inform the Tribunal of Hitler's general views on the situation at the end of April 1945, and would appear to be irrelevant. I think the only point that is made is to show that this had some effect on the radio speech which this defendant wanted to make. These are the views of the Prosecution as to the witnesses. With regard to the panel of experts, the Prosecution respectfully say that these matters of supply labor and armaments are matters which are very generally familiar now and on which a great deal of evidence has been given, and that they are essentially matters which can be dealt with by the Tribunal which will decide other questions of fact. They are not really sufficiently specialist matters to merit the Tribunal's setting up a special panel to deal with them. These are the views of the Prosecution on the question of witnesses.

THE PRESIDENT: Yes, Dr. Flächsner.

DR. HANS FLÄCHSNER (Counsel for Defendant Speer): May I start, Mr. President, with the last point which the prosecutor has mentioned,

namely, the question of whether the case of the Defendant Speer might justify having his sphere of activity explained and interpreted to the Court by an expert. The prosecutor is of the opinion that the evidence presented so far is sufficient to inform the Tribunal about the manner of work, the course of work, and its consequences in regard to those questions, which came under the jurisdiction of the Defendant Speer.

I regret to have to say, however, that the description which the Prosecution has given of the activity of the Defendant Speer up till now is not correct, that is to say, not complete.

It is very difficult to take account of a ministry and its manner of work, which in normal times has no place in the state administration. In all states at war the ministries of armament and production are created during the war. The sphere of activities of these ministries is determined from time to time; and that also applies to the ministry which the Defendant Speer headed.

Not only the ministry of the Defendant Speer, but especially other authorities within the state administration were concerned with that question, which the Prosecution has brought to the notice of the Tribunal; and the authorities overlapped each other in regard to jurisdiction. Many times the jurisdiction of a single authority could not be determined, so that from time to time a solution would have to be found. These are all questions of importance, if the Tribunal is to judge to what extent this or that accusation of the Prosecution, especially concerning the employment of foreign workers, is well founded. In addition we have to consider that that defendant originally involved in this complex of economic questions, who could have helped very much to clear up the question of jurisdiction—the Defendant Ley, who, as head of the German Labor Front, played an important role in the question of labor employment, that is, the taking care of the laborers utilized—that this Defendant Ley is no longer here. The question of the use of foreign labor, of which the Defendant Speer is in the main accused by the Prosecution, must be discussed further. For this reason I requested that an expert be allowed to clear up these purely technical questions of the labor employment as a help to the Tribunal.

The selection of such an expert is not easy. I proposed that one of the gentlemen who work in the economic branch in Washington might have examined the question of Speer's ministry; and might appear as an expert before this Tribunal. I was told this office does not exist any more and the persons of whom the Defendant Speer had the impression, at the occasion of an interrogation, that they really understood the situation, are no longer available. But, there is still an Allied authority here, which is concerned with, in all probability, economic questions; and perhaps it would be

possible to select a suitable person within the circle of gentlemen who are working there, who would be in a position to clear up these questions for the benefit of the Tribunal.

I turn now to the question of witnesses. First of all I have to correct a wrong impression which may have been formed by the Prosecution. If it is said that witnesses 1 to 5—no, 1 to 6, 8 and 10 and 12. . .

THE PRESIDENT: If you are leaving now the question of the panel of experts, this would be a convenient time to break off for the recess.

[*A recess was taken.*]

DR. FLÄCHSNER: Mr. President, I am now turning to the question of witnesses and should like to make a general remark before I start.

The evidence to be offered by the witnesses, as I have already requested in writing, is somewhat more extensive for this reason, that those very witnesses who would have had the most comprehensive knowledge cannot be called. Those are the former Army chiefs of armaments, General Fromm, and Schieber, who for many years was the chief of the central office in Speer's ministry. The names which I have included in my list are, in part, men who only later were called to these tasks. Witness Hupfauer, for instance, who is listed as Number 1, was active in this function only from 1 January 1945 on—that is barely 4 months—as chief of the central office, an office formerly held by the previously mentioned Schieber.

I know very well that if I mention a number of witnesses who were employed in Speer's ministry the appearance is thereby created that these witnesses might be cumulative because they are questioned in regard to the same points. In reality that is not the case. Indeed, although the witnesses concerned were active in Speer's ministry, they were not active as routine officials, that is, as professional civil servants in an office.

Speer's ministry as a war institution was organized along lines entirely different from those of a regular ministry. Main functions were delegated to industrialists, who took care of them in a suboffice. Rohland, witness Number 2, was, for instance, by profession a director of the United Steel Works; witness Number 4 was director of the Zellwell A.G.; witness Number 6, a manufacturer and owner of a textile factory; witness Number 9, the director of the Upper Silesian mining works and of Hütten A.G. In addition to these functions they had special functions in Speer's ministry. Therefore they can testify only on a small section, namely, those functions delegated to them. Therefore I cannot follow the suggestion of the Prosecution, that only two of these gentlemen be selected by me.

I do not know just how far each of these gentlemen is informed on the questions which I shall submit to him. I am not in the fortunate position of the Prosecution, who can question their witnesses in advance and find out what they know. I must rely on an interrogatory and can only surmise that they are in a position to answer the questions submitted to them. If I were to follow the suggestion of the Prosecution and select only two or three of these gentlemen, it may very well happen that I should select exactly the wrong people, those who do not know anything. Therefore I cannot say that I could dispense with any one of these witnesses who are to be here on the main question in the case against Defendant Speer, namely, the employment of foreign laborers.

