

# **United States Holocaust Memorial Museum**

**Interview with Robert Mills Donihi  
March 24, 1994  
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## **PREFACE**

The following oral history testimony is the result of a videotaped interview with Roberts Donihi, conducted by Joan Ringelheim on March 24, 1994 on behalf of the United States Holocaust Memorial Museum. The interview took place in Washington, DC and is part of the United States Holocaust Memorial Museum's collection of oral testimonies. Rights to the interview are held by the United States Holocaust Memorial Museum.

The reader should bear in mind that this is a verbatim transcript of spoken, rather than written prose. This transcript has been neither checked for spelling nor verified for accuracy, and therefore, it is possible that there are errors. As a result, nothing should be quoted or used from this transcript without first checking it against the taped interview.

## **ROBERT MILLS DONIHI**

### **March 24, 1994**

Q: Robert, can you just tell me your name and where you were born?

A: Well, I'm Robert Mills Donihi D-O-N-I-H-I, born in Erie, Pennsylvania, May 18, 1915.

Q: What I would like to do is to get into that period of your life where you were about to go to Japan. Tell me how it is that you got involved in the trials?

A: Almost accidentally. The Tennessee Bar Association -- I was practicing law in Nashville, and was an officer, I was actually the acting president of the Junior Bar Association. All the lawyer under 35 sort of grouped together and held our separate meetings at the State Bar meetings. We were having a meeting in Knoxville that year, 1945. I had been practicing for five years. The keynote speaker at the convention was Tom Clark, who was the Attorney General of the United States. I met Mr. Clark while I was there, and he invited me to come to Washington with him, when he finished his speech, and he was going to introduce me or present me to the Supreme Court. Having completed five years of practice, I was eligible to be sworn in to practice before the United States Supreme Court. That was quite an honor because every lawyer likes to have an Attorney General sign his submission and diploma. When we arrived at the airport in Knoxville from the hotel, I was told by the Army people, who were in charge of the plane, that inasmuch as I didn't have orders that I wouldn't be able to ride. Well, I didn't feel like taking commercial that particular moment, so Mr. Clark suggested that I contact him when I arrived back at my home and made a decision on when I'd be coming to Washington. I had a case that was going to be coming up at the Supreme Court, and I wanted to be there for that occasion, a little later. I think it might have been along about September, October, and another lawyer and I were scheduled to go together. A chap by the name of Whitworth Stokes, another prominent lawyer in Nashville. We were staying at the Carlton Hotel in Washington, and I proceeded over to General Clark's office, went with him to the Supreme Court, was presented. Stokes was present. As we came out onto the steps of the Supreme Court, to my surprise Clark turned to Stokes and said, "Well, are you going to Tokyo?" Stokes said, "I'm sorry, but I would very much like to go, but my wife is opposed to it. Why don't you ask Bob." And he said, "Would you like to go?" And he didn't ask me to go, but he would ask if I would like to go. And I said yes I would but I would need ask my family. He said if you're interested, be in my office at 1:00 today. So, we went back to the hotel. I made calls home, and I recall the day was of course a landmark thing for me. My family said yes. I told them that I had been told that it would be about 90 days of work, and that seemed like a sort of leg up in my profession. I didn't expect it to be a very prominent kind of position, but I didn't even know what it would be except that it would be working with the Justice Department mission. And my family said okay if it was only going to be for 90 days, why fine. So, we had a tureen, if I remember well, of French onion soup sent up to the hotel room, and when I finished it, we decided I would go and went over to Clark's office. He had gone to Boston to speak to

an American Bar Association meeting. Alice O'Donnell and Grace Murphy, who were his chief secretary and Administrative Assistant there, had been told by him that I might be coming and they were expecting me and they called the Chief of what was known as "Project K" as I learned later, for Keenan. Keenan was former head of the criminal division of the Department of Justice. He had been Roosevelt's right arm, as liaison to the Senate. He had a particular friendship with Senator McKeller of Tennessee, whom I knew, and Senator McKeller was Chairman of the Senate, a very powerful Senate Finance Committee. So, Keenan was known by Roosevelt as Joe the Key because he was able to get Roosevelt's economic packages through the Senate with relative friendly ease. That was very important to the President. Keenan was known as a king maker in those days. I think his name today, all these years later, has very little significance, but at that time he was known by people to have recommended persons through the United States Supreme Court to the Cabinet and high positions otherwise, and known as a king maker. So, Keenan had been called by the office staff, either Alice O'Donnell or Grace Murphy saying that I was coming down, and I remember the language well. She said the Attorney General wants Mr. Donihi to go to Tokyo. So, I went down. I didn't know at that time, but Senator McKeller had been contacted by Keenan and McKeller recommended me very highly. I didn't know that myself, because I later contacted one of our Senators who in turn again contacted McKeller. But in any case, Keenan was influenced by the fact that McKeller -- he had the option of choosing me or not choosing me. Apparently they began a process of investigating and I went back, not knowing what was going to happen, I went back to Nashville. In fact, his Deputy, a chap by the name of John Darcian, Assistant Attorney General, was very discouraging. He said we have no money to employ you because it's a Justice Department Staff man that's going; as we have no funds. There's no use even talking about it. He was trying to discourage me from even wanting to go. So, I went back to Nashville not knowing. Subsequently--but I did make a contact with Senator Tom Stewart, our Junior Senator from Tennessee who said, "Well, I'll talk to Senator McKeller and we'll get a recommendation over to the Attorney General." I didn't realize that Keenan had already received a recommendation. So, that really sort of nailed it for me. I was unaware of why or how, but patronage does seem to work that way, and I arrived back in Nashville some days or weeks later there was a telegram that came to Stokes, saying that if you are not going to Tokyo please contact Donihi. So he called and said, "They seem to want you. I called Washington. They told me they were processing at a given date in November. I came up, and then I was sworn to secrecy on everything. You can't tell anyone that you're employed or what's going to happen or anything. It was "Project K." And I recall very well going up on the plane, there was an army captain who's father had been a United States Senator from Tennessee. In fact his father had captured the Kaiser in World War I and became famous as a result, and that sort of propelled him into political life. He became a U.S. Senator and a Financier in Rogers Coldwell firm, Duke Lee, Jr. was on the plane and I recall that he said, "What takes you to Washington, Bob?" And I said, "Oh, just some routine business." At the end of the day we were on the same plane, or the next day it was, we were on the same plane going back to Nashville and he said, "Bob, did you have anything unusual happening in your day?" I said, "No, no, just routine, how about you?" The same thing. The next day to our

mutual embarrassment, our pictures appear side by side in the National Tennessean telling the story and that's the first time I knew exactly what I was going to be doing. That we would be ring side in the trial of the Emperor if he was tried. I was sort of flabbergasted, because so far as I knew "Project K" had nothing but a name. Stokes seemed to think it would have something to do with the rewriting, recodifying of the laws of Japan, which wouldn't quite have been my thing, but I would have been glad to have the experience. The other, trial law, more my forte, I was happy to have an opportunity to work with lawyers who were more experienced of course. Well, that was it. I went off to Tokyo expecting to carry books mostly and briefcases for some of the more experienced lawyers, but to my happy surprise, I was used in the trial itself as one of the trial counsel. In a project known, as let's see it wasn't a project, we divided it into phases and it was called the "Preparation of Japanese Opinion for War Phases, Police Control, Censorship" that sort of thing, and that was my phase, the very beginning of the trial. The trial became the longest in history at that time. I guess it still is. I was only there for one year, but you know, the 90 days were interrupted by a tragedy in my own family, and I had to keep working because we needed the funds. So, I kept working until it was possible to get my family together again. We had a tragic fire at home. So, fortunately I was making what then was considered to be very good money. I was able to send every penny home, because everything was taken care of in Japan, my room, my board, my laundry, my driver, my car, my PX supplies, everything was handed to me. There was no reason for money at all.

