

BR. 438.

PROCEEDINGS

of a

MILITARY COURT

held at

HQ 5 DIVISION, BRUNSWICK, B.A.O.R.

on

THURSDAY, 22nd MAY, 1947

FRIDAY, 23rd MAY, 1947

and

SATURDAY, 24th MAY, 1947

upon the trial of

KONRAD MANGOLD

LUDWIG WILL

KARL SCHMIDT and

OTTO KOCH

German nationals

FIRST, SECOND AND THIRD DAYS

I N D E X

F I R S T D A Y

	<u>Page.</u>
CHARGES AND PLEAS	2.
CAPTAIN CLEAVER'S OPENING ADDRESS	4.

S E C O N D D A Y

Captain H.W.E. CLEAVER, Sworn	18.
HEINRICH THOMAS, Sworn.	
Examined by Captain Cleaver	19.
Cross-examined by Mr. Simon	22.
THE ACCUSED KONRAD MANGOLD, Sworn.	
Examined by Mr. Simon	25.
Cross-examined by Dr. Peters	30.
Cross-examined by Captain Cleaver	32.
Re-examined by Mr. Simon	34.
THE ACCUSED LUDWIG WILL, Sworn.	
Examined by Dr. Peters	38.
Cross-examined by Captain Cleaver	41.
THE ACCUSED KARL SCHMIDT, Sworn.	
Examined by Mr. Peters	42.
Cross-examined by Captain Cleaver	48.
Re-examined by Dr. Peters	51.

T H I R D D A Y

WILFRIED KOCH, Sworn.	
Examined by Dr. Peters	54.
Cross-examined by Captain Cleaver	55.
Re-examined by Dr. Peters	55.
THE ACCUSED OTTO KOCH, Sworn.	
Examined by Dr. Peters	57.
Cross-examined by Mr. Simon	62.
Cross-examined by Captain Cleaver	62.
Re-examined by Dr. Peters	65.

PROCEEDINGS

of a

MILITARY COURT

held at

HQ 5 DIVISION, BRUNSWICK, B.A.O.R.

on

THURSDAY, 22nd MAY, 1947,

FRIDAY, 23rd MAY, 1947,

and

SATURDAY, 24th MAY, 1947.

upon the trial of

KONRAD MANGOLD,

LUDWIG WILL,

KARL SCHMIDT and

OTTO KOCH,

German nationals

PRESIDENT

Lieutenant-Colonel S. C. AULD, R.A.

MEMBERS

Major G. E. FIELD, R.A.

Captain F. R. LONGHURST, R.A.

Flight-Lieutenant M.D. DELANEY, Royal Australian Air Force.

Captain D.F.W. PINCH, R.A.

JUDGE ADVOCATE

IAN C. BAILLIEU, Esq., Barrister-at-law.

(Transcript of the Shorthand Notes of Hibbit & Sanders,
10, King's Bench Walk, Temple, London, E.C.4.)

FIRST, SECOND AND THIRD DAYS

The order convening the Court is read in the presence of the Accused.

The Prosecutor is Captain H.W.R. CLEAVER, R.A., War Crimes Group, North-West Europe.

The Defending Counsel representing Will, Schmidt and Koch is Dr. PETERS.

The Defending Counsel representing Mangold is Rechtsanwalt SIMON.

The President, Members, Judge Advocate and two officers under instruction are duly sworn.

The following interpreters are duly sworn: Lt. W. Williams, Sgt. W. Frank, Sgt. R.C. Powell and Sgt. Fraser, all of Interpreters Pool, British Army of the Rhine.

The shorthand writer (Mr. Philip Sanders) is duly sworn.

At 1000 hours the trial commences.

THE JUDGE ADVOCATE: I shall now read the first charge. The Accused Mangold, Will, Schmidt and Koch, German nationals in the charge of pursuant to Regulation 4 of the Regulations for the Trial of War Criminals, are charged with committing a war crime, in that they in the vicinity of Gladenbach, Germany, on or about the 10th December, 1944, in violation of the laws and usages of war, were concerned jointly with Karl Menge in the killing of Flight Sergeant H.D.F. McGladrigian, Royal Australian Air Force, a prisoner of war. Mangold, do you plead guilty or not guilty?

THE ACCUSED MANGOLD: Not guilty.

THE JUDGE ADVOCATE: Will, do you plead guilty or not guilty?

THE ACCUSED WILL: Not guilty.

THE JUDGE ADVOCATE: Schmidt, do you plead guilty or not guilty?

THE ACCUSED SCHMIDT: Not guilty.

THE JUDGE ADVOCATE: Koch, do you plead guilty or not guilty?

THE ACCUSED KOCH: Not guilty.

THE JUDGE ADVOCATE: There is a second charge in this case against the accused Mangold only, and I shall now read it. The accused Mangold, a German national in the charge of pursuant to Regulation 4 of the Regulations for the Trial of War Criminals, is charged with committing a war crime, in that he in the vicinity of Weidenhausen, Germany, on or about the 7th December, 1944, in violation of the laws and usages of war, was concerned jointly with Karl Menge in the killing of Sergeant J. Scott, Royal Australian Air Force, a prisoner of war. Mangold, do you plead guilty or not guilty?

THE ACCUSED MANGOLD: Not guilty.

THE JUDGE ADVOCATE: Dr. Peters, do you wish to apply for an adjournment in this case on the ground that there have been irregularities in the early proceedings which have prejudiced you, or on the ground that you have not had a sufficient opportunity of preparing your defence?

DR. PETERS: It is quite an unsure matter, because we have got the

translations of most of the productions in this case yesterday afternoon, and therefore the Accused have had no opportunity to have a look at them, and therefore I am in doubt if the Prosecution can start. But I do not want to waste the time of the Court, and therefore I want to have a decision of the Court in this case from the Court itself.

THE JUDGE ADVOCATE: It appears to me that this case must go on from day to day. If documents are brought out and you want an opportunity of discussing those documents with the people who you represent, you will have an opportunity over night. If it requires long discussion, the Court will do their best to see that you are not prejudiced, and they will adjourn at any time in the course of the day or from day to day so that your case can be properly conducted. If we say this, that the Prosecution should now open the case and make their opening address, you will then not only know what is in the depositions but you will more fully know the case which you are being asked to meet, so that any adjournment after that will be more helpful to you. When documents are put in, as I say, if you have not had sufficient time to digest them, then you can from time to time ask us to adjourn either for half-an-hour, or at mid-day rather than 1 o'clock, or at 4 o'clock rather than 6 o'clock, so that you can consult your Accused and prepare your defence.

DR. PETERS: Yes, Sir, I agree with you; but I think the witnesses for the defence will come on the Tuesday after Whitsun at the earliest.

THE PRESIDENT: I am given to understand that the witnesses for the defence are likely to turn up on Friday.

DR. PETERS: That is quite all right, then. I have only one question. In the mid-day adjournment I should like to be replaced by my learned friend Mr. Simon for two or three hours, from 1300 hours to 1600 hours, because I have a very serious appointment and I could not put it off.

THE JUDGE ADVOCATE: The Court has no objection to Mr. Simon representing all the Accused, if you so wish. The President informs me that the usual practice is for the Court to ask Counsel to obtain from the persons whom they represent a statement in writing to say that they are satisfied to be represented by Mr. Simon in your absence.

THE PRESIDENT: If you get that, the Court will agree, but it is up to them; they are the people you are defending.

DR. PETERS: Yes, Sir, I will give you this document.

THE PRESIDENT: Provided, of course, that Mr. Simon is prepared to take it on?

MR. SIMON: Yes, Sir.

THE JUDGE ADVOCATE: Mr. Simon, do you ask for an adjournment on behalf of Mangold on the ground of irregularities which have prejudiced you, or because you have not had sufficient time for preparing your defence?

MR. SIMON: The time was a bit short, especially as we have not seen the first interrogation in German. But I have just heard from Dr. Peters that the President is quite willing to adjourn the case from day to day, and I quite approve of this.

THE JUDGE ADVOCATE: You do not apply for an adjournment now?

MR. SIMON: No, Sir.

THE JUDGE ADVOCATE: Captain Cleaver, do you make an opening address?

CAPTAIN CLEAVELAND: May it please the Court. As there are a considerable number of facts constituting the background of the crimes alleged against the Accused, it is thought that perhaps a rather detailed explanation of the case from the view of the Prosecution will be of assistance to the Court.

During the night of the 6/7th December, 1944, after an air raid on the town of Giessen, south of Marburg, in the north-west corner of the American zone, a number of Allied aircraft were destroyed, and one of them was shot down near the village of Erdhausen, just north-west of Marburg. This aircraft was almost completely destroyed when it crashed.

At this moment, in view of the large number of names which will be mentioned, I would be very grateful for the advice of the learned Judge Advocate as to the employment of some sketches which I have had prepared from a map. I have given them to learned Counsel for the Defence, merely for their assistance; I think they agree that it is a fair reproduction, and I think possibly the Court will find it helpful to have the names and positions before them, even though no evidence has yet been called.

THE JUDGE ADVOCATE: I think it is most convenient, if we are getting information from that which requires to be proved and forms part of the evidence, no doubt the Prosecutor could be sworn for that formal purpose; but it may be that what you are handing us will not be telling us any facts which have to be proved, but merely keeping the names distinct so that we can more readily remember what you are saying.

CAPTAIN CLEAVELAND: That is the object of the sketches I have prepared, Sir. (Sketch maps handed to Court).

The crew of the destroyed aircraft numbered seven. One of them was taken prisoner in the ordinary military channels, and at the end of the war he was repatriated. He was Warrant Officer Forward. In a report on his return he stated that two other members of the crew of this aircraft, Sergeant Scott and Flight Sergeant McGladrigan, had left the plane by parachute before he did.

The report made by the Missing Research & Enquiry Unit of the British Air Forces of Occupation, which will be handed to the Court, reveals that four members of the crew were buried in the cemetery at the village of Erdhausen, near the scene of the crash, and it is assumed that these four persons were killed when the aircraft hit the ground.

On the 18th August, 1948, one of the United States War Crimes Investigation Teams exhumed, examined and identified the body of an Allied airman buried in a wood near the village of Gladenbach. A very detailed pathologist's report may be summed up as saying that this body had two gunshot wounds in the head, one of which would have caused death. The investigating Officer from laundry marks, badges of rank and other items found on the body, identified that body as the body of Flight Sergeant McGladrigan.

This American War Crimes Investigation Team investigated the circumstances of his death, and the results of their enquiries are in the hands of the Prosecution. During these enquiries it became apparent that another member of the crew had been killed in somewhat similar circumstances. A British War Crimes Investigation Team then took over the enquiries into both cases, and the two killings were incorporated into one case. From the information contained in the Missing Research & Enquiry Unit report and from routine correspondence with the British Air Ministry, it will become apparent that the second person killed was Sergeant Scott.

The Prosecution alleges that the Accused are responsible for

CAPTAIN CLEAVER: May it please the Court. As there are a considerable number of facts constituting the background of the crimes alleged against the Accused, it is thought that perhaps a rather detailed explanation of the case from the view of the Prosecution will be of assistance to the Court.

During the night of the 6/7th December, 1944, after an air raid on the town of Giessen, south of Marburg, in the north-west corner of the American zone, a number of Allied aircraft were destroyed, and one of them was shot down near the village of Erdhausen, just north-west of Marburg. This aircraft was almost completely destroyed when it crashed.

At this moment, in view of the large number of names which will be mentioned, I would be very grateful for the advice of the learned Judge Advocate as to the employment of some sketches which I have had prepared from a map. I have given them to learned Counsel for the Defence, merely for their assistance; I think they agree that it is a fair reproduction, and I think possibly the Court will find it helpful to have the names and positions before them, even though no evidence has yet been called.

THE JUDGE ADVOCATE: I think it is most convenient, if we are getting information from that which requires to be proved and forms part of the evidence, no doubt the Prosecutor could be sworn for that formal purpose; but it may be that what you are handing us will not be telling us any facts which have to be proved, but merely keeping the names distinct so that we can more readily remember what you are saying.

CAPTAIN CLEAVER: That is the object of the sketches I have prepared, Sir. (Sketch maps handed to Court).

The crew of the destroyed aircraft numbered seven. One of them was taken prisoner in the ordinary military channels, and at the end of the war he was repatriated. He was Warrant Officer Forward. In a report on his return he stated that two other members of the crew of this aircraft, Sergeant Scott and Flight Sergeant McGladrigan, had left the plane by parachute before he did.

The report made by the Missing Research & Enquiry Unit of the British Air Forces of Occupation, which will be handed to the Court, reveals that four members of the crew were buried in the cemetery at the village of Erdhausen, near the scene of the crash, and it is assumed that these four persons were killed when the aircraft hit the ground.

On the 18th August, 1945, one of the United States War Crimes Investigation Teams exhumed, examined and identified the body of an Allied airman buried in a wood near the village of Gladenbach. A very detailed pathologist's report may be summed up as saying that this body had two gunshot wounds in the head, one of which would have caused death. The investigating Officer from laundry marks, badges of rank and other items found on the body, identified that body as the body of Flight Sergeant McGladrigan.

This American War Crimes Investigation Team investigated the circumstances of his death, and the results of their enquiries are in the hands of the Prosecution. During these enquiries it became apparent that another member of the crew had been killed in somewhat similar circumstances. A British War Crimes Investigation Team then took over the enquiries into both cases, and the two killings were incorporated into one case. From the information contained in the Missing Research & Enquiry Unit report and from routine correspondence with the British Air Ministry, it will become apparent that the second person killed was Sergeant Scott.

The Prosecution alleges that the Accused are responsible for

the deaths of these two men; the exact part which each of them played will be detailed in a moment. The circumstances in which they came to be responsible are as follows:

The Accused Mangold was an official in the Gendarmerie; he was Bezirksobervachtmeister, that is police officer or H.C.O. in charge of a small district, and he appears to have been stationed in the village of Erdhausen. The Accused Will was a member of the Landwacht; that is an auxiliary force, a sort of police force for patrolling and other duties in rural areas. He lived at Gladenbach. The Accused Schmidt was a senior H.C.O. in the Gendarmerie; he was a Gendarmeriemeister. By virtue of his position he was able to give orders where necessary to members of the Landwacht, although the Landwacht did not come under his command. Schmidt was stationed at Gladenbach. The Accused Koch appears to have been a conscripted member, an emergency member, of the Gendarmerie; he lived at Bekelshausen, which is not very far from Biedenkopf.

The police for the whole area were under the command of an officer called Lieutenant Menge. Menge has not yet been apprehended. He was in command of what were known as the Group Posts; he was the officer in charge of all these posts. Each Group Post was in charge of a Gendarmeriemeister like Schmidt, and each of the Gendarmeriemeisters was in command of single posts, perhaps a village and the area around it, which were held by the ordinary Gendarme, Wachtmeisters, like Mangold. So the chain of command is: area commander, that is Lieutenant Menge, who was over a number of Group Posts, each Group being commanded by a Gendarmeriemeister like Schmidt, and each Group consisting of a number of posts held by police constables, as you might say, like Mangold.

For clarity the Prosecution intends to deal with the events in the order of their occurrence as far as can be done, and therefore the killing of Sergeant Scott, the subject of the second charge, will be described first, as it appears to have happened first in point of time.

After the air raid, when the aircraft were shot down, the Landwacht were turned out to look for members of the crew who had escaped by parachute to take them prisoner. On the day after the crash, that is to say the 7th December, 1944, in the afternoon it was reported to Mangold that an airman had been captured near Wommelshausen, which the Court will see on the bottom left-hand corner of the sketch.

Mangold reported this to Menge, and Menge ordered him to go out to Wommelshausen to bring in the prisoner. Menge and Schmidt met Mangold and his prisoner as Mangold was bringing him along the road from Wommelshausen to Weidenhausen. There appears to have been some conversation between Mangold and Menge in which Menge told Mangold to shoot the prisoner there and then on the spot. Mangold refused, and Menge said: "Right, take him away and have him interrogated". For this purpose Mangold took the prisoner to the office of the Burgomeister in Weidenhausen. There an attempt was made to interrogate him; events occurred which will be dealt with in a subsequent trial. As Mangold had to go away to talk with Menge, the prisoner was put in the village lock-up, referred to as the Community Cell.

In his discussion with Menge, Mangold was again told to shoot the airman; moreover, it appears that Menge threatened him if he disobeyed. He also told Mangold to arrange with the Burgomeister to have a grave made ready. Mangold went back to the Burgomeister and told him what was to be done. The Burgomeister then told his servant, runner or orderly to go and prepare a grave somewhere near the cemetery. His servant, the witness Thomas, apparently under duress of some sort, went away and prepared the grave in a hole which he knew already existed; he just cleaned

up the hole, which was in a little coppice. A few minutes later Mangold and the Burgomeister brought the prisoner to this place. It was dark, some time after 7 o'clock in the evening. The Burgomeister held an electric torch, shone it upon the prisoner, and Mangold shot him and killed him. By process of elimination it will appear that this prisoner was, as I have said, Sergeant Scott. That is the event described in the second charge.

In regard to the first charge, the events happened as follows. Another member of the crew of the aircraft was captured by civilians near the village of Morashaussen, near Biedenkopf, the same day, that is the 7th December. This capture was reported to the Accused Koch, who went out to collect the prisoner. There was no gaol available in which to lock him up for the night, so Koch took the airman to the office of the Burgomeister at Morashaussen and they spent the night there together. It appears that Koch treated the airman well, he looked after him and gave him some amount of attention.

On the next day Koch reported the capture to the officer in charge of the district, Menge, and then took his captive to a district police office known as a Landratsamt. The idea was to interrogate him, but there was nobody available to interrogate him, so they put the prisoner back in the gaol at Biedenkopf.

On the next day, that is the 9th December, a Saturday, Koch was to have taken the airman by train to Wetzlar, whence he was to have been taken away by normal channels to a prisoner of war camp; but one way and another they missed the train, and the prisoner was again taken back to Biedenkopf gaol. Menge was informed that Koch had missed the train and he merely said: "That is quite all right", and said no more. That was early on Saturday morning, the 9th December.

Some time during that day or, as one witness says, the following day, but more probably the Saturday, Menge came in person to the Landratsamt and spoke on the telephone to Mangold, who was at Biedenkopf. Originally Menge wanted to speak to Schmidt, but he could not contact him, so he spoke to Mangold instead and gave orders which he was to pass on to Schmidt.

The effect of these orders was that Koch had in his custody an airman, and this airman was to be shot. Koch would bring him to somewhere near Gladenbach, on the boundaries of their respective districts, and Mangold was to take him and shoot him. But to make sure that everything went well, Schmidt was to details somebody to dig a grave in a convenient place and also to go with Mangold to the shooting and help him if necessary. It is not specified in what way he was to help him, but at any rate he was to accompany him.

Mangold then tried to pass these orders on to Schmidt by telephone, but again Schmidt was not at the other end of the telephone, so Mangold went personally to him on the morning of Sunday, 10th December. Schmidt heard the orders and decided that the man to help Mangold would be the Accused Will. Mangold went round to Will's home and told him of Schmidt's orders, and when Will agreed to come he made the necessary arrangements for meeting him in the evening and for the preparation of the grave.

During the Sunday afternoon Will dug a grave in the woods outside Gladenbach. In the evening he reported to Mangold, and then Mangold and Will walked along the road to meet Koch and the prisoner. Mangold carried a pistol and Will had a pistol and either a shovel or a rifle. That is what happened in Gladenbach on the morning and afternoon of Sunday.

Meanwhile the Accused Koch had been on duty in the Landratsamt. After Menge had spoken to Mangold on the telephone, Menge ordered Koch as follows: Koch was to take the airman under cover

of darkness from Biedenkopf along the road to Gladenbach; at the boundary of their police districts he would meet Mangold and hand the prisoner over to him.

Between half past 9 and 10 o'clock that night Mangold and Will stopped Koch and the prisoner on the road. They did not meet on the boundary line between their districts. When Koch arrived there, there was no-one waiting for him, so he and the prisoner walked on towards Gladenbach. When they met there appears to have been some conversation. They then turned round, and Mangold and Will, with Koch, took the prisoner southwards along the road towards Gladenbach for about one kilometre more. Then, about three kilometres north of Gladenbach, they turned off the road into the woods. Exactly what happened, the precise details, are slightly in dispute, but the main facts are clear.