In the list of witnesses I mentioned briefly the particulars about which these witnesses are to be heard. I believe that it is unnecessary for me to make further explanations in that regard; I believe my reasons are self-explanatory.

Now I am turning to the question of witness Number 7. This witness has already been granted me. I do not believe that further explanations in regard to this are necessary.

As far as Malzacher, witness Number 9, is concerned, the Prosecution asserts that this witness would be cumulative of witness Number 1. But that is not so. The vital question which is to be put to this witness is the question as to how the distribution of manpower to the various industries was made by the labor office. The second question is, whether and to what extent the offices of Speer's ministry and the industries had the opportunity of influencing the distribution of available manpower. This witness is of decisive importance in regard to this question. I have further questions to put to this witness and I should include in the interrogatory these questions which refer in particular to destruction, *et cetera*.

I wanted my list to be as concise as possible and therefore mentioned only the main points. I therefore request that this witness be admitted, since I shall make use of the interrogatory only insofar as the witnesses can state therein something which is really relevant. If an interrogatory comes back to me which does not contain relevant material, I shall, of course, refrain from abusing the time and the patience of the Tribunal by not presenting that interrogatory.

The Prosecution is of the opinion that witnesses 12 and 13 are cumulative. That is not correct. Perhaps I expressed myself too concisely in regard to the facts on which these witnesses are to testify.

The Prosecution have, only incidentally to be sure, produced a document, 3568-PS, which contained an interrogatory which gave information regarding Speer's membership in the SS. This document did not, according to the Defendant Speer, come from him, and therefore I name his secretary as a witness to this fact; that is, she should receive an interrogatory.

Witness 13 is to testify on an entirely different matter. The Reichsführer SS Himmler had the intention of making Speer an SS man and of taking him into his personal staff. Witness Wolff had received from Himmler the official statement, which he was to hand to Speer. And Wolff is to testify that this statement was never forwarded to Speer, for which reason there is no question of Speer's membership in the SS.

Even if, in respect to the charge in the Indictment, this is a very minor point, it must nevertheless be considered, since Document 3568-PS has been submitted by the Prosecution and used as evidence for their case.

I agree with the Prosecution that questioning of witness Number 22 can be dispensed with and I can do so.

As far as the questioning of the other witnesses is concerned, I ask to be allowed to use interrogatories.

THE PRESIDENT: May I ask you what you have to say about 14? Surely the secretary can speak as to the fact that the defendant was ill in the spring of 1944?

DR. FLÄCHSNER: Yes, Mr. President; I did not include this question in the interrogatory but I can add it, and we can dispense with witness 14.

THE PRESIDENT: Would it, do you think, Sir David, expedite matters or help the defendant's counsel if he were to be allowed to issue all these interrogatories and then were to consider them with you and see what was then cumulative?

SIR DAVID MAXWELL-FYFE: Yes, I should be quite prepared to do that. They are all witnesses who are giving their evidence in writing so that I shall be quite prepared to. . .

THE PRESIDENT: Well, the Tribunal will consider that aspect of the matter.

SIR DAVID MAXWELL-FYFE: If the Tribunal saw fit I should be very happy to co-operate.

THE PRESIDENT: Then you can now deal with the documents, Dr. Flächsner, or Sir David will.

SIR DAVID MAXWELL-FYFE: My Lord, the documents 1 to 8 deal with the Defendant Speer's being against the importation into Germany of foreign labor and they seem relevant, apart from Number 1, which seems rather a *non sequitur*, for the amount used in the armament industry does not seem to have any connection, as far as we can see, with the Prisoner-of-War Convention, 1929. And Number 6, as to the calling up of women in Germany, seems rather remote. But perhaps these matters can be more conveniently dealt with when counsel seeks to introduce the documents.

Numbers 9 to 13 show the general attitude of the Defendant Speer to the treatment of foreign workers and therefore appear relevant. Number 14 deals with the point on which I think it is desired also to have evidence from the witness Milch.

Numbers 15 to 18 are reports showing the hopelessness of the economic situation in Germany from June 1944 onwards. The Prosecution makes no objection at the moment. Of course, all these matters will have to be considered when the document is used. And Numbers 19 to 41 all deal with the efforts of the Defendant Speer to prevent destruction of bridges and railways and water transport undertakings and the like, during the last few weeks of the war. They might have a bearing on the sentence and therefore the Prosecution make no objection.

Perhaps learned counsel will set out the quotations which he wants admitted in that regard. It is not a matter on which the Prosecution have called any contrary evidence and therefore, if counsel will indicate what the matters are that he wants submitted, it may be that we shall be able to agree and shorten the presentation.

With regard to Documents 38 to 41, these are said to be in the possession of the French Delegation. They are not in the possession of the French Delegation at the moment, but they have asked for them to be sent here.

I think that covers our position as to documents.

DR. FLÄCHSNER: I should like to comment briefly on one factor. Document Number 1 is of value only if the Tribunal decides to call an expert on the general themes which I described to the Tribunal before the recess.

An expert—for practical purposes an industrial expert—can draw from the old distribution plan conclusions which the jurist is generally not in a position to draw. If the expert is considered superfluous by the Tribunal, then Document Number 1 is also superfluous—that I see.

The other documents requested by me are of importance, but not because, as the Prosecution seem to assume, I am trying to produce evidence

of the fact that we did not want any foreign laborers; this should not be expressed so pointedly.

The Defendant Speer had the task of producing armaments and needed workers for that. Nothing is farther from his intentions than, in any way, to deny or lessen his responsibility in respect to that. But what I have to consider important—and for this purpose these documents, which I am requesting, are essential—is the task of defining the extent to which the defendant is responsible.

