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## Einsatzgruppen Case: Presentation of Evidence (Nosske)

International Military Tribunal

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THE PRESIDENT: Because he certainly has the right to cross examine his accuser. That is fundamental. Now, this affidavit is a recent one which would suggest that the affiant is not too far away. If he can be obtained quickly, then we will entertain any motion for his reception here in Nurnberg, but it is a matter of time.

DR. HOCKWALD: If the Tribunal please, the affiant is in Czechoslovakia. The Prosecution will make every effort to get him here, but I doubt whether we can conform to the time limit.

THE PRESIDENT: Yes. Well, the matter will stand this way that the affidavits will not be accepted at the present moment. In the event the Prosecution advises that the affiants may be brought here for cross examination, then we will again take up the situation.

DR. HOCKWALD: Thank you very much.

DR. DURCHHOLZ: Thank you, Your Honor.

DR. HOFFMANN: (Attorney for the Defendant Nosske)

Your Honor, I have seven documents which I would like to offer. Your Honor, during the direct examination of the defendant Nosske the latter said that generally a political prisoner could not be kept for more than ten days while being in protective custody. Concerning this, Your Honor asked me to bring documents to prove this. That is why I offer in Document Book Nosske the Document No. 3 as Exhibit No. 2. This is a circular decree of the Reich Minister of the Interior of the 25th of January, 1938, concerning protective custody. It is on page 2 of the English document book, and I ask you to look at page 3, the first paragraph there which reveals that a person under protective custody had to be released after ten days' at the latest unless the secret police office has asked for him to be kept in protective custody. Also,

THE PRESIDENT: Where is that, Dr. Hoffmann?

DR. HOFFMANN: It is on page 3 of the English document book; the first sentence.

THE PRESIDENT: I don't find it.

DR. HOFFMANN: Nosske Document No. 3, page 3 of the English document



book.

JUDGE DIXON: It is page 4 of our document book.

THE PRESIDENT: I see; page 3 of the original, page 4. Yes, I find it.

DR. HOFFMANN: Excuse me, Your Honor. The next decree concerning protective custody, which also concerns the period of time of protective custody is submitted as Nosske Document No. 4; this will be Exhibit No. 3. It was issued after the second World War, that is the 4th October, 1939; and in the second paragraph under Figure 1 it says: That the previously established term of 10 days is extended to three weeks. Another question, Your Honor, which was also brought up in the direct examination of the defendant Nosske was whether on principle the secret state police office, later the Reich Security Main Office, alone was authorized to issue such decrees for protective custody. I ask that this statement be looked into on the basis of these two statements. In all these documents it says that the written order for protective custody was issued by the Secret state police office, and later by the Reich Security Main Office, and that they were the only ones to issue such decrees. I submitted these documents first of all because Your Honor asked me to; and, secondly, in order to prove the credibility of the defendant Nosske in his testimony.

The next document which I offer is Document Nosske No. 5; this will be Exhibit No. 4. This is another decree about protective custody where a certain simplification of this procedure is ordered, but it says that the decree was issued by the Reich Security Main Office.



As Nosske Document No. 6, Exhibit No. 5, I offer an affidavit by Dr. Hans Ehlich, a physician. Ehlich talked about the so-called commando staff in the Reich Security Main Office, and on page 13 of the document book he says that the commando staff merely had to compile reports from the occupied eastern territories. In contrast to the previous reports from the UDSSR, they did not contain any figures about executions which were carried out due to the Fuehrer Order in the East. In order to show the credibility of the defendant Nosske, this is also important because the Tribunal will remember he stated in the witness stand that he did not see any figures about shootings carried out because of the Fuehrer Order when he compiled reports from the occupied eastern territories.

As Nosske Document No. 7, Exhibit No. 6, I offer an affidavit of Kurt Geissler. It is on page 15 of the English document book, and reveals that after Nosske returned from Russia he was not established permanently with the Reich Security Main Office nor did he want to have a permanent position there, and that the Gruppenleiter because he let the leader of the Iron Guard of Romania escape at the time.

The next document is Nosske Document No. 8, which I offer as Exhibit No. 7. And, Your Honor, I attach special value to this document No. 8 because it is an affidavit of Gunther Husmann, who was the investigation chief in the case against Nosske, because of his attitude in Dusseldorf, Nosske describes that Guttenberger made a report against Nosske and as a result a case was started against him, and as can be seen on page 21 of the document book, finally the decision was made that Nosske had to leave his position immediately and was released from the Gestapo. Husmann states that Nosske's leaving the Reich Security Main Office, and therefore leaving the Gestapo to which he belonged, was confirmed to him, to Husmann. This is on page 21 in the center, Your Honor, of the document.



Your Honor, at the time I applied for Husmann to come here as a witness without the Tribunal's knowledge concerning the importance or lack of importance of this witness. The witness was granted to me on the basis of this affidavit. I fully agree to this; only may I point out that this witness Husmann is in the prison here and that the Prosecution can cross examine him at any time, so that fact that this is an affidavit which is submitted does not mean that I shy away from calling a witness who is so easily available.

Your Honor, as Nosske Document No. 9, as Exhibit No. 8, I bring an ecclesiastical certificate from Walter Kawerau a retired Vicar, from Halle on the Saale River, which reveals that the defendant Nosske was married in church; also the personnel file is submitted here to show that he never left the church, but always remained a member of the Protestant Church.

