

bk. 90

Trial against

Josef Smith

&

5 others.

MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS

D.J.A.G's Case No. 293-298/JAG

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Josef MUTH Kurt GIEGLING Peter STRAUB Fritz HARTJENSTEIN Magnus WOCHNER Franz BERG	All German Nationals		4-5 June 1946 WUPPERTAL
			Convened by
			Commander 1 Corps District

CHARGES

JOINT CHARGE

COMMITTING A WAR CRIME in that they
at STRUTHOF/NATZWEILER, France, on
or about 30 July 1944, in violation
of the laws and usages of war were
concerned in the Killing of No.
1602535 Serjeant J.F. HABGOOD, Royal
Air Force Volunteer Reserve, a British
prisoner of war.

President and Members of the Court (except Legal Member)	Judge Advocate/ Legal Member
Brigadier The Hon. J.D.G. HENNESSY Gren Gds. Major W.D. COOKE 6 R.W.F. Major J.D. WHITFIELD, M.C. K.S.L.I. Major R.B.M. KING, M.C. N.I.H. Major J.W. TURNHILL R.E.M.E.	Mr. A.H.H. MARLOWE, K.C., M.P.

Pleaded	Finding
All pleaded Not Guilty	All found Guilty with the exception of WOCHNER

Sentence and Minute of Confirmation

MUTH 7 years imp
GIEGLING Death by hanging
STRAUB Death by hanging
HARTJENSTEIN Death by shooting
BERG Death by hanging

Confirmed by GOC-in-C B.A.O.R.
on 7 August 1946

When and where Promulgated:— Cases of Straub and Berg 10 October 1946

Date of Receipt	To whom sent	Date sent	Purport

PROCEEDINGS

of a

MILITARY COURT

held at

WAR CRIMES COURT, ZOOLOGICAL GARDENS, WUPPERTAL,
GERMANY.

on

4th and 5th June, 1946

upon the trial of

Josef MUTH, Kurt GIEGLING, Peter STRAUB, Fritz
HARTJENSTEIN, Magnus WOCHNER & Franz BERG.

FIRST AND SECOND DAY.

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Josef MUHL, Kurt GIEGLING, Peter STRAUD, Fritz
HARTMANN, Magnus ROCHNER & Franz BIER

Orders by:

Lieutenant-General C.I. Thomas,
Commanding 1 Corps District.

PRESIDENT

Brigadier The Hon. J.B.G. HENNESSY, Grenadier Guards.

MEMBERS

Major W.D. COOKE

6 Royal Welch Fusiliers.

Major J.D. WHITEFIELD, M.C.

King's Shropshire Light Infantry.

Major R.B.M. KING, M.C.

North Irish Horse.

Major J.W. TURNHILL

Royal Electrical Mechanical Engineers.

JUDGE ADVOCATE

A.A.H. HARLOWE Esq., K.C., M.P., appointed by the Judge Advocate General
to the Forces.

FIRST AND SECOND DAY

1.

The order convening the court, the charge sheet and the summary of evidence are laid before the court.

The accused are brought before the court.

Major A.P. Hunt, Legal Staff Officer, Office of the Judge Advocate General, appears for the prosecution.

Doctor Meyer appears for the accused Muth.

Doctor Dahlfeld appears for the accused Giegling.

Doctor Grobel appears for the accused Straub.

Doctor Kluthe appears for the accused Hartjenstein.

Doctor Freitag appears for the accused Wochner.

Doctor Weiser appears for the accused Berg.

At 1000 hours the trial commences.

The order convening the court is read, signed by the President, and attached to the proceedings.

The President, members, and Judge Advocate are duly sworn.

Four officers under instruction are duly sworn.

Serjeant D.F. Noble, R.A.S.C., is duly sworn as shorthand-writer.

Four interpreters are duly sworn.

The charge sheet is signed by the President, marked B2 and annexed to the proceedings.

The accused are asked if their names as set out on the charge sheet are correct and they severally agree.

THE JUDGE ADVOCATE: Josef Muth, Kurt Giegling, Peter Straub, Fritz Hartjenstein, Magnus Wochner, Franz Berg; you are charged with committing a war crime in that you at Struthof/Natzweiler on or about 30th July 1944 in violation of the laws and usages of war were concerned in the killing of Serjeant Hapgood, Royal Air Force, a British prisoner of war.

(In answer to the charge each accused pleads that he is not guilty)

MAJOR HUNT: Before opening this case I wish to point out that the prosecution propose to offer no evidence against the accused Wochner.

THE PRESIDENT: The prosecution do not propose to produce any evidence against the accused Wochner. He is therefore found not guilty by the court and acquitted. He will remain for the time being in the custody of the military police until release by the proper authority. The accused may leave the dock and there is no need for his counsel to remain.

(The accused Wochner and his counsel leave the court)

MAJOR HUNT: This case concerns the killing of one Serjeant Hapgood a member of a British air crew who having been made a prisoner of war was subsequently in circumstances of disgusting cruelty killed. It will probably be suggested that he was hanged but the manner of his death is important in that hanging in these circumstances and by this method should be interpreted as no more or less than slow strangulation.

On the night of the 28th/29th July 1944 a Lancaster bomber carrying a crew of seven was shot down near Molsheim in France. Two of the crew were killed when the plane crashed; three members of the crew were captured, made prisoners of war and sent to a prisoner of war camp and one member of the crew, an officer, succeeded in evading capture and making his way back to England. It is with the seventh member of the crew that this case is concerned. No reports were received as to his fate and he was, until this case was discovered, accounted for as missing. You will hear how he was first seen at six-thirty in the morning of the 30th July having presumably been at large and endeavouring to escape since two o'clock on the morning of the 29th. He was first seen apparently by a woman by the name of Schonenberger but he apparently became suspicious and took himself off as fast as he could. He was later arrested the same day at about six o'clock that night having been found hiding in a barn.

Having been finally apprehended he was marched off on foot and taken to the village of Wisches where it is thought he was confined as a prisoner and probably spent the night. Some time during the next morning or early afternoon he was collected by a party either sent out for that purpose who were already out looking for him from the neighbouring camp of Schirmeck which was then under the command of one Karl Buck who would be before this court except that he has already been tried on separate offences and condemned to death. Buck himself describes how the arrival of this prisoner in his camp was reported to him and as a result he subsequently made arrangements with the commandant of the neighbouring concentration camp of Struthof/Natzweiler, who is the accused before you Hartjenstein, and between them arrangements were made for the disposal of the prisoner. There is some slight conflict in the evidence of the witnesses who I am about to call as to dates and times which in view of the lapse of time since the incident and the numbers of prisoners with whom they were brought in contact is I suggest only reasonable and there is some doubt whether or not this prisoner was sent up to Struthof/Natzweiler the same day he arrived or the following day.

THE JUDGE ADVOCATE: That means either the 30th or 31st.

MAJOR HUNT: The 31st and 1st.

THE JUDGE ADVOCATE: The 31st July or the 1st August?

MAJOR HUNT: I think the weight of evidence is on the 31st. If it was in fact the 31st I suggest that the following day was the sequence of events. The capture of the prisoner was reported to Buck by telephone on Sunday the 30th as a result of which he made arrangements for the prisoner's collection the following morning and at the same time on the six o'clock morning staff parade he said to the accused Giegling who was a driver employed by Schirmeck words to this effect: "To-day you will have to drive up a prisoner to Struthof but not just yet as I have yet to make the necessary arrangements". If this conversation took place on the 31st then I suggest it was in anticipation of the prisoner's arrival later that same day and then the prisoner was taken up to Struthof/Natzweiler some time about seven or eight o'clock in the evening of the same day that he arrived - that is the 31st - although there are some statements and witnesses seem to think he did in fact spend one night in the cells at Schirmeck. At all events whichever day it was the prisoner was driven by Giegling accompanied by another accused one Fuhrmann - -

THE JUDGE ADVOCATE: He is not an accused here.

MAJOR HUNT: He would have been an accused if he had been apprehended -- and also the accused Straub who was a member of the staff of Struthof/Natzweiler but who had paid a visit to the camp of Schirmeck for some purpose of his own or in connection with this prisoner. The prisoner was driven into the camp of Natzweiler and taken straight to the crematorium which was Straub's department and there with the assistance of Berg the prisoner was stripped, made to stand on planks supported by two masonry blocks and a noose placed round his neck by Berg. Straub then kicked away the supports from under the planks and in the words of one of the accused "The prisoner then remained suspended". You will also hear evidence how by reason of the material used the prisoner was only able to drop a few centimetres and the accused Giegling tells you how he watched and was an eye witness to this operation and how in fact he went away after ten minutes and after that period of time the prisoner was not yet then dead. I suggest that the killing which was carried out was no more or less than slow strangulation and committed in a most barbarous manner. I now call my first witness.

M. Viktor DECKER, is called in, and, having been duly sworn, is examined by Major Hunt as follows:

- Q Will you tell the court your name? A. Viktor Decker.
- Q Where were you in the end of July, 1944? A. The 30th was a Sunday. At six-thirty in the morning I went into the wood to pluck berries. When I was approximately 50 metres from my house a man passed by my side and at the same time, Frau Schonenberger called out to me and she said that it is a parachutist who was with her and, "will you please help me to apprehend the man, to bring him to the Gestapo". I said: "That is nothing to do with me; the man did me no harm", and went on my way into the wood to pluck berries. In the afternoon I returned from the wood and at about three o'clock, half an hour later, I was arrested and brought into the camp at Schirmeck.
- Q Why were you arrested? A. Because I refused to arrest this man.
- Q Was he in fact arrested at the time you saw him, or within a few minutes thereof? A. No, the man was arrested towards evening.
- Q How was he dressed at the time you saw him? A. I cannot state exactly; a long time has passed since, but the man did not wear boots and was very wet.
- Q Was he in uniform or civilian clothes? A. He was wearing a uniform.
- Q Can you remember the colour of the uniform? A. I cannot remember the colour of the uniform.

THE JUDGE ADVOCATE: As in the previous trials, one counsel for the defence will deal with the main defence of all accused but, of course, each will have an opportunity of asking questions and of making speeches in relation to their own particular clients.

DR. GROEL: I will take over the defence. I have one question to put to the witness. (To the witness) What happened to you actually whilst in the camp and how long were you under arrest? A. Nothing of importance happened to me whilst I was in the camp. I was arrested on the 30th of July and on the 2nd Sept., I was transferred to Gaggenau. On the 4th of October I was released.

- Q What was Gaggenau, a prison? A. Yes, a Concentration Camp.
- Q Were you interrogated and then released? A. No, I was not interrogated before I was released.

Cross-examined by Dr. Weiser.

- Q You just stated that you cannot remember the uniform very well. Is it possible that the uniform was of a greyish-blue and combination dress? A. I cannot recollect exactly.

(The witness withdraws)

HEINRICH NEUSCHWANGER, is called in, and, having been duly sworn, is examined by Major Hunt as follows:

- Q What is your name? A. Heinrich Neuschwanger.
- Q Where were you at the end of July, 1944? A. At the end of July, 1944, I was in the security camp of Schirneck.
- Q Do you remember the arrival at that camp of any British airmen? A. Yes.
- Q Tell the court what you remember concerning this prisoner? A. I cannot state the date for certain; I cannot remember the time of day. A vehicle arrived with people, I do not know whether it was CID Commissioner Schoner or somebody else and they brought from the area a prisoner. He was taken down at the entrance of the camp and later on he sat for a longish period on the terrace in front of the canteen. One leg was bandaged, but I do not know which leg it was. He must have been injured.
- Q Do you remember a prisoner of war who arrived in the camp bare footed and carrying his shoes? A. Yes.
- Q Where did he come from, do you know? A. I cannot say for certain whether it was the county police or somebody else who brought this prisoner into the camp.
- Q Do you know what happened to him? A. He came into the camp and as his clothing was wet he got a new issue of clothing from the clothing store in the camp.
- Q After he had been equipt with new clothing, do you know what happened to him then? A. I do not know this.
- Q When you first saw him you say that his clothing was wet. How was he dressed at the time? A. I cannot make an exact statement about this but it must have been a camouflage jacket. He carried his shoes in his hand and he wore socks or he may have worn no socks at all.
- Q Did you know whay he, a prisoner of war, was brought to such a camp? A. As far as I got to know it was an airman who parachuted down near the village of Wisches.

Cross-examined by Dr. Meyer.

- Q You did not observe that on this day or on the following day this prisoner was taken out of the camp? A. No.
- Q Did not you tell the accused Muth, who was present, that the accused was taken out of the camp? A. No.

Cross-examined by Dr. Weiser.

- Q One question concerning the uniform. You said in the court just now that you could not remember what sort of uniform it was. Is it possible that the airman wore a blue-greyish combination with zip-fasteners? A. It is possible but I cannot remember for certain, because this airman had been in the woods for one day or so. If the jacket he wore was not a camouflage jacket it was that soiled that it its colour could not be recognised.

(The witness withdraws)

MLLE. THERESE SANDER, is called in and, having been duly sworn, is examined by Major Hunt as follows:

- Q Will you tell the court your name? A. Therese Sander.
- Q Where were you at the end of July, 1944? A. At home.
- Q Whereabouts is that? A. Lutzolhausen.
- Q Did you ever see a prisoner of war? A. Yes, an English prisoner of war.
- Q Will you tell the court in what circumstances you saw this prisoner? A. It was in the evening between six and seven o'clock. It was at that time that they found the man on top of the barn.
- Q Who found this prisoner of war and what happened to him? A. It was ^{men} by the name of Clouden.
- Q What happened to him after he had been captured? A. He had then returned and came back to the castle with an SD man and they took him away.
- Q How did they take the prisoner away, on foot or in a wagon? A. On foot.
- Q How was the prisoner dressed when you saw him? A. He was dressed in grey-blue and had no shoes.
- Q Did you think from his dress that he was in uniform or not? A. It was a uniform.
- Q Do you know where he was taken to? A. As far as I know he was taken to Wisches, to the police station.

Cross-examined by Dr. Weiser.

- Q Do you know whether the prisoner had zip-fasteners and electrical contacts on the arms and legs for heating apparatus? A. I do not know.

THE JUDGE ADVOCATE: What is the relevance of that question?

DR. WEISER: I would like to prove the identity, as the accused Berg says that the prisoner was brought to the camp dead. (To the witness) You said during the interrogation by Major Barkworth that the prisoner had a zip-fastener on his suit. Do you remember that? A. Yes, that is so.

- Q Do you remember by any chance whether he had on the arms and legs apparatus for electrical heaters? A. No.

THE JUDGE ADVOCATE: There is nothing in her statement that he had zip-fasteners on his shoes but only on his battle-dress blouse.

DR. WEISER: It says here on the bottom of the second paragraph that the battle-dress was closed by a zip-fastener.

THE JUDGE ADVOCATE: The question you put was had he a zip-fastener on his shoes.

DR. WEISER: No, the question put was whether he had these electrical contacts on his shoes and apparatus for electrical heating.

THE JUDGE ADVOCATE: I see.

DR. WEISER: I have put two questions. One is whether he had zip-fasteners and the other was whether he had electrical contacts on the feet and on the arms. One further question. (To the witness) Was a photo shown to you which was marked with the name "Hapgood", and in which you recognised the same man?
A. I have seen a small passport photograph and I recognised from that it was Sergeant Hapgood.

MAJOR HUNT: I will clear this up once and for all by putting the photograph to you. Is this the man you saw? (Photograph handed) A. Yes.

Q And is that the man you saw who had at the time, no shoes?
A. Yes.

(Photograph of Sergeant Hapgood, is marked Exhibit 1, signed by the president and attached to the proceedings)

(The witness withdraws)

MAJOR HUNT: My next evidence is the testimony of Paul Schmidt, who unfortunately is not present in person and I will read the relevant portions of his statement.

(Statement of Paul Schmidt, dated 17th November, 1945, is read, marked Exhibit 2, signed by the president and attached to the proceedings.)

