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TRIAL BY A MILITARY COURT

of

GENERAL VICTOR ALEXANDER FRIEDRICH WILLY SEEGER and 5 others

on

17/22, 24/29 JUNE, 1/6, 8/11th JULY, 1946.

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TWENTYFIRST AND TWENTYSECOND DAYS.

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TRIAL BY A MILITARY COURT OF WAR CRIMINALS.

held at

WAR CRIMES COURT, ZOOLOGICAL GARDENS, WUPPERTAL, GERMANY.

upon the trial of

GENERAL VICTOR ALEXANDER FRIEDRICH WILLY SEIGER and 5 others.

on

WEDNESDAY & THURSDAY, 10th & 11th JULY, 1946.

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PRESIDENT :

MAJOR - GENERAL I.S.O. Playfair, CB, DSO, MC.

MEMBERS :

Colonel E. Fitzhlysch.

Major L. Gill.

Major R.R.S. Maret.

Major A.R.E. Parsons.

Capt. J.O. Davies.

Idcut. Jan Bichet. (French Air Force)

JUDGE ADVOCATE :

O. L. Stirling, Esquire, K.C.

(Deputy Judge Advocate General to the Forces)

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TWENTYFIRST AND TWENTYSECOND DAYS.

21st DAY

Wednesday, 10th July, 1946.

(At 1000 hours the court re-assembles pursuant to the adjournment, the same president, members and judge-advocate being present)

The accused are again brought before the court.

**THE JUDGE ADVOCATE:** The court will now listen to counsel on behalf of Schlierbach.

**DR GIERLICH:** May it please the court: my learned fellow counsel Dr. Von Bruck and Dr. Luedcke have in great detail given their points of view as to whether in the case of their clients the question of a punishable responsibility did arise in the killing of the 32 parachutists in observation of the international laws and various other laws which have a bearing on this case. The points which they have raised go for all the accused, and I shall apply these points in the case of my client Dr. Schlierbach too, and I therefore ask you to take into consideration the points raised by my fellow counsel when you consider as to whether my client is guilty of a punishable offence. Quite apart from the given legal reasons, the accused Schlierbach cannot be found guilty of a punishable offence because he had in no way taken part in the killing of even only one Parachutist.

During my opening address before the interrogation of my client, Dr. Schlierbach, I pointed out that according to the result of the evidence given, no proof as to the participation of the accused Schlierbach in the killing of the parachutists has been found. On hand of the evidence which has been given, I am fully convinced, and it has been given in great detail, that Dr. Schlierbach can in no way be brought into connection with these killings. He had no shootings carried out, and gave no orders which might have led to the shooting, and he did not neglect to use means at his disposal by which the lives of the parachutists might have been saved. He had no hand in deciding the fate of the 32 parachutists.

The official position of the accused and his factual and local sphere of authority as shown by the evidence, let a punishable responsibility of the accused out of the question.

I would now shortly like to speak of the factual and local official capacity of the accused, and the organization of his office.

The RSHA with its HQ in Berlin had under its control the main office of the SIPO (Sicherheits Polizei) and the SD (Sicherheitsdienst). The SIPO split up into the criminal Police (CID) and the Gestapo. The BDS Strasbourg (South west) was Dr. Isselhorst. His personal adjutant and occasionally his deputy was Hauptsturmfuhrer Maier. The office itself, consisted of 6 departments. Dept. 4 was the office of the Gestapo in the staff of the BDS. According to the plan which has been handed to the court by Major Barkworth, the accused Schlierbach is shown as chief of Dept. 4. That is incorrect. The chief of Dept 4 and competent official in the staff of the BDS was the accused Schneider. The areas which came under this dept. 4 were Alsace, Baden and Wurtemberg, and on hand of an agreement with Suhr the areas on French territory west of Schirmeck and the operation Waldfest.

On the other hand the accused Schlierbach has as executive organ, led the Gestapo which was limited to the western border of 1914 of Alsace, and was under the name of Einsatzkommando Strasbourg, in a special office which was quite apart from the previously mentioned 6 departments which belonged to the office of the BDS. In no case whatsoever did Schlierbach have any power of command over districts on French territory in the west of Schirmeck, in other words the former Franco - German border of 1914. The capacity of Schlierbach was a minor one and not that of an independent commander. He had no administrative organization of his own, no disciplinary powers, no right to report to the Gauleiter and did not come under department 4 of the RSHA.

All fundamental and important decisions were given either by Dr. Isselhorst personally or by his personal assistant or by one of his dept. chiefs. It frequently occurred that orders to Schlierbach were signed by his deputy on behalf of the BDS, even if the BDS was present in Strasbourg. Dr. Isselhorst on giving evidence in court said that Schlierbach as leader of the Gestapo in Alsace had to carry out the fighting of inner political opposition and civil counter espionage. It was only later that the task of military counter espionage was given to his office. Dr. Isselhorst has definitely stated Schlierbach had only then been able to participate in the case concerning the parachutists if the French resistance movement would have carried its action onto the Alsatian territory. But that never occurred.

Therefore Schlierbach is not responsible for the killing of those parachutists which had been taken prisoner by Kommando Ernst and Kommando Wenger during the operation west of Schirmeck and the operation Waldfest. All these parachutists had been captured on the territory west of the Reichs Border of 1914, for which Schlierbach was not responsible.

Dr. Ernst was the commander of the SIPO in France with independent powers. His kommando was mainly concerned with English parachute troops. His personnel came from his former office in France, that is they came from the French zone, and had therefore nothing to do with Dr. Schlierbach. Dr. Ernst, as among other things the witness Golkel has said, understood directly the command of Dr. Isselhorst. Dr. Ernst received his orders directly from him, and it was him he sent his reports to. Therefore Dr. Schlierbach loses all responsibility for the killing of those 16 parachutists which had been taken prisoner at St. Die and La Grande Fosse.

The kommando Wenger was not even known to Schlierbach. It was only during these proceedings that he heard of kommando Wenger, that it operated in France and that it came under the command of BDS Suhr. With the killing of the parachutists, which had been ordered by kommando Ernst and Wenger during the operation Waldfest, Schlierbach was not concerned.

The camps Schirmeck and Natzweiler were in the territory of Dr. Schlierbach, but did not come under his command. The camp Struthof-Natzweiler was a concentration camp. It was also in the territory of Dr. Schlierbach, but being a concentration camp it came directly and only under the orders of the SS Economic and Administrative dept. Schlierbach was, as the interrogation of Dr. Isselhorst and himself has shown, in no way responsible for this camp. The camp Schirmeck was a so called security camp. It served principally for the housing of Alsations, Poles, and other foreigners, who were staying in the Alsace and for some reasons concerning the Gestapo, had committed offences against the laws, were sent for a certain time to stay in that camp. As far as sending these people to that camp for a short time was concerned, Dr. Schlierbach as leader of the Gestapo in Alsace had the right to do so, in accordance with the rules which had been given to him.

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Once in the camp however, these people were not anymore, under the commanding power of Dr. Schlierbach, but only that of the camp commandant Buck, who came directly under the orders of the BDS. That alone shows that Dr. Schlierbach had nothing to do with the treatment of the parachutists which through no fault of his own had been confined in the camp Schirmeck. These parachutists were by no means under his power of command but only under that of the office of the BDS.

Therefore it is quite reasonable if Dr. Schlierbach, time and time again, says that he had nothing to do with the sending of parachutists to the camp, and that he could not have had any influence as to their fate. Furthermore had Dr. Schlierbach never given orders or directions in connection with the treatment of captured parachutists. The inmates of the camp were numerous, Alsations, Frenchmen and Czechs, who had to be constantly interrogated by the Gestapo officials under his command.

That was Dr. Schlierbach's task. The witness Buck, the camp commandant of Schirmeck camp, said in his evidence, that occasionally Dr. Schlierbach and not Dr. Isselhorst, gave orders in connection with the camp Schirmeck. Quite apart from that I would also like to mention that Dr. Schlierbach had nothing to do with the 3rd degree interrogation of a captured French terrorist, which had been mentioned by the prosecution. This measure, according to the witness Stassig had been ordered and started by Schoener during the operation west of Schirmeck, without Dr. Schlierbach having had the least thing to do with it.

THE JUDGE ADVOCATE: I am not quite clear. I took a note in which you said that once these people were sent to the camp he had nothing to do with them, they came under Buck. Then I thought you went on to say that these people were frequently interrogated by his staff. Would you clear up this position? That seems rather inconsistent to me.

DR. GIERLICH: I am speaking still of Frenchmen, and Alsations, and Poles and so on. I had said that Dr. Schlierbach had nothing to do with the future fate of these people because they were under the command of the camp commandant; however, he retained and used his right to interrogate those people from time to time, or to send some officials under his command for the purpose of this interrogation.

Dr. Schlierbach had to take part on the order of Schneider, who was at that time deputising for the BDS, in the conference in Schirmeck in August 1944. The theme of the conference was the fight against the French Resistance Movement in the area west of Schirmeck, and particularly the threatened attack on the camp of Schirmeck. There was no mention at that time of parachutists or, if this idea had been mentioned, then it dealt only with airborne troops.

Immediately after this conference Schlierbach had to send 12 to 15 officials to the camp in Schirmeck. This was done on the order of Schneider. This order was later confirmed. Therefore no blame can be attached to Schlierbach for the sending of these officials. In the first place he had to obey orders, secondly nothing had been mentioned during this conference in Schirmeck on the 16th August 1944 as to what should happen if parachutists were captured, or how they should be treated. This was also confirmed by the witness Buck who was present during this conference. From the 18th to the 21st August 1944 Schlierbach was absent from Strasbourg, and in no other conference did he take any part.

Not only the evidence of Dr. Isselhorst, but the evidence of camp Schirmeck in the persons Buck, Muth and Nussberger, irrefutably proved that Schlierbach had nothing to do with the parachutists who

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were accommodated in camp Schirmeck. Further, according to the evidence of Buck and Isselhorst, Schlierbach never gave a movement order concerning these men, to places such as Natzweiler, Gaggenau, Neiderbuhl, still less an order for their shooting. As has been proved, he would not have had the authority to do this. According to the evidence of Muth, Buck and Nussberger, Schlierbach never had anything to do with the shooting of the 3 English parachutists who were transferred from Schirmeck to Natzweiler, or the shooting of 6 Americans and 4 Englishmen which took place at Gaggenau on the 25th November 1944. The shooting of the 3 Englishmen at Natzweiler was carried out according to Buck's evidence upon the order of Maier, whereas the killing of the 6 American and 4 English parachutists was ordered repeatedly by Dr. Isselhorst and for the last time on the 17th November 1944, whereupon the shooting took place a few days later after the evacuation of Schirmeck, at Gaggenau on the 25th November 1944.

As the camp commandant Buck said in his evidence, people arrested by the Gestapo, were usually brought to Natzweiler on Wednesdays. In these cases we are not concerned with parachutists, but with civilians coming from Schirmeck, Lorraine etc, placed under protective custody for an offence, by order from Berlin. Buck has, amongst other things, during his 4 years activity, received many movement orders for such persons, from the Gestapo leaders in Strasbourg, including Schlierbach. Killing in these cases, especially of parachutists was out of the question. The witness Muth has deposed under oath, that Schneider came to the camp Schirmeck frequently to carry out interrogations, that Gehrum sometimes came there, but that he has never seen Schlierbach there, and that he did not even know him - Muth, who had been working as a staff sergeant in the SRS of the camp, and whose duty it was to bring these people to the place where they were interrogated. This witness said in his evidence with regards to the 10 English and American parachutists, who were shot on the 25th November 1944, that on the 23rd November Police officer Ostertag reported to Isselhorst with the prisoners and Isselhorst asked where the people came from. Then Schneider and Maier appeared. Maier asked the witness Muth who was present too, why the men had not been killed. Thereupon the 10 airmen were transported to Gaggenau and shot.

From the evidence of Full Lieutenant Nussberger, who was working at camp Schirmeck, it can be seen, that Schlierbach had nothing whatsoever to do with the airmen at Schirmeck. The witness Stassig has confirmed in the same manner, that Schlierbach had nothing to do with the operations at Schirmeck in the autumn of 1944, but that they were under the direction of Isselhorst and Schneider. As the witness Buck has deposed upon the questions of the court, a delivery note was not essential in the case of prisoners of war. The prisoners were in camp Schirmeck only a short time before they invariably were handed over to the Wehrmacht. Neither did Buck receive a delivery note for the parachutists. He took the parachutists, delivered to him in connection with operation Waldfest without a delivery note because they were brought by an official of the BDS and because he knew, that the operation Waldfest was under way. The orders to receive the parachutists were given by Kommander Dr. Ernst and Schoener. After Schneider left, Schoener still stayed in Schirmeck for another 10 - 14 days. The delivery of parachutists into camp Schirmeck, was never reported to Schlierbach, as it had nothing to do with his department. The accused Schneider too, upon my question, confirmed that Schlierbach was in no way involved in the operations Schirmeck and Waldfest. Gehrum gave the same answer to my question. His move to Schirmeck was not upon the orders of ~~Schlierbach~~ Schlierbach, who incidentally was away from Strasbourg between the 18th and 21st August 1944, but upon those of Engelbrecht. In Schirmeck Gehrum was under the orders of the accused Schneider, and not to Schlierbach. Upon a question of the prosecutor, Gehrum

furthermore confirmed, that in the operation against Maquiss and parachutists, without doubt Schoener was under orders of the accused Schneider and not Schlierbach.

The witness Gehrum, said during his interrogation by Major Barkworth on the 1st May 1946, that Schlierbach and Engelbrecht too must have known in detail of the killing of every airman and parachutist. He bases his allegation on, that he knew that Engelbrecht and Schlierbach had received orders for this purpose from Isselhorst. We are concerned with a final conclusion, which is derived from knowledge, alleged as an established fact, of order given for these killings.