I believe that this explains the question of documents.

THE PRESIDENT: I am not quite clear as to whether you are suggesting that the Tribunal should call the panel of experts or whether you would like to designate the persons who would form that panel.

DR. FLÄCHSNER: The selection of experts I wish to place in the hands of the Tribunal. At the moment I myself should not have the opportunity of finding a suitable person. I am fully aware, though, that in the department of economic warfare there were persons who would be very suitable as experts and who have the knowledge which is necessary in the judgment of these questions.

THE PRESIDENT: Then, supposing that the Tribunal were not to accept your contention as to appointing a panel of experts, there is nobody whom you wish to add to your list of interrogatories?

DR. FLÄCHSNER: I believe not, Mr. President. I have only one more request. This expert should voice an opinion as to whether the figures given by Mr. Deuss in his affidavit—Document Number 2520-PS—would stand up under close examination. In this affidavit Mr. Deuss stated statistically how many of all the workers employed in Germany were foreign workers in the armament industry, *et cetera*.

Important technical objections can be raised to the method of figuring used by Mr. Deuss. If the Tribunal is not to grant the use of an expert in this matter, I wish to ask for permission to submit certain questions to Mr. Deuss, in the form of an interrogatory, naturally, in order to give him the opportunity of checking his figures.

The affidavit as given by Mr. Deuss and the statements contained therein were considered relevant by the Prosecution at the time; I assume that the objections made to Mr. Deuss' figures will also be considered relevant. I should then have to ask permission to call Mr. Deuss' attention, by means of an interrogatory, to these points which in my opinion are technically incorrect.

THE PRESIDENT: Thank you.

COL. POKROVSKY: Please forgive me. I have not had the time to exchange opinions on the subject with my friend, Sir David, and my other colleagues. Therefore, at the present time, I am merely expressing the point of view of the Soviet Delegation on the subject of experts.

I do not consider that the appointment of a board of experts would be a method of solving the problem which could be recognized as correct. We would object to the introduction of experts for the clarification of the circumstances interesting the Defendant Speer and his counsel, as set forth in the document submitted by them. We do not consider it right that a question like the procedure governing the request for manpower for Speer's ministry, and the ratification of this request by Sauckel, as well as the allocation of workers by the competent local labor offices should call for the findings of a board of experts. We do not consider it right that questions of technical productions, as emanating from Speer's ministry, should call for expert opinion.

I could say as much with regard to all the subsequent points. We are inclined to defend the point of view that all these problems can be adequately elucidated by the high Tribunal, and this without the intervention of experts. Therefore the Soviet Prosecution objects to the granting of this claim and requests the Tribunal to reject the application for a board of experts.

THE PRESIDENT: I call upon counsel for the Defendant Von Neurath.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the witnesses of the Defendant Von Neurath, the Prosecution makes no objection to Number 1, Dr. Koepke, who was the director of the political division in the Foreign Office.

Then, Number 2, Dr. Gauss, is the witness who has already been granted for the Defendant Ribbentrop.

With regard to the third, Dr. Dieckhoff, the Tribunal granted this witness on the 19th of December, but the Prosecution, having considered the basis of the present application, respectfully suggests that it might be covered by interrogatories.

DR. OTTO FREIHERR VON LÜDINGHAUSEN (Counsel for Defendant Von Neurath): Mr. President, I agree, and I have already worked out an interrogatory which will be submitted to the General Secretary today; but I wish to reserve the right of asking under certain circumstances that, when the interrogatory is returned to me, the witness nevertheless be heard in person before the Tribunal. In principle I agree, however, to his being heard by means of an interrogatory.

SIR DAVID MAXWELL-FYFE: Much obliged. And the same view is taken by the Prosecution of Number 4, the witness Prüfer; again it seemed to be largely a historical matter and they suggested an interrogatory. There is no objection to the evidence of the witness being brought before the Court.

DR. VON LÜDINGHAUSEN: This interrogatory has already been submitted by me to the General Secretary several weeks ago. I assume that it will be returned to me, answered, within a reasonable period of time.

SIR DAVID MAXWELL-FYFE: Then, Number 5 is Count Schwerin von Krosigk, who was Finance Minister for a long period of years in the Government of the Reich. If the Tribunal would be good enough to look at the application which Dr. Von Lüdinghausen has put in: He says this witness is most accurately informed about the personality of the defendant, his political viewpoints as well as the basic thoughts and aims of the policy of peace carried on by the defendant, and his avoidance of all use of force as well as his endeavors for the maintenance of peace, even after being Foreign Minister, and about his opinion of National Socialism and about the happenings in the Cabinet session of 30 January 1937.

The Prosecution felt that these matters were really emphasizing points that the defendant would speak on, and that it was difficult to see that Count Schwerin von Krosigk was being asked to speak on any particular point that was an issue. Therefore, again, they would suggest that an interrogatory would be sufficient for the purpose of the defense.

DR. VON LÜDINGHAUSEN: I do not believe that an interrogatory will serve the purpose that I wish to accomplish, for several sectors of the activity of the Defendant Von Neurath are dealt with, in regard to which the witness is to give us information.

For instance, the Indictment asserts that Defendant Von Neurath acted as a sort of Fifth Column in the ranks of the conservative, that is, the German National Party. In regard to the fact that this is not true, the witness named by me, Count Schwerin von Krosigk, can give extensive information; and I attach importance to having this take place before the Tribunal in such a way that the Tribunal may have an idea also of the atmosphere in the ranks of the parties of the Right at the time these things took place.