M. ALBERT. MORRITZ, is called in and, having been duly sworn, is examined by Major Hunt as follows:

- Q Will you tell the court your name? A. Albert Morritz.
- Q Where were you in July of 1944? A. I was ⁱⁿ the Concentration Camp of Schirmeck.
- Q Did you, while you were there, ever see any British prisoners of war? A. Yes, I have seen several prisoners of war.
- Q Did ever see a man whose photograph is shown here as a prisoner of war in the camp? (Exhibit 1, handed) A. Yes.
- Q How was he dressed when you saw him? A. I saw him on a Monday afternoon between two and four o'clock and at that time he was dressed in prison uniform.
- Q Was he wearing shoes or not? A. He was wearing wooden boots.
- Q Were these wooden boots you refer to issued as part of the prison uniform? A. Yes, these wooden boots were issued to such prisoners where it was thought they could not escape and that they had to stay in the camp.
- Q Do you know when this prisoner first arrived in the camp?
A. I saw him when he came from the dressing room and then it was about two or four o'clock. He had arrived perhaps one or two hours previous.

- Q Was he in the custody of anyone at the time you saw him? A. No, a rumour went through the camp that there was an English prisoner of war in the camp. I took the opportunity and took my tea jug, went into the kitchen and fetched it. This enabled me to move freely in the camp without anybody being able to do anything to me, that was when I saw the prisoner.
- Q Was he not under guard or being guarded by anyone? A. He was in the company of Muth.
- Q Do you know how long the prisoner remained in the camp or do you know when he left? A. I cannot say for certain how long he was in the camp. According to what other prisoners said it was always customary that round about five o'clock in the evening the prisoners who were to be disposed of would leave for Struthof round about five o'clock.
- Q Do you personally know when this prisoner left the camp or not? A. I saw the truck arrive. It was driven by Kurt Geigling; he was accompanied by Muth. I happened to see because at the moment I was at my place of duty, which was directly behind the gaol, what was taking place, but was immediately chased away from the spot by Muth.

Cross-examined by Dr. Grobel.

- Q During this occasion did you see anyone else besides Giegling and Muth? A. Yes, the commandant was also in the neighbourhood. He always arrived a little later. I could not see him but I recognised his voice.
- Q Was anybody else present? A. I could not ascertain the presence of anybody else.

Cross-examined by Dr. Kluthe.

- Q Did you see the truck leave? A. I could not see the truck leave but I could hear because I was about 20 yards away; I had hidden behind a pile of wood.
- Q Did you see who went with the truck? A. I could not see it, but immediately after the truck left I went to the two gaol wardens and they convincingly explained to me that it was the English prisoner of war.

Cross-examined by Dr. Weiser.

- Q When the truck left did you see an SD Oberscharfuhrer? A. Since I was chased away by Muth I could not establish this.
- Q Do you know Oberscharfuhrer Fuhrmann? A. Personally I know him very well because he was the most dreaded man in the camp and well known for his various murders.
- Q Was he in the neighbourhood? A. I cannot say; I did not see him.

MAJOR HUNT: The next witness is Denu. His statement is not all relevant; just down to the end of paragraph 1.

DR. GROBEL: The defence of Straub and Berg is to the effect that this airman arrived dead in the camp. Driver Fuhrmann was such a dreaded person that the possibility is that he may have killed him on the way. I am asking to call him as a witness.

MAJOR HUNT: If it was possible to produce Fuhrmann as a witness I assure you he have been in the dock.

THE JUDGE ADVOCATE: The prosecution have been even more anxious than the defence to get hold of Fuhrmann but have been unable to find him.

M. LEON DENNU, is called in and, having been duly sworn, is examined by Major Hunt as follows:

- Q Will you tell the court your name and address? A. Denu, Leon, in Molheim.
- Q Where were you in July, 1944? A. In the camp of Schirmeek.
- Q While you were in this camp did you ever see any British prisoners of war? A. Yes, I have seen several.
- Q Did you ever see one who arrived at the camp without any shoes or boots? A. No, I have not seen him.
- Q Did you learn the name of any of them? A. Yes, the first one who arrived was called Hapgood, Frederick.
- Q Did you learn the name of any others or did you only remember this name? A. I know also other names.
- Q In addition to learning names did you also learn the addresses of some of these prisoners? A. Yes, I found out the address of the first one.
- Q Do you remember it now? A. Yes, Hapgood, Frederick, 91, Tranville Road, SW, London.
- Q How did you find out his name and address? A. Frederick Hapgood was in cell 24. In the adjoining cell there were three French prisoners of the French Organisation, Alliance, one of these, his name was Schlitzler, could speak English and I told this man to do everything in his power to find out the name and address of the British prisoner. The prisoner arrived at dinner time and in the evening Schlitzler found the address from Sgt. Hapgood and passed it on to me.
- Q How long did he stay in the camp? A. I know for certain that he stayed only a few hours in the camp. He did not have his mid-day meal in the camp nor did he have his supper in the camp.
- Q Do you know how he left or where he was taken to? A. I only got to know he was taken away in a small truck.
- Q Were you told or do you know who drove the truck which took him away? A. No.
- Q Did you ever see this prisoner Hapgood yourself? A. Yes, I have seen him because I looked into the cells.
- Q How did you look into the cells and what did you see? A. There was a small hole in the door. I looked through the hole and there was no bed, no table, no chair in that cell and the prisoner was sat on the floor.

Cross-examined by Dr. Weiser.

- Q Can you remember what sort of uniform Sergeant Hapgood wore? A. I could not find out what sort of clothing he was wearing because it was so dark in the cell, I just could see that there was a man in the cell.

(The witness withdraws)

CONRAD SCHULTZ is called in and, having been duly sworn, is examined by Major Hunt as follows:-

Q What is your name ? A. Conrad Schultz.

Q Where were you in July 1944 ? A. In the concentration camp of Natzweiler.

Q Do you know the accused Straub ? A. Yes.

Q What was his job in the camp ? A. He was the boss of the prison and also of the crematorium.

Q Do you know the accused Berg ? A. Yes.

Q What was his duty in the camp ? A. He was the sticker in the crematorium and the caretaker in the prison.

Q Who in the camp were the executioners, the people who carried out executions ? A. At first there were few executions.

Q Answer my question please. Who were the camp executioners ? A. If the execution was carried out by shooting a troop carried it out in a quarry. If it was a public execution held on the square in the camp and the whole camp was present - - - - -

Q At a public execution who did the hanging ? A. Straub pressed a lever which released the plank.

Q What part did Berg take in a public execution ? A. I cannot remember having seen Berg at a public execution.

Q Will you please tell the court why you say this now when previously you made a statement as follows: "Public executions in the camp were carried out - - - - -"

THE JUDGE ADVOCATE: I agree this witness is difficult but you must not try to lead him to that extent.

MAJOR HUNT: I must ask you to allow me to treat him as a hostile witness.

THE JUDGE ADVOCATE: I do not think it is a case of wilful or intentional misunderstanding.

MAJOR HUNT: (To the witness) Were you ever present in the camp at private executions ? A. No.

THE JUDGE ADVOCATE: Cannot you get from him, by a little general knowledge, who carried out private executions ?

MAJOR HUNT: He said that he was present in his evidence.

THE JUDGE ADVOCATE: (To the witness) Do you know who carried out private hangings which took place in the crematorium ? A. I was present at one execution in the crematorium.

Q I asked you, do you know who carried out private executions in the crematorium ? A. It was Straub, the commander, two doctors who watched etc. Straub was the hangman, that was in November 1943. Wochner told me in Recklinghausen - I only got to know it in Recklinghausen - that Straub brought a flier once during the night and without any people of the staff being present Straub carried out the execution helped by someone else in the S.S.

- Q Did Berg take any part in these private executions, these executions carried out in the crematorium? A. I do not know - it may have been Straub, it should have been Straub - with another S.S. man who brought the flier from Schimeck, and Wochner said neither the commander or the Adjutant or any other member of the staff knew about it.

Cross-examined by Doctor Weiser.

- Q Do you know other prisoners who helped Straub in the crematorium to carry out those so-called private executions? A. Yes.
- Q Do you know the names? A. I believe one name was Rausch, he was a tall man, and a gypsy by the name of Mettback or something, and in 1942 there was a certain chap by the name of Nauschorsch.
- Q Did Fuhrmann and Ziegler help? A. Fuhrmann helped but Ziegler I do not know; he must have arrived later.

THE PRESIDENT: I am going to ask you one or two very simple questions and they are questions which can be answered by the word "Yes" and "No". Did you at any time attend a hanging inside the crematorium building; "Yes" or "No"? A. Yes.

- Q Was Straub present on that occasion; "Yes" or "No"? A. Yes.
- Q Was Berg present on that occasion; "Yes" or "No"? A. Yes.
- Q Was Giegling ever present at any execution in the crematorium which you say; "Yes" or "No"? A. I have never seen him in the crematorium.
- Q You know Giegling by sight; "Yes" or "No"? A. Yes.
- Q Which man is he? A. The second man, (indicating the accused Giegling).
- Q Have you seen him in Natzweiler camp? A. Yes.
- Q Can you remember him? A. I have seen him very often in the political department.
- Q Have you seen him in the crematorium building? A. I have seen him in the crematorium building.

MAJOR HUNT: There is one paragraph of Wochner's statement. It is half way down Page 4 of the translation and it starts: "Probably at the beginning of September 1944 - - -".

THE JUDGE ADVOCATE: The prosecution are proposing to read only a part of Wochner's statement; the material part beginning on the last page.

(The material part of the statement of Magnus Wochner, dated 21st April 1946, is read and the statement is marked Exhibit "B.3", signed by the President and attached to the proceedings).

MAJOR HUNT: The next evidence is a letter from the Air Ministry Casualty Branch.

(Air Ministry letter is read, marked Exhibit "4", signed by the President and attached to the proceedings)

Major BARKWORTH is called in and, having been duly sworn, is examined by Major Hunt as follows:-

- Q Did you take two statements from Buok? A. Yes.

Q Is that one of the statements and is that Buck's signature, (handed) ?
A. Yes.

Q Was this statement read over to him before he signed it ? A. Yes.

THE JUDGE ADVOCATE: Which statement is this, the one of the 1st May ?

MAJOR HUNT: The 22nd September.

(Relevant portions of statement of
Karl Buck, dated 22nd September 1945,
are read and the statement is marked
Exhibit "5", signed by the President
and attached to the proceedings)

MAJOR HUNT: Did you take another statement from Buck on the 1st May ? A. Yes.

Q Is that the statement and is that his signature, ? (handed) A. Yes.

(Statement of Buck, dated 6th May
1946, is read, marked Exhibit "6",
signed by the President and attached
to the proceedings)

Q Did you also take a statement from the accused Muth ? A. Yes.

Q Is that the statement and is that Muth's signature, ? (handed) A. Yes.

Q Was this statement read over to him before he signed it ? A. Yes.

(Statement of the accused Muth, dated
21st September 1945, is read, marked
Exhibit "7", signed by the President
and attached to the proceedings)

Q Did you also take a statement from Ganninger ? A. Yes.

Q Is that his signature, ? (handed) A. Yes.

Q Was this statement read over to him before he signed it ? A. Yes.

(Statement of Heinrich Ganninger, dated
12th February 1946, is read, marked
Exhibit "8", signed by the President
and attached to the proceedings)

Q Did you also take three statements from Berg ? A. Yes.

Q Is this statement dated 10th December 1945, the first statement you took from Berg ? A. Yes.

Q Is that his signature, ? (handed) A. Yes.

Q Was this statement read over to the accused before he signed it ? A. Yes.

(Statement of the accused Berg, dated
10th December 1945, is read, marked
Exhibit "9", signed by the President
and attached to the proceedings)

THE JUDGE ADVOCATE: This appears to refer to October 1943.

MAJOR HUNT: I anticipate the defence will endeavour to confuse bodies and the dates of happenings and I am going to see if it has been found out what happened to all the bodies referred to at this stage.

THE JUDGE ADVOCATE: It could not be Hapgood in 1943 could it ?

MAJOR HUNT: No, but there are others less clearly referred to.

THE JUDGE ADVOCATE: But it is not necessary to read the whole statement.

MAJOR HUNT: (To the witness) Major Barkworth are you still familiar with the contents of the statement you took from the accused Berg on the 10th December 1945 ? A. Yes.

Q In that statement Berg refers to the disposal of a number of bodies. Have your enquiries that you have made in these cases been sufficient for you to identify the bodies he has referred to in his statement ? A. Yes, I have been able to identify each body with a crime committed outside the camp and in connection with an airmen or parachutist whose name I know in each case except one.

Q Are all those persons you refer to someone other than the victim in this case Hapgood? A. It is impossible that any one of the bodies referred to in the statement of 10th December by Berg can be the body of Hapgood; it is impossible.

Q Did you on the 24th April take two further statements from the accused Berg ? A. Yes.

Q Are those the statements and are those Berg's signatures ? (handed) A. Yes.

Q Were they read over to him before they were signed ? A. Yes.

(Short and long statements of the accused Berg, dated 24th April 1946, are read and respectively marked Exhibits "10" and "11", signed by the President and attached to the proceedings)

MAJOR HUNT: The exhibit which is referred to in that statement I have here. I do not know whether you prefer me to put it in.

THE JUDGE ADVOCATE: What is it? I gather it is only similar to the piece of rope that was used in the hanging.

MAJOR HUNT: (To the witness) Major Barkworth can you tell the court the circumstances under which you acquired this exhibit ? A. When I was interrogating Franz Berg he made up this piece of rope to demonstrate how it was used to hang prisoners in the crematorium. There are two differences between this piece of rope and the original used. It is tied in a knot here and the original was spliced and as Schulz was a seaman he spliced well. The method of use was to pass the small loop through the larger rope thereby making a third loop round the prisoner's neck and the small loop was then fastened to a hook in the ceiling, (demonstrating method of use) He told me there were four pieces on runners in the ceiling in front of the crematorium oven in order to be able to hang four people simultaneously if required.

THE JUDGE ADVOCATE: Can you tell the court if Berg told you that that was the size of rope that was used, roughly ? A. Yes, he said it was exactly similar in size.

Q Both in thickness and length ? A. Yes.

MAJOR HUNT: Did you also take a statement from the accused Giegling ? A. Yes.

Q Is that the statement and is that his signature ? (handed) A. Yes.

Q Was it read over to him before he signed it ? A. Yes.

(Statement of the accused Giegling, dated 21st April 1946, is read, marked Exhibit "12", signed by the President and attached to the proceedings)

(At 1240 hours the court adjourns)

(At 1400 hours the court re-assembles)

(The accused are again brought before the court)

(Major BARLOWORTH resumes his stand at the place from which he is giving his evidence)

MAJOR HUNT: Did you also take a statement from the accused Hartjenstein?
A. Yes.

Q Is that the statement and is that his signature? (handed) A. Yes.

Q Was it read over to him before he signed it? A. Yes.

(Statement of the accused Hartjenstein, dated 14th April 1946, is read, marked Exhibit "13", signed by the President and attached to the proceedings)

Q Did you recently acquire certain official notices issued by the German authorities regarding the treatment of airmen who had been obliged to bale out etc.,
A. Yes.

Q Are these the official copies which you discovered? (handed) A. They are official copies from the German authorities in the area concerned.

Q Are they in German or have you arranged translation of the extracts?
A. I have translated certain paragraphs.

MAJOR HUNT: They were produced by Major Barloworth at extremely short notice; he only received them yesterday.

THE JUDGE ADVOCATE: What is their history?

THE WITNESS: They were issued by the General in charge of the police for the whole South West and were similar in type to notices throughout Germany sent to the police stations saying that civilians were not to take pieces from the aircraft, how prisoners were to be treated etc.,

MAJOR HUNT: Will you translate the relevant paragraphs which apply to the subsequent treatment of any member of an air crew who is captured.

(The witness translates the relevant passages and the document is marked Exhibit "14", signed by the President and attached to the proceedings)

Cross-examined by Doctor Grobel.

Q I have to put one question to you. Have orders been found which have been issued on a later date than those? A. No.

Q From the statement which Doctor Isselhorst made I take it that later orders had been issued and I take it that those documents were the original ones issued at the beginning of the war? A. I have no knowledge of any alteration in the orders concerning the treatment of baled out airmen.

Q Doctor Isselhorst said something in his statement with reference to the killing of prisoners which came from Berlin? A. I think that you are referring to parachutists.

