

DEFENSE COUNSEL: He is testifying against two defendants in the statement.

PRESIDENT: Is this evidence you have the best evidence available?

PROSECUTION: In view of the main conception of the witness policy here it is the best evidence obtainable because we are strictly limited as to what witnesses can be obtained so far as the physical presence of this witness is concerned. I don't know whether he could be obtained or not because he wasn't requested.

LAW MEMBER: Any objection on the part of the defense?

DEFENSE COUNSEL: I object on the grounds that it isn't the best evidence.

PRESIDENT: Is that the only objection the defense has?

DEFENSE COUNSEL: Yes, sir, that is the only objection I have.

LAW MEMBER: Prosecution Exhibit P-9 for identification will be received in evidence for such probative value as it may have.

(The document heretofore marked Prosecution Exhibit P9 for identification was received in evidence as Prosecution Exhibit No. P-9, is attached hereto, and made a part of the record.)

PROSECUTION: If it please the court, I should like to read from this interrogation what pertains to the accused here, eliminating statements made here pertaining to accused not on trial.

PRESIDENT: You may proceed with the understanding that the defense counsel can introduce any part of that exhibit he may desire.

(Whereupon the Prosecution read parts of Prosecution Exhibit P-9, the interrogation of Mieczyslaw Jaroszewicz.)

PRESIDENT: So much of the testimony as was read in Prosecution Exhibit P-9 that pertains to the period prior to January 1, 1942 will be disregarded by the court.

PROSECUTION: May I make a statement with that respect, sir. I think in civilian courts as well as in these courts it is possible to show a course of conduct before the time indicated in the charge sheet. There has been testimony in this case indicating the accused Grill took part in cold water baths after January 1, 1942. In order to show a continued course of conduct, it could show he did the same thing immediately prior to that time because that would be further evidence that he did it before, and though he couldn't be punished for what he did prior to that time, it would have a bearing on the veracity of the testimony.

PRESIDENT: The court understands that.

PROSECUTION: I ask the court reporter to mark this Prosecution Exhibit P-10 for identification, a statement in German by one Heinrich Glowacki, and P-10A for identification, the English translation thereof. This particular witness was subpoenaed but was unable to come here.

(The documents referred to were marked Prosecution Exhibits P-10 and P-10A for identification.)

PRESIDENT: Where does he live?

PROSECUTION: He lives in Linz, Austria.

PRESIDENT: Off the record.

PRESIDENT: On the record.

DEFENSE COUNSEL: If the court please, I object. I think it is not necessary that the defense be penalized

because witnesses don't show up. I don't believe it is the best evidence.

PROSECUTION: I now offer Prosecution Exhibit P-10 and P-10A for identification into evidence.

PRESIDENT: Any further objections?

DEFENSE COUNSEL: That is the only objection I have.

LAW MEMBER: Prosecution Exhibits P-10 and P-10A for identification will be received in evidence for such probative value as they may have.

(The documents heretofore marked Prosecution Exhibits P-10 and P-10A for identification were received in evidence as Prosecution Exhibits No. P-10 and P-10A, are attached hereto, and made a part of the record.)

(Whereupon the prosecution read Prosecution Exhibit P-10A, the English translation of the statement of Heinrich Glowacki.)

DEFENSE COUNSEL: If the court please, I move that that portion of the statement dealing with the Autumn of 1941 be stricken from the record.

PRESIDENT: The court will disregard that part of the statement pertaining to the period prior to January 2nd, 1942.

DR. KLUGE: If it please the court, on behalf of the accused Schuettauf, I feel obliged to object to the use of the statement of the French Captain Bousset. The accused Number One, Schuettauf, objects out of the fact that this witness is not in a position to make the statement of this man, this witness. He never was confronted with such a man. He doesn't know that man. Furthermore, there is no evidence at all that this man has duly been sworn in. We see before us a simple handwritten statement and an English translation which, by the way, is not certified a true translation either.

