

be a matter of general definition. In the final analysis the legal test is whether the evidence is sufficient to satisfy beyond a reasonable doubt the understanding and conscience of those who, under their solemn oaths, as officers, must assume the responsibility for finding the facts." End quote.

Also Military Tribunal II, in case 2 against Erhard Milch, expressed in its opinion the principle of criminal law recognized by all civilized nations, according to which no man can be sentenced to punishment until his personal guilt has been proven. I quote from that opinion:

"This Tribunal, before all others, must act in recognition of these self-evident principles. If it fails, its whole purpose is frustrated and this trial becomes a mockery. At the very foundation of these juridical concepts lie two important postulates: (1) Every person accused of crime is presumed to be innocent, and (2) that presumption abides with him until guilt has been established by proof beyond a reasonable doubt.

Unless the court which hears the proof is convinced of guilt to the point of moral certainty, the presumption of innocence must continue to protect the accused. If the facts as drawn from the evidence are equally consistent with guilt and innocence, they must be resolved on the side of innocence. Under American law neither life nor liberty is to be lightly taken away, and, unless at the conclusion of the proof there is an abiding conviction of guilt in the mind of the court which sits in judgment, the accused may not be sentenced."

Consequently the defendants could only have been guilty of committing crimes against peace if they had known that Hitler intended to wage a war of aggression and if, in full knowledge of his plans they had consciously assisted in the realization of these plans.

Hitler, however, by no means informed the defendants of his plans, as alleged by the prosecution. Hitler said the exact opposite to the German people and to the world. He spoke not of war, but always of peace.

In this connection it is not without significance that the International Military Tribunal acquitted Hans Fritzsche, whose task it had been to inform the German people by means of the press and the radio of what was happening.

In spite of this fact the prosecution apparently wishes to maintain that everybody in Germany knew that Hitler intended to wage wars of aggression. In its attempt to prove that the prosecution presented an overwhelming amount of evidence concerning the charges of crimes against peace, which evidence contains practically no reference to any of the defendants.

Unfortunately the Tribunal has not indicated whether and to what extent such evidence will be considered relevant in this case.

I shall try to prove why some of the acts with which the prosecution charges the defendants in this connection were lawful and some irrelevant as far as the law is concerned. In this respect I must reserve the right to submit some of the material pertinent to this count of the indictment at a later stage of the statement of the defense, since special difficulties have arisen. For example, the photostat office of the Courthouse ceased unexpectedly a few weeks ago to work for the defense; formerly it had done this work as a matter of course.

JUDGE DALY: Excuse me, Dr. Vorwerk, has that held up the preparation of the defendant's cases?

DR. VORWERK: Yes, it has delayed our work.

JUDGE DALY: Has it been taken up with somebody here in the courthouse to see that you can have the benefit of that work?

DR. VORWERK: Photostatic copies aren't made to the extent as before; therefore, we were forced to put some material into the form of an affidavit.

JUDGE DALY: No, I'm afraid you don't understand me. What I meant was that we have established a schedule here and if that schedule is being interfered with, we would like to know it and get in touch with the office here in the courthouse that is delaying you from going ahead on the scheduled basis. That is what I inquired about.

DR. VORWERK: Judge Daly, I merely want to explain that I should like to reserve the right for this first part of the defense, with reference to the aggressive war, to submit evidence at a later date, evidence which is not available at the moment.

JUDGE DALY: Oh yes, I understand that, but what I had in mind is this: If you gentlemen have encountered some difficulty with some office here in the courthouse where you expected to get help, we should be glad to see that you got the help so you wouldn't be delayed.

DR. VORWERK: Thank you.

JUDGE DALY: And specifically Doctor, what was your statement a minute ago? I am not sure that I have it clear. You said you were cleared -- some

JUDGE WILKINS: Some briefs, I think.

JUDGE DALY: -- somebody to do some work for you.

What was it?

DR. VORWERK: The photostat office only does certain photostatic work, namely, as far as I know, drawings; nothing else; and this hasn't been the case up to now.

