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A Yes, some of them said he did, some others said this food would go somewhere else.

Q Were the invalid baths so well known through the camp that everyone of the accused probably knew of that activity?

A They were well-known in the entire camp.

PRESIDENT: Any other questions by the court? There appear to be none. The witness will be excused.

(Whereupon the witness was excused and withdrew.)

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(Whereupon at 1200 hours the court recessed until 1330 hours.)

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AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May the record show that all members of the court, prosecution, defense, accused, and court reporter that were present at previous sessions are now present. There is a new interpreter to be sworn.

PRESIDENT: Mr. Herbert Rosenstock has been appointed court interpreter. He will be sworn.

(Whereupon Herbert Rosenstock, U. S. Civilian, was sworn as court interpreter.)

DEFENSE COUNSEL: If the court please, defense rests.

PROSECUTION: If the court please, Prosecution Exhibit P-14 is the Fragebogen in German of the accused Schuettauf. There was a question raised as to the translation. I have had the translation corrected. I ask the court reporter to mark this corrected translation Prosecution Exhibit P-14A for identification.

(The document referred to was marked Prosecution Exhibit P-14A for identification.)

PROSECUTION: I now offer Prosecution Exhibit P-14A in evidence.

DEFENSE COUNSEL: No objections.

LAW MEMBER: Prosecution Exhibit P-14A for identification will be received in evidence.

(The document heretofore marked Prosecution P-14A for identification was received in evidence as Prosecution Exhibit P-14A, is attached hereto, and made a part of the record.)

PROSECUTION: I ask the court to take judicial notice of one of the exhibits in the main Mauthausen case, marked Prosecution Exhibit P-25, one of the death books of Mauthausen and its subsidiary camp. I call the court's attention to an entry in this death book, that they will take judicial notice of an entry. It is the death entry of a Wilhelm Tuttas, about whom there was testimony in this case. I call the court's attention to it for the fact of his death. There was testimony in the record of the main Mauthausen case that other entries in the death book are not accurate, but that it is accurate so far as the names of those concerned.

DEFENSE COUNSEL: If the court please, I don't believe that the introduction of this is proper, I don't believe the method of introducing evidence is proper. There is no evidence to show that this book was ever introduced into the original Mauthausen case as far as I am concerned and again I don't believe it is proper rebuttal.

PRESIDENT: The court will take judicial notice of the matter just presented to it by the prosecution.

PROSECUTION: I call the court's attention to the fact that this entry is on page 332 of Prosecution Exhibit P-25 in the main Mauthausen case. The name is Wilhelm Tuttas.

DEFENSE COUNSEL: Does defense counsel have permission to comment on this in the court. I would like to make a couple of comments as to the entries pertaining to Wilhelm Tuttas, sir.

LAW MEMBER: Wouldn't that be more appropriate in the closing argument?

DEFENSE COUNSEL: Yes, sir.

PROSECUTION: If the court please, in view of the fact that some of these accused were identified by number I believe

the record should indicate which accused is what number here. So that the record may so indicate I would like to read off the names and the numbers:

PRESIDENT: You may proceed.

PROSECUTION: Number 1, Erick Schuettauf; Number 2, Wilhelm Grill; Number 3, Willi Jungjohann; Number 4, Oskar Tandler; Number 5, Herbert Hartung; Number 6, Alfons Hugo Heisig.

The prosecution rests.

PRESIDENT: Any argument by the prosecution.

PROSECUTION: Yes, sir. If the court please, the testimony of the witnesses in this case, both witnesses for the defense and for prosecution and direct examination and on cross examination has been so strong for the prosecution that there remains little for the prosecution to say. I will not speak of the beatings and the starvation and other miscellaneous mistreatments. I will not speak of what the statements presented to this court contain. I will only speak of actual direct death and I will only speak of what the witnesses before this court have said with respect to the participation of these accused in those deaths.