Cross-examined by Doctor Weiser.

Q I have one question with reference to Berg's statement. If I understand you

rightly you mean that in Berg's statement none of the corpses which Berg describes can actually be the flier in question, namely Hapgood. What reason makes you think so? A. My reason would be lengthy to explain and I would like to take the other various bodies one by one. The first body described by Berg was brought to the camp in a private car of which either the driver or the man, sitting next to him spoke with a Karlsruhe accent and the body was wrapped in a piece of tent cloth. I have been able to establish without any doubt that this is the body of an airman named Cochran who was captured at Lohr, was taken subsequently to Karlsruhe and on instructions from Gerbeiner was driven by three men named Herberg, Wochett and Price to within a short distance of Natzweiler camp. I hold an affidavit from Herberg describing this occurrence. He also described the fact that they wrapped the body in tent cloth before handing it in. I also hold an affidavit from Magnus Wochner describing the visit of Herberg to Natzweiler on this account. That I think is to the first body.

The second body described by Berg is one with fair hair with a wound he said in the face and with the probability that he was wearing brown overalls with contacts for electrical heating. This body is that of an airman who was endeavouring to evade capture and was shot by members of the frontier patrol post, Madona. The body was seen subsequently laying in the crematorium and was seen by Lieutenant Stonehouse who made a sketch of it and by Hans Gash. I consider with certainty this is not the body of Serjeant Hapgood.

The third body dealt with in Berg's statement is that of an airman wearing light blue combination overalls with a zip-fastener and also electrical contacts for heating. Berg further described him as a dark man wearing the badge of an Oberscharfuhrer and was brought at three-thirty in the afternoon in a small butchers van. This is the body of an airman named Walker who was shot by two German policemen at Colpsheim near Strasbourg. I hold statements by Philip Von Bach the driver of the truck in question and from other persons connected with the actual killing of the airman and also from Doctor Boogaerts who observed the arrival of this body and noticed that the body was concealed in the back of a truck by branches and twigs. He subsequently saw the body laying in a cell in the crematorium.

The fourth body described by Berg was brought up in a lorry from Schirmeck with a policeman with it resembling Fuhrmann. Berg himself describes the body as being dressed in khaki uniform and also wearing heavy black military boots. He also observed a sign which appeared to be round with wings on his sleeve. In the first place Hapgood was not wearing heavy military boots and secondly on other evidence which I have concerning a case not at present before this court this body appears to be identical with Hall, a man of my regiment who was confined in Schirmeck camp and was subsequently murdered. In this case there is no query in Begg's statement that the face on the photograph marked four appears familiar to him

- Q Has the witness Therese Sander said the airman had a blue grey overall with a zip-fastener? Of the third body which you referred to as the body of a man called Walker, Berg told you when he was interrogated by you in December 1945 that that man was similarly dressed to the man referred to as Walker. A. The statement refers to a light blue combination overall which is the standard of overall issued to members of the American Air Force and my investigations in Colpsheim disclosed that the body in question was that of a parachutist who had baled out in the course of the day at a time when no British bomber had been undertaking daylight missions in that area.
- Q Therese Sander has mentioned a zip-fastener and also that the man was parachuted. The same Berg stated in December of 1945. With reference to body number three are you certain that therefore this body is not the body of Serjeant Hapgood? A. I think I have given sufficient proof that the body referred to, the third body, by Berg, is that of an airman brought from Colpsheim, first that the time of day which is given by Berg of the arrival is half past three in the afternoon, secondly the fact that the arrival of this body was observed by Doctor Boogaerts also during the afternoon, thirdly that Giegling in his statement describes the

handing over of this body, fourthly that I hold an affidavit from Philip Von Bach who accompanied me on these occasions and sixthly that the wounds observed by Doctor Boogaerts corresponded exactly with the wounds observed on the body at Golpsheim before it was transferred to Natzweiler.

MAJOR HUNT: That is my case.

THE JUDGE ADVOCATE: That concludes the case for the prosecution. Each accused now has three courses open to him. He can go into the witness box and give evidence on oath in which case he is liable to be cross-examined by the prosecuting officer and to be asked questions by this court. He can make an unsworn statement from where he stands or he can remain silent and let his counsel speak on his behalf. Naturally the court attaches more weight to evidence on oath than to evidence not given on oath but nobody is obliged to give evidence on oath and be cross-examined if they do not wish to do so. I will ask each of the accuseds counsel in turn what course they propose to take.

(All counsel indicate the intention of their accused to give evidence from the witness box)

THE JUDGE ADVOCATE: Doctor Grobel, do you wish to make an opening speech on behalf of the accused generally?

DR. GROBEL: My first request on behalf of the defence counsel for the accused Hartjenstein is for the witness Buck to be heard in the witness box because we have seen him in court. He is wanted as a witness for the defence. I would ask you to excuse a slight indisposition on my part. I have just heard during the mid-day break that I have received further briefs from Bochum and that my house in Wuppertal has just been confiscated.

In all states of culture there are several principles of law which account for humanity in general and which point to the fact that one should in the first place respect the life of ones fellow citizen and that one must respect international law. People who contravene against these laws have turned their backs on the civilized world. We have already heard that in the course of the Nuremberg trials differences made between those accused who acted on their own account and those who acted on orders and already at Nuremberg it has been emphasised that a difference should be made between the higher ranks and the subordinates. When you arrive at your decision I would ask you to examine as to whether these accused belonged to the high senior rank or if they are only subordinates and general opinion is that those who are in such subordinate ranks, who acted on orders, at least they should be able to plead that they had to act on orders. In my opinion the accused who are responsible for the murder of this airman sit in another dock either the Nuremberg dock or perhaps they have already evaded earthly justice. We all know that we were astonished when Goebbels announced on the radio that allied airmen could no longer be protected from the people and in a statement by Doctor Isselhorst there is a passage: "I received an order from the Official Office Number 4, Group Leader Muller, which said that all allied military personnel either in uniform or not who were taken prisoner in actions against terrorists should also be treated as terrorists and be executed as such". We also know that Himmler who committed suicide gave orders to that effect. We have heard from the evidence of a witness to-day that he was already arrested by the Gestapo just because he did not take part in securing an airman who had landed by parachute. He spent four weeks in prison before he was released. This man was only a civilian. The men in the dock are soldiers. The question arises if the soldier when executing an order acts criminally or unlawfully if this order was not contained in international law. You will have to investigate if this order was against international law, whether the soldier concerned could recognise it as such and if perhaps he was not in a dilemma when he followed the order. I could

imagine that if an ordinary civilian is already arrested for not handing over a prisoner to the Gestapo that these soldiers in a camp in which daily orders included hangings would have been executed immediately if they had not followed

the order. The accused when in the witness box will testify more or less

that they followed these orders because of this particular dilemma and I

again point out so as not to repeat too much of what I said last week that

also the British Manual of Law says that in no case by the fact that the

order has been given the absence of unlawful intentions cannot be proved by

the subordinate. I have also brought the point as to whether a soldier

is obliged to check on the lawfulness of orders given by such as Himmler and

Goebbels etc., and the Manual of Military Law says at another point that a

soldier need not be over anxious in examining the lawfulness of such an order.

In my opinion this covers everything I can say as regards the legal question.

This case differs from last weeks in as much as there is only one question to

answer: "Did you act on orders and did you have to act that way?".

THE ACCUSED. JOSEF MUTH, takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by Dr. Meyer as follows:

- Q Your name is Josef Muth? A. Yes.
- Q Can you remember an English airman who was brought into the camp of Schirmeck at the end of July, 1944? A. Yes.
- Q And whose name you got to know as Hapgood? A. Yes.
- Q Did you get an order to take this man to the clothing store? A. Yes.
- Q After he had changed his clothing, did you take him to the cells? A. Yes.
- Q Did you have orders for this? A. Yes.
- Q Did take Sergeant Hapgood out of the cells on the same day or the following day? A. I am not quite sure?
- Q What do not you know for sure; that it was Hapgood? A. Yes.
- Q But you did take an English airman out of the cells on one of those two days? A. Yes.
- Q And for this you had an order? A. Yes.
- Q Who gave you this order? A. Buck.
- Q Did Giegling come to the camp at that time, in a van? A. The van was always in the camp.
- Q Where did the van stand as you saw it? A. At the gate to the inner camp.
- Q What ^{is the} distance from the entrance to the inner camp to the cells? A. Roughly 200 metres.
- Q How did you know what the fate of Sergeant Hapgood would be? A. I saw Sergeant Hapgood as he came in the company of Straub and Giegling from the Kommandantur and he was on the way to the van.
- Q Suddenly it became clear to you that the British airman, Sergeant Hapgood was to be murdered? A. This was not clear at all when we departed.
- Q But you suspected that something of this nature might happen? A. Up to this time nothing of this kind ever happened in our camp.
- Q Did you know the fellow accused Straub? A. Yes.
- Q Did you also know his nickname? A. Yes.
- Q As you saw Straub did ^{not} you take into consideration that something awful was about to happen to the British airman? A. As we went away something of this kind entered my mind.
- Q As you saw Straub did you have already the prisoner handed over to the authorities? A. Yes.

DR. MEYER: No, further questions.

Cross-examined by Major Hunt.

- Q Is your statement true? A. Yes.
- Q You knew he was a prisoners of war, did you? A. I knew that he had parachuted down.
- Q You refer to him as a prisoner of war, do not you? A. If somebody was taken into our camp he was always mentioned as a prisoner.
- Q Why is it that you called him a prisoner of war? A. It was an airman who had bailed out from an aeroplane.
- Q You say in your statement: "I can remember the following American and British prisoners of war being brought to the camp". A. At the second interrogation I have to agree that I mixed up some facts.
- Q On the 21st September 1945, did you, or did you not refer to this man as a prisoner of war, yes or no? A. Yes.
- Q You knew where he was going, did not you, when you handed him over to Geigling and Straub? A. Yes.
- Q You knew you were handing him over to his death, did not you? A. No, I did not know about this at that time.
- Q Why did you say then: "The destination and fate of this prisoner of war was at once obvious to me as Peter was always known to us as the executioner, I know too that at the time of the prisoners departure the camp commandant, Karl Buck had made several telephone calls to Struthof etc"? A. Until that time it had never happened before that a prisoner of war had been sent from our camp to the camp of Natzweiler.
- Q Why did you say that his fate was at once obvious to you? A. When I had to fetch this man it was not clear to me at all what was about to happen to this man. As Straub and Geigling drove away, it became apparent to me that this man was about to be killed.
- Q Why did you only realise that he was going to be killed when they drove away. When you saw Giegling and Straub waiting for the prisoner did you then not know that he was going to be killed? A. I had only seen Straub in our camp on a duty errand.
- Q You said in your statement that as soon as you saw Straub the fate of the prisoner became obvious; is that true? A. As they drove away the prisoner, Straub and Giegling, I thought of the possibility that this man would have been killed but until that time nothing of this kind had ever happened before in our camp.
- Q Who told you to go and fetch the prisoner? A. Captain Buck, just gave me the order to fetch the prisoner to the Commandant's office.
- Q Did you say anything to Buck about the possible fate of the prisoner? A. No.
- Q After you handed the prisoner to Straub and Giegling and you realised he was going to his death, did you say or did you do anything at all? A. No, I just handed him over.
- Q When you handed him over, how was he dressed? A. As far as I can remember, as he was brought up he wore khaki uniform and he was soaking wet and for this reason he got issued with dry clothing but he received his uniform, he got it back - this can be ascertained by witnesses - as he left the camp.

- Q When he actually left the camp how was he dressed? A. His uniform.
- Q His own uniform? A. His own uniform.
- Q Was he wearing any shoes or boots? Can you remember? or not? A. No.
- Q Was the man you handed over the same man as arrived in that camp without shoes? A. Yes.
- Q To whom exactly did you hand him over? A. Giegling and Straub.
- Q Whereabouts in the vehicle was he put and by who? A. He was placed in the back of the vehicle by Straub.
- Q How was he placed in the back, describe it in detail? A. As they came from the Commandant's office, they were very much in a hurry and Straub pushed the prisoner into the car.
- Q Pushed him or kicked him, or what? A. He just pushed him saying that they were very much in a hurry.

Cross-examined by Dr. Kluthe.

- Q You have said in your affidavit that the camp commandant, Buck had several telephone calls with the camp of Natzweiler. Were you present during these telephone calls? A. I was once on duty at the commandant's office.
- Q Was it on that same day which you have mentioned here? A. No.
- Q Not on this day? Was it before or later on? A. No, later on.
- Q Was it several days later after this incident happened which is mentioned in court today? A. I cannot remember the exact date.
- Q How can you make a statement saying the Buck had rung up Struthof/Natzweiler several times? A. Yes, it is true that Buck rung up the camp of Struthof/Natzweiler several times.
- Q How do you know? A. I know this from the Commandant's office.
- Q Do you know it from Buck personally? A. No, if one had to see Buck one had to wait in the ante-room and he usually did the telephone calls from the ante-room.
- Q Did Buck only ring up Natzweiler? A. He rang up different places.
- Q How do you know that Buck rang up Natzweiler on the same day as the British airman was brought into the camp? A. I do not know this for certain.
- Q Can you give me an explanation for the fact that you have mentioned in your own affidavit that several telephone calls passed between Schirmeck and Struthof/Natzweiler? A. I have told Major Barkworth during my second interrogation, that I had made several mistakes in my first statement and I have corrected them since then.
- Q Have you also corrected that Buck did not ring up Natzweiler on that day? A. I am not sure.
- Q Is it true that you said in your own statement: "I remember this very clearly because Buck was cursing at the telephone"? A. It is possible.

- Q Do you know with whom Buck had a telephone conversation? A. I said at that time I was not sure but the name of the camp of Natzweiler was mentioned several times.
- Q Was the name of a person mentioned as well? A. I cannot remember.
- Q You said in your statement that you received orders at night to take the prisoner from the cells? A. No, it must have been a mistake because he was fetched during the day.
- Q At what time? A. I cannot remember.
- Q Do you know whether this happened before noon or afternoon? A. I think in the afternoon.

THE PRESIDENT: I want to make one point quite clear. You say that this case is the first case on which you had seen Straub at Schirmeck camp on duty? A. Yes.

- Q But you knew Straub, you had seen Straub on other occasions, though not necessarily in Schirmeck? A. Yes.
- Q Where had you seen him? A. In the camp of Schirmeck.
- Q You had seen Straub there before? A. Yes.
- Q On the previous occasions when you had seen Straub at Schirmeck, what was Straub doing? A. Straub saw Giegling very often.
- Q He was a friend of Giegling's, is that right? A. Yes, they were very often together.
- Q And it was common knowledge among the other guards such as yourself that Straub was known as the executioner at Natzweiler? A. Yes, this was mentioned.
- Q But this was the first occasion that you had seen him on duty at Schirmeck? A. Yes, that is right.

(THE ACCUSED, MUTH, leaves the place from which he has given his evidence)

THE ACCUSED, KURT GIEGLING, takes his stand at the place from which the other witnesses have given their evidences, and, having been duly sworn, is examined by Dr. Dahlfeld, as follows:

- Q Has it occurred often that prisoners were transferred from Schirmeck to other camps? A. No.
- Q If some were transferred, who accompanied them? A. The prisoners went to Strasbourg with a workers train, usually early in the morning, or were transferred with a truck to Mulheim. What happened there, I do not know.
- Q Did you yourself often drive the trucks with prisoners? A. Yes.
- Q Where did you drive them to? Did you ever drive prisoners out of Schirmeck? A. When we went on postings expeditions to Mutzig we delivered them to stations there.
- Q Did you often bring prisoners to Natzweiler? A. No.