Q: When were you assigned to Japan, what was the year?

A: Well, we arrived there on Pearl Harbor day of 1945, which was on the anniversary, the fourth anniversary of the attack on Pearl Harbor. Actually at Pearl Harbor, it would have been December 7. In Japan it was December 8, because of the time line difference, one day. So, we arrived there I presume for whatever that propogandic value that might have to be there precisely on the day, four years to the day later. That trial was much different than the trials in Germany for me because we were a twelve nation trial. The Judges -- there were eleven judges on the bench, one of them representing two countries. Eleven chief prosecutors from the various countries, so my job, I had several bosses and all of them telling me what to do.

Q: Did you know prior to coming about the war crimes commission? Did you learn about that?

A: Of course all lawyers had some concept, if you were interested at all in world affairs, you knew what was happening. These world affairs and the war trials and the war crimes, the London Conference, the Cairo Conference, and so forth. Yes, I had some knowledge of it. I never dreamed that I'd be involved in it. First of all, I had no proficiency in Japanese whatever. I didn't know German at all. I spoke some Russian and Spanish, and of course that didn't suit me for either of the assignments, but I did find that English was the official language of the trial in Japan. And everything was on a simultaneous translation

basis. We had soundtracks when we were standing at the podium wearing headphones. Sorry I don't have pictures that show, yes I do think I have one, but the United States, the U.S. VA Graduate School, which I'll be teaching a course in foreign affairs in a few weeks, they had that picture and they were going to return it to me. It's the only one I had of me while I was trying -- it turned out not to be the Emperor of course. As you know, politically, he was excused from the trial. He wasn't tried, he wasn't indicted. We tried Tojo as the lead person and all of the other 27 who were high ranking officers, we thought the top people. There were many other trials, but they were in another place, in Yokohama, some in China. This was only one international trial in Japan--the Tojo case.

Q: Can you tell me something about the preparation of that trial and what it was that you did?

A: Well, we were broken into several phases. Preparation for Japanese opinion for war being the phase the I was assigned to. There were several of us, three lawyers actually, who were working on that phase, and I had the duty of interviewing people who were related to the press, the movie industry. We didn't have television in those days, and the newspapers and all of the various media used in Japan to bring about the raising of antipathy against the western nations, preparation for war, actually. To prepare the Japanese mind to accept this, because there had been a lot of pro-western feeling, I think, mostly pro-American feeling, by even a lot of the top leaders in Japan. The strata of administration of the trial with Keenan as chief American counsel also elected by his peers to be chief prosecutor of the international prosecution section as we were known a part of SCAPs, the Supreme Commander for the Allied Power which translates to MacArthur. Actually, although MacArthur is historically given credit for the trials, it's sort of a mistake. In fact, Keenan's orders, own orders were equal to those of MacArthur. They were presidential orders. I think all of the people who are aware of that period know that President Truman was not reluctant to fire the supreme commander of the Allied Powers, so the title didn't have a whole lot to do with whether or not the President was able to fork his will on the individuals who were American citizens. So, Keenan's presidential orders were equal to those of MacArthur. But, Keenan I think, to my sorrow at the time and continued, Keenan apparently felt reluctant, maybe it was on presidential instructions, but Keenan seemed to be reluctant to go off on his own. He sort of surrendered his authority to MacArthur when we got there, and became a part of the Supreme Command. So, instead of being the International Prosecution Section for the Far East, it became a part of the Supreme Commander staff, even though we were called International Prosecution Section, it was the General Headquarters, MacArthur. This had a very distinct, I think probably a weakening effect of the end results of the trial, because here we had all of the constituent members of what became the United Nations Security Council, were there on the Court. You had China and the Soviet Union and Great Britain and France and the United States. All of the nations who were vying for top authority within the Security Council were there and could have taken it upon themselves at that point to become the United Nations representative in International War Crimes Trials. But you see, that didn't happen. It became more or less an American show because it was

McArthur. Even though we had the other nations in, it was international only to a limited extent. The American dollar was paying for it, which I guess, had to be expected. We had no subsequent proceedings. I'm getting a little ahead of myself because in Germany the same thing prevailed, incidentally. It was also a part of the military. It was International Military Tribunal. We were International Military Tribunal for the Far East. When the people at Nuremberg, after Justice Jackson had come home, he had been the chief prosecutor at Nuremberg, when he came home, the Soviets had withdrawn, gone back to their zone of operation, so had the French, so had the British, leaving whatever was left of the American staff at Nuremberg under the charge of a very competent lawyer by the name of Telford Taylor, who still lives and who's at Columbia teaching. He must be in his 90s by now. He's a very capable lawyer. But he decided, for whatever reasons, possibly again on I don't know if it was Presidential orders, but for whatever reason, he decided that Nuremberg should continue in an international vein. That is, all the trials that would be held at Nuremberg under his direction from then on were to be called international trials. His tribunals would all be known as international military tribunals. It was sort of a fiction because they were manned only by Americans who are very capable judges, prosecutors who are American, very capable prosecutors. I think very excellent prosecutors. Almost all personnel with the exception of those employed to do the translating and interpreting were of the United States. So, I felt that it was a fiction. We had voted this idea down in Tokyo. I was on a committee to determine whether we would hold what was called "subsequent proceedings under American authority" but to be called international. Well, aside from that, the trials were very similar. The Tokyo trial was much like the Nuremberg trial, but the language was a barrier to public comprehension. The faces were different. The Japanese were not as easily depicted to the American imagination and mind as were the Germans. The German Bund was something that we could comprehend in their swashbuckling style, but the Japanese methods were very foreign to us. So, their infiltrative process -- as a matter of fact we misunderstood them to such an extent, that a lot of the Japanese U.S. citizens were thrown in jail, as you know, when Pearl Harbor came about. I think today that wouldn't happen because we understand the Orientals better than we did then. I don't know what we would have done with the German American Bund. It seems to me that a lot of those fellows probably should have gone to jail that didn't go. Do you understand what I'm saying here? Well, the strata I started to get at, that would be with MacArthur seemingly at the top as the Appellate Authority. It shouldn't have been that way. The Appellate authority really should have been the President of the United States, and I suppose ultimately it was, but MacArthur's been presented historically as the top authority. And Keenan as the chief prosecutor, the justices were working under the leadership of Sir William Webb of Australia, who was the Chief Justice of the Tribunal. The U.S., just for the purposes of identifying the Americans, the U.S. representative was a fellow by the name of John P. Higgins. John Patrick Higgins, who had been the Chief Justice of the Superior Court system in Massachusetts, very bitterly opposed by Keenan. Keenan didn't want him on the Court. Unfortunately Higgins found that out, because when he was appointed, he had served in the Congress at one time with President Truman when Truman was a Congressman. The result of that was that they had an affection for each other and Truman

