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Einsatzgruppen Case: Opening Statement for Defense - Dr. Lehmann for Fendler

International Military Tribunal

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I shall also prove the above facts through the hearing of witnesses and presentation of documents.

Furthermore I offer proof that certain localities which have been mentioned in the documents as lying within the area of the commandant of Sipo and SD of White Ruthenia, actually were not situated in that area. Consequently, a connection of defendant STRAUCH with the events that took place in these localities, cannot be considered.

Finally the defense will enter into a critical examination of the Kube-letter of July 31, 1942, submitted by the prosecution - Document 2829, Exhibit 111 - and through hearing of witnesses and presentation of documents prove this letter to be objectively incorrect.

THE PRESIDENT: Counsel for Defendant Fendler.

DR. LEHMANN (ATTORNEY FOR THE DEFENDANT FENDLER): May it please the Tribunal, in the case of the defendant FENDLER the prosecution has referred in all to six of the documents which it introduced into the proceedings. From these documents may be seen, according to the statements of the prosecution, that FENDLER belonged to Sonderkommando 4 b as an officer and during his membership in this Kommando he learned unofficially that executions had been carried out. According to the statements of the prosecution, such executions were carried out by Sonderkommando 4b at places where FENDLER was stationed at that time with this Sonderkommando.

Finally the prosecution produced documentary proof that FENDLER was a member of the SS and also of the SD and thus considers as proven his membership in an organization declared to be criminal by the International Military Tribunal.

The prosecution considers the defendant FENDLER to be convicted of guilt under counts 1, 2 and 3 of the indictment.

However, the defense for the defendant FENDLER will show in the course of the introduction of its evidence that during his membership in the SD the defendant FENDLER performed only duties connected with intelligence and information. Thus, for instance, during the time when

he belonged to the SD before the Eastern campaign commenced in 1941 he worked in various offices of the SD, dealing with the protection of industrial plants. After he had become a candidate for executive rank in the autumn of 1940 and studied law, he was assigned to field duty in the summer of 1941 on the basis of his qualifications. He was assigned without any action on his part to Sonderkommando 4 b which had then been newly formed in Einsatzgruppe C. At that time FENDLER only knew that his Sonderkommando was to be an advance Kommando of the Einsatzkommandos of Gruppe C. He was not informed of the detailed orders which the officer in charge of the Kommando had received. Above all, he had no knowledge of the fact that Einsatzgruppen and Einsatzkommandos which had executive powers would have to perform deeds which would violate the laws of warfare and would include inhuman acts. He was even less aware that they were to take part in the so-called "final solution of the Jewish question". As early as 1938/9 FENDLER was engaged, with so-called Einsatzgruppen, in the occupation of the Sudetengau and Czechoslovakia and took part in the establishment there of offices of the SD. He could therefore only assume that on the Eastern front the Einsatzgruppen would have ghastly duties. As the only expert in intelligence service he was appointed expert adviser of Section III i.e. intelligence expert, in Sonderkommando 4 b. The intelligence section (Section III) within Kommando 4 b had no material connection whatsoever with the executive (Section IV). FENDLER's duty as SD-expert was to secure all intelligence material found in the occupied area and to screen it for relevant information. He also had to make reports on the economic, cultural and political conditions and on the morale of the population. He never at any time worked on the executive side either in accordance with orders or voluntarily.

The defendant FENDLER was with Kommando 4 b only from the end of June 1941 until the 2 October 1941 on the Eastern front, therefore some of the documents presented in the case against him which refer to a later date, cannot incriminate him.

As the SD never had any executive powers, but performed only duties connected with intelligence and information, and as the defendant FENDLER in all the time he was in the SD until the end of the war never performed Counter-intelligence duties for the Executive (Gestapo), he knew nothing of the criminal character of the SD as determined by the IMT verdict. Furthermore, under the existing regulations, FENDLER was not able to leave the SD during the war. It can therefore not be said that FENDLER voluntarily remained in the SD during the war. Nor did he belong during the war to that group of persons in the SS declared to be criminal by the IMT verdict.

I shall prove the correctness of my argument by means of affidavits and witnesses.