

9 Feb.-A-BK-14 & 15-1-Gallagher (Int. Juelich)
Court II, Case 9

AFTERNOON SESSION

(The Tribunal reconvened at 1345 hours, 9 February 1948)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Dr. Koessl for the defendant Braune. The defense counsel for the defendant Braune asked me to request from the High Tribunal that the defendant Braune be excused from attendance in Court this afternoon, because of a few changes in the final plea which are to be discussed. In view of the fact that his final plea is to be ready tomorrow, I would like to ask the Tribunal to grant the request.

THE PRESIDENT: Do you want him taken into Room 57?

DR. KOESSL: Yes, please.

THE PRESIDENT: Dr. Braune will be excused and taken to Room 57 so he may confer with his counsel. Proceed Dr. Lummert.

DR. LUMMERT: It is on page 20, Your Honor.

In the fourth place, as regards the "unexpectedly" as set forth by me, mention must be made of the special conditions prevailing in the East. In order to avoid repetitions I should like to refer to the detailed expert opinion of Professor Dr. Maurach (Document Ohlendorf No. 38) and should like briefly to call attention to the Soviet partisan warfare which is contrary to International Law and to the fact which was set forth by Prof. Maurach in detail that at that time in Germany the Jews in Russia were considered as bearers of the Bolshevist system.

In this connection I should only like to add that the so-called anti-Semitism was never so widespread in Germany as it formerly was e.g. in Poland and in Russia. Everybody in Russia and Poland knew and still knows what the word "horpom" or "pogrom" means. In Germany on the other hand this word is so little known that many people pronounce or spell it with an "r" in the wrong place, namely "progrom" (as in the word contains the Latin prefix "pro"). Without the compel-ing [sic] orders of the State Government the regrettable measures of the persecution of the Jews would never have taken place in Germany.

9 Feb.- A-BK-14 & 15-2-Gallagher (Int. Juelich)
Court II, Case 9

Last but not least, in connection with the "unexpectedability", the Fuehrer Order to the Einsatzgruppen in the East and the direct orders of the superiors, e.g. of. Brigadefuehrer Nebe to the defendant Blume, and the urgent character of these orders must be taken into consideration [sic]. Here "unexpectedability" and the legal aspects of necessity, in particular necessity caused by orders issued, overlap. Since these questions are dealt with in some detail by my colleagues Dr. Aschen-auer [sic] and Dr. Gawlik I take the liberty of referring to their statements.

Summarizing I may say: If the Tribunal is to pass a fair judgment in this phenomenal trial, all the special conditions with regard to the legal problem of "unexpectedability" with which the defendants were faced in 1941 have to be considered, from the point of view of the defendants at that time. In effect J u s t i c i e [sic] - without any feelings of hatred or revenge and without prejudice - can only be administered in that way.

I now turn to the case of the defendant Dr. Blume who is represented by me before this Tribunal.

I am in the fortunate position that as far as the facts are concern-ed [sic] i.e. the actions of the defendant Blume in his position as tempora-ry [sic] commander of Sonderkommando 7 a in the East in the summer of 1941, from the beginning of July until 15 August, 1941, the Prosecution and I as defense counsel are fundamentally in agreement as far as I can see. This is the reason why neither the Prosecution, as I was told by Mr. Ferencz, nor I myself drafted a closing brief for the defendant Blume.

The actions of the defendant Blume as commander of Sonderkommando 7a can clearly be seen

a) from his own examination²⁰⁾ and the two supplementary affidavits he gave (Blume document nos. 4 and 13).

20) Cf. Transcript pp. 1764 - 1846, 1858 - 1863, 1867 - 1875, 1881 - 1898, 1900 - 1901, and 1904 - 1915.

9 Feb.-A-BK-14 & 15-3-Gallagher (Int. Juelich)
Court II, Case 9

b) from the reports of events for the time in question (see Blume 21) Document nos. 5 and 6).²¹⁾

c) from his affidavit NO-4145, Prosecution's Exhibit No. 10, in connection with the letter written by the defendant Blume to Mr. Wartenberg of 29 June 1947, to complete this affidavit (Blume Document No. 8);

d) from the affidavit of the witness Radl (Blume Document No. 11);

e) from the affidavit of the witness Krueckemeier (Blume Document No. 12);

f) and finally from the excerpts from the newspaper (Voelkischer Beobachter) offered as a supplement (Blume Document No. 7) and some additional evidence, I.e. The two affidavits of the defendant Staimle (Prosecution's Exhibits nos. 119 and 61) and the examinations of the witnesses Naumann, Schulz, Six and Steimle by me as counsel for the defendant Blume.