It has been proved by the extensive evidence given, that Isselhorst has given no orders to Schlierbach, with regards to the killing of any parachutists whatsoever. From this we must take it that Schlierbach could have received no orders for the purpose of such killings. With that, the conclusion based on the incorrect allegation as to fact must be dropped namely that Schlierbach was informed of the details of the killing of every airman. The evidence has established that the final conclusion drawn was in fact incorrect, Schlierbach not only, had nothing to do with the killings, but was in no way informed of these. Schlierbach particularly never talked about this, to Dr. Isselhorst. Furthermore Gehrum said in his examination in chief, that his deposition had been misunderstood by Major Barkworth. He does not know anything of an order given to Dr. Schlierbach by Isselhorst with regards to a killing and could not have known of such an order, as the evidence has irrefutably established, that other persons had initiated the killing and that any complicity of Dr. Schlierbach in this matter is completely out of question. In any case, the declaration by Gehrum which has been plausibly refuted, can not serve as evidence against Schlierbach. Gehrum can say nothing about an order emanating from Dr. Isselhorst by Dr. Schlierbach for the killing of these parachutists. Gehrum could not have known of anything of this; as the evidence proves without doubt that any complicity of Dr. Schlierbach in this matter is completely out of question; in any case the declaration by Gehrum, which has been plausibly refuted cannot serve as evidence against Schlierbach. This counts, because even in deposition of the 1st May 1946, Gehrum could give no detailed information as to the orders, the alleged purpose of which was the killing, and could not even say with regards to which airmen or parachutists the orders were to have been issued, when the orders were issued, and whether or what action Dr. Schlierbach took upon receiving these orders, and whether the measures taken by Dr. Schlierbach took upon receiving these orders, and whether the measures taken by Dr. Schlierbach were in any way helpful towards a killing.

The witness Callies did not alter anything in the abstract of evidence in this respect. He had received the task in Berlin to gain information about the effect of V-weapons. On a Sunday towards the end of August 1944 upon the instructions of Maier, the ADC at the office of the BDS he interrogated the airman Seymour in the Gestapo offices, where he let himself be led to a room by the doorman. Dr. Schlierbach did not know of this, Callies did not talk to Schlierbach at all, he did not see him at all at that time, and never even talked to him about the interrogation and its purpose. Although Callies was an official of the Gestapo and Security Police, he only took orders from the BDS directly, and had nothing to do with Schlierbach's offices in the Sangerhausstrasse in Strasbourg. In fact he had never been there, before Seymour's interrogation. The interrogation of Davies, by Callies in Schirmeck was only carried out upon the instructions of Maier. As I have already pointed out, Schlierbach was in no way involved in this. Furthermore he could not have been involved, as he had no authority concerning this matter. Seymour and Davies were captured

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beyond the territory under Schlierbach's authority, during the operation west of Schirmeck, for which area he was never responsible.

Only those parachutists dropped at Wingen near Zabern, the so called Wimmenau group, to which the airmen Ash and Wertheim belonged, were dropped in the territory under the authority of Dr. Schlierbach. Schlierbach is not responsible for the killing of Ash and the possible killing of Wertheim, which according to the evidence of Major Barkworth has not been established in any way. Neither has he taken any action, nor has he wilfully neglected any action by which the death of these two men might have been caused.

Fundamentally I have to add the following, regarding the responsibility of Dr. Schlierbach for parachutists: Schlierbach in his sphere of duty was responsible only for interrogations, that is interrogation of those parachutists, who: firstly were arrested in his territory, and secondly were brought to his offices immediately after their arrest, before they had been interrogated.

He had to send reports of the interrogations carried out and intelligence reports to the BDS without stating his personal opinion. This was confirmed by Dr. Isselhorst in his evidence. Such incidents never occurred.

But Dr. Schlierbach was neither competent nor responsible for any further factual measures such as orders for supplementary interrogations, orders for transfer to a camp and the final decision about the fate of the parachutists. Such orders and decisions were the concern of the BDS and his deputy only.

After their capture at the beginning of October the Wimmenau group - consisting of 7 men - were interrogated by the kommando Sinnhoff which was stationed in Zabern. The protocol about the interrogation and a final report about the inquiries were sent from kommando Sinnhoff directly to the office of the BDS. Schlierbach's office received a copy of the report for information, as the capture took place in his area. Dr. Isselhorst as BDS, then ordered the transfer of the prisoners to a POW camp. Ash's transfer to Schirmeck and Wertheim's to Strasbourg had not been ordered by Schlierbach, just as he did not order the removal of Ash to Gaggenau and of Wertheim to Niederbuhl. Neither did he have anything to do with the further fate of these men.

Whether interrogations of the members of the Wimmenau group were carried out by kommando Sinnhof and Uhring, has not been definitely proved.

In view of Uhring's evidence it could be assumed that Schoener had carried out interrogations. If that was the case, it is certain that Schlierbach had given no orders for these interrogations to Schoener. According to his own and Isselhorst's depositions, Schlierbach was not in Strasbourg at the time the complete Wimmenau group was captured, but he was in Berlin on duty. Schlierbach has stated on oath from the witness box that he had given Schoener no orders for interrogations. Isselhorst has confirmed quite definitely that Schlierbach had nothing to do with the interrogation of the Wimmenau group. Isselhorst has furthermore stated that Maier or Schneider had reported the results of the interrogations to him and that the order for a transfer to a POW camp had been given to either of these two. We have furthermore Isselhorst's definite statement that as Schlierbach had no dealings with the parachutists, he could not have ordered transfers to Strasbourg, Schirmeck, Gaggenau or Niederbuhl.

In connection with the Wimmenau group, Dr. Isselhorst had only once called for the accused Schlierbach and given him the order, to get an expert (in crime) to write a summary on the interrogations

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of captured airmen, carried out by kommando sinnhof, on hand of the statements, copies of which had been received by Schlierbach. Dr. Isselhorst wanted to send a report to Berlin, based on this summary. Dr. Schlierbach has never passed on this summary, as Isselhorst has testified. This work was then carried out by Engelbrecht, Dr. Schlierbach's deputy. When these questions were discussed, Dr. Isselhorst quite definitely stated, to a question put by the prosecutor, that Schlierbach had no dealings whatsoever with the parachutists in Alsace, least of all with the interrogation and further treatment of the Wimmenau group. According to his own statement, Isselhorst had received reports regarding the Wimmenau group only from Meier and Schneider. He only gave these two an order for the transfer of the Wimmenau group to a POW camp, and then he received the message, that the order had been carried out.

Parachutist Ash belongs to the group of 10 English and American airmen, who between 21st and 23 November 1944 were transferred from Schirmeck to Gaggenau and shot there on the 25th November 1944. Parachutist Wertheim was taken to the prison at Strasbourg, after his capture in October 1944. On the day of the evacuation of Strasbourg, 23rd November 1944, Wertheim was seen on the right side of the Rhine, at Niederbuhl, where he had apparently been taken to on 20/21 November 1944. Nothing has been established about his further fate. The question whether he has also been killed, as is assumed by the prosecutor must remain unanswered.

That Schlierbach was not concerned in the transportation of Ash from Schirmeck, which started on 21st November, and the transfer of Wertheim to Niederbuhl, can be seen from the fact that Schlierbach was in Kolmer from 20th November 1944 until 1430 hours 22nd November 1944. When he returned to Strasbourg on 22nd November 1944 the prison there had been evacuated. Engelbrecht told Schlierbach at that time that the evacuation had been carried out by order of Dr. Isselhorst. After the evacuation of Strasbourg from 23rd November 1944 Schlierbach had nothing further to do with his tasks in Strasbourg, including the officials who had been his subordinates, especially Gehrum. On 23rd and 24th November he was in the village of Goldschewen on the right side of the Rhine with Dr. Isselhorst. On 25th November he went with Dr. Isselhorst directly to Ereiburg, where Dr. Isselhorst gave him an entirely new task in the bridgehead Kolmar. He stayed there until 20th December 1944.

It can be assumed from this fact alone, that he had nothing to do with the fate of Wertheim. Concerning Ash, Schlierbach knew nothing about his transfer from Schirmeck to Gaggenau or his shooting which had been ordered.

It is also impossible that Schlierbach might have given orders in regard to the Wimmenau group on his own accord. Isselhorst has mentioned it as impossible that Schlierbach might independently have issued orders for shooting, etc. The same applies to all other decisions regarding parachutists. In view of Schlierbach's correct, even too correct, way of working, which has been confirmed by Isselhorst, and in view of his bureaucratic manner, of which he has been accused by the Party and by Suhr, it seems impossible that Schlierbach would have made any independent decisions regarding parachutists, who were the concern of the BDS only.

Schlierbach did not know the fuhrer order of October 1942. As Schlierbach had taken over the office in Strasbourg only on

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the 1st June 1944, and as previously he had had no dealings in Gestapo matters, he could not have known the fuhrer order prior to 1st June 1944. As Isselhorst has stated several times, he had not informed Schlierbach of the Fuhrer order in Strasbourg either. As I said, it was not one of his habits to inform his subordinates unnecessarily of 'top secret' matters. To inform Schlierbach of this fuhrer order was completely unnecessary, because Schlierbach had no practical dealings with parachutists. Furthermore Isselhorst kept the right of decision over the fate of parachutists entirely to himself.

In this connection I would point to the evidence of the witness Carnallis, who to a question by the court whether the head of the Gestapo in Strasbourg would have to know the fuhrer order, answered: that quite depended on the superior. When the RSMA in a decree had censured the handing over of the Wimmenau group to the Wehrmacht, Schlierbach asked Dr. Isselhorst after the contents of the fuhrer order of October 1942. Dr. Isselhorst however did not tell him, as he did not consider it necessary. Schlierbach himself has confirmed this in his deposition, made before Major Barkworth on 12th June 1946 and also as a witness before this court.

Apart from the fact that the actions of Schlierbach are in no way connected with the death of a parachutist neither did Schlierbach know what fate might be expected for these parachutists under the circumstances.

The accused Schneider, at his interrogation of 27th October 1945 and also during the proceedings before this court, has several times mentioned translations of English documents, which are alleged to have gone from Schneider via Isselhorst to Schlierbach. The documents are not evidence against Dr. Schlierbach. There is no doubt, that these documents originate from the parachutists which were captured during action Waldfest. But ~~sax~~ Schlierbach never had anything to do with action Waldfest which fact also has been established without a doubt. Therefore he was not competent for receiving the translations. The only competent authority for this was dept. 4 at the BDS. Something similar applies to the documents of Black and Dowling found in Schneider's flat. Neither of these parachutists was captured within Schlierbach's sphere of authority, he never had anything to do with them. In fact Schlierbach has never received from Dr. Isselhorst any translations made by Schneider of documents of English parachutists.

May it please the court: I believe to have dealt fully with the evidence, as far as it concerns Dr. Schlierbach. The long proceedings, which have been carried on with greatest care, have shown, that Schlierbach in not one single case, is responsible for the killing of any of the 32 parachutists. According to the given facts, it seems impossible to me that Schlierbach should be found guilty of any punishable offence, I ask for his acquittal.

THE PRESIDENT: The court will adjourn for five minutes.

(At 1125 hours the court is closed)

(At 1150 hours the court re-opens)

The accused are again brought before the court.

MAJOR HUNT: May it please the court: This case has not been a simple one, partly perhaps on account of the fact which I mentioned in my opening address, that it has not been alleged by the prosecution that any of these accused now before you ever actually carried out a killing in the physical sense of the word. The case for the prosecution is that they implemented or passed on orders which resulted in the deaths of the victims in this case.

There are several facts which are not in dispute. Thirty-two members of the 2nd Special Air Service Regiment and one RAF pilot were captured by units operating in the areas controlled by the accused Isselhorst and Oberg. It is not disputed that any of these 33 were in fact killed; it is not disputed that any of these 33 were in fact captured in uniform.

Certain suggestions, and statements, and allegations have been made by the defence that these 33 men must have been considered to have lost their status as prisoners of war by reason of their co-operation with the Maquis. You have heard from Major Barloworth that it was no part of the duties of the SAS to organise or co-operate with the Maquis in any way; and in any case, although I do not propose to deal at length with the status of the French Resistance Movement, I see little difference between that and the Volksturm in Germany and the Home Guard in England -- with one fundamental difference, that at the time France was occupied by an enemy power.

Whether or not -- and there is a great wealth of authority on the subject, I believe -- the Maquis were illegal or legal as an organisation, the prosecution definitely reject any suggestion that they were illegal. In my submission it is ridiculous to say that because a soldier in uniform, engaged on a lawful task, makes use of a local civilian, whether he be a member of the Maquis or not, for the purposes of a guide or something similar, that is something which is illegal. Every army will always make use of such local civilian assistance as may be practicable in the circumstances, and in my submission the SAS did no more than use an odd local civilian as a guide.

Whatever the status of the persons used by the SAS, the following seems to me to go to the root of the whole matter: We heard from one witness that this famous Fuhrer Order, which in some way has been alleged to have been the primary cause of these deaths, did not require that any trial should be held in the case of any man who was captured co-operating with the Maquis, and, for that reason, we are told there was no trial. I think Dr Isselhorst said that when I put it to him.

The order in itself, which was a unilateral, one-sided, order, is too obviously unlawful to require further mention by me.

No one has suggested that any of these men did have a trial, except some cursory investigation or examination by some official, and it seems that by reason of not having a trial the defence, or the defence we have heard, have taken away a part of their own argument, because had there been a trial then any distinctions, or any status, or difficulties as to the status of the prisoners of war, the French civilian, the member of the French Resistance Movement would have come before the court and would have been decided upon. If members of the SAS, soldiers in uniform, were captured operating with, or in company with, members of the French Resistance Movement, or civilians, or even common criminals, then at the trial those facts would have come out, and it is ~~from~~ the very fact that these men received no trial which, in my submission, clinches the guilt of the accused.

With regard to the SAS, they were soldiers in uniform carrying out a lawful task, in which connection I would mention, in the Manual of Military Law, Chapter II, page 13, para. 45, which says: "Train wrecking, and setting on fire camps or military depots are legitimate means of injuring the enemy when carried out by members of the armed forces". That is exactly the task on which the 2nd SAS were engaged.

We have heard it alleged that vast quantities of arms were found, and that the Maguis were being trained and led by British personnel, but Major Barkworth's evidence has made it abundantly clear that the task of the SAS had no connection with that at all.

Assuming that the task of the SAS was lawful — and I do not think we can find anything else — then the co-operation with the Maguis in itself cannot bring a soldier engaged on a lawful task into the category of a frank-thrower; but even if it did, or it was thought that it did, had a proper trial taken place, then the status of the frank-thrower, or civilian, or a soldier in uniform, carrying out the task would have been apparent.

