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PROCEEDINGS

of a

MILITARY COURT FOR THE
TRIAL OF WAR CRIMINALS

held at

LUNEBURG, GERMANY

on

SATURDAY 10th NOVEMBER 1945

upon the trial of

JOSEF KRAMER

and

44 Others.

F O R T Y - E I G H T H D A Y.

Transcript of the Official
Shorthand Notes.

(At 0930 hours the Court reassembles pursuant to adjournment, the same President, Members, and Judge Advocate being present)

The accused are again brought before the court.

CAPT. CORBALLY: I will now deal with the case of Schreirer. I submit that this case must present considerable difficulty to the court. It raises in most direct and challenging form the credibility of a witness who has appeared before this court, and the trustworthiness of two affidavits. The prosecution have produced very little evidence to support the two charges against Schreirer, and I submit that it is therefore imperative that everything which has been produced on one side and the other should be scrutinised with the greatest of care.

The affidavits to which I refer are those of Diamant on page 19, and of Kurowicki on pages 83 and 85 of the bundle. These two identify him as being concerned in the ill treatment of male internees at Auschwitz. The affidavit of Diamant gives no date at all, but Kurowicki says that the period concerned was from about November 1942 until the middle of 1943. Kurowicki says he was living in block 22 at Auschwitz, and that Schreirer was the blockfuhrer during that period. Both Kurowicki and Diamant were transferred to Belsen in January 1945.

Diamant is a young Polish Jewess, and I would submit that her evidence is of little value. Kurowicki, on the other hand, is of far more mature years, and it was he who first of all identified Schreirer when Schreirer was working as a medical orderly in the Belsen hospital. He identified him as the SS man whom he knew at Auschwitz two years before. He knows nothing about his having been in Belsen although, of course, Kurowicki was also interned at Belsen for four months.

He also confirms as Schreirer has himself told the court that he, Schreirer, was working as a medical orderly in the Belsen D.P. hospital for some weeks in May of this year. Of course, it is impossible to cross-examine an affidavit, but I would like to draw the court's attention to one sentence which is on page 85. In this sentence Kurowicki says that Schreirer was slightly knock-kneed, but that he does not require this to identify him. "I know his face very well". I submit that that can only be taken to mean that two years before the blockfuhrer, whom the deponent knew in block 22 at Auschwitz, was slightly knock-kneed. Kurowicki actually saw Schreirer at Belsen, of course, but that sentence would be meaningless if he were just saying "I saw him yesterday and I noticed he was slightly knock-kneed". He is clearly referring to the man at Auschwitz in 1942 and 1943.

It is to be noted that he also says that he does not require that to identify him, but all the same he does say on oath that the blockfuhrer whom he knew at Auschwitz was slightly knock-kneed. I submit that no reasonable man could say that Schreirer was slightly knock-kneed. I submit that Kurowicki knew the accused at Auschwitz and he must have made a mistake, because that description simply does not fit the accused in the dock.

The other evidence against Schreirer is that of Kopper. She says that she knew him about the winter of 1942/43 at Auschwitz when he was in charge of the bunker. If she is to be believed, Kopper is a woman who knew almost everything that went on in the bunker at Auschwitz. According to her evidence she spent more than two years in the bunker, and she should know everything that went on. She certainly should know who was in charge of it, and she says that Schreirer was in charge of it.

She also said that he was an Oberscharfuhrer, which is quite likely if he was in charge of the bunker. She only knew him, she said, for a period of ten days or so, but during that time she appears to have known him very well indeed. It cannot be that she was mistaken about his rank. Kopper is far too intelligent for that. She has told the court that she knew her rights as a prisoner. She knew when it was possible to make a complaint. She obviously knew to whom she should make a complaint, and she must also have known of whom it was possible to make a complaint. She obviously must have known, therefore, that an Oberscharfuhrer was a fairly senior man, and that an ordinary Sturman in the SS was very much junior to an Oberscharfuhrer. It would be quite impossible to carry on Kopper's trade as an informer and a person habitually making complaints unless she knew the relative ranks in the SS. I say, therefore, if Kopper's evidence is to be believed, Schreirer must be taken to have been an Oberscharfuhrer in the winter of 1942/43; further, an Oberscharfuhrer in the political department.

If, however, that is true, the story of Kurowicki and Diamant that he was a blockfuhrer during that time in charge of block 22 becomes far less probable. There is no evidence and it is, on the face of it, most unlikely that the duties of a blockfuhrer were performed by men of the rank of Oberscharfuhrer. They were obviously just ordinary Sturman or Rottenfuhrer. Also the political department, I think it is now clear, was a sort of separate entity. It came under Auschwitz 1 and certainly members of the political department did not have jobs in the ordinary administration of the Berkenau camp.

It is true that Kopper does not claim to have known him over the whole of those nine months, but it is, I submit, on the face of it, absolutely improbable that the same man whom she knew as an Oberscharfuhrer is the man about whom Kurowicki speaks.

The court will have noticed in the deposition of Kurowicki that there is a sentence about Rapportfuhrer Stibitz giving an order to Schreirer. Is that likely if Schreirer was an Oberscharfuhrer of the political department? In fact, is it really probable that Schreirer was an Oberscharfuhrer in the political department at all? I asked Kopper how old she thought he was and she said between 20 and 22. In fact he was not even 20 at that time. He was born, as has been proved, in June 1923 and he could only have been 19 that winter. He could not have been in the service for more than a year, because, as has also been proved to the court, he came from Rumania in the late summer of the previous year. It has taken Stofel, who was a regular SS man, ten years to become a Hauptscharfuhrer. Is it conceivable that a boy of 19 with one year's service could have attained the rank of Oberscharfuhrer?

Is Kopper's evidence about Schreirer worthy of any reliance at all? I agree she was certainly in a position to know, but is she telling the truth? I have to admit that I could make no impression on her, but she is obviously accustomed to being interrogated. One simply cannot follow her trade without being experienced in being interrogated many times, and she has obviously learned the ropes.

I submit that the one thing which does stand out is the manner in which she identified him in court. You will remember that in answer to a question of mine which was: "Are you sure and can you say on oath that the accused 26 is the same man as Hansi whom you knew at Auschwitz?" she looked up and said: "At that time I did not swear to it. I said I am unable to swear because I am not sure". Then, as I was virtually bound to do, I invited her to say if she could identify him in court. You will remember the long pause and the way she turned round to the dock and said, after all, "Yes". I submit that that was far from genuine. It was prompted by a fit of anger because she thought the other members in the dock were laughing at her. She thought she would

show them that she was in a position of power, sitting in the witness stand giving evidence before this court. She would show them.

Then there was the extraordinary prevarication about the photograph. I would invite the court to look at the photograph. In my submission it is an absolute perfect likeness of the accused Schreirer. It is the best photograph in the whole bundle, and I submit that nobody who had seen the man six weeks beforehand would have the slightest doubt from that photograph that it is the man.

Then what really caps her story is that she admits that a few days before the camp was liberated, Schreirer showed her some passports and each one of them at a photograph in it. She must have been familiar with how Schreirer looked in the photograph.

There is in connection with this matter a small discrepancy in Kopper's evidence about the date. She told me that it was about three days before the British arrived. She volunteered that information. I did not press her for it. In cross-examination, however, when she was invited by the learned prosecutor to say that it was not about three days but really about three weeks, she agreed quite readily with him. She has herself said that she, at all events, found no difficulty in keeping track of dates. She had no difficulty whatever. Now there is a great deal of difference between three days - just before the British arrived - and three weeks before the British arrived. I believe I pointed out to the court yesterday that it is obvious that the liberation of the camp must have been the greatest landmark in the experience of these concentration camp internees. I submit, therefore, that the difference between three days and three weeks is really quite immense. I submit there is no excuse whatever for this change from three days to three weeks. The explanation is that she was willing to agree with the prosecutor because she realised that that made her story sound more probable. In fact, she really did not know or care when it happened, and her only interest was to make her denunciation of Schreirer more convincing before the court.

There is another thing which she said in cross-examination which I should like to comment upon shortly. It is the question of languages. To the best of my recollection she told the learned prosecutor that before her statement was taken down and sworn she was with Schreirer for about an hour, together with Major Champion, Captain Fox, and a subaltern who could speak German, and a Polish interpreter. She told the learned prosecutor that Schreirer conversed quite well in Polish and in German. They started off in German and then switched to Polish. Well, the first point I have to make on that is that Major Champion was conducting this investigation, and it seems to me rather doubtful that he would have permitted his investigation to be conducted first in one language and then in another.

The second point is that in her affidavit she states that it was the American boxer Jacob who told her that Schreirer could speak all these languages. "The American boxer Jacob told me that Schreirer was an intelligent man who spoke Rumanian, Polish, Russian, German and English". In the court she said she knew he could speak Polish and Russian and the American boxer Jacob informed her that he could speak English and French. Is not there a difference? The court will appreciate immediately the difference between what she says the American boxer told her and what she can say of her own knowledge. Furthermore, on this occasion when she says she spoke in Polish it took place in the presence of Major Champion, and later on she swore her affidavit. Well, Major Champion had told us in the court that he was at pains to find out what the deponent could swear to of his own knowledge and what he had merely heard from hearsay. He was at great pains to find that out. If this really happened would not the sentence have run this way: "I know he can speak Italian and Russian, and the American boxer Jacob informed me that he can speak these other languages".

Again I submit that she is telling lies. Furthermore, I submit that the explanation for that is that she heard Schreirer's story in the witness box: "I cannot speak Polish. I know a few sentences but I cannot speak Polish", and in order to prove him wrong she is quite prepared to say that she has spoken to him in Polish and that he answered her and they carried on a conversation. Incidentally, when she was asked about that by the learned prosecutor she said not only he but his mother could speak Polish too. The reason for that, I submit, was that she was trying to back herself up and give herself support. Of course we all know that his mother could. It is quite obvious that she could.

It is not really part of my case to say that Kopper has produced a badly constructed story, but merely that it does not fit Schreirer's. Some of it is perfectly credible. The part which deals with the American boxer Jacob is not exactly probable, but even that could happen. Again, the story of a former member of the political department equipping himself with false papers before he fled from Belsen is probably true. It happened in many cases. It is also probable that before the British arrived the political department were busy in destroying papers. We found no papers when we arrived there, and very likely it was the political department who disposed of them. I submit, however, that such a person engaged in destroying papers would be most unlikely to disclose the secrets to an internee with the dangerous reputation of Kopper.