When they had gone some way into the woods the prisoner was relieved of his handcuffs and his hands were tied with a piece of rope behind his back. The Accused Will shone an electric light on the airman and Mangold shot him in the head. This shot did not apparently kill him, and a second shot was fired. Mangold's pistol had jammed; and the Prosecution alleges that it was Will who fired the second shot. There is a certain amount of evidence of a third shot having been fired, but that is not clear. The property of the murdered man was then taken from him and handed over, his body was carried to the grave which Will had prepared in the afternoon and buried there. It was from this grave that the body of Flight Sergeant McGladrigan was exhumed in August, 1945.

Sergeant Scott and Flight Sergeant McGladrigan were prisoners of war. They had been taken into custody and handed over to the police; Sergeant Scott had been in custody for some hours, Flight Sergeant McGladrigan for some days. The Prosecution alleges that these two prisoners of war were murdered.

The parts played by the Accused may be summed up by saying that Schmidt prepared for the murder of Flight Sergeant McGladrigan by ordering Will to dig the grave and to go out to accompany Mangold to the killing. Koch, knowing what was to take place, took Flight Sergeant McGladrigan along the road to Gladenbach, handed him over to his murderers and went with them to the killing. Will dug the grave, and I may say that he murdered Flight Sergeant McGladrigan. He shone the light so that he might be shot, and he shot him himself when he was not properly killed. Mangold killed Sergeant Scott and Flight Sergeant McGladrigan by shooting them in the head.

The evidence with which the Prosecution will support these allegations is somewhat varied, and it may be of assistance if I outline it before submitting it to the Court. Much of it, of course, is purely formal.

First of all, there is a letter from the British Air Ministry announcing the loss of a Lancaster aircraft, and a second letter which details the crew of that aircraft. The first letter also exhibits a certified copy of some German documents which were captured and which relate to the crashing of the aircraft in the district. This letter also refers to another aircraft which was shot down on the same raid.

For the purpose of ascertaining the identity of the first victim, the Prosecution will hand in a report from a Missing Research & Enquiry Unit of the British Air Forces of Occupation, which refers to four graves in Erdhausen cemetery. There is a letter from the British Liaison Detachment at the United States War Crimes Group in Augsburg announcing that the officers and other ranks who composed the American War Crimes Investigation Team which investigated this case and who took statements and

interrogated the Accused have not been located; they did in fact return to the United States a long time ago. This letter will be produced to exhibit the pathologists' report and the report of the exhumation and identification of the body of Flight Sergeant Macledrigan, and the identification also exhibits certain items taken from his body which are tendered to prove his identity.

By way of purely formal evidence as to the organisation of the Gendarmerie, there will be handed in a certified extract from the counter-intelligence book issued by Supreme Headquarters Allied Expeditionary Force, which describes the organisation of the police in the rural areas. For the assistance of the Court there is handed in a map, pieced together from two sheets, covering the district in which these crimes are alleged to have occurred.

In the absence of the American officers who investigated the circumstances described in the second charge, the Prosecution will submit to the Court in accordance with Section 8 of the Royal Warrant signed and sworn records of the interrogations, together with German and English statements also signed by the Accused. The Prosecution will also submit affidavits by the British Officer who investigated the whole case exhibiting the statements made and sworn in his presence by the Accused.

Finally, the Prosecution will call in person to give evidence Heinrich Thomas, the servant of the Burgomaster of Weidenhausen who was present at the killing of Sergeant Scott. Also named in the Summary of Evidence is the witness Maria Woge, who the Prosecution does not propose to call in view of the fact that she can give little evidence of value in this trial, but should learned Counsel for the Defence wish to cross-examine her, then she will be called formally and placed at their disposal.

That is the outline of the case for the Prosecution, Sir, and with your permission I will now submit the first documents in evidence. The first one is a letter from the Air Ministry describing the fact that Sergeant Macledrigan was reported missing.

THE JUDGE ADVOCATE: Are they going to be produced by a witness on oath so that any questions may be directed to the witness who produces them concerning the document itself?

CAPTAIN CLEAVER: No, Sir. The persons who made or received these documents are not available, and they are tendered as documents signed by a member of the Forces in the course of his duties under Section 8 of the Royal Warrant.

THE JUDGE ADVOCATE: They are tendered as documents purporting to be signed by a member of the Forces? Very well.

CAPTAIN CLEAVER: I will hand in the letter from the Air Ministry.

(Letter from Air Ministry dated 7th March, 1946 is read, marked "Exhibit No.1", signed by the President and attached to the proceedings).

CAPTAIN CLEAVER: The captured German documents to which I referred, copies of which are in the possession of the Accused, I feel add little to the case, and unless learned Counsel want them to be put in I will omit them. For them I will substitute this letter from the Air Ministry describing the crew of the aircraft of which Sergeant Macledrigan was a member.

(Letter from Air Ministry dated 4th January 1947 is read, marked "Exhibit No.2", signed by the President and attached to the proceedings).

THE JUDGE ADVOCATE: Dr. Peters, have you received copies of those documents in German before the trial?

DR. PETERS: I cannot say, because I have got it only yesterday, but I think I have got this. It is enough that I have got knowledge of these letters now, and I shall mark it in my papers as Exhibit No. 2.

CAPTAIN CLEAVER: That letter, Sir, is not in the papers handed to the Defence. The Prosecution did not consider the evidence as advised was sufficient on the identities of the killed men, and these letters are produced to establish their identity with rather more certainty.

DR. PETERS: I do not think we shall need a copy of these letters, Sir. We shall make a note of this in our papers.

CAPTAIN CLEAVER: With the same intention, Sir, the Prosecution submit a signed copy of the Investigation Report of the Missing Research & Inquiry Unit. I would be grateful if the learned Judge Advocate would look at it and consider the portions which I have taken the liberty of marking in red ink. They refer to matters which I think should not be admitted. Similarly, a large number of conclusions drawn by a member of this Unit on the reverse, also marked in red ink, I think are also inadmissible. The document is submitted merely with a view to the first part of paragraph 1, paragraphs 2, 3, 4 and 5, less the parts marked in red, being read.

(Investigation Report marked "Exhibit No. 3" signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: I shall now read from a document which has been marked "Exhibit No. 3" and attached to these proceedings, but only those parts which I read shall be seen by the Court, and only those parts which I read shall be accepted in evidence. It is dated 9th November, 1946, and on the face of it refers to a Lancaster P.D. 267, the date and time being 6th December, 1944, 21.00 hours, and the position of crash is Erdhausen, map reference G 5839. It says: "Crew: seven unknown, six dead and one prisoner. Particulars of burial: four at Erdhausen cemetery, two at Gladenbach cemetery. Result of Investigation and Findings: From information obtained from the Burgomeister of Erdhausen I was informed that a Lancaster returning from a raid on Giessen was shot down by enemy fighters at approximately 21.00 hours on 6th December, 1944. From eye witness accounts in this area I was informed that four members of the crew were killed in the crash and buried in the village cemetery. I also learned that three members successfully baled out. I visited the cemetery at Erdhausen and discovered the grave of the four airmen killed in the crash. A cross bearing the inscription 'Hier ruhen 4 Unbekannte Engl. Flieger, den 6.12.44' - I think that means 'Here lie 4 unknown English airmen' - has been erected by the villagers. The Burgomeister of Gladenbach informed me that an American G.C.U. exhumed the bodies of the two murdered men in August 1945 and reburied them in Gladenbach cemetery. A certificate to that effect was shown to me by the Burgomeister. He also informed me that the wreckage was at Gladenbach station. When I inspected the wreckage I found it to be that of a Lancaster, and the letters and figures P.D. 26 and another undecipherable figure painted in red letters about eight inches high on what is taken to be a wing. In Gladenbach cemetery I found the grave of the two airmen, a white cross bearing the inscription 'Hier ruhen 2 Unbekannte Alliierte Soldaten' has been erected by the authorities on order of the Americans. Examination will doubtless provide more evidence, please forward any further particulars the above information may bring to light." That is signed: "P. White, Flying Officer."

(Exhibit No.3. is translated into German.)

CAPTAIN CLEAVER: Under the same portion of the Royal Warrant, Sir, I submit a letter written by Lieutenant-Colonel Boyd Maunsell, the Liaison Officer in the American Zone, saying that he cannot locate the members of the American War Crimes Investigation Team.

(Letter from Lt.Col.Boyd-Maunsell is read marked "Exhibit No.4", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: The next document, Sir, is an affidavit submitted under the same provision made by the pathologist, Lieutenant Sherrick, and sworn before Lieutenant Needle. The document described the pathologist's qualifications and his present duties.

(Affidavit is read marked "Exhibit No.5" signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: The next document, Sir, is the report made by Lieutenant Sherrick, the pathologist's report, and it also refers to further exhibits taken from the body. It is sworn before the Investigating Officer, Lieutenant Needle.

(Pathologist's Report is read marked "Exhibit No.6", signed by the President and attached to the proceedings.)

(Exhibit No.6. is translated into German. During the translation the following occurs):

THE INTERPRETER: Sir, Dr.Peters says that I say in German "fehler", which is "mistake", and he says he has another word in his translation.

THE JUDGE ADVOCATE: What does the word he has got mean in English ?

THE INTERPRETER: "This effect has fairly smooth edges".

THE JUDGE ADVOCATE: Is there any materiality in this for the purpose of determining the guilt or innocence of these Accused, Dr. Peters ?

DR.PETERS: The question for me later on is if this is a wound from a shooting so that we can say there are two shootings in the head and one of the shootings is going there and one going there. If we say "fehler" in German, in English that is "fault". I think that is a mistake.

THE INTERPRETER: If Dr.Peters would listen to the whole document, I think in the end it becomes quite clear where the "fault" comes from.

THE JUDGE ADVOCATE: Perhaps you would listen to the complete translation and then make your comments thereafter, Dr.Peters.

DR.PETERS: Yes, perhaps we must correct it later on.

THE JUDGE ADVOCATE: Let it be fully translated and then make your observations to the Court.

(The rest of Exhibit No.6. is translated into German).

THE JUDGE ADVOCATE: Are you satisfied now, Dr.Peters.

DR.PETERS: Not quite, Sir.

THE JUDGE ADVOCATE: The point is this. The Court are not skilled

in German, and what the Interpreter is translating to you is not the evidence upon which the Court is going to act; they are going to act on the English version of it which is before them. We understand what the English version is.

DR. PETERS: Yes, Sir, but I must understand what the English version is too, and therefore it is a bit difficult for me.

THE JUDGE ADVOCATE: If you will tell me now that is the passage about which you have some doubt, I will try to see if I can make clear to you what the Court thinks it means.

DR. PETERS: Perhaps we can get it clear if I tell you the point of my question, Sir. What I want to know, and perhaps what my learned friend Mr. Simon wants to know, is in the German translation there is the word "fehler" in the temple, and I think that means a wound going from here to here. (Indicating.)

THE JUDGE ADVOCATE: Yes.

DR. PETERS: What I want to know is this: are there two such wounds or only one?

THE JUDGE ADVOCATE: About that I myself, having read this, am not quite clear. I think it will have to be studied carefully. It talks about: "The edges of the defect on the external surface of the squamous portion of the right temporal bone are fairly smooth and sharply defined. The edges of the defect on the internal surface are excavated, rough and shelving. Radiating out from the defect are several fine linear fractures up to about 1.5 cm. in maximum length. In direct linear relation to the above described two defects is a third defect." Are you saying that there are only two wounds, Captain Cleaver, or do those two defects compose one wound and the third defect a second wound or shot?

DR. PETERS: That is what I want to know, Sir.

THE JUDGE ADVOCATE: I do not think that can appear from a translation. There may be some difficulties in properly interpreting what this report says, not in interpreting from English into German but in interpreting to understand what it means on the face of its English.

DR. PETERS: At one time he talks of the shooting as going there and there and there, and then I think he speaks of two wounds.

THE JUDGE ADVOCATE: Captain Cleaver, are you going to submit on behalf of the Prosecution that as a result of this report you can ask the Court to say that two shots were fired into this man's head.

CAPTAIN CLEAVER: Yes, Sir, I do, and you may consider that the evidence is that the two distinct marks were wounds of entry and that the other one was one wound of exit; you may also think that either both shots came out through the one exit or that one came out from a portion of the skull which has left no trace, due to the decomposition referred to earlier in the report.

THE JUDGE ADVOCATE: I think the Prosecutor is right. If you look at paragraph 30 it says this: "Gunshot wounds: the defects described in the zygomatic and temporal bones are quite characteristic of wounds of entry", indicating that there was more than one wound of entry.

DR. PETERS: Two entries and one exit?

THE JUDGE ADVOCATE: Two entries and one exit: that is all he says.

DR. PETERS: So that one bullet remained in the head ?

THE JUDGE ADVOCATE: That is a matter for argument, but there appear to be two entries.

DR. PETERS: In this matter I think Will is concerned, and I am defending Will, and therefore I am asked to have it quite clear what in the opinion of the Doctor is the wound causing the death.

THE JUDGE ADVOCATE: It may be that the Prosecution will be unable to establish that. They have placed this evidence before the Court, and that is all the evidence which we have so far, unless further evidence is forthcoming.

DR. PETERS: Perhaps I must ask the Prosecutor what in his opinion is the shot causing the death of the man, the first or the second.

THE JUDGE ADVOCATE: I think that first of all the Court will merely listen to the complete evidence of the Prosecution. We are not now weighing it or trying to draw conclusions on it, I think we are merely receiving it, and I think that any point which you want to make on that must be made later.

CAPTAIN CLEAVER: In this envelope, Sir, which is referred to in the Pathologist's Report, are the Exhibits A, B, C and D, if the Court feel that they are still necessary to establish the identity.

THE JUDGE ADVOCATE: As you have got them we may as well have them in.

(Envelope containing Exhibits A, B, C and D referred to in Exhibit No. 6. is marked "Exhibit No. 7", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: Sir, the Prosecution is anxious not to waste the time of the Court or of learned Counsel. I wonder whether learned Counsel agree with my outline of the approximate positions held by the four Accused in the Police Force. If they do, it will save putting in this extract from the Handbook.

THE JUDGE ADVOCATE: I do not think we can call for admissions.

CAPTAIN CLEAVER: If you please, Sir. Then I put in an extract from the Supreme Headquarters Expeditionary Force Sub-division Handbook on the internal organisation of Germany, known as the CI Handbook. It is certified to be a true copy, and it refers to the organisation of the Gendarmerie as far as it concerns this case.

(Extract from CI Handbook is read, marked "Exhibit No. 8", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: A little piece of formal evidence, Sir, is a map purporting to be a map of that portion of Germany in which these events took place. It is not certified, it is merely included in my report. I do not think learned Counsel for the Defence have seen it.

THE JUDGE ADVOCATE: If they desire to study it it can go in later on. We can carry on the proceedings without it for the moment.

DR. PETERS: I am obliged, Sir.

CAPTAIN CLEAVER: The remaining evidence for the Prosecution, Sir, consists of statements made by the Accused, first of all to the American Investigating Team whose names have appeared before you and subsequently to a British Investigating Officer. As has already been stated, the American officers and other ranks are no longer in this Theatre, and the statements are submitted for your consideration, and no doubt you will be advised as to the weight which may safely be put upon them. The first one is a statement in German made by Mangold, which is signed by him, and also a translation of that statement, followed by a record of an examination carried out in the manner usual to the American investigators, that is question and answer, which is only in English; it is a record of the interrogation and not the interrogation itself.

THE JUDGE ADVOCATE: Dealing with the statement first of all, what is properly admissible in evidence is that statement in German which has been signed by the Accused. We are entitled to have this translated. I do not know whether or not the Interpreters here have read this translation and can tell us whether or not it is a proper translation?

THE INTERPRETER: No, Sir, I do not think so. We only have copies of the originals which have been translated from the German into English, and then we translated it into German again.

THE JUDGE ADVOCATE: You do not want the English translation in, do you, Captain Cleaver? We have got interpreters here.

CAPTAIN CLEAVER: I thought it might assist the interpreters and speed up the proceedings, Sir.

THE JUDGE ADVOCATE: If those statements can be handed to the interpreters so that they can prepare their translations, they can all be read off.

THE INTERPRETER: I think I have it here, Sir.

THE JUDGE ADVOCATE: Will one of the Interpreters read that statement in German, and will one of the other Interpreters follow it in the English translation, and then at the end he can say whether that translation is a proper one or not.

(Statement in German by the Accused Mangold is read by the Interpreter, marked "Exhibit No. 9A", signed by the President and attached to the proceedings).

THE JUDGE ADVOCATE: Can the Interpreter say whether the English translation of that statement is a true translation or not?

THE INTERPRETER: Yes, it is a true translation.

(English translation of statement by the Accused Mangold is read marked "Exhibit No. 9B", signed by the President and attached to the proceedings).

CAPTAIN CLEAVER: The next document, Sir, is the Interrogation of the Accused Mangold by the American investigators. May I ask Defending Counsel if they have a German translation of this document?

THE JUDGE ADVOCATE: Dr. Peters, have you and Mr. Simon got a German translation of that document?

DR. PETERS: Yes, Sir. May I be allowed to go now? I have the full power of Mr. Simon, who is prepared to replace me from now until 3 o'clock or perhaps half past 3, and we have the agreement of all the Accused. Perhaps I can give you this

document now. (Handed).

THE JUDGE ADVOCATE: Very well. We will adjourn now.

DR. PETERS: If today you could adjourn until half past 3, we could lose only one hour, and I think we could make up that hour during the next day.

THE JUDGE ADVOCATE: If I felt that your case was being prejudiced the Court would undoubtedly do what you required. But by half past 3 the case will not go beyond reading statements which you have already seen. If we get to the stage of the case where a witness is called, we will not go to that point; but provided we are merely reading documents which you have considered beforehand, I do not think the fact that you are not present while they are being translated is of great materiality.

DR. PETERS: That is very kind of you, Sir. Perhaps later on one of the Interpreters can give me a list which shows me the numbers of the exhibits, so that I can complete my papers.

THE JUDGE ADVOCATE: Yes, that will be done.

(At 1300 hours the Court is closed.
At 1415 hours the Court re-opens.)
(The Accused are again brought before the Court.)

THE JUDGE ADVOCATE: When we adjourned, Captain Cleaver, you had just handed in the Interrogation of the Accused Mangold.

(Examination of the Accused Mangold is read marked "Exhibit No. 9C", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: I think it will be convenient, Sir, to keep the statements of the Accused together and to exhibit next the statement made by Mangold to Captain Brunner. I therefore hand in the affidavit by Captain Brunner, who took the statement.

(Affidavit by Captain Brunner is read marked "Exhibit No. 10A", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Have you to go with that the document referred to in this affidavit?

CAPTAIN CLEAVER: Yes, Sir. I should have added that Captain Brunner is at present on leave. He had to go on leave when the opportunity offered, but he can be recalled to produce the statements in person should learned Counsel not accept the statements.

MR. SIMON: I personally have no objection to the evidence being produced as such without calling Captain Brunner, but I would very much like to ask my clients first to get approval.

THE JUDGE ADVOCATE: Very well.

(Mr. Simon conferred with the four Accused.)

MR. SIMON: The statement is quite correct the way it has been read out. There is no need for the certificate by Captain Brunner.

(Signed statement in German by the Accused Mangold is read to the Court, marked "Exhibit No. 10B", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Will the Interpreter certify that the English translation of that statement is a correct translation?

THE INTERPRETER: Yes, it is correct.

(English translation of statement by the Accused Mangold is read marked "Exhibit No.10C" signed by the President and attached to the proceedings).

CAPTAIN CLEAVER: Similarly, Sir, we have next a statement in German, which is in longhand and typewritten, a translation, and a record of the interrogation of Ludwig Will by the American officers.

(Signed statement in German by the Accused Will is read to the Court, marked "Exhibit No.11A", signed by the President and attached to the proceedings).

THE JUDGE ADVOCATE: Is the English translation correct?

THE INTERPRETER: Yes, Sir.

(English translation of statement by the Accused Will is read marked "Exhibit No.11B", signed by the President and attached to the proceedings.)

(Examination of the Accused Will is read, marked "Exhibit No.11C", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: There is a similar affidavit by Captain Brunner, Sir, exhibiting a further statement by Ludwig Will.

(Further affidavit by Captain Brunner is read marked "Exhibit No.12A", signed by the President and attached to the proceedings.)

(Further statement in German by the Accused Will is read to the Court, marked "Exhibit No.12B", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Is the English translation correct?

THE INTERPRETER: Yes, Sir.