The defendant Blume always represented the facts in the same tho-roughly [sic] credible way. They are borne out by the entire evidence. I believe I can say that the Tribunal in examining the defendant Blume gained the impression of a frank, upright and truthful character.

These personal qualities are confirmed by all character testimonies (Blume documents no.s 15 – 29 and 31 – 35).

As concerns the figure of 996 alleged liquidations carried out by Sonderkommando 7 during the period of time up to 20 August, 1941, in the reports of events no. 73 (Blume document No. 6, O. 25 [sic]) there is such a bulk of material in evidence before the Tribunal concerning the exaggerated figures of liquidations usually reported by Brigade-fuehrer Nebe, who was Chief of Einsatzgruppe B, that this alone is 22) sufficient to consider this figure as refuted.²²⁾

21) Cf. Transcript pp. 1805 – 1822.

22) Cf. Examination of witness Blume, transcript pp. 18-3, 1807-1808, and 1818; affidavit Radl (Blume doc. No. 11), p. 5; furthermore the examinations of the witnesses Ohlendorf, Naumann, Sandberger, and Ott in this respect (transcript pp. 535, 825, 2234, 3768) as well as the affidavit of the witness Fumy (Ohlendorf document no. 32)

9 Feb.-A-BK-14 & 15-4-Gallagher (Int. Juelich)
Court II, Case 9

First of all, it has been proved that the defendant Blume did not approve of the Fuehrer-Order concerning the liquidations and that as far as all possible he evaded its execution, but when executing it he acted because of extreme emergency²³⁾ and finally, as early as in the middle of August 1941, he was relieved as being too "soft and burocratic [sic]" and was ordered back to Berlin. Concerning this latter fact I also refer to the testimonies of the witnesses Naumann, Schulz, Six, and Steimle and Steimle's two affidavits.²⁴⁾

The few cases where the Sonderkommando 7a could not totally avoid compliance with the Fuehrer Order while the defendant Blume was in charge of it, are the following:

1.) On 7 July, 1941, in the morning of the shooting of 50-60 persons from Minsk. This liquidation had been categorically ordered the preceding evening by Nebe, who was Chief of Einsatzgruppe B, despite the reluctance of the defendant Blume. Nebe had directly ordered Hauptsturmfuehrer Foltis to carry out the execution, by-passing the defendant Blume because of his obvious aversion to it. For this latter reason alone the defendant Blume cannot be charged with this liquidation. In view of the order issued by Nebe to Foltis, Blume could not prevent it.

2.) On 19 or 20 July, 1941, the liquidation of about 80 persons in Witebsk. The defendant Blume himself ordered Hauptsturmfuehrer Foltis to carry out this execution after Nobe had forced him -Blume- directly, by a very harshly-worded radio-order, to carry out a liquidation [sic] of Jews in Witebsk according to the Fuehrer Order before he left Witebsk. The defendant Blume on t he [sic] witness stand, testified as to details of that order of his superior Nebe and the carrying out of the liquidation; I should like to refer to this testimony.²⁵⁾ This is the only case where the defendant Blume ordered the killing of Jews, on direct order of his superior Nebe and according to the Fuehrer Order.

23) Cf. trans. pp. 1768-1770, 1777-1779-1790, and 1837-1840; affidavit Radl (Blume document No. 11), pp. 3-5.

24) See trans. pp. 847, 1025, 1378, and 2024 as well as Pros. Exh. nos. 119 and 61 (cf. trans. P.

25) Cf. Transcript pp. 1787-1790; furthermore aff. Radl. P. 5)

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9 Feb.-A-BK-14 & 15-5-Gallagher (Int. Juelich)
Court II, Case 9

On the other hand the defendant Blume had nothing to do with the shooting of 27 Jews in Witebsk who refused to come to work and which took place a short time before, because Foltis carried out this execution under the Fuehrer Order on his own initiative without the defendant Blume having issued such an order or having any knowledge of it.