Then she says he buried those papers - "It was not quite by the crematorium, but opposite the crematorium and inside the wire of the women's compound". Why bury papers there if the purpose is to hide them? Would not that be equivalent to making a present of these secret papers to the 28,000 internees in the women's compound?

I submit that it is really significant that Kopper is the only person who identifies Schreirer at Belsen. She says that she saw him four times in all. If she had seen him, scores and even hundreds of others must also have seen him. Nobody could walk into that overcrowded Belsen camp without being seen by literally hundreds and maybe thousands of people. Among those hundreds or possibly thousands, there must have been some who had spent time in block 22 in Auschwitz where Kuronicki was or in the political department in Auschwitz or in the bunker. There must have been some, yet there is nobody but Kopper to say that Schreirer was at Belsen.

Schreirer has told you after he was arrested he was interviewed day after day by scores of internees, and, in all probability, his photograph was shown to many hundreds more, yet nobody can say that he was at any time part of the staff of Belsen concentration camp, or that they had seen him at Belsen at all.

We have seen witnesses in this court identifying people of whom they have said nothing in their affidavits. They have come into court, picked such and such a person out, and said something to the effect that they knew he or she was there but they did not know very much about him. Again, nobody has come in to court and picked out Schreirer as having been at Belsen. Kramer also expressly denies having had Schreirer as part of his Belsen staff and Kramer, at least, should know.

Schreirer's case is that he was never a member of the SS at all. He said he left Rumania with his mother in 1941 and was called up in the Luftwaffe. He has told the court to the best of his recollection where he has been and what he has been doing since that time, and he has told them in some detail how he came to be in Belsen in May of 1945. I would submit that it is a very normal and ordinary story. There is nothing ingenious about it at all. He has given the name of his battalion, and a general account of their establishment and what they did. He might

have been able to tell the court more about that had he been asked, but nobody questioned him on it. The court have heard him telling his story. They have seen him cross-examined with the greatest skill by my learned friend the prosecutor. He has answered the questions that were put to him, and I submit on balance his story must be taken to be substantially true. At all events, I would submit that it is quite impossible to say that every word which he has uttered from that witness box is an invented lie. That is, of course, is what is involved. If Kopper is to be believed, and Kurowicki was not mistaken, every word that Schreier has told you in the witness box is a lie.

There are a few points on which his evidence can be tested. The date when he left Rumania and entered Germany is confirmed first of all by the evidence of his mother and, secondly, by the naturalisation certificate. This also confirms the approximate date of his calling up. He could not obviously have been called up until he entered Germany.

He has sworn that his service has been in the Luftwaffe. Frau Schreier also says he was in the Luftwaffe. Surely she must know? As a mother she would be bound to know the particular service in which her son was serving. Also he has been on leave twice, and although the second time he was on leave his mother was very ill and she is, as she told us, very shortsighted, surely she still must know. She was asked by the learned prosecutor whether she would not be very sorry to have to say that her son was in the SS, and her answer, I submit, was really most illuminating. The SS were considered the elite of Germany, and it would have been an honour, but she was anxious about him being in the Luftwaffe because she always considered that something cruel. Is not that remark typical of an elderly woman who only knew of the shop-window side of the SS, and whose predominate experience of this war has been the saturation bombing to which every person who lived in Germany or Austria has had to stand up? Naturally she would think the Luftwaffe as being the equivalent in Germany to the bombers that were bombing their homes something cruel. Could she have made that remark if she had known that her son was in the concentration camp service? She must, if she had known that, have realised that the SS was something in addition to the shop-window side of it, and that they were the people who looked after the concentration camps. I submit that the fact that that remark was made, proves that she knew nothing whatever of the concentration camp establishments in Germany, as an elderly woman probably would not know, but that she must have known if her son was really in the concentration camp service.

Again, in answer to a question put by the Learned prosecutor, Frau Schreier said she remembered that her son served for a time in Rumania. It was more natural for her to remember Rumania, the country in which she had lived for many years. As a matter of fact, she gave that as the reason. She also remembered the rank he attained - a lance-corporal. I submit that on this point her evidence is really most important. An elderly woman could hardly be familiar with the different ranks and different services. We have only got to think of the number of women in England who do not know the difference between a corporal and a bombardier. How would this old woman have known which was which? It must have been because he had told her or a friend had told her when he was on leave that her son was then a lance-corporal. I would submit that Frau Schreier was speaking the truth to the best of her recollection. I submit that she answered every question fairly and honestly, and particularly when she said that her son was a lance-corporal and that he served in Rumania. Of course, you will appreciate, that if this story is to be believed, the Oberscharfuhrer rank of which Kopper has told us, just vanishes into thin air.

Schreirer's story can also be tested by the documents discovered in his wallet. Firstly, there was the medical card which describes him in his own name and gives the date and place of his birth. Those facts have also been proved by his mother and are quite unquestioned. It then describes him as a medical obergefreiter, the equivalent to a corporal. The certificate is an official German Army Red Cross certificate, and Schreirer is described in it as being a medical orderly. It is true that the certificate is signed by an officer holding SS rank, and that that officer is described as being the chief doctor in the division. It is quite possible that the head of the medical services was an SS doctor. I will go further than that, I will say it is quite possible that this was an SS division into which Schreirer's battalion was drafted in the last fortnight of the war. The only resistance our troops did encounter East of the Elbe was from SS formations. It may well have been that Schreirer's battalion in the process of being converted into infantry was then ready and was pushed into the SS Division.

What is important is that Schreirer is described as a medical corporal not of SS rank. Had there been any reason for saying he was an SS man he would surely, if it were an SS formation, have been described in SS rank and terms. He would have been called Medical Unterscharfuhrer as, for instance, Barsch is.

Remember he has always had this tattoo mark, and he has also had his photograph taken in SS uniform. The other point is the date. He has sworn, and I submit that it is a common practice that these cards are only issued to troops engaged in operations, that it was his first and only experience of front line operations. Well, he was in Rumania, which must have been a thousand miles from the nearest fighting. Then he was in Norway, which was not very close. The Germans had complete mastery over Norway in 1944. He came to Germany in the beginning of 1945 and his unit was at Neu Strelitz where it was converted into infantry.

As the court well know, British and American troops did not cross the Rhine until the middle of March, and did not reach the Elbe until the end of April. This card, as you will notice, is dated 6th April.

I will pass now to the photographs which have been put to him in cross-examination. Firstly, there is the photograph of himself in SS uniform with a girl. He says that was taken on leave. I submit that the fact he was on leave at that time is the explanation of this photo. It may be said that the SS was so hated by the Wehrmacht that no Wehrmacht soldier would ever put on the uniform of an SS man. I ask the court to pay not the slightest attention to generalities of that sort. We are not Germans and we have no insight whatever into what goes on in the minds of the individual German private soldier or SS man. At all events, Schreirer seems to have been quite friendly with this SS man Karl Jenner, and I submit that in this atmosphere of being on leave and in company with their girl friends he might easily change his uniform. It may well be that one of the girls wanted it. I submit that could easily happen.

Secondly, the uniform certainly appears to fit him well, but that too could happen if the other soldier was substantially the same build as himself. The court must know that our own soldiers habitually borrow each other's uniforms. One man is detailed to appear on a ceremonial guard mounting the next morning, and it is more than probable he would borrow either a battle dress jacket or trows; and the officer who inspects that guard may well pick out as the smartest soldier on the guard mounting the man who is not wearing his own uniform at all.

With reference to the theatre ticket and so on, the explanation that it was sent to him is just as probable, in my submission, as the fact that he was on leave on February 18th of this year. If he were on leave in Linz what object would there be in denying it? It is not really likely as a member of the under-staffed and grossly expanding concentration camp at Belsen that he would be sent on leave at the end of February this year. On the other hand, it is more than possible that during the slack period in the winter as a soldier in an ordinary formation he would have been sent on leave. In any event, if he was not there was no reason for him to deny it. He knew what was in his wallet, so why lie about it? Of course, as the court will appreciate, neither of these facts is proof that the accused was at Linz at that time. The writing on the back which, I believe, have been translated to the court, is merely an extract from a poem which does not prove that Schreirer was there on leave at all.

It is also to be noted that he did not deny spending the night with this other girl - this prostitute from Soltau. I submit that he has told the truth about that. It is most embarrassing for him, as in fact it would be most embarrassing for any young soldier, to be confronted with the photo of a prostitute with whom he spent one night, and to be asked to explain that in open court before very senior officers and a very mixed audience. Nothing could be more embarrassing. He was vague about the place, and I submit the reason was because it made no impression on him whatever. The photo is undated. He could have said, if he were making up a story, that it happened any time or place which suited him. We cannot even say for certain it was Soltau. It is true that the word "Soltau" is written on the back, but it is admittedly not in his handwriting, and he does not appear to have known whether it was Soltau or not.

All I submit about that is whatever the place was he knows very little about it indeed. Of course, the prosecution would naturally say it is peculiar because Soltau is a town close to Belsen, but the prosecution's case that Schreirer was at Belsen rests entirely on the uncorroborated evidence of Kopper. There is no corroboration whatever, and I am sure the court will take the view that among 40,000 internees at Belsen, there should be some person who could corroborate Kopper on this point. Generally, in my submission, the evidence against Schreirer is far too small. On the other hand the clues which he carried about on his person are very great indeed. No detective would have the slightest difficulty in arresting him, and the detective who arrested him would be perfectly certain that he had got the right man. When, however, he is arrested and it comes to preparing a case against him, the evidence is very slight. Such evidence as there is suggests immediately that there ought to be a lot more, but no more comes forth.

Again I suggest such evidence as there is conflicting. Also the clues gradually begin to disappear. For instance, the tattoo marking at one time appeared to cause the strongest suspicion that Schreirer was a member of the SS. Now, as a result of the medical evidence called by the court, I think I can say that that tattoo mark has nothing to do with the SS at all. It merely proves that he came from Rumania.

Of course, I am not suggesting to the court that if, for instance, a murder is committed in an isolated spot and one reliable witness comes before the court and gives a reasonable story which the court can believe, that they cannot convict; but the contrast to that is a place where numerous crimes are said to have been committed, one of the most overcrowded spots in Europe, yet there is this scarcity of evidence.