appointed him after having asked Keenan what he thought of him, over Telecon, which is a very slow process of communication. I guess he figured that when you asked someone, when the President asked you're going to say, "Oh, yes, Mr. President we like him." But Keenan had sent a scathing kind of a commentary back over Telecon which the fate had been accomplished at that point. Higgins had been named. He had arrived in Washington, was able to read all the exchange of communications including that which was distressing to him. He possibly if he had been a different person might have quit on the spot, but he didn't want to put anybody in a position of embarrassment. So, he came to Tokyo. I talked to him many times, and he was an awfully nice gentleman. A very fine justice. The Chief Justice was extremely fond of him and they came to look upon each other as being equal in their comprehension of the law. But Higgins waited until an appropriate time and then he threw a bomb into the works by quitting. He didn't quit in a manner that should have embarrassed anyone, but he just said, that there had been many deaths on the Courts in Massachusetts and I have to go back and take care of things, take charge. So, he left. That had the effect of sort of pricking a balloon, taking a lot of the steam out of the nature of the -- the press for example were wondering what's this going to amount to with no American Justice. So, Truman called one Judge Advocate General by the name of Myron C. Cramer. The Army's Judge Advocate General of some previous years, called him back to active duty and sent him over there in military uniform. That in itself started to play down the public comprehension of the kind of trial that it was, with an American General on the case. Well, you didn't look at it the same way as you would have if you had a member of the Supreme Court or a former member of the Supreme Court on the bench, or even Higgins. So, the result of that was that there were two generals at that time, only two generals on the court. One was the Soviet General and I think it was \_\_\_\_\_, and the other was our own General, Myron Cramer. This all happened in mid-stream so it had a lot of scholars began to look at the thing and say how in the world is a justice going to be able in good faith to sit down and command the evidence as it's gone in so far and properly meet out justice. Well, he could of course, but nonetheless it had a watering down effect on the trial. So, in any case, my phase of the case was over with. I worked under a couple of very top level committees, the evidence committee which decided what I could and could not present into evidence. It was all screened out very carefully and they determined whether it would fit my phase of the case and whether I should put in. All the lawyers did the same thing. And the other committee, which was called the Executive Committee, what it really amounted to was Keenan and all the other chief prosecutors from the various nations who would make determinations of who would be presenting evidence and what evidence seemed inappropriate. They were trying to coordinate everything. And then there was a coordinating committee down the line. So, there was really three committees that we would go through before we even got to the floor of the courtroom.

Q: Were there defending lawyers and prosecuting lawyers on the American side also?

A: Yes, the Department of Justice, I think, primarily had sent lawyers over at the request of MacArthur, I presume. Every one of the accused, there were 28, had an American



counsel. In addition to which, they also had Japanese counsel. Tojo refused American counsel. He didn't want American counsel, and to my thought, perhaps the most intelligent lawyer, the best scholar in the courtroom was probably Tojo's lawyer, Dr. Kiosi (ph). I have very high regard for him and his capacity. As a matter of fact, I have very high regard for the ability of Tojo himself. When you're dealing with people like that you can't just water them off as being enemies. There is something very special about a man who's able to become the Prime Minister of his country. Tojo was known as old razor brains, and I can see why.

Q: Did you interrogate Tojo?

A: Yes, but the system we used in the interrogation of Tojo one man on our staff was promised the sole and exclusive right to the cross examination of Tojo. In other words, Tojo was going to be his accused. I was assigned two people. General Hiroki, who had been sort of the tutor and sort of a well guiding force and godfather behind Hirohito as he was growing up, up through his years and until he became the Prince Regent, took over for his father in about 1928 or 1929. General Hiroki was the oldest accused in the bench. She probably had more influence on what happened in later years than anyone else there. Hiroki and the other was Hiroto. Hiroto was a diplomat and had been a foreign minister. These were my two for preparation for ultimate cross examination, which I never did conduct because I came here and then later went to Europe. I came home because of emergencies and then went back to Tokyo after I had gotten the emergency somewhat in hand, but I had to keep working until I thought everything was right with my family again. Came home -- I had resigned to come home thinking I was through. When I got back, I found that I wasn't able to really get away. My law practice had dribbled out. Other lawyers had ruminants of it. I had been gone almost a year, and I needed a job very badly and one had been offered in the European trials, so I accepted it. But I sort of lost the trend of my thought there for a second with regard to the --

Q: What was it like to meet Tojo?

A: Tojo was what we were talking about a moment ago. It seems to me, or I was talking about, Jack Feeley, who had been I think the Solicitor General, he was either an assistant Solicitor General of the United States or the Solicitor General, also head of, if I remember correctly, of the Justice Department at one time, Criminal Division of the Justice Department at one time, had been promised by Keenan that he would be the sole and exclusive counsel to cross examine and prepare the case against Tojo, and this of course was more or less a center piece of the trial once the Emperor was out of the picture. So, that was Feeley's role. A very interesting fact that that promise was given to him all the way from the very beginning which lends itself to whether or not there was some question about whether the Emperor would be tried. You see, we didn't know it until down the line some weeks later whether or not the Emperor was actually going to be tried or not. But I think Keenan had a pretty good idea because he was promising the chief individual in the trial, or what seemed to be the chief individual in the trial, Tojo, to

