

AFTERNOON SESSION

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Mr. Thayer, just before you proceed, is counsel for the defendant, Kupke, in the courtroom? Who is the defense counsel for Kupke?

JUDGE WILKINS: Dr. Behling.

MR. THAYER: Dr. Behling is not here, Your Honor.

THE PRESIDENT: Well, we have a report from the prison physician saying he ought to be examined. We will take it up when he comes in. It is for his own protection.

MR. THAYER: May it please the Tribunal, prosecution has finished its questions on redirect. Pending cross examination by the defense counsel, particularly with reference to the defendant Houdremont, if that raises any further questions on redirect, we reserve the right to question further.

DR. KUROWSKI: After contacting the defendant Houdremont, I withdraw my motion that the defendant, Houdremont, should participate in the afternoon session. I withdraw this motion; I have, however, a few questions.

THE PRESIDENT: Very well. Did you want to cross examine him any further, Doctor?

DR. KUROWSKI: I withdraw my motion that the defendant, Houdremont, should participate in the afternoon session.

THE PRESIDENT: But did you finish with him?

DR. KUROWSKI: Yes, I only want to put one question to the witness.

ALBERT SCHWARZ - Resumed

RECROSS EXAMINATION

BY DR. KUROWSKI:

Q Is it correct that you only gave a short report of about five minutes when you talked to the defendant, Houdremont, at the end of August?

A Yes, this was certainly a short period of time, I believe at the most ten minutes.

DR. KUROWSKI: No further questions.

MR. THAYER: Prosecution has no further questions on redirect.

THE PRESIDENT: Did you have any questions, Judge Daly?

JUDGE DALY: No.

THE PRESIDENT: The witness is excused.

(The witness left the courtroom).

MR. THAYER: Prosecution wishes to take only a moment to clear up a few points. Document book 38 was delivered on the 23rd of December to defense counsel. Notice was given of the appearance of this witness.

THE PRESIDENT: I think they conceded that.

MR. THAYER: In respect, Your Honor, to Exhibit 872, which was introduced and accepted for identification this morning, Document NIK 12334, objection was made by the defense counsel because the German did not contain one page which was contained in the English. We would like to reoffer that document now as a full exhibit with this explanation: that page in the English was simply an additional page from other source unknown to the prosecution, which was by accident inserted in the document room. It has no connection with the document, is not a part of the photostatic exhibit at all, and therefore is irrelevant to the prosecution's case. That, I think, was on Page 66 of the English, Your Honor. That page, aside from the certificate of translation at the bottom of the page, can simply be struck off.

THE PRESIDENT: You mean with the exception of the certificate of translation?

MR. THAYER: With the exception of the certificate of translation.

THE PRESIDENT: I suppose that superfluous page must be in the translated copy, too, which the defense counsel has.

MR. THAYER: No, Your Honor, defense counsel were lacking that in the German. That is why they objected to it. That was page 66 of the English.

THE PRESIDENT: It leaves on that page only the certificate of translation?

MR. THAYER: That's right. The photostatic copy does not contain that page at all. Some way or another --

THE PRESIDENT: Of course, the photostatic copy is actually in evidence. That will be admitted now.

MR. THAYER: Thank you, Your Honor.

Prosecution would like to offer now presentation of documents in Book 33.

Prosecution offers as Exhibit 879 excerpts from the Document R 124, on page 1 of the English and of the German. These are extracts from the minutes of the 54th conference of the Central Planning Board with a discussion of the deportation of foreign workers to Germany.

THE PRESIDENT: Will you let me interrupt you? It brings to my mind something. There was an organization referred to by this last witness by initials -- four initials.

MR. THAYER: Are you referring, Your Honor, to the Labor Allocation Office?

JUDGE WILKINS: W.V.H.A.

THE PRESIDENT: Yes, I have it here.

MR. THAYER: The W.V.H.A. was the Economic Office of the SS. I can't offhand give you the German of it.

THE PRESIDENT: I don't want the German.

MR. THAYER: It was the Wirtschaft economy.

THE PRESIDENT: That is in substance what you contended was?

MR. THAYER: The Economic Administration Office of the SS -- the Main Administration Office, and if Doctors Wolf and Maschke will be kind enough to assist me with the German, it was Wirtschaft und Verwaltung Hauptamt -- the top administrative economic office.

THE PRESIDENT: Pardon the interruption. I was afraid that I would forget it. I intended to ask at the time.