(English translation of statement by the Accused Will is read marked "Exhibit No.12C", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: Next is a statement in two parts, first and second, by the Accused Schmidt, together with a translation and a record of interrogation, before the American investigators.

(Signed statements in German by the Accused Schmidt are read to the Court, marked "Exhibit No.13A", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Will the Interpreter certify that the English translation is correct?

THE INTERPRETER: There is one mistake, Sir; it says: "District 1st Lieutenant Mangold"; Mangold was not a lieutenant but merely an U.S.O.

THE JUDGE ADVOCATE: Apart from that the translation is true?

INTERPRETER: Yes.

(English translation of statement by the Accused Schmidt is read marked "Exhibit No.13B", signed by the President and attached to the proceedings)

(Examination of the Accused Schmidt is read marked "Exhibit No.13C", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: Next there is an affidavit by Captain Brunner exhibiting the statement made to him by the Accused Schmidt, together with the statement made by Schmidt.

(Further Affidavit by Captain Brunner is read marked "Exhibit No.14A", signed by the President and attached to the proceedings.)

(Signed statement in German by the Accused Schmidt is read to the Court, marked "Exhibit No.14B", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Will the Interpreter certify that the English translation is a true one?

THE INTERPRETER: Yes, Sir, it is correct.

(English translation of statement by the Accused Schmidt is read marked "Exhibit No.14C", signed by the President and attached to the proceedings.)

CAPTAIN CLEAVER: Next, Sir, there is a statement in German by the Accused Koch, with translation, together with a similar record of interrogation.

(Signed statement in German by the Accused Koch is read to the Court, marked "Exhibit No.15A", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Will the Interpreter certify that the English translation is correct?

THE INTERPRETER: Yes, Sir, it is correct.

(English translation of statement by the Accused Koch is read marked "Exhibit No.15B", signed by the President and attached to the proceedings.)

(Examination of the Accused Koch is read marked "Exhibit No.15C", signed by the President and attached to the proceedings.)

DR. PETERS: Sir, I wish to raise a question on the translation, whether it says that one shot was fired and two shots afterwards, or whether one shot was fired and a second one afterwards. I think in the English statement it says there was a second afterwards, and in the German the Interpreter had read out "two shots afterwards".

THE INTERPRETER: The passage in the German statement I translate as: "A torch was lit up, a shot was fired and shortly afterwards another two." In the English translation it has: "I heard a shot and shortly afterwards a second shot".

THE JUDGE ADVOCATE: That is not a correct translation?

THE INTERPRETER: No, Sir.

THE JUDGE ADVOCATE: Thank you very much, Dr. Peters. It is now on the shorthand note that the correct translation of the original is "and after that two more shots".

DR. PETERS: If I understand the affidavit correctly, it must run as it is in English, because I have had a talk with the three Accused, Koch, Mangold and Will, and they say there was first a shot and then afterwards a second shot, and nothing else.

THE JUDGE ADVOCATE: That is a matter of evidence. What we must do at this stage, having received these documents, is to see that we understand what is in these documents. It may be that someone has made a mistake, and it may be that when the people you represent give evidence we will be satisfied that the mistake lies in the document and not in their testimony, but that is something which we can only clear up by hearing evidence.

DR. PETERS: Have you there the original in German or the original in English?

THE JUDGE ADVOCATE: The original in German. The one in German is signed. The one in German was read over to the Accused Otto Koch and he signed it in German. I will hand it to you. (Handed.)

DR. PETERS: In the original in German there are the words "There was a shot first and two other shots afterwards".

THE JUDGE ADVOCATE: Yes, but as it was taken in English and in German, both languages must have been being used at this time, and it is evidence that the person who was dealing with it made a mistake in one or the other, and it is quite open to you to impress upon the Court that such a small matter as that might not be observed by a man when it was being read over to him afterwards. That is a matter for argument later on.

DR. PETERS: Yes, Sir. I thought the Interpreter had read a copy and there might be a fault in it.

THE JUDGE ADVOCATE: No, he read from the original.

DR. PETERS: I am quite satisfied now, Sir. Then I must remark that the English translation is not correct.

THE JUDGE ADVOCATE: The English translation is not a correct translation, but you say the English translation is the correct version; it tells the correct version.

DR. PETERS: Yes, Sir, I think I can prove this. May I draw the attention of the Court to a passage in the Examination of Koch, where the question is: "How many shots", and then he says: "One shot and the second", which is contrary to the statement he made before.

THE JUDGE ADVOCATE: Very good.

CAPTAIN CLEAVER: Is the correct translation of the original statement made by this Accused: "I heard one shot and two others afterwards"?

THE JUDGE ADVOCATE: Yes.

(At 1740 hours the Court is adjourned until 1000 hours tomorrow, Friday, 23rd May, 1947).

S E C O N D D A Y

(At 1000 hours on Friday, 23rd May, 1947, pursuant to adjournment, the Court re-assembles, the same President, members and Judge Advocate being present.)

(The accused are again brought before the Court.)

CAPTAIN CLEAVER: The next piece of evidence, Sir, is an affidavit by Captain Brunner exhibiting the statement of Otto Koch.

(Further affidavit by Captain Brunner is read marked "Exhibit No.16A", signed by the President and attached to the proceedings.)

(Signed statement in German by the Accused Koch is read to the Court, marked "Exhibit No.16B", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Is the English translation correct?

THE INTERPRETER: There is one little mistake, Sir. In the German statement it says he had shot somebody; in the English translation it says he had shot an airman.

(English translation of statement by the Accused Koch is read marked "Exhibit No.16C", signed by the President and attached to the proceedings.)

DR. PETERS: Does the Court know what is meant by "SS und Polizeigericht"? Otherwise I must ask the interpreter to translate this term.

THE INTERPRETER: "SS und Polizeigericht" is an SS Police Court.

CAPTAIN CLEAVER: May I ask if the Court have the map before them?

THE JUDGE ADVOCATE: Yes, but it has not yet been taken in evidence. It has merely been handed up. Is there any objection to this map going in now you have seen it, Dr. Peters and Mr. Simon.

DR. PETERS: No, Sir.

MR. SIMON: No, Sir.

(Map is marked "Exhibit No.17", signed by the President and attached to the proceedings.)

THE JUDGE ADVOCATE: Is that all your documentary evidence, Captain Cleaver?

CAPTAIN CLEAVER: Yes, Sir.

THE JUDGE ADVOCATE: I think that a certain number of these documents should be produced by someone on oath. It is merely a matter of formal evidence, and I would ask you, Captain Cleaver, if you would take the oath for that purpose.

Captain H.W.E. CLEAVER is duly sworn.

THE JUDGE ADVOCATE: Captain Cleaver, will you give your particulars for the purposes of the record? A. I am Captain H.W.E. Cleaver, R.A.

Q Have the documents which you have produced to the Court been received by you in your official capacity? A. Not all the documents have been received by me personally, but by other members of the office staff who have dealt with the super-

vision of the investigations in this case.

Q You must have received them in order to produce them ?
A. They were given to me when I set out to conduct this case.

Q Is not that a proper source from which to receive them ?
A. Yes, Sir; I thought you meant in the past.

Q No, I did not mean through the post, I meant in your official capacity from a person whose duty it was to give you such documents ? A. That is so.

Q That is really the second part of my question; they have been received by you in your official capacity through the ordinary military channels ? A. That is correct.

Q Are these documents genuine documents ? By that I mean are they that which they purport to be ? A. They are to the best of my knowledge and belief.

THE JUDGE ADVOCATE: Dr. Peters, do you wish to ask any questions on that ?

DR. PETERS: No, Sir.

THE JUDGE ADVOCATE: Mr. Simon, do you ?

MR. SIMON: No, Sir.

(The witness withdraws.)

THE JUDGE ADVOCATE: Have you any witnesses to tender to the Court, Captain Cleaver ?

CAPTAIN CLEAVER: I wish to call the witness Heinrich Thomas, Sir.

HEINRICH THOMAS is called in, and, having been duly sworn, is examined by Captain CLEAVER through the interpreter as follows:-

Q Is your name Heinrich Thomas ? A. Yes.

Q You live at Stroberg 155 Weidenhausen; is that right ?
A. Yes.

Q What was your job in December, 1944 ? A. I was a Burgo-
meister's runner.

Q How long had you held that job ? A. From the 1st August 1944 until the 8th March, 1947.

MR. SIMON: I have one question, Sir. The Accused Michel is not here. Is there going to be a separate trial, or how is this man going to be dealt with ? Michel, as you know, is accused of having taken part in the killing and also for having ill-treated and doing something in connection with this present case here.

THE JUDGE ADVOCATE: The answer is this: there will be a second trial, and the trial of Michel will start from the beginning all over again.

MR. SIMON: That means to say a trial which will start after this trial has been concluded ?

THE JUDGE ADVOCATE: That is correct.

DR. PETERS: May I ask a further question, Sir. Must not Michel be present here, because the witness standing in the box now gives evidence against him, and if he is not here he has no

possibility to make objections ?

THE JUDGE ADVOCATE: He is not giving evidence against Michel now, because the Court will not in the trial against Michel take any notice of what is said here and now before them. If necessary, it may be that the same man will come back and give evidence in Michel's case. He will then hear that, and Mr. Simon, representing him, will be able to cross-examine and deal with it on his behalf.

DR. PETERS: I am obliged, Sir.

THE JUDGE ADVOCATE: I will now read from Rule of Procedure 103: "The Prosecutor and the accused respectively" - and by the word "accused" is included the Counsel who represent them - "are at all times after the Judge Advocate is named to act on the Court entitled to his opinion on any question of law or procedure relative to the trial, whether he is in or out of Court, subject when he is in Court to the permission of the Court." If either Dr. Peters or Mr. Simon have further problems of this nature, it is open to them to ask to see me after any adjournment of the Court, and I will tell them what our law is or what our procedure is to the best of my ability.

CAPTAIN CLEAVER: Were you ever in the Army ? A. Yes.

Q For what reason did you cease to be in the Army ? A. Because I am a war invalid, and I have got brain trouble.

Q Can you remember the 7th December, 1944 ? A. As far as I can remember it happened on the 7th December 1944 when I came back from duty.

Q What did you find when you came back from duty ? A. When I returned from duty I was told at the Burgomeister's office that the British airman was in the cell.

Q Did anybody tell you what was going to happen to the airman ?

A. Burgomeister Michel told me.

Q What did he tell you ? A. I cannot give the exact wording, but he replied similarly as that he should be shot.

Q Did he give any reason why the airman should be shot ? A. I am unable to state.

Q Did the Burgomeister ask you to do anything ? A. He asked me whether I would like to take part in it.

Q What did you say to that ? A. No, I refused to do it.

Q On what grounds did you refuse ? A. Because I had been a soldier myself and had no interest in such matters.

Q What did the Burgomeister say to that ? A. He kept on asking me, and finally I had come to that that I may lose my job and be dismissed and finally agreed.

Q For how long did the Burgomeister talk to you persuading you to help him ?

THE JUDGE ADVOCATE: Is this material to this case, Captain Cleaver ?

CAPTAIN CLEAVER: I apologise, Sir. (To the witness). Can you tell us what the Burgomeister told you to do ? A. I should take part in it.

THE JUDGE ADVOCATE: Is not the question rather this: what did

you do as a result, because the Burgomeister is not now being tried. We are not interested at this moment in any complicity on behalf of the Burgomeister. What we are interested in is what this man did as a result which may implicate someone before this Court.

CAPTAIN CLEAVER: I directed my question in that way, Sir, rather to help the witness, but I will try the other way. (To the witness). What did you do after you had finished speaking with the Burgomeister? A. I have got to say something before I reply to that question.

Q Say what you like. A. I only did it because I was a war invalid, because I could not do any heavy work, and further that I have got four children to look after.

Q I think that is understood. Tell us what you did when the Burgomeister had finished giving you this talking to? A. As far as I can remember he sent me away to find out whether the ditch was still there.

Q Where was this ditch? A. It was near the cemetery, by a little wood.

Q When you went there what did you find? A. There was a ditch.

Q What did you do then? A. I then returned to the Burgomeister office.

Q What happened when you went back to the office? A. The Burgomeister told me to get hold of a shovel, then Mangold and the Burgomeister went to collect the prisoner, the airman, from the cell.

Q Who is Mangold? A. Mangold is the Oberwachmeister.

Q Do you recognise him in this Court today? A. Yes.

Q Would you point him out to the Court? A. The one at the corner.

Q Which number is he? A. No. 1. (Indicating the Accused Mangold.)

Q What happened to the prisoner when they went to the cell? A. They tied a rope round him, but I was not present.

Q When did you next see the airman? A. Up by the grave, by the ditch.

Q Who brought him to the ditch? A. Herr Mangold and Herr Michel.

Q Will you describe exactly what Herr Mangold did then? A. As well as I can remember, I will describe now. The soldier was standing with his back to Herr Mangold.

Q Who do you mean by "the soldier"? A. I speak of the English soldier.

Q What happened then? A. Then Herr Mangold fired.

Q With what? A. With a pistol.

Q How many shots? A. I cannot quite remember whether there was one or two shots; I will not certify that a second shot was fired.

Q At whom or at what did Mangold fire these shots? A. Against

the English soldier.

Q What happened to him ? A. The soldier collapsed.

Q What was done then ? A. Thereupon Michel and myself made the ditch.

Q Will you explain that a little ? A. Thereupon we prepared the grave for the soldier.

Q What was the last you saw of this airman ? What happened to the body of the airman ? A. The body was lowered into the ditch and then earth was put upon it.

THE JUDGE ADVOCATE: Dr. Peters, so far as I can see, this witness has not given evidence against any of the persons whom you represent. In any event, Mr. Simon is representing Mangold, who is the first of the Accused, and I think it would be his right to cross-examine him.

DR. PETERS: Yes, but I have a general question.

THE JUDGE ADVOCATE: Yes, but it will come after Mr. Simon. Mr. Simon, you have raised the question about the Burgomaster. I am not going to stop you putting any questions to this witness concerning his evidence, but the Court are not interested at the moment in whether the Burgomaster was guilty or not guilty. If he is subsequently tried before this Court, this witness will have to give that evidence again, and you will have as much opportunity as you like of cross-examining the witness on the evidence so far as it relates to the Burgomaster.

MR. SIMON: Do I understand aright that the statement that is now being made by Thomas will not be used for the next trial ?

THE JUDGE ADVOCATE: No, he will be brought to this Court and he will give evidence again, we will then listen attentively to what he says about the Burgomaster, and we will listen equally attentively to the questions which you put to this witness.

MR. SIMON: I have a few questions to ask this witness.

Cross-examined by MR. SIMON:

Q When were you discharged from the Wehrmacht ? A. On the 4th February 1944.

Q What was the reason ? You have spoken of a brain injury. Would you explain this in more detail ? A. The results of the brain injury were headaches, excitement, exhaustion and at times I get dizzy.

Q You were speaking of your thoughts. Do you mean to say that you forget easily, that you suffer from loss of memory ? Therefore I am surprised you can make such a detailed statement about this incident. Do you remember that incident very well ? A. Some parts of it I remember very well indeed, but others I remember less.

Q Do you know who collected the British airman from the cell ? A. No. What I want to say is I am not sure whether one of them collected the prisoner or both of them.

Q How do you know that it was either Michel or Mangold ? A. Because they both went down together and I went with them part of the way and then left.

- Q Did not you go with them into the cell ? A. No.
- Q Where did you go to then ? A. I went away to get a shovel.
- Q Can you still exactly remember that you at first objected to the order which was given to you ? A. Yes, because Michel asked me thereupon.
- Q Do you remember exactly that it was Herr Michel ? A. Yes, I can only remember Herr Michel.
- Q Is not there a chance that someone else in the Burgomeister's office had given you the order ? A. I am not aware of this, I do not know.
- Q How did you come to speak of a second shot being fired ? In your examination you said you could not confirm a second shot ? A. I cannot maintain this.
- Q Are you able to say that shots had in fact been fired at all ? A. That Herr Mangold had fired.
- Q Are you so certain that Herr Mangold had fired ? A. I cannot remember otherwise but that Herr Mangold had fired.
- Q How many persons were present there and what are the names of those persons ? A. There were Herr Mangold, Herr Michel and I, Thomas.
- Q Three men altogether ? A. Yes.
- Q Are you so certain about this ? A. There were not more than three.

MR.SIMON: I have no more questions, Sir.

THE JUDGE ADVOCATE: Do you wish to cross-examine, Dr.Peters ?

DR.PETERS: No, Sir. I have only a question: is it at all possible to use the statement made by the witness, considering that he is suffering from brain injury, and is it possible that he is not being told that he might get himself into trouble by making this statement ?

THE JUDGE ADVOCATE: The witness has appeared before the Court, and it is open to the Court to take the view that he understands what he says. If the Court are of opinion that he understands what he says and if the Court are of opinion that he remembers that which he has told them, the Court are entitled to act on it. In deciding whether or not to accept his memory as accurate the Court will give due consideration to the evidence that he has received a brain injury. If it is suggested that this witness has given false evidence through fear or hope of favour, the suggestion may be made to the witness and the facts brought to the attention of the Court to justify that suggestion; but you must assume that this Court will exercise its common sense and experience of life with regard to any evidence which is called before it.

DR.PETERS: Sir, I have to ask the Court a question, because it is quite possible that the witness gets himself into trouble possibly by aiding or abetting in this case.

THE JUDGE ADVOCATE: You are not defending this witness, Dr. Peters, you are defending three other people, and I think that you should confine your observations to those matters which are relevant to the interests of the people whom you represent.

DR.PETERS: Yes, Sir.

CAPTAIN CLEAVER: I have no re-examination, Sir.

(The witness withdraws.)

THE JUDGE ADVOCATE: Mangold, Will, Schmidt and Koch, you have now heard the case for the Prosecution. The time has now come for you to put forward to the Court your defences. You are all represented before this Court, and your Counsel call on your behalf any witnesses whom they choose. You yourselves have three courses open to you. Your first course is to say nothing at all and let the Court decide on the evidence which is before them; but you can add to that evidence by giving any further information which you so desire. You can do that by making a statement not on oath, in which case no-one can ask you any questions, or you can tell your further story by going into the witness box and giving evidence like the other witnesses. If you do that, you may be cross-examined by the Prosecutor, and asked questions by the Court.

It is my duty to tell you this, that if you want the Court to pay attention to your story, they may pay more attention to it if you tell it as a witness on oath. There are two reasons for this. The first reason is that the accuracy of what you say will be tested by the questions which are directed to you. The second reason is the sanctity and the penalty which attaches to an oath.

Each of you will be asked in turn this question: do you apply to give evidence as a witness in your defence? The first person to be asked will be Konrad Mangold, and only when his defence is finished will the question be put to the other Accused. Mr. Simon, I am going to ask Konrad Mangold to answer this question now. Would you like to talk to him before I put the question?

MR. SIMON: Yes, Sir.

(Mr. Simon conferred with the Accused Mangold).

THE JUDGE ADVOCATE: Konrad Mangold, do you apply to give evidence as a witness in your defence?

THE ACCUSED MANGOLD: Yes.

THE JUDGE ADVOCATE: Mr. Simon, are you calling any other witnesses in the defence of Konrad Mangold?

MR. SIMON: Yes, Sir.

THE JUDGE ADVOCATE: Are they witnesses as to the facts of the case or merely witnesses as to the character of Konrad Mangold?

MR. SIMON: Not only witnesses of character but also witnesses for the facts.

THE JUDGE ADVOCATE: In that event you have the right to address the Court before you call your evidence. Do you propose to address the Court?

MR. SIMON: Yes, Sir.

THE JUDGE ADVOCATE: The Court is going to adjourn now for ten minutes, and we will hear your address after the adjournment. If you wish to talk to the Interpreter in the meantime, you may decide between yourselves the best way in which you should make your address in German and he should translate it to us in English.

(At 1130 hours the Court is closed.
At 1145 hours the Court re-opens.)

(The Accused are again brought before the Court.)

THE JUDGE ADVOCATE: Are you ready, Mr. Simon?

MR. SIMON: Yes, Sir. I only want to speak very shortly and as a sort of introduction. The deed as such is not being denied by Mr. Mangold. He admits to have fired the shot. What he says is that he and his comrades have been ordered to do so, and that this order was combined with another order. This other order was to the effect: "If you, Mangold, and your comrades will not carry out this order, you and your comrades will have to appear before a court meting out immediate justice. This court will sentence you to death." Then the witnesses, when they are in the box, will speak about their motives and reasons for carrying out these orders. The defence of Mr. Mangold and his comrades will assume that direction. That is all I want to say now.

