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## Einsatzgruppen Case: Presentation of Evidence (Wissmath for Jost)

International Military Tribunal

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MR. WALTON: Your Honor, the prosecution makes application in open court to have these two witnesses called for cross-examination.

THE PRESIDENT: If they can be obtained.

MR. WALTON: Otherwise we object to the introduction of these last two documents.

THE PRESIDENT: If those witnesses can be obtained forthwith, the application is approved.

DR. DURCHHOLZ: I shall try, if it becomes necessary, to bring these witnesses here for cross-examination.

MR. WALTON: Do I understand the Tribunal that I have the right to cross-examine these witnesses?

THE PRESIDENT: You certainly have.

MR. WALTON: If they are not brought then the Tribunal does not accept the documents, or do they accept it for whatever probative value they choose to give it?

THE PRESIDENT: Well, what is sauce for the goose is sauce for the gander.

MR. WALTON: That is right.

THE PRESIDENT: He has the right to cross-examine your witness.

MR. WALTON: Very true, your Honor.

THE PRESIDENT: Well, can you get your witnessin here?

MR. WALTON: He lives in the French Zone of Austria. I can set the procedure in motion as soon as I leave.

THE PRESIDENT: Well, let's dispose of it this way, Mr. Walton, that if any or all of these witnesses can be obtained and presented to the Tribunal this week then we will hear them. Otherwise we will accept all the affidavits, the ones that you presented and the ones that he presented, and assign to them the probative value which the entire situation will accord to them.

DR. WISSNATH: Dr. Wissnath for the defendant Jost.

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Your Honor, I am prepared to present the documents for the defendant Jost by presenting Document Book IV which conclude my presentation, if the prosecution does not object to this since Mr. Glancy is not present.

THE PRESIDENT: You may proceed.

DR. WISSMATH: I offer as Jost Exhibit No. 33 the document J-34. This is an affidavit by Hans Daufeldt of 19 December 1947, on Pages 1 to 2. The witness was on an emergency status in the RSHA where he was assigned from 1939 until 1941 and he states that the activity in the independent Office VI dealt with making economic and political reports from foreign countries and that it did not collaborate with Office IV of the RSHA. Daufeldt describes Jost as a decent humane man who treated his subordinates in a correct and decent manner.

As Jost Exhibit No. 34 I offer the document J-35. This is the affidavit of August Finke of 12 January 1948 on Pages 3 to 6 of the document book Jost No. IV. It states that Jost was chief of Office VI in the Reich Main Security Office from September 1939 until the middle of 1941 approximately. Office VI was not a counter-intelligence organization of Office IV. It had no police tasks and had nothing to do with executive tasks. Office VI merely dealt with intelligence reports from abroad. Also Office IV of the RSHA obtained their own information apparatus which concerned enemy counter-intelligence work abroad. Attempts by Office Chief IV Mueller to influence Office VI rejected by Jost. Finke says about Jost's character, "Jost's reserved attitude was almost indifference. Things had to happen before he changed that attitude, but Jost stood up for his own opinion stubbornly, though on the whole he was very tolerant. Jost was not a political zealot nor was he doctrinaire."

As Jost Exhibit No. 35 I offer Document J-36, an excerpt from the Flick judgment. This excerpt is to be considered as part of the

emergency decreestatus which concerned him.

As Exhibit No. 36 I offer the document J-37. This is an affidavit of Dr. Wolfgang Wohlgenuth of 15 January 1948, contained in Pages 14 to 19 of the fourth volume. Dr. Wohlgenuth has known Jost since the fall of 1940. At the end of 1941 or beginning of 1942, he gave him medical treatment. The diagnosis showed a disturbance of the activity of the thyroid glands caused by strong emotional excitement and a disturbance in the equilibrium of the vegetative nervous system with symptoms of deficient circulation of the blood. The illness is due to the inner tension existing in Jost which resulted because of the discrepancy between Jost's inner attitude and the work he had to do. The witness describes Jost as tolerant in his character and not at all ruthless.

THE PRESIDENT: May I call your attention to one sentence in this affidavit which to me is a little ambiguous, and I want to make certain that the translation is correct. On Page -- the top of Page 3, Page 16, the English document book, the English translation, but your Page 3, where it says, "He showed himself to be an outspoken idealist and at that time, autumn 1942 --" Have you located that?

DR. WISSMATH: No, your Honor.

THE PRESIDENT: Well, it is Page 3 of yours, of the original affidavit of Dr. Wolfgang --

DR. WISSMATH: I have the place, your Honor.

THE PRESIDENT: Now, this is the way we have it in English. "At that time, autumn 1942, he made the somewhat melancholy remark, as I still remember very well, that idealism is probably the most erroneous conception of life." I see that you understand English.

DR. WISSMATH: Yes.

THE PRESIDENT: Now, is that the correct translation?

DR. WISSMATH: Your Honor, I assume that the date given here is given in the wrong relation. I shall read the sentence again in German

and the interpreter will then retranslate it.

THE PRESIDENT: Please read it slowly.

DR. WISSMATH: "He showed himself as an outspoken idealist and at the time, namely in the fall of 1942, as I recall very well made, the rather sad remark that idealism is the most erroneous conception of life." This date, therefore, refers to the time when he made that remark and not to the time when he was an idealist, as I think the English translation might indicate.

THE PRESIDENT: Well, I don't see how this is a favorable view of the defendant, and certainly you wouldn't be submitting something unfavorable to him. He states that idealism is an erroneous conception of life, in other words that idealism should not be embraced and followed, is that what you mean?

DR. WISSMATH: Yes, that is how I understand the testimony of the affiant.

THE PRESIDENT: Well, I can't understand the purpose in submitting something which is derogatory of the defendant in the defendant's document book. However, that is up to you. It may be that what the affiant intended to say was that idealism did not bring the defendant to any felicitous state in life and to that extent that idealism was impossible, but not that it is an erroneous conception, because if you don't have idealism in life you certainly don't have any order or system or morals. Very well.

DR. WISSMATH: Because of Jost's character the witness Wohlgermuth had confidence in him and expressed his anti-Nazi opinions to him, as can be seen from the affidavit. Wohlgermuth recalls that during a conversation Jost told him about his work in Riga, that he objected to executions of Jews.

As Exhibit No. 37 I offer the document J-38. This is an affidavit of Dr. Sohr of 17 January 1948, Pages 20 to 24. The witness says concerning Jost's character that Jost was a calm, reasonable man who was

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very honest. He was sincere and conciliatory and always willing to help.

As supplement to Document Book IV, I offer as Exhibit No. 38 the document J-39. This is an affidavit by Anton Dunkan of 30 January 1948. This reveals that Heydrich disapproved of Jost and described him as an officer who was of not much use. Heydrich wanted to express by this that Jost insisted on legality and proper treatment and justice. In his opinion Jost was not energetic enough for such an assignment and too inhibited.

I now take the liberty instead of the listed numbers 1 and 2 in Document Book III, Pages 14 and 15, Exhibits Nos. 29 and 30, I want to offer the new numbers, the new charts, which I ask the Tribunal to accept now.

In conclusion I would like to draw the attention of the Tribunal to the fact that the Document Book 5-A submitted by the prosecution in rebuttal in the English version merely contains a small part, namely a third approximately of the German issue. Since the defense quotes this volume in the final pleas, there is a danger that the Tribunal will not be able to find the quotations in the English text. I therefore suggest that the prosecution should complete the volume in English so that it contains the same as the German volume.

That concludes my presentation.

THE PRESIDENT: Suppose we have our recess now.