this one man. It seems to suggest that back as early as our departure date which was the 2nd of December 1945, that there was some knowledge, but we did have a message delivered to our aircraft just before departure. It came from the President. The Presidential car came with this seemingly secret message to Keenan, and we knew it had to do with the Emperor because we were told after that that we would not be permitted to interrogate anyone in the Royal household. That seemed to suggest many things that were happening in retrospect. It suggests also that the Emperor might not be tried, probably wouldn't be tried. Whether that had been a decision made, I don't know. We do know that the people who are foremost in making that decision aside from the President himself, on the United States side, were John McCloy who was the --well he was really running the War Department under Stimson in that time period, and MacArthur of course had a voice in it as did Joseph Grew who had been our Ambassador in Tokyo. All of these were opposed to the trial of the Emperor. Now, the Soviets wanted him tried. So did the British, I believe. There were various people who wanted the Emperor tried. The United States had the most to lose in that situation, if you can believe that by trying the Emperor that the Japanese would have fought to the last inch. It was thought that the assault on Honshu<sup>1</sup> which was being planned, might have cost millions of lives, American lives, and more millions of Japanese lives so that it would have been a wise practical decision to say, well, all it's going to take to have peace is you can have your Emperor. It was easy to lay the blame on the military. The Emperor, the assistant in Japan, the Emperor would have of course be following to a large extent, he was not quite the mouth piece that some people might have described to him for the military just saying yes. When I say the mouthpiece, I mean the yes-man. He had more voice than that, but he seemed to go along pretty well with what was wanted in those days. The Navy was opposed, for example, to the attack on Pearl Harbor. The Army was pushing for it. The Navy had to carry it out, of course and did it with dispatch. But they had fought against the concept. A number of the Navy people felt that it was a losing war if we did that. It appears that they were right. Going back to Tojo. So, Feeley had total authority as to whether or not one would get to talk with Tojo at Sogolmo (ph) Prison. When I wanted to talk to Tojo, I had to do it through Feeley. Generally, if I wanted to go to Sogolmo Prison with him, I could, but I was not permitted to speak, nor were any other lawyers to speak personally with Tojo, except off the record. Off the record we might have a few comments, but on the record, that which was to become part of his official affidavit sworn testimony, my name would not appear in it. Although there would be questions in it which I had propounded through Feeley which I would use in turn in my phase of the trial about censorship, propaganda, police controls and so forth. I recall one incident sort of in passing concerning the fact of his being called "Old Razor Brains" while we were there one very cold day in December or January, that winter of '45-'46, a couple of plumbers came into this little interrogation room at Sogolmo Prison and those of us who were there were the interpreter was a Commander Maxim has written a book about his experiences. He was the interpreter, Jeff, he was an American Commander, a Navy man. Myrtle Mills was Feeley's own secretary who was taking notes. Feeley himself with me, and of course Tojo. Two fellows

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<sup>1</sup> The largest of the Japanese islands.

came in, two Japanese workmen began to pound on the radiators, it was terribly cold, with their wrenches. And the girl said "Hubba, Hubba" so they got up and went out of the room. That was being interpreted as very slang, so Tojo said something in Japanese to Maxim, the interpreter and they both began to laugh. They hubba-hubba back and forth a little bit, and then it was explained to us that Tojo said that every night when he left that particular room, the guards would poke him in the back with their billy clubs and say hubba hubba and up until now he had always believed that meant remember Pearl Harbor. He knew it would get a laugh out of us. I'm sure he didn't really mean that.

Q: Did you travel through Japan and see --?

A: Mostly unofficial. The workload was almost unbelievable. We were rushing for the indictment and rushing for the first day of trial, and rushing because I had to present the first witnesses in the trial. So, for me, the pressures were almost inhuman and in particular with the load at home. My anxious feelings about getting back home took the romance out of the job really for me. But I did fly over Hiroshima and Nagasaki and other major cities. I wanted to see -- the Army at my request took me over it, the major cities of Japan so I could see the damage and it was unbelievable. I couldn't properly describe the effect of one bomb on a city like say Hiroshima for example. Although the damage in Yokohama and Nagasaki and Tokyo itself from the fire bombs was beyond belief, too, but you could comprehend that to some extent because the buildings were so fragile, a lot of bamboo and paper structures. Whole neighborhoods would be wiped out with a small bomb, a fire bomb. And occasional weekends there were several of us, Feeley, myself, John Darcey who was the Assistant Attorney General of the United States in charge of one of the divisions there, and Henry Sacket, later a federal judge, Elton Hyder, Elton has become oil rich in Texas. He went back and became a very effective lawyer in big oil cases. We traveled together usually, all or part of us, and we'd go for one overnight trip we'd go to Atomi (ph), which was a seaside resort, wherever, just to get the feeling of being away for a little bit. It gave us a trip out of town, but it wasn't every weekend and it wasn't a very, it wasn't really a vacation type of thing. It was sort of a quick breather to get out of town and we'd carry some K rations with us, dry field rations to eat. It's about the way we were living on weekends.

Q: Can you tell me something about what happened at home and how that --?

A: Well, my wife, within days after I had gone to Tokyo, had gone to visit her family in Alabama with our twin sons. We had twin sons then who had born in 1944, so they were just a little over one year old, and she was expecting another child at that time. She was a few weeks pregnant. That was one reason the 90 day period seemed to be almost essential. On Christmas Eve I got the word that she had been very critically burned. She apparently had something back in the way of a housecoat from the cleaners that possibly had a lot of flammable liquid used in it and she had backed up too close to an open fireplace at her parent's home. And they lived a great distance from a hospital, so the burns, I guess, just kept getting worse and worse. By the time she got to the hospital from

their home, which was in Hamilton Alabama to sort of a small sort of a country hospital in a larger town in Russlerove Alabama, she was really in very bad condition. So, there had been a lot of efforts to reach me, but for some strange reason Red Cross couldn't do it. My friend Mike Hoffman, I got to talk to him about that. They apparently tried through various means and couldn't get communications very well. Finally one lawyer in Nashville called, who knew the Attorney General, called General Clark and said "Did you know?" and he said no he didn't so Clark then immediately sent MacArthur a message ordering me home. Without asking any further questions, MacArthur's staff prepared the orders for me and told me that I must go home right away because she was in critical condition. So, I did. I came home, and I was told that she wasn't expected to live through the night. But I remember that I knelt by her bed and said prayers with her at that time and we were both pretty desperate about the situation. I called friends in Nashville that said they would make arrangements, and they did, with an expert in skin grafting. All I had was this one doctor's word that she wasn't going to live. They arranged to send an ambulance down to this little town, and we sent her back to Nashville, a distance, I guess probably nearly 200 miles in an ambulance which in itself she had to be heavily sedated and have a nurse with her who was a friend of the family. And we had a private room set up for her in the hospital with a telephone and so forth. It was imperative that I had to that if she could be taken off the critical list at all, that I had to go back in order to continue drawing a salary, because I had turned my practice over to another lawyer. And really, I was in no emotional condition to try anybody's case at that point. So, I did, we got her settled back in Nashville, in a hospital and she had some skin grafts and appeared to be rallying to some extent. But it was a couple of years before she was fully out of the woods for skin grafting. I think it was 1948 before the last of the burns had healed.

Q: Did she lose the baby?

A: Yes, the baby was lost at once, really. She miscarried even before she got to the hospital. So, that was it, and then when I came home at the end of approximately a year, when I came back from Tokyo, because her telephone calls -- I would call her once a week from Tokyo, she had a telephone right at her bedside and that we could discuss how she felt about whether she felt well enough to come home. As a matter of fact, she was well enough to come home, but she needed 24 hour around the clock care. So, when I got back to Nashville, I resigned, came back and took her home and we had a nurse that had taken a strong friendship liking to her and wanted to continue and she stayed at our home and took care of my wife until she came to Germany. She was really not in a great condition to come to Germany, but I went over and made several trips back and forth from Germany. I was able to do that relatively easy. I flew back and forth to United States to see her in between, but it was again, almost a year before she could come to Germany. And then we continued her skin grafting after she got there.