JUDGE DALY: Well, what did you want to have done that was refused? So that we have it on the record.

DR. VORWERK: There are charts which deal with a schedule, a construction schedule of Krupp. It concerns extensive plans. It is impossible to draw or to write these plans by hand. If they are not photostated -- and apparently they can not get photostatic copies because only drawings are accepted by the photostat office of the courthouse; however, these aren't only drawings, but lists -- and charts of figures, and so forth. I am trying to overcome this difficulty by not submitting these books but in place of these books I try a collective affidavit and substitute it for that, but I haven't got these affidavits available at the moment.

JUDGE WILKINS: Mr. Ragland, are you familiar with this statement that was made here?

MR. RAGLAND: I read the statement, your Honors. I know of no change in the procedure of the photostat office. I would suggest that the Tribunal ask the Secretary General's office to get a report from Major Granzin, who is in charge of the photostat office, if there is any question concerning the procedures of that office or any change in its procedures.

JUDGE WILKINS: Well, the statement is made: I must reserve the right to submit some of the material pertinent to this count of the indictment at a later stage of the statement of the defense, since special difficulties have arisen, and then the word, "For example, the photostat office of the courthouse ceased unexpectedly a few weeks ago to work

for the defense."

MR. RAGLAND: Yes, I know.

JUDGE WILKINS: "Formerly it had done this work as a matter of course."

MR. RAGLAND: I gathered from the statement of Dr. Vorwerk that there wasn't a change in procedure and that he had a special type of work concerning which Prosecution, Defense, or anyone else might encounter some difficulties and that the Defense was working the matter out with the photostat office.

JUDGE WILKINS: What we want is this: We want to make it clear. The Defense have agreed to a certain length of time on which they want to produce their evidence, and on that basis -- we have given them a choice of choosing a considerably long recess -- and we don't want anything to interfere with that program. And when a statement is made like this we want to pin it down and know specifically just what the charge is. Now we will follow --

DR. WOLF: Your Honors, since this question has arisen, may I add the following: The Prosecution in its whole work has presented its documents as photostats and not one original. We have some other Krupp files which afterwards were found at Krupp itself and certainly from the numerous files now available to us from Room 306 and 307 -- and after that is looked through by the defendants and by the Defense Counsel we have a large number of documents which we should like to submit within the scope of our defense. These documents are now in these files, in these folders. We have stipulated with the Prosecution that the documents we need for defense purposes shall be taken out of the documents in the original and the places in the files will be marked. Of course, it will

be the simplest thing for us to exercise the same procedure as the Prosecution did; namely, to have photostats made of these documents and to introduce these photostats as exhibits to the court, -- to return the originals to the Prosecution. We have tried to do that by asking the photostat office to give us photostats of these originals. We were told that from now on only photographs and charts would be processed -- would be photostated, but not simple documents. Therefore, we are forced to submit the documents either in the original -- that is, not be able to return them to the original folders -- or else to get certified true copies, which, after all, takes much more time. Second of all, it would never make the same impression on the court as the original itself. These are the difficulties which have arisen through the refusal of the photostat office to photostat all documents in the future except photographs and charts. Consequently, I should like to request the Court to direct the photostat office to put its facilities at the disposal of the Defense the same as they were at the disposal of the Prosecution.

THE PRESIDENT: Let me inquire, Dr., have the facilities of that department been at the disposal of the defendants in the other cases here in Nuernberg?

DR. WOLF: I can't answer that, because I conducted no previous defenses in Nuernberg before this.

THE PRESIDENT: I was just wondering if there had been any change in the procedure of the whole program.

DR. WOLF: I do not know how the defense worked before that. I know from my own experience in this trial that the Prosecution offered its documents as photostats.