While Sonderkommando 7A stayed at Lake Loswida – about the end of July and beginning of August 1941 – Hauptsturmfuehrer Foltis was ordered to Witebsk to fight partisans. There Foltis independently and on his own initiative carried out the liquidation of 50 - 60 people. The defendant Blume did not issue an order in this case either, on the contrary, this liquidation was in contradiction to the form resolution Blume had made in Witebsk after the liquidation there to avoid any similar situation by all means. The defendant Blume only learned about it when Foltis returned from Witebsk. He therefore had no chance to prevent the execution. Foltis acted within the framework of the Fuehrer Order.

Moreover, up to the middle of August 1941, Sonderkommando 7 shot armed partisans or saboteurs in very rare cases only, altogether about 10 – 15 persons within 6 weeks. On the witness stand the defendant Blume testified that in such cases careful interrogations used to take place, and that executions which were ordered according to the Fuehrer Order concerning such cases were carried out only if the guilt of the partisans or saboteurs had been clearly proved. I believe I need not go into further details in this connection.

The above mentioned enumeration is complete (paragraphs 1 – 4). This has been confirmed by the defendant Blume on the witness stand under oath. ²⁶⁾

As to the individual responsibility of the defendant Blume then there only remains the shooting of about 80 Jews in Witebsk on 19 or 20 July

26) Cf. Transcript p. 1805 (on this page the translation unfortunate-ly [sic] is incorrect and incomplete.)

9 Feb.-A-BK-14 & 15-6-Gallagher (Int. Juelich)
Court II, Case 9

1941, carried out by the defendant Blume by strict order of his superior Nebe. I want to call Your Honor's attention to the fact that the defendant Blume, from the beginning, admitted this case voluntarily and on his own. There is no report of events and no other evidence concerning this case. The defendant Blume in this connection is incriminated only by his own testimony which he gave voluntarily.

I should like to request the Court, in deciding the defendant Blume's guilt or innocence in this case – Witebsk – to take into consideration all statements which I made in the first part of my plea concerning "unexpectedability", and which the defendant Blume made on the witness stand about the details of the state of emergency in which he found him-self [sic] at that time. The conclusion can only be as follows:

The defendant Blume could not be "expected" to act differently in the Witebsk case. He had no other choice at that time. If he had refused to obey Nebe's order, a court martial proceeding would certainly have been started against him which would have resulted in a death sentence. This alternative, however, left no moral choice for him. In this connection it is important that the defendant Blume – as far as his good character is concerned – was and is the very contrary of what the Prosecution has contended at the beginning of this trial. The Prosecution stated in its opening statement:

"Each of the defendants in the dock held a position of responsibility or command in an extermination unit. Each assumed the right to decide the fate of men, and death was the intended result of his power and contempt."

None of this has been proved against the defendant Blume. On the contrary, it is proved that the defendant Blume never wanted the killing of Jews, that he ordered it on a single case - Witebsk – only under extreme compulsion limiting it to able-bodied men and sparing women and children, that from Witebsk he sent a courageous report to his superior Nebe with the aim of preventing the liquidation of the

9 Feb.-A-BK-14 & 15-7-Gallagher (Int. Juelich)
Court II, Case 9

Jews and having the Fuehrer Order revoked, ²⁷⁾ that in his conversation with the local commander at the Wilna he did not intend the killing of Jews, but recommended very limited measures under the necessity of the Fuehrer Order. ²⁸⁾

In accordance with this, all character testimonies offered on behalf of the defendant Blume give the picture of a splendid and good character [sic] (Blume documents nos. 15-29 and 31-34, also 11 and 12). ²⁹⁾ I need not go into details. If I may summarize the most important facts in these affidavits, I may say that all these affiants always emphasized the following characteristics as the salient characteristics of the defendant Blume, namely, his open and sincere manner, his honesty and love of truth, his pleasant and kind manner which made him popular wherever he went, and his fairness in sports and his tolerance of other people's opinions. As far as the affidavits refer to the professional activity of the defendant Blume, they confirm his absolutely correct and decent attitude and – briefly put – the fact that in his whole professional career he only served law and justice.

In conclusion I ask the Tribunal to acquit the defendant Blume on Count I and II of the indictment.

Under Count III the defendant Blume has been charged with membership after 1 September 1939, in various organizations which have been declared criminal by the International Military Tribunal. I can be brief in discussing this Count.

a.) Count III, B of the Indictment charges the defendant Blume with having been a member of Offices III, VI and VII of the Reich Security Main Office which constituted part of the SD. This, however, is a mistake. The defendant Blume was never a member of these offices of the RSHA. ³⁰⁾

27) Transcript pp. 1786-1787 and 1820.