Q: After she got to Germany?

- A: After she got to Germany, but she was able to do that on an outpatient basis. Just go in for a few days and come out. This went on until 1948 from 1945.
- Q: This must have been a great strain on you?
- A: Unbelievable. It was really unbelievable on both of us. It's hard to recapitulate that period. It's so painful. We had three more children after that. All of them survived except one got killed as a result of a wounds in the Viet Nam war. He was a Marine.
- Q: How did you get to Germany?
- A: I had been asked -- when I first came back I had been asked, I had to report at Keenan's request amongst other things to report to the Attorney General and the War Department. Oh, I hadn't said that the way I was paid, because the Justice Department truly didn't have the funds, they merely asked the War Department to pay me and put me on the War Department payroll. And it created some difficulty because some of the more senior lawyers were getting less money than I was. It was a personnel problem for some of those who were justice department lawyers and therefore sort of bureaucratically inclined. The money meant more to them perhaps than it might to Edward Bennet Williams wouldn't have cared it was \$1 or \$10,000. \$10,000 in those days was the top salary. So, these fellows who were getting \$8,000, \$9,000 and had pretty good jobs as professional grade sixes and sevens, eight was the top, and I came along at the top of the six bracket, getting over \$9,000 a year because I was given an overseas override. They were -- the Justice lawyers were given I think \$10 a day, which today of course would be ridiculous but at that time it was a pretty good per diem. They got \$10 a day per diem and the Army took it away from them. The Army, I think was rather vicious in that regard, they said you don't work for us, you work for the Justice Department, so that \$10 is for your board and room, give it to us, and they took it. In my case, they didn't take anything because I was a War Department lawyer even though I wasn't really. It was one of those comical bureaucratic mixups. I was very happy for the mistake. We needed the money badly.
- Q: When did you get to Germany?
- A: I left as I remember it was December 4, 1946, and I went over on a very slow boat, by my choice. I wanted, I really needed a rest, and as far as I was concerned I was on the payroll from the minute I left and it seemed like a good opportunity, so I went over, and it was a very slow trip. I got to Nuremberg on New Years Eve 1946 going into 1947, New Years Eve at Nuremberg. I met with Telford Taylor and some of the others there, celebrated with them. I had spent Christmas in Germany because orders were issued to me and reissued to me along the way. I really didn't know where I was going to end up. I was sent first to Frankfurt. From Frankfurt I was sent to Heidenburg and from Heidenburg I went to Augsburg and from Augsburg to Nuremberg and Nuremberg to Dachau. It was a very happy experience because every place was new. My wife was not permitted to come over while I was at Dachau, but at the time of as the war crimes ended, when was it? It

must have been the end of '47, I think we had been ordered to close it down by the beginning of 1948, and while I was in Berlin interrogating Rudolf Hess, I stopped over to see an old acquaintance who was the Solicitor General of the United States at one time, and later became a U.S. Federal Judge on the Court of Appeals here in the District of Columbia, Charlie Fehe( ph). He was heading the legal staff for military government. So, while I was there to interrogate Hess, I stopped over and talked to him. He was getting ready to come back to the United States and ask me if I would like to join the staff in Berlin and I said, I sure would, because I didn't want to go to Augsburg where it would be a reviewing job. I didn't like reviewing these cases. I had gone through them so carefully. The ones that I handled, many of which I handled in the pretrial and others which of course I personally tried. There were literally thousands of cases that seemed to be going across my desk, but I'm talking more in terms, I guess, of people than I am of individuals rather than cases because so many of these cases would include any number of persons up to 100. I'm sure in some instances. So, it seemed to me that there were literally thousands of cases against thousands of persons going across my desk. And I would review these, all the evidence that had been gathered on them. I had my own opinions about whether they should be tried or not and then I would pass them along with a suggestion that they be tried or they not be tried or that they be reviewed by someone else so that it was sort of part of a chain link proposition, a pipeline before they got to trial. In many cases, I'd put a case aside because I wanted to try it myself for one reason or because others didn't want to try it. If I wanted to try it and felt that it should be tried, I'd try it. I'm not sure how many lawyers may have been doing that. I was known as a chief trial attorney. That was my title. I worked under well really three other lawyers. One the head of the War Crimes Detachment which we normally call the Dachau contingent was a fellow by the name of Straight, Brigadier General Straight. He was in Augsburg. Under him was a Colonel Howard Brissey. Brissey was the head of the Dachau detachment, where the trials actually were held, but the chief of the trial branch who was really my immediate overseer and boss was Leo Goodman. Leo had been an Army Colonel I think and before he died he had become -- two principle jobs he held. One was head of the American Chamber of Commerce in Germany, but before that he was Counsel General, I believe, he went into diplomatic service. Well, Leo was the one I had to report to most directly and we had day to day contact. The others were looking at him and he was looking at them, but this was my chain of command. He was very competent, a very competent lawyer and a very nice man to work with and for. We were very good personal friends. I enjoyed that experience, I guess more because of him than anything else. It would have been very lonesome. He was a bachelor and he later married in Germany. He was a man of great high moral values and if it hadn't been for him I don't think I could have stood the thing away from family and so forth. So, anyhow, he wanted me to go to Augsburg as we were closing down the trial branch and I said, "Gee I don't think it's my thing. I've had this thing offered to me in Berlin." And he said, "Well, what if I won't approve of it?" I said, "Well, I think you certainly have that option. Out of all the things you've done for me I could hardly be angry about it but I would still say no." Well, you have to pay your own way back you know. Well, I'd be willing to do that. My wife was probably well enough for me to go home and take over things without the

worry. He said, "Oh well, go ahead and take the job." It meant a promotion, so I was glad to do that. I was then on Lucius Clay's staff, legal staff in Berlin during the blockade in a position known as General Counsel on High Priority Policy Matters. It really meant dealing with the Soviets as much as anything. That's about it.

Q: What did that job entail?

A: Somebody from the Pentagon told me that they had read some of the opinions that I had written and were complimenting the fact that I had given the Italians back all of their artwork, that gives you an idea, the restitution of property. Just many things. It really meant that I was doing a policy job of involving international matters that had to be adjudicated based as best we could on what law we had to work with and claims of other nations. We worked on the currency reform matter, for example, which resulted in a break with the Soviets as you know. I guess somebody might know.

Q: How did you get to Dachau?