Again I would like to quote the Manual of Military Law on a matter which, in my submission, is right to the point. Para. 37 of Chapter 14 on page 11 says: "It is not, however, for officers or soldiers in detaining their conduct towards a disarmed enemy to occupy themselves with his qualifications as a belligerent. Whether he belongs to the regular army or to an irregular corps, is an inhabitant or a deserter, their duty is the same: They are responsible for his person and must leave the decision of his fate to competent authority. No law authorizes them to have him shot without trial, and international law forbids summary execution absolutely. If his character as a member of the armed forces is contested he should be sent before a court for examination of the question". That is exactly what I have been saying.

It has also been suggested by the defence that some cursory interrogation carried out by Ernst or one of his subordinates, in what manner we have not been told, could, for the purposes of this argument, be construed as a trial. The Manual of Military Law lays down the formalities to be carried out in a trial, some of which are so clear that by no stretch of the imagination could an interrogation in one of Ernst's cellars amount to a trial. Page 25 of Chapter 14, paragraph 105, and the subsequent paragraphs, says: "At the beginning of judicial proceedings against a prisoner the detaining power shall notify the representative of the protecting power as soon as possible and at any rate before the date fixed for the opening of the hearing. This notification shall contain full particulars of the case, the description and location of the court which will try the case, and the date of opening of the hearing, shall be communicated to the representative of the protecting power not less than three weeks before the opening of the hearing. No prisoner shall be sentenced without being given the opportunity to defend himself, nor shall he be compelled to plead guilty. The prisoner shall have the right to be assisted by a qualified advocate of his own choice, and to have recourse to the offices of a competent interpreter. He should be informed of his right in good time before the hearing. The representatives of the protecting power shall have the right to attend the hearing of the case, except where it has to be kept secret in the interests of the safety of the state. In the latter case the detaining power shall notify the protecting power accordingly".

Then in para. 107 it says: "A sentence shall only be pronounced on a prisoner by the same tribunals and in accordance with the same procedure as in the case of persons belonging to the armed forces of the detaining power. Every prisoner shall have the right of appeal against any sentence in the same manner as persons belonging to the armed forces of the detaining power. Sentences pronounced against prisoners shall be communicated at once to the protecting power. If sentence of death is passed on a prisoner, a communication setting forth in detail the facts of the case shall be addressed as soon as possible to the protecting power for transmission to the power in whose armed forces the prisoner served. Sentence shall not be carried out before the expiration of a period of at least three months from the date of the receipt of the communication by the protecting power".

No one — none of the accused, or the defence as a whole — has at any stage suggested that an interrogation carried out by Ernst or one of his subordinates in his headquarters, might might be adequate for members of the SAS, was at any time adequate as a trial for members of their own commands or their own formations. It has not been alleged that this interrogation, which should be considered satisfactory for this purpose, was considered satisfactory for anybody else.

We have heard some slight mention of the question of reprisals. Articles 2 and 4 of the Geneva Convention of 1929 absolutely forbid any question of reprisals as applied to prisoners of war by either side; although the question of reprisals might arise in a legal capacity, in a proper capacity, as against prisoners of war those Articles that I have just mentioned absolutely forbid it.

Finally to the question of orders. Obedience to illegal orders is not a defence in our law, nor, if the orders are obviously illegal, according to German law. I suggest that in this case the orders were not only illegal but obviously illegal. Firstly, there is the question of no trial. Even though this Fuhrer Order did not require a trial it is surely common knowledge to every man that in every country in the world, from time immemorial, any person accused of wrongdoing is entitled to a trial whereby he is given a chance to justify himself; therefore no reasonably thinking man, in my submission, would realize that the lack of a trial was a proper course of conduct.

Secondly, by reason of the method of execution. There were various methods of execution — some sent off to Struthof-Hatzfeldlar, where they were hanged and subsequently cremated immediately without there being any entry made in any record, without apparently any interest; some turned out of a truck, shot in a wood, put in the back of the truck, and driven off again, no record needed, no enquiries made; others, in parties or alone, taken into isolated woods under armed guard, sometimes stripped of their clothes, sometimes stripped of their possessions, shot in the wood, with sentries posted to keep interfering or prying eyes away from the scene, the graves perhaps having previously been prepared, or a barb creter enlarged for the purpose; some taken from the truck, marched up to the improvised grave, shot in the back of the head, pushed in, covered up with earth, and, as far as possible, all traces removed.

I cannot see, by any stretch of the imagination, why a lawful execution, if thought to be lawful or known to be lawful, should be carried out in such hole-and-corner methods; and finally I suggest that the hiding of traces, the removal of clothes, the stripping of the victims in order that identification subsequently should not be made possible, is clear proof that the persons concerned, both giving the orders, receiving them and carrying them out, knew that they were not engaged in a lawful execution which had been approved and in accordance with a sentence of a court, but were carrying out no more nor less than plain murder, and that they were doing their best to hide the traces in order to ensure that their crime should not be found out.

I propose to deal very shortly now with each accused in turn.

With regard to General Seeger the following points appear to me to be required to be borne in mind: He was the general commanding 405 Division in the area. He attended at least one conference, if not more than one, and discussed the action regarding the suppression of the Haguis and parachutists and questions of the disposal of prisoners of war. He mentioned the witness Schmidt as the commander of a battalion or a greater force in the area of Schlimmek, and he maintained Schmidt himself in the capacity of commanding and as personal liaison officer to himself. We have heard that information allotted by Schneider was passed to Schmidt and transmitted to General Seeger. Therefore, it is reasonable to suppose that he would have known at least that prisoners were captured, or, if he did not, he should have known. He also maintained co-operation with the security police. There is no doubt that at least one, if not more, prisoners were captured by forces under his command, and, having been captured, they were handed to the SD. We have heard all sort of evidence as to why they were handed over to the SD. We have heard that he rang up his next senior formation, and that the orders were that they should be handed over.

However they came to be handed over and subsequently killed, he himself denies all knowledge of any orders that these prisoners, or this class of prisoner, should be killed; but Dr Isehnorst says categorically that he went to Wagner and discussed the question, and later he informed General Seeger that he proposed to apply a test of his own as to whether

co-operation had taken place with the Magua. On this matter Wagner expressed himself as satisfied with the application of this test, and Steeger did the same. But if Dr Isselhorst put this proposition to General Secher and General Steeger at that time, as he told us, did not know of this order to kill these parachutists, surely he would have turned round and said: "What on earth are you talking about?" Apparently he did nothing of the sort; he agreed, Dr Isselhorst told us, with the application of this test. If you believe that he did not know of the order, or of the fate of the prisoners, then I suggest you cannot believe that he ought to have known.

With regard to Dr Isselhorst, he admits that he was the JMG of the Area South-West, in which a number of the killings took place. He was without doubt the superior of Ernst. He has told us that he was in charge of Schirmeck. He was the immediate superior of Schneider, who was at that time in charge of action Schirmeck and based on Schirmeck. In addition he admits that he authorized or sanctioned the execution of some of these victims, and in that respect I suggest that he is far and away the most honest of the witnesses we have heard, insofar as he has done little or nothing to minimize his share of the responsibility.

With regard to Schneider, he was the representative of Isselhorst at Schirmeck from the 16th August to a date sometime before the 1st September. He was the deputy of Dr Isselhorst, and chief staff officer on his staff of Departments 4 and 5. He went to Schirmeck as the senior representative of the security police during this action Schirmeck, and he went there for the express purpose of carrying out interrogations. He not only knew that prisoners of war were captured, but he personally interrogated them, and subsequently two, anyway, were killed.

Schneider admits in his statement that he seems to remember, or he thinks he remembers, that one prisoner was taken back to his place of capture. It is the suggestion of the prosecution that this man was in fact Davis who was taken back to the scene of his capture — although it can be no more than a suggestion — and then ordered to disclose where these crystals which were then in great demand were hidden. It is reasonable to suppose that Davis, in accordance with his previous brave attitude, refused, even if he knew where these crystals were, to disclose it, and it is suggested that such refusal to disclose their whereabouts may have led to his death on the spot where his body was subsequently found.

Dealing with the case of Hall, Hall was captured with Seymour on the 17th August. On the 20th August Seymour was in Schlierbach's office in Strassburg. On the 22nd or 23rd August the witness Gallien said he made a journey to interrogate Davis, who was captured on the 20th. On the arrival of Gallien at Schirmeck he interrogated Davis without success. Nobody told him that Hall was there, and I suggest that if Hall had been there he would most certainly have learned of the fact; the submission being, therefore, that Hall had arrived on the 17th and sometime before the 22nd he had already been removed and was, at the time of Gallien's visit, already dead.

Between those dates Schneider was in charge of action Schirmeck. He was there for the purpose of extracting information from the prisoners. Whether Schneider gave orders for the removal of Hall to Metzweiler, or whether he did not, the fact remains that between the 17th and the 22nd or 23rd, Hall was killed, and the admission of the prosecution is that if Schneider did not order it he ought to have known about it and prevented it.

It has been said that once he left Schirmeck he ceased to have anything to do with parachutists, and yet there is considerable evidence that even after his return to Strassburg between the 25th August and the 1st September he occupied himself to some considerable extent with the question of parachutists. There is the fact that the documents of Black and Doelling were found in his office, the fact that Thring says he came to ask Schneider to obtain permission of Isselhorst for him to interrogate the Wisneman Group, and Schlierbach's evidence that Schneider remained in control or in command or occupied himself considerably with the dealing of the parachutists and the disposal of them. There can be little doubt that after Schneider's visit to Schirmeck, which terminated his direct dealing on the spot, he continued his

dealings from Strassburg in the capacity of a staff officer responsible for such matters.

Schneider said in his evidence that it was not the Wismann Group that Uhring asked for permission to interrogate, but Davis. This is either a lie or a mistake, because Uhring says quite clearly he was in hospital until the 1st September, and it would appear there is little doubt that it was in relation to the Wismann Group that Schneider received this request from Uhring, which of course was long after Schneider's departure from Schirneck.

Finally we get the somewhat complicated entry in Dr Tasselhorst's statement, in which he describes the group of seven or eight who were taken to Strassburg, and Schneider read extracts, and convinced Tasselhorst of the fact that this group had taken such an active part in co-operating with the Magdls, and that Schneider put the case so strongly to him that he felt he was unable to disagree with him and gave orders for them to be shot. That group was not the Wismann group, because they were not shot. It was not the Grand Posse group. Tasselhorst suggested it might have been Hall, Davis and Seymour; but my examination, to clear the matter up, is that in fact it was the St Die Group, who were at no time taken to Strassburg, but it may be that reports prepared by Ernst were despatched to Strassburg, studied by Schneider, and then passed with his own views to Tasselhorst, as a result of which the St Die group were executed.

That does not explain how it is that in the statement it is alleged that they were taken to Strassburg. This, I suggest, is a genuine mistake or confusion on the part of Tasselhorst in regard to his information, and I suggest that he has confused the Wismann Group, which was taken to Strassburg and not shot, and the St Die group, which was never taken to Strassburg, but in regard to whom he consulted and did, as he told us, issue instructions, in accordance with the advice he received, that they were to be shot. In any event, Schneider was in charge of Schirneck, and subsequently had dealings with parachutists during the time that a considerable number of them were executed.

Now with regard to Gehrm, who was a member of Section 4. He actually went to Schirneck, anyway for a short while, to assist Schneider in these interrogations perhaps because the number of prisoners fell below those that were expected, his services were dispensed with, or other duties called him back. But the purpose of his departure for Schirneck and his presence there was quite clearly to carry out interrogations and to assist generally in the interrogations and also in the extraction of information from the captured parachutists; and he certainly was there engaged in that capacity for a short while. It was not only his duty to carry out these interrogations, but he certainly saw and was aware of the presence of captured parachutists in Schirneck while he was there, and these prisoners of war, with the exception of Seymour, were subsequently killed.

You will recall the evidence of Gallies to the effect that, having failed to extract information from Davis, he subsequently reported to Schneider and Gehrm, and one of them, or both of them, said: "Well, we will try again later", or: "We will deal with the matter later", or words to that effect. Soon after that Davis was killed. I suggest that Gehrm must have known that prisoners were being captured, and he did know that, and he must have known the fate which was in store for them, and also ultimately what happened to them.

With regard to the case of Oberg, seven members of the SAJ were killed in the area controlled by him. He was the head of the police in France. His BOS was, towards the end, Subr, who, it may be thought, preferred to die by his own hand rather than account for his activities before this court. There is no doubt that Subr was in close touch with Oberg, otherwise I hardly think Oberg would have referred to him quite naturally in his statement as "my BOS Subr".

More important still is the affidavit of von Krogh, and nobody regrets more than I do that he was not present to give evidence in this trial. That is one point I do share in common with Dr Gröbel. He says that Subr got his orders from Oberg, which he passed on to Einsatz commandos such as Wenger.

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We all know the way Wenger went about the matter, and the witness Freil gave a very clear and lucid explanation of the fate of prisoners in the hands of Kdo Wenger.

Von Krogh says Wenger got the orders from Suhr, which were passed on having emanated from Oberg; and finally Isselhorst tells us that he had attended a conference which Oberg, as the senior present, had summoned and, although he did not speak or voice his opinion as to the disposal of parachutists, his BDS Suhr certainly did so. He held forth and explained just how highly qualified he was to deal with prisoners of war or parachutists; Oberg merely nodded. He was the senior officer present; he had called the conference. If he did not agree, why did not he say so?

Lastly with regard to Schlierbach, he was the head of the Gestapo at Strasbourg, and obviously worked in close co-operation with Dr. Isselhorst. Although he maintained that he has had no dealings with parachutists, it is significant to note that Seymour anyway was interrogated in a room in the building which was his headquarters. His visit to Schirmeck discloses that at any rate he was interested to some extent in parachutists, but when asked to account for the reason for his visit to Schirmeck at the commencement, or to attend the conference which was the forerunner of action Schirmeck, he said he really did not know why he went, or who told him to go, and really he does not know what was said, or what he went for - which is not only unsatisfactory, but almost incredible. Here is the head of the Gestapo in Strasbourg making a journey to attend a conference which was the forerunner of an action which led not only to the capture of prisoners, but to their death. He attends the conference, but cannot help us in any way as to what happened, or why.