A further subject for his hearing is the question of the outstanding manner in which the Defendant Von Neurath intervened, although he was no longer Foreign Minister at the time, in order to bring about the conference at Munich in September 1938, and the measure in which he had an effect on the outcome of this conference which, at that time, was generally considered a happy one.

I should consider the summoning before the Tribunal of this witness, who is present in Nuremberg, and who will therefore not have to be brought from another city, important.

SIR DAVID MAXWELL-FYFE: I do not desire to say anything more on that point.

Then, Field Marshal Von Blomberg is, we understand, ill, and there will be an interrogatory.

Number 7, Dr. Guido Schmidt, is the same witness as was dealt with this morning in the case of Seyss-Inquart. He is an Austrian ex-Foreign Minister. I made no objection in the case of Seyss-Inquart and I make no objection now, of course.

Lord Halifax has been the subject of interrogatories.

DR. VON LÜDINGHAUSEN: The interrogatory has already been sent to Lord Halifax, as I have been told by the General Secretary.

SIR DAVID MAXWELL-FYFE: Dr. Mastny, who was the Czechoslovakian Ambassador in Berlin, came into the case in that the Prosecution put in a letter from Jan Masaryk describing a visit of Dr. Mastny to the Defendant Von Neurath. Of course, if there is any issue as to that report—its not being true—then there would be some reason for calling him as a witness; but if it is merely a question of clarifying it, I should believe an interrogatory would be sufficient.

DR. VON LÜDINGHAUSEN: I agree to an interrogatory in this case.

SIR DAVID MAXWELL-FYFE: Then with regard to the next witness, Dr. Stroelin—if the Tribunal would consider that along with Number 12, Dr. Wurm—I understand that the Tribunal granted Number 12 on the 19th of December as an alternative to Stroelin, giving the choice between the witness Stroelin and the witness Wurm. Dr. Stroelin is Oberbürgermeister of Stuttgart. I do not know if Dr. Seidl can tell the Tribunal if it is the same Dr. Stroelin he desires in the case of Hess.

DR. VON LÜDINGHAUSEN: Yes.

SIR DAVID MAXWELL-FYFE: Dr. Von Lüdinghausen tells me that he is, so the Tribunal might note that point—that that witness will also be asked for by Dr. Seidl in the case of Hess—and therefore I should suggest that we might leave that undecided for the moment. If the Tribunal grant it in the case of Hess, of course, Dr. Von Lüdinghausen will automatically have the advantage of this witness; and if he is not granted—and I do not know whether Dr. Von Lüdinghausen feels strongly about his personal presence—I am not the Court—I do not feel very strongly on the point myself. Do you want to be heard?

DR. VON LÜDINGHAUSEN: I quite agree that I should make this decision at that time when the question is settled as to whether the witness is granted to another defendant or not. I should like to make the following remark. . .

THE PRESIDENT: One moment. Which witness?

SIR DAVID MAXWELL-FYFE: Number 10, Dr. Stroelin.

THE PRESIDENT: If Dr. Stroelin were granted would you require Dr. Wurm at all, Number 12?

DR. VON LÜDINGHAUSEN: Mr. President, I do not insist on Dr. Wurm's being heard in person at Nuremberg. Bishop Wurm has already told me that he would give me the information requested in the form of an affidavit. I should ask for permission to submit this affidavit to the Tribunal. I do not insist on his being heard in person.

SIR DAVID MAXWELL-FYFE: It is merely cumulative, Number 10, but if it is felt that an affidavit would help—it will be along the same lines—I shall not press an objection.

Now, Number 11. The Prosecution felt, with regard to the witness Zimmermann, that he was really speaking on the contents of the defendant's mind. If I might read the first five lines:

> "The witness is in a position to give information about the personality, the character, and the philosophy of the defendant, as well as about the fact that he entered the Cabinet only at the express request of the Reich President Von Hindenburg, and that he remained in the Cabinet after the latter's death because he was a convinced friend of peace and an opponent of any policy pointing toward force or war, and that because of this reason he handed in his resignation as Reich Foreign Minister soon after 5 November 1937; also about the reasons because of which he declared himself ready to take over the office of Reich Protector of Bohemia and Moravia."

It would appear that these are all matters which Dr. Zimmermann has heard from the defendant. I do not really think it helps the defendant's case any further. The Prosecution therefore felt that that witness was irrelevant.

DR. VON LÜDINGHAUSEN: I should like to request that he be heard here. The witness has been a very intimate friend of Defendant Von Neurath for many, many years. The defendant considered him somewhat as a father confessor and informed him of everything which oppressed him. From this information the witness has a very clear impression of events and happenings. Thus this lawyer, Dr. Zimmermann, is very closely informed

about the incidents that took place in September 1932, when Von Neurath entered the newly-formed Cabinet of Von Papen upon the express desire of the then Reich President Von Hindenburg. The witness is informed of the fact that Defendant Von Neurath did not wish to accept the call, and that it took very earnest persuasion on the part of the Reich President Von Hindenburg, concerning his patriotic and personal duty, before the defendant could be moved to assume the office of Reich Foreign Minister. This witness also knows the motives because of which the defendant after the death of the Reich President considered it his duty, in response to a wish expressed previously by the Reich President, to remain in office, and in that way to fulfill the wishes of the Reich President.