As the last document, Your Honor, I submit Nosske Document No. 10; this will be Exhibit No. 9. It is in a supplementary volume, and contains an affidavit of a certain Dr. Schnitz, who was a police official in Dusseldorf, and who adds to the statement by the witness Burchardt from his own knowledge concerning his office in Dusseldorf. In the paragraph before the last he says Nosske left the Security Police and the SD; he had to hand in his SS uniform and his official pass.

Your Honor, that concludes my presentation of documents.

THE PRESIDENT: Very well.

MR. WALTON: If it please the Tribunal, my objections to these documents are purely nominal. If Dr. Hoffmann will state in his place that the three circular decrees which he has presented as Nosske Exhibits 2, 3 and 4 are all the law on the subject of protective custody, I will not object to them. The point that I make is this: One of these documents shows that protective custody could only last ten days before trial. The next document, in the first months of the war, shows that this protective custody was increased to three weeks. There-



3 February 48-M-ATD-4-3-Sampson (Int. Juelich)  
Court 1, Case 8

fore, if that is true, there may be, or, at least it is reasonable to assume that this time as the war progressed was increased. However, if the good Doctor will state in his place, or, as a legal expert and one familiar with German law, that there was no further decree on the subject of the time when a man might be in custody without trial and without hearing, why I will not enter an objection, but as it stands, the three decrees, there is nothing in them which states that is all the law on the subject.

THE PRESIDENT: Well, we will grant, concede and state very emphatically that we have the highest respect for Dr. Hoffmann's legal acumen and knowledge but we cannot charge him with omniscience --

MR. WALTON: But, Your Honor --

THE PRESIDENT: He cannot say that he knows that there never was any other decree on that subject. You are asking him to state as to what does not exist.

MR. WALTON: I appreciate that fact, Your Honor, but he has gone into this subject. I assume that he has made a research to find three circular decrees. Now, if he will state that he found no other decrees pertaining to this during his search, it will be acceptable to the Prosecution, but the point that I am making is that this protective custody was increased, and I think I am reasonable in assuming that if it was increased once it might have been increased again. If there is any other circular decree that he knows of on this subject, I think he should put it in.

DR. HOFFMANN: Your Honor, one of the exhibits in the International Military Tribunal in 1945 was submitted in this connection. That is all what I know, and incomprehensible .....

THE PRESIDENT: That is exactly what I said, Dr. Hoffmann, only you put it in a little better English.

MR. WALTON: My point, therefore, is won, because the Tribunal from Dr. Hoffmann's statements can draw the same conclusion that the



3 February 48-M-ATD-4-4-Sampson (Int. Juelich)  
Court 2, Case 9

Prosecution draws: That it was increased. The only other objection that I have is to the affidavit of Dr. Gunther Husmann in that he speaks of matters which inject into the case an entirely new personality on the grounds of a denunciation that Nosske claimed this person made of him. Since this was not testified to by Nosske on the stand that anyone denounced him, which caused him to leave the Gestapo, I do not think that at this time the good Doctor can overcome the doctrine of Laches! that he is barred from bringing in or injecting this new feature since it was known or allegedly known to the defendant, and he testified as to nothing about this man Guttenberger denouncing him.

THE PRESIDENT: We will follow the same rule unless you have something to say, Dr. Hoffmann. Did you want to interject something?

DR. HOFFMANN: Your Honor, the very fact that someone who is indicted does not know from the start what charges are filed against him, is sometimes the basis for the success of the Prosecution. This examiner Husmann, therefore, did not inform the defendant Nosske, whose Prosecutor he was going to be, what the charges were against him, so that it is not strange at all that Nosske on his own initiative can only say what he knows, while Husmann as an investigator states matters as he sees them. I therefore see no reason. --



MR. WALTON: I think Dr. Hoffmann misunderstood me. According to this affidavit in 1933 the affiant was examining judge and Nosske came before him for interrogation in connection with this Horia Sima's escape. At that time in 1944 the now defendant Nosske told this examining judge that the man Guttenberger was denouncing him. Therefore, if your Honors please, this fact was known to Nosske when he took the witness stand in this trial, and he was at liberty at that time to testify concerning it. Now the prosecution contends that since he did not he is now barred from injecting into the case an entirely new feature concerning this testimony about his investigation. He made no mention of anyone denouncing him when he was on the stand here.

DR. HOFFMANN: Your Honor, may I say something about this?

THE PRESIDENT: Well, I will let you, but I think that I can do it just as well. The theory of the document books is that they will contain evidence, not only rebuttal but they are still part of the case in chief -- I am speaking now of the defendants' document books - so that each affidavit could well be a speaking witness. Now Dr. Hoffmann is still presenting his case in chief and he presents this affidavit. He could have called that individual. Well, we know that in lieu of the flesh and blood witnesses we are taking affidavits for the conservation of time and for many other reasons, so that he, in effect, is now presenting a witness who he might just as well have presented before. So I don't think you can charge him with laches. It is not rebuttal; it is his case in chief.

MR. WALTON: Very well, your Honor.

THE PRESIDENT: Very well.

MR. WALTON: Your Honor, I don't know quite how we are proceeding and Dr. Hochwald gets up and then Dr. Hoffmann gets up. I have one document I would like the Tribunal, in order to keep the proceedings regular, to call me at the proper time, when it is the proper time to introduce it.

THE PRESIDENT: You may present it now since you are here at the podium. I don't think Dr. Durchholz will mind.