THE JUDGE ADVOCATE: Do you now want to call Konrad Mangold to give his evidence?

MR. SIMON: Yes, Sir.

THE ACCUSED KONRAD MANGOLD takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by MR. SIMON, the evidence being translated into English as follows:-

- Q Will you please give your full name and when and where you were born? A. My name is Konrad Jakob Mangold, I was born on the 1st November, 1898 at Munchengrumbach.
- Q For what occupation did you prepare in your youth? A. I learned inn-keeping.
- Q Until when were you in that occupation? A. I was in that occupation until I was called up on the 26th August, 1939.
- Q Until when did you then serve in the Wehrmacht? A. I was called up on the 26th August, 1939, and I served until the 4th January, 1943.
- Q What rank did you have in the Wehrmacht? A. Sergeant.
- Q Had you already served in the first world war? A. Yes.
- Q How did your release come about and how did you come to join the Gendarmerie? A. I applied to the Wehrmacht to be released because I had five children at home. This application was granted, and I was released on the 4th January, 1943. I wanted to return to my occupation, but I could not do that as I was called up to the Gendarmerie on the 8th January, 1943. I became a regular member of the Gendarmerie as I had served in the Wehrmacht before and as the prospect of a pension at the end of the service was held out to me.
- Q How old were your children at that time? A. A son 22 years of age, a girl 20 years of age, a son 18 years of age, a son 5 years of age and a son 2 years of age.
- Q Will you describe the events as far as you can remember them on the 8th and on the 10th December, 1944. Perhaps you would start with the events on the 7th December? A. On the evening of the 6th December an aeroplane which came from the direction

of Giessen crashed near my village. This I reported to Lt. Menge. I immediately proceeded to the place of the crash, to the aeroplane, and I tried there to come with other members of the auxiliary police to get near to the plane and to save any people who might still be in the plane. I ordered the auxiliary policemen to cordon off the surrounds of the plane. I thereupon was called away to the telephone. Lt. Menge answered and wanted me to give a short report of the location of the plane, whether any members of the crew were found, to which I gave a negative reply. Thereupon he ordered me to give an alarm to all the auxiliary policemen and to order them to carry out patrols to find any baled-out airmen. This was carried out according to orders, but there was no success. There was no properly appointed Burgomeister in our village, and the next morning I was busy laying out the charred bodies, which two days later were buried in the cemetery. On the same day towards dinner time I received a telephone call from Wommelshausen that a baled-out airman was at the Burgomeister's office at Wommelshausen. Wommelshausen belonged to my area. I reported this further to Lt. Menge. I then cycled to Wommelshausen and found the prisoner sitting in the Burgomeister's office. There was no Burgomeister present, because the Burgomeister was also absent. There was a large crowd in front of the Burgomeister's office. These were mostly evacuees from Frankfurt who had been billeted there because of air raids. As I came out of the Burgomeister's office with the airman the crowd threatened to fall upon us. I stood in front of the airman and told the crowd that nobody must do him any harm. Thereupon I went with the airman in the direction of Weidenhausen. About 1,000 metres before we reached Weidenhausen Lt. Menge came in company with the Meister of the Gendarmerie by the name of Schmidt. Both these were my superiors. I reported shortly to Lt. Menge. He told me off severely why I had not left the airman to the mercy of the crowd. I only shrugged my shoulders and did not reply, and told him that he had ordered me to bring the airman to Weidenhausen. Thereupon Menge demanded that I should shoot the airman immediately in a nearby wood. This I refused on the spot. Then Menge told me off severely and mentioned that I had already refused to carry out an order in connection with a French P.O., and he said if I did not carry out the order this time I would know what to expect. Thereupon Menge spoke with the Meister of the Gendarmerie Schmidt, and then Menge ordered me to deliver the airman in the prison of Weidenhausen, and when I had brought the airman to the prison I should come to the inn called Asmann. Thereupon I delivered the airman and spoke to the Burgomeister. Menge told me I should interrogate the airman, but the Burgomeister and I could not speak any English at all, so the Burgomeister fetched a teacher. The airman did not answer to our questions. We offered him food and everything, and he did not accept anything and he gave no answer whatsoever. When I asked him about his papers he said his papers were in the plane. The only thing he had on him was a little case in front of his chest with vitamin tablets and a little hook. After a short interrogation I put the airman back into the cell again and I went to the inn called Asmann. Lt. Menge was not present in the inn, but he was in the kitchen, and Meister Schmidt was not present. Lt. Menge asked me then what the airman had to say in his interrogation, and I said he had nothing to say, we could not make him speak. Thereupon Menge said the airman would be shot tonight. I refused to obey this order and to carry it out, and I said to Lt. Menge: "It just cannot be done". Lt. Menge replied: "If you do not obey my order I take you tonight to the place and get you tried. I request from you tomorrow morning". Menge said "a report that you have executed my order." Thereupon I replied to him that I could not possibly do it myself, whereupon Lt. Menge said: "You have to go to the Burgomeister Michel, and Michel shall come with you and look after the grave". Then

Menge and I parted, and I left this way. When I left, Meister Schmidt came along, and both drove off in the direction of Gladenbach. I then went to Burgemeister Michel and told him what I had been told by Menge. Then together with Burgemeister Michel we discussed for a long time as to what to do. I could not very well let the airmen escape, because after all I had to give my report next morning, and if I had let him escape he would have been caught in another district and I would have been caught afterwards for giving a false report. The Burgemeister and I came to the conclusion that after all we had to kill the airmen. Thereupon the Burgemeister talked with Thomas, the runner. This conversation took place in an ante room. I could not understand what they were talking about. Then he came back and said everything was being arranged for. Thomas was being sent away by the Burgemeister, and the Burgemeister and I went to the cell to collect the airmen. Thomas was not present when we went to collect the airmen from the cell. Then Burgemeister Michel took over the load and showed me the way, because I did not know the district as I was new down there, and we went off to the wood. When we came there the whole thing was done very quickly. We left the airmen about 10 yards from the grave because he should not see the grave, and as far as I know only one shot was fired and the airmen collapsed and was dead. Then Michel went over to the grave to see that everything was all right, and then he came back and looked over the airmen, and then Michel and Thomas put the airmen into the grave. I did not bother about anything and went together with Michel and Thomas back home. This is the incident as far as I know at Weidenhausen.

- Q Did you have the impression that Herr Michel was very sorry to execute this order? A. Michel said to me: "I have in front of me another order after which all airmen should be brought to Giessen." Then Michel said: "I have heard of the order, and as we have to make a report the next morning there is nothing we can do about it, we shall have to do it."
- Q How long were you discussing the matter about this question, you and Michel? A. We argued for about twenty minutes what to do.
- Q When did you receive for the first time a general order which had the consequence which you have insinuated here before? A. This order was read by Hauptmann Kreits in the presence of Lieutenant Menge either in June or August, 1944. Hauptmann Kreits when he told us about this order insinuated and insisted that those who would not execute this order would be put without mercy in front of a Court and tried, and Hauptmann Kreits was himself a member of the Court. I would mention here that when I was taken prisoner and was awaiting my trial, Hauptmann Kreits was also a prisoner in one of the neighbouring cells and he hanged himself. When this order was being issued Meister of the Gendarmerie Schmidt objected against this order. But Lieutenant Menge was not only a Lieutenant in the Gendarmerie, he was also a Sturmbahnfuhrer in the SS.
- Q Who was present when this order was being read to you? A. All the Gendarme which belonged to the district were present.
- Q Did you ever come to know of the consequences to those who did not obey this order? A. Yes. Hauptmann Kreits often mentioned the consequences to people who had been tried for not obeying the order, because he was a member of the Court.
- Q Did this order come from higher authority, and from which authority might it have come? A. The secret order was supposed to have come from the Reich Government, but I should say Meister Schmidt and Koch could give more information about this than I.

- Q Could you give us any information as to the reasons why this order was issued? I am very surprised this order was only issued in June or August, 1944. A. At a conference it was explained to us that this order originates because the enemy not only contents himself with attacking military targets but also attacks the civilian population in the fields with small arm fire, and also the civilian population in towns, women and children.
- Q Can you give me any information as to the sort of district the aeroplane had gone to of which the airman who was killed was a member of the crew? A. Lieutenant Menge said to me when he issued the order that the plane has taken part in an attack on Giessen, and in this attack about 10,000 people were killed and the town was completely destroyed.
- Q Were you personally a witness of any such act of violence? A. I have been more than once under fire, because of a train which by-passed the town, and this belongs to my district which I had to patrol, and more than once I have been under fire by fighters which attacked with small arm fire, and there is not one village where people have not been killed or wounded.
- Q Were there any military targets which would have been attacked by enemy aircraft? A. No, it was a plain country, and only two factories which employed only about 100 people, and there was nothing important there.
- Q Which is the biggest of the little towns in your surrounding district, and how many inhabitants did it have? A. The next big town was Marburg. I do not know how many inhabitants it has, because I am a foreigner myself in those parts. The other one is Giessen, which is about 80 miles away as the crow flies.
- Q How far is it from your village straight down to Kassel? A. About 50 kilometres approximately; I do not know. It is quite a long way - 100 kilometres.

MR. SIMON: That is all I want to ask.

THE JUDGE ADVOCATE: Mr. Simon, your witness gave some detail about the events leading up to the first shooting, which he admitted in his evidence, and he has then put before the Court certain circumstances which he says are relevant to the action which he took; but you have not yet asked him any questions about the second killing. You need not if you do not want to do so, but I call your attention to that.

MR. SIMON: I intend to ask the witness a few questions on the second shooting, although the motives leading to the second shooting were very similar to the motives leading to the first shooting. I believe, however, that I can take responsibility for that if the second incident is not enlarged upon. (To the Witness): Will you now relate the incidents on the 10th December 1944?

A. On Saturday afternoon I was sitting in my office and doing my routine work, whereupon I received a telephone call from Lieutenant Menge. Menge first asked whether I knew where Meister Schmidt was. I said I did not know where he was. Thereupon Menge gave me the following order: In the area of Oberwachtmeister Koch there is an English airman; an English airman has been captured there. As he came from the same aeroplane which had crashed near my place, he too should be shot by us. Thereupon a discussion ensued with Lieutenant Menge, because I said that incidents which occurred in other areas had nothing to do with me, but Lieutenant Menge told me the following. Lieutenant Menge said that if I contradicted him

any further he would have me taken away immediately. I would like to mention at this stage that I was not a Party member; I belonged to the Central Party, the Liberal Party, and had a lot of enemies. I was not affiliated to any organisation, and that is why I was suppressed in the Gendarmerie. Menge told me that Hauptmeister Koch was going to take the prisoner in the direction of Gladenbach and I should meet them. Thereupon I contradicted again and I said that I could not do all the dirty work, and then Lieutenant Menge told me that I should go to Schmidt and he would detail a man to go with me, and he said: "I demand that you report on Monday morning". I called Meister Schmidt by telephone several times that day, but Meister Schmidt was not at home, he was on patrol. On Sunday morning towards 10 o'clock I then went personally to Meister Schmidt and I met Meister Schmidt in his flat. I told Meister Schmidt the orders which I had been given by Lieutenant Menge, also that a man was to be detailed. Meister Schmidt then said: "Go to the Auxiliary Police Will." I would like to stress at this point that Will was not known to me at that time. Meister Schmidt also told me where Will was living. I then went to Will's flat, but I did not meet Will there, only his wife. The wife told me where her husband was. I then went to look for Will, met him and returned to his flat, then we talked about the order which had been given. Will could not do anything otherwise than myself, because he was an auxiliary policeman and had taken his oath accordingly. I want to say at this point that Lieutenant Menge had given orders that these airmen were not to be buried in the cemetery. I told this to the auxiliary policeman and told him to find a place where we could make a grave. Will then went away in the afternoon and prepared the grave; I did not go with him. I had made an appointment with Will for 8 o'clock in the evening, and we then left together. Then we went in the direction of Runhausen and met later on in the evening - I do not know exactly what time, about 11 p.m. - Koch with the airmen. We then went with the airmen along the road and then we went across the field in the direction where the grave was. The grave had been prepared, and everything took place in a very short time. I bound the hands of the airmen behind his back, and immediately fired the shot. For my part, only one shot was fired. The airmen was lying on the ground and was touched by me to find whether he was dead, and then later we deposited the airmen in the grave. While the grave was being filled, Will suddenly must have become very excited, because all of a sudden he fired one shot. I myself told Will off why he had fired a shot. Will said that he heard some movement and he thought the airmen was still alive. Thereupon we filled the grave altogether. Then we left. On the way to the road Koch gave me the valuable of the airmen. Menge had given him an order that I should accept these things. On Monday I gave the second report. Thereupon, I do not know whether it was Wednesday or Thursday in the following week, Lieutenant Menge again came to my flat and spoke to me regarding the report, that I had not given it correctly. I then had to sit behind the typewriter and he dictated the report to me. The conclusion of the report was that a terror airmen was found dead. On that occasion Lieutenant Menge also took the valuable from me. There were also identity discs there which had been found near the wreckage. These things Lieutenant Menge took and said that they were going to be sent to higher formation. As I had some disagreements with Menge, I was posted in January to Denmark.

- Q Will you repeat again why you were posted to Denmark?
- A. He made as an excuse that I had to go on a Gendarmerie course to Denmark, but only one man had been needed; that was a man called Wege. When we arrived in Denmark I found out that I was surplus. It was only then that I realised I had been posted as a punishment. From Denmark I became a prisoner-of-war in British hands.

- Q Are you sure whether all the valuables which had been taken by you and your comrades were passed to the appropriate authorities ? A. This I cannot say exactly.
- Q Are you sure that you and your comrades did not retain anything belonging to the airman ? A. All the things have been delivered up by us.
- Q Are you quite sure that a second shot was not fired after your first one ? A. It was assumed that a second shot had been fired. It could not have been fired by me because there was a jam in my pistol. At some time when I made my deposition I thought the second shot had been fired straight afterwards, but that may be by somebody else in the wood. I am not quite sure. It is a large wood.
- Q What I wanted to know is did you, Koch or Will fire a second shot ? A. No.
- Q Are you a Catholic or a Protestant ? A. A Catholic.
- Q Even now ? A. Yes.

MR.SIMON: I have no further questions.

THE JUDGE ADVOCATE: Dr.Peters, do you wish to apply to cross-examine on the ground that any of the evidence given by this witness has been against the people you represent ?

DR.PETERS: Yes, Sir.

Cross-examined by DR.PETERS.

- Q Will you explain very briefly and tell me quite clearly this: did Meister Schmidt have any dealings with the first case which occurred on the 7th December ? A. Meister Schmidt had nothing to do whatsoever with that case; he merely met me when I met Lieutenant Menge and he listened when Menge gave me the order, and I did not see Schmidt any more except once when he left.
- Q Are you referring to Meister Schmidt who is in Court today ? A. Yes.
- Q You know that the name of Schmidt does come up very often, does it not ? A. Yes.
- Q Referring to Meister Schmidt again and as regards the second shooting, had he only to do with the fact that he named Will as the man you should go to ? A. Meister Schmidt had nothing to do with that case either, and in fact he was very annoyed that we had come and that this case was brought up in his own district.
- Q You were referring to a telephone conversation you had on a Saturday with Lieutenant Menge. Are you referring to the telephone conversation you had on December 9th ? A. Yes, on a Saturday afternoon.
- Q Meister Schmidt had nothing to do with that conversation either ? A. No, Menge 'phoned me personally.
- Q Did he mention the name of Schmidt at all ? A. He merely asked me whether I knew where Meister Schmidt was, and I gave a negative reply.
- Q We now come to speak of the case of Koch. How did Koch act during the shooting on the 10th December ? When did he hand the prisoner to you ? A. At about 2300 hours.

- Q At what village ? A. On the road from Runzhausen to Gladenbach.
- Q Not at the forest ? A. We met him on the road and we went together to the forest.
- Q Is the forest close to the road ? A. No.
- Q How far off ? A. Approximately 300 metres.
- Q Where was he standing when the shooting took place ? Perhaps the Court will allow the witness to show here in Court where the grave was, where he was standing, where Koch was standing and where Will was standing.

THE JUDGE ADVOCATE: Very well.

DR. PETERS: First of all show us where the grave was ?

A. The Interpreters' table is the grave. The airman could not see the grave.

- Q Supposing the grave was about 10 metres in front of you. Now tell us where were you standing ? A. I stood about 5 metres behind the airman.
- Q How far was the airman away from the grave ? A. About 15 metres away; the airman was put in such a position that he could not see the grave.
- Q Was it dark ? A. Yes.
- Q You said you were standing about 5 metres behind the airman. Where was Koch standing ? A. Koch was standing at the rear of me, and therefore I am unable to state how far he was away.
- Q Where was Will ? A. Will was a very short distance from me.
- Q To the left or right ? A. At the moment I am unable to tell you.
- Q Did Koch fire at all ? A. I did not see that Koch had fired a shot.
- Q You said that you did not see Koch fire a shot, but do you think it was likely or possible ? A. I do not think that Koch fired.
- Q You do not believe it ? A. No.
- Q Did you see that Will had fired a shot ? A. Yes.
- Q When did he fire that shot ? Before you have stated that he fired the shot after the airman was lying in the grave ? A. Will had fired the shot when the airman was in the grave.
- Q The statement you are making now before this Court you are making under oath. I have got to point this out to you, because once before you said something different. In a previous statement you stated that the airman was not dead at once and that Will fired a second shot. Now you state that you yourself examined and tested the airman to find out whether he was dead, that he was lowered into the grave and that Will got somehow excited and fired another shot ? A. Yes, by that shot it was assumed that the airman had not been dead.
- Q Which is correct ? Was the airman dead after the first shot or was he not dead ? Just think very carefully. A. When I examined and touched the airman his pulse was not beating any more and his heart was not beating any longer, and I myself undressed him and listened to his heart.

- Q Did you also shine the torch upon him ? A. The torch was only very weak.
- Q If you examine and try to find out whether a man is dead or not, normally one looks at his eyes. Did you look at his eyes? Did you see that his eyes were broken ? A. I closed the eyes of the airman myself.
- Q When ? A. After the examination.
- Q Before you put him into the grave ? A. Yes.
- Q Who was Will and what rank did he hold in the Police ? A. Will was an auxiliary policeman and he had taken the oath as a police officer.
- Q What was the duty of the Landwacht ? A. The Landwacht came under the regular police, and their job was to take part in searching for enemy airmen or to cordon off certain areas.
- Q Was the Landwacht an auxiliary force to the Wehrmacht or to the Police ? A. To the Police.

DR. PETERS: I have no further questions, Sir.

Cross-examined by CAPTAIN CLEAVER:

- Q At the case of the shooting of the first pilot were you the only person who fired a shot ? A. Yes.
- Q In regard to the second pilot, do you remember what Will carried when he came with you along the road to meet Koch and the airman ? A. When Will left his home he was carrying a pistol and a rifle. I told him off and I said: "Will, you do not need the rifle, put it away, you do not need it tonight", and Will put the rifle away.
- Q Was the pistol which Will carried part of his usual equipment as a member of the Landwacht ? A. I am unable to state anything about the equipment which Will was supposed to carry or wear, but Meister Schmidt will be able to certify since he was in charge of them.
- Q When you went to Schmidt about the killing of the second airman, supposing Schmidt had not ordered Will to accompany you, what would have happened then ? A. I would then have to inform the Lieutenant that Schmidt was not obeying his orders.
- Q Did Schmidt say anything to you when you told him what was to happen ? A. Schmidt was in rather a bad mood about it. Schmidt was my superior officer and he was very startled that we were told of such orders.
- Q When you say he was startled do you mean he was frightened for himself or that he was opposed to carrying out such orders ? A. We were all opposed to it, and Meister Schmidt was opposed to it too.

(At 1300 hours the Court is closed.)

At 1415 hours the Court is re-opened.)

(The Accused are again brought before the Court and the Accused Mangold again takes his place at the Witness-stand.)

CAPTAIN CLEAVER: When you and Will went to meet Koch and the airman, is it correct that you walked along the road and then waited for some time standing still at the side of the road ? A. We went up and down the road and waited for Koch.