He also knows very well what a really devastating effect it had on Von Neurath when, on 5 November 1937, Hitler for the first time came to the fore with martial intent. Witness Zimmermann also knows very exactly the reasons which moved the defendant after very long deliberation to assume the office of Reich Protector. The witness also is very well informed not only about the difficulties confronting the position of Reich Protector, but also about the attitude of the defendant to the problems in the Reich Protectorate. These matters are all of decisive importance so far as a judgment of the defendant is concerned, and I do not believe that even an affidavit or minutes of interrogation which has been worked out with the greatest care can have the same weight as a personal hearing of the witness. For these reasons I request that this witness, who has already given me his assurance that he will be glad to come here from Berlin, be granted me. We do not have to find him; he is a practicing lawyer and notary in Berlin.

SIR DAVID MAXWELL-FYFE: I do not wish to add to that. That leaves one point, My Lord, the two witnesses, 13 and 14. The first one, Dr. Völkers, was the chief of the Cabinet of Defendant Von Neurath in Prague. He has not been located. The second, Von Holleben, was. . .

DR. VON LÜDINGHAUSEN: This witness is in an internment camp at Neumünster, and I indicated the exact address.

SIR DAVID MAXWELL-FYFE: Then I think the submission of the Prosecution is that one of these witnesses is suitable, and that it would be unnecessary to call the second witness if Dr. Völkers is available. That is my point.

DR. VON LÜDINGHAUSEN: I quite agree, but I ask you to consent to witness Consul Von Holleben's being heard by means of an interrogatory.

THE PRESIDENT: It is now a quarter to 1; we will adjourn until 2.

[*The Tribunal recessed until 1400 hours.*]

Afternoon Session

THE PRESIDENT: It appears probable that the Tribunal will finish the applications for witnesses and documents before the end of the sitting today, but they do not propose to go on with the case against the Defendant Göring until tomorrow. They will take that case at 10 o'clock tomorrow morning.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents applied for by the Defendant Von Neurath, Paragraph 1 requires no comment.

Paragraph 2 refers to documents which Dr. Von Lüdinghausen has in his possession. If they are treated in the usual way and extracts are made, I have nothing further to say.

Then we come to documents that are not yet in his possession. Number 1 and Number 4 are minutes of the Disarmament Conference in 1932 and in May 1933 respectively. I am afraid I do not know what the difficulty has been in obtaining those documents, and if there is any way in which the Prosecution can help, they will.

DR. VON LÜDINGHAUSEN: Concerning Document Number 1 I was able to find, in the meantime, in one of the documents which referred to the Disarmament Conference, a copy of this document which is important for me, namely, the resolution about Germany's equality of rights. If the document which I have asked for is not here in time, I am nevertheless in the position of having to submit an excerpt from this German book. However, that does not apply to Number 4, and I should like to be able to get that.

SIR DAVID MAXWELL-FYFE: Number 2 is a request for the interrogation of Karl Hermann Frank.

The ruling of the Tribunal was that only the portions of interrogations of defendants used by the Prosecution might be re-used. If any portions of this interrogation were used by the Soviet Prosecution, and I confess. . .

THE PRESIDENT: One moment, please, Sir David. As I understood you, you did not state our ruling quite accurately.

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

THE PRESIDENT: I think our ruling was that if the Prosecution put in any part of an interrogation of a defendant, then the defendants would have the opportunity of using any other part of the interrogation, treating the interrogation as one document.

SIR DAVID MAXWELL-FYFE: I am very grateful to Your Lordship. That was the rule so far as defendants are concerned, but Karl Hermann Frank is not a defendant.

THE PRESIDENT: Oh, I see.

SIR DAVID MAXWELL-FYFE: And any portion that has been used would have appeared in the ordinary way in the document book of whichever delegation had used it. The general interrogation was taken, of course, not only for the Prosecution's purpose at this Trial, but also for the purposes of the Czech Government, in the trial of Karl Hermann Frank himself. Therefore, what I suggest is that Dr. Lüdinghausen put interrogatories to Karl Hermann Frank, on whatever points he wants to raise. The Prosecution would have no objection to that.

DR. LÜDINGHAUSEN: Mr. President, may I make the following reply?

These minutes of the four interrogations of Karl Hermann Frank are mentioned and discussed in Exhibit Number USSR-60, which has been given to me and which contains the indictment made by the Czech Government.

I cannot judge to what extent these interrogations are important in reference to my client, the Defendant Von Neurath, as Reich Protector, or whether they have to do with a later period. For that reason I have asked that these protocols be made available to me. I know that Karl Hermann Frank has also been questioned about the document concerning the meeting in Prague on a policy of Germanization of the Czech country. To this document, which was presented, that is to say, which is contained in a report of General Friderici, reference is made in the respective minutes.

Now, I know that Frank once made a report to the Reich Protector in which he labeled all the opinions and proposals—which actually, however, were never put into actions—ridiculous and declared them to be impossible. Therefore, it is important for me to know just what is said in these minutes which the Czech indictment has drawn on at this point. If nothing is contained therein, then, of course, I shall dispense with these minutes, but I have to examine them myself. It is, therefore, important for me to see these minutes, at least, and then to present from them whatever is of importance for me.

THE PRESIDENT: Sir David, would you have any objection to counsel for Von Neurath seeing these interrogations?

SIR DAVID MAXWELL-FYFE: I should have to consult the Czech Government before I could agree, because, frankly, I have not gone through

the parts which we were not concerned with in this case, and I do not know on what subjects the interrogation was based.

THE PRESIDENT: But treating the matter as a matter of principle, if a certain document or a part of a document is used, ought it not to be open to the defendants to use the rest of the document?