- Q Was Sergeant Hapgood the first prisoner you ever brought to Natzweiler? A. I did not think any further about it. I thought he could be ill and that was the reason he was transferred to Natzweiler as they had an operating theatre and hospital there.
- Q Muth says in his statement that when he saw what was happening to Hapgood he knew what his fate would be because he saw Straub near him; you knew that Straub was hangman in Natzweiler? A. I thought it was just an ordinary transfer as that happened nearly every Wednesday when prisoners from Concentration Camps were transferred and those orders came from Berlin.
- Q Did Straub tell you anything regarding the fate of Sergeant Hapgood? A. No.
- Q Did Duck tell you anything regarding the fate of Sergeant Hapgood as he gave you the order for this journey? A. No.
- Q When did you realise that Sergeant Hapgood was to be killed? A. When I was told to stop with my car as we arrived at the crematorium.
- Q Were not you told before as to the destination of your journey; whether it was the crematorium or was it Natzweiler? A. My order was to drive to Natzweiler, I had no further orders.
- Q On the journey to Natzweiler did Straub tell you that you were going to the crematorium in Natzweiler? A. Very shortly before we arrived at the camp, Straub told me that we might just as well go straight down.
- Q Originally you believed that you were driving Sergeant to Natzweiler just in an ordinary job of transfer? A. Yes, Natzweiler. At that time there were a great number of Wehrmacht guards there. I thought a prisoner of war may be established there.
- Q Did not Straub tell you what was going to happen to Sergeant Hapgood when he, Straub, arrived at Shirmeck to fetch him to go to Natzweiler? A. No.
- Q Was Sergeant Hapgood actually the first prisoner of war to be murdered at Natzweiler? A. As far as I know, yes.

Cross-examined by Dr. Grobel.

- Q Where was Straub sitting when you left with the truck? A. Straub was sitting in the cab, next to me. In the back of the truck next to the prisoner Fuhrmann was sitting.
- Q Were those people the only people who actually went on the truck? A. Drivers and guard personnel were always supplied but the guard commander had nothing to do with them.
- Q I would like to know whether on that certain day there was no one else sitting in the truck except those people that you have already mentioned? Fuhrmann was sitting in the back of the truck, Straub was in front.
- Q You know that Straub says that the airman actually arrived dead by the time he actually arrived at the camp. What do you say to that statement? A. He was there with him.
- Q Would you like to say that he was alive when he arrived? A. Yes.

Cross-examined by Dr. Kluthe.

- Q You say that Buck usually made 'phone calls with the Commandant of the Hatzweiler Camp or with his deputy. Could you say whether Buck 'phoned to the camp on the day in question when you brought that English flyer to Hatzweiler? A. When I was interrogated I stated that I received the order at six o'clock in the morning when I was on role call from the Hauptsturmführer: "You have got to go to Hatzweiler today. First of all I have got to make a 'phone call". Who he did actually call, I do not know.
- Q Do you know whether he did actually 'phone? A. No, I cannot say.
- Q Were you present during the execution? A. Yes.
- Q Who was present with you? A. Fuhrmann, Straub, Berg and myself.
- Q Did you see any other persons? A. No.
- Q Do you know a commandant of the Hatzweiler camp, Hartjenstein? A. Only a little.
- Q Did you see him on that day? A. No.
- Q Who gave you, Straub, or the other members who were present the order to kill the airman? A. I did not kill the airman.
- Q You do not know? A. I only had the order to drive to Hatzweiler.

Cross-examined by Dr. Weiser.

- Q On your journey to Hatzweiler, did you ever stop or did you go straight through? A. No, we did not stop.
- Q Did you know Berg previous to that occurrence? A. We delivered the bodies to Straub's crematorium and that is where I met Berg.
- Q Do you know the case when flyers were shot on the journey from Schirmeck to Hatzweiler? A. No.

Cross-examined by Major Hunt.

- Q Is your statement true? A. Yes.
- Q You said that you did not know where you were going; you were merely going to Hatzweiler. You did not know which part, which building. What part of the camp did you propose to drive to if you did not know where you were going? A. To the Kommandantur.
- Q And what were you going to do when you got there? A. I should have delivered the man to Wochner in the Political Department.
- Q I understand you to say that Straub came to you in Schirmeck and asked if you had yet delivered the prisoner. Knowing that Straub was the executioner, what did you think was going to happen there? A. I take it that he must have known something about the whole matter.
- Q Why do you think Straub was interested? A. As he went down specially and fetched the man himself. He just came apparently because he had some duties to do in Schirmeck and wanted to beg a lift.

Cross-examined by Dr. Kluthe.

- Q You say that Buck usually made 'phone calls with the Commandant of the Natzweiler Camp or with his deputy. Could you say whether Buck 'phoned to the camp on the day in question when you brought that English flyer to Natzweiler? A. When I was interrogated I stated that I received the order at six o'clock in the morning when I was on role call from the Hauptsturmführer: "You have got to go to Natzweiler today. First of all I have got to make a 'phone call". Who he did actually call, I do not know.
- Q Do you know whether he did actually 'phone? A. No, I cannot say.
- Q Were you present during the execution? A. Yes.
- Q Who was present with you? A. Fuhrmann, Straub, Berg and myself.
- Q Did you see any other persons? A. No.
- Q Do you know a commandant of the Natzweiler camp, Hartjenstein? A. Only a little.
- Q Did you see him on that day? A. No.
- Q Who gave you, Straub, or the other members who were present the order to kill the airman? A. I did not kill the airman.
- Q You do not know? A. I only had the order to drive to Natzweiler.

Cross-examined by Dr. Weiser.

- Q On your journey to Natzweiler, did you ever stop or did you go straight through? A. No, we did not stop.
- Q Did you know Berg previous to that occurrence? A. We delivered the bodies to Straub's crematorium and that is where I met Berg.
- Q Do you know the case when flyers were shot on the journey from Schirmeck to Natzweiler? A. No.

Cross-examined by Major Hunt.

- Q Is your statement true? A. Yes.
- Q You said that you did not know where you were going; you were merely going to Natzweiler. You did not know which part, which building. What part of the camp did you propose to drive to if you did not know where you were going? A. To the Kommandantur.
- Q And what were you going to do when you got there? A. I should have delivered the man to Wochner in the Political Department.
- Q I understand you to say that Straub came to you in Schirmeck and asked if you had yet delivered the prisoner. Knowing that Straub was the executioner, what did you think was going to happen there? A. I take it that he must have known something about the whole matter.
- Q Why do you think Straub was interested? A. As he went down specially and fetched the man himself. He just came apparently because he had some duties to do in Schirmeck and wanted to beg a lift.

Q You say in your statement: "Berg placed a noose round his neck. The other end of the rope was fastened to a hook in the ceiling. Peter Straub then kicked the board away from under the prisoners feet"; is that true? A. Yes.

Q Were you present and did you see it? A. Yes.

Q You say in your statement: "The prisoner was taken into the crematorium by him, by Straub and his assistant Berg, Fuhrmann and I followed"; why? A. There is a room in the crematorium and I thought that that may be a cell he was being delivered to.

Q When you saw preparations being made to hang him, what did you do? A. Fuhrmann stopped there and I went back to the door and lit a cigarette and then went out and came back again.

Q You knew that a man was being murdered, did not you? A. No, I did not know that.

Q You knew that when you drove him up, he was going to be killed, did not you? A. No.

Q You did know when you drove the man up to Schirneck that he was going to be killed, did not you? A. No, I did not know.

THE JUDGE ADVOCATE: He knew when he saw the noose being put round his neck.

MAJOR HUNT: (to the witness) You knew when you saw the man ordered to strip and the noose put round his neck that he was going to be killed, did not you? A. I knew then when Straub did that; Before I did not know.

Q And you stayed present in this building while the killing was going on? A. No.

Q You went out and came back again, you say? A. I went out for Fuhrmann to turn up.

Q What did you think Buck meant when he said: "Giegling came back and reported that my orders had been carried out"? A. It cannot be correct.

Q He also said in his statement, that is Buck, that you suggested to him that in the future these victims should be taken up a little later to avoid unnecessary talk? A. That is not correct.

Q Are you telling the court that you did not report to Buck that his orders had been carried out? A. Yes.

Q And you did not mention that in future victims should be taken later because it would be darker? A. No.

Q You often used to drive prisoners up to Natzweiler, did not you? A. Yes.

Q Did you usually deliver them dead or alive? A. Alive.

Q Did you ever get orders or have any dealings with the commandant when you handed in prisoners dead or alive? A. No.

Q Did you know that Hartenstein was the commandant of Natzweiler? A. No.

Q You did not know who the Commandant was? A. No, I think it was man who wore glasses and I think now that is the adjutant. Ganninger or something was his name.

Q Who did you always deal with? A. Wochner.

Q Do you recall an incident when you went up to Hatzweiler to collect the clothing of airmen who had previously been driven-up and presumably, had been disposed of? A. No, I cannot remember that.

Q You do not remember collecting the uniforms of four airmen? A. No, I do not know.

Q Do you like watching men hang? A. No.

DR. GROBEL: The counsel for the defence for Berg has asked me to put one question for him. (To the witness) Did you ever talk to Straub whilst you were in Recklinghausen? A. I was lying four weeks in one part of Recklinghausen and the only time I saw Straub was for one day or it may have been 1 and a 1/2 days.

Q I do not want you to evade my question; I did not ask you whether you ~~saw~~ ^{saw} him but whether you talked to him? A. No, only greet each other very shortly.

Q I want you to tell me the truth; whether that is correct, you were alleged to have told Straub: "why did you not dispose of the prisoner Berg; he is a traitor now". Did you say that? A. That is not true; that is a lie.

Giegling
(The accused ~~leaves~~ leaves the place from
which he has given his evidence.)

Q You did not know who the Commandant was? A. No, I think it was
man who wore glasses and I think now that is the adjutant.
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the prisoner Berg; he is a traitor now". Did you say that?
A. That is not true; that is a lie.

Giegling
(The accused ~~leaves~~ leaves the place from
which he has given his evidence.)

The accused PETER STRAUB takes his stand at the place from which the other witnesses have given their evidence and, having been duly sworn, is examined by DR. GROBE, as follows:

Q You have heard everything that has been said about you here. Tell us if that is the truth or not. Did you take part in this drive from Schirmeck to Matsweiler? A. No.

Q Do you remember the truck arriving up there? A. I cannot say when the truck arrived, I only know that Glegling arrived three times with a dead body, the body not being in a coffin but just lying in the truck covered with a blanket.

Q How can you explain that all witnesses testify that you were present? A. How could I know that a prisoner had to be collected from Schirmeck?

Q Did you not have to drive together with Glegling in this truck? A. I once went with Glegling from Matsweiler to Haiden.

Q Did you have a prisoner with you? A. No Glegling brought a dead body in a coffin and he always brought dead bodies in a coffin and when the coffin was emptied the coffin was put back into the truck by Berg and others.

Q How can you explain the evidence against you by Glegling? A. I presume Glegling made these statements to clear himself. The truck of Glegling brought some body having cloth round his feet; I can remember it being brought to me. In that truck there was fresh blood. When the dead body was fetched out of the truck by the prisoners occupied in the crematorium, whether it was Haensch, Fuhrmann, Simon, Metzbach or Ziegler, they were constantly occupied with Berg in the crematorium and two or three fetched the dead body and Glegling told me I should have the truck washed clean.

Cross-examined by DOCTOR KREMER

Q Who gave you your orders? A. I have never received any kind of order from the Kommandant, adjutant or warden. If the execution had to take place then either Schutzstaffelfuhrer Zeuss or Worts leader Ideusich came to me. They always negotiated with the adjutant and they told me: "Go down there, let them know they shall prepare everything; one, two or three are going to be hanged". I then went down below and let them know and round about that time it was usually in the morning at ten or in the afternoon at three when this took place and then I used to wait down below for the staff to arrive and they were usually the adjutant, the doctor, the Schutzstaffelfuhrer, the block fuhrer and the warden fuhrer and when this squad arrived and those to be executed stood there and when they came to the crematorium I said: "No" and those who had to undertake the hanging, namely the prisoners - they were appointed by the former Kommandant Kremer - were appointed by me.

Q I do not want to know of this. I am only asking did you ever receive an order to execute British airmen? A. No.

Q Have you ever seen a British airman being executed? A. No.

Cross-examined by DOCTOR WEISER.

Q Do you remember the day when Fuhrmann arrived with Glegling and a British airman? A. I cannot say if they brought airmen, I only presume because Glegling only brought us dead ones.

Q Do not you remember a dead airman who was brought in in July 1944 and who had a bullet wound in the breast? A. I remember an airman but where he had his wound I do not remember. He came from Karlsruhe.

The accused PETER STRAUB takes his stand at the place from which the other witnesses have given their evidence and, having been duly sworn, is examined by DR. GROBEL as follows:

- Q You have heard everything that has been said about you here. Tell us if that is the truth or not. Did you take part in this drive from Schirmeck to Natzweiler? A. No.
- Q Do you remember the truck arriving up there? A. I cannot say when the truck arrived, I only know that Giegling arrived three times with a dead body, the body not being in a coffin but just lying in the truck covered with a blanket.
- Q How can you explain that all witnesses testify that you were present? A. How could I know that a prisoner had to be collected from Schirmeck?
- Q Did you not have to drive together with Giegling in this truck? A. I once went with Giegling from Natzweiler to Roudan.
- Q Did you have a prisoner with you? A. No Giegling brought a dead body in a coffin and he always brought dead bodies in a coffin and when the coffin was emptied the coffin was put back into the truck by Berg and others.
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Cross-examined by DOCTOR KLUMPE

- Q Who gave you your orders? A. I have never received any kind of order from the Kommandant, adjutant or wachner. If the execution had to take place then either Schutzhaftlagerfuhrer Zeuss or Works leader Liestch came to me. They always negotiated with the adjutant and they told me: "Go down there, let them know they shall prepare everything; one, two or three are going to be hanged". I then went down below and let them know and round about that time it was usually in the morning at ten or in the afternoon at three when this took place and then I used to wait down below for the staff to arrive and they were usually the adjutant, the doctor, the Schutzhaftlagerfuhrer, the block fuhrer and the works fuhrer and when this squad arrived and those to be executed stood there and when they came to the crematorium I said: "Go" and those who had to undertake the hanging, namely the prisoners - they were appointed by the former Kommandant Kramer - were appointed by me.
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- Q Do you remember the day when Fuhrmann arrived with Giegling and a British airman? A. I cannot say if they brought airmen, I only presume because Giegling only brought us dead ones.
- Q Do not you remember a dead airman who was brought in in July 1944 and who had a bullet wound in the breast? A. I remember an airman but where he had his wound I do not remember. He came from Karlsruhe.

- Q Were Fuhrmann and Giegling present? A. No, they brought a dead body; whether it was an airman I do not remember.
- Q Who helped you during your executions? A. The executions took place as I just mentioned before - the five prisoners.
- Q Did Berg also help occasionally or was his function only that of a stoker? A. Berg was the stoker.
- Q Did he also help at executions? A. Yes, if somebody else was missing.
- Q Is it correct that Giegling approached you at Recklinghausen and spoke to you? A. Yes.
- Q Did he say to you as Berg states: "Why did not you do away with Berg; he is going to give us away now"? A. Can I explain this. I came to Camp 5 of Recklinghausen barrack room No. 13 and I suddenly saw Giegling and Wochner and then Major Barkworth asked me about the statement of Giegling and then I said to Giegling: "Well, you said a nice lot of things" and that was in front of barrack room No. 13. Giegling said to me word for word: "If you had done away with Berg; Berg has made stupid statements" and I said to Giegling: "First of all I am not a murderer and secondly if Berg tells the truth I would have done away with my best witness". I left Giegling standing there and went inside the barrack room. This was in the evening and next morning Giegling was admitted into the sick bay. That is all I discussed with Giegling in the camp.
- Q What did Giegling mean by all this in your opinion? A. He thought that he might be able to shove off his shoulders and on to Berg.
- Q Was Giegling referring to any particular incident in your opinion? A. That is possible. He may have referred to the case of the dead body which was brought up when there was still fresh blood in the van.
- Q Do you know of cases in which Fuhrmann shot airmen? A. I do not know of any case.

Cross-examined by MAJOR HUNT.

