

calls upon the Lord to be his witness and claims that he could hear something under such conditions. And let me refer to one other old-fashioned precept in this respect. In the German language we have a proverb to the effect that he who lies once will not be believed, and isn't it true that we have many times been forced to return to the truth referred to in such simple, childish proverbs? And this brings me to a subject which we are interested in, the material which is available in collecting evidence in such types of criminal trials, a subject about which I have not only had the opportunity to talk about frequently, but have already found it necessary in fact to talk about frequently. I want to start out with the question of the president of this court which he asked each accused as he interrogated him: "Would you, the accused No. so and so, have any reason for believing that this witness had any reason to testify against you?" And the constant answer of every one of the accused, the stereotyped answer of those accused, had to be, "No." And why was it that this answer would have to be no? The answer is very simple. It is the same reason in all cases. The reason was that the accused had to say, "I don't know. I don't even know these people who are accusing me of all these acts." For what is the general view of these trials? What is it to the witnesses here? It is simply a trial of the tortured versus the torturers. Now which ones of the tortured are they that appear here? I think, gentlemen, that we will have to do some differentiating here. Thousands upon thousands of men went through this notorious concentration camp system as years went by. But gentlemen, I don't think that any one of these men are among the unvarying, constant material of witnesses which keep appearing before you. Of these many thousands many of them stay home, resigned to their fate, resigned to what they had to go through and considering it fate that has

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been put upon them by providence. And it would indeed be very useful if we could get some witnesses from this better part of the prisoners over here. I must apologize to you for this evaluation of the case because it would be so much more valuable to have these witnesses who made up the better part of the prisoners here in order to find out what conditions in concentration camps actually were, the light and the dark points, but including also the light points. In another case which has been before this very same court I had an opportunity to present to it some personal experiences concerning the choice of witnesses that we have. And I think the prosecution was very wise in not bringing the witness Lowicz here on the stand as had at first been planned. In certain respects I feel sorry that this witness was not here examined for the prosecution can rest assured that I would have asked this witness certain questions which would have been extremely unpleasant to the witness and which would have shaken his credibility considerably. But aside from all this, if we direct our attention to the fact that all of these witnesses have been through the misery of such camps, for years and years through the same misery, then we can not understand the great discrepancies existing between the testimony of the witnesses for the prosecution and the defense. It cannot be the duty of the defense here to pick up every point that has been testified here, to compare the testimony of Kowalski with Kamienski, to put that in the light of the testimony of Sculz again and to compare all this again with the testimony of the accused, or to do any thing of the kind. One point seems to be all-important to me. If there is a material and a substantial discrepancy in testimony concerning the same incident, particularly incidents which allegedly happened in a camp and should therefore be matters of common knowledge, if such dis-

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crepancies exist then there is something wrong, either in the prosecution testimony, or in the defense testimony, and this point seems even more important if such discrepancies exist concerning the same incident within the testimony of different prosecution witnesses.

We knew that much has been said around here concerning the accused Grill and particularly regarding his participation in the death bath. We, the prosecution and the defense, as well as the court, have tried our very best to find out everything and to collect every scrap of evidence in order to find out whether the accused Grill has actually participated in these baths or not. The witness Kowalski, who knows so very much, this omniscient witness who knows about everything inside the camp and out, who was always present when something would happen--he was the man to tell us, yes, this accused was present. And another witness who went through this same vale of tears and of blood with him suddenly names the name of another one of the accused who had been present in the death bath, an accused who had never been mentioned in this connection. And I am sure that everyone who has been following this trial here had a sort of a reflex action within himself when suddenly it was not the accused Grill, who had been the center of attraction, who was mentioned, but it was the accused Heisig who was mentioned. And then, almost breathlessly, everybody listened to the answer to the following question as to who else was present at these baths. And then we got the answer, "Who else participated? Well I don't know. I didn't hear about it."

What I am trying to say, gentlemen, is the following. Your task, gentlemen, is to create a picture of the facts as they actually did exist from the variety of facts that have been presented to you. I know very well that it was with a certain amount of skepticism that you received

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the testimony of even the prosecution witnesses. That could be seen by the questions you asked them. But it is very difficult for the mind of a human being to still be doubtful if the same statement is made by two different persons. And then it is very easy to fall back to the problem in arithmetic which I mentioned in the beginning. What do we have on one side? Four or five prosecution witnesses. And on the other side? Well, nothing but the testimony of the accused, who are interested in the case, plus maybe one or two defense witnesses. But in this connection there is one point that I have to bring out, that it is my duty as defense counsel to bring out on behalf of the accused, and that is that the accused, as was stated in the beginning of the trial, have not had sufficient opportunity to prepare their defense, as would be desirable. But the fact of the matter is that for years upon years the prosecution has had the opportunity to collect evidence. They have gone down as far as Austria and they have gone into every DP camp to collect evidence, all of this during the time the accused were in prison pending their investigation, during which time they had no opportunity to fight for their own heads. This we can gather from the seriousness of the charges and the demands of the prosecution. As I have mentioned before, among the many thousands upon thousands of witnesses who have gone through this misery and through these concentration camps, throughout the many years, there are only about six or seven of them who are here now and we who are very far away from the scene where these acts allegedly have taken place are required to accept the testimony of these six or seven witnesses, who may be maliciously saying the untruth or else may be suffering from a faulty memory. Of course, gentlemen, you will say that this is still not answering the problem raised by the answer of the accused which they gave when asked whether they could think of any reason