Now Schneider says that Isselhorst sent for him and communicated to him the results of interrogations, or the information which Schneider had been able to obtain from documents, etc; Schlierbach denies this, and Isselhorst cannot remember. Somebody is wrong but, if we believe Schneider in this respect, it is reasonable to suppose that Schlierbach was summoned in order that in the course of his duties he should be familiar with the situation as it stood at that time, and in possession of the latest information with regard to parachutists.

Then there is the question of the passing of the letter which had come from the RSHA calling for an answer as to the non-execution of the Wimmennau group. Why pass it to Schlierbach if he had nothing to do with it? If a letter was received to which a reply was required, then presumably the man who ~~was~~ was responsible for the blunder, or who had committed the blunder, or was at any rate, in possession of the full facts, would be the man to prepare the draft reply.

This letter was past to Schlierbach and, in my submission, there can only be one reason for that. The Wimmennau group were

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in Strasbourg. Dr. Isselhorst said that he gave orders that they were to go to a prisoner of war camp. Schlierbach admits that he had power to order the arrest and confinement of any prisoners in Schirmeck camp. One of the Wimmensau group was Ash. Ash went to Schirmeck camp, was subsequently evacuated to Gaggenau, and shot in a wood. How he got there the prosecution cannot tell you, nor apparently can the defence, but it is significant that Schlierbach had the power to send people to Schirmeck. Ash did go to Schirmeck and did get killed, and yet he was one of the Wimmensau group, which was the subject of a report which was required, and which Schlierbach was ordered to prepare.

That, I think, summarizes the main facts against each accused. The major facts are dealt with first, and I am confident that there is very little more that I can say now which will in any way further clarify the minds of the court on this matter.

**THE PRESIDENT:** The court will adjourn now until 10 o'clock tomorrow morning, when the learned judge-advocate will sum up.

(At 1230 hours the court is adjourned until 1000 hours tomorrow morning)

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22nd DAY

Thursday, 11th July, 1946

(At 1000 hours the court re-assembles pursuant to the adjournment, the same president, members and judge-advocate being present)

The accused are again brought before the court.

SUMMING UP

THE JUDGE ADVOCATE: May it please the court; There are before you six Germans. In the world that has tumbled in ruins about them they held positions of power and authority varying only in degree. There is Willi Seeger, a general of the Wehrmacht who, at the material times, commanded the reserve division in Alsace with some 800 officers and 30,000 men. There is Oberg a man of great power, described as second only to Himmler so far as France was concerned the chief of the SS and the police. There is Isselhorst, the BDS, with powers of a wide and varied character over some three provinces. There is Schneider, there is Schlierbach and there is Gehrum, all members of the staff of Isselhorst.

The common factor between them now is that they all appear in the dock before you on a charge of committing a war crime, in that they in France and in particular in the Vosges district, in or about the months of September and October 1944, in violation of the laws and usages of war, were concerned in the killing of a number of Allied Airborne troops and personnel of aircrews, all members of the Allied Armed Forces and prisoners of war.

Now gentlemen, in every trial the court has two broad issues to consider: firstly, has the charge preferred been made out in the sense that the offence alleged has been committed and secondly, have any or all of the accused charged with that offence been proved to have committed it?

In this court it is the duty of the prosecution to satisfy you of the guilt of the accused beyond reasonable doubt, and it is not for the defence to come here and establish their innocence. That is particularly of point in the case of Oberg who has, as he is entitled to do, not elected to give evidence; even in his case the rule holds exactly the same that the prosecution must prove the case beyond reasonable doubt against him.

Now first of all, gentlemen, let me deal with the question of whether the crime as set out in the charge sheet, has been committed. First of all I would invite you to consider whether, as is alleged in the charge, a number of personnel of the British Forces have been killed. I do not propose to take up much of your time in dealing with that issue; I propose to deal with it only in a general way, though you will have to deal with it more specifically when you come to consider the case of each accused.

I invite you, gentlemen, here and now to dismiss from your minds the case of Hapgood. In my view nobody knows how he died, or when he died, or who killed him, and I think it will be a waste of time to pursue the case of Hapgood.

Gentlemen, I am also going to suggest for your consideration that the real personnel concerned in this case are the members of the SAS regiment, and I invite you, though it is entirely for you, not to waste time on the case of Captain Gough. Captain Gough belonged to a different organization of the SAS and, in view of the

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arguments that have been put to you in regard to collaboration with the Maquis, his case seems to me clearly to differ from the others and may raise complicated questions of international law and the simplest way to my mind, is to say, you will not convict any of these men in the case of the death of Captain Gough.

After you have cleared the ground in the way I suggest you will then be left only to consider the real essence of this charge and that is the killing of some 28, 29, 30, 31 or whatever you make it to be of the SAS regiment.

There can be no doubt at all that you are satisfied that Hall was killed, that Davis was killed, that the Gaggenau group were killed, that the St. Die Group were killed, that the La Grande Fosse group were killed and I think you will be satisfied that there were some 6 or 7 or 8 killed in the area of France. To my mind there is ample evidence for you to answer the first question that these men were killed, but the point that really you have to consider is; were they killed in violation of the laws and usages of war.

As you know, I am a lawyer, and my profession is that of the law. Yours is the profession of arms, and it is for you, because you exercise that profession to decide what are the laws and usages of war. You are the judges of that, and you will have to decide in this case whether there has been any breach or not.

Now let us first of all consider a little law. As I understand it, it is common ground that over a considerable period set out in the charge members of the SAS were being dropped in uniform in the Vosges, and occasionally in Alsace. So far as you can get at what they were doing there from Major Barkworth, it would appear conclusive that they were sent to undertake military duties which had a purely military objective, the disrupting of railways, and that they were not there for the purpose of co-operating and collaborating with the Maquis. That is entirely a matter for you to decide. Whether they did collaborate with the Maquis or not is for you also to decide, in the light of the evidence. Now prima facie a soldier in uniform, proceeding on a mission such as that, is entitled at all times after he has been captured to be treated as a prisoner of war, and he could not be killed or executed except for some proper offence after a proper trial by the court set up for that purpose. What is suggested, I understand, by the defence, is that some or all of these SAS were behaving in such a way with the Maquis that they should say they had ceased to be treated as prisoners of war and that they could be dealt with, as I understand it, rather in the same way as the Maquis could be dealt with by the Germans when captured.

I propose to read to you certain passages which commence on page 451 of Oppenheim's International Law, the 6th Edition by Lauterpacht: "In contradistinction to hostile acts of soldiers by which the latter do not lose their privilege of being treated as lawful members of armed forces, war crimes are such hostile or other acts of soldiers or other individuals as may be punished by the enemy on capture of the offenders". To make that passage clearer the foot note runs as follows: "This definition makes it clear that a belligerent may punish captured enemy soldiers who before capture committed violations of the rules of warfare which constituted war crimes". I am going to ask you to examine this book in closed court, and you will see a large number of examples given as to what might be considered to be war crimes in such circumstances.

The passage continues: "In spite of the uniform designation of these acts as war crimes, four different kinds of war crimes must be distinguished on account of the essentially different character of the acts: namely, (1) violations of recognised rules regarding warfare committed by members of the armed forces".

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"The fact that a rule of warfare has been violated in pursuance of an order of the belligerent Government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. A different view has occasionally been adopted in military manuals and by writers, but it is difficult to regard it as expressing a sound legal principle. Undoubtedly, a Court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in conditions of war discipline, be expected to weigh scrupulously the legal merits of the order received; that rules of warfare are often controversial; and that an act otherwise amounting to a war crime may have been executed in obedience to orders conceived as a measure of reprisals. Such circumstances are probably in themselves sufficient to divest the act of the stigma of a war crime". "However, subject to these qualifications, the question 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. To limit liability to the person responsible for the order may frequently amount, in practice, to concentrating responsibility on the head of the State whose accountability, from the point of view of both international and constitutional law, is controversial".

Then there is this passage: "Private individuals who take up arms and commit hostilities against the enemy do not enjoy the privileges of armed forces, and the enemy has, according to the customary rule of international law, the right to treat such individuals as war criminals, but they cease to be private individuals if they organize themselves in a manner which, according to the Hague Convention, confers upon them the status of members of the Regular Forces".

A note in the text book says: "In June 1944 the French Forces of the Interior were constituted as a combatant force commanded and directed by a French High military officer. They were recognised by the Supreme Commander of the Allied Expeditionary Force as forming an integrable part of that force. For a formal announcement to that effect describing as a war crime the German reprisals thus organized. (See the Times newspaper)".

All I think I need further refer you to is that all war crimes may be punished with death, but of course they can be punished with a less sentence. The right of the belligerent to punish during the war, such war criminals as fell into his hands is a well recognised principle of international law.

Gentlemen, I think in view of the law I have read to you, you will have to consider what was the composition and constitution of the Maquis, with which these soldiers of the SAS were alleged to have been co-operating. You will find in the Manual of Military Law the requirements which turned the Maquis into a body of troops of the kind which I have read out in the manual, and I do not really think I need deal with that in any great detail. As you know there are certain requirements, that they have to be exercising under a leader wearing an emblem, and so on. These are matters which you can consider later. If you take the view that the Maquis, with which these soldiers were working, come under that heading, then clearly, in my view any such co-operation could not amount to a war crime on which the SAS could be tried. Equally, if you are satisfied that such assistance as they got from the Maquis was clearly such as they were entitled to get,

without any breach of the laws and usages of war, then, gentlemen, you can so find that, if that be your opinion.

There has been addressed to you, as I understand it, an argument by learned counsel in which he suggests that there is some unwritten law whereby, if you are entitled to deal summarily with a maquisard, and one of these SAS soldiers has identified himself so closely with them as to become in effect a maquisard, for the purposes of punishment a summary execution could take place in the case of the SAS soldier.

I presume, when he refers to unwritten law, it is some war custom. If you know of any war custom which justifies such a procedure as a summary execution without trial of an SAS man who has landed in uniform in France, then that is a matter you will have to consider on the whole of the bearing of relationship between the SAS and the Maquis.

I do not want to labour this point in any great detail, but you will see that one of your tasks under the first heading will be to examine, in the light of the evidence, exactly what was going on between the Maquis, how it was composed and what they were doing in regard to the SAS when they landed in France. Even if you are satisfied - it is entirely a matter for you that the circumstances convince you that members of these SAS had lost the protection of soldiers and had become liable to be tried for war crimes committed as a result of their association with the Maquis, it would then I think be necessary for some proper trial to be held, according to the law of Germany for dealing with people who were alleged to have been even in uniform, in breach of the laws and usages of war in the way they were conducting themselves behind the lines in Germany. You have heard varying accounts how these SAS men were dealt with, and it seems to me, at any rate in the area of France, that those who died there, it would be impossible to hold had been tried and executed in accordance with the law. You have only got to think of the case of the two men who were apparently either shot or burnt, or burnt and shot, with a view to terrifying Lieutenant Silly into making a statement. These sort of proceedings seem to me the very negation of a cool, calm execution according to law.

When you come to deal with the south west area, as I understand it, there is a claim made that there there was some sort of a trial, at any rate in all the cases in which Dr. Isselhorst was concerned. Even if you did take the view that any of these prisoners composed in the Gaggenau group, or the St. Die group or the La Grande Fosse Group or Hall or Davis were liable to be tried, it is for you to see whether what you have heard amounts to a trial and a legal execution. These are matters entirely for you; they are matters which seem to be peculiarly within your province, and I do not really think that I can help you any further as far as the law is concerned.

In dealing with these so-called executions in south west France, you have to consider the bearing on them of the fuhrers order. As I understand that order, it was an order to kill parachutists in certain circumstances just because they were parachutists, and not because they had committed some specific war crime for which they should have been tried. As I understand it, assuming that a trial had to take place in Germany, on the authority of the legal expert who was called by General Seeger it would appear that that trial would have to come before some military court in Germany, and if that passed a sentence presumably it would be because they had examined into the question of some co-operation with the Maquis and found that the soldier in question had lost his right to be treated as a soldier, and therefore could be properly convicted of a military crime.

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It seems a little difficult having heard the full evidence, to say that even in south west France there were these constitutional methods adopted, which presumably are part of the law of Germany, when dealing with people who have to be tried, who have been captured, and against whom it is alleged they have been in breach of the laws and usages of war before they fell into their hands.

Now, gentlemen, will you ask yourselves the question; are you satisfied, after you have carefully considered it - and this is the second question - that any of these men were properly charged, properly tried, properly convicted and properly executed for having committed a breach of the laws and usages of war? If you think any of them were, if you have possibly even a reasonable doubt, then, I am bound to direct that you could not convict an accused in this case. It is entirely your responsibility, gentlemen; you will consider the whole of the evidence, you will read the law that is to be found in the text books, and decide that question. If you say that in every case you are satisfied that there was some ground which is legal for dealing with these men, and that the accused really believed that they had committed a war crime, and that there was carried out a legal execution, then, gentlemen, as far as that particular SAS man is concerned the charge must fail. I have, however, to tell you that so far as the charge itself is concerned you have not to be satisfied that every one of these SAS men were killed; if you are satisfied that even one only was killed in breach of the laws and usages of war, as alleged in the charge, that in itself is sufficient to support the charge and you can go on to consider further matters in the case only if you say there has been no breach, only if you find that in every case there has been a proper execution, should you stop the case and not proceed to consider the second point.

It seems to me that there is quite obviously evidence, at any rate, in France and the south west area, from which you might take the view that these killings were unlawful in the sense that I have indicated, but that is entirely a matter for you but, that being so, there being evidence which, if you accept it, might get you to take the view that the first point was proved, it becomes necessary for me to go on and consider the case under the other headings.

I hope I have made it perfectly clear that in my view your first point is to decide whether the prosecution have proved that these men, or some of them or even one of them, was killed in deliberate breach of the Laws and Usages of War. If they have not, whatever I say after is of no use and will not be considered by you at all.

Now, gentlemen, we come to what I consider to be much the more difficult part of the case. If you are satisfied that the crime as alleged was committed you have now got to consider whether any one or all of these accused committed it. They are charged together but you realize you have to consider the case of each man separately in the light of the evidence which applies to his particular case only, and before I proceed to deal with their individual cases I would like to offer you a few general remarks which I daresay are well known to you.