- Q Did I understand you to say just now that Major Barkworth has spoken to you since you arrived at Recklinghausen? A. No, this was not in Recklinghausen, this was in August in Kornwestheim during my first examination.
- Q But did you not say just now that Major Barkworth had some bearing on this conversation you had with Giegling? A. In Kornwestheim he asked me if I could identify Giegling. I did not know Giegling's full name. I only knew his christian name was Kurt.
- Q You did say did you not to Major Barkworth when he saw you on this first occasion in August last that you had never seen airmen? A. Yes, I did not see any.
- Q You said just now did you not that all the airmen you saw were handed in dead? A. Yes, I take it because Berg once showed me a suit in which there were warning attachments on the dress.
- Q Why did you deny that there were airmen in the Hatzweiler originally? A. I just said I never saw one.
- Q Is Wochner wrong when he says that you told him you carried out two executions by hanging in the oratorium of airmen? A. No, Wochner could not have understood me correctly.
- Q Is Buck wrong when he says that you came and reported to him because you understood there was an airman to be taken on to Hatzweiler? A. Buck is wrong.

Q Is Muth wrong when he says he hurried over a prisoner to you and you pushed him into a truck and drove off in a hurry? A. That Muth has seen me once in Schirmeck when a prisoner was collected, that is correct, but the case is as follows; I went to Schirmeck and bought some acid at the chemist for our dispensary when, as I wanted to go back to Malsweller from the chemists, especially, one of our cars arrived. I stopped it and Obersturmführer Meier sat in it and two other interluners were with him.

Q Came to the point will you? A. As regards that small truck he is wrong.

Q Did you collect a prisoner from the camp? A. No.

Q So Muth is wrong is he? A. In that case, yes.

Q And Giegling, he is wrong too. This hanging did not take place I suppose? A. Yes, he is also wrong.

Q And you are the only honest man here? A. I can only tell the truth.

THE JUDGE ADVOCATE: This is what Giegling says about you: "Straub and Berg then tied the hands of the prisoner who by now was standing naked behind his back; he remained quiet and did not say anything but I noticed that sweat was breaking out of his body. Next the prisoner was made to stand on a wooden board raised from the floor at both ends by supports and Berg placed the noose around his neck. The other end of the rope was fastened to a hook in the ceiling. Peter Straub then kicked the board away from under the prisoner's feet but as the rope was already tight he could not have dropped more than a few centimetres" A. If it happened that one man would have been hung we had no blocks, we had a box.

Q Were there hooks on the ceiling in this room in the crematorium? A. There were four hooks.

Q What were they there for? A. For hanging. That was an order by Kommandant Krumer.

Q And there was a board with some boxes also for use in hanging, was there? A. There was a semi-mechanical box where if one stood on it and the board was moved it collapsed inwardly.

Q That room was equipped for hanging? A. That was directly in front of the stove.

Q I did not ask you anything about the stove, I asked if the room was equipped for hanging? A. Yes.

Q And you were in charge of this room? A. Yes.

Q Giegling has given this account of what took place on that day? A. Yes.

Q And Muth said that you and Giegling were friends? A. Yes.

Q Were you? A. I got to know Giegling through Wochin r.

Q Were you friends? A. Yes.

Q Why should he tell this story about you if it is not true? A. To put himself in the clear.

Q Why, what has he done? A. He brought the dead bodies to us. I presume that if they took no body from Schirmeck alive then they took them through the woods and they did away with him on the way.

Q Do you realize that if he was in the room taking part in this hanging he does not clear himself? A. He probably intended to do so. I want to say some more. Berg and I were never alone in the Crematorium. There was at least another three with Berg who were also constantly occupied in the Crematorium.

Q When Kramer was Kommandant of the camp he detailed the execution parties, did he? A. Yes.

Q Did that system continue? Did the Kommandant give the same orders when Hartjenstein became Kommandant? A. There was no such order from Hartjenstein, he never took part in executions.

Q Who detailed execution parties? A. The Schutzstaffelfuhrer got those who were already engaged in the crematorium and the adjutant gave the orders. The adjutant was always present.

Q Was the adjutant present on this occasion? A. No, in this case there was nobody there.

Q What case are you talking about? You said you did not hang anyone? A. Personally I never laid a noose.

Q Did you kick the box away instead? A. Also not.

Q What part did you take in the execution? A. I was only a spectator so that afterwards the corpse was taken away properly either into the morgue or into the basement.

Q Were you a spectator when Hagood was hung? A. No, he was not hung at our place.

THE PRESIDENT: Do you know the names of the three prisoners who used to assist in this hanging. Before you told us that there were three prisoners who used to assist; do you know the names? A. Rauech Karl, Fuhrmann Georg, Simon, a Gypsy by the name of Metzbach and one more, Zeigler. Those were the ones ordered by the Kommandant.

Q How long had these men been carrying out these duties; how many months? A. Rauech was the first he was there from the start. As far as I know they always had something to do with these executions. If the one or the other was missing the other took his place. There were always at least three of them in the crematorium.

Q That was not what I asked. I want to know since when those men have been carrying out these duties. Was it one month, three months or a year? A. I am not quite certain but most of them were already at it since March 1945.

(The accused Straub leaves the place from which he has given his evidence)

The accused Fritz HARTJENSTEIN takes his stand at the place from which the other witnesses have given their evidence, and having been duly sworn, as examined by MR. KILMER as follows:

Q Can you tell me whether there was in your camp British or other airmen? A. Yes.

Q What can you tell me about it? A. Once it was reported to me by the Schutzstaffelfuhrer that there were a British and an American soldier in my camp. After I heard this I went into the camp and found out that these two soldiers were in the sick bay. I talked to these two soldiers and I have in the presence of Doctor Rohle and Bruteel and in the presence

of the prisoner Kauten Roger, explained to the prisoners that they need not worry about anything and I gave the order to the Doctor to look especially well after the two sick soldiers. That is the only case referring to allied soldiers which I got to know.

- Q Did you never get to know that allied soldiers or airmen were brought to your camp in July or August 1944? A. No, I only got to know about it while I was being interrogated by Major Barkworth and later after I received the charge sheet.
- Q How can you explain it that nothing about incidents of this kind was ever reported to you? A. I suppose that somebody tried to keep something away from me.
- Q Who was supposed to make reports about incidents of this kind to you? A. It does not matter who it was, whether it was the schutzhafthlagerführer, head of the political department or the adjutant. All these three had to report extraordinary events to me.
- Q Why do you think these officials tried to keep something away from you? A. If an airmen or a soldier had been brought into the camp I would have made inquiries right away because I have been a soldier for a long time myself and I would have known how to treat a prisoner of war.
- Q Did you ever receive orders pertaining to parachutists or other prisoners of war? A. I am only acquainted with these orders because I fought in the east and in the west.
- Q Did you ever get to know anything about the case of the airmen Haggood? A. Nothing ever got reported to me relating to this incident.
- Q How can you explain this? A. I suppose also in this case somebody tried to make it a secret because it was a prisoner of war.
- Q You have heard to-day that this airmen had been brought either on the 31st July 1944 or on the following day, the first of August to the camp of Schirmeck and was subsequently transferred to the camp of Natzweiler. Could you tell the court where you were at that time? A. I could not say this for certain.
- Q When did you usually leave the camp when you were present? A. In summer the last roll call was held at 1800 hours and after the roll call and after the schutzhafthlagerführer had made his usual report that the inmates of the camp were correct, that everything in the camp was in order; after this had been done I left the camp and drove to my home in Willemsdorf.
- Q Who was responsible for the whole camp while you were away? A. From one roll call from one o'clock lunch time until the next day lunch time it was an orderly officer. This orderly officer had the task to report anything of importance to the adjutant or to myself because he is in the guard room.
- Q How can you explain it that this incident happened in your camp and that you never got to know about it? A. I can only explain it that way; that there must have been somebody present who could make it possible that this car could drive into the camp without having any difficulties.
- Q You have heard to-day that Straub had been sent to Schirmeck to collect the prisoner to take him to Natzweiler. Who do you think gave Straub the order to do this? A. I do not know but I did not give him the order.

- Q Would you please tell the court how everything was arranged as to your deputies. You have mentioned something about it during the previous trials but will you please repeat the most important part of it?
- A. The adjutant was my deputy. I could not appoint him directly as my deputy but this had been done by my superior officers up at Oranienberg and they confirmed that during my absence my adjutant Ganninger had to take my place and for this purpose I signed the camp over to the adjutant and when I came back the adjutant signed the place over to me. There was a similar confirmation from Berlin that Ganninger was the law court officer and this had been done by the Oberstammführer Schmidt Klebenau.
- Q What are you going to say to the following. It will be put to you that never mind whether you were in Natzweiler or not you had, as camp Kommandant, the responsibility? A. I had various departments and each chief of the department occupied a position of trust. I had to be of the opinion that these chiefs would not misuse their authority because as I took up office I made it quite clear to them what I expected of them in the way they were going to carry out their duties. I cannot stand up for all the persons I employed and I cannot keep them under observation day after day but if I had known that something had gone wrong I would have corrected it immediately.
- Q Did Buck, the camp kommandant of Schirmeck, ring you up at Natzweiler and did you say anything during this telephone conversation about the killing of British airmen or the putting of British airmen up in your camp? A. No, and I would have refused this offer because just like Buck says the same in his own statement.

Cross-examined by MAJOR HUNT.

- Q You said that it was the duty of your subordinates to report to you extraordinary events. Are you saying that the killing of airmen or other persons in your camp was an extraordinary event? A. Yes, it something out of the ordinary; that is why I am surprised that nobody made a report about it to me.
- Q How many prisoners of all sorts were sent up from Schirmeck to be disposed of in your camp? A. I cannot say this for certain because there have also been transfers of ordinary prisoners from Schirmeck to Natzweiler.
- Q What about the big and regular convoys of persons coming up to be exterminated, to be killed which Buck transported? A. There have never been weekly transports from Schirmeck who were supposed to be killed in Natzweiler.
- Q How do you know they did not come? You did not know about Haggood, perhaps you did not know about the others? A. In the ordinary way I would have got to know about it through the political department because Wochner would have known about it if these weekly transports had arrived and Wochner would have reported it to me.
- Q How do you account that this man or other persons of all nationalities could be executed and cremated; how do you account for their disappearance? Did nobody inquire about the prisoners in your camp? A. As far as I know, no prisoners were executed in my camp if there was not a sentence.
- Q Buck did telephone you and ask you if he could send people up; did not he? A. In this case I did not talk to Buck.
- Q Who did you talk to? You say in your statement that Buck asked you if he could send bodies up and you gave permission. He asked if he could send them up to be burnt as he had not the facilities in his camp. You will admit that that conversation took place; will you not? A. Buck once asked me if those inmates in his camp who died a natural way could be sent to my camp as there were no facilities in his camp to get rid of them.

- Q But this is not what Buck says, is it? A. I do not know what Buck says.
- Q He first of all says that he refused to allow prisoners to be killed in his camp. He says that sooner or later if they were killed in his camp it would become generally known and he would be the one responsible. "Meier told me, however, that I was never to send airmen or parachutist prisoners of war to Stalag through normal channels. I replied, therefore, that the only possibility left for me was to make arrangements at Struthof and send them there so that I would not be responsible for anything that happened" and then he goes on to say: "I contacted the kommandant of Struthof; I telephoned and arranged for the necessary transfer to take place. The kommandant at that time was Hartjenstein".
- Q Are you still saying that you know nothing about the transfer of prisoners to your camp to be killed? A. Yes; Buck never told me anything about it.
- Q So this statement of Buck's is wrong; is it? A. Buck's statement might be true because Buck says in his own statement that it might have been my adjutant.
- Q I understand that Buck will be here tomorrow and we will be able to ask but are you seriously still saying that no-one was transferred to your camp to be killed or that you did not know about it? A. I received no reports to these effects.
- Q When you took over the camp as kommandant, did you alter the standing orders that were then in existence under Kramer? A. Yes, I have altered the standing orders.
- Q Did you ever inspect your crematorium? A. Yes.
- Q Did you see the apparatus available there for executions? A. Yes, I saw a hook at the wall.
- Q Did you consider that this apparatus was adequate and efficient to carry out a proper hanging? A. Yes, I had to accept.
- Q Do you still think it was very efficient when Giegling tells us that it takes over ten minutes for the man to die? A. I cannot imagine that this happened.
- Q Why did you allow hangings to take place privately in the crematorium? A. I did not allow any private hangings.
- Q Why do you imagine that this apparatus for hanging people was in a room in the crematorium? A. It had to be in one room.
- Q You did not know whether it was efficient or not? A. I had to assume that this apparatus was efficient but I am not an expert.
- Q You did not care, did you? A. If something happened in my camp which was not permissible, I would have taken the necessary steps to correct it.
- Q Why did you allow two types of hanging, one private and one public? A. I never gave permission.
- Q There were two different types of execution prevalent in your camp; were not there? A. Yes.
- Q Why; why one in public and one in private? A. This was contained in the sentence of the written order.
- Q Did the sentence stipulate that a person was to be executed in private? A. It always said: "public hanging".
- Q Why did you have then in private in the crematorium; why did you permit

these executions in private in the crematorium in your camp? A. There was always a sentence, I suppose if I am being asked about private executions I have to extract that by these executions are meant where there are no witnesses. There were sentences available for those hangings which took place in the crematorium as well.

Q I do not understand. When a sentence was received did it stipulate whether the hanging was to be in public or in private? A. It only said in the sentence in the written order: "This person is to be publicly executed".

Q Why then was it necessary to have an apparatus to hang people in private? A. Because the public execution had to take place in the open.

THE JUDGE ADVOCATE: I think that what the witness is saying is the normal hanging would take place after sentence not in public but on some occasions there had to be an exemplary punishment where there had to be a public hanging. (To the witness) Is that so? A. Yes.

MAJOR HUFF: He said in every case of sentence so received that it was stipulated to be a public execution.

THE JUDGE ADVOCATE: I do not think he said that. He said that in special cases the sentence said it was to be a public hanging.

THE ACCUSED HARTMANN: Some times it says on a sentence "Public hanging" and some times it just mentions "hanging".

MAJOR HUFF: In the circumstances when it only mentioned "hanging" it was carried out in the crematorium? A. Yes.

(At 1730 hours the court adjourns until 1000 hours
to-morrow morning)

(Wednesday, 5th June 1946)

))))))

SECOND DAY

(Wednesday, 5th June, 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 accused FRANZ BERG takes his stand at the place from which the other witnesses have given their evidence and, having been duly sworn, is examined by DR. WETSER as follows:

- Q Do you remember the flier Hapgood being brought to Natzweiler? A. Yes.
- Q Do you remember who arrived in the car at that time? A. Yes.
- Q Who was with him? A. Fuhrmann, Giegling, and outside was Peter Straub.
- Q Could you tell us what the flier looked like when you saw him the first time? A. They brought him along in a small car and we looked inside. The car was full of blood. We then took the flier to the crematorium and there Giegling said to Straub that he was to wash out the blood out of the car.
- Q Did you see whether the flier was still bleeding? A. On the floor of the crematorium there was also blood after we had brought him to the morgue.
- Q What time of day was it, when the airman arrived at the camp? A. It was in the afternoon.
- Q You cannot give us a definite hour? A. I cannot be definite; it might have been between four and six but it also might have been later.
- Q Do you have any definite recollection of the uniform which the airman was wearing? A. Yes.
- Q Can you describe the uniform? A. It was a light blue airman's uniform with a zip fastener and on the arms and legs were electrical contacts.
- Q In December 1945, during an interrogation by Major Barkworth, you have described three bodies; could that have been one of them? A. The first airman who was brought came in a private car, the second airman that was brought came from Schirmeck, so that would be the first airman who was brought from Schirmeck.
- Q In other words you want to say that the second airman, as you said in the interrogation on the 10th December, was actually Hapgood? A. Yes.
- Q What do you say to that, that Major Barkworth said that he found out that the body really was the body of a man called Walker? A. I do not know anything about that.
- Q Do you know a man of that name or do you remember a case when a body with that name was brought into the camp? A. No, the bodies which arrived from Schirmeck had no names and no numbers.
- Q Major Barkworth said that, after the interrogation of Doctor Boogaerts and Philip Von Bach. Do you know these men? A. I do not know these men.
- Q What was your task in the camp? A. I was the stoker of the crematorium.