So far as the accused Schuettauf is concerned the evidence indicates that he gave orders for executions. The record in this case on page 16 gives the complete testimony of the witness Kowalski in that respect. The witness Kamienski has given testimony that the accused Schuettauf has given orders resulting in beatings to death. That testimony has not been contradicted except by the accused on the stand. In his position as commanding officer of at least one of the guard companies and

perhaps at one time of all of them it would lend credence to the fact that he actually did give such orders.

So far as the accused Grill is concerned, I will not dwell on his activities as a postal robber. His activities as a murderer are far more important. The witnesses Kowalski, Kamienski, Szulc, Gomez, Szmura and Berdzinski have all placed him in the invalid baths. Even the defense witnesses have said they have heard his name mentioned in that connection.

So far as the accused Jungjohann is concerned, the evidence is strong that he shot an American flyer and that he threw prisoners from high points in the stone quarry and into holes and rocks. The witness Kowalski has so testified and the witness Berdzinski has also testified that he beat a Spaniard to death.

So far as the accused Tandler is concerned, I will not dwell on his activities in the starvation, mistreatment and other cruelties that resulted in the death of 2000 Russians in the matter of a few months. I will mention only the part he has played in the direct and immediate deaths of prisoners. The witness Kowalski has testified that he was active in the gassing of Russian prisoners of war. I would like to mention at this point that although the accused Tandler categorically denied that he was a block leader in the Russian Prisoner of war block his own defense witnesses, including the last defense witness who took the stand, placed him as a block leader in the Russian prisoner of war block. Both the witness Szmura and the witness Kowalski have testified as to his beating of a Russian prisoner of war and subsequent drowning of him. The witness Kamienski has testified to the brutal manner in which prisoners who had collapsed at the stone quarry were suffocated by piling dead bodies on them. That was done under

supervision and under orders of the accused Tandler.

So far as the accused Hartung is concerned, the witnesses Kowalski and Szmura testified as to his part in the killing of Willi Tuttas. The witness Kowalski has testified as to his participation in the gassing of 500 prisoners in the early part of 1945. Hartung himself has admitted shooting the prisoner Leitzinger and in a previous statement has admitted that he shot him to death although he denied that his shot took effect on the stand.

So far as the accused Weisig is concerned, the witness Kowalski has testified to his participation in the gassing of 500 inmates in the early part of 1945. The witness Szulc has testified to his participation in the death baths.

In conclusion, every one of these six accused is a murderer. If not a small time murderer he is a mass murderer and I ask the court to bring in findings and sentences in accordance with the great preponderance of evidence that has been produced in this court.

PRESIDENT: Any argument by the defense?

DEFENSE COUNSEL: If the court please, with the permission of the court I would like to comment on the entry in the exhibit entered by the prosecution, namely the death book. If the court will observe that entry pertaining to Wilhelm Tuttas, they will see that this man was a professional criminal and that he was born in Gelsenkirchen, Germany, and, contrary to the statements of the prosecution witnesses, was not an American citizen. With the court's permission I would like to waive my portion of the closing argument in favor of Dr. Kluge, but I would like to give to the court four words which have been very prevalent throughout this case. Those

four words are: first, doubt, to which these defendants are entitled; hearsay, probably one of the most prevalent things throughout this case; contradiction, and lastly and most important contrary to statements of the prosecution witnesses, presence.