I come now to almost my last point which the story of his capture on arrival at Belsen. Here I will say with some confidence that he is certainly telling the truth, and that his story, taking into account the circumstances surrounding it, is consistent with his innocence. Firstly, as to his capture.

He described his capture and gave a description of American military police. How on earth could he know what an American military policeman looks like if he had not been captured by one and seen one? He said he was captured near Schwerin. The date which he gave in his first evidence was clearly wrong, but not very much wrong. He said it was about that time. When he was handed his movement order from the medical officer in Celle, he was able to tell the court exactly when his capture must have taken place, and it is to be noted that in his first appearance in the witness box he said it took him six days to get to Celle, and six days from the 6th May, which is the date of the movement order, brings it to the 1st May or the 30th April.

His account of a Red Cross convoy moving after it had been captured by us behind our lines, being sent from one place to another without guards, and finally crossing the River Elbe and ending up in Celle, is, in my submission, correct. That is just what could have happened in the last days of the war. They got the Red Cross convoys out of the way. Nobody could afford to send guards with such a convoy.

He said in answer to a question by a member of the court that he crossed the Elbe at Lauenberg. He could not possibly have known that unless he had actually crossed it there. The court is well aware that towards the end of April 6 Corps did make a bridge head across the Elbe, and a pontoon was constructed. The accused Schreirer could not possibly have known that unless he had actually crossed it.

Then there is this letter dated 22nd April. He could only have got that letter in the way he has described. It came from Hamburg to where he says he was at Schwerin. If he had been in Belsen he could not possibly have got that letter. It is unbelievable that we were delivering mail to the SS people in Belsen seven days after we had liberated them. We had better and more important things to do than to read letters from their girl friends as well.

I submit that this story of the letter at Belsen is only consistent with his innocence. Would an SS man, even if he had never been in Belsen before, have just turned up at Belsen in the way he did?

There must have been unlimited opportunities for escaping both East of the Elbe and West of the Elbe. Would he again, had he been an SS man and looking after the wounded, have fitted himself up with a pair of grey trousers and walked into Belsen in that sort of Charlie Chaplin outfit?

Would he have kept all these photographs of himself in

SS uniform, and the photograph of the girl in Soltau? Surely

that is wholly consistent with his innocence?

Now if the believes Schreirer you will have to say that Kopper is lying and that Kurowicki is mistaken. We have not seen Kurowicki before us here, but it would have to be assumed that he was mistaken in his identification if you believe Schrierer, and I do submit that there is that contradiction between Kurowicki and Kopper concerned ranks at Auschwitz.

If you believe either Kurowicki or Kopper you will have to say that every word which Schreirer has spoken in the witness box is a deliberate lie. You will also have to say that Frau Schreirer is a liar; that she knew that her son was in the S.S. - because she must have known - that she knew he was never in the Luftwaffe; that she knew he was not a Lance-corporal or a Rottenfuhrer, or something of that sort. When she answered the learned Prosecutor about the S.S. being the elite and the Luftwaffe something cruel, I am afraid that you will have to think that that was not a genuine remark of what she really thought, but a very clever piece of hypocrisy indeed. She did not think that. Her mind thought quickly and she invented it and tried to deceive the whole Court. I submit that on these points that Frau Schreirer at least is speaking the truth.

Finally when you come, as I am sure you will, to weigh up every point of this evidence, you will attach to no part of it more weight than it, in your opinion, deserves, and if at the end of that you are still undecided, you will remember that noble and fine and generous doctrine of the British Criminal Law that if there is a doubt in the minds of his judges the accused will always be acquitted.

I will now deal with the accused Dorr, and in his case I would like to adopt straight away the speech of Captain Fielden in defence of Stofel. Captain Fielden has said almost everything which I have got to say and I would like to adopt every word that he said. Particularly I would like to adopt what he said concerning the contradictions in the four affidavits produced by the Prosecution in this case.

I would submit that the whole of this story concerning the shooting by Dorr has been produced in bad faith - not, of course, in bad faith by my learned friend the Prosecutor - but the deponents are acting under bad faith. You will notice that Poppner was a soldier, and he describes himself as being held for seditious talk. Well, I do not know what he means by "seditious talk", it is a very vague term and could easily apply to a soldier who was not too keen on the war.

Mockes was also a man who has been held for his association with a thing called the Reichsbanner, some sort of illegal organisation. Gruhmann, of course, is not a soldier; he is a Czechoslovakian. He was put into a concentration camp for refusing to go to work.

These men obviously have a prejudice against the persons who were their gaolers in the concentration camp in particular, and against the S.S. organisation in general. I submit that that prejudice, that determination to get their own back on the S.S. who looked after them shows itself in their affidavits. The stories do not agree and, to my mind, the whole thing is characterised by bad faith.

Captain Fielden, I believe, yesterday mentioned that none of the affidavits made any mention whatever of the Gross Hohlen incident. Any truthful account of this affair would have mentioned the Gross Hohlen incident and, what is more, it is the easiest way to remember. Instead of fumbling about with names of towns they could have said: "The last night before we reached Belsen".

Again, they say they calculated that so many men were killed by Dorr. I think the Court is entitled to ask by what means they made this calculation, and I suggest that what they have done is this. They have

just said: "Oh, Dorr shot them", or somebody else shot them. In fact the men had probably escaped.

I am particularly concerned with the first night of this journey, because that is the night in which Dorr was really in charge of the thing and Stofel had gone home. The Court will notice that both Poppner and Gruhnann mention killings on the first night; they mention killings by a stable. I submit that there is all the evidence before the Court which proves conclusively now that there was no stable on the first night at Osterode at all; that description was quite false, the first night in Osterode was spent in another camp. There is another concentration camp and that is where they spent the first night.

There were stables later on in the journey; there was a barn at Gross Hehlen; there were stables at Zeeson, but there was certainly no stable at Osterode.

Again, it is said that five kilometres beyond Osterode on the second day's march, Dorr shot some more of them. Well, all the evidence is that Dorr did not accompany them to Osterode; he waited there until Stofel came up. Both these women, Steinbusch and Neumann, say that, and Dorr says it himself, and I submit that that is a reasonable thing to do.

I would submit that this vagueness concerning the route - this was mentioned by Captain Fielden - is quite inexcusable. The Court will know that every small village of a few houses in Germany has got a large placard up outside the village with the name on it. One cannot help but know the places one is going through.

Now I feel that in this case it is really most unfortunate that none of the witnesses have been able to appear before the Court. If we could have had Mocks, or Poppner, or Gruhnann here I think that the Court would have heard very different accounts indeed of what happened. You will notice that Dorr, when he was cross-examined by the learned Prosecutor, twice said: "I only wish that the people who were accusing me were here in Court today" - he said that twice. He also said: "These people were interned in concentration camps for committing offences against the laws of Germany, enemies of Germany. When they are released they can make up any stories they like and then go home to Czechoslovakia". Dorr has also said: "If I did shoot people I would not have stayed behind in Bergen of my own free will, but I would have gone to Hamburg".

I submit that this story of what happened on that journey produced by the Defence is a far more reasonable and likely story than what the Prosecution are attempting to prove. The Defence at least have agreed on where they went. On the other hand, there is a great deal of disagreement on that between the Prosecution witnesses, and I really think the Court should accept the minimum which has been proved by the Defence, and if they do they cannot believe that Dorr did all this shooting or did any shooting at all.

THE JUDGE ADVOCATE: With regard to Dorr, it seems to me I have got an affidavit of Adolf Linz in addition to the others which you have dealt with.

CAPTAIN CORBALLY: It is not an affidavit.

THE JUDGE ADVOCATE: Well, it is a statement which had been put in. Do you want to deal with that? It is something different from the case of Stofel. Perhaps you attach no importance to it; I do not know.

CAPTAIN CORBALLY: The Adolf Linz statement says that Dorr shot 13 or 14 prisoners only because they had bad feet or were suffering from other diseases. Well, there are two introductory points on that. Firstly, we do not know who Adolf Linz is. It is impossible to say what reliance should be placed on this statement, because we cannot possibly say who he is. There

are possibly some people in concentration camps upon whom the Court would place no reliance at all. He might have been put in there for murder.

The number which he gives here, 13 or 14, is a very much more moderate number than the others. I will not labour this point, because Captain Fielden dealt with it yesterday. He says that the men were shot only because they had sore feet. There is evidence before the Court that people who had sore feet were put on to the trucks. He says the shootings were carried out in full view of the other prisoners whilst on the march. Poppner says they went behind into a wood, or something of that sort. I suggest that in this case Poppner is more to be relied upon, because it is most unlikely that shootings were carried out in full view of everybody. I really feel the Court should pay no more attention to that statement than they do to any of the others - probably less.

There is just one last point on the Gross Hehlen incident. In the Gross Hehlen incident Dorr says that first of all the prisoners were brought out of the yard and he was not ready, and an officer came to him and said: "Are you with this party", and then said: "Right, come with me", and they went up to the aerodrome and arranged for the accommodation, and they then came back and met the prisoners.

In case it should occur to the Court, or be suggested by the Prosecution, that Dorr was in any way responsible for the shooting at Gross Hehlen, I would like to say this. It is surely the only reasonable thing that somebody should go ahead and prepare the new accommodation, as they had already been hunted out of their old one. It is the only reasonable thing to happen.

Stofel, evidently, did not do so. He was engaged in another way, and therefore obviously Dorr would do it, and his story, I submit, is perfectly true on that. It is the only reasonable thing to happen. If he did that he could not, at all events, hold responsible in any way for the shootings at Gross Hehlen.

Finally, I would submit that the story produced by the Defence of this march is a reasonable story and should be believed, and if it is believed the Court must reject all these affidavits and they must say that Dorr did not shoot the prisoners.

Now, sir, if I may, I will pass to Zoddel. The first thing I want to say about Zoddel is that he must have been one of the best known men in the camp. He was the original Belsen; he had been there far longer than anybody else, in fact he had been there for nine months longer than Kraner. He came there originally as a convalescent concentration camp prisoner, and he became blockaltester for the first time in his career in a concentration camp in a sort of hospital block. Then in January, 1945, he became lageraltester with special duties in camp No. 1. He kept the job as lageraltester until the liberation.