A: I got to Dachau on the first or second of January of 1947 and as soon as I reported I was put to work. I wasn't given a chance to do much except take a desk and start looking at cases. The first thing that I was doing was interrogating various people who had already been interrogated by investigators, trying to decide whether or not the testimony would stand up. Looking at the record of what evidence was there to try cases, and I started trying cases myself first with some of the other lawyers who had been there awhile and then later as the Chief Counsel in whatever trials I was taking on. Really, in an administrative matter am I getting there. I would like to have stayed at Nuremberg except for one thing, and that was the subsequent proceedings ran contrary to two things. One my own personal belief in calling something international that has really become unilateral as they had. It had the color internationalism because it was all being done on international law to some extent. But it was not international law as far as personnel was concerned. I felt that if maybe the French or the British would have stayed there or the Soviets that they -- it was only bilateral. You could still call it international and it would stick, but when all but the Americans had gone home, and the American Judges and the American prosecutors or the people who had to deal with it you have to appeal to only one source from then on and that's the Supreme Court of the United States, and that becomes an American Trial as far as I am concerned. Now, the Supreme Court held me wrong in that. One of the trials-- I have to say very quickly that those cases at Nuremberg were very well tried, excellently tried. And I think all the lawyers, all the Judges that I knew were splendid. They did their job very well, so I wouldn't fault that. I just had this strong feeling against calling something what it isn't. But the Supreme Court of the United States held against my thinking in the Frederick Flick case. And I knew Flick. Flick had asked me to defend him at a later time. What he actually asked, after he had been imprisoned, he had a relatively shortened imprisonment and was at Landsberg prison. I had a request while I was still trying cases at Dachau, I had gotten quite a bit of publicity in the German press as a result of that Lottenbaucher(ph) case. I think that gave the

wrong impression to the Germans, that maybe I was sympathetic with the Germans, which I was not, with the Nazis, which I certainly was not. But after all, he was one of the top people in the German government, \_\_\_\_\_ and head of the Hitler youth, and he was acquitted. So a lot of these Germans thought perhaps that they needed my services. Baroness Von \_\_\_\_\_, I think she was a Baroness, she came to Dachau and asked me if I would go she said her husband had requested that I come down and see him at Landsberg prison, that he had been convicted by a war crimes court in China and this really piqued my curiosity because I was doing some writing anyhow about the various war crimes court, and I wanted to find out more about that, to that extent I wanted to talk with him. I did go down. He had been a diplomat in the Embassy in Beijing (ph.) He had been tried by a \_\_\_\_\_ court, which I thought had died really about World War I days, but apparently he had been tried by \_\_\_\_\_ court. Apparently that didn't cause the State Department any kind of turn. They normally, I think, might have said, well we have no business doing that and turned it over to the Army, but he was convicted and somehow ended up in Lansburg Prison. But what he wanted to see me about was the fact that he was a friend of Frederick Flick. Now Flick was running the \_\_\_\_\_. Flick was really big league and what Puttcomer said to me is that Mr. Flick who was present during this conversation that we were conversing in English primarily although by that time I did speak a workman like kind of German, but we were talking in English and Puttcomer said that "Flick says if he is released from prison that he has the plan for rebuilding Germany on the cuff of his sleeve." Interesting commentary. Well, apparently he did. Because as you know when he was realised--So, he wanted to know if I would take the case. I said, "You know, I have a problem. I'm an insider and I'm not sure that I can get released to do it, but if I can, can we talk money." He said, "Well would you talk with my board at Dusseldorf?" Apparently it was what was the makings of the new Farbinworth (ph). So, I did. I talked with them, and we agreed that if I could, my job in this case would be to make an appeal on this case to see if I could at least get clemency and get him out on the grounds that he really could do something about the rebuilding of Germany. And the whole thrust at that point of our new policy with Marshall Plan and so on coming in was to do just exactly that to try to rebuild Germany. So, it seemed like an interesting concept. I wasn't at all sympathetic with the slave labor thing. As you know, I had tried a number of people because I felt that slave labor was something that people shouldn't prosper from. And I tried persons who had been kind to slave labor, thinking of the Schindler movie, for example, turning that over in my head. Probably had his case come across my desk, I would personally have tried him, because I think he shouldn't have escaped simply because he was willing to try to help some people. He wasn't such a great person himself. You know, if you want to be just about it, he was probably not any different than some of the others. I did try one, a couple of brothers, not brothers, a couple of relatives I think they were the Wuelfert Meat Packing. I was wandering a little bit here.

**End of Tape #1**



Tape #2

Q: Robert, I'd like you to give us a sense of the process. How did they choose perpetrators? How did they get them? How did you decide the cases? What kind of cases came across your desk? Can you give us a sense of what the process was in Dachau?

A: I think I can give a sense of the choice both in Europe and in Japan and there was a little variation and it probably has to do with employment of personnel as well. The personnel employment started at the very top level, as I indicated. The Attorney General, then Keenan and eventually both at Nuremberg and at Tokyo the authority passed to the War Department, who were engaging different persons for jobs here and there. In Tokyo insofar as the accused were concerned, we started with several lists. The State Department the Foreign Service had lists of persons who were likely suspects. So did the military. So did the various countries who came in and we took these and we were able to find the common denominator amongst all of them. They all presumably had Tojo on them, for example. I don't want to say the Emperor. I can't recall that any of the U.S. lists had the Emperor on specifically. Some of the foreign lists did. In Europe the personnel thing worked pretty much the same way, and so did the choice of the original persons. We had four nations that were looking at lists in Nuremberg. Arriving at Dachau, the people who you had lists of names -- first of all, you knew immediately who was in the camp when you took over. General Jacob Devors, who I think was Eisenhower's operations officer on the invasion, I was on a lecture tour with him, oh a number of years after the trials, but he told me that one of his units had overrun Dachau and he had gone in there. Well, they could hardly believe their eyes when they saw the conditions of the inmates. In his case, just as a matter of some interest, I got back into the subject of witnesses. There are two categories. There was the German people who lived around Dachau as well as those that were inmates. He was so outraged by what he found there that he had his troops round up everybody that they could find in the town of Dachau and bring them out there to see what was there. He said from the looks on the faces of the German people, of the residents of the town of Dachau, he was inclined to believe that they did not really know. Well, it was one of those things, speak no evil, hear no evil, you don't see no evil. I think that's perhaps it more than anything else. They knew, but they didn't know. They chose not to know, because you couldn't not really know. In any case, he believed that they were ignorant of the facts. Now, you have all these terrible things that you find there. Stacks of bodies, emaciated persons, people who are hardly able to -- you get a lot of names. These are people who are going to be used possibly as witnesses at what took place. No matter where they went, they eventually got some requests to come back and testify. Those who were surviving. And they were given an opportunity, those who came back to Dachau. Now, this was not just Dachau, of course it was Buchenwald and Auschwitz and Mauthausen, you name them, all of the camps.

Q: You mean the Dachau trials included more than --?