First of all I would remind you that in English law the accomplice, that is to say the man who himself has been taking part in the crime under discussion is always considered as a witness whose evidence should be closely scrutinised and in English law juries are warned that they should not act on such a man's evidence unless there is some independent corroboration showing that in some material particular his story is true, not only that the offence was committed but that the accused committed it. Quite apart from that, however, your own sense will tell you that in a case of this kind it may be that one accused will

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endeavour to show his conduct in a better light rather at the expense of another. Equally you may have come to the conclusion that the atmosphere in war crimes trials is such that the witnesses and accuseds are rather inclined not to be very frank, they are often afraid that what they say in this court may be used in another. These are only matters of common sense, and I am sure you will have them in your mind when you come to weight up and consider what weight you will attach to the testimony of the various witnesses in this case. There are also one or two affidavits, some of them not unimportant; and, as a point has already been made, I will not say very much about it. You cannot cross-examine an affidavit, and therefore it is left to your sense of fair play, to your sense of judgement when you come to read an affidavit, what weight you will attach to it. That evidence stands entirely by itself and there is nothing to show that it has got some weight which should be considered, you will probably reject it; but if you do find an affidavit fitting in with some of the general picture of the evidence then, of course, you may use it and attach such weight as you like to put. These are just ordinary matters of prudence which you will apply when you come to consider the wealth of evidence which has been put forward in this case.

I propose first of all to take the case of General Seeger. Let me at the very outset of my remarks at once say that this accused comes before you with a very high character. He is described as a just man, an honourable man, a religious man and, what is not unimportant in this case, he is described as a commander who takes a great interest in his men, and he is also described as a man, if I understand it aright, who is meticulously careful when he has to deal with a court-martial on his own soldiers. I understand he takes great care to see that they are tried with justice, and that at such punishment as they get is a fair one. Those are very laudible characters; but it may have struck you, in the light of the evidence you have heard here that it is difficult to say that he perhaps exercised that in the case of one of the British soldiers in Schirmeck, who, if you accept it, were there to his knowledge might perhaps, according to the prosecution, have received some of this meticulous care which we have been told he used in connection with the administration of his own unit. They may be or may not be committed, I have to put it to you that he is a man of unblemished character.

You will form your own views in this case but I think it will be fair to suggest that on the whole the Wehrmacht have conducted themselves properly in accordance with the Laws and Usages of War in this war and I for one am not prepared to put the general in the Wehrmacht in exactly the same position as people who are serving in the Gestapo. Those are matters for you to consider; they are matters which go to weight when you come to consider credibility. I am not for one moment suggesting that because a man is in the Security Police or in the Gestapo he should not be believed, but you have to form your view of the respective organization. It seems to me, though you will not accept it unless you agree with it, that there is a great difference between the calibre of integrity, honour and justice which you would find in the administration of the Wehrmacht, and that which you would find in the Security Police or Gestapo.

At the material time General Seeger was in command of this division 405, and you start like everything in this case, with rather a dispute. When these parachutists landed, was it General Seeger's duty to conduct the operation for the first few days with the assistance of the Police, or was it a question of the police conducting it with the assistance of General Seeger? There is a dispute on that point. Schlierbach will have it that the military were running it, the police were helping, you have others views on both sides. It is a question of fact for you to decide. It is

not unimportant because it has some bearing on the responsibility of General Seeger.

As you know these parachutists landed, whether the Maquis rose with them, or because the Maquis had risen, are all questions for you; but I think you will be satisfied that a time came when it was decided that operations should be taken against the Maquis and the parachutists, and that they would all be taken when captured to this camp at Schirmeck. General Seeger has told you in detail exactly what he did during the first period. Whether large numbers of parachutists were expected or not is for you to decide, but it does look as if in the initial states that a large number of parachutists were to be expected, and we would wonder whether there would not have to be discussions among everybody concerned as to what was to be done with these parachutists if and when captured.

The first piece of evidence that I would draw your attention too is the statement of General Seeger which he made at Wuppertal on the 25th May. Do you get the impression, looking at the evidence as a whole that running through it there is a suggestion by quite a number of witnesses that they got the impression though they are rather inclined to go back on it now, that a dispute was going on between Isselhorst and the military as to what should be done with parachutists, whether they should be handed over or whether they should not.

What General Seeger says, and these documents are all before you and you will read the whole of the documents if you want to, is "At the previous mentioned discussions at Saales both General Von Kirchbach and I maintained the point of view that soldiers who had jumped in uniform should be treated as prisoners of war. The answer to this was that each case would be examined carefully as to whether co-operation with the Maquis existed or whether it was merely a case of pure sabotage troops. In the first case the persons would be treated as terrorists and in the second as prisoners of war. To my knowledge no soldiers were treated as prisoners of war" etc. Gentlemen, that is the first statement which was made by General Seeger, and the prosecution invites you to say that it could only mean that he was agreeing in certain events to some of these parachutists being dealt with as terrorists and he must therefore have realized that they would be shot. As I understand it the General says: "Whatever I may have said, and wherever I may have said it, I went no further than agreeing that if they were handed over they would be dealt with only after a proper trial".

You will remember that he gave evidence at this court, and there again he repeated much the same sort of story about a conference at Saales with a great deal of detail, who was there and he told us that he understood a proper court procedure would take place to ascertain the proper standing of each parachutist, and that a discussion took place about what was to be done with these parachutists when captured. He then told you that after this he got on, or his staff did to General Veiel because he was uneasy, and that he got some message to say: "they were to be handed over to the camp at Schirmeck". There is no corroboration of that by General Veiel, though it may have been done through the staff. He does not mention that in his original staff. The prosecution ask you to say that on this statement General Seeger was handing over, or agreeing to hand over British soldiers captured in uniform to an organization which he must have known was rather a sinister one, with a pretty poor reputation.

Later on in the case he came back, and he gave you another account of what had happened, as he then remembered it, having heard, I think, the evidence of Isselhorst; and he then told you exactly what view he had formed about these parachutists, and what he proposed to do with them.

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His account is rather different in some respects from what he said at first and the prosecution are asking you to say that Seeger's real trouble was that he had known of this order for the killing of parachutists when captured, and that he realized if they were handed over what would happen to them; and the prosecution are asking you to say that the case against Seeger is that while he himself would not have wished to kill parachutists, it was an easy way out to hand them over and then, if they were killed afterwards, well it would not be his responsibility but all those who had dealt with them.

That is roughly the case that the prosecution put against Seeger. You have to decide whether Seeger was aware of this order or not. That is a matter of fact for you to consider. He swears on his oath that he never heard it. That order you have seen and you have read. It is an order addressed to the Wehrmacht and to become operative at all it has to percolate really right down to the soldier in the field, because he has been told he must kill parachutists. General Seeger on his oath denies that he knew anything about it; General Veiel denies he knows anything about it. There was also General Varteredt, and also General Von Kirchbach. We do not know what they knew about it, but the prosecution ask you to consider: when during these necessary discussions, which must have covered the question of parachutists, must not one or other have known of this order? I do not know; that is a matter for you. General Seeger swears that he did not. Dr. Isselhorst says that when he was discussing this matter with General Seeger he took it for granted that General Seeger must have known about it. You will remember that General Seeger told us that he had had orders before this that as he lacked intelligence section or an interrogating section in his division, if anything of this kind should arise he should hand over prisoners to the police for interrogation, and one wonders perhaps a little why, when he had these clear orders, he did not act on them in this case at once. Why should he have so many discussions and why should there be the reticence to put what after all seems to be a sensible question: "Isselhorst, what are you going to do with these prisoners of war if I hand them over to you? I should like to know what happens to them, and I should, as a matter of interest, to complete my records, and I should like to know whether they are ultimately dealt with as terrorists or not".

Gentlemen, there seems to be, on the approach of whether this order existed or not, a considerable lack of inclination to discuss it. Whether that is the right inference or not is for you to decide, and what inference you are going to draw from it is for you to say. If General Seeger knew of this order, if he realized this order, then the prosecution say: "our case against them is very much stronger"; if he did not they say: "well, he ought to have known about the order", and the case against him would not be so serious.

You have had called on this point some evidence from his staff you have had Major Buckrucker, who corroborates that he had never heard of this order, and you have the evidence of Muller-Hill that he had never heard of this order.

Gentlemen, these are all matters of fact which you have to decide in the light of the evidence. There again you have to ask yourself: Have the prosecution satisfied you that General Seeger knew that if he handed over British parachutists captured in uniform, they would be dealt with in a way which was contrary to the Laws and Usages of War, or was he handing them over in such a way that there was a duty upon him to take steps to see they were dealt with according to the Laws and Usages of War? If you are not satisfied by the prosecution's case, and you think that he was

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acting perfectly properly, there was no duty upon him at all, and that he was carrying out his orders and that it was quite reasonable to do so then the case against General Seeger would fail. As I understand it, in addition to that general question you have to consider what has been put to you by the defence. They are saying - and this is a matter for you to consider - that at any rate whatever his responsibility and duties may have been they lasted only for a short time, they only cover the comparatively few days in the middle of August when three parachutists were brought to Schirmeck, and that you ought to say, at any rate after that, he had nothing to do with it at all, but it was then discovered that there were not many parachutists, that there was not very much need for the military, and that they rather faded out, and therefore at any rate you can only consider General Seeger's responsibility in the light of that short period. That is again a matter for you.

On the whole I think it is quite clear that this composite battalion was subsequently broken up or dispersed very shortly, after some seven or eight days and after that when there are references to capture by the Wehrmacht I think you will probably find that they were not troops under the command of General Seeger. As I have already told you in my view you can convict a man in respect of the killing of one man alone of these SAS men if it was in breach of the Laws and Usages of War, and therefore, if you take the view that General Seeger's responsibility in any event was limited to these seven or eight days, it comes down to a question whether you can say he was concerned in the killing, contrary to the Laws and Usages of War, of Hall or Davis, because, as you know, Seymour, the third man was not killed.

I do not know quite what General Seeger's responsibility was. There has been some reference to General Varterodt starting it and to General Seeger taking it over after; but even if his troops did not capture these two men - and there is a dispute about that, it is suggested by the defence that Major Barkworth in the first instance described them as both being captured by, I think, the Schoener kommando, by the police, but it is a matter for you to decide and if you are taking the view that General Seeger was in command of this operation in those first few days you may think it matters very little whether it was the Schoener kommando or whether it was his own men provided they were taken to Schirmeck for interrogation at a time when he had his liaison officer there and when he might be said to be in charge of the whole operation.

You have had a certain amount of evidence from Schmidt, who was the liaison officer, he tells you that he was aware that these parachutists in uniform were in the camp, and that he passed on this information to his headquarters. I think he says that he passed on the particulars of the results that Schneider had obtained from interrogation. Are you satisfied that General Seeger did know that these two parachutists were in this camp at Schirmeck at this time, or that he ought to have known?

Then, gentlemen, that raises the question for you as soldiers to decide, what his duties were. The prosecution say that he had the duty to ensure that if he thought that these soldiers had been guilty of a war crime they should have been brought for trial before a proper court which, as I understand it, would be some kind of properly set up military court, which would not be his court but one created by the German Army; and that if he decided that there was nothing of that kind to be put forward he had a duty to see that they were handed over as prisoners of war.

Those are matters, as I say peculiar for you. If you are not satisfied with the prosecution's case on that, then you will find Seeger not guilty in respect of those two men, and in his case I do not think the prosecution ask you to say that after that period he

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was really concerned in any way with any further parachutists who may have been captured.

At this stage I think it would be well to remind you of the charge - "concerned in the killing". They are not words of art they are just words of ordinary meaning, and you must attach the ordinary meaning that you think right to those words. They are very wide, and for your guidance and assistance I would suggest that they certainly do not mean only to cover the man who uses the knife, or fires the pistol, or draws the rope round his victim's neck. I equally do not think they can apply to a man who has no duty to prevent someone being killed, but maybe aware that something very appalling is going on but has really nothing to do with him; and if he stands by and does nothing. I do not think a charge would cover that state of affairs.

"Concerned in the killing" would, I think, cover an organization which was being deliberately used for the purpose of killing men and it would cover everybody in that organization who was part of the machine necessary to bring about that end. Any, as it were, working cog which was required in this machinery which would result in the unlawful killing of SAS man might, I think, properly be said to be concerned in the killing.

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The first accused you have to consider, as I pointed out, is General Seeger. Nobody suggests that General Seeger killed anybody in the direct sense nor did anybody else in this case. The point you will have to carefully consider - he is not part of any organization at all - is: was he concerned in the killing, in the sense that he had a duty and had the power to prevent these people being dealt with in a way which we just inevitably have known would result in their death.

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Gentlemen, so much for the case of General Seeger. The facts are entirely for you. The law is not complicated, and it is for you with your members, using your military knowledge going into the whole of this evidence to say whether it is right to hold that General Seeger, in this period between, let us say the middle of August or towards the end of August, was holding a military position which required him to do things which he failed to do and which amounted to a war crime in the sense that they were in breach of the Laws and Usages of War.

Now, I propose to take the case of Dr. Isselherst. Dr. Isselherst has been a frank witness, and he has told you a very long story of all the matters he was concerned with in regard to these SAS; and his attitude is this: "I take full responsibility for anything my subordinates may have done, provided they carried out the orders as I gave".

I think it is quite clear that you must find, giving the ordinary meaning to the words "concerned in the killing", that he was concerned in the killing of quite a number of these SAS men. He tells you about how these cases of Dr. Ernst were specifically referred to him, and he tells you that although Dr. Ernst, in his opinion, was entitled to shoot these captured parachutists, he had intervened and said: "They will not be shot or disposed of until I have gone into the case and confirmed it".

Well, it is for you to say whether there is any substance in the defence put forward on behalf of Dr. Isselherst. It is not a denial that he was not concerned with the killing of these parachutists; it rather is one based upon a submission that what he did was not in breach of the Laws and Usages of War. I have already touched on that subject in some little detail in dealing with the first aspect of the case, and I do not propose to reiterate it. If you are satisfied taking into account the law and all the facts, that it is impossible to say that Isselherst did not know

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that it was wrong, that he knew perfectly well and it is quite clear that the shooting, if you like, in the St. Die, or La Grande Fosse, or Gaggenau, was in breach of the Laws and Usages of War, that I do not see what defence is open to Dr. Isselhorst to a charge that he was concerned in the killing of this large number of parachutists. That is the issue really that you have to concentrate on in the case of Isselhorst. Was this intervention of his which caused these parachutists to be shot a lawful one or an unlawful one?