Furthermore, all of the accused object to the use of the statement in spite of the fact that the statement already has been received in evidence, of Mieczyslaw Jaroszewicz. I point out the essential fact and the substantial fact that this witness has been asked, "Is it possible for you to go to Dachau to testify?" and that he said, "Yes, but not until on the 15th of March, because I have some personal business to attend to before that time." I am of the opinion, therefore, of course, that the witness could attend court. And as the fate of the accused, their lives are at stake, we must make sure that the best evidence is secured. This is not the case, in my opinion. Therefore, it is the accused's duty and the peerless duty of the defense counsel to point out these facts.

LAW MEMBER: The court will receive the documents for such probative value as they have.

<sup>THE</sup> ~~two~~ documents <sup>WAS</sup> ~~were~~ marked Prosecution's Exhibits P-11 and P-11A for identification.)

PROSECUTION: The court reporter has marked for identification Prosecution's Exhibit P-11, ~~and Prosecution's Exhibit P-11A~~. This <sup>vik</sup> Exhibit P-11 for identification is an interrogation of the witness Glowacki, the same witness whose statement I have previously read.

PRESIDENT: What is the date on it?

PROSECUTION: 6 February 1947.

PRESIDENT: And what was the date of his previous statement? In Prosecution's Exhibit P-10, what was the date of that?

PROSECUTION: 30th of April 1947.

If it please the court, the Prosecution's Exhibit P-10 related to the accused Grill. Prosecution's Exhibit P-11 for identification relates to the accused Hartung and Jungjohann. I offer it in evidence.

DEFENSE COUNSEL: I make the same objection--that it is not the best evidence.

LAW MEMBER: Prosecution's Exhibit P-11 ~~and Prosecution's Exhibit P-11A~~ will be received in evidence for such probative value as they may have. <sup>vik</sup>

(The documents heretofore marked Prosecution's Exhibits P-11 ~~and P-11A~~ for identification were <sup>vik</sup> received in evidence as Prosecution's Exhibits P-11 and P-11A, ~~and~~ attached hereto, and made a part of the record.) <sup>vik</sup>

PROSECUTION: If the court please, I will read that portion which relates to those accused on trial here.

PRESIDENT: You may proceed.

(Whereupon the prosecution read the pertinent parts of Prosecution's Exhibit P-11, ~~the English translation of the statement of Henryk Glowacki, dated 6 February 1947.~~) <sup>vik</sup>

PROSECUTION: I ask the reporter to mark for identification Prosecution's Exhibit P-12, and the English translation thereof, P-12A.

(The documents were marked Prosecution's Exhibits P-12 and P-12A for identification.)

PROSECUTION: If the court please, Prosecution's Exhibits P-12 and P-12A for identification are the statements of Neumaier, Ludwig, living in Fuerth, Bayern--a German national. It relates to the accused Grill.

PRESIDENT: What is the date of it?

PROSECUTION: It is dated 29 April 1947, and I offer it in evidence.

PRESIDENT: Where is Neumaier?

PROSECUTION: I don't know where he is now, sir. He wasn't requested.

PRESIDENT: He wasn't requested?

PROSECUTION: No, sir.

PRESIDENT: Why wasn't he requested?

PROSECUTION: For the same reason as I have stated in the reason of the other witnesses' cases. A selection was made of the witnesses who were deemed most important. They were requested. The others were not.

DEFENSE COUNSEL: If the court please, the defense makes the same objection and moves that that portion of the statement dealing with activities prior to January 1942 not be read.

DR. KLUGE: If it please the court, may I add to the statement of the chief defense counsel? May I point out that according to the statement of the prosecution, from accounts that he just read, that this witness lives in Fuerth, and that Fuerth is only about 180 miles from here. The witness is German nationality. In my opinion, he could attend the session. Also, because he is supposed to state very substantial facts. The same case about the witness Glowacki, who lives

at Linz. Linz is in Austria, but not further away from Munich than any German town.

PRESIDENT: Is this evidence the best evidence reasonably available?

PROSECUTION: It is, taking into consideration the policy of the administration in regard to economy as to calling of witnesses.

PRESIDENT: Has the defense been given copies of these statements?

PROSECUTION: Yes, sir.

PRESIDENT: The exhibit will be received as evidence and read, and that portion pertaining to the period prior to January 2nd, 1942, disregarded by the court.