A: From our perspective they did. They included all of the concentration camps. They

included all of the atrocities which were committed against U.S. citizens. We had something known as "fire cases." These were our airmen who were brutally murdered when they were shot down. There were various categories of trials that were tried at Dachau. But the true primary kinds were one that the concentration camp atrocity cases and those which were the special cases which involved not just camp personnel but a lot of the people on the outside of the camp, the Gestapo, the SS the SA, the Police organization, the paramilitary organizations who had committed atrocities against various allied prisoners. Well, all those involving American citizens were tried there. All of the cases that were committed against inmates of concentration camps within what we call the American Zone of Occupation, whether it be Austria or whether it be in Germany, were tried at Dachau. That was the site of all the war crimes trials, other than the very few cases tried at Nuremberg. See, only a total of 13 cases were tried at Nuremberg. One of those was the original four power international trial involving Rudolf Hess and the others. The other 12 cases were what we called subsequent proceedings. Excellent cases for trial. They had to be tried no matter how they were tried they had to be tried. There was no question about that. My only difference was to call them international or not international but either way they were well tried. So, those 13 cases were the only cases tried by American authority in Germany at Nuremberg. The only other cases that were tried by American authority or personnel were at Dachau. All of the cases involving atrocities committed in our zones of occupation, our zone of control. We brought them all there to try them. And frequently we'd get someone from another zone. If I knew a name that was on a list in the Soviet Union who was not particularly wanted by them in the Soviet zone of occupation or the British or the French, then I could put in a request through our channels and ask for that person to be sent to us so that we would either try him or use him as a witness, whatever. The routine that was followed primarily--So I have established now how we gained witnesses. These were primarily the inmates or the people of the town, depending on the category of the trial. Then we have a line up procedure, much like a police line up in any city in the United States or any town in the United States in which the inmates who are assigned to a particular category of geographical category say at Dachau itself. They were camp personnel. They were guards. They were administrative personnel, whatever they were. They are now in a prison uniform of some sort and they're marched across a stage with a number around their heads. Sitting out in the audience are people who have been in that camp. This may involve several lineups, because people who come from various places may not be there at the same time, so you might have a similar lineup on the same people at different times before you conclude what you're going to do about the individuals that are wearing that number. So, with a piece of paper which has certain questions on it, kind of a questionnaire which will carry the name as put in by the prospective witness, the former inmate. He writes his name and the data about himself, where he can be reached and so forth. Question one, do you recognize any one on the stage. If he answers yes, then he's going to have to go on from there. If it's no, then obviously he's not concerned with that lineup any further. If he answers yes, please identify him. It's so and so and so, number 3, number 17, number 19. Where did you know them? I knew them at Camp Dachau at such and such detail, maybe it's the medical detail or the slop detail or the concentration -- I

don't remember, what did they call it -- the Brause, the showers, the gas chambers, really, detail. And they've indicated where within the camp they knew him. Now they're asked what the specific name is. They identify a name. Now, obviously the next step that an investigator who's looked at this paper, if he finds any error in it, he knows that error has to be corrected or this is not going to be a good witness. What did this individual do? For example, in the Buchenwald case there were a lot of important elements of the Buchenwald case that were going to effect the whole history of the trials. One of them was the fact that Ilse Koch, the wife of the camp commandant had chosen individuals apparently for extermination based on the fact that she wanted to have a lampshade or bookcover out of a tattoo that the individual had. How to prove it? The positive evidence against her included on one case that she straddled a trench where some prisoners were working and she urinated on them. When you consider the health conditions of those prisoners it could have been something that caused their death ultimately, and that she had hit one or some of them with a riding crop. That could cause the death of a very emaciated person, because they weren't getting much to eat. Actually they were getting virtually nothing. So, that she could have caused the death of these people. It doesn't mean that she did, because there was no proof that she did, but that she hit them is uncontroverted. That she's there, that she's part of the system that is part of a conspiracy she could be tried on the common design element of it. All of these were provable cases against Ilse Koch. Now, you get to the more serious charge of choosing someone for extermination so that she can have -- in other words we have a murder case against her. In any case, you got a murder case against her. You can say that under the common design "X" number of people are exterminated at Camp Dachau and she's a part of the administration which caused that death. In my case, I would ask for a death penalty for her if I had tried her on those grounds. But when you choose a path to try to pressure in on the fact that the big crime that she committed is the lampshades the question is are you going to be able to prove your case and to prove it -- so some of these people who were in the lineup and saw her with a number now have said on their questionnaire her name is Ilse Koch. She was a camp commander's wife. She has done these things that I know of at Camp Buchenwald. So, Bill Denson and Bob Kunzo who are the trial counsel, very competent trial counsel in that particular case, had to take the evidence as presented to them by the investigators who were going over what had happened in the lineup procedure and who were sort of trying to farm out what was good and bad evidence were going to find when they went to trial that two things would happen. One there had been a leak on the publicity on what we call raw materials. What does the witness really know? The witness said they knew that Ilse Koch had chosen these particular individuals for extermination for lampshade tattoos and bookcovers are now in evidence. So, what were the names of the prisoners who were exterminated. Then you get down to the fine points of cross examination and they had some pretty good trial counsel, I take it. And they were unable to properly identify who it was. Joe, I don't know his last name, I don't know his number. Where did Joe go? Well, the last time I saw him he was headed for Dachau. I don't know where he died. So you have a hard time identifying. I do know that I recognize that tattoo. I recognize that lampshade as having been his tattoo. But it's a loose kind of thing that troubles the court, because they look at this evidence as being not quite

tied up. There were some death penalties in that case. Bill Denson if he's interrogated will be able to tell you who was and who wasn't executed as a result of his good prosecutor work. She got a relatively light sentence. I think like 13 or 14 years. I was on Clay's staff in Berlin when her case came up for review there and Clay cut it way back. And then she was turned over to the Germans. Clay was criticized for this. The lawyer who did the review was a very conscientious lawyer named Dick Higgins, Brigadier Major General, in fact, if he's still living, a reservist in the air corp. Dick Higgin was on our staff at Dachau both in the trial branch and later in -- by the way he'd be a good person to interview if he's still living here in Washington. Later he was on the review staff at Augsburg when I refused to go there, he went over. Later he joined our staff in Berlin doing much of the same thing I was in Berlin except that he had the job of looking at all of the records of those that Clay wanted to go over to see whether or not on the petitions that were being presented to him they should have commutation of sentence or maybe even a pardon. In the case of Ilse Koch, Higgin said he couldn't find adequate, essentially I'm putting words in his mouth. He may be living and deny this, but whatever he said to Clay he thought the sentence should be commuted to a lesser one because the evidence wasn't adequate. That essentially is what it added up to. So, Clay commuted the sentence and she was turned over to the Germans. I don't know what happened to her. I understand she got a little stiffer sentence in the German courts. I'm not sure. She was a bad one. But again, the evidence was weak there. And I myself tried some of those lampshade and bookcover sort of cases, the tattoo things. And it's awfully hard to make a case there. I tried, myself I used to try bear down on what I thought was the more cogent part of the charges. If an individual is present in the camp as an integral part of the machinery that was putting hundreds of thousands of people to death, in that particular complex or even thousands, you had a good murder charge against them. What difference does it make about lampshades. So, you could throw that in in passing, but don't bear down on that so that the defense leaps on it and says it has a lot of weak spots in it and they make a little impression on the court. The court could not deny the fact that an individual who's in there pointing a billy club or a gun or a club at somebody and sending them down here and another step and another step and the next step the fellow's emaciated and he's being dragged by the heels down to the showers and they take down the data and he's given a towel and a piece of soap and locked into the gas chambers. Everybody in that pipeline is guilty. You can't get around that fact, and that's the way I approached all of my cases. A lot of people got thrown off on what I call the glamour side of the trial. It looked better to talk about some of these specific things. For example some of them you could make a case more easily in the medical cases, the experimental cases. They had some crazy kinds of things that were done in that camp. It's painful to me to think of these things, but anyhow, I recall there was one little sort of an operation type room was set up in the camp hospital. They could hose it down after they blew a few brains out there. They'd bring people in as if they were going to take photographs of them. Set them all up as if they were going to take their photograph, and then somebody behind them would just blow their brains out. You know, neither rhyme nor reason. Maybe the person was a trouble maker in the camp or something like that. But there seemed to be no rhyme or reason to that kind of murder. And they had experiments such as trying to freeze people