MR. THAYER: Your Honors may take judicial notice of some of the

proceedings in the case just closing in this building -- the RuSHA case -- I can't remember which Tribunal number it is -- also the Pohl case, in which the W.V.H.A. and its activities are fully described?

Prosecution offers as Exhibit 880 extracts from the document NOKW 442, page 5 of the English and 9 of the German. These are extracts of the meeting of the Taegerstab, the Fighter Plane Council, in May, 1944, in which the chief of the labor allocation of the Speer Ministry speaks concerning the deportation of Italian workers to Germany, which may throw some light, Your Honors, on something of the status of Italians, some of whom were civilians deported, and some of whom had formerly been prisoners of war, and noting that precautions should be made to see that Italians who were deported by force were shot rather than allowed to jump out of railroad carriages.

Prosecution offers as Exhibit 881 document NIK 12709, which is a letter from the artillery office of the Hague to Krupp, concerning the transfer of Dutch workers to the Krupp shipyard. This was a transfer from state owned Dutch artillery enterprises, to Krupp, to Germany, for use in the Krupp plant.

Prosecution offers as exhibit 882 Document NIK 12601, page 9 of the English, 13 of the German. It is a copy of a letter from the commander of the Security Police (SD) in the occupied Netherlands territory, referring to punishment of Netherlands workers who tried to evade work in Germany. Dr. Muentinga was the head of the conference of social administration.

Prosecution offers as exhibit 883 Document NIK 12605, page 10 of the English, 15 of the German. This is a copy of a report concerning the transfer of 30,000 Dutch steel workers to Germany, and identifies Oberregierungsrat Muentinga, Page 11 of the English, 19 of the German.

DR. MASCHKE: Mr. President, the document submitted consists of a photostat which has no original signature. It is called a copy and on the original it is alleged to have the signature of an SS Oberhauptsturmfuehrer, but his name is not given. This photostat does not show who made the copy and from whom this original letter originated. For that reason I object to the submission of this document.

THE PRESIDENT: What do you say, Mr. Thayer?

MR. THAYER: Your Honor, this is a certified copy from the Dutch. It is true that the signature is illegible and the original photostat has the Dutch certification as to its correctness, which is behind the certificate, as to the source of it.

DR. MASCHKE: May I ask the prosecution whether it is a translation or whether it is an original letter?

MR. THAYER: I think that is the original, Your Honor. This is a copy of the original found in Dutch records, copy of which has been certified to us. It has been stamped at the end in Dutch, that the signature is illegible and the photostatic copy has a stamp in Dutch, signed by the Dutch official to the effect that it is illegible.

THE PRESIDENT: This class of document, unsigned and with no accounting for the origin, presents quite a problem as to our not knowing from what source they came. It is hardly known how they can be successfully attacked. They give the Tribunal considerable trouble. According to these rules under which we are operating, they are of no probative value, and we will have to regard it in that light. By its admission we don't say that means any probative value will be given to it, but the failure of the signature and other circumstances surrounding it, the Tribunal feels, go to the probative value of the document rather than its admissibility. Now, if the time comes to argue that probative value, then, of course, you will have ample opportunity to do that. Frankly, I had a little different view about it originally, but regardless of how I feel, that is the situation. We are required to abide by these rules under which we are working. We don't mean to

say by admitting this as evidence we are going to give it any probative value, but it has to be considered for whatever it is worth. We do not tacitly mean to say it has not any probative value.

MR. THAYER: Your Honor, prosecution does not at this time desire to argue the probative value of the document, either. We would like to say that we feel sometimes these documents are attacked on the basis of probative value without warrant, and that a document such as this should be given the same consideration as any other document, inasmuch as internally it is well identified as coming from a German source in the Netherlands, during a period of time, it gives the rank of the person signing it. Simply because the signature is illegible I don't think that should affect the value of the document, either for its admissibility or its probative value.

THE PRESIDENT: We ruled on it. We didn't mean to say it did or did not have any probative value. The members of the Tribunal were as little originally accustomed to the rules under which we are operating, as counsel. It is a somewhat difficult problem to cope with. It is certainly not the rule which prevails in the United States, but that is the decision, that is the way the majority of the Tribunals feels about it, and that is the rule that will be adhered to and enforced.