(The documents heretofore marked Prosecution's Exhibits P-12 and P-12A for identification were received in evidence as Prosecution's Exhibits P-12 and P-12A, are attached hereto, and made a part of the record.)

(Whereupon the prosecution read Prosecution Exhibit P-12A, the English translation of the statement of Ludwig Neumaier, dated 29 April 1947.)

PROSECUTION: I ask the court reporter to mark this as Prosecution's Exhibit P-13 for identification, and the English translation thereof, P-13A for identification.

(The documents were marked Prosecution's Exhibits P-13 and P-13A for identification.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1355 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May the record show that all the members of the court, the prosecution, the defense, the accused, the court reporter and the court interpreter that were present at the previous sessions are present now.

May it please the court, during the last recess I have been authorized to announce that there has been an administrative ruling that the witness, Captain Louis Bausel, whose statement is Prosecution Exhibit P-8 and P-8A, is not obtainable and likewise the witness whose statement appears as Prosecution's Exhibit P-9, whose name is Jaroscewicz. The witness Slowacki whose statement is in Prosecution's Exhibit 10 and P-11, as previously announced was summoned was not obtainable and it has been administratively authorized that he is not obtainable. The prosecution at this time would like to withdraw Prosecution's Exhibit 12, the statement of Ludwig Neumaier, and P-12A, the English translation thereof.

PRESIDENT: Is there any objection to the withdrawal of Prosecution Exhibit 12 and 12A?

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 12 will be withdrawn from the record.

PROSECUTION: I should like to offer into evidence the exhibit marked before the last recess by the reporter as Prosecution's Exhibits 13 and 13-A for identification. This

statement is by one Teodoronic, family name, and first name, Dusan, from DP Camp 100, a Yugoslavian national whose statement was sworn to on the 21st day of February, 1947. This particular witness was requested but it is reported that he is sick in a hospital and too ill to come here to testify. I now offer these documents into evidence.

LAW MEMBER: Is there any objection?

DEFENSE COUNSEL: I object on the same grounds. It is not the best evidence.

LAW MEMBER: Is the witness Dusan Teodoronic reasonably available?

PROSECUTION: No, sir.

LAW MEMBER: Prosecution Exhibits 13 and 13A will be received in evidence.

(The documents heretofore marked Prosecution's Exhibits 13 and 13-A for identification, were received into evidence as Prosecution's exhibits 13 and 13-A, are attached hereto and made a part of the record.)

(Whereupon the prosecution read Exhibit 13-A to the court.)

PRESIDENT: The translation of this Exhibit P-13A ought to be read to all accused during the coming recess.

DEFENSE COUNSEL: Yes, sir. It shall be.

PROSECUTION: I ask the court to take judicial notice of the record in the Parent Mauthausen case and the review and findings therein, and for the purpose of refreshing the court's recollection and for its convenience, I have here an index and a guide to the references in that record to concentration camp Gusen, a subsidiary of the Mauthausen camp.

PRESIDENT: The court will take judicial notice of the original Mauthausen case as requested by the prosecution.

PROSECUTION: The prosecution rests.

PRESIDENT: Does the defense counsel desire to make an opening statement?

DEFENSE COUNSEL: The defense counsel does not desire to make an opening statement but would like to move at this time for a finding of Not Guilty against all accused and of all particulars and charges on the ground there is not sufficient evidence to support a finding of guilty as to these particulars and charges.

PRESIDENT: Subject to objection by any member of the court, the motion of the defense counsel is denied.

DEFENSE COUNSEL: The defense calls as its first witness the last witness which appeared for the prosecution this morning, Antoni Szulc.

ANTONI SZULC, called as a witness by the defense, being reminded that he was still under oath, resumed the stand and testified further through a Polish interpreter:

(Whereupon the proceedings were translated into the German and English languages.)

#### DIRECT EXAMINATION

#### QUESTIONS BY DEFENSE COUNSEL:

Q Will you state your name, please?

A Szulc, Antoni.

Q Are you the same Szulc that testified for the prosecution here this morning?

A Yes.

Szulc-Direct