- Q Was any particular place ordered to you where you should meet Koch and the airman ? A. The Lieutenant told me that Koch would come from the direction of Runzhausen towards Gladenbach.
- Q Did he not tell you to meet him at the boundary of your district ? A. This has not been told to me by the Lieutenant; I only heard it later from Koch. I was not told about it.
- Q When you met Koch did you reproach him for not having shot the airman in Biedenkopf ? A. I told Koch: "Why did you bring the airman to us".
- Q Was it then that Koch said: "If I had been ordered to shoot him at Biedenkopf I would have done so" ? A. There was a conversation to that effect, but Koch did not say: "I would have done so". Koch said that he had the order to pass the airman to me.
- Q Did you tell Koch to follow you and Will to the place where the airman was to be shot ? A. I left it to Koch's discretion whether he wanted to accompany us or not. I could not give an order to Koch as Koch was of the same rank as myself.
- Q Did you receive the impression that Koch followed you of his own free will ? A. I cannot say that exactly; I do not know why. There was not much conversation; we were rather excited. It was rather cold on the road and so we proceeded.
- Q When you got to the place where the airman was to be shot what did Will do whilst you were preparing your pistol ? A. Will at first went to the grave. He then returned and stood by my side, on which side I do not know. He had a very weak torch and he shone it.
- Q Did he shine it upon the prisoner ? A. He stood behind me and he shone it in the direction of the prisoner.
- Q And it was a very dark night; is that correct ? A. Quite dark. It was not very dark, it was quite dark, just as it is on a night in December.
- Q Could you see the prisoner without the use of this torch ? A. If I stood at a great distance from him I could not have seen him. It was in the wood; there is always twilight in the wood and things cannot be seen so clearly in a wood.
- Q When you shot the airman how far were you from him ? A. 4 or 5 metres. Exactly I cannot tell.
- Q At what time did your pistol jam ? Was it before you fired this one shot or afterwards ? A. After the shot.
- Q I am correct in saying that you do not think another shot was fired until the corpse was in the grave; is that right ? A. I personally only fired one shot.
- Q But you heard a second shot, did you not ? A. Yes; it might have been an imagination of mine.
- Q But you say that Will fired a shot when the prisoner was in the grave ? A. Yes.
- Q Did you see Will when he fired that shot ? A. Will stood at the right-hand side of me.
- Q Did he bend down towards the grave ? A. That I cannot say exactly. He fired a shot in the direction of the grave.
- Q He fired that shot because he thought the airman was alive; is that correct ? A. I thereupon reproached Will why he had

fired the shot. Thereupon Will replied that he had heard something.

- Q Do you know why Menge detailed you to shoot the second airman? A. Menge told me that the airman belonged to the plane which had crashed near my place and that is why he should be shot in that area.
- Q Do you know whether these two airman were shot because of the secret order which you had been given or because of the fact that they had destroyed the town of Giessen? A. When I had words with Menge, Menge told me that these airman had taken part in the raid on Giessen, and these were terror raids and that is why they had to be shot, because the secret order was to the effect that all airman taking part in terror raids were to be shot immediately upon being taken prisoner. We had at first refused to carry out that order; only upon the direct order of Menge did we proceed with the deed.
- Q At this particular time after the air raid on Giessen did you think that it was still wrong to shoot the prisoners? A. We had already spoken about it, that the order was unjust. We did that openly in the conference of the staff, and I beg to ask Meister Schmidt about this point.
- Q At the conference the order which you were told was that prisoners must be shot, terrorfliers must be shot; is that right? A. Yes, at the conference it was said that terror fliers had to be shot immediately upon being taken prisoner and a report had to be made "Terror fliers found dead".

Re-examined by MR.SIMON.

- Q You just said that you had spoken about this order with your comrades; is that correct? A. Yes.
- Q In this connection the word "unjust" was mentioned. I now ask you: Did you think that order was given to you justly and was binding upon you, or did you not think so?

THE JUDGE ADVOCATE: Let us separate the question. "Did you think it was just" is one question, "Did you think it was binding on you" is another question. Answer one at a time and each question separately. A. We Gendarme had no right to quibble about an order, we had to carry it out. Whether the order was just or unjust, we had no influence upon this point, we had to carry it out.

MR.SIMON: Will you say by that that this order was binding upon you? A. The order was binding upon me. The order came from the highest Government places and therefore it must be binding upon us.

MR.SIMON: I have no more questions, Sir.

THE JUDGE ADVOCATE: You have fought in two wars? A. Yes.

- Q Did you know that is against the rules of war to shoot a prisoner-of-war? A. This was not made known to us.

THE PRESIDENT: I do not know quite how far you say you would carry out your orders from your superiors if they are obviously wrong. To take an extreme case, if Lieutenant Menge acting on behalf of the highest authority of the State, had ordered you, for example, to shoot your own child, would you have done it? A. We were only told we must shoot terror fliers.

THE JUDGE ADVOCATE: Why do you think this order was given in secret? A. I did not think about it. This order was told to us during the conference and it was given to us as a

secret order, that is we had not to divulge it any further.

Q It never occurred to you to wonder at the back of your mind why an order like that should be given in secret, did it ?
A. I never thought about it.

Q Did it not occur to you that it was a thoroughly wrong order, that it was contrary to all international rules of warfare ?
A. I could not rule about that, they were not known to me.

Q What steps, if any, were taken to see that the first airman was dead before he was buried ? A. Michel and myself touched the airman, and Michel himself closed the eyes of the airman. We touched his pulse and listened to his heart.

(The Accused Mengold returns to the dock.)

THE JUDGE ADVOCATE: Have you any other witnesses on behalf of Mengold, Mr. Simon ?

MR. SIMON: I have to quote several witnesses for the existence of that order.

THE JUDGE ADVOCATE: Call them one at a time.

MR. SIMON: The first one is Meister of the Schutzpolizei Heinrich Schmidt.

THE JUDGE ADVOCATE: Let him be called.

MR. SIMON: He is not here yet.

THE JUDGE ADVOCATE: Have you any witnesses here ?

MR. SIMON: He is not identical with the Schmidt who is being accused.

THE JUDGE ADVOCATE: I know that. Have you any other witness to place before the Court now ?

MR. SIMON: The other witnesses may not be here yet either. Those are four witnesses who can testify as to the existence of the order.

THE JUDGE ADVOCATE: Are you questioning the existence of this order, Captain Cleaver ?

CAPTAIN CLEAVER: It is rather a difficult question for me to answer, Sir, without giving evidence myself in one form or another. The Prosecution is aware of an order which was given

THE JUDGE ADVOCATE: If an order was given in the terms of which there is evidence already before the Court by another witness, would you cross-examine to the existence of such an order ? There is evidence before the Court in the depositions. Do you question the accuracy of the evidence which is now before the Court on that matter ?

CAPTAIN CLEAVER: I am prepared to believe those witnesses and the Accused who say that an order was given to them at this conference that the airmen should be killed. That that order was the actual one which was given by the highest authorities is, in the minds of the Prosecution, a matter for doubt, and I was going to cross-examine ----

THE JUDGE ADVOCATE: Then these witnesses are material ?

CAPTAIN CLEAVER: I think they are, Sir.

THE JUDGE ADVOCATE: Is it the duty of the Prosecution to procure the attendance of the Defence witnesses ?

CAPTAIN CLEAVER: I believe the usual procedure, Sir, is for Counsel for the Defence to nominate the witnesses they want, take all reasonable steps to obtain them themselves, and then to call upon the assistance of the "A" Branch of the Convening Authority to obtain the witnesses after that point.

THE PRESIDENT: I take it the witnesses Mr. Simon had just mentioned have been called, have they, and may be here, or coming here ? Are those the witnesses referred to who are going to arrive on Monday ?

CAPTAIN CLEAVER: They were the witnesses for Koch, I think.

THE PRESIDENT: What steps have been taken to call these witnesses ?

MR. SIMON: As far as I know, these witnesses were not due to attend until Monday or Tuesday; we could not foretell the exact speed of the proceedings, but Dr. Peters may be able to give information as to what steps have been taken to call these witnesses before the Court.

THE JUDGE ADVOCATE: Dr. Peters, do you require these witnesses for the defence of your clients in the same way that Mr. Simon does ?

DR. PETERS: Yes, Sir, I need these witnesses for Schmidt, Koch and Will.

THE JUDGE ADVOCATE: It seems to me that provided the Court receive this evidence it does not matter whether they are called by you later or by Mr. Simon now.

DR. PETERS: No, Sir, that makes no difference, because we collaborate in the defence.

THE JUDGE ADVOCATE: Mr. Simon, if you have no further evidence other than these witnesses to call, I suggest we now pass to the case of the second Accused.

MR. SIMON: I agree with this suggestion in principle, Sir, but I would like to draw your attention to the fact that I also intend to call the fireman Scheldt, who will give evidence as to the fact that Mangold tried to save the airman.

THE JUDGE ADVOCATE: Is that witness outside the Court now ? If not, when will he be here ?

MR. SIMON: He too will be here on Monday and will be questioned together with the other witnesses.

THE JUDGE ADVOCATE: Dr. Peters, do you feel that you can now open the case for the Accused, and permit Mr. Simon to call his witnesses afterwards when they arrive ?

DR. PETERS: Yes, I can do that, Sir.

THE JUDGE ADVOCATE: We will hear your evidence, Mr. Simon, when it is before the Court.

MR. SIMON: Thank you, Sir.

THE JUDGE ADVOCATE: Ludwig Will, do you remember what I said to the four of you at the end of the Prosecution case ? I am now going to put the question to you: Do you apply to give evidence as a witness ? Dr. Peters, would you like to talk to this Accused before he answers ?

DR. PETERS: Yes, Sir. He would like to give evidence as a witness.

THE JUDGE ADVOCATE: As you, Dr. Peters, are representing these three Accused, the same question will be put to the other two at the same time. Karl Schmidt, do you apply to give evidence as a witness?

THE ACCUSED SCHMIDT: Yes.

THE JUDGE ADVOCATE: Otto Koch, do you apply to give evidence as a witness?

THE ACCUSED KOCH: Yes.

THE JUDGE ADVOCATE: Dr. Peters, are you calling any witnesses other than the Accused?

DR. PETERS: Yes, Sir, and the same applies to those witnesses as to the witnesses Mr. Simon has already mentioned.

THE JUDGE ADVOCATE: I understand then that they are witnesses as to the facts of the case?

DR. PETERS: Yes, Sir, no witnesses as to character.

THE JUDGE ADVOCATE: Then you have the right to address the Court before calling your evidence, if you so desire.

DR. PETERS: I would like to put a very short question to the President. Have I got to give an opening address, and if I do not give an opening address have I got the last word after the Prosecution?

THE JUDGE ADVOCATE: Whether or not you open this case now, you will have the right to address the Court at the conclusion of all the evidence. The order of speeches at the end of the defence will be yourself first, Mr. Simon second, and the Prosecutor last.

DR. PETERS: Then we could start with the examination of Will. I only want to indicate briefly to the Court the way that I want to conduct the defence.

THE JUDGE ADVOCATE: Very well.

DR. PETERS: Gentlemen, the three Accused who are represented by me, Will, Koch and Schmidt, have according to the Prosecution taken part in the killing of an English prisoner-of-war. The fact that the English airman was killed in the presence of the three on the 10th December is not being denied. As Counsel for the Defence for the three Accused, I have to examine the question; who has committed the actual act of killing. The second question I will have to examine is whether, if anybody has committed a direct act of killing, he acted against the law; and if he has offended against the law, I must examine the question whether he can justify his deed or bring any other excuse, because it is the law in all civilised countries that criminal deeds or borderline cases may be committed but these offences may be excused or justified. Because of this I will have to question my witnesses whether they knew of a secret order, whether they intended to obey it, and if they obeyed it, why, and if they had not obeyed it what would have happened to them. I therefore desire to conclude my opening address and then I will ask the witness Will about this.

THE ACCUSED LUDWIG WILL takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by DR. PETERS in German, the evidence being translated into English as follows:-

Q Mr. Will, are your statements and your particulars in the documents which have been read out to you right? A. Yes.

Q I mean your statements as relating to yourself? A. Yes.

Q Therefore it is not necessary to question you here as to your address. A. No.

THE JUDGE ADVOCATE: Dr. Peters, I fully agree with the way you are questioning this witness. It means that now the Court can concentrate on those small matters on which you want them to concentrate and which are so important.

DR. PETERS: Is this statement of the witness Mangold correct, that you were detailed to dig a grave on this particular day in the bushes? A. Yes.

Q Is it correct that on the same evening you went together with Mangold on the road between Runzhausen and Gladenbach in order to meet Koch escorting the airman? A. Yes, that is correct. I went together with Mangold on the stretch of the road between Runzhausen and Gladenbach and went 100 metres on to wait for Koch and the pilot.

Q Is it correct that Koch and the airman arrived and that you shone a torch on them? A. I switched on my torch quite frequently and the reason for this was because the road was concrete and because it was heavily frozen.

Q I only want to know from you whether it is correct, and please answer my question Yes or No, whether you shone your torch on these two men? A. Yes.

Q Did you know Koch previously? A. No.

Q Which of you two knew Koch, Mangold or yourself? A. Mangold must have known Koch.

Q Why? A. Because both of them were gendarme of the same district.

Q What were you? A. I was an auxiliary policeman.

Q What is the meaning of the term "auxiliary policeman"? A. An auxiliary policeman has to be ready to assist the official gendarmerie at every moment.

Q Was this organisation in existence prior to the war? A. No.

Q Why was this organisation created during the war? Do you know anything about that? A. No, I cannot say anything about this.

Q Has it ever been pointed out to you during official conferences or during instruction hours what was the meaning behind the auxiliary police organisation? A. These conferences took place every Sunday morning, and the orders of the auxiliary police organisation were read out to us by the Meister of the police and also by the commandant of the auxiliary police force.

Q What was the reason of this organisation? What has been explained to you? A. "You must be aware of the fact that

all able-bodied men are at the front, and you who are left behind have to protect the home".

- Q Why did you have to protect the home, against what ?
A. First of all, all the regular police force, all the regular Gendarmerie, has been called away.
- Q Am I correct in assuming that you occupied an auxiliary position ? A. Yes, we occupied that auxiliary position in that we had to go on patrol at night and also had to keep watch on the foreign workers and generally had to do all tasks formerly carried out by the regular police.
- Q Is this correct, that you received your orders through the same regular channels as orders were given to the regular police ? A. We received the same orders as the former regular police, and the district leaders impressed on us that we had to carry out exactly the same duties.
- Q When you recognised Koch with the prisoner, where did you go to afterwards ? A. When Koch and the prisoner arrived we walked together on the road. I myself turned left and Koch and the prisoner walked on a bit, and Koch and Mangold went together.
- Q Did you talk to Koch about the handing over the prisoner, or is the statement of Mangold correct that he talked to Koch ? A. No, I myself did not talk either to Koch or to Mangold. I did not say anything at all.
- Q I asked you whether Mangold talked to Koch; you must concentrate on the questions I put to you. A. Mangold and Koch talked together.
- Q Is it right that Mangold said to Koch: "We are now going into the forest"? A. Koch asked: "How far is it, because I have to come with you".
- Q Did he say: "because I have to accompany you", or did he say: "How far have I to accompany you" ? A. He asked: "How far is it".
- Q When you arrived at the forest who fired the shot ? A. As we arrived at the forest Mangold fired the shot.
- Q Did only Mangold fire or did you fire too ? A. Only Mangold himself.
- Q You have heard that Mangold has stated here that you also fired a shot ? A. Yes, I also fired, but I only fired when the flier was already in the grave.
- Q Why did you shoot when the airman was in the grave ? A. Because I thought he was not yet dead.
- Q You have heard that Mangold has stated here that the death of the flier had been ascertained by him before. Why did you fire at all ? Did not you see that Mangold ascertained the death of the flier when he touched him ? A. At the time Mangold ascertained the death of the flier I walked a distance of approximately 20 metres further on in order to fetch my spade.
- Q How can you know today that the flier was already dead or was presumed to be dead when you fired at him ? A. Because Mangold rebuked me by telling me that the shot was unnecessary.
- Q I am now going to read the statement made by you in which you

said something different. You will have to be more explicit about it. In your statement made at Marburg on the Lahn on the 21st August, 1945, you stated that the flier was not dead after the first shot, and therefore you fired in the direction of his temple. A. I have always disputed this statement from the beginning.

Q. But it is stated in this deposition of yours that you read over the statement, if was given by you voluntarily without the use of force, or threat, or promise or reward? A. I have always said that as I was about to shovel the earth on the airman and also to cover him with bushes that it appeared to me that the airman was still alive as if he was still trembling.

Q. You must be aware of the fact that you are on your oath and that the oath is holy. Which statement do you wish to state - the statement made by you on the 25th August, 1945 at Marburg on the Lahn, or the evidence as given by you in this Court? A. The evidence I am giving now is true, so help me God.

Q. Then you only fired the shot after the airman had been in the grave and not previous to that? A. No, I did not fire a shot previously.

Q. Did you have any feeling of enmity towards enemy soldiers when you went together to the shooting? A. No, on the contrary. I have been a foreman and I have been employed partly on the airport at Giessen, and at this airport there were 95 black soldiers, French prisoners-of-war, and these soldiers were hungry and I brought some potatoes and bread for them.

Q. It is quite possible that you did not have any feelings of indignation against these soldiers but your feelings might have been different towards enemy airmen. Do you want to state that you regarded the British pilots as dear comrades? A. We could not regard them as comrades because as members of the auxiliary police force we had to go out during the night and see whether the black-out was in order, and if the black-out was not in order we had to fall out with the people concerned.

Q. I will put the question again. Did you act because you felt personal indignation towards these men, or did you act on superior orders? A. On superior orders.

Q. On superior orders? A. This order has always been read out to us every Sunday morning by Meister Schmidt, and it has been explicitly explained to us and we were explicitly made aware of this order.

Q. You know there existed several orders, and amongst these orders there was an order, as Mangold stated here, that enemy terror fliers had to be shot, and also that all those disobeying this order would be put in front of a Police Court? A. Yes.

Q. Were you aware of this order? A. Yes.

Q. Did you think of these orders when you participated in the killing of the British prisoner-of-war, if we may express it this way, did you bear this order in mind? A. When Mangold transmitted this order to me on the 19th December, 1944, and when on the 7th December my youngest son was called to the Army to Koenigsberg in East Prussia, then it was not the same to me.

Q. What do you mean by that? What has not been the same? A. Then it has not been the same to me that I had to carry out these orders.

Q During this shooting did you hear three shots or only two shots, the shot fired by Mangold and the shot fired by you ?
A. The shot fired by Mangold and by myself.

Q Do you know that Koch fired a shot ? A. No, Koch did not fire a shot.

DR. PETERS: That is all I want to ask.

THE JUDGE ADVOCATE: Mr. Simon, do you wish to put any questions to this witness before he is cross-examined by the Prosecutor?

MR. SIMON: No, I have no further questions at the moment.

Cross-examined by CAPTAIN CLEAVER

Q Would you repeat what you said about the orders which you were given on these Sunday morning conferences ? A. I cannot say anything about these orders, because I was only a small auxiliary policeman and we received all orders from our superior officer, Meister Schmidt.

Q At these conferences what were you told should be done to enemy airmen ? A. During these conferences it had been pointed out to all members of the auxiliary police force that all captured enemy terror fliers had to be shot.

Q In your statement to Captain Brunner you said that Koch said something about he would shoot the airmen at Biedenkopf if he had been ordered to do so. Is that correct ? A. Yes, Koch must have mentioned something in this direction.

Q Can you remember exactly what he said ? A. No, I cannot exactly remember, and I could not quite understand him either.

Q When you went into the forest and came to the place where the grave was, did you hold the light upon the prisoner ? A. When we came into the forest I first approached the grave and Mangold wanted to see the grave. Koch remained outside the forest. Then Koch arrived and Mangold turned away from the grave, and Koch escorted the airmen to Mangold. I put a few bushes into the grave and then I climbed out of the grave, and I approached Mangold and stopped at a distance of approximately 4 to 5 metres away from him. I then switched on my torch and immediately a shot was fired.

Q Why did you switch on the torch ? Was it to light up the airmen ? A. It was dark in the forest and I wanted to make sure where Mangold and Koch were.

Q You knew the airmen was going to be killed, did you not ?
A. Yes.

Q How did you expect anybody to shoot him in the dark ? I suggest that was why you turned the light on ? A. Yes, Mangold told me: "Will, switch on the light".

THE JUDGE ADVOCATE: I do not want to trick you in any way, but as I understand your defence you are not denying that you were partly responsible for killing this man, but you are saying that in view of the orders which you had received you were justified in doing that. Is that correct or not ?
A. Yes, I was ordered to accompany Mangold and the flier was to be shot.

