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Official Transcript of the American Military Tribunal in the Matter of the United States of America, against Otto Ohlendorf, et al., defendants, sitting at Nurnberg, Germany, on 3 February 1948, 0930-1630. Justice Musmanno, presiding.

[end block quote]

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

MR. HOCHWALD: If the Tribunal please, the Tribunal certainly recalls that the Prosecution has obtained Haensch's Exhibits Nos. 1, 2, 3 and 4 in order to get expert opinion on the handwriting, and on the pictures which were put in. We had received the expert opinion, and they are in the hands of the Tribunal, the originals, and copies were handed to Dr. Riediger, defense counsel for the defendant Haensch. I have here the exhibits, but when these tests were made additional pictures and additional charts of the handwriting were made by the Research Institute. The Prosecution does not intend to offer these items into evidence. I think it appropriate as I do expect that Dr. Riediger wants to use them to make a short survey of these by saying what was added to each exhibit. Would that be agreeable to the Tribunal?

THE PRESIDENT: What did you specifically request?

MR. HOCHWALD: I only would make a short survey and state what was added by the Research Institute to the different exhibits so that it may be explainable for the archives why the exhibits are more and different from what was originally submitted.

THE PRESIDENT: By all means, not only I approve but it should be done.

THE PRESIDENT: By all means, not only I approve but it should be done. [sic]

MR. HOCHWALD: Haensch Exhibit No. 4 was one original photograph, and six more negatives were made by the Research Institute and all of them are labeled how they were obtained and from which negatives they

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were obtained. There are no additions in Haensch's Exhibit No. 3. Haensch Exhibit No. 2 were two negatives and an envelope, two positives from these two negatives were made by the Research Institute and added to the exhibit. Haensch Exhibit No. 1 was one appointment pad and one photostatic copy of pad No. 391 on which the name of Haensch appears. Another pad Nos. 210 to 261, was added for comparison of the handwriting, for no other reasons, and finally, Prosecution Exhibit No. 192-B which is a handwritten affidavit of the Witness Reich, Document NO-5718, a chart with different examples of the handwriting was added by the Research Institute to this exhibit. May I inquiring [sic] on his behalf -- to introduce the copies of this expert opinion as exhibits, or would that be usable for him in the form I have just given it? As I said, the original expert opinion itself is in the hands of the Tribunal.

THE PRESIDENT: That is enough that you have presented it.

MR. HOCHWALD: I have not presented it. To be frank, Your Honor, I have not presented the expert opinion in evidence. I have only handed to the Court in partial what I have received from the Research Institute.

THE PRESIDENT: Well, if you have not presented it, and Dr. Riediger desires to present it, he may present it.

MR. HOCHWALD: All right. Allright [sic], so Dr. Riediger can present it.

THE PRESIDENT: Very well. Who is ready to present documents? I presume you have finished, Mr. Hochwald?

MR. HOCHWALD: May I present a few documents, Your Honor, before the defense --

THE PRESIDENT: All right, you may proceed while you are there.

MR. HOCHWALD: I now offer Document NO-5877. This will be Prosecution's [sic] Exhibit No. possibly 250.

MR. KNAPP (Secretary-General): Prosecution's Exhibit No. 250.

MR. HOCHWALD: Prosecution's Exhibit No. 250. This is a letter showing the Defendant Six was the moving party in urging close cooperation between the SD and the Gestapo. Here we see the organized regular

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conferences in order to achieve a close and confidential cooperation between the Gestapo. The document is offered as a rebuttal document against the defendant's contention that he was never anything else but a scholar. I have here two documents concerning the defendant Schulz. These are Document NO-5862 and Document NO-5871. The documents were already previously distributed. I want to inform the Tribunal that originally I have received Document NO-5862. As, however, the identity of the defendant was not clear out of this first exhibit. I have returned the first affidavit and sent a picture of Schulz, which actually is attached in photostat to the first affidavit, and have obtained a second one. These documents which I gave the numbers 251-A-B are rebuttal documents in order to refute the statement of Schulz that he never participated in the crimes of the Gestapo when in charge of the Gestapo of Czechoslovakia.

DR. DURCHOLZ: Dr. Durcholz for the defendant Schulz. Mr. President, I object to the admission of these two documents, and I shall give my reasons for these objections when I have looked at the original -

MR. HOCHWALD: I am sorry to say the original is in Czech. I don't know whether Dr. Durcholz can find something out of it but it is with the Secretary-General, and sofar as I knew Dr. Durcholz has received the German Copy through the Defense Information Center.