DR. WECKER: Your Honor, may I answer your question? As you know, your Honors, I worked in the Flick trial. All

documents which we took from the files of the Prosecution, as is the case in this trial, were made photostats of and were presented as photostats. Therefore, these were documents, not only cards, so that since that time there has been a change in proceedings. And, of course, it is a disadvantage to the defense as compared with the Prosecution, as my colleague Dr. Wolf said, that the prosecution had at its disposal the whole technical machinery, whereas now the defense, wherein each counsel has only one secretary, has to copy the whole thing by hand.

MR. RAGLAND: Again, the entire question seems to be one of the photostat office. I would suggest that either the representative of the Court or the representative of the Prosecution and the Defense would go communicate with Major Granzin, who is in charge of the photostat office and inquire -- as to whether there has been any change of procedure, and if there has been we can attempt to adjust the matter. I myself am unaware of any change in procedure.

THE PRESIDENT: Whether or not there has been any change in the procedure, there is no reason just yet why facilities of that office shouldn't be made available to Defense, if it is going to expedite the presentation of this evidence. Now, we have fixed a definite time limit within which the Defense is to present this evidence and repeat very emphatically that nothing be standing in the way of that being done. We don't want it to be said here when the time comes to be closing that they haven't been able to present their case because some facilities have not been made available to them that should be.

MR. RAGLAND: I agree, your Honor.

THE PRESIDENT: Just a moment. And we expect Defense

Counsel to take this as an example to notify the Tribunal promptly of any further instance that occurs like this so that we can do at least what we can -- now, what we can do may be a different question -- but we are willing to see that there is no basis or any excuse for any delay.

Now, following your suggestion, Mr. Ragland, suppose you and a representative of Defense Counsel and the Secretary General here see if you can make an investigation of it. See just what the situation is and if anything needs remedying, why, let us know about it.

MR. RAGLAND: Gladly, your Honor.

JUDGE DALY: I apologize, Dr. Vorwerk, for breaking in, but I was afraid there might be some misunderstanding, because when I attended a conference with representatives of the Defense Counsel and the time limit was talked about, they said then that was all right -- that if there was anything that we can do, that nothing be in the way of the Defense Counsel, then it would be done, and it was for that reason that I wanted to have the question discussed now, if something was interfering with the work of the Defense Counsel to proceed. That is the reason I broke in. I hope I haven't interrupted your train of thought.

DR. VORWERK: Thank you, your Honor. May I continue?

THE PRESIDENT: Yes, go ahead. Proceed.

Just one moment, Dr.

Since we have been interrupted with our -- It is just two or three minutes until recess time, why, we will take a recess.

(A recess was taken.)

THE MARSHAL: All persons in the courtroom will take their seats.

The Tribunal is again in session.

THE PRESIDENT: Proceed.

DR. VORWERK (For Defendant Karl pfirsch): I need only refer here briefly to the fact that the prosecution has no legal basis for its opinion that any violation of the armament limitations imposed on the Reich by the Treaty of Versailles constitutes per se a criminal act within the meaning of Control Council Law No. 10, punishable also if committed by individuals.

I would consider such an act punishable if it could be proved that the offense was committed with the intention of preparing and waging a war of aggression.

The basic theory of the prosecution, that ever since the first years after the World War of 1914/18 the aim of the then leading officials of the firm Krupp was to preserve the plant in disregard of the Treaty of Versailles, as a future armament potential, can easily be refuted.

In my opinion, however, the prosecution has not given individual proof of the fact that any such offenses of any importance occurred during the time when the armament limitations of the Treaty of Versailles were in force as far as the tasks of the defendants were concerned, inasmuch as they were employed by the Krupp firm at the time in question.

With regard to Count 2 of the Indictment, so-called spoliation, I am of the opinion that the prosecution did not assert - much less prove - conclusively, from the legal or from the factual point of view, that criminal acts were committed. This was especially true in the case of Pfirsch. I can, therefore, limit my defense with regard to this Count to emphasizing the negative result of the evidence submitted by the prosecution, in order to point out that in his field of authority Pfirsch neither had to make nor actually made pertinent decisions, that he had no part in any decisions of that nature, if such decisions were made by the firm Krupp, in fact that he was not even informed of them, but above all had no part in their execution.