Q And you were to help and did help; is that correct ? A. I have been detailed to dig the grave and to bury the airmen.

CAPTAIN CLEAVER: Why then did you carry your rifle with you

when you went out with Mangold ? A. This rifle did not belong to me, it belonged to a fellow auxiliary policeman who gave it to me the previous evening, and in the presence of Mangold two months later I returned the rifle to this auxiliary policeman.

Q When you fired the one shot at the airman that was because you thought he was alive; that is right, is it not ? A. Yes.

Q When Mangold came to you and told you what you were to do, on the Sunday morning, did you object to his orders ? A. I did not say anything; I could not say anything.

Q But you knew it was wrong to kill prisoners, did you not ? A. I only received the order from Mangold to dig a grave and to bury the airman.

THE PRESIDENT: Will you tell the witness to answer the question. Perhaps you would put the question again, Captain Cleaver.

CAPTAIN CLEAVER: Mangold told you to dig the grave. You therefore knew that the prisoner was going to be killed ? A. Yes, I have been told: "By order of Meister Schmidt you are to dig the grave".

Q Did you not think that it was a wrong and wicked thing to kill prisoners who had been captured ? A. I could not do anything about it as a small auxiliary policeman; if I had not carried out this order I had to take the consequences at once from the district leader.

THE JUDGE ADVOCATE: Will you answer this question: did you carry out that order because you thought it was your duty to comply with it or because you were frightened to disobey it ? A. I carried out this order first because I had to comply with it and also because I have been afraid.

CAPTAIN CLEAVER: And it never occurred to you to object to such orders ? A. I once objected to these orders and in consequence I have been sent for twelve weeks to the West Wall.

THE JUDGE ADVOCATE: Do you wish to re-examine, Dr. Peters ?

DR. PETERS: I believe everything has been put very precisely, Sir, and it is not necessary to waste the time of the Court.

(The Accused Will returned to the dock.)

THE ACCUSED KARL SCHMIDT takes his stand at the place from which the other witnesses have given their evidence and, having been duly sworn, is examined by DR. PETERS in German, the evidence being translated into English as follows:-

Q Mr. Schmidt, you have heard that during the proceedings it has come up that you have been Meister of the Gendarmerie ? A. Yes.

Q You have also heard of the document which has been produced by the Intelligence Officer of Hamburg where the whole organisation of the Gendarmerie is laid out; it is Exhibit B.

THE JUDGE ADVOCATE: Do you want it ?

DR. PETERS: I would like to show it to the witness.

THE JUDGE ADVOCATE: Very well. It is in English, but it may be translated if you so wish.

(Exhibit No. 8. is read out in German.)

DR. PETERS: I would like the Interpreter to read this sentence in English.

THE INTERPRETER: "A number of these posts from a Gendarmerie gruppenposten (group post) under a Meister of Gendarmerie (senior N.C.O.)"

DR. PETERS: You have been a Meister of Gendarmerie; is that right? A. Yes.

Q You have so to speak a certain authority over a group post? A. Yes.

Q As Meister of the Gendarmerie you had to lead all the conferences in connection with the police who were your subordinates? A. Not in general. New orders and new directions were usually published in conference at Kreis level, and a certain amount of orders and instructions were sent to the individual officers.

Q Verbally or written? A. Written.

Q We have heard from Mangold and Will of an Order that decrees that all terror fliers should be shot? A. Yes.

Q Has this order been published by conferences which have been called by the Kreisfuhrer, that is to say the officer who was above you? A. Yes, this order has been announced for the first time, if I remember rightly, in August 1944 at a Dienst conference at Kreis level by Lieutenant Menge.

Q Do you think that all the people who came under you, that is to say the gendarmerie and the auxiliary police, had to execute the order because they want to have revenge on the terror fliers or because they were scared of the consequences, or why? A. This order has been executed because people were scared of the consequences.

Q Can you say anything as to how these orders inside the district were executed? A. In general, or concerning this particular order?

Q In general, so that the Court can make itself a picture as to how these people were scared?

THE JUDGE ADVOCATE: Would you repeat that question?

DR. PETERS: Would you show how people were executing the order and show what measures have been taken to scare these people so that they would execute these orders?

THE JUDGE ADVOCATE: What steps were taken to frighten the people into compliance with this order?

DR. PETERS: Yes. A. In general it worked like this. If a new order came out, each gendarme received his order in a written document, and if this order was not obeyed the gendarme had to report the offender. Subject to these new orders, sometimes conferences were called to explain to all the new members and auxiliary members these orders.

Q My question is this: how were these people intimidated so that they executed the order and did not say: "I do not want to do it"? I want to know what measures have been taken to do so. How were these people intimidated? A. Each official was under oath and on that oath everyone had the obligation to execute every order and to do everything that was asked of him, because the official himself was responsible to maintain

order in his district.

- Q You have heard a question put by the Court previously: would you have shot your own child if you had been ordered to do so? A. No. There was an order which said that if in the family of a police officer anything might have occurred which was punishable, the father of the relative was not forced to take action against a member of his family, but he had to report the matter to higher authority, which appointed another official who took the necessary steps against those people.
- Q This was not the purpose of the question by the Court. The purpose was the following. In this case it is about an order which obviously is against all rules and regulations of warfare, and the President, who put the question to the men here, obviously wanted to put this question, that if a man had to execute an order which obviously was against all rules and regulations of international warfare but had nothing to do with his own family he would execute it and he would cover himself by saying that if he did not execute the order he would be punished, but he would hesitate to execute an order if it was against his own family. Do you understand what I mean? A. Yes.
- Q What have you got to say to that? A. Against my own family without doubt I would not have executed such an order.
- Q But against foreigners? A. Against strangers I had to. On the other hand, such an order against my own family would never have been given, because if it had been necessary another police official would have received the order to do so and not their own relatives.
- Q Do you want to say that higher authority assumed that such an order would not have been carried out by relatives against their own people? A. There existed an old order which said that their own relatives were not forced to execute an order against their own relatives, but that a strange official would have been ordered to do so.

THE JUDGE ADVOCATE: Dr. Peters, I do not want to stop these questions, but, as you yourself rightly said, the point of that question was merely to get an order which was beyond all question one which would never be carried out, to try and find the borderline, somewhere else. Carry on with your questions if you want to, I am not stopping you, but I suggest a more practical example would be this. The Accused Will has said that if he had disobeyed he might have been shot, and I understand this witness to say that well might have been the consequence. You need not put this question, but I suggest if you want to follow this line of enquiry a better example would be this: supposing Will had disobeyed this order, would you have shot Will if you had been ordered so to do for that act of disobedience? I only want that question put at this stage if Dr. Peters wants to put it.

DR. PETERS: Yes, this question could be put in that form.

THE JUDGE ADVOCATE: Very good. Will you put it to the witness?

DR. PETERS: You say that if one did not obey such orders one was in danger to be shot oneself. Would you have shot Will if he had not carried out the order at the shooting of the British airman?

THE JUDGE ADVOCATE: That is, if you had been ordered to shoot Will for that reason; if Menge had ordered you to shoot Will for disobeying the order, would you have done so? A. No.

would have to be sentenced by a court-martial or by the SS Police Court.

THE PRESIDENT: You are missing the point. If Menge had said to you: "Take Will out and shoot him", would you have shot him? A. Most probably not, because I assume that Menge did not have the right to give an order like that to me.

DR. PETERS: But did Menge have the right to give you the order to shoot enemy airmen? A. Such an order Menge gave, as he had received orders from superior quarters.

Q Therefore you want to say that if you had been given the order to shoot Will he could not have given such an order because he had not been directed to do so by superior quarters. Assume that the same authority which issued the secret order to shoot terror fliers had given authority to Menge to order you to shoot Will, would you have done so? A. Then I would have had to do it, because otherwise I would have been shot myself.

Q That is what I wanted to know. What is the position you take towards the story which Mangold related regarding the events on the 7th and the 10th December? Is this story correct? A. About the events which took place on the spot I do not know, because I was not there, but the events which have taken place before, they are substantially correct.

Q On the first day, that is the 7th December, who was given the order to shoot, you or Mangold? A. I was not given the order to shoot.

Q Why did you not get the order? You were the superior of Mangold? A. That I cannot say, but I had dissuaded Menge before to have that airman shot at all. Menge and I were together when Mangold and the airman arrived.

Q Had the meeting between Menge and yourself before the arrival of Mangold anything to do with the airman? A. Menge had ordered me to be on that spot. I do not know at present whether I told Menge before the arrival of Mangold with the airman or afterwards that he should not have the airman shot, because this was not the proper place to do so. Menge then told Mangold off why he was bringing the airman at all. Mangold was then given the order to bring him to Weidenhausen and to have him locked up there. I then told Menge not to have him shot but to have the airman brought to Giessen, to the Air Force authorities, and to have him interrogated. Thereupon we cycled away on our motorcycles to Weidenhausen, to an inn. Nothing was said about the matter there at first. Only once Menge said: "I have to think over what I shall do." I then left and went into the village to fetch something. When I returned Mangold was there as well. I assume that Menge then during my absence had given the order to Mangold to shoot the airman, because in my presence no order had been given. I left straight afterwards and Menge came after me. We never spoke about the matter then.

Q How was it between you and Mangold, did you speak with Mangold about the matter? A. No, I did not speak with Mangold any more because I did not come into contact with him any more.

Q Did Mangold later give you a report, as you were his superior, or did the report go directly to Menge? A. Mangold did not give me a report, he was not obliged to do so, because the reports of these gendarme went direct to the district leader.

Q Did you later hear anything from Menge about this report? A. No, I heard nothing from Menge.

Q Do you think that Menge had reason to be silent towards you about this report, or do you think that he was merely silent because he thought: "I do not need to account for these matters to people inferior in rank to me"? A. I believe that he did not say anything because he thought that there was no obligation on his part to inform me about it.

Q Have you heard about any punishments which had been given to police officers or men of the Gendarmerie who had not carried out orders coming from superior quarters? Were such precedent punishments, as we call it, ever announced to you, or were you told about it? A. No particular cases in the neighbourhood are known to me, but Hauptmann Kreits, who was also sitting at the SS Police Court, sometimes told us about severe punishments which had been meted out by that court, but to whom they were meted out was not said, nor were such sentences made public. I have now heard that steps had been taken against policemen in Magdeburg, and it is assumed they had been shot for similar offences.

THE JUDGE ADVOCATE: Do you mean you have since heard? A. It was here in the prison that I heard about it. There is an official in the cell and he told me about this case, and I have asked him also to appear as a witness.

DR. PETERS: As regards the subject of concentration camps, you know that people suddenly disappeared, that sometimes there have been rumours that people have disappeared who had refused to obey orders or to carry out certain work or certain duties. As a person connected with the Gendarmerie you must have had certain indications. Have you heard anything like that? Or do you mean that being brought before an SS Police Court was about equivalent in meaning to being brought to a concentration camp? A. In my district no such cases are known to me that people have disappeared in such a manner. In my part of the district no people have been there, but from another part some people have been taken away, but they have all returned.

Q Why had these people been taken away? A. They were, I believe, Jehovah's Witnesses. I do not know exactly what their offence was; they had refused to become soldiers.

Q They had tried to refuse a call-up order, if one can put it in that way. How is it as regards the second case, the case of the 10th December? Who gave orders and who was given orders? A. In the second case I was not given an order either. The order was given to Oberwachmeister Mangold.

Q How do you know that Mangold had been given the order? A. Mangold visited me on Sunday morning and told me about it.

Q What did he say to you? A. He said that he had been given the order by the district leader to shoot the airman who was in prison in Biedenkopf, and Koch was to bring him to Gladenbach.

Q Did he say anything more? A. I was annoyed about the matter and told him off, and I said: "Why should we do that? If they arrest an airman in Biedenkopf they should also see where they will bring him to. That is nothing to do with us." Thereupon Mangold told me that he had said words to that effect to Lieutenant Menge, and Menge had threatened him again that he would have him arrested, and have him brought before an SS Police Court. Thereupon Mangold told me that Menge had ordered him to tell me that I should get a man for him to prepare the grave. At first I did not know who to take. Then the name of Will occurred to me, so therefore I told Mangold to go to Will and to see whether he was at home, perhaps he

could come. Mangold then left me and I have not seen him since. I did not see him again until two or three days after that.

Q What did he say? A. He told me that the business was over, he had made out a report and also delivered the personal possessions carried on the pilot.

Q Did he mention anything about the report and did he mention anything about the articles where they had been brought to?
A. To Lieutenant Menge.

Q Am I right in assuming that Mangold approached you again because he received an order from Menge, exactly as on the 7th December? A. I believe Mangold would never have approached me at all if he had been more acquainted with the locality of Runzhausen. He himself could not detail the people, he himself could not find an auxiliary policeman, because he did not know the people.

Q I want you to consider this very carefully. Did you only want to hint to Mangold that he should try and get an auxiliary policeman to take part in the killing, or someone who deliberately wanted to take part in such an action, or somebody who wanted to take part in a police duty? A. I was of the opinion that Will had nothing to do but to dig the grave.

Q That is not an answer to my question. Be very careful.

THE PRESIDENT: Perhaps you could put the question more simply. I did not quite follow the question as translated.

THE JUDGE ADVOCATE: I thought the question was: were you ordering a policeman officially to do it or were you giving him the name of someone who might willingly do it without an order?

DR. PETERS: No, that is not the sense of my question. I shall repeat my question more simply. (To the witness): How did it happen? Did you only wish to give some information to Mangold about a man who could be of some assistance to the police, or did you wish to give some information to Mangold about a man who was willing to take part in a killing and who would have been willing to do so according to your opinion?
A. No, I did not intend to order the man to participate in a killing but merely to assist Mangold in the digging of the grave.

Q Did you consider whether it was in your power to do anything in order to sabotage this order by Menge? A. I intended to telephone to Menge, but Mangold told me I could not locate him, he was going away and he could not be located.

Q Did you ever talk about the possibility with Mangold that you could have let the prisoner escape and used some sort of reason which you might have mentioned to higher authority?
A. We considered this, but we could not see any solution to extricate ourselves, because he would have been captured again and afterwards the man himself might have talked and he might have said that we released him.

DR. PETERS: If the Court is of the same opinion, I do not think I need question Schmidt any further in this matter.

THE JUDGE ADVOCATE: I think you have put the questions very properly. Do you want to put any questions, Mr. Simon?

MR. SIMON: I have no further questions.

Cross-examined by CAPTAIN CLEAVELAND

- Q You are aware, I suppose, that not every airman who was shot down at this time was killed? A. I cannot give any information about that. No-one has been arrested in our district.
- Q Did you never hear of airmen being arrested in other districts and being taken to Wetzlar and then being taken to Giessen and then being taken to Oberursel? A. This I cannot say, because I had no connection with the district of Wetzlar and I did not meet any police from this district. But I have heard at Dechau that some people were shot in the district of Wetzlar, but I do not know how this happened and the conditions in which this occurred.
- Q You have heard during this trial that one member of the crew of the aircraft that was shot down did in fact get taken to Oberursel? A. Yes.
- Q So it would appear that not every one of the police officials obeyed these orders to kill the airmen who were captured? A. We never had the intention to shoot those captured airmen. This was mainly the responsibility of the district leaders, and I do not know about the district leaders of different territories, how they evaded these orders.
- Q If Himmler had never given this order, no airmen would have been shot, would they? A. No.
- Q And if Menge, for example, had not told all the Gendarmeriemeisters in the district to shoot airmen, or to have the airmen shot, the airmen who came down in that district would not have been shot, would they? A. No.
- Q If Mangold had never received any orders to shoot prisoners he certainly would not have shot them, would he? A. No, on no account.
- Q If all you Gendarmeriemeisters had turned to Menge and said: "No, we are not going to carry out these orders, they are wrong", what would have happened then? A. In all probability we would have been imprisoned, because we few remaining old officials on the active list would have been much more severely dealt with than those young recruits called to the police force.
- Q If you had instructed all these new young policemen that they should say to Menge: "No, we are not going to shoot airmen", what would Menge have done then? A. It is very hard to say at present, but I believe that all of us would have been taken to account, even considering that all police forces were withdrawn from our district and would have been replaced with new ones.
- Q Why did you never tell Menge, when he told you to do these things, "No, you shoot them; if you think this is a just order, you go and shoot these airmen"? A. As soon as these orders were issued first of all I told Menge that this order was not right and was against our instructions that these prisoners should be handed over to the Air Force for interrogation. I also told him during the first case at Weidenhausen, but I could not talk to Menge about this because he was adamant and whatever he ordered had to be carried out, because he occupied the rank of an SS Sturmführer and he was particularly keen and he never tolerated any criticism from subordinates. If he had been approached with something, he simply said: "I have given an order and it is to be carried out", or he said: "Have a look through the instructions and you will find it there yourself, and whatever the instructions

Cross-examined by CAPTAIN CLEAVER

- Q You are aware, I suppose, that not every airman who was shot down at this time was killed? A. I cannot give any information about that. No-one has been arrested in our district.
- Q Did you never hear of airmen being arrested in other districts and being taken to Wetzlar and then being taken to Giessen and then being taken to Oberursel? A. This I cannot say, because I had no connection with the district of Wetzlar and I did not meet any police from this district. But I have heard at Dechau that some people were shot in the district of Wetzlar, but I do not know how this happened and the conditions in which this occurred.
- Q You have heard during this trial that one member of the crew of the aircraft that was shot down did in fact get taken to Oberursel? A. Yes.
- Q So it would appear that not every one of the police officials obeyed these orders to kill the airmen who were captured? A. We never had the intention to shoot these captured airmen. This was mainly the responsibility of the district leaders, and I do not know about the district leaders of different territories, how they evaded these orders.
- Q If Himmler had never given this order, no airmen would have been shot, would they? A. No.
- Q And if Menge, for example, had not told all the Gendarmeriemeisters in the district to shoot airmen, or to have the airmen shot, the airmen who came down in that district would not have been shot, would they? A. No.
- Q If Mangold had never received any orders to shoot prisoners he certainly would not have shot them, would he? A. No, on no account.
- Q If all you Gendarmeriemeisters had turned to Menge and said: "No, we are not going to carry out these orders, they are wrong", what would have happened then? A. In all probability we would have been imprisoned, because we few remaining old officials on the active list would have been much more severely dealt with than those young recruits called to the police force.
- Q If you had instructed all these new young policemen that they should say to Menge: "No, we are not going to shoot airmen", what would Menge have done then? A. It is very hard to say at present, but I believe that all of us would have been taken to account, even considering that all police forces were withdrawn from our district and would have been replaced with new ones.
- Q Why did you never tell Menge, when he told you to do these things, "No, you shoot them; if you think this is a just order, you go and shoot these airmen"? A. As soon as these orders were issued first of all I told Menge that this order was not right and was against our instructions that these prisoners should be handed over to the Air Force for interrogation. I also told him during the first case at Weidenhausen, but I could not talk to Menge about this because he was adamant and whatever he ordered had to be carried out, because he occupied the rank of an SS Sturmführer and he was particularly keen and he never tolerated any criticism from subordinates. If he had been approached with something, he simply said: "I have given an order and it is to be carried out", or he said: "Have a look through the instructions and you will find it there yourself, and whatever the instructions

say must be obeyed".

Q You agree that to shoot prisoners in this way was a criminal thing to do, do you not? A. I was of the opinion that it was not right.

Q It was so wrong that even when it was done by the authorities the bodies had to be hidden, had they not? A. Yes, this has been ordered too.

Q The bodies were not buried as soldiers should be buried, with a funeral in a cemetery, but they were hidden in a hole in the ground in the woods at night, were they not? A. Yes.

Q You will perhaps agree with me that the preparation of the grave to hide these crimes was quite an important part of the crime, was it not? A. I cannot judge that.

THE JUDGE ADVOCATE: It was an essential part, perhaps. The preparation of a grave was an essential part of carrying out a crime such as this? A. At this time we did not think about it.

CAPTAIN CLEAVER: If you think about it now ---

THE JUDGE ADVOCATE: Do you wish to object to that question, Dr. Peters?

DR. PETERS: Yes, Sir, because it is a question of right and not a question of fact.

THE JUDGE ADVOCATE: I think it is admissible.

CAPTAIN CLEAVER: I submit it is going to the state of mind of this man.

DR. PETERS: If there are essentials of a crime, that is in the decision of the Court but not in the decision of the Accused.