SIR DAVID MAXWELL-FYFE: I should have thought it a matter of principle, My Lord, only if there were connected parts. I think that is the general rule that is applied, say, to interrogatories in the English courts. For example, supposing that one day Karl Hermann Frank was examined about the early days of the Protectorate, and then on another day he was examined on a specific point at the end of the Protectorate. Then I should not have thought that the two things were sufficiently closely connected.

My Lord, I am reminded that there is another point, which Mr. Barrington has just brought to my attention. These interrogatories were the basis of the Czech Government report. They are not introduced as interrogatories but—so I am told—as part of the report by the person who drew it. It is not material that we are in a position to introduce as interrogatories. They come in as a Government report from the Czech Government.

THE TRIBUNAL (Mr. Biddle): If it should develop later that it is relevant to the occasion, could the Prosecution object to that material being introduced?

SIR DAVID MAXWELL-FYFE: No. If he can get the material, but the material is the property of the Czech Government.

THE TRIBUNAL (Mr. Biddle): Then your position is really that it is not in your hands, but for the Czech Government to determine it.

SIR DAVID MAXWELL-FYFE: Certainly.

THE TRIBUNAL (Mr. Biddle): I see.

SIR DAVID MAXWELL-FYFE: The only other document is the treaty between France and the Soviet Union, in 1935. This document was authorized by the General Secretary on 29 January, and if there is any difficulty in getting a copy, I will try to do anything I can to help, subject to the reservation of objecting to its relevance when I know what use is going to be made of it.

DR. LÜDINGHAUSEN: May I add a few more words to this point?

During the very last few days I have received, from various sides, suggestions of information which seem important to my defense; but I have not yet had the opportunity of checking this information and finding out whether it is really of importance to the conduct of the Defense. May I

therefore ask, if this should be the case and if there should be one or two other witnesses or documents which I can find out about only later, that I be permitted to make an application supplementary to the list of witnesses and documents I have given today.

THE PRESIDENT: I call upon counsel for the Defendant Fritzsche.

[*Dr. Fritz approached the lectern.*]

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, there are only two witnesses applied for in this case.

The first of them is Von Schirmeister, who was an official of the late Dr. Goebbels in the Propaganda Ministry. The Prosecution have no objection to that witness.

With regard to the second witness, Dr. Otto Kriegk, the application says that he received his information and instructions from the Defendant Fritzsche and he can speak as to the directives issued to journalists. On the assumption that these were more or less official directives that he gave in the course of his duty, again, I do not think there can be any objection from the Prosecution. But I do not know what Dr. Fritz would think about interrogatories, or whether he has any strong views about calling Dr. Kriegk on that point. As I understand it, it would be more or less a synopsis of the directives given, but in view of the very modest proportions of the applications in this case, I do not want to be unreasonable if there is any special reason for calling Dr. Kriegk.

DR. HEINZ FRITZ (Counsel for Defendant Fritzsche): Your Honors, I have presented a very restricted list of evidence material and I should be grateful if the personal appearance of the second witness, Dr. Kriegk, were granted, for the following reasons: First the witness Von Schirmeister has been named because he is to give us information about the internal tasks which the Defendant Fritzsche had in the Ministry for Propaganda, especially about his relations to Dr. Goebbels. As far as the daily press conferences which the Defendant Fritzsche held are concerned, this first witness, Von Schirmeister, did not take part in them. From the subjective angle, especially, it is important to know what directives the Defendant Fritzsche gave the journalists, specifically the most important German journalists who assembled daily at his press conferences.

As a further reason for my request that the personal appearance of this witness be granted, I point out that, of the collection of documents or rather of the two document collections, 1 and 2 of my list are not yet available to me, so that there are various points which I had wanted to prove by

presenting documents or quotations therefrom which I now hope to prove by questioning these two witnesses.

SIR DAVID MAXWELL-FYFE: I do not press the point of an affidavit. I leave it to the Tribunal.

With regard to the documents, Number 1 is the broadcasts of the Defendant Fritzsche, and there is obviously no objection from the Prosecution to that.

Number 2 is the archives of the section German Express Service. And again we make no objection at this stage. We will perhaps have to consider the reports when we get them.

There is a little trouble about the third group, sworn testimony or letters which contain objective observations on the part of the writers about the acts of the Defendant Fritzsche. If these are official reports or anything of that kind, of course, there would be no objection, if they were contemporaneous; but the course which the Prosecution respectfully suggests to the Tribunal is that we wait and see these in the document book and then we can consider them and make any objection when they come up.

DR. FRITZ: I agree to this procedure. I believe I need say nothing more about Documents 1 and 2 after the statement Sir David has just made.

THE PRESIDENT: Sir David, some of the defense counsel want to put in supplementary applications. It would be convenient to deal with them now.

SIR DAVID MAXWELL-FYFE: Perhaps Your Lordship will allow me to confer with my colleagues as we deal with each one, as we go along, in case they have any further views to express.

THE PRESIDENT: Certainly. I think there are some supplementary applications by Dr. Seidl.

DR. SEIDL: Mr. President and Your Honors, on 28 February 1946, I submitted to the Tribunal a supplementary application for the Defendant Rudolf Hess. The application was necessary for the following reasons: In my first application I mentioned the witness Bohle, the former Gauleiter of the Auslands-Organisation of the NSDAP, for a number of subjects, among others in reference to the German Foreign Institute and the activity of the League for Germans Abroad. When I made that application to question the witness Bohle I had not yet had any opportunity to speak to the witness. After approval by the Tribunal, however, I did so, and I found out that the witness Bohle, although he can make very concrete statements about the Auslands-Organisation, does not have any immediate first-hand information

about the activity of the German Foreign Institute and the activity of the League for Germans Abroad.