There were many thousands of inmates in camp No. 1, but the only people who have accused him are Glinowieski, Lozowski, Zuckermann and Kurowicki. I submit that it would be quite impossible to carry on the job of lageraltester without making some enemies. Compare, for instance, Stania Starostka, who was also lageraltester. There is a mass of evidence in her case, quite a lot of it in her favour, but still there is a mass of evidence. I say that people who have accused Zoddel are not the people who have known him well and lived in his camp for a long time, but they are people like Glinowieski, who were actuated really by motives of spite and revenge and for whom the denunciation of German internees and German staff was a matter of revenge and in some cases you might almost say racial hatred.

With reference to the evidence of Glinowieski, the learned Judge Advocate said that there was some evidence that the Court might consider that at another time Glinowieski had recognised the photograph which was proved before this Court by Colonel Champion to be a photograph of Zoddel.

However, I submit to you now that the Court could not attach any weight whatsoever to such evidence. There is no question of Zoddel being unlike this photograph; in fact it seems to me that Glinowieski has failed to come up to the most elementary test of credibility, the capacity to recognise a man whom he has denounced.

As opposed to that, the story which he has told in Court has also changed in some respects from the story of his affidavit. For instance, the affidavit does not mention the stick. On the other hand, his evidence in Court introduces the stick of more than a metre long and as thick as his arm.

That, I submit, is a stupid and ridiculous exaggeration. Lozowski accuses Zoddel of hitting a man over the head with a stick, and he says that the end of it was made of iron. He said he hit him in such a way that his skull was split open. Then he says he went to the hospital the same night and found out the man had been carried away and was told he was dead.

Well, in the first place Zoddel says that he certainly had a stick, and he occasionally used it, but he has described the stick in quite a sensible way to the Court as an ordinary walking stick, and so far from having the end of it made of iron it had in place of the ordinary ferrule a rubber ferrule at the base of the stick.

Again the evidence of this person having died is hearsay upon hearsay. Benec Zuckermann describes an incident which is very much the same as the incident which Glinowieski talks about, but he says that Zoddel was the lageraltester of lager 2. I submit that it must have been well known throughout the camp that Zoddel was lageraltester of lager 1 and not of lager 2.

Kurowicki, on page 85, is, I must say, a good deal more restrained. It is quite possible that Kurowicki had seen Zoddel beating people, but not beating them so severely that injury must have been caused, or at least, it depends what you mean by "injury", of course.

I submit that the Court cannot accept the evidence of Glinowieski that Zoddel committed a murder. I submit that neither can they accept the evidence of Lazowski that Zoddel committed a murder. You cannot have murder charged against a man in that way. You cannot have it proved that a man was killed by saying: "I was told in the hospital that he had been taken away".

As far as beatings are concerned, it is admitted by Zoddel himself that he did do some beating, and I say on his behalf that a certain amount of beating was quite inseparable from the job of lageraltester; it could not be avoided.

He has said in the witness box that though he beat people he never beat people after they had fallen on the ground, and he never beat people so that he drew blood. I submit that it is unlikely that he did.

Surely these people, when the lageraltester hit them one across the shoulders with a stick or boxed their ears - as Zoddel described he did, would run away. It is the sensible thing to do. They surely would

not stay there waiting for more, and it is unlikely that a rather harrassed and busy lageraltester would indulge in a sort of game of chasing the internees.

Beatings of that sort go quite against the evidence of Mr. Le Druillenne, who said that you undoubtedly got beaten, but it was a sort of haphazard beating. He said that if you got out of the way they did not come after you; they beat somebody else.

Finally I should say on behalf of Zoddell that he himself had been a prisoner for a long time ^{and} owing to the way in which he was grossly overworked in some of these working camps he became very ill indeed, as he has said. He was sent to Belsen originally to recover his strength, and he says that Belsen at that time was a good place.

As a sort of blockaltester in a hospital block he had certain comforts, and there is no evidence at all that he ill-treated people there. In fact as a convalescent home probably Belsen was not a bad place.

He did not want to lose the comforts and extra privileges which he received as a blockaltester, and so he continued to keep himself in that job, and he worked as far as he could in various functions which he had to perform.

As lageraltester he has told the Court what he had to do: supervision of the camp; seeing that food came from the cookhouse and was sent to the blocks and so on. He had responsibility and to carry out that responsibility no doubt it was necessary that he had to beat people at times.

The Court should remember that he had had very long experience himself in a concentration camp and he obviously was not the sort of person to beat just because it pleased him.

Finally, I would like to adopt on behalf of all my accused the crudite and splendidly phrased arguments which were put to you two days ago by Colonel Smith, and I would like to submit that in the light of those arguments none of my accused have really committed a war crime at all.

CAPTAIN NEAVE: May it please the Court. I represent the accused No. 30, Schlomowicz; No. 33, Ilse Forster; No. 34, Ida Forster and No. 35, Klara Opitz.

At the outset I should like to say that I would like to adopt in toto the very lucid argument placed before the Court two days ago by Colonel Smith on the question of International Law, and I should also like to adopt all the remarks which were made by my friend Major Munro on concerted action and collective responsibility.

My accused are divided into two different categories, and I should like first of all to deal with the man No. 30 (Schlomowicz). He is accused on the Belsen charge only, and that means that while he was at Belsen as a blockaltester for two days he is charged with committing a war crime, namely, when a member of the staff of Bergen-Belsen concentration camp he was responsible for the well being of the persons interned therein in violation of the Law and Usages of War, and was concerned as a party in the deaths of persons named and physical suffering to Allied Nationals, and the relevant dates are between the 1st October, 1942, and 30th April, 1945.

Now that is the charge which he has to face, the only charge, and that is the charge which the Prosecution have to prove. Now what has the Prosecution put before the Court in order to prove their case? They have, in the first place, produced two live witnesses. These witnesses were Sompolinski and Zylberdukaton, and both of them recognised the accused in the

dock. What allegations did these witnesses make ?

THE JUDGE ADVOCATE: What is the second one you mentioned ?

CAPTAIN NEAVE: Zylberdukatzen.

THE JUDGE ADVOCATE: He seems to have left so little impression on the Court that I personally have no note of him.

CAPTAIN NEAVE: She actually did say that she recognised the accused in the dock and when asked to say anything about him she said that he was of very good behaviour at Belson after the arrival of the British which, of course, is still within the time covered by the charge.

THE JUDGE ADVOCATE: Yes, I see.

CAPTAIN NEAVE: What allegations did these witnesses make against the accused ? - none at all. Sompolinski, in the witness box, told the Court that he had known the accused at Auschwitz for a period of about a year, and he said that the accused had arrived in Belson some eight days before the liberation. He then went on to confirm the accused's appointment as blockmaster of block 12, and he said that that appointment took place some two or three days before the British came.

Now this witness lived in block 12, and of his own knowledge he said that while at Belson the accused behaved very well towards the prisoners. Then, as I have said, Zylberdukatzen recognised the accused and said that she knew the accused as having been of very good behaviour after the arrival of the British, and that is the total live evidence against this man.

Now what else does the Prosecution offer ? They offer two affidavits, the first one by Ladislaus Judkovitz on page 72 of the book, and the other by Arnost Basch, at page 239. There is a remarkable similarity between these affidavits. Both the deponents are Czechoslovakian Jews and have been shown to be friends of each other. Obviously they have been together for some time in concentration camps and they deposed to having known the accused in some three camps, the last being Belson. I submit that we are concerned only with what the accused is alleged to have done at Belson.

The affidavits make allegations against the accused of beatings at Belson in March and April of 1945, whilst the accused was a kapo. Now a kapo has been shown to be an internee in charge of working parties, and no witness has shown to the Court that the accused was ever a kapo at Belson. The dates of the alleged beatings are given as March and April, but the accused did not arrive in Belson until late at night on the 5th April. It is not disputed that the accused is the man about whom these witnesses have deposed.

There is a curious distinction to be drawn, I submit, between the two affidavits, because Basch says that he has seen ten men bleeding as a result of beatings by Schlomovitz. On the other hand Judkovitz said that he once saw a man bleed.

There is also another remarkable similarity, and that is both deponents say that it was perhaps necessary for some amount of shoving and pushing and even hitting with the hands, and I submit that they probably said this because they were not themselves blameless. It is a strange thing that neither witness alleged that the accused ever hit them.

None of the alleged victims of these supposed beatings were named, nor are their nationalities given, and I submit there is a very good reason for that, and that reason, I say, is that these victims they talk about are nothing more than figments of these witnesses' over-taxed mental capabilities due to privation and physical suffering and mental suffering during their concentration camp life, and my submission is that very little, if any, weight should be given to the testimony of either witness.

That completes what the Prosecution has to offer on this charge. Now the Defence. What is material to the Defence of Schlomovitz is the evidence which he gave in the witness box himself, and in addition, an affidavit which is exhibit "140" by Daniel Blicblau. In the witness box the accused told the Court of his concentration camp life since 1939, and of how he eventually came to Belsen late at night on the 8th April, 1945. He told the Court that for three days he had no official or semi-official duties whatsoever, and that due to the illness of the then block altester he was appointed block altester on the 13th April. He has told the Court that it was his main duty to distribute what food there was, and he, I submit, has been the only clear witness in this Court as to how much food there was to distribute.

He has told the Court how many internees were squashed into that block, some 1100 or 1200 people, and of the number of deaths which occurred there from his arrival until the arrival of the British. He had suffered much hardship and pain in concentration camp life himself and he has told the Court that he gave strict orders to any of the people working under him for those two days that the beating which undoubtedly was going on must cease. He did admit that it was sometimes necessary to hit with the hand, and that, I submit, is quite understandable. He did deny ever having beaten anyone with a rubber cable or a stick, and he pointed out that out of, call it, 1,000 people in that block only two have come forward to accuse him.

He then continued as block altester until the 20th April, by which time he was suffering from typhus, and later he was removed to hospital. He then told us of that remarkable visit which was paid to him in hospital by his two accusers, bringing him cigarettes and chatting with him. Although the learned Prosecutor tried to break down that story in cross-examination, he failed, and the accused gave us more information on the subject and told us of the meeting in the room itself on the 26th May, which consisted of a conversation with his two accusers to be, and the parting with hand shakes. Then, when asked by the Court if he could suggest any reason for these two men having made any accusations against him, he gave, I submit, a very excellent reason, and that was that the two witnesses Judkovitz and Basch had themselves been so ill with typhus that they were in a low state mentally and physically and that must have been the reason for them making these wild and, I submit, completely unfounded accusations.