THE JUDGE ADVOCATE: Yes, but what was passing through the Accused's mind might throw some light on his actions and help us to interpret them in the true way.

DR. PETERS: Yes, I agree with you.

THE JUDGE ADVOCATE: It is not really what he thinks now, except that he is asked now to check up as to what he thought then, and that is material.

DR. PETERS: Yes; I do not wish to interrupt the Prosecutor, but what I want to know is can I or can the Prosecutor put questions of law, questions of right, to the witness?

THE JUDGE ADVOCATE: It does not matter what the witness says, it does not affect the legal position. The only relevance of questions such as this is to know how the witness is explaining his actions at a given moment having regard to how he views the problem with which he is dealing at that moment. Will you put the question again, Captain Cleaver?

CAPTAIN CLEAVER: Do you agree that it is absolutely essential that if you are going to kill people unlawfully, then those people must be hidden when they are dead?

THE JUDGE ADVOCATE: He says it was part of the order in this case that they should be killed and hidden. That has come out earlier in evidence. A. During my first conference with Menge I told him my opinion that they should be buried in the cemetery. Thereupon he replied: "No, they will be buried on the very same spot where they have been shot".

CAPTAIN CLEAVER: In other words, the hiding of the bodies of these men is almost as important a part of the crime ----

THE JUDGE ADVOCATE: If you are asking him to judge the merits, you are getting on to argument with him. It may be very important but a small essential. It happens to be on the face of it something which has to be done to comply with the order. Eventually the Court have got to decide this matter. It does not matter whether the witness agrees with you or not. What I think you can enquire from the witness is the facts as to whether or not the order which he gave was intended to involve the digging of the grave beforehand and assistance in the burying of the body afterwards, and therefore possibly the presence at the time of the killing.

CAPTAIN CLEAVER: I am very much obliged, Sir; that is obtaining very much more directly what I had hoped to find out. (To the witness). When you told Mangold to go and tell Will to help him in this digging of the grave and going out to the place, did you realise that you were telling Mangold to tell Will to take part in a crime? A. Yes, one can expect this.

Q But you felt this had to be done because you had been given orders to do so; is that correct? A. Yes.

Q Did you consider at the time that your orders were necessary to carry out this shooting? A. Not the shooting itself, only the burial.

Q I am suggesting to you that what you did when you arranged for Will to go with Mangold was as much to do with the killing of this airman as if you had loaded a pistol and handed the pistol to Mangold and said: "There you are, shoot the airman with that"? A. I cannot quite understand this.

THE JUDGE ADVOCATE: I think you are getting very near argument, which we do not want the witness to do. Dr. Peters is there for that purpose.

CAPTAIN CLEAVER: I appreciate that, Sir, but I feel that these suggestions should be put to the witness so that he may deny them, rather than to be left to the more legal conclusions which may be drawn by the Court.

THE JUDGE ADVOCATE: I think that is quite proper. Might I suggest that you frame your questions along these lines: "I am going to suggest to the Court that in doing this or that you were implicating yourself in this or that way. Do you want to tell the Court anything about that."

CAPTAIN CLEAVER: I am obliged, Sir. (To the witness): What I am saying to you, I am also pointing out to the Court, and what I am suggesting to the Court in this fashion is this.

THE JUDGE ADVOCATE: You are going to suggest it in your final speech and you are telling him now and warning him and giving him an opportunity of making any comment in his own defence.

CAPTAIN CLEAVER: I do not want to ask you questions and get answers from you "Yes", and "Yes", and "Yes", and then at the end of the trial say to the Court: "Schmidt says he did this, that and the other; I therefore suggest that these actions constituted a crime". You must be given a chance to say what you want to about it. The argument is that the preparation of the grave was as much part of the shooting as, for instance, the provision of a weapon with which to do the shooting. Do you agree? A. This question is very difficult to answer. At that time I did not think that I was committing a punishable offence. When I indicated Will it could have

been enough. I only wanted to save Mangold the work of shovelling the grave.

Q So that you thought that your orders to Will were nothing more than orders to dig the grave? A. This was no order from me. This was merely the passing on of an order given by the district leader.

Q But without your authority Mangold could not have got Will to dig the grave, could he? A. This is in so far right as Mangold does not know the people in Gladenbach. If he had known the people in Gladenbach he probably would not have come to me at all.

Q But you do remember the evidence that originally Menge tried to ring you up on the telephone and he passed on the orders to you? A. As far as he told me, he tried to ring up on Saturday evening, but I was not at home. What he wanted to tell me then I do not know.

Q Mangold has told us in his statements? A. That he had rung up at my house?

Q Yes, and he has told us the orders that Menge meant you to receive directly for yourself? A. No, I did not receive any other orders. I merely got hold of Will to help Mangold to dig the grave, and it might have been anybody else.

THE JUDGE ADVOCATE: Have you any re-examination, Dr. Peters?

DR. PETERS: Yes, Sir. I am sorry to have to do so, but I must do so.

THE JUDGE ADVOCATE: It is proper that you should put any question you think right.

Re-examined by DR. PETERS

Q You heard the Prosecuting Officer suggest that if all the people in your district had disobeyed the order Menge could not have got anywhere. Did you hear that? A. No, it was not that. The question was why did not we all refuse to obey the order, and to that I said that if we had all refused we all would have been taken away from our posts and arrested and accused possibly of mutiny.

Q I think it would be important for the Court to know how you imagine that an Army or a Police Force is set up. Suppose that we had all refused to do military service, to make bombs, to throw bombs or to kill people at all, do you think that anybody would have been killed at all? A. It is difficult to say what would have happened then.

Q Perhaps it would be easier for you to say why all these people had not refused? A. It has always been so, that militarism is in the German character, and the German has always been a good soldier for centuries.

Q You went through Brunswick this morning, did you not? A. Yes.

Q Did you see whether all the houses were still intact? A. Most of them were destroyed and burned out.

Q What caused this, do you think?

THE JUDGE ADVOCATE: Are you trying to get the witness to tell us that on the assumption that we do not already know?

DR. PETERS: I want to bring the witness to the point, as the

Prosecuting Officer has done, that refusal to obey an order or blind obedience to an order are not the characteristic reactions of a German only but characteristic of any sort of military set-up in the world and of any organisation of a State all over the world.

THE WITNESS: May I say something. If one wants to speak about that, one has to go back several years. Already in the Spring and Summer of 1944 it happened that little villages and places where there were no military objectives were attached and that persons on country roads were being shot at.

DR. PETERS: I do not want to know that. I want to know how you account for the blind obedience to orders given by State authority? How does a child learn to obey? How does a child learn to keep order? A. A child is told: "This you may do, this you may not do; and if you do what you must not do, you will be punished and you will be beaten".

Q Would you say, therefore, that children primarily obey because they are afraid? A. This is very often the case.

Q Very often or mostly? A. Mostly.

THE JUDGE ADVOCATE: This witness is not an expert witness in psychology, and he is here to deal with the facts of the case. I think we are straying a little way away from the facts now. It seems to me that you are trying to prove from the witness box certain facts which you can ask the Court to take notice of in your final address, and you can then speak from where you are placing your arguments and grouping your facts and you will be listened to, but I do not think it helps us to get these questions answered by the witness.

DR. PETERS: Yes, I agree with you Sir, but I thought it would be a help, as was brought up by the Prosecuting Officer and me, to make this clear, why we obey orders. That is not a matter for Schmidt alone, that is a matter for all Germans and all Englishmen.

THE JUDGE ADVOCATE: Yes, and we understand when you address us on that matter.

DR. PETERS: Therefore we must have it clear what is the Accused's thoughts during the time when he gave the order to Mangold to inform Will to go with him.

THE JUDGE ADVOCATE: You can put the simple question to him, if you think it is not already in his evidence: "Why did you give Mangold authority to pass on an order to Will?"

DR. PETERS: Yes, I shall continue in this way. (To the witness): Why did you give Mangold the directive that Will should take part? Did you give the order because you wanted somebody else to take part in a murder or a crime, or did you merely give the directive to carry out an order which had been passed to you by Mangold from Menge? A. I myself was under the pressure of this order, and if I had not been able to detail an auxiliary policeman I myself would have been liable to punishment; and I, as a regular official of the force, should know what the refusal of an order means.

Q Did you have any intention that you yourself would like to be connected with this case, or did you just carry out an order in a case with which you were not connected, which you believed you were not personally connected with? A. I regarded this case as a case with which I was not personally connected, and I had not the intention to play a part either with my mind or personally.

Q In other words, you did not want the deed from your own will, you only said to yourself: "If Menge wants this done it has to be done"? A. I only regarded this as an order from Menge. I myself had nothing to do with it.

Q Perhaps you wanted to have something to do with it because he was a terror flier and you had a personal grudge against these people? A. I had no thoughts of revenge or vindictive thoughts against the man. He had done nothing to me personally. I had many prisoners of war in my district, mostly Frenchmen. On the whole, conditions were quite bearable. I must say these men always acknowledged me when I walked in the streets. In one case I used a French prisoner of war as an interpreter; if I had not had confidence in him I would not have called for him. Of the old soldiers and the German people generally, there was no-one who had wanted the war.

Q Can we sum it up, therefore, that from your personal standpoint you did not want to be mixed up in the matter? A. I did not want to have anything to do with it personally. If I had had any interest in the matter I would have gone out personally voluntarily.

Q And you want to say that because you did not want to be mixed up in the matter personally, that is why you did not go out yourself? A. Yes.

THE JUDGE ADVOCATE: I understand you to say that you thought that Ludwig Will would dig the grave. Is that correct?
A. To Will personally I did not say anything.

Q That was not the question. Did you think that you were telling Mangold to get hold of Will so that Will would dig the grave? A. Yes.

Q And when the man was shot he would be put in that grave; is that right? A. Yes, this I assume, but I did not say that.

Q And did you assume that when the man was put in the grave the grave would have to be filled in with earth once again?
A. Yes, it was a matter of course; it could not remain open.

Q And, as a matter of course or not, did you assume that Will, who had made the grave with the shovel, would help in covering up the grave with the shovel? A. This I did not say.

Q Did you think that would happen as a matter of course?
A. Yes, I thought that.

Q And in order that he could help in filling up the grave, did you think as a matter of course that he would be present when the killing took place? A. That was not necessarily so.

(The Accused Schmidt returns to the dock).

(At 1730 hours the Court is adjourned until 0930 hours tomorrow, Saturday, 24th May, 1947.)

THIRD DAY

(At 0930 hours on Saturday, 24th May, 1947, the Court reassembles pursuant to adjournment, the same President, Members and Judge Advocate being present.)

(The Accused are again brought before the Court.)

DR. PETERS: Gentlemen, now I can continue with the defence of Schmidt. I have a witness available who can say something about the order given to members of the German Luftwaffe, that is the order that every terror flier who was collected should be shot down; this order has not been followed in all cases. This witness who I can bring here has heard this order during his duty. If you would like to hear him, I can call this witness here. It is in confirmation of the secret order which the Accused mentioned here in Court.

THE JUDGE ADVOCATE: It is for you to decide whether you want to call him.

DR. PETERS: Yes, I want to call him. I call the witness for the Accused Schmidt and also for the Accused Will, who are defended by me. Perhaps Mr. Simon can agree that this witness can give evidence also on behalf of his client, and so we will have this witness for all of them.

THE JUDGE ADVOCATE: Do you want to call him before you call the Accused Koch?

DR. PETERS: Yes, because I have no other witness available here.

THE JUDGE ADVOCATE: Very good; call him.

WILFRIED KOCH is called in, and, having been duly sworn, is examined by DR. PETERS in German, the evidence being translated into English as follows:-

Q Will you give your full name? A. Koch, Wilfried.

Q Where do you live? A. Eckelshausen, on the River Lehn, Lahnstrasse 6.

Q Were you stationed during the war in 1944/5 with the Wehrmacht? A. Until the 10th December, 1944, I was with the Sixth Air Force Squadron.

Q Where? A. At Fassberg in Luneberg Heath, near Celle.

Q What rank did you have? A. Finally I was a sergeant.

Q Can you remember what orders were given in connection with terror pilots within the Wehrmacht, and this means also the Luftwaffe? A. At an occasion in August or September, 1944, an order was given by higher Luftwaffe authorities that any enemy airman who was shot down or who baled out should not be taken prisoner but should be shot. For that reason, each time an air-raid warning was sounded each member of the Squadron had to take their pistols along.

Q That means to say that at all times you had to carry your arms? A. On the occasion of air-raids gas-masks and pistols or arms had to be carried.

DR. PETERS: That is all I want to ask this witness.

THE JUDGE ADVOCATE: Do you wish to put any questions, Mr. Simon?

MR. SIMON: I have no questions, Sir.

Cross-examined by CAPTAIN CLEAVER

- Q Do you know whether this order was actually carried out in all cases? A. What order are you referring to?
- Q The order that you should not capture baled-out airmen but that you should shoot them? A. I am not aware that this order has been carried out, and in the area I was stationed in no terror plane was shot down and no terror pilot was shot by my unit.
- Q Was any distinction made between the various kinds of aircraft taking part in raids? What did you call a "terror pilot"? A. The word "terror pilot" was generally used for any enemy aeroplane which approached the Reich area.
- Q So if for instance, a British aircraft coming over to do photographic reconnaissance was shot down, the pilot would also be shot; is that so? A. The word "terror pilot" did not originate from us soldiers, but it is assumed that all pilots were considered to be terror pilots.
- Q We quite appreciate that the phrase came from other sources than the fighting forces. Was there any distinction made between the different kinds of pilots?

THE JUDGE ADVOCATE: Is not that the question which you have put to him and which he has answered explicitly?

CAPTAIN CLEAVER: As long as it is clear to the Court, I will let it rest at that.

Re-examined by DR. PETERS.

DR. PETERS: I ought to have asked this question before, Sir; perhaps I have to ask this question through the Court. I would like to ask the witness whether that order was a sort of final order given to them and whether any previous order in some more lenient form had been issued, so that we have a development because the attacks were from time to time for ever stronger.

THE JUDGE ADVOCATE: I will put the question for you. (To the witness): Before you received these particular orders which you referred to, what had been your previous instructions with regard to pilots who baled out? A. It was generally known that any shot-down pilot or any pilot who baled out should be arrested and he should be brought up to higher authority for interrogation.

THE JUDGE ADVOCATE: Is that the question which you wanted to put, Dr. Peters?

DR. PETERS: Not quite, Sir. What I would like to know is whether there was any difference made in the first place between a plane which would come over and do a correct sort of job and those who did a terror raid, and whether later, when the attacks became stronger, this first order was superseded by the other order.

THE JUDGE ADVOCATE: Before you received this order in August or September, 1944, had you received any other special instructions as regards pilots who bombed villages or machine-gunned civilians? A. As far as I know there was no order in that respect.

DR. PETERS: I have no further re-examination, Sir.

THE JUDGE ADVOCATE: Could you tell us whether you received any instructions as to what to do if you in fact did shoot a terror pilot, that is to say did you receive any instructions as to what to do with the body or to whom to make a report, and in what form that report should be? A. In that respect no further instructions were given.

Q From whom did you receive this order? A. As I pointed out before, this order was given during the conference by the serjeant-major of the unit, but I am not aware who has issued that order.

Q Was it ever put in writing? A. I am unable to state whether this appeared on the notice-board, and I only remember that the serjeant-major read it during the conference from his little diary.

THE PRESIDENT: Were you told that the order was to be confidential or secret and you were not to tell other people about it? A. No, there was nothing particular said in that respect, but any order which was given within the unit was a confidential order and should not go any further but remain within the unit, and as soldiers, of course, we had to speak confidentially to keep our mouths shut.

THE JUDGE ADVOCATE: In the ordinary way were the orders which you had to obey orders in writing under the hand of some commissioned officer? A. Every time an order was given to the Squadron by the captain of the Squadron, of course, it was signed by this captain, but if there were any special announcement within the unit it was either signed by the serjeant-major or by the senior rank.

Q Did the serjeant-major when he gave you that order give you any explanation as to why there was this change of procedure? A. I cannot remember that an explanation was given, but it was always on the radio and written in the papers that the terror pilots were coming over more and more and they were attacking civilians and that the strictest measures should be taken.

Q Some of your orders, no doubt, were based on the authority of your Station Commander, and you probably know that some of your orders came from even higher authority and were passed down to your Station Commander to pass on to you? A. Yes.

Q When the serjeant-major told you about this secret order, did he tell you on whose authority it was given? A. I am not aware and I cannot remember that it was a secret order at all, and upon what authority it came.

(The witness withdraws.)

DR. PETERS: I have here a certain number of documents which show how this secret order has come about and its development.

THE JUDGE ADVOCATE: In certain instances, Dr. Peters, documentary evidence is admissible. If you wish to place documentary evidence before the Court, they will consider it.

DR. PETERS: I believe I am still permitted to produce these documents as long as the evidence has not been concluded?

THE JUDGE ADVOCATE: That is correct.

DR. PETERS: Considering the fact that we had only the order to defend these people about a week ago, it is very difficult to have all the translations done. It does not really matter that it is still in German if we can have until Tuesday, because

then the Court will give its findings and the translation can be done in the meantime, and the translation will show you the development of these orders as they were given. I do not wish to waste the time of the Court and have these documents read out now. However, if you wish them to be read out now, it has to be done.

THE JUDGE ADVOCATE: I think they can be taken after all the verbal evidence, and the Interpreters are at your disposal for the purpose of translating them, because these interpreters have been sworn to translate truly in this case.

DR. PETERS: I would like to point out that these documents are reproductions of the Nuremberg trial. Unfortunately these reproductions are not quite complete, and for that reason I brought this witness to the box today to show you the final development, but the beginning of the development I have here in writing. Therefore, Gentlemen, it will be quite easy for you to consider the arguments which have been raised by the Accused. I shall therefore hand over these documents to the Interpreters for translating so that they can be ready for Tuesday morning.

THE JUDGE ADVOCATE: Very good. Are you prepared now to call the Accused Otto Koch?

DR. PETERS: Yes, Sir.

THE ACCUSED OTTO KOCH takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by DR. PETERS in German, the evidence being translated into English as follows :-

Q Your full name is Otto Koch? A. Yes.

Q You come from Eckelshausen, near Biedenkopf? A. Yes.

Q Your last employment was what? A. Carpenter.

Q What did you have to do with the case of the 10th December, 1944? A. At the time of the 9th/10th December, 1944, I was a gendarmerie official, reserve.

Q Under what command did you come? A. Under the command of Kreisführer Lieutenant Menge.

Q Can you roughly name the villages which came under this command? A. Under my post came the villages of Holzhausen, Hornhausen, Hornertshausen, and Silberg.

Q How long did you look after that post? A. From the 1st, April, 1944, until the 2nd May, 1945.

Q What happened in connection with the British airmen who was shot by Mangold on the 10th, December, 1944, as far as you were concerned? A. On the 7th December, 1944, I was called by telephone at night, at 1000 hours.

Q Do you mean 10 o'clock in the morning or 10 o'clock at night? A. At 200 hours.

Q Who 'phoned you? A. A contractor called Wilhelm Jakobi.

Q Where did he live? A. Hornhausen.

Q What did he tell you? A. He told me that Jakob and Christian Schmidt had captured a pilot and that I should come immediately.

Q What did you do ? A. I got ready and cycled to the dwelling of Jakob Schmidt.

Q Who did you find there ? A. At his dwelling I met the already mentioned Jakob Schmidt, Christian Schmidt and some other civilians who I do not know.

THE JUDGE ADVOCATE: Would it be convenient for you to put to this witness the question which you put to the last two witnesses, to the effect: "Is your statement true", and then emphasise those points which you want to emphasise.

DR. PETERS: Yes, Sir, I will do so. (To the witness.) I shall now ask you straight forward questions and not details of the case. What did the British pilot look like ? A. The pilot looked young and healthy.

Q What colour was his hair ? A. If I remember correctly his hair was black. He was not wearing any headgear.

Q Where did you go to with the pilot ? A. I went with him to the Burgomeister's office at Mornshausen.

Q What did you do there ? A. To find shelter for him for the night.

Q How did this airman find shelter, and how was he treated ? A. I searched him first for arms; I did not find any. I then noted that he was wounded. We gave him something to eat, we dried his clothes and then he found a shelter and a bed in the office of the Burgomeister.