I therefore ask that the following be approved as further witnesses: First, Dr. Karl Stroelin, former Oberbürgermeister of Stuttgart and finally President of the German Foreign Institute. The witness is here in Nuremberg as a prisoner awaiting trial, and it is the same witness who has also been requested by the Defendant Von Neurath in his case.

SIR DAVID MAXWELL-FYFE: Perhaps it would be convenient, My Lord, if Dr. Seidl would indicate what the final position of these witnesses is. As I understand it, he no longer wants Herr Bohle. Is that right? I am not clear whether this witness is in addition to or in substitution for Herr Bohle.

DR. SEIDL: With regard to the witness Dr. Stroelin, this is an additional witness. The witness Bohle will still be needed as a witness, but only concerning the matter of the activity of the Auslands-Organisation. The witness Stroelin, since the witness Bohle has not first-hand information about the Foreign Institute, should speak about this latter point.

SIR DAVID MAXWELL-FYFE: If I understand it, that would mean that Dr. Seidl is now asking for Herr Bohle, Herr Stroelin, Dr. Haushofer, and an affidavit, I think it is, from Alfred Hess.

I am not sure that this is not rather an accumulation of witnesses on what is, perhaps, a narrower point than Dr. Seidl realizes, from the point of view of the Prosecution. The Prosecution said that the Auslands-Organisation was used for promoting Fifth Column activities, but it was only put in this way: That by using the Auslands-Organisation there was, first of all, complete record and organization of Party members abroad; secondly, the intelligence service of that organization, through the organization, reported on all German officials of every section of the Government who came abroad and kept check on them in their work, in addition to German subjects; and because of this intelligence service, these Germans were ready for use and in fact were used when there was a question of invasion of the country.

It was not suggested that there were direct orders, for example, to blow up bridges or commit acts of sabotage, given directly to the organization, which is a matter of inference from the functioning of the organization that I have described.

I say that only because it should be helpful to Dr. Seidl to know the case he has to meet. The Prosecution has never proved direct orders for sabotage in this regard.

DR. SEIDL: The trial brief on his case has accused Rudolf Hess of the fact that, under his leadership, the Auslands-Organisation of the NSDAP, as

well as the Foreign Institute and the League for Germans Abroad had developed an activity which was almost equivalent to that of a Fifth Column. It is correct that in the original indictment of the Defendant Hess, personally, there were no details given by means of which the indictment meant to show this activity and above all Hess' guilt in regard to the activities of these organizations.

As long, however, as the Auslands-Organisation and the Foreign Institute and the League for Germans Abroad are accused of any connection with the activities of a Fifth Column, the Defendant Hess has a reasonable interest in seeing explained, first, what kind of activity these organizations had and, second, which orders or directives he had given to these organizations.

The witness Bohle is in a position to make very concrete statements regarding the Auslands-Organisation. The same is necessary for the German Foreign Institute about which Dr. Stroelin, who is here in Nuremberg, can make authentic statements, and for the League for Germans Abroad, about which the witness Dr. Haushofer can speak.

I agree, however, with regard to the physical condition of the witness, Dr. Haushofer, that only an interrogatory be used for this witness.

SIR DAVID MAXWELL-FYFE: I have no objection to interrogation as far as Dr. Haushofer is concerned.

THE PRESIDENT: There is one more you want?

DR. SEIDL: Yes, Sir, a third one. Before I come to the third witness, whom I wish to name as an additional witness, I should like to inform the Tribunal that I do not insist on a personal hearing of the witness Ingeborg Sperr, who has already been approved by the Court. Instead of that, I shall submit a short affidavit, which is already in the document book which I have already given to the General Secretary.

In the place of the witness Sperr, I request, however, that the witness Alfred Leitgen be called. Leitgen was for many years, until the flight of Rudolf Hess to England, his adjutant.

I could not apply for this witness any sooner because I have found out only now where this witness is. I believe that a personal hearing of this witness is so important that one should not dispense with it.

SIR DAVID MAXWELL-FYFE: The two points which Dr. Seidl specifies both seem to be relevant points, and in view of the fact that he is prepared to drop the calling of the secretary, the Prosecution will not take objection to that witness.

THE PRESIDENT: Are there any more applications?

SIR DAVID MAXWELL-FYFE: I wonder if Your Lordship will allow me to say one thing. Dr. Servatius has already had certain conversations with a member of my staff. I think they will prove profitable and helpful on the lines that Your Lordship suggested, and if the Tribunal will be good enough to safeguard Dr. Servatius' rights for a day or two, we hope to have something practical and useful to put before the Tribunal.

THE PRESIDENT: You mean with reference to the organizations?

SIR DAVID MAXWELL-FYFE: No, with reference to the Defendant Sauckel.

THE PRESIDENT: Oh, yes.

SIR DAVID MAXWELL-FYFE: Your Lordship will remember that you allowed the matter to stand over. We have been working along the lines that Your Lordship suggested, but I am afraid that I have not had time to go into it myself and see the final result.

THE PRESIDENT: I see.

DR. SERVATIUS: In discussing the witnesses, I proposed a restriction which is being presented to the Court in writing. Concerning the documents, I have also practically come to an agreement as to how they should be handled. There are, however, two principal applications which I should like to submit and which have not been mentioned so far. But I believe that a decision will have to be made by the Tribunal in respect to principle. The applications are Documents 80 and 81.