I really do not think that it is necessary for me to go through the evidence in the case of Isselhorst. It is put before you in great detail. You have heard how he decided that he would not apply this order, in fact, he would try and get round it, and how in each case he says he went into the particular evidence which showed that these SAS were co-operating with the Maquis, and when he was satisfied of that, and only then did he cause the execution to proceed.

Gentlemen, whether he is telling you the truth about that or not is for you to decide. You will remember that he made a great point that in the case of Dr. Ernst he was always consulted, and that Dr. Ernst only put it into execution after he had given his authority. If you look at his earlier statement, you will remember that he refers to Dr. Ernst as being a man who carried out an execution in one of these cases without reference to him, and that he was surprised about it, and so on.

These are all matters which go to his credibility, but I really do feel in the case of Dr. Isselhorst, where his defence is rather one more of law than of fact, that he was justified in doing in what he did, that there is no point in taking up your time in dealing with the evidence. Dr. Isselhorst's stand must surely be this: I did order these sentences to be conformed. I knew that they would be carried out, but I say I was justified in doing so, and I have committed no breach of the Laws and Usages of War, and therefore I ask this court to say that I am not guilty of this charge.

That is a very simple issue. If you feel that that law as I have already mentioned it to you covers this case, then you can acquit Isselhorst on this ground; on the otherhand, if you say: no, the law is not one which makes so called executions lawful, then you must find the accused guilty.

Quite apart from that aspect of the case, Isselhorst wishes to disassociate himself from the manner in which these people were killed, and it seems a little extraordinary to me that when you are deciding that people should be killed, that you have the power to decide that they should be killed humanely and in accordance with the law, that you do not lay that down, as to how it should be done. Isselhorst apparently says: "I left that to my subordinates, and I never knew that they were going to act in this brutal way": but, I think, if you are taking responsibility for executing people according to law, you have a duty to see that it is prepared properly, and that your subordinates carried out that execution according to law.

Isselhorst is a man who has been given a good character, and described as a good husband, and you will of course, consider that in arriving at your credibility of what you are going to do in regard to the evidence when you consider his case.

So far as Isselhorst is concerned I do not propose to say anything more.

Now I would like to deal with the case of Schneider. Schneider is a man of 59 years of age. He has served at sea and eventually

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he comes, as you know, to Strasbourg, and he comes on the staff of the BDS, Dr. Isselhorst, what his exact position was at the material time is for the court to decide. There has been some discussion as to whether he was Isselhorst's second in command, or whether he was his deputy, but I do not think you will get very much profit out of that, I should concentrate upon what were his actual duties at the material time which is between August and November 1944. He seems to have been in charge of these departments we have heard so much about, and he seems to have been senior officer after the BDS. He does not seem to have been in the same building as Dr. Schlierbach, and he seems to have had very little in the way of an office. We asked him about what staff he had, and it was difficult to get a picture of what he was doing, but Schlierbach was quite insistent that he was the head of the Gestapo that he was the head of these departments and that Schlierbach was not.

Somewhere about the middle of August, when the Maquis and the parachutists had to be dealt with, in the absence of Isselhorst you find Schneider going to this camp at Schirmeck, and I think it is common ground that he would be the senior there and would be in charge of the camp. How long he was there is a matter for you to decide; if it was some days, perhaps ten days; perhaps not so much, it is entirely a matter for you to decide; but during that time the prosecution say he was in charge of the camp both from the point of view of the parachutists and the Maquis who were being brought in. Now he took with him quite a number of the staff from Strasbourg, mainly coming, I think, from Dr. Schlierbach's department.

He comes there and he takes charge. He has had a conference apparently, as to what is to be done, with General Seeger, and he proceeds to receive in Schirmeck certain parachutists who, I think you will remember, are the three I think already referred to, Hall, Davis and Seymour. The case for the prosecution - and it is entirely one for you to decide was that Hall was killed very shortly after he arrived there. He had not been there very long. It is suggested he was killed before the 21st or 22nd August. The prosecution say that if Hall was killed, one person who must have known about it was Schneider.

Gentlemen, there seems to me to be considerable force in that, if you accept that Hall was killed as Major Barkworth alleges. If Schneider had had two prisoners or three prisoners and by mistake Hall was sent to Natzweiler he would have at once surely said: where is Hall, what have you done with him?, and he would have come here and said surely at once: "Hall disappeared in some way. I do not know how but I want and made inquiries and I found he had gone".

The prosecution say that in all circumstances if you find that Hall went and disappeared and was killed you must draw the irresistible inference that it was with the knowledge and connivance, and possibly the authority of Schneider. Whether that is right or not is for you to decide. If Hall was alive and was still in the camp at Schirmeck after Schneider left it then, there is no force in the point that is being made; but the prosecution have suggested, I think it is from the evidence of Callies, that if he was interviewing Davis and Hall had been there, it is inconceivable that he would not have heard about it. That, I think shortly is the case that is put against Schneider in the case of Hall.

Schneider, of course, denies that he had anything to do with the killing of Hall.

The other man is Davis, and how Davis was killed is for you to decide. You have heard how his body was found in a wood, and the case for the prosecution, as far as that is concerned, is that Schneider was concerned with the case of Davis, that he had interrogated him and that he was interested in Davis, and that when Callies

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reported he could get nothing out of Davis there was some remark made by Gehrum and Schneider that they would have to try and get something more.

The case for the prosecution, as regards Davis, that they say at any rate, even if Schneider did not cause him to be killed he certainly was taking part - he was a working cog in this machine which had been set up and he had heard about these orders brought back from Berlin by Isselhorst. They ask you to say that, at any rate, whatever his actual part was, it was sufficient to show that he was being concerned in the killing of this parachutist Davis, within the meaning of the charge.

Schneider, of course, denies that he had anything to do with the killing of Davis. In fact he says, on the contrary, he interposed on his behalf, and that he tried to keep him from being killed because he thought of his bravery but Isselhorst would not agree because he was considered to be co-operating with the Maquis. He was very considerably concerned in this case of Davis, and it is for you to decide whether his part in the whole affair was sufficient to be described as in breach of the Laws and Usages of War.

As I understand it, the case against Schneider is not limited to his activities in Schirmeck camp. The prosecution say that, in the case of Schneider, he was carrying on his activities, and that he was carrying them on right through until about November. Whether that is right is for the court to decide. You have heard the prosecutor draw attention to the finding of these documents which related, I think, to Black and Dowling, and it is quite clear that those documents could not have come into this area at the time when Schirmeck was still functioning with Schneider in command.

You have had a good deal of evidence about discussions of prisoners, and you have the statement of Isselhorst which, if you accept it, alleges that at one time Schneider was pressing that a group should be killed and that he pressed so strongly that he overcame Dr. Isselhorst's views or, at any rate, convinced Dr. Isselhorst that they had been acting with the Maquis and in that sense Schneider was a party to that decision. I think Dr. Isselhorst now says that that was really Meier but I am not going to labour this point - they have all been put before you by the prosecution and by the defence - but as I understand it, in the case of Schneider, they say there is evidence both from the witnesses and from the affidavits from which you should hold that in his case he was not only concerned with these parachutists at Schirmeck camp, but that his activities went on and continued with some of these other groups, and they ask you to say that he should be dealt with as having been concerned with quite a number of these SAS men, even to the extent that he came to Saales when the St. Die group were there on two or three occasions. That, as you know, Schneider says was for the purpose of obtaining a quantity of arms which had been kept there.

Gentlemen, those are all matters for you to consider. They are all matters of evidence; they are all questions of fact and not law and you have taken a full note.

In the case of Schneider who is a man of good character - an honest man, an upright man - the prosecution say the evidence is such that you ought to find, within the meaning of the charge, that he was certainly concerned in the killing, contrary to the Laws and Usages of War, of quite a number of parachutists, the SAS, and that you can convict him because he is guilty of the charge. On the other hand, you have heard what the defence have to say. They say that he was not a party to any of these matters in the sense that he was in breach of the Laws and Usages of War.

Now, gentlemen, I do not think I can help you any further on the case of Schneider and if that is a convenient moment for you, I suggest we adjourn.

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THE PRESIDENT: The court will adjourn for five minutes.

(At 1130 hours the court is closed for five minutes)

The accused are again brought before the court.

THE JUDGE ADVOCATE: Just before the adjournment I was dealing with the case of Schneider, and I had pointed out shortly what the case for the prosecution was, and you will remember, of course, that a number of witnesses had been questioned who have said that Schneider had really nothing to do with these killings at all; those you have heard and you will consider them in due course.

There is also in his case the affidavit of Uhring, which says a good deal about Schneider, and I do not propose to pass any comment on that; it is before the court and they will attach such weight to Uhring's affidavit as they think right.

Now I propose to take the case of Dr. Schlierbach, as I think it will be right to treat him as being the next in importance of these accused we are considering. Schlierbach is quite a young man; I think he was only 31 years of age when the matters we are considering arose, and I think he came to Strasbourg in June 1944. He says quite emphatically that he was really not the head of these sections 4 and 5, but that Schneider was, and you have had a great deal of very clear exposition from his counsel as to exactly what Schlierbach suggests his duties and responsibilities were. He says that at all material times he was in charge of the Einsatz Kommando, Strasbourg, and he has told you that he lacked many of the powers, discipline and authority which should go with the post of the head of department 4, and I think what Schlierbach is saying, time after time, is: "I had my own duties to perform, and I really had nothing to do with these SAS men at all unless they happen to come within the area of Alsace, for which I was the head of the Gestapo"

Schlierbach has been at pains to say that throughout the period you are considering the question of parachutists was one for Schneider and not for him, and the case against him, so far as the prosecution put it, is that over the period September and October 1944, as head of the Gestapo, you ought to find that he was concerned with the killing of these SAS men. The way they put the case, as I understand it, is that although he was not at Schirmeck, he was part of the organization at Strasbourg, and that the camp of Schirmeck was within his province. Schlierbach says he had nothing to do with the camp at Schirmeck, and a number of witnesses have agreed that he had not; but the prosecution say he had a great deal to do with people who were put there, and that it is inconceivable that with his 150 agents, or whatever they were, his machinery would not be used for the purpose of dealing with parachutists as well as Maquis, or anybody else that was giving trouble round about the area of Strasbourg. Schlierbach admits that he went to a conference at the very beginning at Schirmeck, but he says he was asked to attend because of his knowledge of the Maquis, and that is all he had to do with this question of parachutists. He says that during these months he was carrying on his own specific duties, and that the only time he was concerned with parachutists at all was in regard to the Wimmenau group, which was captured in his area.

The case against Schlierbach is based rather on statements which have been made by one or other of the accused, and if you turn to the statement of Schneider, exhibit 11, some point is made that Schneider, when he was questioned and asked: "How do you account for the fact that you claim to know nothing concerning the interrogation of English parachutists in Strasbourg when you were the representative of Amt 4, in relation to Isselhorst, since you have just said that Amt 4 was the branch dealing with these cases".

Schneider is supposed to have said: "because Dr. Schlierbach dealt direct with Isselhorst". That is one of the points - it may be a small point, but one you have got to consider - that the prosecution suggest in fact that Schneider was saying this about Dr. Schlierbach.

Again on page 5, Schneider is saying that Isselhorst communicated interrogation results to Dr. Schlierbach. That is another small point which the prosecution suggest indicates that during this period Schlierbach was being consulted and was assisting in regard to the whole question of the interrogation of parachutists.

Then some point is made of a reference by Isselhorst in his deposition, exhibit 7 at page 3, when he says: "To whom did you give these orders? (A) I gave these orders to Schneider who must either have passed them direct to the kommandos which were at that time in the field or through Schlierbach, the head of the Gestapo under me in Strasbourg".

The prosecution also rely on one of the utterances of Gehrum in exhibit 6 where he says in paragraph 10: "Equally Sturmbannfuhrer Schlierbach and deputy, Sturmbannfuhrer Engelbrecht must have known of the details of the execution of any airmen or parachutists, since I know that they received orders to this effect from Isselhorst". You have had an explanation of that by Gehrum, and it is entirely a matter for you to say what weight you attach to these allegations which are made by one accused against another. Those are entirely matters for you; you will carefully consider them. If you attach no weight to them you will dismiss them from your minds; but the prosecution ask you to say that if you do accept them, that running through this account there are allegations by people who know that Schlierbach was concerned with these parachutists. Schlierbach of course, denies these and these have all been put to the accused, and they have given their explanations of them.

A further point is made by the prosecution that Schlierbach was called in to make a report in the case of the Wimmenau group. What exactly happened or why it was passed by Isselhorst, has been fully ventilated and discussed, and it is for you to make up your minds but the prosecution say that without going into the evidence at all in any great detail, there are these matters put before you and they ask you to say that not only at Schirmeck, but during the whole of the period that Isselhorst was using the resources of his departments, and that Schlierbach was being brought in to assist in dealing with parachutists. If you do not accept that, of course, you are quite entitled to say that there is no evidence against Schlierbach at all.

Schlierbach has gone into the witness box, and he has told you on oath what he did, and shortly he says: "I had nothing to do with these parachutists at all, except on this occasion when I went to Schirmeck, and that was really not in connection with parachutists but the Maquis". He also says that he knew nothing about these other groups, St. Die and Grande Fosse, that he was never consulted, and that these were all done by Dr. Isselhorst and Dr. Ernst themselves. He says he knows nothing about the fuhrers order and he tells you how when he tried to find out, that Isselhorst did not pass it on to him, and therefore at no time did he know of the terms of that order.

The prosecution have to satisfy you that Schlierbach was taking some part in operating the machine from Strasbourg which was endeavouring to make a case against these parachutists that they were co-operating with the Maquis, and if the prosecution have failed to prove that then, gentlemen, I do not think it is possible to suggest that Dr. Schlierbach was concerned actively either in the field or in any other way with these parachutists.

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There is nothing more that I propose to say in the case of Dr. Schlierbach. The issue is very clear one. The facts have been put before you, both by the prosecution and the defence and the issue in his case is really the simple one again: did he or did he not take part in the killing of these parachutists? He does not raise any question of law; he does not raise any question of whether it was right or wrong. His defence is a complete denial that he had anything to do with it at all. If you think that is a reasonable possibility then you must acquit him of this charge.