28) Transcript pp. 1884 – 1888

29) Cf. transcript pp. 5234-5237 and transcript of 2 February, 1948, afternoon session, and transcript pp. 5232-5233.

30) Cf. transcript pp. 1851 and 1877 – 1879.

9 Feb.-A-BK- 14 & 15-8-Gallagher (Int. Juelich)
Court II, Case 9

b.) Count III, C of the Indictment charges the defendant Blume with having been a "member of Office IV of the Reich Security Main Office", which constituted part of the so-called Gestapo. This again is a mistake. The defendant Blume was never a member of Office OV [sic] of the RSHA. ³¹⁾

c.) Count III, A of the Indictment charges the defendant Blume with membership in the Schutzstaffeln of the NSDAP, i.e. the so-called SS. In the final analysis this is not correct either; the defendant Blume can not be punished for this, either.

The International Military Tribunal in its judgement declared criminal only a certain group composed of those persons who officially became members of the SS, etc. ³²⁾ The essence of this offense according to the clear wording of the IMT judgement is cooperation for criminal purposes in the above mentioned group of the organization. ³³⁾ Before the IMT Justice Jackson spoke accordingly: ³⁴⁾

"The purpose of declaring criminality of organizations.... is punish-ment [sic] for aiding crimes...."

The defendant Blume was only a police official. He never did any service in the SS and therefore never rendered any "cooperation for criminal purposes" within the SS. ³⁵⁾ He never held any position in the SS, but only a so-called assimilated rank. In this connection I refer to the official decree concerning this assimilation of ranks dated 23 June, 1938 (Blume document No. 10) and to Blume's testimony concerning this question. ³⁶⁾

On the basis of this assimilated rank the defendant Blume was only a formal member, but no "real" or "active" member of the SS.

31) Cf. transcript pp. 1852 - 1853, and 1879 - 1881

32) Cf. Official Edition, vol. I, p. 273.

33) Cf. Official Edition, vol. I, p. 256

34) Cf. Official Edition, vol. VIII, p. 369

35) Cf. transcript p. 1848

36) Cf. transcript pp. 1848 - 1850.

9 Feb.-A-BK- 14 & 15-9-Gallagher (Int. Juelich)
Court II, Case 9

Likewise irrelevant is the fact that the defendant Blume, 8 or 10 days before the German capitulation, received a military draft call for the Waffen-SS with the military rank of private first class. Like any other soldier, the defendant Blume had no possibility but to obey this draft order.³⁷⁾

The defendant Blume, therefore, must also be acquitted on Count III.

In conclusion I am going to deal with the question which could be called the "great problem" of the Nurenberg [sic] Trials. These are the questions concerning jurisdiction and justification of these tribunal and the doubts arising from Control Council Law No. 10.

Logically these statements should have been made at the beginning of this plea. However, I intentionally mention them at the end. For I believe that the statements made in the previous paragraphs I – III in themselves are sufficient a foundation for my request to acquit the defendant Blume. Moreover, in this case No. 9, we are faced with the fact that many thousand innocently exterminated human beings demand that justice be done. Therefore it might be said that it is of no relevancy whether e.g. this tribunal must be considered an American or an International one and whether Control Council Law No. 10 contains international law, be it as codification or innovation, or whether the four occupying powers in the Control Council Law are competent merely to pass occupation laws (under Article 43 of the Hague convention on Land Warfare), or whether they executed German [sic] legislative power since according to the Berlin Declaration 5 June 1945, they assumed sovereign legislative power over the former German territory and its population, the very legislative power which Hitler held as dictator during the preceding years.

As a lawyer, however, I am familiar with the fact that in the realm of the law [sic] the formal aspect is very essential; and sometimes the ultimate problems of justice are hidden behind these formal questions. Therefore I should like to say a few words concerning the "great

37) Cf. transcript p. 1850.

9 Feb.-A-BK- 14 & 15-10-Gallagher (Int. Juelich)
Court II, Case 9

problem" of the Nuremberg Trials.

THE PRESIDENT: Just a moment please.

DR. LUMMERT: It is in the middle of page 30.

THE INTERPRETER: I am sorry, Your Honor, there is one page missing in the translation. Possibly it could be read slowly for translation.

DR. LUMMERT: You have read this already?

THE PRESIDENT: You have it now?