DR. KLUGE: Mr. President and gentlemen of the court, prior to my argument I must express my thanks, both on my own behalf and on the behalf of the accused in this case, for the serious attention of the members of the court and the striving for the truth on the part of the members of the court during the eight days of this trial. I personally have not ascertained any influence to the statement with which the defense has rested and I would have deemed it advisable to continue the presentation of evidence on behalf of the accused. Ever since criminal courts have been in session there has been, when the prosecution on the one hand has rested and when, on the other hand, the defense has rested, a question which has to be decided by the court, and that question is the determination of the truth. That is the ancient question, what is the truth and can we ever reach truth? Now, may it please the court, the process used by the prosecution is terrifyingly simple, extremely simple, too simple in fact. That procedure is to take the facts out of the testimony of the witnesses, to add them up in the way that an accountant would add up a column of figures, to conclude from a sum total that these are the facts and that the accused must be found guilty on them. However, there has always been a more difficult task; that was the task of a judge; and it has always been more than a simple measuring by means of a measuring rod. Of course we always have to resign ourselves to a certain point in every trial. We have to resign ourselves to the fact that in this concrete case we never did reach the actual truth. During the last eight days the thought has been going through my head as to what, after the ten years of experience that we have behind us, our own personal attitude towards the value of human life is. Let us be honest with ourselves. We are a generation which has lived through two terrible wars, wars as terrible as any that humanity has lived through.

(Argument-Kluge)

And the time between those wars again was filled up with political incidents and repercussions during which the life of an individual human being has been very cheap indeed. And I am very well familiar with the fact that inside a concentration camp, inside these notorious institutions created by a criminal government, life was exceptionally cheap. But let us be honest with ourselves and let us ask ourselves with the same rigor and the same concentration that is necessary whether, whenever we decide the question, a human life has actually been forfeited. I am trying to think back to the time before the great wars, whenever a criminal case came to trial, and think of how serious the attention of the public was, how the press was informed on such matters and how feverish the general attention to the guilt or innocence was. Cases of that type were prepared months ahead of time, by the prosecution it is true, but, Gentlemen, also by the defense. Only in order to determine whether one single man was guilty and whether a life was forfeited month after month of preparation was used, weeks were used up in trial and commissions were sent out to the places where the alleged acts took place, all of this to determine the truth. And we are now sitting in a court judging about an incident which took place in a camp, a camp which none of us, with the exception of the accused and some witnesses, had ever seen, and this in spite of the fact that an exact knowledge of the locality would be of such tremendous importance in checking up on certain matters contained in the testimony. Let me pick out only one point to illustrate this fact. The witness Kowalski, who knows so very much-- he knows, in fact, something about every accused--tells us, among other things, that he had received certain information from the place where the stenographers were working concerning statements made by the accused Schuettauf. In the meantime I have gone to the trouble of checking up on what it all is that Kowalski knows. He said, for instance, that he heard that the accused

(Argument-Kluge)

Schuettauf had issued orders and that he had also seen that. And concerning the issuing of instructions he says he heard that too but he does add after that that it would be difficult to understand all that. And he then adds that the place of work of the stonemasons was about 15 meters away from the spot where these instructions were issued. Now, gentlemen, just in this one point how important, how infinitely important would it be for us who did not have any other opportunity to check up on this matter to see and find out whether this witness Kowalski was actually able to hear this, much less whether he actually did hear it. Gentlemen, I realize that it might perhaps be considered old fashioned to use the subject of religion in a final argument. Nevertheless, is it not our duty, if we consider that witnesses have sworn up here and have sworn to our Lord, to the fact that every word that is said on this witness stand is the entire truth, is it not therefore important that if there should be one point upon which the witness would not say the truth that we should say to him that you have sworn to our Lord, that you have spoken an untruth in this case and have therefore spoken untruth in all cases? And in this one point, gentlemen, it is certain that we can say that a witness has spoken an untruth, here in the one case of the witness Kowalski, who was at the place where stonemasons were working and where there was a lot of noise. We can tell him, "You could not have heard it. At the very most you could have seen that somebody said something to somebody else, but at no time could you possibly have heard what was said." And in that connection it is entirely immaterial whether it is true that the distance, as shamefacedly the witness Kowalski admitted, was 15 meters, or 100 meters, as the accused in their own defense testified. In neither case could the witness Kowalski have understood a single word. And I must say, gentlemen, that I consider it quite a presumption from a man who, before these men, who, after all, are reasonable men,

(Argument-Kluge)