DR. DURCHOLZ: I only got a copy of No. 5871. I know nothing about the first document.

MR. HOCHWALD: The distribution was made last Friday, Your Honor.

THE PRESIDENT: Well, has the Tribunal received a copy?

MR. HOCHWALD: The Tribunal has received copies in the frame of distribution, and I have had further copies handed to the Secretary-General yesterday, and sofar as I know, the Tribunal has the document before it.

THE PRESIDENT: Very well. Who is ready to proceed now?

DR. HOFFMAN: Excuse me, but my colleague wants to speak before I do.

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THE PRESIDENT: Very well, if you are agreeable, I am agreed.

DR. KRAUSE: Dr. Krause for the defendant Haensch. Your Honor, may I ask that the opinion concerning the documents by Frau Schreyer be handed to me by the Secretary-General so that I can introduce them as documents for the defendant Haensch.

MR. HOCHWALD: It would be possibly easier if Dr. Krause would introduce copies. There will be no objection against the introduction of the copies from the Prosecution, as copies were made by the Prosecution.

DR. GAWLIK: Dr. Gawlik for Herr Ulmer, for the defendant Six. Your Honor, I object to the rebuttal document which was submitted as NO 5877, Exhibit No. 250. I would like to draw the attention of the Tribunal to the date of the document of 16 June 1937. I do not know what the Prosecution is trying to prove with this document, which concerns a period of time which occurred long before 1 September 1939, and the International Military Tribunal already established that only the activity after 1 September 1939 is considered criminal in such an organization. In addition the following must be said concerning this document. It was in fact decided by the IMT that before 1938, a certain degree of cooperation between the SD and the Gestapo took place, but in the year of 1938 in particular a decree was issued separating the two, and since that time the Gestapo and the SD worked in completely different spheres, and had different tasks, and the Prosecution's Exhibit is from the year 1937, that is before the date of this so-called [sic] decree of separation; that is the question which has been discussed in detail by the IMT, and the IMT has already established the fact that only such activity as was carried on after 1 September 1939, can be considered criminal according to the statutes.

This document has no probative value and it is no rebuttal document.

MR. HOCHWALD: If the Tribunal please, rebuttal is every evidence which can refute the contentions on the part of the defendants.

THE PRESIDENT: This document could under no circumstances be

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controlling of any issue which is before the Tribunal. In itself it would not establish any mooted point, but it does shed some light on the history of the entire affair, and we think that it would be well to have it in evidence for whatever probative value would be assigned to it later on.

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DR. DURCHOLZ: Dr. Durcholz for the defendant Schulz. Your Honor, I have objected to the introduction of Document No. 251-A-B. I would like to give reasons for this objection. Apart from the fact that the incidents stated in this document and directed against the defendant Schulz constitutes a completely new charge against the defendant Schulz, which were not subject of the trial until now, and since at this stage of the trial the defendant has no opportunity of defending himself against this, therefore, if this document were received, this would violate the elementary principles of law: that is why I ask that this document be rejected. Only yesterday Your Honor stated here that in his trial you wanted to find the truth; but owing to such a one-sided attitude by the Prosecution this has become completely impossible. The defendant would have to state that he had nothing at all to do with the incidents mentioned in this document. That document is also called Indictment. Therefore, another trial would have to be started against the defendant Schulz, but neither the defendant nor I have ever heard of such a thing. The defendant Schulz does not know this witness Pauker at all who makes the statements in the document. Also the document does not show that this so-called [sic] Pauker actually made these statement under oath. Finally, this statement of Pauker is completely torn out of context, because this document refers to an interrogation before the State Police Office in Reichenberg, which is interrogation about which I don't know anything. Also it does not show whether this Pauker actually identified the defendant Schulz, and whether on the basis of a photograph of the defendant, he was able to identify him at all. May I also point out that another person called "Schulz" is repeatedly mentioned in this document, and he is called "Schulz No. 3". Also in the decisive part of the document there are a number of contradictions and inconsistencies and untruths, which the defendant Schulz and the man who is used as a witness of the opposite side could refute immediately. Also the document does not conform with the prescribed form of documents presented here. That

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is why I ask that this document be rejected for purely formal reasons, but if the Tribunal should accept it inspite [sic] of my explanation, seeing that they are so generous, even if they only attach to it such probative value as it may be worth, I move that the Prosecution call the witness Pauker here, so that I may cross-examine him. Only in that manner could the defendant Schulz's disadvantage be made up for. The defendant Schulz asked me to state that he never in his life had beaten a human being, and that he was not competent for the prison where this alleged socalled [sic] Pauker is supposed to have been, and that he never visited that prison.