Q I have here a written statement from the Burgomeister of Mornshausen in which it is said that the next day was the pilot's birthday. Is that correct ? A. He had his birthday on the 8th December. I found it out by looking at his identity card. He was born in 1922.

Q What was the name of the Burgomeister ? A. The name of the Burgomeister was Andreas Weigel.

Q I would like to point out that I am going to produce this document afterwards. What did you do the next morning ? A. My duty said that I had to make a report the next morning to my Kreis Fuehrer.

Q What did he tell you ? A. The Kreis Fuehrer himself was not present but his deputy, Meister Ebling, was present.

Q What did Ebling say ? A. Ebling told me to take the man to Biedenkopf to the Gendarmerie Kreis post.

Q Did you do this ? A. Yes.

Q What happened after you had come to the Kreis office ? A. When I reported with the airman to the Kreis office Lieutenant Menge was present.

Q Then what happened ? A. Menge shouted at me in such a way that the officials who were working next door came to the room. He asked me why I had brought this airman in alive and why I had not carried out the secret orders which were known to me.

Q What did you reply ? A. I told him that it was impossible for me to carry out those orders and I had to think of my four sons who were in the field who might experience the same thing.

Q What happened then ? A. Menge then ordered me to stay at this place with the airman until the Landrats came to the office.

- Q Did this happen ? A. No.
- Q Why not ? A. The Landrats did not come; he did not appear in the presence of myself or the airman. I had to wait from about 11 o'clock until approximately 1630 or 1700 hours. I had to wait with that man at the garage until I got further instructions.
- Q What further instructions and orders were given to you ? A. All that time, neither in the office nor in the garage had I handcuffed that man, but when Menge saw us he gave me orders to handcuff this man and take him to the local police cell.
- Q How long did he stay there ? A. Until the next morning, until 0430 hours.
- Q What date was that ? A. The 9th December.
- Q Where did he go from there ? A. On the 9th December I had orders to take the airman to Metzlar. I went to the police cell at Biedenkopf but the meister was not there and therefore the prisoner was not handed to me. It took a long time to call the janitor of the gaol and make him get up and it was about 0510 or 0520 hours by the time I received the prisoner.
- Q Did you then go to the station ? A. Yes.
- Q Did you travel to Metzlar ? A. No.
- Q Why not ? A. Because the train to Giessen was not going at all, nor the train to Dillenburg.
- Q Did you then return or what happened ? A. I took the prisoner to the same cell I had fetched him from.
- Q How long did he then stay at the prison ? A. He stayed there until the next day, the 10th December, until approximately 1700 hours.
- Q What happened then ? A. I then took over the prisoner and an order was previously given to me in the morning by Menge to take the man to the border of my district and hand him over to Mangold.
- Q Did you then proceed with the prisoner to Gladenbach or to the border of your district ? A. I took the prisoner from Biedenkopf through my village, Eckelshausen, and since it was a very long way that we had to go we went into a house and we both had supper at one table.
- Q Did you walk all that way ? A. No, I had my bicycle with me and since I knew the airman was wounded and he could hardly walk on his felt boots, I took him where-ever possible on my bicycle, and we rode together on one bicycle.
- Q Did the man know at all what would happen to him ? A. I do not think he knew what was going to happen to him; nor did I know, and towards me he was quite trustful and decent.
- Q You said that you also did not know. Is this quite true ? A. It is quite true, I did not know. I had only known the order that I had to hand this man to Mangold, that Mangold was taking two prisoners to Metzlar.
- Q You have heard it stated in Court by Mangold that he had instructions given to him by Lieutenant Menge that the man should be shot. How can you explain this difference of opinion and how did it come about that you did not know ? A. I do not know why Menge did this. The only reason I can think of is that he probably did not

think I was a fit man to have anything to do with it; that he could not use me for it.

- Q Why could not he use you ? He could have told you: "If you are not going to carry out my orders I will bring you before a police Court". A. Menge had already threatened me that I would be put before a police Court because I disobeyed the order.
- Q This surprises me really, because Menge was not such a kind-hearted fellow and he had given orders for two airmen to be shot. Why should he have been so kind-hearted to you ? A. I begged him when I spoke to him over the telephone that he should consider my family and my troubles and my whole position.
- Q How many children have you got ? A. Five.
- Q Did you tell him this ? A. Menge knew this; he knew my family.
- Q At what time did you arrive at the border of your district, I mean after you had had something to eat at your home at Eckelshausen ? A. It might have been about 2130 hours.
- Q Where did you meet Mangold ? A. On the road from Runzhausen to Gladenbach, outside Runzhausen.
- Q Is what Will stated correct, that it was roughly about 100 metres away from this village ? A. I am unable to state this correctly, whether it was 100, 200 or 400 metres; it was pitch dark that night.
- Q At that time did you still think that you were going to hand over this man to Mangold so that he should take the pilot to Metzlar or some other place ? A. I was of the firm opinion that I was going to hand over this man, but we were only standing there for a very brief time and I was told what was going to happen to the man.
- Q Listen carefully to this question. You refused to Menge something which was very much against your opinion. When Mangold, who was in a similar position to you, told you that the man was to be shot, what did you do then ? A. I did not reply anything to him.
- Q Why not ? A. I was so surprised when I heard this that everything had been pre-arranged in that way that my thoughts left me and I did not know what to think.
- Q Were you startled or were you surprised ? A. I could not say that I was either startled or surprised. Some sort of impression came on me which I could not explain.
- Q Were you perhaps in a position that you could not find any words for it ? Could not you say anything at that moment ? A. I acted very carefully, because I did not know what orders had been given to Mangold and what he was supposed to do.
- Q So you did not say anything to Mangold at all ? A. No.
- Q What did Mangold tell you after you had handed over the prisoner to him or when you were about to hand this prisoner to him ? A. I cannot give the exact wording, but I believe he said something like this: "Come along and you will see what happens to the man".
- Q So he did not say right away to you that that man was going to be shot ? A. No, he did not.

Q What happened then ? A. I enquired how far it was away and then Will, who I did not know at the time, told me it was about another 600 metres.

THE JUDGE ADVOCATE: Dr. Peters, one or two of your questions were, I think, in rather a leading form. I would like you to put the question: "At what stage did you first know it was their intention to shoot him?"

DR. PETERS: When did you know for certain that the prisoner was going to be shot by Mangold or by Will ? A. At the moment Mangold told me: "Come along so you can see what is going to happen to the airman".

THE JUDGE ADVOCATE: Then he said that did you know that he was going to shoot the airman ? A. Then I had some indication of it.

DR. PETERS: Did you accompany him ? A. Yes.

Q Why ? You were only supposed to go as far as your district boundary and hand over the airman ? A. The flier was still in my custody at that time, and he had not been handed over and Mangold did not take any steps to have him handed over to him.

Q I think it is quite natural that if you had an instruction to escort the pilot to the boundary of your district you would have done so and as soon as you arrived at the boundary of your district you would have handed over the pilot to Mangold and told him: "Here you are, this is your prisoner now, carry on with it". Why did not you do that ? Why did not you turn round ? A. I cannot say that.

Q Did you want to take part in it ? A. No, I did not like to be present.

Q Then you must give some explanation to the Court why you accompanied this pilot at all ? A. I really cannot explain why I went with the party, why I went with him and why I did not carry out the instruction as has been explained by Dr. Peters.

Q Did not you have the intention not only obey the instructions as given by Menge, to hand over the pilot, but to exceed your instructions and tell yourself: "Now I am going to accompany them"?

THE JUDGE ADVOCATE: Dr. Peters, I think you are now cross-examining your own witness. He has given you a direct answer to a direct question: "I cannot tell you what made me do that which I did". I think you must leave it there for the prosecutor to cross-examine.

DR. PETERS: Yes, Sir, but the job of the defence is sometimes to prepare.

THE JUDGE ADVOCATE: Yes, but you cannot usurp his privilege of cross-examination. Your examination on that matter, I think, has put before all you are entitled to put.

DR. PETERS: Thank you, Sir, I shall follow your advice. (To the witness.) When you arrived at the spot where Mangold and Will stopped what happened then ? A. Which spot, the spot where I handed over the flier or the spot where I met the party ?

Q At the spot where you handed over the airman. Did that take place in the forest ? A. That took place in the forest.

Q What happened then ? A. As I have already mentioned, I released him from the handcuffs. I handed him over to Mangold and Mangold then fastened him to a tree with a rope.

- Q Where did you stay then ? A. When Mangold pulled out his pistol, the grave had already been prepared, and I turned round and walked away some distance because I could not have a look at it because a human life was at stake.
- Q Who fired first ? A. I remember having seen Mangold preparing his pistol, but I did not see him fire the shot.
- Q Did you hear it ? A. Yes.
- Q Was the airman dead after the shot had been fired ? A. This I cannot say. I was not in the vicinity of the airman at that moment.
- Q When did you next look after the airman ? A. I did not look after him at all any longer.
- Q Not at all ? A. No.
- Q Did not you help to fill in the grave ? A. When the grave had been partially filled in Mangold, who held the torch, and Will, who shovelled the grave, told me to take hold of the torch because he was going to have a smoke, and this I did.
- Q And you did not help in the shovelling ? A. After Mangold had lighted a cigarette I told Mangold: "It is frightfully cold here, and I am very cold", and in turn Mangold replied: "Here, take hold of this spade, you will feel warmer after that". After that I took hold of the spade and helped them to shovel because there was only one spade there.
- Q Have you at any time fired a shot at the airman yourself ? A. No.

DR. PETERS: I have no further questions.

Cross-examined by MR. SIMON.

- Q Did you say that you joined the County Constabulary in 1944 ? A. I did not say that I joined the Gendarmerie in 1944, but that I was in charge of the district at Mornshausen from April 1944 to May 1945.
- Q When did you do duty with the County Constabulary ? A. I started to take up my duties from the 1st August 1943, that was when I was under instruction.
- Q You did not join voluntarily ? A. No, I did not.
- Q You were called up ? A. Yes, I was called. I have my emergency call-up papers here as evidence.

MR. SIMON: I have no further questions.

Cross-examined by CAPTAIN CLEAVER.

- Q You knew that originally Menge intended to have this airman shot, because he had rebuked you for not carrying out the secret order. That is correct, is not it ? A. Yes.
- Q When you were ordered to take him towards Gladenbach under cover of darkness did not you think that something was going to happen to the airman then ? A. This I cannot say, but I asked Menge: "Why should I bring him there under cover of darkness?"
- Q Did Menge say that there was danger of civilians attacking you ? A. Yes.

Q You had been looking after this prisoner for some three days at that point, had you not? A. No, he had been looked after by the police in the district of Biedencopf; my district was at Mornshausen.

Q During those two or three days you had been taking the prisoner from Mornshausen to Biedencopf and from the gaol to the station and from the station to the gaol? A. Yes.

Q Had anything occurred in the way of attacks by the civilian population upon you and the prisoner? A. During the first day when I escorted the prisoner from Mornshausen to Biedencopf a congregation of people assembled in front of a vegetable shop and these people shouted at the flier to go to Giessen and have a look what sort of destruction had been wrought there.

Q Did that make you think that Menge's reason was a true one?

THE JUDGE ADVOCATE: He has not said that. He did not say that he believed Menge's reason, he has just said what Menge said.

CAPTAIN CLEAVER: Do you think that Menge's reason was correct? A. I do not understand the question.

Q Did you think that the prisoner was likely to be attacked as Menge had suggested to you? A. I believe it would have been possible during the day.

Q Did you think it strange that in the winter you should hand over this pilot at a slightly uncertain time on the open road and not deliver him to one of the police stations on the way? A. From Mornshausen towards Biedencopf?

Q No. Menge's orders were that you were to hand the prisoner over to Mangold, were not they? A. Yes.

Q It was cold, was it not; it was winter? A. Yes.

Q You were to meet Mangold on the boundary between your two police districts? A. Yes.

Q Where exactly was that boundary line? A. The exact boundary of my district crossed the road from Biedencopf to Gladenbach at the junction of the Holzhausen.

Q Is that north of Holzhausen or south of Holzhausen? A. That is south of Holzhausen.

Q Which is the next town between Holzhausen and Gladenbach? A. Runzhausen, a village.

Q Is there somewhere in Runzhausen where you could have delivered the flier to Mangold? A. Not to my knowledge, because I do not know Runzhausen.

Q So you did not think it peculiar that you were to hand over this man on the open road? A. No, I did not think that peculiar because I was under the impression that Mangold was to receive the prisoner at this particular spot on the road in order to take him to Gladenbach and put him into custody there.

Q Why did you not wait on the boundary until Mangold came to collect you? A. The reason for this is that it was at night in the middle of the forest and I thought it dangerous for me and it was bitterly cold and I did not consider it wise to wait in the middle of the forest and therefore I proceeded.

Q You told Dr. Peters that Mangold said to you: "Come along, you will

see what will happen to the man" when you handed the prisoner over. Is that correct? A. That is correct.

Q Exactly when did you hand the prisoner over to Mangold, on the road or in the forest? You have said both things? A. In the forest.

Q Why did you not hand him over on the road? A. Because Mangold did not take any steps to take the prisoner over.

Q But he said: "Come along, you will see what will happen" while you were still on the road, did he not? A. Yes.

Q And it was on the road when he said this that you realised what would happen to the prisoner? A. Yes.

Q So, the prisoner was still in your custody when you took him into the forest to the place where he was going to be killed? A. Yes.

Q Did not Mangold reproach you for not dealing with the prisoner in Biedencopf? A. I cannot recollect that Mangold told me anything of that kind.

Q Did you not say anything to Mangold about what you would have done if you had been ordered to shoot the prisoner in Biedencopf? A. No.

Q Do you still maintain that you had no idea that this man was going to be killed when you left Biedencopf that evening? A. No.

Q You remember telling us that when Menge reproached you earlier about not ~~bringing~~ out the order of not shooting the airman you begged him to consider you and your family and your position and not force you to have anything to do with it.

THE JUDGE ADVOCATE: And Menge threatened to have him punished and brought before a court; that was the evidence. A. Yes.

CAPTAIN CLEAVER: Then you begged him to let you have nothing to do with such things, did not you? A. Yes.

Q Having regard to your family and the general circumstances in which you found yourself? A. Yes.

Q Did you think, that as a result of your entreaties on your own behalf, Menge had changed his mind and did not intend to have the airman killed? A. No, I did not think so, as was proved by the fact that Menge did not change his mind and passed on the order to Mangold.

Q I want to know what you thought when Menge told you to deliver the prisoner to Mangold. The position is this, that at one minute Menge is wanting to have the airman killed and he is reproaching you for not killing him and threatening you with the S.S. court. That is so, is it not? A. Yes.

Q Then you say: "Please do not let me have anything to do with this, I do not want to have anything to do with it, think of my family!" A. Yes.

Q Later on Menge says: "Take this man to the border of your district and deliver him to Mangold". A. Yes.

Q At that time did you believe that Mangold was going to take the prisoner to Wetzlar, as Menge pretended he was? A. I was of the firm opinion that the prisoner was to be escorted to Wetzlar together with a fellow prisoner.

Q And you saw nothing surprising in Menge's sudden change of instructions? A. No, I cannot really say it was a surprise for me. I

knew the order existed and that Menge passed it on to Mangold.

Q You knew Menge had passed what order on to Mangold ? A. It is like this. I only knew something about the secret order and I only knew that Menge wanted to translate the secret order into action.

Q That is exactly what I am suggesting to you, that you knew that this airman would be killed by Mangold. Is that correct ? A. I knew it at the moment I got to know it from Mangold.

Re-examined by DR. PETERS.)

Q I want to ask you again this. Did you want to have any dealings with this case whatsoever in case the Englishmen resisted and you might be needed for defence ? Was that perhaps the reason why you went along ? A. No, this was not the reason I went along.

DR. PETERS: I have no further questions.

THE JUDGE ADVOCATE: When you were walking into the forest with the prisoner did you realise then that Mangold was going to shoot him ? A. Yes.

Q You had no orders to do anything more than hand him over to Mangold ? A. Yes.

Q Why did not you insist that Mangold took the prisoner from you and permitted you to go home ? A. I really could not say. I could not really insist on going until such time as Mangold had in fact taken over the prisoner.

Q Why should not you offer the prisoner to Mangold and say: "Here he is, take him, he is yours" ? A. At that moment I did not know what orders had been given to Mangold.

Q But so soon as you did know these orders why did not you say that ? A. What order ?

Q So soon as you knew that Mangold was going to commit this act of killing, why did not you say: "All I have to do is to hand him over to you. Now take him; I am going away" ? A. I did not approach Mangold in that way. We did not stop at the road.

Q Why did not you say that to Mangold if you did not want to have anything to do with it ? A. I did not know whether Mangold had received orders from Menge that I should take part in the killing.

Q Why did not you find out by asking him ? A. I am unable to reply to this.

Q When did the prisoner first realise that he was going to be shot ? A. I did not notice anything of the man.

Q You watched Mangold tie him to a tree ? A. Yes, I have seen this.

Q What did the prisoner seem to think when that was happening ? Was he still as decent and trustful ? A. I cannot guess what the prisoner thought at that moment, and since it was dark I could not see what he was doing at all.

Q Did he shout anything to you ? A. No.

Q Did you shout anything to him ? A. No.

Q You had been with him for three days, on and off ? A. Yes.

Q Were you ashamed to be standing there while he was being tied to a

tree about to be shot? A. I could not say that I was ashamed. I felt that there was a feeling of total war and the life of a person did not mean much.

Q In that case why did you refuse to carry out Menge's original instructions to shoot this man? A. I told Menge that with my nature I could not possibly manage to shoot that man, because I had four sons in the field and I was hoping that nothing of this kind would happen to them.

Q You received your orders from Menge, did you not? A. From Lieutenant Menge.

Q When you had handed over the prisoner and while Mangold was tying him to a tree you would have been entitled to have gone away, would you not? A. I would have been entitled to go away but I was still in possession of the prisoner's valuables at that time.

Q Why did not you hand them over earlier? A. Because there was no time to do it.

Q When did you hand them over? A. When we were about to leave the grave and after the grave was covered with earth I handed over the watch and the wallet which contained these dollar notes.

Q Did this airman have any German or French money on him? A. No, my original report stated that the man had been in possession of dollar notes, but I was later informed by Mangold that they were shillings, that there was seven 20/- notes and two 10/- notes and some copper money.

Q But no German money? A. No.

Q Do you know French money when you see it? A. Yes.

Q Was there any French money? A. No.

Q Did you see any emergency rations on him, vitamin pills? A. No, all he had was a splinter of ack-ack which he had taken from his upper thigh which I left with him.

THE PRESIDENT: Do you mean to tell the Court that this man did not make any expostulations or resist at all when this incident happened or just before? A. I did not notice that he resisted.

Q Did you hear any sounds after the first shot? Did you hear any noises or groans from the airman after the first shot? A. It was night and it was a fir wood, a very close one, and the wind was blowing and it was very difficult even to understand the conversation we had.

Q Approximately how long after the first shot was the second shot fired? A. I am unable to state this, whether the second shot followed immediately after the first shot or whether there was a certain interval. I was so excited and I was walking about there in the forest and I could not see anything.

(The accused Koch returns to the dock.)

THE JUDGE ADVOCATE: Dr. Peters, on Tuesday morning you wish to put forward some documentary evidence do you?

DR. PETERS: Yes, Sir. I have three short documents here. Perhaps they can be read out and then I can hand them to you.

THE JUDGE ADVOCATE: Very well.

(Testimonial by Andreas Weigel is read to the Court, marked "Exhibit No. 18A and 18B", signed by the President and attached to the proceedings.)

(Testimonial by Frau Beimborn and others is read to the Court, marked "Exhibit No. 19", signed by the President and attached to the proceedings.)

DR. PETERS: I know that the value of these declarations on oath is not so high as if the witnesses appeared in this Court, but I thought that the witnesses lived so far away that I could save them coming here.

THE JUDGE ADVOCATE: I think the Court will have no difficulty in accepting the substance of these. There is no evidence that Koch ill-treated this man and he has himself given evidence that he treated him well and that has not been cross-examined to by the Prosecutor.

(Testimonial by the Burgomeister of Mornshausen is read to the Court, marked "Exhibit No. 20", signed by the President and attached to the proceedings.)

DR. PETERS: The testimonial which has just been read is a mixed declaration which is partly in regard to character. I shall hand in other affidavits as to character after the finding.

THE JUDGE ADVOCATE: Very well.

(At 1200 hours the Court is adjourned until 0930 hours on Tuesday, 27th May 1947.)