- Q Did you also have the duty to help during executions? A. For that task people were ordered by the Kommandant - there were four to five prisoners
- Q Which prisoners were detailed for these tasks? A. There several. The first one was normally Rausch, Fyrmann, Simon, a gypsy by the name of Metzbach and finally Zeigler.
- Q If one of these men was not present was it your job to help during these executions? A. During mass executions, yes.
- Q Do you want to say that during private executions that was not your duty? A. No, never.
- Q One final question. Do you know what Giegling discussed with Straub in Recklinghausen? A. Yes, I was told that Straub, Rausch, Zeuss and him had a small discussion there and Giegling asked Straub why he did not kill the prisoner Berg as he is giving the whole show away.
- Q What in your opinion did Giegling want to say when he said "He is giving the whole show away"? A. He wanted to say with that, that out of ten bodies that were brought from Schirmeck to Natzweiler, seven were shot and only three died of a natural death and he wanted to say with this that he was not to give any evidence that any life prisoner was brought to that camp but all the people arrived dead.
- Q Do you want to say then that the testimony of Giegling concerning the hanging of the flier is untrue? A. The testimony of Giegling is untrue. The execution of that kind never took place with the presence of the camp staff or the prisoners.
- Q How do you explain then that Giegling gave detailed information concerning the hanging and that according to your statement it never took place? A. Giegling very frequently used to watch and witness mass executions and other executions and therefore he has a great knowledge of them. Giegling brought in two Poles who in the summer 1944 assaulted an S.S. officer and they were brought to Natzweiler and taken to the crematorium and there during the hanging the whole camp staff from Schirmeck and Natzweiler and also Giegling was present.
- Q Giegling said that he had seen you and Straub in the crematorium. Does he want to say that he saw you only as a stoker or helping with an execution? A. Schutz said he had seen me in the crematorium but if he saw me there it was because my place of work was in front of the stove itself in front of which the hanging took place because it was my job of work there and even then there were always two or three prisoners present. I was never on my own in the crematorium.

Gross-examined by Major Hunt.

- Q You say you remember Hapgood, do you? A. Yes, I can remember him now, as the witness Sander said that she could recognise him, by the photo and the uniform.
- Q You did say that you saw him in the cells at Natzweiler; did not you? A. No, I did not say in the cells.
- Q In the French block of Natzweiler? A. Major Barkworth showed me the picture and asked me whether I had ever seen this man before and whether I knew him and I told the Major that I saw a man who looked similar to him in the French block.
- Q Was the man you saw in the French block the same man who was handed in dead? A. That I do not know; I cannot remember the face of the body.
- Q Do you believe the evidence of Buck and Muth that Hapgood was handed over to Straub and Giegling? A. Yes, I believe that.

- Q Do you claim that it was the same man who was handed in dead? A. Yes.
- Q How do you account for the fact that the man who left Schirmeck alive should be handed in dead? A. I thought about this quite a great deal as prisoners frequently arrived with Fuhrmann and Giegling and other personnel and they generally arrived dead.
- Q Are you saying their escorts shot them on the way to the camp? A. Yes.
- Q Was that the usual practice to shoot prisoners on the way up to Natzweiler? A. Yes, I have only seen two prisoners that were executed in Natzweiler and they were the two Poles who had assaulted the S.S. officer.
- Q How do you account for the fact in this case that some were shot outside the camp and some were hung in the crematorium? A. There was only one case as far as I remember, in the crematorium and at that time the complete camp staff was present and also officers from Strasbourg.
- THE JUDGE ADVOCATE: Before you leave that point, you were dealing with, he says he accepts the evidence of Muth and Duck that Haggood was handed over to Giegling and Straub and that he was shot on the way. Would you ask him whether he believes Straub was a party to the shooting on the way.
- MAJOR HUNT: Do you accept the evidence of Muth and Duck and Giegling that this victim was handed over to Giegling and Straub and driven up to Natzweiler? A. Yes, that might be possible; I was not present.
- Q You agree then that the evidence to the effect that Straub and Giegling brought this man from Schirmeck is correct? A. Yes, if that was Sergeant Haggood in that car, then Straub, Giegling and Fuhrmann were present.
- Q What do you think about Straub saying he did not do anything of the sort? A. Yes, Straub went up with the car to Schirmeck and he took over the prisoner there, he must know what happened on the way.
- Q Then you think he was not telling the truth when he was in the witness box? A. I cannot be definite on that but I maintain that if he was present he must know what happened on the way.
- Q Why do you think Giegling should have described in detail what he saw at the crematorium when he saw you put the noose around the man's neck? A. As I have said before, Giegling was frequently present at executions and he had seen other prisoners do it and I believe he thinks it was me. This execution which Giegling is talking about never took place.
- Q What executions are you saying that Giegling was often present at. Where did they take place? A. It always took place in the crematorium and the first case were the two Poles which I have already mentioned and the last case I remember was in September when Giegling and Fuhrmann brought some prisoners from Schirmeck.
- Q How many prisoners did they bring from Schirmeck and did they bring them all at once? A. No, they brought them with three or four cars, I do not really know how many.
- Q 20, 30, 40, how many? A. 100, 120, 130, it might have been just about that number.
- Q Were they all killed? A. Yes.
- Q How were they killed? A. One part of them was shot and one part was hanged.
- Q Were was the Kommandant during this; did he authorize it? A. No, the kommandant was not there at the time but present were Ganninger and the deputy Meier.

- Q When did this happen? A. Inside the crematorium, in front of the crematorium.
- Q When did it happen? A. In September 1944.
- Q The kommandant has denied that any large numbers of prisoners came to his camp in September 1944. How do you account for the fact that some 120 people can be killed in his camp and he not know about it? A. Because it might be possible that the adjutant Ganninger did not tell the kommandant about it.
- Q You helped at that hanging, yourself; did you? A. Not during this execution. Three prisoners were present and two block fuhrers.
- Q In addition to denying that you had anything to do with Hapgood, are you also saying that you have not hanged anybody? A. I was only present during a mass execution of Russians and during a mass execution of Poles and that time I was detailed for the task.
- Q What about the people in the surrounding camps; you and Straub went out in your truck to conduct the executions? A. That was once, that was in the camp Weischling where mutiny started and there was Rausch, I, Zeuss and the doctor and we all went to Weischling and an execution was made to make an example of this and the prisoners that took part in this execution were Poles. They volunteered for this job at the camp commandants.
- Q Why did you have to go down to this labour camp to assist in this execution? A. There was only that one camp and the second time was in a camp where typhus had started and we took the dead body on with us.
- Q Why were you, a prisoner in Mauthausen, taken out of the camp to conduct executions out side? A. I was not taken out to carry out executions, I only went around the camps and fetched the bodies from there where typhus had started.
- Q Is it not a fact that you went out with Straub to conduct executions? A. No.
- Q Why should Geigling describe your part in this killing if it be not true? A. This execution which Geigling is talking about never took place.
- Q You think he dreamed it, do you? A. He did not dream that but he was a witness during other executions.

(The accused Berg leaves the place from which he has given his evidence)

THE JUDGE ADVOCATE: The defence wanted Buck as a witness, is he here?

MAJOR HUNT: I had a telephone call this morning and the Prison Governor had refused to hand over Buck unless he had an undertaking from Military Government. It appeared to be an extremely conscientious way of looking at it. The corps do know about it because they rang me up at half past nine to see what I knew about it. I knew that Buck had been asked for but nothing further. Whether any steps are being taken to produce him or not, I don't know.

THE JUDGE ADVOCATE: Is he on the way or not?

MAJOR HUNT: I do not know, he is not my witness. If the court would consider an adjournment while I get on the telephone I could find out perhaps, whether he is coming or not. I understood that was being done but I have been told they could not get a call through.

THE JUDGE ADVOCATE: Doctor Grobel, there appears to be some difficulty in obtaining the attendance of the witness Buck. Can you tell us for what purpose the defence require him and what evidence you anticipate he would give if he were here beyond what is already contained in his statement.

DOCTOR GROBEL: The defence counsel for Hartjenstein is the one who needs Buck as a witness. He wants to prove that the telephone call which took place before the airman was fetched did not exist between Buck and Hartjenstein. He considers this a very important point in favour of his client.

THE JUDGE ADVOCATE: In order to see whether the attendance of Buck can be procured the court will adjourn and see if anything can be done over the telephone.

38. (At 1050 hours the court adjourns)
(At 1115 hours the court re-assembles)

THE JUDGE ADVOCATE: Every effort has been made to secure the attendance of the witness Buck. He is in prison under sentence of death and it is difficult to secure his release without communication through very high channels. It is hoped that he might be got here between three and four this afternoon. We propose to continue the trial by taking the speeches for the defense next and the court is prepared to assume that if Buck had given evidence he would have said that he did not make any such call to Hartenstein on this occasion and that the defense may accept it that the evidence is before the court. If Buck arrives before the conclusion of the proceedings his evidence will be taken and further opportunity will be given to the defense to make any comments they wish to after that evidence has been given. Dr. Grobel, do you wish to make a speech on behalf of the defense generally?

DR. GROBEL: A few words. It concerns the question of the order so that there will be no need for the other defending counsel to repeat it. The statement of Buck of the 1st May 1945 states that Meier told him that those airmen who were to arrive at Sobernack were to be shot and that he received such an order from Isselhorst.

THE JUDGE ADVOCATE: It does not say that they were to be shot, does it? It says to be done away with.

DR. GROBEL: Yes, he says in the second chapter that under these conditions he sent three airmen to Natzweiler. In his further statement of the 22nd September he says on Page 2, Paragraph 2 also that he was told by Meier that airmen or parachutists who were taken prisoner were to be killed. On Page 2, Paragraph 4 he says that Meier acted under Goebbels' orders; that all parachutists and airmen who bailed out were to be done away with. On Page 5, Paragraph 3 he says that Isselhorst passed on the order to kill British and American prisoners. For this purpose take the statement of Dr. Isselhorst who, on the top of Page 3 says: "I had an order from the chief of District 4, Department 4, Gruppenfuhrer Muller, which says that all Allied military personnel whether in uniform or not who were taken prisoner in actions against terrorists had to be treated as terrorists and had to be executed as such".

THE JUDGE ADVOCATE: Do you suggest that in this case there is any suggestion of this man being captured in any action or taking part in any action in connection with terrorists?

DR. GROBEL: It is not alleged in this case that it had anything to do with terrorism but it can be argued that the small men in the district could not tell the difference and my last word in this matter is as follows: Last night the radio announced the statement of Yodel. Yodel said that there was a General Headquarters German Army order of December 1942 in which Hitler added to this General Headquarters order of the German Army that those airmen who took part in raids on towns should not be put on trial before a military court. I have no more to say.

DR. MEYER: Mr. President, Gentlemen: I represent Muth. I would refer to the remarks of my colleague Dr. Grobel and wish to add the following details. Muth pleaded not guilty and in my opinion he is not guilty. The proceedings have shown the following picture as far as his participation is concerned. He repeated the order from Buck to fetch the prisoner Hapgood from the cells, a prisoner of war who had only recently before been handed in. Muth could follow this order without compunction. He could even assume that this prisoner of war was now to be led to a prisoner of war camp. When Muth stood before the cells with the prisoner the small delivery van arrived driven by Giegling and a further occupant Straub. When these four met - Hapgood and Muth on one side, Giegling and Straub on the other side - at that moment Muth had carried out his order, his task was fulfilled and he had no more to do. At the earliest it is at this particular moment he should have become suspicious because then he saw Straub who was known to him as an executioner. I say at the earliest as Muth states without contradiction as can be readily believed that he only became suspicious later on. This can be readily ~~believed~~ understood if Muth only became suspicious later on because he cannot be contradicted that in the first place the case of Hapgood was the first in which a prisoner of war had to be brought to Natzweiler and that Straub and Giegling were friends and that so far Straub had never come to the camp.

I repeat again that at the earliest he had reason for suspicion when he had already carried out his order. Everything that happened later on - the possible shooting of the prisoner during the voyage or the hanging in the crematorium of Natzweiler - for all this Muth cannot be possibly held responsible. It is my opinion that Muth did not make himself guilty under Article 2 of Law No. 10. He also did not take part in a criminal act in the least possible way. If, however, there is the slightest doubt with the court Muth should still be found not guilty in accordance with the old legal maxim "in dubio pro reo". I therefore ask for Muth to be found not guilty.

DR. DAHLFELD: The extent to which the participation of Giegling can be looked upon as punishable depends for what reason Giegling did this drive. It is a fact that he took a man to the place where he was executed but if Giegling did not really know why he had to take this prisoner in his car it is not clear whether Giegling is guilty in the sense of the charge. I cannot say that this case is clear. It is rather doubtful as far as I can see. As far as I can see the doubts which arise out of the case of Giegling are sufficient not to arrive at a clear sentence.

My principal argument is Giegling's statement, before Major Barkworth I think, that Giegling was serious as he made this statement under oath because he is the chief witness and in that position he really incriminates himself. As he is now in the dock in this court it can be argued that this is on account of the statement he made. If the court can believe his statement as to the extent of his participation in this incident it has to believe also his statements. I also want to point out that this case referring to Sergeant Hapgood was the first case of this kind in the camp of Natzweiler and as far as Major Barkworth's inquiries have shown there were only three or four cases of this kind in the camp of Natzweiler. I refer to prisoners of war. I do not mean any other prisoners. If Giegling says now, "I did not know at the time I took this prisoner to Natzweiler what was going to happen to him", I cannot see what evidence has to be produced to prove the opposite. He was present at the execution. There is not sufficient evidence to show that this act was punishable because there in the camp he had no possibility to avoid the crime. Only if the accused Giegling knew what this drive meant to the fate of Sergeant Hapgood would it mean that the accused was aware of a guilty action. I beg the court to take these doubts into consideration as far as the accused Giegling is concerned.

DR. GROBEL: Everything which we got to hear in the last two days was not very nice but the contradictions which the prosecuting officer believed he could lay in front of the court at the start of the trial have not lasted during the trial. I am of the opinion that the question of guilt can be proved in the following way. There are two points opposing each other. First of all there are the three men from Soherneck, Muth Buck and Giegling. The other party consists of Berg and Straub. Therefore you have got to compare all statements to see which ones are the most trustworthy, the ones made from one side or those from the other side. Only so can you arrive at a just verdict.

Giegling was the driver of Soherneck who has carried out a considerable number of journeys. We have heard that of the ten transports he actually drove seven of them were shot persons and the other three were natural deaths. Buck was his chief and Muth was his guard commander. Therefore I can understand the remark of Giegling to Straub in Recklinghausen that ~~he would not do anything~~ if he had liquidated Berg he could not be a traitor to them, because he was frightened that the transport of the corpses to Soherneck would come into open light.

We have got another point with reference to this opinion. We have heard that Meier told Buck in the camp: "The airmen who were coming into the camp from now on have got to be liquidated". Buck says in the same statement that he was not willing to do that, otherwise his camp would get a bad reputation and that he suggested to him that the prisoners should be taken into the woods and there liquidated. It can be accepted that the transports were only of people who were actually dead so that they never arrived alive at Natzweiler.

One witness who watched the transport leave told us that he did not see Straub present and he is quite a trustworthy witness, namely Albert Morits from Alsace Lorraine. None of the other witnesses say that Straub was actually present and even the two incriminating witnesses, namely Muth and Giegling. Buck says in his statement of the 1st May Paragraph 5 that Straub was sitting in the back of the truck. Giegling stated that he sat next to him in the cab. Even if those are minor details one can see that there are contradictions between those two statements. We have heard that Straub was very seldom in the camp. Buck has described the driver that went with Giegling on this transport. He says in his statement that Straub was one metre 70 high. I do not believe he is that tall. He said that he is very pale faced. If his face is similar to the one that you can see now you cannot say it is a very pale face. Buck also said that he had ginger hair, reddish hair, and I do not think that is the case. To me it looks as if he has got black hair. Buck said he had an impediment in his speech and I did not notice that. According to those contradicting statements of those two witnesses it is very doubtful in my eyes whether Straub was actually present. As that case is back dated two years and transport of these kinds were very frequent it is very easy to assume that a case of mistaken identity lies before you.