Now the other evidence in favour of the accused is, I fear, an affidavit, and it would be your duty to attach what weight to it you consider should be attached to it. The affidavit is of Daniel Blicblau and in it is something more or less on the same lines as Judkovitz and Basch. He knew Schlomovitz in one or two camps and knew him as block altester in Belsen for two days. He then states that he never saw the accused hit anyone at Belsen. He says he has heard of it, but even then it is not specifically at Belsen.

I should point out that all three affidavits - the two affidavits against the accused and the one for him - mention two or three camps, and it is extremely difficult, in my submission, to extract from them exactly where any of these alleged beatings took place. That being so, I do submit that any doubt in the matter must be exercised in favour of the accused.

Blicblau also says that it may have been necessary to use the hands and then brings forward a very good point in the accused's favour by saying that Schlomovitz often gave away his own food because he got a double ration, and furthermore - although I do not think this refers to Belsen itself - he allowed members of his working party to hide themselves away if they were in a weak or in a sick condition.

That is the entire case against Schlomoivicz. The prosecution produced two affidavits, and I submit that the information in these affidavits is vague, venomous, and valueless.

Now the defence. We have the straightforward evidence given by the accused himself, absolutely unshaken by cross-examination, and we have the affidavit of Eliclbau. The prosecution charge this man as a war criminal and, on his own showing, he himself has been a victim of the Nazis since 1939. He was a block altester in all for seven days. Five of these days were under British supervision.

According to the charge he was responsible for the well being of the internees in Block 12 - at least 1,000 or 1,100 people. I ask the Court: how could that man be held responsible for the well being of these hundreds of people, more in number than an infantry battalion? He was a prisoner himself. How could he have obtained more food or more living space for the people in block 12? Did he have a quartermaster, an officer i/c barracks or a D.I.D. round the corner? Apparently the camp commandant himself could not improve the conditions.

I would like at this point to remind the Court of Capt. Sington's description of block altesters. You may remember he said they were not members of the camp staff; they were definitely internees or prisoners nominated and exploited by the camp staff.

In conclusion, on all the facts which are before the Court, I do strongly submit that this accused should be acquitted.

I will now come on to the cases of the three so-called S.S. women who also are only on the Bolson charge: Ilse Forster, Ida Forster and Klara Opitz.

By way of preliminary I would like to remind the Court how these three people did become what are known in this Court as S.S. women. All three of them were working in factories in Silesia and, due to war conditions, it was essential for the Nazis war production to be stepped up. Labour was scarce and scattered throughout the country and much of the heavy work had to be done by forced foreign labour. None of the labourers were friendly to the Germans, which is quite understandable, but they were the only ones which could be supplied to the factory owners. The factory owners became responsible for the security of these workers and they had to provide their own guards.

Where were these guards going to be found? The only source was amongst the factory hands themselves, simple factory hands, all women, and, as is normal in time of war even in Great Britain, these women were conscripted by the state. From then on, through none of their own doing, they were branded S.S. women. That was in the later summer and autumn of 1944. All three were given some form of course and, in the evidence which came out in this trial, what actually happened on that course, I submit, is still very vague. The courses lasted for some three to four weeks, after which they went back to the factories from which they had come and acted as guards over the forced foreign workers.

All three women have told their stories of which factories they were working in and of how they eventually arrived in Belson. Two of them arrived in February and the other arrived in April of this year.

I shall now deal with the case of No. 33, Ilse Forster, and in that connection I shall speak of the affidavits which the prosecution have put before the Court in order to prove their case. The first affidavit is that of Regina Bialek on page 6. The relevant paragraph is No. 6. The witness identifies the accused from a photograph as an aufseherin in kitchen No. 1 at Belson. There is no date, no month, not even a year mentioned.

The deponent then goes on to make the usual wild allegations of beatings by the accused with blood, unconsciousness, wheelbarrows and hospitals, and ends with the normal insidious type of sentence: "I do not know whether any of them died as a result of their injuries, but many were covered with blood".

The accused in the witness box does not deny that she beat prisoners; she even told the Court, and described to the Court, that she had a small stick. She does, however, deny that she ever did beat any prisoners until they were unconscious, and she also denies ever leaving anyone lying bleeding on the floor.

I will dismiss that affidavit by saying that in my submission paragraph 6 in relation to the accused is a complete over-statement and so full of untruths that I would ask you to attach no weight to it whatsoever.

The next affidavit is that of Hilda Lippman on page 94. There are two small paragraphs in that affidavit referring to the accused. The witness states that she was a cook and cleaner in kitchen No. 1, and in fact the accused herself in Court said that the witness Lippman was a cleaner in the kitchen. There then follows the usual extremely exaggerated account of beatings by the accused, this time with a rubber stick. Then I submit it is very strange that the witness says that she once saw a sick man being beaten so badly that he had to be carried away afterwards.

The accused does not deny, does not dispute the fact, that this witness may have seen her chiding or hitting thieving internees sometimes, but I submit it is a very strange thing that although she worked in the same kitchen as the accused and in the same kitchen as the deponent Bialok she only once saw anybody hurt by the accused. Compare her once with Bialok's numerous times. But that is not the end of the affidavit. It has a saving clause at the end, paragraph 5: "I say that S.S. Forster and S.S. Houskol many times in my presence inflicted brutal and savage punishment on starving internees who were trying to get some scraps of food from the kitchen". What I submit about paragraph 5 is this, that the deponent had such a terribly weak affidavit when she looked at it, there was only one semi-specific allegation, that she thought she had better do something about it and she tried to make a good story out of a bad one.

The accused, Ilse Forster, has at no time tried to make out that she was any kind of fairy godmother going about the kitchen with a wand in her hand, but I would like to remind the Court of her responsibility for the supply of food in her kitchen. I would remind the Court that there was nothing she could possibly have done to increase those supplies and nothing she could possibly have done to prevent some of the internees from starving.

She told the Court in the witness box, and her statement was backed up by the evidence of Charlotte Klein, that she did what she could for the internees who worked in her own kitchen; she got extra bread for them, as Klein has told the Court, six to eight times.

The affidavits of Bialok and Lippman I do submit are just as worthless, as far as evidence is concerned, as the majority of the remainder of the affidavits which the prosecution has laid before you. I further submit that they are no value whatsoever in proving any charge against this accused.

There is one other affidavit which brings in the accused, that of the accused Ehlert on page 193, but I feel that that affidavit must be coupled with Ehlert's evidence in the witness box. My submission is that the sum total of the affidavit and Ehlert's evidence is that there had been a great deal of stealing in and around kitchen No. 1, that the accused Forster reported it to Ehlert when she came to visit the kitchen, and that is the lot.

From all the conflicting evidence which you have heard and read I submit that it is very doubtful if there ever was such a person as a young rottenfuhrer in No. 1 kitchen at that time.

Now I would refer to the deposition of Sophia Litwinska on page 96 which has already been referred to by Major Cranfield. In that affidavit in paragraph 4 the deponent makes a specific allegation of shooting against Herta Ehlert. I submit that from the reading of that paragraph that incident must have been one which stood out very vividly in the witness's vivid imagination, but when she came to the Court to give evidence she made no such allegation against Ehlert. In fact, as has already been mentioned, in cross-examination I stood Ehlert up and asked the witness if she had ever seen her beating anybody, and the answer was: "No".

In addition to that, the learned prosecutor in his examination asked the witness: "Did you see any other shooting whilst you were at Belsen as well as the shooting you have told us about which was not the Ehlert incident?" and the witness answered: "I saw that every day"; but even then she did not remember Ehlert's alleged shooting which must have been very clearly in her mind when she made her affidavit on the 24th May.

To cap all that, the learned judge-advocate himself asked the witness: "Have you any recollection of any other similar incident at all where a woman was supposed to have been killed when she was attempting to get some potatoes or vegetables?" and the answer again was: "No".

When Litwinska was in Court my learned friend, Major Cranfield, cross-examined her about the deposition, and the answer the witness gave was: "It was a very short interview I had with this officer and he was mainly concerned with the question of the gas chambers and with the question of the killing of this young girl whom I mentioned before". The killing of the young girl is the specific allegation which she made against Forster in the witness box.

When Litwinska was in the witness box she accused Ilse Forster of a particularly foul murder, a murder which she had never even mentioned in her affidavit and one which I submit if it ever did take place would have stood out in her mind much more clearly than Ehlert's alleged shooting. My submission is that neither incident has the slightest foundation in fact whatsoever and this evidence should not carry any weight at all.

That is the case for the prosecution against this accused. I submit that in the witness box the accused gave her answers truthfully and that what she said, in the balance, should weigh very strongly in her favour compared with anything the witness Litwinska said and with anything to which the witnesses Bialek and Lippman have signed their names.

The accused denies ever using a rubber truncheon and she denies the Ehlert incident in which she is supposed to have said that she was excited because she had been beating prisoners. She does not deny that she had been striking some of these prisoners. In reply to the specific allegation by Litwinska of the murder of this young girl of 17 or 18 she completely denies the story and she says that on that day she did find someone stealing in the peeling part of her kitchen and she found some meat and some other form of foodstuff which this girl obtained. The accused was the N.C.O. on the spot and she dealt out summary punishment; everybody was quite satisfied, and this girl, who she says was a Russian, turned up for work the next morning. In conclusion I would ask the Court, as in the case of Schlomoivicz, to find that no charge whatsoever has been proved against this accused and that she should be acquitted.

My other two accused are No. 34 Ida Forster and No. 35 Klara Opitz, and I will deal first with No. 34. The total evidence against No. 34 is that of the witness Ilona Stein which is contained in transcript No. 9 on page 16. This witness identified the accused in the dock and she said that

she know her at Belson in kitchen No. 2, I believe. Of course, the accused always worked in kitchen No. 3. She said that on one occasion the accused ran out from the kitchen with a sort of rubber tube and started hitting the prisoner so badly that she had to be carried away by ambulance. You will remember that the ambulance in the end turned out to be something very vague, nothing on wheels, anyway.

Then the witness was asked if that was the only occasion on which she had seen the accused beat anyone and we got in answer to that one of the normal answers, that that was the usual procedure of this woman whenever she saw anyone approach the kitchen. But that is the total evidence against this woman, that she once hit a man with a piece of rubber tube.