DR. LUMMERT: I thought the interpreter could read the missing para-graphs [sic]. At first I can read it to you.

THE INTERPRETER: Yes, that is possible.

DR. LUMMERT: The Prosecution in its Opening Statement called the Indictment a "plea of Humanity to Law".

What does Humanity means? Nobody has found more striking words for the explanation of this term than the German philosopher Johann Gott-fried [sic] Herder. He was born in East Prussia and lived in Weimar after 1776 and during the years from 1793-1797 he published several collec-tions [sic] of "Letters to promote Humanity" in connection with his "Ideas on the philosophy of the history of mankind." In the 27th letter he wrote the classic words:

"The divine in us therefore is education for humanity; all great and good people helped in it, legislators, inventors, philosophers, poets, artists, every noble man in his position, in the education of his children, in observing his duties, by example, work, institution, and philosophy. Humanity is the treasure and the result of all human strivings, it is the a r t [sic] of mankind. The education for it is a work which has to be continued ceaselessly; or else we, higher and lower classes, shall lapse back into crude animality, into brutality."

Whoever would not who leheartedly [sic] agree if this Humanity appeals to Law? But which is this Law? Under section I, 2a of this plea we saw that thus far the sovereignty and egoism of the individual States are the highest law on earth, and that the alleged international law of Control Council Law No. 10 has thus far actually not been recognized by the

9 Feb.-A-BK-14 & 15-11-Gallagher (Int. Juelich)
Court II, Case 9

individual sovereign States as supernational law nor has it been embodied in the Charter of the United Nations. For the time being then, only the sovereign power of the victor States is using those new principles of law against citizens of defeated Germany unilaterally. From this one-sidedness results the doubt in the "justice", and also the "great problem" of the Nuremberg [sic] Trials. This problem will remain unsolved as long as the "reign of Law" in an "organized mankind" in the sense of the great ideas of President Wilson has not actually been established. This problem, on the contrary, would be decided in the negative if the organization of mankind does not take place. For in this case "les lois de l'humanité et les exigences de la conscience publique" (the Laws of humanity and dictates of the public conscience) which have already been mentioned in the introduction to the Hague Convention of Land Warfare as the basis for the Convention, could not be realized. Present world developments, just as in the years after 1918, are obviously away from this goal.

Whoever, like myself, believes that it is the meaning of History, gradually to overcome force among men in favor of a general peace and a supernational law of mankind, can only fear that the work done in the Nuremberg "Palace of Justice" during the past 2 years might have been one-sided and therefore in the final analysis vain and unjust.

May the judgment of the Tribunal in this great trial bring us closer to the solution of the legal problems of mankind.

9 Feb.-A-MV-16 & 17-1-Arminger (Int. Juelich)
COURT II, CASE IX

THE PRESIDENT: Dr. Lummert, I wish to congratulate you on the excellent manner in which you have presented your plea in English, al-though [sic] that is not your native language.

DR. LUMMERT: Thank you so much, Your Honors.

THE PRESIDENT: Who is ready now? Do we have the final summation of Dr. von Stein's? I don't hav [sic] it.

You may proceed.

Your Honor, Members of the Court:

May I at the start of my final plea refer to the trial-brief which I have submitted. Where I have summarized the essential results of the evidence. Principally I wish to repeat here once more what I have par-ticularly [sic] emphasized at the close of this trial-brief: That it is ne-cessary [sic] to oppose in the strongest possible way the contention expressed by the Prosecution that they need carry only a minor part of the burden of proof in regard to the culpable participation of the defendants in the criminal acts alleged in large outline by the Prosecution. The more grievous the misdeeds are with which a defendant is charged the more con-scientiously [sic] and indubitably must it be proven that he really committed these acts. May I refer here to the statements of the Military Tribunal No. IV in the judgment of Case V. (Quoted in the JOST-Doc. Book IV, Page 7, JOST Doc. No. 36). At the close of the trial-brief it is explained what remains of proven criminal acts on the part of the defendant Dr. SANDBERGER after the results of the evidence have been appraised. Therefrom [sic] it follows that essentially 2 questions are relevant for the de-cision [sic] of the Case:

- 1.) How are SANDBERGER's measures against Communist activists and
- 2.) how are SANDBERGER's measures against the Esthonia Jews to be judged?

SANDBERGER's measures against Communist activists.

- 1.) The reason for the Fuehrer - Order.