The same is true in the case of Count 3 of the Indictment, so-called slave labor. The prosecution has failed to bring any proof that Pfirsch played any important part in the formulation and execution of the official so-called slave labor program, or that he knew about the relatively isolated abuses which may have been committed by subordinate functionaries in the course of the treatment of the foreign workers whom Krupp rather unwillingly employed. Since the Prosecution has thus far been unable to bring any serious charges against Pfirsch in this respect, I can limit my defense with regard to this count mainly to pointing out these shortcomings of the prosecution and its presentation of evidence.

Summing up, I wish to say that I consider the material brought by the prosecution against Pfirsch insufficient on all counts of the Indictment. Should the Tribunal still have any doubts on individual points, I am convinced that the evidence which I shall submit will

remove them.

Since, I have to represent the basic principles with regard to Count I of the Indictment on behalf of all the defendants, I need, in view of what I have already said, only refer to the motions submitted by the entire defense.

DR. POHLE (For Dr. Kranzbuehler, counsel for the defendant Max Ihn):

Your Honors,

Like most of the other defendants, my client, Max Ihn, is also charged with crimes against the peace and with participation in the criminal preparation and waging of aggressive wars and in a conspiracy relating to the preparation and waging of such aggressive wars. Although repeatedly challenged by the defense, the Prosecution has omitted to substantiate its charges in detail and to demonstrate the personal connections which are alleged to exist between the individual defendants and the criminal preparation and waging of aggressive wars. I am not dealing with this subject on behalf of the defendant Max Ihn. For he as Personnel Chief does not occupy an important position amongst the defendants from company owner to the chief of the supreme camp leadership. Consequently, I merely reserve the right to make supplementary remarks to this topic, in the evidence procedure.

Likewise, I shall be able to confine myself to brief additional explanations to Count II of the Indictment, i.e., the so-called "spoliation". To this count the Prosecution, in spite of the objections raised by the defense, has not produced anything either that would even allude to a responsibility of the defendant Max Ihn for these allegedly criminal actions. Nothing but the fact that he was a member of the directorate of the firm of Krupp. This subject I also leave to the spokesmen within the defense.

On the other hand I shall comment extensively on the so-called "slave labor program". On behalf of the entire defense I have taken it upon myself to explain to you the principles according to which the employ-

ment and treatment of the foreign workers were effected in Germany and at the Friedrich Krupp AG during the war. In this trial, too, I am obliged to explain these principles to the Tribunal, although during the Flick Trial I had an opportunity of revealing to the Court the true picture of the employment and treatment of foreign workers in Germany during the war in all its aspects. For not only by the wording of the Indictment, but also by the documents incorporated in its evidence, the Prosecution demonstrates that it is going to charge the defendants in this trial with having participated in the forcible removal and deportation of the foreign workers, basing such charge on the same arguments which were often refuted during the Flick Trial. I reserve to a later stage of the trial my juridical comments on the criminal actions as defined by Control Council Law No. 10 on which the Prosecution bases this charge.

On scrutinizing the argumentation of the Prosecution we encounter also in this trial a fundamental mistake which the Prosecution, obviously deliberately, maintains and fosters: the misleading premise - which drags on and on like an eternal illness - that "at least 5 million workers were forcibly removed to Germany". The indictment in the Flick trial admitted at least that 200,000 came of their own free will. In the Krupp trial this admission is obviously being withdrawn. I shall furnish proof showing that these figures are very, very far from correct. Not even the International Military Tribunal made the statement maintained by the Prosecution. It only referred to the notorious statement of Sauckel in the Central Planning Office to the effect that out of 5 millions of workers hardly 200,000 had come voluntarily. But at no time did the IMT make this figure the basis of any positive statement as to the number of the workers employed in Germany against their will.

In this connection I shall submit evidence to the Tribunal to show that the so-called unwilling workers from some countries came to