THE JUDGE ADVOCATE: Is it a man or a woman she is supposed to have beaten?

CAPT. NEAVE: It is a prisoner actually. In regard to that incident the witness again cannot remember any dates at all. It is just an incident out of the blue, I submit, and when she saw the accused in the dock she said: "Well, I had better say something about her". I do submit that if that is the total evidence against this accused - and it is the total evidence - that it could not possibly by any wild stretch of imagination be called a war crime.

The accused herself in the witness box denied beating anyone with a rubber truncheon; she denied hitting anybody at Belson. She told, I submit, a quite truthful story, that her job was inside the kitchen, she had 38 female internees working under her, and 38 female internees must have been, I submit, quite a lot to look after quite apart from the cooking side in that kitchen.

She said in her evidence that she stayed in the kitchen all day because that was her job, and I would ask you to accept that as extremely truthful evidence. Stein said that she, in the incident which she has described, ran out of the kitchen after a prisoner. I do submit that this running is completely exaggerated because, although it has not come out in evidence in Court, this woman at the start of the trial was an extremely ill woman suffering from a disease which could not have come on within the space of her incarceration.

That, then, is the case for Ida Forster. The evidence, I submit, is extremely weak and cannot possibly support any charge of a war crime against this accused.

My remaining accused is Klara Opitz. Klara Opitz has been recognised in the dock by one prosecution witness and that was Litwinska. Litwinska on this occasion, however, made no allegation whatsoever against Opitz, and the prosecution's entire case against her is contained in two affidavits which are actually made by one man, Dr. Makar, on pages 104 and 106. These two affidavits were made on different days, the first on the 6th May and the second on the 26th May.

In paragraph 1 on page 106 the deponent says: "I have been in Belson for some months having previously been in Dachau. I know the S.S. women known as Bormann (photo 35 - 3) and Klara Opitz (photo 37 - 1). I have frequently seen them beating women prisoners. They made a particular habit of it". The second affidavit says, in paragraph 3: "I recognise Klara Opitz (No. 1 on photo 37) as being an S.S. woman in charge of female working parties at Belson. On one occasion I was passing a party when I saw Opitz kicking a girl and beating her on the face and body with her fists. I have often heard from other prisoners that she made a particular habit of beating the girls".

There is something strange, I submit, about these two affidavits. The first one made on the 6th May says: "I have frequently seen Opitz beating prisoners" and in the second affidavit it is said the deponent once saw a girl being ill-treated by the accused.

I would ask you to not that particularly. To start with it was "frequently" and then when the deponent thought harder, some three weeks later, he changed it to once; but he had to bolster up his weak story and there then came a dash of secondary evidence, which being in an affidavit becomes, I submit, what might be described as double secondary evidence and, therefore, not worth the paper it is written on.

In conclusion I submit that even if the Court were to accept both these affidavits, the sum total of them, in my submission, is that the deponent once saw the accused strike a girl. I would ask the Court: is that a war crime?

THE JUDGE ADVOCATE: You said the sum total was that he said he saw her beat a girl, strike a girl. The evidence was: "I saw her kick a girl and beat her on the face and body". The Court may draw a distinction between that and a slap on the face; they might want to know how anybody justifies kicking.

CAPT. NEAVE: That, then, is the case for the prosecution. For the defence we had only the evidence of the accused herself and she described how she eventually came to Belson. In her examination by myself she said that she arrived at Belson on the 13th April. In point of fact at the end of my examination she said that she arrived in the camp some five days before the British liberated it. There was a discrepancy of three days there in her own evidence, but on this point or in that regard I would put on one of the prosecution's shoes and refer the Court to what Col. Champion said as far as the prosecution witnesses were concerned.

He said, in his examination: "We also had some difficulty with regard to dates. Most of the witnesses were very vague as to when an incident occurred. They usually only knew the day was in the summer or in the winter, and sometimes they were not quite sure of the year". I do submit to the Court that even although the accused went wrong by three days it amounts to nothing at all.

She denied in the witness box ever having beaten prisoners at Belson, and I do submit that she could not have had much opportunity as she was only there for a few days. She denies that she knew Litwinka, and she described to the Court how she worked in the food store at the end of Block 9. She was, I do admit, extremely vague as to her arrival in Belson, as to the date of it, but it is no part of her case that she was only there for two days. It has been proved, I submit, one way or the other that she was actually in Belson for five days and did take part in the mass evacuation of S.S. women to Neuengamme on the 11th or 12th, returning somewhere about the 13th April.

That is the entire case for and against this accused and I submit that Dr. Makar has made several slips in his affidavits; there are no dates mentioned and, although it has not come out in any way in evidence, I submit that the name Klara Opitz has come into his affidavits by some mischance and that he in fact had never seen this woman at Belson at all. The case against the woman is so weak that, as with my other three accused, I would ask the Court to acquit her.

CAPT. PHILLIPS: May it please the Court. My four accused are No. 36 Charlotte Klein, No. 37 Herta Botho, No. 38 Frieda Walter and No. 39 Irene Haschko.

Before I get on to consider the evidence in their cases I have one point with which I want to deal on international law. Col. Smith the other day dealt very fully with this subject and I do not propose to go over again all he said, but I do wish to deal with one point which he left, or at least only just touched on when he presented arguments to show that what happened at Auschwitz and Belson was not a war crime. He then said that even if it was a war crime there is open to the accused the defence that there was a conflict between German law and between international law and that, in the circumstances, the accused were bound to obey their own native law.

He then went further and dealt with the question of superior orders and he presented an argument to the Court to show that in his submission the Court should accept as the correct law on this subject what I would call the "old text" in the Manual of Military Law before it was amended. It may be that the Court will not, in the end, accept that submission and, therefore, I wish to deal with the matter as it would stand under the text in the Manual of Military Law as it has been amended because, in my submission, even as amended it does afford to these accused a defence.

I have had some copies made of it and I will hand them in to the Court. (Handed) At the top is a copy of paragraph 443 from Chapter XIV, and at the bottom is the old text with which Col. Smith dealt, but the part above the line is the amendment as the Manual stands at the moment.

I would like to read to the Court the last sentence of that amendment: "The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity".

The point which I wish to make is this, that the prosecution have got to prove, even under this amendment, that the acts in question both violate unchallenged rules of warfare and outrage the general sentiment of humanity. I would accept at once, of course, that these acts outrage the general sentiment of humanity - there is ample proof of that - but the prosecution have also got to satisfy you that they also violate an unchallenged rule of warfare.

The prosecution will, no doubt, later explain to the Court in what way Col. Smith's argument is wrong and in what way these acts do constitute a war crime but, in my submission, even if they succeeded in convincing you that this was in fact a war crime they will only do it by proving it to be under, shall we say, one of the lesser known rules of warfare, one of the less well-established rules of warfare, and a rule of warfare which it would be difficult at least to call an unchallenged rule of warfare. I do not suggest that the fact that the defence have challenged it is sufficient, but I do suggest that the authority which Col. Smith has quoted in support of his argument, that this is no breach of any rule of warfare, even if that argument fails, it is at least sufficient to make it perfectly clear to the Court that any such rule of warfare cannot possibly be said to be an unchallenged one.

In support of that I would like to make a short quotation from Oppenheim's International Law which in this connection is really almost a work of authority because it is edited by the same author who wrote the amendment which is now before you.

THE JUDGE ADVOCATE: Would you indicate to me what you consider to be the rule of warfare which is unchallenged, according to you?

CAPT. PHILLIPS: My submission is that in fact we have broken no rule of warfare. The prosecution, of course, do not accept that. They say that we have broken a rule of warfare which is, at present, quite unknown to me, but I am saying the very fact that it is unknown to me is at least some indication that it is not an unchallenged rule of warfare, that it is not, shall we say, a conspicuously well known one.

The passage which I wish to quote is on page 184 of Volume 2 of the 6th Edition. It is discussing the growth and history, and so on, of various rules of warfare throughout the centuries and the passage relates to some principle which does not concern us here, but it says: "It" - that is the principle - "originated and found recognition in those times when warfare was not regulated by laws of war, that is generally binding customs and international treaties, but only regulated by usages. In our days, however," -- and this is the passage I wish to draw your attention to -- "warfare is no longer regulated

by usages only but, to a greater extent, by laws, firm rules, recognised whether by international treaties or by general customs".

In other words, this makes it perfectly clear (and I have no doubt it is accepted by the prosecution) that the laws and usages of war consist of two main bodies, on the one hand firm rules which have long been accepted, and about which there is no doubt and no possibility of dispute and which might well be called unchallenged rules of warfare, and on the other hand it consists of what I would call usages less well defined, less universally accepted rules, which have not hardened into a definite law and which cannot be called, in my submission, unchallenged rules of warfare.

An example of the first sort has been the generally accepted custom that you do not in battle poison a well or fire deliberately on the Red Cross. That finds complete and general acceptance and it would, I think, reasonably be called an unchallenged rule of warfare. On the other extreme you have got such a rule of warfare as is apparently being appealed to in this case, but I confess myself I do not know what it is -----

MAJOR STEWART: I am sorry to interrupt my friend, but the rule of warfare which he says has not been challenged is paragraph 383 of Chapter XIV of the Manual of Military Law. That was referred to by Col. Backhouse in his opening speech. It says: "It is the duty of the occupant to see that the lives of inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property, are just as punishable as in times of peace".

That is the rule in question which the prosecution say is an unchallenged rule of warfare but, according to Capt. Phillips, he says it is not.

CAPT. PHILLIPS: Of course the learned Prosecutor will have ample opportunity of stating this in due time but, at the same time, I am indebted to Major Stewart for drawing my attention to it and I am aware of it. It is unchallenged as a rule under the convention, that of course is perfectly clear, but in my submission it is very much challenged as a rule of warfare discreditable to which may bring punishment on an individual as a war criminal.

Col. Smith has already delivered a long argument, which I do not wish to go into, to the effect that that is a rule the breach of which can only be dealt with as a matter of state as opposed to individual responsibility. I do not wish to spend a long time on this subject of international law and if I have made the point I am making clear I am satisfied which is, as I say, that in my submission this is not an unchallenged rule of warfare and that the prosecution, before it even begins to consider the facts and draw on those facts, has got to satisfy you that it is.

THE JUDGE ADVOCATE: I confess I do not know what is meant by an unchallenged rule of warfare. I mean: who challenged it, and how?