Now, gentlemen, I will deal with the case of Gehrum. Gehrum is the most junior in point of rank of any of the accused in the dock, and he was a member of the staff of Dr. Schlierbach. He was diverted at the beginning of the Schirmeck action to Schirmeck, and he was there working under Schneider for some two or three days. He says that his duty was in connection with the interrogation of French partisans, and that he had nothing to do with the parachutists.

The case for the prosecution against Gehrum, as I understand it, is that it is not limited merely to what happened at Schirmeck. They suggest that Gehrum was being used in this organization or machine at Strasbourg in connection with some of these other parachutists besides the ones which had been in Schirmeck.

Gehrum, as you know made two statements, and when he was questioned here he clarified the position by explaining certain of the things that he had deposed to in the statements. It is rather a statement which deals with the other accused rather than himself, but in the result he did depart very materially from what he had said, and it is for you to decide whether, in making that statement, he was telling lies or making mistakes, because it is for you to decide on the credibility of each of these accused in giving evidence.

One of the matters upon which the prosecution rely in the case of Gehrum is the remark of Isselhorst which appears in exhibit 7 and his reference to the triumvirate. What it all means is for you to decide, but the prosecution ask you to consider that Isselhorst, when speaking about Uhring, Schneider and Gehrum, must have meant something, and they say suggests that the interpretation you should put upon it is that they were all engaged in connection with the interrogation of parachutists. Whether this is right or wrong is for you to decide. You have heard Isselhorst, you have heard Schneider, and you have heard Gehrum; if you take the view that that was wrong and you ought to pay no attention to it, that is a matter for you.

A further point relied on is the one I have already mentioned, that when Davis was being interrogated in the camp by Gallies there was a reference to further inquiries being made which Gehrum was supposed to have said or it might have been Schneider.

Then there was the statement of Muth and statements of an incriminating nature by Buck and Nussberger; they are very general sort of statements, but the prosecution say they all at one time were making allegations which suggest that Gehrum was taking some part in regard to these parachutists. Whether Muth made the mistake is for you to decide. You have heard Buck, and you have heard Nussberger. These are all matters for you to decide with regard to what weight you give to them; but the prosecution say, realising that Gehrum was from the Gestapo, that he had special knowledge, that it was only reasonable to link up the interrogation of the Maquis with the interrogation of parachutists, and that you ought to find, taking into account all these matters that they refer to, that it is a reasonable and irresistible inference to draw that over this period Gehrum was taking part and being used in this machine for the purpose of bringing this case against the

parachutists and which resulted in their deaths.

Gentlemen, you have heard Gehrum, you have heard all the witnesses cross-examined by his counsel, and I think shortly what it amounts to is that it is submitted that everybody who has been cross-examined says that Gehrum has not anything to do with these cases which occurred after Schirmeck. That again is a question of fact; there is no law in it. It is simply for you, in the light of the notes considering the evidence of the prosecution and of the defence, to say whether you are going to draw the irresistible inference that this particular accused was concerned in the killing, not only in so far as it related to Hall and Davis, but in so far as it related to some further groups who were killed during the period September and October.

Something has been said about situation reports, reports which were supposed to give some picture of what was going on, but not about the deaths of parachutists. These, I think, were distributed to Dr. Schlierbach but whether they were ever distributed to Gehrum, I do not think has been established. So, gentlemen, it is a pure question of fact for the court to decide, have the prosecution satisfied you by the evidence they have laid before you that Gehrum was concerned, in breach of the Laws and Usages of War, in the killing of any one or more of these parachutists?

Now I have dealt with the case of General Seeger, which seems to me to be in a class by itself; I have dealt with the case of Dr. Isselhorst, his subordinate Schneider, his subordinate Dr. Schlierbach, and his subordinate Gehrum, and I would once again like to emphasize that the case of the four latter, as far as the prosecution is concerned is that they were operating a system and a machine, and that they were all material cogs in that machine and that they were, one and all, taking part in operating a machine which had for its purpose the extermination of these parachutists, in circumstances which they must have known were quite illegal and contrary to the rules and laws of war.

Although you must consider the evidence against these four separately - and their cases are widely different - it is obvious that if you consider the earliest statements which they all made in this case you get rather this sort of picture; you get Isselhorst implicating Schneider, very much so; you get Schneider implicating Isselhorst; you get Gehrum implicating Schlierbach; you get Schlierbach definitely putting the blame on to Schneider, and so it goes on; and is it a fair summing up of their original statements before they came into court, or one or other; if you add them all together, do they not seem to indicate that they were all being concerned in a matter of the kind the prosecution suggest, but in each case, or in many of the cases each man, with the exception of Isselhorst is really saying: "It was not I, it was one of the others"? Whether that is a fair criticism or not is for you to decide, and whether it helps you to say, on this general question, whether there was this organization of which they were part, is entirely a matter for you; but that, as I see it, is the case against these four men so far as the prosecution is concerned.

So far as the defence is concerned, with the exception of Isselhorst who really bases it upon whether he has been in breach of international law or not, the defence is: "We had nothing to do with it at all really" - especially in the cases of Schlierbach and Gehrum: "We have nothing to do with it at all".

These, gentlemen, seem to be the issues. It is a curious case and one perhaps rather out of the usual that you have heard - men making affidavits on oath which have, in the main, been taken by, Major Barkworth, and I think it is some testimony to the fairness of Major Barkworth that only one witness, and he was not supported

and in fact was disassociated from by learned counsel, has made a suggestion that the statement he made to Major Barkworth was obtained by any juress, or threats, or improper methods; and you do find what is not very usual, not the allegation "What I said was wrong because I was bullied", or "because I was ill-treated", but agreement that the statement was voluntary, that it was made in reasonable circumstances, though it may have been made after a period of some time of incarceration; and you do find a very large departure from what was originally sworn to what is now explained in court.

I do not propose to refer them to you. You have seen them and made notes on them. What you deduce from that I do not know, but with men of intellect, with men of some education, the proper thing to say; if you do not know when you are making a statement is: "I do not know, I do not recollect"; it becomes very difficult to understand when you swear to one set of facts outside the court and then alter them in court. In most cases the court could not fail to observe that they were altered in favour of an accused in the dock.

Such criticisms as I make here may be right or maybe wrong, they are entirely for you to accept or disregard; but the prosecution ask you to take into account that if you take the statements you should infer that there has been by most of the accused an attempt to alter what they swore, to something different now. All that goes very much to their credibility; and why, if people have nothing to do with parachutists, should they tell lies or make mistakes of the kind which are misrepresented by these two versions.

So much for these cases of the four men employed by the BDS and his staff.

I now come to deal with the last case which, again, like that of General Seeger appears to me to be a case on its own. It relates to France, and we have not had the advantage of any explanations or implications by Oberg himself, but I think by now you have a considerable amount of evidence which should enable you, one way or the other, to decide the verdict in the case of Oberg. He was a very important person, and you will remember that he was originally stationed in Paris. Eventually he came, I gather, to Nancy, and finally to Fraise somewhere about the middle of September 1944.

The case against Oberg is very clear as an issue and should be put quite shortly. The case against Oberg is that while he was in charge of this area in September and October 1944, parachutists were being captured by his Wenger kommando and that in pursuance of the deliberate policy, the policy of the Fuhrer to wipe them all out, they were brutally murdered. The case for the prosecution is that that was done upon the authority or upon the agreement of Oberg. I think the defence to that is rather that the BDS Suhr, who was then concerned with it, was getting his orders from the RSHA in Berlin, and that they were by passing Oberg and he knew nothing about them.

I am not going into those horrible stories. I do not think anybody can say, in the case of those men, that there was a killing or an execution that was in accordance with the Laws and Usages of War and the only issue, as it seems to me, as far as Oberg is concerned is: did he know of it, did he order it, did he condone it, or was he allowing it to take place with his knowledge, and was it part of his policy that that should happen?

The defence have asked you to pay not too much attention to what happened in Paris. They say that whatever may have happened with regard to Oberg in Paris it was not the same in the more difficult conditions of September 1944, and they ask you to say that at

at that time Oberg was more concerned with other duties, and that he had nothing whatsoever to do with this killing, that he was not in touch with it, and that he should be held quite free from blame in regard to it.

Gentlemen, you have had an affidavit by Suhr, who has committed suicide, and that is before you, and I am not going to refer to it. You have had a statement by Oberg, and that is the only statement in regard to this case which you have from Oberg. I do not think that I need read it in any detail but what I think he is saying is: "I have heard and knew of parachutists being dropped but I thought they were in plain clothes. I heard nothing about soldiers in uniform. I know nothing about this, and it was never referred to me".

Quite rightly one of the issues you have to consider is whether the knowledge of Suhr was passed on to Oberg, and counsel makes a point that nowhere has Suhr said that he did consult with Oberg about this policy and that Oberg agreed. Can you believe for one moment that if Suhr was discussing this matter with Oberg it would not have emerged that he was talking about people being in uniform? The whole trouble for the Germans throughout this case seems to me to be that the parachutists were captured in uniform, and why there could be a discussion with Oberg as to what should be done with parachutists in plain clothes I do not see. That is a matter which is quite clear - what happened to parachutists who were soldiers and arrived in plain clothes. The really difficult question was as to how to dispose of officers and men captured in uniform. At any rate, that is a matter for you. Do you accept Oberg in his statement when he says: "Suhr never informed me that soldiers in uniform were concerned in these parachutist landings"? He is clearly talking about these people that we are talking about, because he mentions the name of Isselherst and the withdrawal of forces further up.

The prosecution do not hesitate to suggest that you should not believe Oberg when he makes that statement; but besides that there is the affidavit of Von Krogh, and again I merely refer you to it; it is entirely a matter for you. Von Krogh is not here. The defence have had no chance of cross-examining him and it is for you to say what weight you attach to it. However, it is a very important document from the point of view of the accused. He is speaking of a time when he was at Nancy and not in Paris; he is speaking of the times with which you are intimately concerned: "I was employed in the N. Referat at Nancy. The BDS at that time was Knochen. He received his orders from Oberg, Hohere Polizei and SS fuhrer Frankreich. I can remember having seen a secret order originating from Knochen that all special parachute troops captured behind our lines were to be shot within 48 hours. This order would also have been passed direct to the officers in charge of SD kommandos such as Kdo Wenger and Kdo Retschek. This order would have been given a bit the time of the Allied landing in South Italy, Sept 1945". Then he goes on to deal with the kommando, and then he finishes up in this way: "When the staff of BDS France arrived in Nancy, Knochen was still BDS, but was replaced for a few days by Stossberg, and finally at about 15th September 1944 when BDS France moved to Fraise, Suhr was appointed BDS. In this position he received orders from Oberg and passed them direct to the Einsatz Kommandos such as Wenger".

That is a document you will have to consider; attach only so much weight to it as you think is fair having regard to the fact that it has not been tested by cross-examination.

Of course, the real point upon which the prosecution are relying, so far as bringing knowledge to Oberg is concerned, is the evidence of Dr. Isselherst, which he gave here in court. That

is important, and because it is important I endeavoured to take a more or less verbatim note, and what he said was to this effect, of course you will rely on your own notes; he says: "There were two conferences, the first was in the office of Suhr at Fraise. He and I had a heart to heart talk about the competence and the carrying out of the order, that is the fuhrer order. I explained my point of view, as I have done in court. I explained the difference in regard to the working with the Maquis, and Suhr replied that he had considered co-operation between Kommandos and maquis. He said that he and his commander had sufficient experience with such cases, and that they did not want my advice. He said that the order existed and he and his kommandos would keep to it. There was a sort of difference of opinion between Suhr and myself as to how this could be settled", because Isselhorst is saying: "We had one policy in our area, and in the neighbouring one there was a different policy". They then went and saw, as I understand it, about the same day, - that was in mid September - and it is said that the main subject of the discussion was about the operational question; but Isselhorst says: "I raised the question of parachutists, and Suhr turned to Oberg and said: 'this matter has been thoroughly discussed between Isselhorst and myself'. Oberg nodded his head and the matter was dropped". He said: "In my view Oberg held the same views as Suhr. I pointed out that the difference, <sup>should be</sup> made in the treatment, and Suhr said 'we have got our orders and shall act accordingly'". That is the fuller version, to which the General then is supposed to have nodded in agreement.

The difficulties for the defence appear to me to be either he agrees with it or he disagrees with it. If he agrees, it is quite reasonable to nod his head; if he disagrees it seems to me equally reasonable to intervene and say: "I want to know all about this what are we discussing? I am going to decide what we are going to do so far as our area is concerned; and that is the point that the prosecution make. They ask you to say, as reasonable men: if you accept Isselhorst you can only find that there was a discussion in mid September in which Isselhorst is saying: "I am going to interpret the order in a more humane way" and Suhr and Oberg are saying: "No, we carry out the orders of the fuhrer"; and it is upon that and after that I suppose, the prosecution say that you found these men being killed in the way that has been described, by the Wenger Kdo.

I do not know whether Isselhorst is telling you the truth, I do not know whether Von Krogh is telling you the truth, and it may perhaps be difficult for Oberg to go into the witness box in view of accusations he may have to meet elsewhere; As far as I am concerned as judge-advocate, all I can do is to point out that Isselhorst has not been contradicted by Oberg on oath and he has not gone into the witness box and said that Von Krogh is a liar. If you think that something is owing to him for his defence in regard to his future trial do not attach too much weight to that point; on the other hand it is entirely a matter for you to say whether you accept the evidence for the prosecution.

You have heard certain cross-examinations of witnesses by the learned counsel for Oberg, and I think, putting the case very shortly, it is that Oberg was in no way concerned with these matters, never heard of them, and should be absolved. In his case no point of law arises, no defence such as is put forward in Isselhorst's case occurs. It is a straight forward question of fact for you to decide. Is it an irresistible inference that these men, these 7 or 8 SAS personnel, who you have heard were killed, were killed either on the orders of Oberg, or were they killed because he had agreed to it, and are you going to say that undoubtedly in his case he was concerned in the killing, in breach of the Laws and Usages of War, of these 7 or 8 SAS killed by the Wenger Kommando? That again is entirely your responsibility.

If there is a reasonable doubt, well, then you acquit the accused.