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why all these people testified against them. But let us pick out, for an example, the case of Grill in order to explain how it was that this tremendous hatred, this enormous amount of hatred of all of these prisoners for these accused, would be created. And that case which I am going to cite to you will also demonstrate to you how easy it is for a human being to reach a finding of guilty towards any particular man. We all know, from our forensic experience, that there is a direct relation between the education and intelligence of a person and the sureness of his testimony on the witness stand, that is, the less intelligent a person is the more sure he is of himself. In the testimony of the witness Kowalski you will find the following verbatim: "Grill was responsible for seeing to it that we got the entire contents of our package and that the packages were kept in order, but we never did get the entire contents of our packages." So this conclusion as it appears in the mind of this simple person is also a simple one. But this attitude perpetuated itself daily in conversations and talks with other prisoners.

DR. KLUGE: For these men who were indeed living under miserable conditions, who were far away from their families, for these men these packages which they received were the only connection which they had with their families, they were, in fact, the only connection which they had with life, and, of course, somebody's taking a hand in these packages which they received was to them as a vital operation would be to another person, and if you consider that in probability only the accused Grill probably met every single one of these prisoners during these years you could well imagine what the amount of hatred was that was collected, and we have been able to see enough of these men in this trial. We have heard that in this camp witnesses have appeared around here who are themselves to be used as witnesses, black check witnesses so to speak.

Gentlemen, I have to reemphasize the seriousness of your task of finding a sentence on such uncertain foundations, and if we do have to admit that the testimony of former prisoners should be sufficient to reach a sentence in such a case, then we must have a strict standard of testimony that is considered, then indeed we are justified in demanding that testimony in such cases should be as identical as two congruent triangles in mathematics, and there is nothing of that type to be found here. There are defense witnesses who themselves lived and worked the same as defendants and who did not confirm the testimony of the prosecution witnesses. You certainly cannot say that the witness Folger was particularly sympathetic toward the accused, and you might in fact say that he drew a picture of the accused Grill's character, a picture which I am convinced

is a true one. You did notice the point when the witness became slightly weak during the time when he spoke about the Russian prisoners of war and this particular point convinced me all the more that the witness was honest as he spoke. Surely this witness would certainly not have had the slightest reason for keeping to himself the fact, if it was a fact, that the accused Grill had something to do with the bath. The same is true for the witness Krause and you cannot simply call the testimony of the witness Krause null and void merely because he received personal favors in the post office in the evenings. These two men basically can demand the same credibility and the same importance attached to their testimony as the witnesses for the prosecution can, since they did go through the same misery.

So, gentlemen, deliberate your task to weigh, on the balance of justice, these pieces of evidence with the cool deliberation which has been in the heart of judges for all ages.

PRESIDENT: Court will be closed.

(Whereupon at 1445 hours the court closed.)

* * *

(Whereupon at 1500 hours the court opened.)

PRESIDENT: Court will come to order.

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

PRESIDENT: As the name of each accused is called he will stand in place.

FINDINGS

PRESIDENT: Erick Schuettauf, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you, Erick Schuettauf:

Of the Particulars: Guilty
Of the Charge: Guilty

Wilhelm Grill, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you, Wilhelm Grill:

Of the Particulars: Guilty
Of the Charge: Guilty

Willi Jungjohann, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you, Willi Jungjohann:

Of the Particulars: Guilty
Of the Charge: Guilty

Oskar Tandler, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you, Oskar Tandler:

Of the Particulars: Guilty
Of the Charge: Guilty

Herbert Hartung, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you, Herbert Hartung:

Of the Particulars: Guilty
Of the Charge: Guilty

Alfons Hugo Heisig, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you, Alfons Hugo Heisig:

Of the Particulars: Guilty
Of the Charge: Guilty

The court will hear evidence of previous convictions and of any extenuating circumstances.

PROSECUTION: The prosecution has no evidence of previous convictions.

PRESIDENT: Do the accused desire to introduce evidence of extenuating circumstances or to make any further statement to the court?

DEFENSE COUNSEL: If the court please, we have no evidence in mitigation to offer, however we have four defendants who would like to take the stand in their own mitigation. Would the interpreter warn the defendants that subject to cross examination they are not to bring out any details pertaining to the evidence presented in this case.

(Whereupon the interpreter did as directed.)

PRESIDENT: Tell the witnesses they are appearing before the court to present evidence of extenuating circumstances or to make any further statement that they desire to make to the court.

(Whereupon Erick Schuettauf took the stand.)

DR. KLUGE: Mr. Schuettauf, you have heard the court find you guilty. Now, without commenting upon the facts based upon this finding of guilty, will you please tell the court the reasons why you would ask them to treat you mildly.

ACCUSED SCHUETTAUF: I am 60 years old. I have never been convicted in my life. I was entirely bombed out. I have

lost everything I owned and my family is in a state of dire emergency.

DR. KLUGE: Is that all?

ACCUSED SCHUETTAUF: Yes.

DEFENSE COUNSEL: Wilhelm Grill would like to take the stand in mitigation.

(Whereupon Wilhelm Grill took the stand.)

DR. KLUGE: You have heard the findings of the court. What reasons concerning extenuation would you like to present to this court, without, however, commenting upon the facts in the case.