Document 80 is a photostat of a deportation order which had been issued in the city of Oels by the Soviet local commander, whereby the native male population had to report for deportation; and it can be seen from this order that it is deportation for the purpose of labor. I want to submit this to show that the Hague agreement concerning land warfare has been considered obsolete by the Soviet Army. I have only this one deportation order. I should therefore like to suggest that the Tribunal make use of Article 17(e) of the Charter and have a judge determine on the spot to what extent this deportation took place, and I should like thereby to have it shown that it is not only the town of Oels, but that it was done similarly on a large scale in the cities of East Prussia and Upper Silesia. The population was deported in large numbers for purposes of work and, if the information which I have received is correct, part of the population of Königsberg is today still in the Ural Mountains. I am not in a position to submit documents about all these things, because of the difficulties of mailing, and the difficulties of receiving news from the East at all. But the Tribunal should be in a position, by asking

the mayors and other officials, to find out that what I have just said is correct.

Under Document 81 I submit an affidavit concerning the city of Saaz in Czechoslovakia. There 10,000 inhabitants of the city of Saaz were put into a camp and, until Christmas 1945, they worked there without pay. I believe also that this is proof of the fact that the Hague agreement concerning land warfare is considered to be obsolete and outmoded in regard to labor employment.

Furthermore, Documents 90 and 91: These are two books with affidavits meant as a substitute for an investigation. It would be irrelevant if I were to produce one or two affidavits concerning conditions in the labor camps. One could object to that as being irrelevant because, in view of the large number of factories and camps which exist, little proof would be afforded by these affidavits. These mass conditions have somehow to be considered juridically. Therefore, the Charter has admitted government reports. I am not in a position to ask a government to help me in this matter. Therefore I have to find a substitute by collecting affidavits and grouping them in logical form in a notebook in order to submit them to the Tribunal. This is the purpose of my proposal to introduce a presentation of proof which is an innovation and is difficult for me; but thereby the same objections are justified which one might make to an investigation. An investigation has great weaknesses, especially if it is conducted in a one-sided manner without participation of those involved on the other side. In the case of my affidavits, this danger is greatly reduced because it is hard to find anybody who would fill out these affidavits unless he has very serious reasons for doing so. I therefore ask the Tribunal to decide about my application concerning these Documents 90 and 91. That is the matter I wanted to submit here; the rest I shall discuss with the Prosecution.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, I have already intimated the grounds on which the Prosecution object to Documents 80 and 81. To test their admissibility the easiest way is to assume that Dr. Servatius has proved the facts alleged. And if that is done they would not, in my opinion, come within miles of proving that Article 52 had become obsolete; and it is illustrative of the danger which I ventured to point out to the Tribunal in regard to these two arguments—that vague and hypothetical suggestion that there might be some evidence that Article 52 had become obsolete. It is suggested that the Tribunal should try the conduct of the Soviet Union with regard to labor conditions and, as I understand, send a commission to collect evidence on that point; and I do not want to repeat the arguments, but the Prosecution most strenuously object to the

suggestion and say that nothing has been indicated which provides any basis for it.

With regard to 90 and 91, I really feel that the best method would be by *solvitur ambulando*. Let us see the affidavits and get some idea of their contents and the source of knowledge disclosed and then the Prosecution can make a decision regarding them. At this stage I do not want to do anything to exclude them and they will receive the most careful attention by my colleagues and me when they are brought forward.

THE PRESIDENT: I am told that there are other supplementary applications for the Defendant Schacht and for the Defendant Keitel. I think there may be some mistake about that.

Is the Defendant Bormann's counsel here?

DR. FRIEDRICH BERGOLD (Counsel for Defendant Bormann): Yes.

THE PRESIDENT: Are you ready to deal with anything yet?

DR. BERGOLD: No.

THE PRESIDENT: I think the Tribunal made an order that your applications would stand over for some application within the next three weeks. So you are not ready yet? I am told your documents are all here. Is that so?

DR. BERGOLD: Mr. President, my documents are here, as far as I know. However, since I have to collect my own information from the books, I cannot tell the Tribunal whether these will be all my documents. I therefore have asked permission to speak to the secretary, Wunderlich, who was secretary for a long time, and also to another woman secretary. Only from these two shall we get satisfactory information. Bormann, I cannot reach. Therefore, for practical reasons, I ask permission to present everything at a later date.

THE PRESIDENT: Very well. Then the Tribunal will now—I am told that there are applications from the Defendants Keitel, Rosenberg. . .

DR. BERGOLD: Mr. President, Defense Counsel for Keitel and Rosenberg are not present at the moment. They probably did not expect that their applications would be presented today. Maybe that could be done tomorrow before the beginning of the Göring case.

THE PRESIDENT: Well, the Tribunal will now adjourn.

[*The Tribunal adjourned until 8 March 1946 at 1000 hours.*]

TRANSCRIBER NOTES

Punctuation and spelling have been maintained except where obvious printer errors have occurred such as missing periods or commas for periods. English and American spellings occur throughout the document; however, American spellings are the rule, hence, “Defense” versus “Defence”. Unlike Blue Series volumes I and II, this volume includes French, German, Polish and Russian names and terms with diacriticals: hence Führer, Göring, Kraków, and Ljoteč etc. throughout.

Although some sentences may appear to have incorrect spellings or verb tenses, the original text has been maintained as it represents what the tribunal read into the record and reflects the actual translations between the German, English, French, and, most specifically with this volume, Russian documents presented in the trial.

An attempt has been made to produce this eBook in a format as close as possible to the original document presentation and layout.

[The end of *Trial of the Major War Criminals Before the International Military Tribunal: Nuremberg 14 November 1945-1 October 1946 (Vol. 8)* by Various]