CAPT. PHILLIPS: This is the crux of my argument. I put it this way: originally - to go back a long way - war between states was not regulated by any regulations at all. Anything was all right; you could do what you pleased. Gradually, as a result of growth of chivalry and various practical considerations, rules and usages came into being. When a custom first grew up it was merely a custom, but if that custom found general acceptance from all belligerents over a period of a hundred years that custom hardened into a rule of warfare, so that at the beginning of the hundred years it was, we will say, a rule of warfare which could well be challenged, but at the end of the hundred years it would properly be defined as an unchallenged rule of warfare, and to-day the laws and usages of war consist on the one hand of generally accepted, universally accepted, rules and laws and, on the other hand, of the less well accepted customs.

THE JUDGE ADVOCATE: Is not the meaning of that last paragraph surely that they are in effect suggesting that a man brought before a military court on a charge, on a war crime, might be able to convince the Court that the particular actions which are alleged to be a breach were so ambiguous that a reasonable man might have not know where he was and in such case the Court ought to take the view that he should be acquitted? Is not that really the meaning of that, that if what he has done is so obviously wrong and must be wrong in any system of international law for the amelioration of the sick and wounded and inhabitants of occupied territory then the Court could take the view he should be punished? Is not that the effect of that last paragraph?

CAPT. PHILLIPS: No, because the word "unchallenged" surely relates to the rules of warfare.

THE JUDGE ADVOCATE: But it is not unchallenged in the sense that it is so clear to the ordinary soldier and ordinary officer what it is. That is what I thought it meant.

CAPT. PHILLIPS: May be that is the case, but if you find that that is just as much assistance to the defence as what I am saying because an act as is suggested took place at Auschwitz and Belsen may well outrage the sentiments of humanity but to the people who committed it as a result of their training and their system of law it will be one which will not be clearly to them contrary to international law and, therefore, taking it as meaning what you have put even then it would not be contrary to an unchallenged rule of warfare.

I have no more to say on that point. I think it is now before the Court and I will leave it there.

Now, Sir, dealing with the cases of my four accused, they are all very similar; they held very similar positions at Belson. They were not, of course, at Auschwitz, so we can dismiss straight away the Auschwitz charge and the Auschwitz evidence. The chief difference between them is the weight of evidence which the prosecution has brought against them.

Before we start to consider the actual evidence about them I just want to say a word or two about the charge, and to consider what it is necessary for the prosecution to prove before they can be convicted. They are charged at Bergen-Belsen between particular dates, which are admitted - it is admitted they were at Belsen between the dates in question - "In violation of the Laws and Usages of War", I will say nothing about that because the argument on that topic is already before the court, "were together concerned as parties to the illtreatment of certain persons, causing the deaths of allied nationals" - I am leaving out a lot and quoting only the salient words - "and physical suffering to allied nationals."

In my submission, for the prosecution to succeed in this case they have got to satisfy you on one of two alternatives. The first is that these accused directly, with their own hands, either killed or injured an allied national. That is quite apart from any topic of International Law; it is in the charge itself. If they fail to do that, the other alternative is they must satisfy the court that they were indirectly responsible for the death or the suffering or injury of an allied national, who died or was suffered at Belsen as a result of the conditions for ~~for~~ which conditions these accused were responsible.

In my submission, the prosecution must satisfy you of one of those two points. In other words, it is not sufficient for the prosecution to say Belsen is a war crime, these people were at Belsen therefore they are war criminals. You cannot have a war crime at large just like that. You have got to prove one of these specific things against these particular accused.

I would like to consider each of these two alternatives in turn. First of all, the direct responsibility, as I will call it, that they either directly killed or directly injured an allied national. In my submission, if we accept the prosecution's case at its face value there is no evidence before the court whatever that these accused ever had anything to do with an allied national. If the prosecution are going to succeed ---

THE JUDGE ADVOCATE: Why do you say there is no evidence at all that these accused had anything to do with an allied national?

CAPT. PHILLIPS: I may have missed, but I have no recollection of any evidence to that.

THE JUDGE ADVOCATE: Is there any dispute as to what is an allied national?

CAPT. PHILLIPS: I do not regard a Hungarian as an allied national, nor, I think, does the prosecution.

THE JUDGE ADVOCATE: Do you regard a Russian as an allied national?

CAPT. PHILLIPS: Yes. I am not saying there were no Russians in Belsen. I am not saying Mr. Le Druillenc was not a British subject. What I say is that my four accused have not been shown personally to have had any contact with an allied national, and I merely say that is how I wish to dispose of the one alternative to the prosecution. It throws, in my submission, the prosecution back on to the second alternative open to it, that is to say, indirect responsibility. They have got to satisfy the court that these accused were at Belsen and that somehow they were

responsible for the deaths and the suffering which undoubtedly took place at Belsen, and unless they do that of course these accused are entitled to be acquitted.

I will read now to you a passage from Col. Backhouse's opening speech, where he put the matter very much the same way as I have now put it. It is in the transcript of the first day, and I will read, first of all, a passage which is on page 24, paragraph 4. He says: "I shall ask you to say that the conditions which were found in Belsen, and the conditions of which you will hear with regard to Auschwitz, were brought about not only by criminal neglect but that they were caused by deliberate starvation and illtreatment, with the malicious knowledge that they must cause death; that such starvation as occurred and such illtreatment as occurred was bound to cause the death of many and to cause lasting physical injury to many more."

Then on page 39, the last paragraph, he goes on: "As in all cases, it is the duty of the prosecution to prove the guilt of the accused beyond any reasonable doubt, and unless the prosecution do fulfill that burden of proof then it will be your duty to acquit any one of these persons who you may be in doubt about." In other words, there the learned prosecutor, in my submission, agrees very much on the point I am putting before you at the moment; he has got to satisfy you that these four accused were responsible for the conditions at Belsen in some way which he has to satisfy you of. I do not know how, but that is up to him, and it is from that point of view that I will ask you to consider the evidence, first of all, against those specific accused, and after that the evidence as to the general conditions at Belsen.

Before I start on the evidence against the accused, I want to put before the court the view which I am going to ask them to take of the evidence and of the witnesses. So far as the witnesses go, I would ask the court to say that the witnesses such as Brigadier Glyn-Ighues, Mr. Le Druillencoe, Dr. Bendle and Dr. Leo, who have spoken to general conditions, are on the whole reliable, and I would ask them to compare those witnesses with the other witnesses who have spoken not to general conditions but against individual accused, and I will ask the court to say that whereas the witness as to general conditions are reliable on the whole, the witnesses as to specific acts are almost universally unreliable. So much, Sir, for the witnesses.

I come now to the affidavits. A lot has been said by my friend, Major Cranfield, and others about the affidavits in general, but I am afraid there are one or two other points which I must say about them. The reason for that is this. My accused, four in number, three of them have not been accused by a living witness in court at all. Therefore, the entire prosecution case so far as their own acts are concerned, rests upon the reliance which the court is going to place upon these affidavits. I will say nothing about the various discrepancies which have occurred between affidavits and between live witnesses. That has been fully dealt with. But I would like to say a word about the way in which these affidavits were taken and prepared. That is dealt with fully in the evidence, first of all, of Major Smallwood, and, secondly, of Col. Chamion.

I first of all just want to deal with four or five points. - I shall not go into them, I will just mention them - which appear from Major Smallwood's evidence. It appears that accusations were invited from the whole number of internees at Belsen. So you have, to start with, a deponent who, very rightly, has considerable animus against the accused. Secondly, that the affidavits as they now appear before you in the bundle were prepared from statements taken by other people, mainly by police officers, and then turned

into affidavit form by Major Smallwood. Thirdly - and this is very important - the accused were never present or really present when these accusations were being made. Consequently the identification of them rested solely upon the use of photographs. We have been told that, at any rate, during what I call the Major Smallwood period the set of photographs in use was confined to members of the S.S. with, I believe, one or two of the wehrmacht, but, in any case, confined to people who had been in Belzen as officials. The effect of that, of course, is this, that a prospective deponent is shown a photograph and he picks somebody out and says: "I know No.1 on photograph No.6." Well, Sir, he must inevitably every time pick a winner, if I may put it that way; he is bound to pick out somebody who has been at Belzen, and that very fact will add a certain amount of colour to his story.

The court I have no doubt is familiar with the normal practice in the army of identification parades. It is, in fact, laid down in King's Regulations that if you have a man who is accused of a crime and you wish him to be identified by a witness you have an identification parade, and you must have on that parade other soldiers of the same rank and dressed in the same way, so that it is a fair test on the part of the witness, and he at least has the chance of picking out the wrong person, whereas in the photographic identification, as I say, you are bound to pick out somebody who would fit the bill every time. That is the situation during the Major Smallwood regime.

Then Major Champion, as he then was, came upon the scene, and I will admit there was a certain amount of improvement so far as checking the credibility of deponents was concerned. But the same situation exactly continued with regard to photographic identification; there was exactly the same possibility of error. Sjt. Dinsdale told us when he was cross-examined by Capt. Roberts -- he was one of the investigating serjeants -- that it was quite possible for there to have been a mistake in the key on one of these photographs. If that did, in fact, happen of course it completely invalidates the whole of an affidavit, but, unfortunately, one does not know which affidavit. Sjts. Higgs has also told you what is rather a strange thing. He says he used to take photographs round and show them to prospective deponents, and as soon as a deponent said: "Yes, I recognise No.3 on photograph No.4 as having done something or other, but I do not know her name" the witness was told by the serjeant: "Oh, that is so and so." Of course that witness goes away and if, as may be the case, there is a little conspiracy going on to bring forward witnesses, she merely has to say to one of her friends: "If you look at the photograph of the man in white pyjamas", or "If you look at a photograph which has got a figure like Ehlert's on it, No.4 is the one I am talking about." In other words, the point I am trying to make clear is this system of photographic identification was anything but fullproof and anything but reliable.

Under Regularion 8 the court is, of course, enjoined to place upon each affidavit what weight it thinks fit, and no doubt the court will give some weight to some affidavits and little weight to other affidavits, but I submit in general that the court should be very reluctant to pay any attention to an affidavit which is not corroborated by oral evidence given in this court.