Only one thing is rather incriminating and that is Berg's statement but that can be explained too. Berg said that Giegling and Fuhrmann were with the transport when the flier was transported to the camp and he further stated in detail that next to the truck in the crematorium Straub was standing. He did not reply to the question of the prosecution that Straub actually came in the transport so that it cannot be proved that Straub actually knew what had happened to the flier.

And now to Wochner. Wochner said that he told him something about two fliers which were liquidated in the camp. We have no proof that one of those two fliers are identical with the flier in question. Especially we have no proof that Straub was present at the killing. I therefore ask you to treat Straub justly and not to believe those people incriminating Straub that he was actually hang-man of Natzweiler. Should you however punish him and should this punishment be a term of imprisonment then I would like you to take into consideration the punishment he received last week to see whether those two can be combined.

DR. KLUTHE: Mr. President, Members of the High Court. In the question of the defence of the accused Hartjenstein the court have to look at two considerations. The first question is the one on which the prosecution bases itself and this is as follows. It was stated that Buck and Hartjenstein made the preparations for these executions and the second question is whether Hartjenstein, as commander of the camp at Natzweiler, so carried responsibility when he knew nothing of the deed and furthermore that he was absent. The accusation in regard to this first point based itself mainly on the evidence of Muth, Giegling and Buck. Yesterday we heard the two accused Muth and Giegling.

THE JUDGE ADVOCATE: Did you say that he knew nothing and was absent? There is no evidence before the court from Hartjenstein that he was absent on this occasion.

DR. KLUTHE: By "absent" I mean he had taken no part in the deed. I would like to return to the first point. It was not proved by both the accused Muth and Giegling that the accused Hartjenstein was 'phoned on that day in question by Buck. Furthermore, according to the written testimony of Buck nothing could be proved. I do not know what evidence Buck will give when he arrives here but I reserve the right to mention that point if he should arrive.

Now lastly the question of responsibility. Generally the commander of a troop battalion or camp is responsible for what happens in that area. The court will have to consider whether in this case, this special case, any sort of responsibility can be brought to bear on the accused. May I just give a small example. In a company during a battle training a few soldiers break into a farm and shoot the owner of that particular farm. Is the battalion commander responsible for the action of these soldiers? I believe that one would have to reply in the negative to this question. Now one accuses the accused Hartjenstein that several cases of that kind occurred. I would like to

continue with my example. If, for instance, in this battalion several occasions had occurred concurrently would one in that case also bring responsibility to bear on this battalion commander?

THE JUDGE ADVOCATE: Will you agree that the case would be different if the battalion commander gave the troops the arms and gave them permission to go out robbing and killing the owner of the farm?

DR. KLUTHE: I was coming to that point. One can make the battalion commander responsible either if the battalion commander neglected his duty or if he approved of actions of that kind which means that he was definitely in agreement with them. I would like to consider the same in the case of Hartjenstein. Hartjenstein was the commander of that camp. He states that on the commencement of his duty he explained to his section commanders their various duties in great detail. Would one now in this case and, for instance, the case of Hapgood and as one has said we have other cases, make the commander responsible and then only if the court presumes that he approved of these actions. But then if one goes according to the trial and the evidence heard nothing has been proved in that way.

I would like to point out that Hartjenstein stated it was once reported to him that an English and American airman were in the camp and that he took care of these airmen and looked after their welfare. Now I ask you would this man who took care of Allied airmen, would he in the same breath have given orders for others to hang? That is the question which the court has to consider. The fact that there was apparatus in Natzweiler to hang people is no decisive factor in the decision of this case because we have heard that executions had to be carried out by the order of the Reichs Security Office and the Gestapo and so, in other words, instruments were officially available and instituted by law.

I would further like you to consider that Hartjenstein was very frequently on duty trips to his fifteen or twenty other camps and we have also heard that during his absence his adjutant was deputising for him and so was carrying all the responsibility. The court will have to consider all these points and prove that in this case the responsibility came from Hartjenstein only.

DR. WEISER: Concerning the fate of the accused Berg it is of importance whether the court would believe the statements of the accused Giegling in all parts. The defence of Berg points out that the airman Hapgood came to the camp as a corpse. If Giegling would admit that he received the airman Hapgood alive and delivered him dead it would be a very heavy case against him - in any case a much heavier case against him as already can be derived from his present statements. In the truck of Giegling was Fuhrmann who according to the evidence of the witness Moritz was a very dangerous character and is looked for now for many murders. This alone allows for the possibility that the airman Hapgood was killed in transit.

Lastly the question arises of, Is it possible that Giegling has said anything untrue? Giegling made a statement here which in my opinion allows for a doubt in his case. His evidence said that at the moment when the dying airman was hanged he went out to light a cigarette. This points to such a lack of feeling that I also consider him capable of having made a false statement to clear himself.

It must be added that the accused Berg also according to the evidence of witness Schultz was only the stoker of the crematorium. Schultz's statement agrees with that of Straub and Berg that mostly the others were the executioners, namely Ziegler, Mettlich, Rausch and Fuhrmann. It must be added that the witness Therese Sander has said that Hapgood was dressed in a uniform with a zip-fastener, that he was bare-footed and that he was wearing a blue uniform. Similar statements that a corpse was delivered similarly dressed and also bare footed were already made by Berg before Major Barkworth in December 1945. Even if Major Barkworth has excluded the possibility that this corpse No. 3 is identical with the airman Hapgood these statements are again made by witnesses who we cannot hear, namely the witnesses Dr. Boogaerts and Philip Von Bach.

There remains the possibility of a mistaken identity and that the airmen may in actual fact have been delivered into the crematorium as a corpse. This question cannot, in my opinion, be cleared up properly until the accused Fuhrmann can also be apprehended and brought before this court. At any rate it is my opinion that one cannot come to a conclusion after just relying on the evidence of a fellow accused such as Giegling if no other points of decision arise. I would ask you to examine Berg's guilt from this angle and to take into consideration that these happenings took place over two years ago and to take into consideration that this case cannot be closed without Fuhrmann.

MAJOR HUNT: This, in my submission, is an extremely simple case. The victim, Serjeant Hapgood, who was a member of an air crew, having been shot down and captured in uniform - in respect of which there was ample evidence - was conveyed to Schenck and then to Natzweiler and there hanged under horrible and disgusting conditions. There appears to be little or no evidence of even an illegal order for this man being shot. Buck, it is true, said that he had received orders to send airmen to Struthof for disposal but he admits that his orders in this respect related chiefly to people co-operating with the Maquis and he, Buck himself, admitted that although he knew what would happen to these airmen he dispatched them just the same. There has not been throughout the course of the defence any suggestion that this man received any sort of trial and international law forbids summary execution or killing without trial absolutely. In fact there appears to be no real reason for this killing at all. It appears to have been a purely cold blooded murder carried out with no particular purpose nor reason except possibly to provide opportunity for Straub and Berg to demonstrate their ability.

There appears to be ample evidence, especially from his own statement, that Muth handed over the victims and he says himself in his statement that when he saw Giegling and Straub together the fate of the prisoners at once became apparent to him. Although he knew he was sending this man to his death he apparently took no steps to remedy or alter that state of affairs. With regard to Giegling the evidence is in one respect interesting. He says he got orders to drive a prisoner up to Struthof but he did not know why. He says that Buck did not tell him why he was going to drive this man up there and that no particular orders were issued as to what he was to do when he arrived there but he does not appear to have registered any degree of surprise when on arrival the prisoner was taken from the van and hanging commenced. In fact far from being surprised he went out during the lengthy proceedings to have a cigarette and the hanging being completed, or partially completed - he still not having previously known the purpose of his mission - returned to Buck and reported that his orders had been carried out.

With regard to Straub there can be, in my submission, little doubt that he carried out and was in charge of the hanging and amazingly enough without apparently having received any orders to do so from anyone. It almost causes one to consider that Straub must have been in receipt of standing orders to kill all comers to his crematorium. It is true that there is evidence that he went to Schenck to collect the prisoner or he was in Schenck. There is some evidence to show that he spoke to Buck but it also appears apparent that Straub had a free hand in regard to all persons who entered his crematorium. In this case there is, in my submission, overwhelming evidence that he in fact was present and carried out this killing.

Hartjenstein was the commandant of the whole camp. In his statement he says that he has given permission to Buck to hand in dead bodies. I suggest that in view of the evidence it is difficult to believe that all the bodies were handed in dead. In spite of the fact that he was the commandant he says he knew nothing and heard nothing. It was unnecessary to say anything more about it. Berg denies any participation in the killing of Hapgood and seeks to plead that the body in question or the body which is the subject of this case was handed in dead. He has in a previous statement described various bodies that he received as a member of the crematorium staff but Berg's counsel, when he asked Major Barkworth, received what was, in my submission, a comprehensive answer accounting for all the bodies described by Berg. Berg, who claims to have been merely a stoker for the crematorium, did however admit in his evidence that he was accustomed to set out on certain travels with Straub for the purpose of collecting bodies or officiating in some respects at other camps. Finally the evidence of Giegling, who as an eye-witness witnessed the killing would appear conclusive against Berg. Finally it is a point of interest that the evidence almost wholly in this case consists not of circumstances or the evidence of outside witnesses but purely the testimony or the stories as related by the accused themselves concerning this particular killing. It is their story that we have heard and nobody else's.

SUMMING-UP

THE JUDGE ADVOCATE: Gentlemen, the time comes for me to sum up this case to you and give you such guidance as I can as to the matters which you will have to take into consideration. Fortunately this is the same Court as dealt with the preceding case and therefore I will not take up a great deal of time in informing you of your responsibilities in dealing with a matter of this kind. The general principles by which you must be guided are already known to you but I must shortly remind you of them again.

The first and most important is this: that under the English law, by which you must now be guided, any accused is innocent until he is proved guilty by the prosecution, and it is not for the accused to prove that they are innocent. On the contrary it is for the prosecution to prove that they are guilty and by that you must understand that the burden of proving the case lies on the prosecution and if they do not discharge that burden, if they cannot satisfy you that the accused and each one of these accused separately has committed the crime with which they are charged, then that particular accused is entitled to be acquitted.

You have to consider next the extent to which you must be satisfied and the standard taken by the English law is that you must be satisfied beyond reasonable doubt. What is meant by a reasonable doubt is such a questioning of your minds as would affect yourselves in your ordinary daily lives. If you left this Court, having convicted someone, and yet felt "Perhaps I was wrong" then you would be in a state of reasonable doubt. If you could go away completely satisfied you had done justice then, of course, you would be satisfied beyond reasonable doubt. There is a field in between which is the field which you have to consider. It does not mean that you must be so certain that no question could ever arise or trouble your minds again. It means you would be satisfied in the same way as you would be satisfied if you were making up your minds about your own daily business.

The next general observation which I must make to you is that you are bound, in cases of this kind, to get a considerable amount of evidence from accomplices. People all charged together give the first impression, if any case is made out against any of them, of being accomplices because they are all charged with joining together and committing that offence. Again, it is a principle of English law that you must be very careful in accepting the evidence of an accomplice. There may be several reasons why an accomplice who is to go into the witness box may say something that is untrue. Of course, the commonest reason is that he is endeavouring to exculpate himself and, therefore, you have to regard with the greatest caution evidence given by an accomplice. This does not mean that you have to reject it altogether but you must caution your minds against its tainted nature. If, after doing so, you are satisfied that in spite of that you think that in all or in any particular part of the evidence given by the accomplice he is telling the truth, then you are able to act upon it. The wiser thing to do when dealing with the evidence of accomplices is to look for some sort of corroboration which implicates the particular accused whose case you are considering at the time and you will find, in many of these cases, that there is corroboration which will help you to decide whether you are justified in accepting the evidence of the accomplice or not.

Now, to the general question which you have to deal with in this case. These five accused are charged that on or about 31st July, 1944 they were together concerned in the killing of Sgt. Haggood and the general principle I should point out to you is that it is a very wide charge and any person who took any part in bringing about the death of Sgt. Haggood in those circumstances would be a person who would be concerned in the killing. You do not have to be satisfied that any particular person put the rope round his neck or kicked the block from underneath him or that sort of thing. Any person who took some effective action in bringing Sgt. Haggood to his death, if as Sgt. Haggood ought not to have been brought to his death - he was a person who should have been treated as a prisoner of war - any person who took such an effective step would be a person who would be concerned in his killing.

Of course, before you come to consider the actual events which took

place on that date - either the 31st July or 1st August, but it does not matter - before you come to consider that you first of all have got to be satisfied as to some general questions of what was the status of Sgt. Hapgood and whether anybody was entitled to put him to death at all. Normally, considering cases of ordinary murders and so forth, you do not get a complication of that kind. You start with the maxim that nobody is entitled to put anybody else to death, but in war time curious situations arise. If a person is tried by a proper court, after that proper trial that person may be sentenced to be executed, but one question arises in this case.

Sgt. Hapgood, you heard, was a member of a Lancaster bomber crew that was engaged in operations, was shot down, and he baled out along with some four others of whom, you have heard, one evaded capture and got back to England, three were made prisoners of war and the remaining members of the crew were killed in the crash. There was Sgt. Hapgood, a perfectly ordinary, competent airman, shot down, and I do not think you will have any difficulty, with your military knowledge, in seeing that he was a person who should have been treated as a prisoner of war. Indeed any doubts of that, of course, can be removed by the fact that apparently, from the evidence, the other three survivors were taken prisoners of war, but for some reason, unhappily for him, Sgt. Hapgood became separated from his fellows and fell into this somewhat undesirable company.

He was taken into Schirmeck, according to the evidence, where Buck, you have heard, was the commandant, and the case for the prosecution is that he was put into a cell. It is not clear whether he stayed the night or not but it is quite immaterial; he was there either part of a day or part of a day and night. After being there a little while Giegling and Straub arrived at Schirmeck - this is the case for the prosecution - with what is perhaps not inappropriate to describe as the "butcher's van", and demanded to have Hapgood handed over to them from Schirmeck.

Muth, according to the evidence for the prosecution, went to the cell where Hapgood was and brought him along to Giegling and Straub, handed him over and he was taken away in the van. I am dealing at the moment only with the case for the prosecution: I will deal with the case for the defence in due course. That is the only part that Muth plays in this case but it is not without significance that he said himself, of course, that when he saw Hapgood being taken away in the custody of Giegling and Straub he knew perfectly well what Hapgood's fate was going to be. There is, of course, a point in his defence which I will refer to when I come to deal with it. So much for the case against Muth.

The case against Giegling is based largely on Giegling's own statement in which he said himself - and nothing could be clearer - that he and Straub drove the van from Schirmeck. They had a man, Fuhrmann, with them. However, Hapgood was taken by them in this van to Struthof/Natzweiler. They took him straight to the crematorium and there he tells us the whole story; that a noose was made in a rope by Berg who actually put the noose on the hook; Straub kicked the block away from underneath and that Hapgood was hanged on a piece of rope similar to that which has been exhibited in this case. There was only a slack of 15/20 centimetres at the most so that death, of course, was by no means instantaneous. He hanged on this rope for at least ten minutes before death overtook him and during the whole of that performance Giegling said he was present. He claims towards the end he went away towards the door to have a cigarette. That is the case against Giegling which is supported to some extent by the statement of Buck and the statement of the man Leon Denu who says that anyhow Giegling drove this van. He saw the van which he knew was the one which Giegling usually drove. Buck supports that Giegling came and collected Hapgood.