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At the most it could be the police prison which was under the charge of the police president in Reichenberg with which the Gestapo, and therefore Schulz had no connection at all. Also, the Gestapo in Reichenberg did not have any air raid shelters, which are mentioned in this document; also, the defendant never gave an order such as is mentioned [sic] here. The defendant is also prepared to make an affidavit himself to refute the statements of this document, and is also prepared to give testimony concerning this in the witness stand. I also for permission that as a witness of the opposite side concerning this incident, I may call the witness Hasse, and that I may examine him here as a witness in this trial. He was in Reichenberg at the same time as Schulz, and who will clear up and refute the inconsistencies and untruths which are contained [sic] in this document. The defendant also tells me that the statements [sic] of the so-called Pauker in this document are nothing but a clumsy denunciation. My client and myself, therefore, ask for the protection of the Tribunal against these untruths.

DR. HOCHWALD: If Dr. Durcholz wants to testify, he may do so in the witness box, but it is impossible and there is no possibility to do that in any kind of procedure in the world in the manner he is now attempting. He is testifying not only for his client, but also for a number of other people. If Dr. Durcholz knows something of his own knowledge about the documents, about the persons, about the prison, about the happenings in 1941, he is at liberty to testify, but this is no objection against the documents, but what he is speaking about.

DR. DURCHOLZ: Your Honor, I thought it was my duty to make these statements in order to show to the Tribunal why I had to make these motions and raise these objections against these documents. Therefore, I ask for your permission that the witness Pauker be called as a witness for cross examination.

DR. HOCKWALD [sic]: If the Tribunal please, if I understood the objection correctly, it was to the effect that the happenings which are described



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in the affidavit are a completely new feature of the case. Count III of the Indictment is to criminal membership, and the defendant Schulz is charged with having been a member of the Gestapo. The defendant has testi-fied [sic] at great length that he, having been a Gestapo officer was blame-less [sic] in the discharging of his duties. He had testified at great length what he has been doing as chief of the Gestapo, among other places in Liberets, in Reichenberg from which this affidavit was obtained. Therefore, the affidavit in itself, the affidavits are prefectly [sic] permissible rebuttal evidence.

DR. DURCHOLZ: Your Honor, may I say here that yesterday exactly the opposite case occurred here, that a document was offered and the Prose-cution [sic] asked that this document be only admitted if they have the right of cross examination of a witness. I ask you to grant me this same right. Also, the defendant Schulz wants to refute this great reproach by cross examination.

THE PRESIDENT: The defendant Schulz testified at great length on the witness stand that not only was he innocent of the crimes charged against him in the Indictment but that at no time was he guilty of any inhumanity towards those who came within his jurisdiction; and testified rather amply to what happened in Salzburg and other places. So that, in principle, this evidence would be entirely relevant to rebut the picture which you have drawn of a person who is entirely free not only of crime but even of bad conduct in his relationship with his fellow man. So that there is no question that in principle this evidence is absolutely relevant. However, we are confronted with another situation, another equally sacred principle in Anglo-American procedure, and that is that every accused person is entitled to confront his accuser; so that unless the Prosecution is willing and able to produce forthwith, or, in the next day or two, these witnesses who accuse Schulz of crime, we cannot possibly accept these statements as they stand.

DR. DURCHOLZ: Yes, Your Honor.

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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 mater [sic] of time.

DR. HOCKWALD [sic]: If the Tribunal please, the affiant is in Czecho-slovakia [sic]. 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 of time will stand this way that the affidavits well 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 [sic]: Thank you very much.

DR. DURCHOLZ: 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 [sic] Book Nosske the Document No. 3 as Exhibit No. 2. This is a circular [sic] decree of the Reich Minister of the Interior of the 25<sup>th</sup> of January, 1938, concerning protective custody. It is on page 2 of the English document book, and I ask you to look at page 2, 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