Now, Sir, I will turn to the evidence against the accused themselves, and the first one is No.36 Charlotte Klein. There is against her only one paragraph in one affidavit. It is on page 162 of the big bundle, and it is the affidavit of one Luba Triszinska. As this is the only evidence against this accused I think I will read all of it to the court. It is very short. "I name also Charlotte Klein, whose photograph has been shown to me, No.22, whom I identify as No.1 on such photograph, as being personally responsible for deaths by beatings. Internees pulled a cart of bread from the main store to other stores under her supervision and were beaten for stealing bread."

Now, Sir, a certain amount of that is true; that is to say it was her custom to take a cart of bread round the camp, and that is not disputed. There is very little I can say about this affidavit, it is so short, it is so lacking in detail, that it is merely for the court to compare that with what the accused herself has said when giving evidence, and I would suggest to the court that she had the appearance of an honest witness. She was not shaken in cross-examination and, as I say, she admitted a good deal, and the court may well think that what she said was the truth. What she said was this, that she was in charge of the bread store, that she used to treat her own kommando of 15 persons well, and that she used to give them extra food. She said that she used to have a great deal of trouble - as may well be believed in a starving camp, - in carting round the bread, and that from time to time internees made efforts to steal that bread from her cart. A further admission to the story is that she used to slap them to get them out of the way and stop them stealing the bread. If that is what she did the court may well think it is a most reasonable way of acting; indeed, it is difficult to see what else she could have done in the circumstances.

The learned Judge Advocate did ask her whether she should not have reported the thief to the commandant instead of hitting the thief herself, and she answered -- which, in my submission, is quite a sensible answer -- "I made no report because they were very hungry and would not have stopped anyway." Surely that is probably the truth. Anyway, that is the situation we are faced with, this one paragraph of the affidavit on the one hand, her evidence on the other.

There is also the evidence of Unterscharfuhrer Muller, who said that she behaved very well to the bread kommando. His evidence is in transcript 44, and what he said was that he had to reprimand her because she was too familiar with her kommando and used to give them extra food and so on. Admittedly he is a member of the S.S. himself, but in my submission his story sounded quite a reasonable one, and I think it does bear consideration by the court.

There is one final point in the case of this accused to which I would draw your attention, and that is this. The job which she had at Belson was probably one of the most public in the whole camp. In the first place, she was dealing in a very desirable commodity, bread, and in the second place, she was taking that to every compound in the camp. Therefore she must have been very much seen and, as I say, a public figure. In that case it is, I submit, worthy of note that not a single prosecution witness who has come into this court has been able to say against her a single word, and the prosecution, so far as her own acts go, has got to rely on this single paragraph in a single affidavit. That absence of oral evidence coupled, as I say, with her public job is, in my submission, a very strong point in her favour, and I therefore ask the court to accept her own story that she used to slap people from the point of view of chasing them away to stop them stealing this bread.

I shall go on now to deal with the case of the other accused, and when I have done that I shall come back to this accused again and each of the others and ask the court to consider how far what has been proved of their acts does involve them in the responsibility for the general conditions at Belson.

My next accused is No. 37, Herta Bothe, and the court will no doubt recollect that such witnesses who have identified her have not told us that she was in charge of the wood kommando. Again in her case the evidence is purely affidavit evidence; not one live witness has spoken about her. I do not propose to deal with every affidavit, because most of them contain only a single sentence like: "I have seen Hilde Bothe beating", and that sort of thing, which does not take us very far.

The first affidavit I invite your attention to is the affidavit of Wilhelm Grunwald on page 37 of the big bundle. It is Exhibit 35.

He accuses Hilde Bothe of shooting two prisoners with her pistol. First of all, so far as this affidavit goes I would invite the court's attention to the age of the deponent. He was only 17 at the time he made the affidavit, and I think that that is a fairly relevant point when considering its worth. Bothe herself when asked about this said that she never had a pistol. The accused Charlotte Klein said that she never had a pistol, so far as she knows, and Gertrude Reinhardt, who I called as a witness and who slept in the same room as then both for a time, said that as far as she knows Bothe never had a pistol. None of the witnesses for the prosecution who has come into court has been able to say that she did have a pistol. In fact our sole knowledge that she ever did or may have had a pistol rests upon this affidavit of Grunwald, and the affidavit itself does not help us very much because there is nothing in it from which one can judge its truth or otherwise. There is no internal evidence that either assists or hinders in coming to a conclusion as to its truth. I would point out that it is like many other of these affidavits, very vague and very mendacious.

He goes on to say: "They fell down, but I cannot say whether they were dead or wounded, but as they were very weak thin and under-nourished I have no doubt that they died." That, in my submission, is a most improper thing to put in an affidavit. However, it is there, and I can say no more about it except to invite the court to pay to it no attention whatever.

The next affidavit of my interest is that of Sale Schiferman, which is page 131, Exhibit 77. She also is a notably youthful deponent, some 12 years old I think, and that she accuses Bothe of is beating to death somebody called Eva, who is a Hungarian, beside No. 4 kitchen, and she admits a date either in January or February 45. That is all she does say in this affidavit and it is confined entirely to the accused Bothe.

When the accused was cross-examined it was put to her that she did, in fact, work in the woodyard which was, in fact, near No. 4 kitchen. Accordingly the prosecution in this case is prepared to accept that this did happen in No. 4 kitchen. The accused admitted that she did, in fact, work quite near to No. 4 kitchen. On the other hand, if the court is going to accept that the incident happened in No. 4 kitchen I shall ask them also to accept that it happened during the month specified, that is in January or February, and, of course, neither in January nor in February was the accused Bothe working in the woodyard.

From the accused's own evidence -- she told us of various jobs which she did while at Belson -- it is clear that she did not take over the wood kommando until about the 10th or 11th March. That date is taken by the days she spent in various odd jobs, and you will find that she did not go anywhere near No. 4 kitchen until about the 10th or 11th. Therefore, it is difficult to know what interpretation, if any, to put upon this affidavit. There are so many possibilities. It may be a case of mistaken identity; it may merely be a case of exaggeration. It is very difficult to make any definite submission on the subject. The accused Bothe denies it altogether. She says it never happened. I would say that either this story is completely untrue or so exaggerated to be untrue, or if it happened it did not happen to this accused. There have been a lot of mistakes and I should not be at all surprised if this was not another one.

The next affidavit of any substance is that on page 162, Exhibit 88. It is the deposition of Luba Triszinska again. She says: "I name also as persons whom I have seen severely beating internees and thereby causing their ultimate deaths S.S. woman Marta Linke" alias Hilde Bothe, and "She was in charge of the vegetable kitchen." The first thing I would like to say about that affidavit is, of course, that the accused Bothe never had anything to do with the vegetables at all, and in support of that proposition we have the evidence of the accused herself, who says it; we have the evidence of the accused Lothe, who says it, and we have the evidence of the accused Ehlert who says it, and none of that has been challenged, so far as I know, by the prosecution. Again I suggest that Luba Triszinska has made a mistake.

There is another curious point about this deponent. She says at the top: "In Belsen camp I was employed as a nurse to Dutch babies." You may remember I asked the accused Kopper whether she knew Triszinska, and she rather surprised me by saying she did, and that she lived in the same block as Kopper did, that she was not a nurse of Dutch babies at all and, in fact, worked in a cookhouse quite near the cookhouse where the Dutch babies got their food. Of course, one does not know where one is with Kopper. She either invented that on the spur of the moment, or it may be true. I make no submission on it, I merely mention it as an interesting point.

I ask the court, so far as this allegation is concerned, to ignore it completely on the ground that it does describe for once the job of the alleged accused, and describes it quite incorrectly. As I say, Bothe had nothing whatever to do with the vegetables.

I have left out one or two affidavits which do not add very much one way or the other; I do not think it is worth dealing with them.

I would mention that there is a statement by the accused Lobauer. It is page 220 in the big book. She says there, in paragraph 5: "Of the S.S. men and others whom I have seen with my own eyes beating and illtreating prisoners I consider that" so and so "and Hilde Bothe should be punished." Now when she was giving evidence (Transcript 28) she said that that was wrong and she never said that at all. She said that what she did say was that she had seen these people beating and that she had said nothing about illtreating and she had said nothing about punishment. That is how the matter was left. The learned prosecutor did not examine her on this statement and therefore I assume he accepts that explanation, and so far as I am concerned all that Lobauer is saying is that she has seen Bothe beating. You have already heard from my learned friend Major Munro the difficulty we are in about "beating" and "schlagen." That does not really amount to very much.

The learned prosecutor also put to this accused the affidavit of Helen Hammermasch on page 41. It is only a single line and I will read it. She says: "I saw Marta Linke" - which is, of course, Hilde Bothe - "beat a naked woman in the bathhouse with a rubber stick." Of course that was put by the learned prosecutor because this is one of the affidavits which was put in by Major Cranfield, and when the witness Hammermasch came to the court she completely failed to identify the accused at all, and the accused when asked about it denied any knowledge of any such incident.

Quite apart from the incident of the bathhouse, the question of this affidavit is, in my submission, a most interesting one, because you have got a witness here who makes a deposition and says something about this accused, yet when she comes to the court she fails completely to recognise her. Now, one is tempted to ask what would have happened had Luba Triszinska come into the court, or Sale Schiferman come into court. Is not it likely that both of them would have failed to recognise the accused? Apart from Hammermasch no prosecution witness -- in fact not even Hammermasch identified the accused at all. Again, what I said about Charlotte Klein applies equally to her. The job which she had at Belsen was a very public one; she was in charge of the wood kommando and she took wood everywhere and yet, as I say, not one of these prosecution witnesses has recognised her. In my submission, one is drawn to the irresistible conclusion that they have failed to recognise her because her conduct was so unquestionable that they do not remember her. In other words, that she never did do all these things that she is accused of having done. I would ask the court to take this view of her actions, that in fact she hit people from time to time, and I say "hit" rather than "beat" - hit in the sense of a box over the ears when they did anything which was wrong, when they stole anything, whenever they committed any small offence.

She too was asked by the learned Judge Advocate should she not have reported these matters to the S.S. The answer, of course, is that she should have done, but one has got to remember that Belsen in March and April was not normal, even for a concentration camp.

That, Sir, is all I have to say about Dothe, unless the court wish me to deal with any of the affidavits I have not dealt with. There are one or two, but they are very insignificant ones.

(At 1323 hours the court is adjourned until 0930 hours on Monday 12th November 1945)

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