MR. THAYER: Prosecution offers as Exhibit 884 Document NIK 12608, page 13 of the English, 20 of the German. It is a copy of the report of the Commander of the Security Police (SD) for the Netherlands territories, referring to the transfer of Dutch workers to Germany. It would appear, Your Honor, that this document is the same as to its signature as the other one.

THE PRESIDENT: We will take the same course. No. 884, is that the right number?

MR. THAYER: Yes. Prosecution offers as Exhibit 885 extracts of the document 1726 PS, page 15 of the English, 23 of the German, an extract from the statement of the Netherlands government, an official

of the Netherlands government, with respect to the prosecution of German war criminals, and identifying the pages from which this section of the report is taken. This explains in some detail the method by which workers, civilians, were required to go to Germany to do labor, and it explains the methods of pressure which prosecution contends changed civilians from completely free to unfree workers, and although they might have had a certain amount of liberty, they were not to be regarded as voluntary and free workers. This document also contains some statistics at the end of page 20 of the English, 27 of the German.

Prosecution offers as exhibit 886 document NIK 12587, page 23 of the English, 30 of the German, which is also a report from the Labor Allocation Office of Holland concerning the transfer of skilled workers.

Prosecution offers as exhibit 887 Document NIK 12598, page 24 of the English, 32 of the German. It is a copy of a letter concerning the transfer of Dutch labor evaders from the Amersfort concentration camp to the Labor Education Office at Mulheim in the Ruhr, which was the labor center for the Ruhr. Prosecution calls attention -- I beg your pardon, that is the next document.

Prosecution offers as Exhibit 888 Document D 196, Page 25 of the English, 33 of the German. This is a memorandum of the Labor Allocation Office "A", the office of the defendant, Lehmann, concerning points of discussion with respect to the obtaining of civilian labor. I call attention of the Tribunal that this was distributed, among others, to the defendant, Mueller, who was No. 1 on the distribution list on the top of that letter. This is a particularly important document, explaining at this fairly early date, December 1942, the methods which had been taken by Krupp in sending representatives into foreign countries. At the top of Page 26 of the English and 34 of the German, the special operations of iron producing industry refers to the R.V.E.'s special action to obtain labor for the iron industry,

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and refers to Dr. Roehling there in his capacity as head of the
R.V.E. and plenipotentiary for the Western territories.

MR. THAYER: Prosecution calls particular attention to the first paragraph and the middle paragraph in respect to the connections of Krupp in the use of the RVL for these purposes.

THE PRESIDENT: Is that on page 26?

MR. THAYER: Page 26, Your Honor, and in the place, the last word in the paragraph No. 2 there is a typographical error in the English. It again should refer to Dr. Roechling instead of Dr. Buechling. It should be R-O-E-C-H-L-I-N -G and in paragraph No 3, the second paragraph of that section, it should be noted that because of political -- the political situation in the unoccupied part of France, it is necessary to conscript these workers and that special action is to be taken against those and I quote, "...who could not be persuaded to sign the contracts and to leave"---

THE PRESIDENT: Where are you quoting from?

MR. THAYER: That is in the middle of the second paragraph, Your Honor, under the numbered heading 3 on page 26 of the English and at the bottom of page 34 in the German which sentence reads: "That will be 60 per cent of the skilled workers"...

THE PRESIDENT: Yes.

MR. THAYER: Pointing out that the Krupp plant was then in a position to know that they were not voluntary workers because they refused to sign contracts.

THE PRESIDENT: What is the date of this?

MR. THAYER: This is December 21, Your Honor, 21st of December.

JUDGE DALY: Mr. Thayer, I understood you to say that the distribution list indicated that the defendant Mueller was on the list. As I have it on page 27 the distribution list has B. Mueller not E. Mueller.

MR. THAYER: That is correct, Your Honor, and is a typographical error, I believe and in the photostatic copy it is apparent that it's E. Mueller and apparently this copy of the document was taken from E. Mueller's file because that name is underlined in the original of the

photostatic copy of the original. It is spelled out there E. Mueller.

JUDGE DALY: Well, then that would indicate that the defendants Loeser, A. von Bohlen, that is, the defendant referred to here as Krupp, is it not?

MR. THAYER: That is correct, Your Honor.

JUDGE DALY: And the defendants Mueller and Ihn were on the distribution list for this letter the last paragraph of which indicates that previous complaints against Krupp had been made?

MR. THAYER: That is correct, Your Honor.

JUDGE DALY: To indicate that they were exposed, at least, to knowledge of it as early as 1942.