The case against Straub, of course, rests largely on the evidence of Giegling which it is not necessary to repeat. It tells the story which I have just recapitulated to you of how he went to Schirmeck with Straub, took Hapgood back, and Straub took a very active part in the execution. You may think there is quite a considerable amount of evidence to support that story. You have

got the fact that Straub was the executioner at Struthof/Natzweiler; that was his job; that was what he was there for, so you begin with the position that if Hapgood was taken to Natzweiler, and if he was alive when he arrived there, if he were hanged and if Straub was there at the time, then Straub was the person who would normally have done it. You have got the evidence of Giegling, who takes it much further, and says quite apart from anything else: "I was there and I saw him do it". You have got the evidence of Buck who says that Straub came with Giegling in the van to collect Hapgood, and you get a rather remarkable difference there between the stories as told by the defence. There is Giegling saying: "Straub came with me"; Straub says he did not and Berg says he believes Straub went with Giegling. Of course, if Berg is right, that Straub went with Giegling, then Straub cannot be right. Obviously they cannot all be right. That is the case for the prosecution so far as Straub is concerned. He was the hangman. Giegling tells you that he saw him hang this particular man. Straub is in a difficult position when his old friend, Berg, has given evidence because Berg says: "I believe he went on this journey to Schirmeck" and Straub's defence is that Giegling and Fuhrmann were in this van, disposed of Hapgood on the journey, and only a dead body arrived. If Berg is right when he said Straub went on the journey and if Buck is right that Straub arrived in Schirmeck to collect Hapgood then Straub is in the unfortunate position of having to choose between having hanged the man on arrival at Natzweiler or having shot him on the way in. Those are matters which you will have to sort out. You will probably, on the weight of the evidence, lean to the view that Hapgood was not shot at all, but was disposed of in the way described in the charge.

1 The case against Hartjenstein is by no means an easy case. It is one which will require careful consideration. 2 The position of Hartjenstein was that he was commandant of this camp and he again is placed in this difficulty. Obviously you would have no doubt about his implications if you were satisfied that he gave orders for the execution. There is another aspect you will have to consider; to what extent he is liable if he did not give orders for this execution, and indeed it was his place because he was commanding a camp in which people could be brought in and a person of low mental calibre like Straub could just bring them in and hang them if he wanted to. You may think it was not only a strange camp but also that Hartjenstein might well be called upon to answer for being a commandant of such a camp. Hartjenstein is again in an unhappy position. He either authorized the execution or else he was running a camp where authorization was not required and where anybody could bump off anybody else, and that is the way the case for the prosecution is put against him. 3 There is no direct evidence that he authorized this execution. Some implied it because he was the commandant of the camp; there is some little vague evidence, but, remember, we have to deal with this on the basis that we have accepted that if Buck had given evidence he would have said he did not have telephone communication with Hartjenstein on this specific occasion, but you have got the general statement of Buck that whenever an action of this kind arose he rang up either the commandant or the adjutant. You probably think there is no material distinction between the two. No doubt he rang up the office there, either Genninger, Hartjenstein or maybe even the clerk on duty, but you will satisfy yourselves whether such circumstances would get to Hartjenstein or not.

If Hartjenstein is contacted in those circumstances and he says: "That is all right; there is my executioner and there is my hanging room", all commanders make use of", you will have little difficulty in measuring the extent of his implication. Alternately there is the case that there is no direct implication by a person who was in fact running his hanging shop - "Anyone who would like to come in could bring their friends along and have them attached to the proceedings in Hartjenstein's room". You may take the view that he could hardly be considered free from some sort of blame in this matter.

Now you come to Berg. Berg, again, of course, has against him the evidence of Giegling and I will not repeat the story; I dealt with it in the case of Giegling and in the case of Straub, but you have got the evidence of Giegling that he saw the whole thing take place and Berg was there. He says Berg was the person who put the rope round the unfortunate Hapgood's neck and attached it to the ceiling. There is some corroboration again there

if you look at Berg's own statement, the first of his statements of the 24th April. He now says, you will remember, that Hapgood never came alive to Natzweiler at all; all they received was a corpse, but in his statement of the 24th April he says: "I am able to state with certainty that I have seen a man whose appearance resembled exactly that of the man whose photograph marked 'Hapgood' has been shown to me. I think that I saw him in prisoner's clothes in the French block at Natzweiler". What he is saying in effect in that statement is: "I saw Hapgood alive at Natzweiler". The story he is putting before the Court now is "All that I received at Natzweiler was the corpse of Hapgood". Berg also said in his second statement of the same date - he sets out the normal procedure - he says that the normal procedure was that Peter Straub, who was in charge of the crematorium, received orders from the political department to carry out an execution. Straub gave out orders to those who helped him and the prisoner who had been brought in by Straub was made to undress completely, to step on the plank supported by blocks and the noose, the other end of which was fixed to hooks in the ceiling, was placed round the prisoner's neck. "This was done by Ziegler, Metzbach or by me. We usually left 10 or 15 cm slack on the rope and the two blocks were knocked over by either the Blockfuhrer if he was present or by Ziegler, Metzbach or me". There is a close resemblance to the description given by Giegling of what he says happened on this occasion. That is the case for the prosecution.

We will just look at the defence and remember that it is for the prosecution to satisfy you before you even need consider the defence. If the prosecution has not satisfied you at all then you do not even have to consider the case for the defence. As far as Muth is concerned he agrees that Hapgood came to Schirmeck and he says that he had to take some clothing for him from the stores. He says, the same or next day, he took him out of the cells and he saw Hapgood with Straub and Giegling on the way from the commandant's office towards the van, and he says he knew what that meant. That is Muth's defence. He says he concedes with the case for the prosecution. That is all the prosecution say.

Giegling, again, is difficult. It is difficult on his statement to see precisely what his defence is. I gather it to be that "What I took part in - and he is saying when he took him from Schirmeck to Natzweiler - 'I had no idea what it was all about and I did not know he was going to be executed. I merely had orders to take him there and when I got there I did not take part in the hanging'. He was only standing around as a spectator and he was not one of the people who actually took part in the killing. I should say that Muth relies on the same defence. He is saying: 'I did not know when I was handing Hapgood over to Giegling and Straub what was going to happen to him; it was only when they drove away'".

Straub, of course, is rather difficult. He knows nothing about it at all. "It did not happen" is his story. You have heard the evidence of Giegling and Berg that this happened. You have heard the conflicting evidence as to whether Straub was on the van or not, but there it is; that is Straub's defence. He says: "Well, I was not there. All that happened was that a dead body which had been shot arrived in the van. All I could do was take it and the story of the hanging is completely untrue". He relies entirely - and he makes the suggestion - that someone, presumably, on his story, either Fuhrmann or Giegling, shot Hapgood between Schirmeck and Natzweiler and all he had to do was to act in his position as cremator and deal with the corpse which was delivered to him. I pointed out to you that Berg, despite his present story, said he saw Hapgood alive at Natzweiler.

In the case of Hartjenstein, his defence is as I have indicated to you in dealing with the case for the prosecution. He is saying: "It is true I was commandant but these things were nothing to do with me. I did not know. I gave no orders for it. I did not authorise anybody to do it and if it happened it was entirely without my knowledge". That is his story. According to him he knew nothing about it until Major Barkworth interrogated him or he got the

charge sheet. The case against him is that he was the captain of the ship and his answer is: "I did not know anything about it". Your task will be to decide whether he did or did not; whether he gave any particular order in this particular case or whether he gave a general authority which covered it - somebody could bring a person to his camp and have him hanged.

The case of Berg is rather like the case of Straub - that the whole of Giegling's story is fictitious, that there never was any hanging. All that happened was a corpse arrived and the cremator again, or cremator's handyman, just dealt with it in the usual way of dealing with a corpse. You have heard how he said in his previous statements that he saw Hapgood alive at Natzweiler. You have heard the evidence of Giegling that he in fact put the rope round his neck. You have heard the evidence of the statement of Berg that that indeed was the usual practice when the hangings were taking place, but he says there was no such hanging as this. That is his defence. A shot corpse arrived and he helped to cremate it. It is for you to consider whether Hapgood was alive or dead when he arrived at Natzweiler. If you believe he was dead and had been shot on the way then, of course, Berg and Straub on that story, and indeed Hartjenstein too, because he put it on that basis, and Giegling and Muth - if you believe the story that Hapgood was shot on the way you would have to consider if they were a party to that. If you do not believe that, of course, different considerations arise there having regard to which of the accused were concerned in this killing.

That deals entirely with the defence, but one other general observation I must make as to the defence. You have not got here the complications as in the previous cases as to the status of the persons, if they were prisoners of war or not. Nor do I think you need consider for a moment whether there was a trial or not but, of course, it is not for them to prove there was a trial - it is for the prosecution - but you see the dates. You can almost trace the movements of Hapgood from the moment he was first seen by the woman Schonenberg and the other witness who saw him with Schonenberger. Certainly within a very few hours Hapgood was in Schirmeck. He was there for a very short time and was transported from there to Natzweiler and the execution took place immediately, so with regard to the question of his never having been tried I think you are probably satisfied that the prosecution have discharged the onus prima facie that no such trial took place. As I say, the defence have not suggested there was one. The prosecution have put forward a prima facie case. If they wish to rely on that and say they were merely acting under orders from a judicial execution, then, of course, it would be considered whether they did or not, but no suggestion was made.

Still less, I say, is the question as to whether this man was a prisoner of war or not. There is no suggestion here of his being an agent or anything like that. He was a competent airman shot down on operations. The point on which the defence hangs its case is the question of "orders are orders" and you will have to give the appropriate consideration to that. It is probably true that a soldier can, to some extent, escape liability if he is obeying an order which he does not know is an unlawful order. What is the position here? You have to consider whether an order to commit a criminal act, still more an order to commit an obviously criminal act, is one which a soldier can be called upon to obey. This again, is a matter which I have been talking about in the previous trial. No obligation rests upon any member of any body to obey an order which is obviously criminal. It is true that different people of different races have different outlooks about these matters. It may well be that if a German officer and a German soldier were walking down the road and the German soldier was ordered by the officer to shoot a passing dog just for the fun of it, the German soldier may well say "All right" and shoot it. We know perfectly well that a British soldier would probably disobey the order and the dog would probably survive. We must judge these things by moral standards which should be common to all nations. Are you going to say that a German soldier is justified in obeying although the surrounding circumstances must make it perfectly clear to him. That is, of course, the charge which is made against the German people in all these cases. If the system had not been built up with the existence of the words "obey such orders" would there

ever have been any such system. The indictment is if only a German had stood out and said "We are not going to obey these orders" then the thing that had been done would not be so and the people who have had to undergo so much suffering through the last few years would have had a different story.

Probably, whatever the extent of your German, one word you will never forget is the word "befehl" and you must consider whether or not we are going to say because a German is ordered to do it he should do it. Where is the sense in such circumstances as this. Math says Hartjenstein gave the order, somebody says somebody higher up gave the order and so eventually, if that philosophy was to be accepted, you would have no criminals at all because everybody goes right to the top and everybody gets to Hitler, and he is not here, and what are you going to do about that? The charge here is not that they obeyed their orders but that they became a party to and obeyed what were obviously criminal orders.

These are the considerations which you will have to weigh when you come to the verdict in this case. You will realize that you are here administering justice. You have taken an oath to administer it impartially and without favour. You are not here because you are occupants in a conquered country. You are here on this particular occasion to administer justice according to the standards which prevail in the British Empire. You will therefore discharge your duties with regard for those standards of justice. At the same time you will protect yourselves against any thought of revenge for anything which may have been done to your comrades in arms during the war, but you will also realize that the administration of justice requires that it should be executed without fear as well as without favour and it is within the ambit of those standards that you will consider your verdict.

Will you now consider your findings.

(At 15.5 hours the Court adjourns)

(At 16.25 hours the Court re-assembles)

(The accused are again brought before the Court)

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Will you now consider your findings.

(At 1545 hours the Court adjourns)

(At 1625 hours the Court re-assembles)

(The accused are again brought before the Court)

THE PRESIDENT: In the case of the accused Hartjenstein the court have decided that if the witness Buck had been here he would have said that on the day in question he did not speak to Hartjenstein on the telephone but that he spoke to somebody else in the Adjutant's office at Natzweiler. The court are working on that basis. It is of course possible that the witness might not have made a statement so favourable to the defence but the court make allowance for the fact that he would have made the most favourable statement possible.

Josef Muth, you have been found guilty by this court of the offence with which you were charged.

Kurt Giegling, you have been found guilty by this court of the offence with which you were charged.

Peter Straub, you have been found guilty by this court of the offence with which you were charged.

Fritz Hartjenstein, you have been found guilty by this court of the offence with which you were charged.

Franz Berg, you have been found guilty by this court of the offence with which you were charged.

THE JUDGE ADVOCATE: Do you wish to say anything in mitigation Doctor Meyer?

DR. MEYER: The accused Muth has been found guilty but the measurement of punishment should in my opinion be small in proportion to the amount of guilt which was led towards him. One must consider that the accused acted on orders and that under the circumstances, which at that time were taken for granted, he would have endangered himself to the limit if he had refused the order when it could have been clear to him that Haggood was to be killed. One could only expect from him that he should have acted differently if he had been a person of considerable courage. One cannot expect heroism from an average person, least of all from him, a little guardsman such as Muth. Under these circumstances I would ask you to consider a lightened sentence for Muth.

DR. DAHLFELD: The Judge Advocate said a little while ago about the accused that they were part of a system. I believe that on these grounds the punishment for the accused should be meted out in accordance to the extent of their participation. There are much heavier involved persons than Giegling. It would also be a point of justice to find sentence accordingly. Giegling did not even belong to the guard, he was just the driver of the concentration camp. I therefore believe, also considering his general character, that he does not belong to those terrible types with whom the court very often deal with.

DR. GROBEL: Even if the court has not excluded the possibility of acting on orders in the case of Straub it should still be a point for extenuating circumstances. I would ask you to consider the documents which I have handed the court in the previous case. Straub was not a member of the party. On the contrary he was persecuted by them. How it came about that afterwards he took part in it cannot be explained psychologically. They are testimonials from civil servants who all said that he had led a clean life. I did not make use of having him examined as to his mind because no visible characteristics were apparent but there must be a defect in his case because otherwise it cannot be explained how he could commit such deeds.

DR. KLAUTHE: I do not think I am wrong in saying that the court consider the accused Hartjenstein as guilty because as the commander he was responsible for everything that occurred in the camp. If this is correct I ask you to consider that Hartjenstein as a member of the S.S. was harnessed in a system from which there was no escape. Blind obedience was the absolute system. He who did not obey these orders was destroyed. On the other hand I would ask you to consider that Hartjenstein had to look after a great number of camps which made it more difficult for him to look after all places which came under his jurisdiction in detail but this mistake in the organization must not be held against Hartjenstein.

If there had been other than the Adjutant; if there had been a proper representative for the camp who was a visible point in the absence of the commandant, I believe one would consider the responsibility considerably milder. I would also ask you to consider that Hartjenstein has again and again applied for front line service to escape this unpleasant task but he had to obey. As to his character I have already explained this in the previous week. I believe I may be permitted to refer to it.

DR. WEISER: The accused Berg is the only prisoner amongst the S.S. accused. Berg served his last sentence in the year of 1934. He told me he always only received terms of imprisonment and not of hard labour. He was not sentenced to any protective custody. Berg then spent from 1934 till 1944 in concentration camps without ever having been put to trial. This may be explained through the fact that since 1923 and up till 1932 Berg was a member of the Communist Party. I am of the opinion that the fact that he spent ten years in a concentration camp and also his political life should be taken into consideration in arriving at a sentence. It should further be added in the case of Berg that he had to carry out orders. Berg explained to me that it was said to him just as to any other prisoner when he entered the concentration camp: "He who does not obey the order of an S.S. man will be punished by death". I would ask you to consider the sentence of Berg in this light.

THE JUDGE ADVOCATE: Major Hunt, this court did of course sit on the previous case but I think for the purpose of records we should know about their history?

MAJOR HUNT: Nothing is known about these accused except the convictions of the previous court; Straub thirteen years, Hartjenstein life, and Berg four years imprisonment

THE JUDGE ADVOCATE: Muth was tried on a previous case and acquitted?

MAJOR HUNT: There is no previous conviction on record.

THE JUDGE ADVOCATE: The court will retire to consider sentences.

(At 1635 hours the court adjourns)

(At 1720 hours the court re-assembles)

(The accused are again brought before the court)

THE PRESIDENT: Both the findings and the sentences are subject to confirmation by a higher authority.

Josef Muth, you have been sentenced by this court to undergo imprisonment for a term of seven years.

Kurt Giegling, you have been sentenced by this court to death by hanging.

Peter Straub, you have been sentenced by this court to death by hanging.

Fritz Hartjenstein, you have been sentenced by this court to death by shooting.

Franz Berg, you have been sentenced by this court to death by hanging.

The trial is ended.

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