I have been shortly dealing really with the broad outlines rather than matters of evidence because, after a long trial in which you have taken most voluminous notes and which you will take with you in closed court, and after the analyses by learned counsel, it is obviously quite unnecessary for me to deal with the detailed evidence. I have put the broad issue, and it is for you to consider the evidence in the light of those broad issues I have suggested to you.

May I again very shortly run through what I would like you to do. First of all, I would like you to consider whether you are satisfied that parachutists were <sup>under</sup> killed in breach of the Laws and Usages of War, then to ascertain what circumstances they were killed and who was connected with it, remembering always it is for the prosecution to prove the guilt. Then I would ask you, though you will treat each case separately, to consider in a general way the cases of the BDS and his three subordinates. I would ask you to treat the case of General Seeger as rather one on its own, and equally Oberg also as one rather on its own. But in each and every case the issue is the one set out in the charge: were they concerned - that is how I suggest that you should interpret it - in the killing of any of these SAS men and was it in breach of the laws and customs of war?

As I have pointed out to you, this is an important case; it is a serious case, and it is a very grave case. For a long time now the Allies have been trying what the learned counsel refer to as "the small fry" - the man who uses the knife, the man who fires the bullet, the man who puts the rope around the victim's neck, the man who is a brute or a dolt who under the guise of orders or pressure, performs the killing. It is right, gentlemen, that those men should die if they have taken life in breach of the Laws and Usages of War; but behind those men there is always somebody in authority, somebody who is using the small man to do the dirty work; and we all agree, I am sure - the German counsel, prosecution, court and myself - that if there is a degree of guilt to be apportioned the gravest one should be apportioned to the man in authority who gets the others to do this work.

Gentlemen, I think it is obvious that in this case the prosecution have brought before you, at any rate in the case of all the defendant except Seeger, men whom they suggest are the figures of power and authority standing behind these men who have passed through this court to receive the sentence of death - the actual killers. I do not for one moment suggest that that should influence you in any way in the administration of justice; but the prosecution here undoubtedly have put before you, at any rate in the case of Oberg, at any rate in the case of Isselhorst, perhaps in the case of Schneider, the men of power and authority. Whether their case is right or whether it is not is for you to judge, but the case for the prosecution is that these 5 men, in the way that has been suggested to you were standing in the background, and that they were using this machinery through the hands of others who have been dealt with elsewhere. Whether there is substance in that case is for you to decide. It is a grave responsibility which you alone, as the judges of this court, have to shoulder. If you feel that the prosecution's case is sound then, gentlemen, of course it is your duty to act upon it; but equally in the closed court, when you have time to study the whole of the evidence, if you come to study the accusations made in court verbally, and in the documents, and the denials in cross-examination, which have been elicited, that the accused had anything to do with it, and when you have considered all that fairly, and patiently, and quietly, you are prepared to say that you have a reasonable doubt in the case of any of these accused, that there is not that judicial certainty in the offence which excludes a reasonable doubt, then

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each accused in respect of which you have a doubt has the right to be acquitted. On the other hand, if you have no doubt at all, and you feel the case for the prosecution is irresistible, not withstanding the denials of the accused, then it is your duty to convict.

There is not one thing more I would ask you to do and that is, when you come to consider your finding, to carefully consider the very able and analytical speeches which have been made by German counsel on behalf of their clients. They have taken a good deal of trouble to make the issues clear, and I know you will consider carefully all those points which were brought out in favour of the accused.

May I say, if I may be allowed to do so, that in my view I have had the greatest of assistance from the learned counsel in the way they have put their cases, which has enabled me to follow the issues and defence which they have raised, and I feel I ought to say; speaking for myself at any rate, that German counsel have, in this case, behaved with propriety and have assisted the court in the administration of justice.

I feel that there is nothing I could add except in the question of law which you will have to discuss with your members, and decide what is the law, what are the customs and rules of war which apply here, and what was the position of the Maquis qua the SAS; the other issues are mere questions of fact which depend entirely on you.

I would ask you to close your court and, with your members, to retire to your room to decide whether the case for the prosecution has been made out beyond reasonable doubt in the case of any of these accused.

**THE PRESIDENT:** The court will now adjourn. The court will consider in closed court its finding. The court's deliberation on its finding will begin in closed court at 2 o'clock, and I do not anticipate opening the court until 5.15.

(At 1240 hours the court is closed)

(At 1620 hours the court re-opens)

The accused are again brought before the court.

**THE JUDGE ADVOCATE:** I am directed by the court to announce the following findings. It is my duty to tell you that any finding of guilty is subject to confirmation by the Superior Military Authorities.

I will now read the findings of the court:

**Seeger:** the court find the accused, Willi Seeger, German national, is guilty of the charge.

**Isselhorst:** the court find that the accused, Erich Isselhorst, German national, is guilty of the charge.

**Schneider:** the court find the accused, Wilhelm Schneider, German national, is guilty of the charge.

**Gehrum:** the court find the accused Julius Gehrum, German national, is not guilty of the charge.

**Oberg:** the court find that the accused, Karl Albrecht Wilhelm Arnold Oberg, German national is guilty of the charge.

**Schlierbach:** the court find that the accused Helmut Karl Wilhelm Schlierbach, German national, is guilty of the charge.

**THE PRESIDENT:** Julius Gehrum, you may leave the dock. (The accused leaves the dock)

THE JUDGE ADVOCATE: Learned counsel for the defence, the court have now to award a just and fair punishment in respect of the accused who have been convicted. If there is anything that counsel would like to lay before the court in mitigation of punishment you can say anything you like now to the court before they proceed to decide what punishment shall be awarded.

DR. OBERLOSCHAMP: May it please the court: I would like to point out to the court now what I said before in favour of my client, and particularly I would like to stress all those witnesses to the character of General Seeger. General Seeger who showed the very best of character, and who showed also the very best of intentions during the war, is now unfortunately connected, although having never been a member of the party, with things which originated in the party and its organization.

It is particularly hard in the case of General Seeger, as you remember the High Church official pointed out that Seeger had always been an enemy of the party and its organization.

I would like that the court should realize the importance of this matter when considering the sentence.

DR. VON BRUCK: May it please the court: about the personality of my client, the accused Dr. Isselhorst, I have told the court quite a number of things. I had the impression during the trial that the prosecution, as well as the learned judge-advocate, had the opinion that my client, Dr. Isselhorst, had, purely as a human being, very strong and good qualities. What he did was on orders, but he did not shirk the responsibility, and that has been acknowledged in a very fair way by this court.

What I said concerning the accused, that what he did he did only on the orders of the then highest authority in Germany, I can only repeat, and I want only to stress it. There was no other possibility for the accused, in the situation in which he found himself, than to obey these orders. I am speaking now when I say "orders" about the well known fuhrer order, I am speaking about the order of the RSHA, and lastly I am speaking about the order of the highest SS authorities which threatened anybody who would not obey every order with death. What I would like to say is that these threats in cases of not carrying out orders were directed not only against the person who did not carry out the orders, but also against his whole family and relations. The court did not find it possible to see the might of this force-majeur when they considered the verdict, but at least I would request the court now, when they retire for the finding of the sentences and the punishment, to remember this fact.

The court has authority for this point in mitigation in law 10 of the Control Commission, which says that the fact that somebody committed something on orders might be considered as a ground for mitigation.

You remember that the affidavits spoke about the highest qualifications concerning the character of Dr. Isselhorst. You remember also that he did not show any personal inclinations to cruelty or to excesses, and you remember also that he was a faithful son of the Catholic Church. Therefore I think I shall not in vain ask for clemency for my client.

DR. LUEDECKE: May it please the court: in the case of the accused Schneider it is the same, he did not act on his own free will but only on orders. I make the arguments of my learned friend, Dr. Von Bruck, my own.

The accused Schneider was not a man for office work. He was a naval officer, and only after Germany had lost the Merchant Navy he became an official in the police force. He was not very strong

concerning the questions of law; he was a soldier and carried out orders which he received, and he trusted that whatever he did was right.

You remember the affidavit of the burgomaster of Bingen concerning the personality of Schneider. You remember that this affidavit point out quite clearly that Schneider had no inclinations at all towards cruelty or hard things. If he helped in the framing of the decisions in regard to the parachutists then he did so only because he received orders to do so; that is what I would like the court to remember.

DR. BROBEL: The reasons for clemency in the case of Oberg are different from those of my learned friends. Oberg was, in the eyes of the highest party authorities, and also in the eyes of Himmler a persona in gratia - he was not seen with favourable eyes. He is the only one of these Highest SS officers who did not receive the golden Party medal or any of these higher decorations. He always tried to act against excesses of the Party, and instigated inquiries into the doings of a number of Gauleiters, provincial heads. That is also the reason why he was, during his stay in France, controlled thoroughly by the General of the SS, General Sep Dietrich.

General Darlagur had the order to transfer or to divest Oberg of his authority, and he came already with his successor to Paris for that purpose, and this transfer was only avoided by the good offices of the two generals, General Stiplnager and General Rundstedt, who were highly satisfied with the wise behaviour of the accused Oberg; but after the happenings of the 20th July, Oberg lost even more favour with the Party, and we know that General Stiplnager highly participated in these events of the 20th July. General Stiplnager's widow is ready to give evidence for Oberg in the future trial at Paris concerning these matters.

Oberg went so far as to complain to Heidrich about the behaviour of some of the SS officers in France. Sachel went so far as to go to Hitler himself and complained that in Paris there was a man named Oberg who sabotaged the orders of the Fuhrer. The reason for this complaint was that younger SS officers went to Hitler and complained that if Oberg would not start a proper fight against the Maquis then they themselves would take matters into their own hands.

One example is the wife of General Weygand, who was captured in Mecklenberg. His wife was brought by a service vehicle of Oberg himself from France to Mecklenberg to join General Weygand.

When Himmler wanted to arrest the police chief of France, Bousquet, then Oberg himself brought this man in his own service vehicle to Bavaria.

I have got these details from documents which are in the files of the French case, and I have the names of 9 well known people who will give evidence in this future trial, and I would like that the court even now should realize these things which are meant for the future trial, and should act with clemency.

DR. GIERLICH: May it please the court: in the case of Dr Schlierbach it is the same, that he obeyed only orders of his government and of his next superior officers. I think that the court will agree with me if I told the court that Schlierbach had no idea at all - not the faintest idea - that he did something wrong. When he carried out his orders he only thought he was doing his duty, and I may trust that the person who the court saw here giving evidence did not give an unfavourable impression. It seems clear now

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after having heard the evidence, and particular the evidence of Dr. Isselherst, that Dr. Schlierbach was a hard working and conscientious officer. We have heard from Dr. Isselherst that Dr. Schlierbach had some difficulties even because of his exaggerated sense of his consciousness, and also because very often he refrained from doing other things. This moderation and this consciousness did not react favourably in the eyes of his party superior officers. We have heard that this moderation did not re-act favourably with the Gauleiter Wagner and also with the BDS Suhr.

Dr. Schlierbach was very unfortunate in that he had to join the offices of the Gestapo against his will. Dr. Schlierbach who is now 33 years of age, was at the time when Hitler took power only a student. Because of his youth he was imbued with all the thoughts and ideas of National Socialism, to such an extent that he became almost enslaved with those ideas. Because of this National Socialist education of his it became part of his life and of his being to obey every order of his fuhrer; to criticise any such orders was quite out of the question for Schlierbach.

Dr. Schlierbach, during his years as a student of law, worked with every intensity and energy for that purpose. His idea and intentions were to become a highly qualified lawyer. In 1938 he finished his studies as a lawyer and because of the very good results of his examinations he became a civil servant in the German Home Office in 1938; only because of his very high qualifications did he get this job with the Home Office. He stayed in that capacity until June 1942 with very good results, and unfortunately he was transferred then to BDS Kief, and there he stayed on until December 1943. That was the first step of Schlierbach's connection with the BDS or any subordinate office of the same department. After leave of some months Schlierbach was transferred, again against his will, on the 1st July 1944 to the Gestapo in Strasbourg, but even in this work, which he did not like, he tried to act concerning the regulations of law and fairness and justice.

I said before that he had some considerable difficulties with Party organizations, and particularly did I mention the difficulties with Gauleiter Wagner, and these difficulties resulted in his being relieved of his duties with the Gestapo on the 15 February 1945.

I would like the court to realize the position which such a comparatively young man had at that time. Duty and obedience - those were the two first things in the life of Dr. Schlierbach. I think the court will agree with me if I say that for such a man at that time it was quite impossible to act in a different way than he did. We see here an example of where a young man has to answer for an ideology which he served, and where he is held responsible now for all these things which we heard during this trial; and I believe the court will agree with me that in the case of Schlierbach it is a man of good and honest character, and particularly would I like to point to the youth of the accused, and also to the mental development which he had from 1935 onwards.

Schlierbach is a young man. He has a young wife, and he has three children of three years to 18 months, and I would like that the court should consider all these reasons which I have given to be clement with Dr. Schlierbach.

THE JUDGE ADVOCATE: There is nothing you want to place before the court in regard to the accused?

MAJOR HUNT: No, I am afraid nothing is known at all.

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**THE PRESIDENT:** The court will retire to consider in closed court the sentences. If the court is ready to re-open by 6 o'clock it will do so, and if not it will remain adjourned until 10 o'clock to-morrow morning.

(At 1700 hours the court is closed)

(At 1755 hours the court re-opens)

The accused are again brought before the court.

S E N T E N C E S

**THE JUDGE ADVOCATE:** I am directed by the court to announce the following sentences, and I want to make it clear that these sentences, like the findings are subject to confirmation by the appropriate Superior Military Authorities.

I will now read the sentences.

**Seeger:** The court sentence the accused Willi Seeger, German national, to be imprisoned for 3 years.

**Isselhorst:** The court sentence the accused Erich Isselhorst, German national, to suffer death by being hanged.

**Schneider:** The court sentence the accused, Wilhelm Schneider, German national, to suffer death by being hanged.

**Oberg:** The court sentence the accused Karl Albrecht Wilhelm Arnold Oberg, German national, to suffer death by being hanged.

**Schlierbach:** The court sentence the accused Helmut Karl Wilhelm Schlierbach, German national, to be imprisoned for 10 years.

**THE PRESIDENT:** Let the accused leave the dock.

(The accused leave the dock)

**THE JUDGE ADVOCATE:** For the convenience of everybody the president asks me to announce that the proceedings of this trial are over and therefore the sitting is discontinued.

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