MR. THAYER: For those reasons, Your Honor, we feel that this is one of the very important documents and it is signed as Your Honors will note by the defendant Lehmann.

JUDGE DALY: Now on page 25 up at the top of the page there is a copy of some initials there. What is the distinction between that and distribution there?

MR. THAYER: I don't know exactly, Your Honor, why the partial distribution list at the beginning and a more complete distribution list at the end. It may have been put on a secondary distribution at the end and in his office additional copies were made and redistributed as at the beginning here. Muo is the symbol used for Erich Mueller. That evidence has been put in document 2 or 3 -- 1, 2 or 3.

JUDGE DALY: I was just wondering and trying to get the system. All right, go ahead.

MR. THAYER: Judge Daly called attention to the fact that the last paragraph in the document refers to the fact that complaints had been previously received -- pardon me, Your Honor, for asking Mr. Kessler, my assistant, to be sure that our next witness is ready before he left the room, that was all.

THE PRESIDENT: Yes, that is all right.

MR. THAYER: As a matter of fact, there has been some detail in this letter as to types of complaints which had been made by foreign workers in respect to conditions at Krupp. Prosecution offers as exhibit 889, document NIK 12705 on page 30 of the English and 38 of the German.

This is a letter from Krupp, from the Gusstahlfabrik office of the Arbeitseinsatz A signed by the defendant Lehmann concerning the appointment of the Krupp recruiting agency in Paris and the assistance that can be given to Germaniawerft in getting labor. The reference, I believe, on the left-hand side in the end of the heading where it says "two illegible initials" those are the initials of Joeden who was at that time the head of the Germaniawerft or just about taking over from Schroeder and, Your Honors, in the English at the bottom of the page where it says "hand-writing notation for next word illegible" that word that is illegible to the processor is the Germaniawerft.

The typographical error at the end of the fourth line -- "change" should read "chance".

Prosecution offers as exhibit 890, document NIK 12945 which is on page 31 of the English and 40 of the German, this being a copy of a transport list dated May 19, 1944 concerning the transfer of 363 Dutch labor contract breakers and political prisoners from Amersfoort Camp to Krupp's.

I call attention to the fact that the index is incorrect in that it should read 19 May rather than 19 August.

Prosecution calls particular attention to two names on page 32 of the English and 40 of the German, the names of Berghout, No. 23 on the list and Bierens, No. 26 on the list, -- I beg your pardon that was page 41 of the German. Berghout and Bierens are both affiants whose affidavits are in document book 40, I believe, Your Honors, possibly in book 35. They were taken to Dechenschule from Amersfoort camp.

THE PRESIDENT: That is Berghout and who?

MR. THAYER: Berghout and Bierens, Your Honor, 26 on the outside column of figures.

Prosecution also calls attention to the fact that on the next page 33 of the English and 42 of the German, No. 42 Bosch whose affidavit we have and will probably introduce in evidence.

Prosecution offers as exhibit 891 document NIK 5993, page 34 of the English and 43 of the German. There is an error in the index, typographical error, May should read March, should read 18 March 1947 of the defendant Ihn. This is his affidavit concerning the sending out of Krupp representatives to Holland, Belgium, France, Italy and Poland.

Prosecution offers as exhibit 892, document NIK 7685, page 35 of the English and 44 of the German. This is an affidavit of the defendant Lehmann concerning his trips to Paris for the purpose of recruiting French workers and of some of the representatives Krupp maintained there.

Prosecution offers as exhibit 893 the affidavit on page 37 of the English and 46 of the German, affidavit of the defendant Kupke.

DR. WOLF: Mr. President, as to the submission of this document I only want to rectify that I cannot see from this document that Dr. Lehmann travelled to Paris in order to recruit Laborers. My German text says that Dr. Lehmann went to Paris for negotiation for allocating labor.

MR. THAYER: Prosecution won't quibble over it at this time as to whether labor allocation means recruiting labor.

THE PRESIDENT: The document will speak for itself.

Pardon me, excuse me just a minute. Dr. Behring, we have an affidavit, not an affidavit a statement from the prison physician to the effect that your client the defendant Kupke had been examined and found to be suffering from a kidney ailment and the physician wants him sent to the city hospital for a day to have a more thorough examination, some tests that can't be made in the prison.

Now, we are not disposed to do that unless the defendant wishes it done.

DR. BEHRINGER: At a previous date I have stated that the state of health of my client is not satisfactory and I am very grateful if now