to see whether or not they could recover by putting a couple of warm bodies. They would take individuals and bring them down to the temperature of the North Sea, for example, presumably the thought was that some of the German airman or seaman who were thrown into the water one way or another there could survive if they were given a certain kind of treatment afterwards. So, they put a couple of girls in bed with this body after this person after he reached a certain temperature or had been exposed to cold water for a certain period of time to see whether that would revive him. Whether human body heat would revive him. Any kind of experiment would seem to go. And of course they had other kinds of experiments with medications and injections and so on. Mostly the damage was done by virtually working them to death. They reached a certain point of infirmity or they came in and they were of no use to the work program. When I think about it, my God why didn't -- if Germany wanted to use these people for the work program, or the sustenance, why didn't they feed them well. Why didn't they treat them well. Why not use them as free labor but try to save them. Why kill off your free labor. That's a good thing to get rid of. It made no sense really. The SS were terrible people. They were terrible people. And I doubt if Hitler was ever in a concentration camp. I think these people at the top level tried to save themselves. I wonder whether Imler was ever in a concentration camp, Gering, people who were accountable for them. I have no evidence that they ever were, you know. The final solution? Well, I doubt if they even looked at the refinements of the final solution. The language probably just meant that somebody else is taking care of it. Like superior orders, it's the law, everybody relying on the law. That's why we had to do it. It was always somebody up there that he did it, not me.

Q: Were you present at these lineups? Did you see that?

A: No, everything that reached me was after the lineups. I never -- they were still going on I'm sure, all the time, but no, I didn't bother with lineups. First of all I was trying to look at the material that came out of the line up in a professional way. As to whether or not a case could be made. If there were weaknesses I would write a little memo as to what I thought were the weaknesses in it and pass it to someone else. They were either able to strengthen it with further evidence or maybe they wanted to try it that way they could. I wouldn't try a case that I didn't think was prepared enough for trial.

Q: Can you give us an example?

A: Well, the ones that I just talked about would be good examples. If a case came up -- no, really there's a couple of cases I defended simply because I realized they were not defensible and it was partly because I had a feeling with regard to the other counsel. This doesn't make me look very good, but my friend Jim Phelps, with whom I really practiced law for a while in Houston. Jim was part Indian. I understood from people that knew him very well that he was Audi Murphy's C.O. That he was a captain, I think. The time we knew him, he had just been discharged. He was a captain. He had apparently been a first lieutenant when he commanded troops at Anzio, or the Italian campaign, and Audi Murphy with all those medals, the most decorated soldier had to go either forward to the

Germans of course, do all these magnificent heroic things that he did, or go back to Jim Phelps. I've always said, knowing Phelps it was a lot hell of a lot safer to go forward to the Germans than to come back to Jim Phelps. He was part Indian and he was mean, awfully mean. But we were friends. Anyhow, Jim had a case and he had gotten lazy. He was an awfully good lawyer, and he had gotten lazy and there was one case that I had gotten familiar with. I had looked at it and asked if I would take the defense on it. Goodman was looking for someone to defend the case, and it looked like an open and shut case, as far as Phelps was concerned, and I guess as far as Goodman was concerned it seemed to be. But I did a little investigation on it and decided I was criticized later for not telling the administration that it shouldn't be tried, but I did try it. It was a farm lad who had apparently seen an airman descending, a U.S. airman descending, parachuted out of his plane. The police chief there had apparently knew there was something going on above. The plane shot down so he had acerned about where it was going to come down. He got into his car, drove out to what was the area and saw this farm lad standing there with a great big fence post in his hand, kind of like a tree limb. And he was oddly turning his head from one side to the other. The airman was dead on the ground with his head all caved in. And he said the ghost made me do it. That was what he said and this was made a matter of the official record by the Germans. So, the police chief took the lad back and took a statement from him. Now, that's all the evidence that the government had. Phelps presented the evidence, strutted around a little bit, try to top that one if you will and I said, "Chief have you known this accused?" I knew in advance what was going to do it. "Have you known this accused for a long period of time?" He said, "I've known him all of his life." "As a matter of fact, did you have any kind of fiduciary relationship with him, that is were you not his guardian?" He said, "Yes, I had been his guardian." "How did that happen?" "His family was dead and he couldn't get into service. He was kind of a dull kind of individual and he seemed to be kind of harmless." I said, "Well this is not a harmless thing that's done here. He's confessed to a crime here, has he not to murder?" He said, "Yes, but he never committed a murder." I said, "Well, why would you say that?" He said, "Well, it wasn't unusual for him to confess to a crime. He confessed to all the crimes that were ever committed in the community." And I said, "did he commit any of those crimes?" He said, "No, he never committed any of them. He was really rather harmless sort of fellow." I said, "Well this is not a harmless act, chief. Let me ask you this. Did you see that airman as he was descending." He said, "Yes, I did." "Would you tell the court about what level his parachute opened?" "Oh" he said, "it never opened. He landed on his head." Well, of course that blew the case out of the water, and the President of the court criticized both Phelps and me. Phelps for not preparing the case better and me for not telling the administration which paid my salary. That was mischievous. Obviously that case should not have been tried and I shouldn't have done what I did, and Phelps should have done a better job, but other than that, and I tried that Lotterbaucher case. I did that out of mischief as well, but I didn't like the lawyer. I'm not proud of that, but that's what that was.

Q: Would you describe the Lotterbaucher case?

A: Well, I was -- tensions were very high. We were trying to wrap up all this work at the end of the war crime. We were told to close the program down by the first of January, I believe it was of 1948. And so I had cases really stacked up along side my desk, and I was using my own rule of thumb. If there were not 10,000 deaths asserted in the indictments that were going to be drafted to be attached to the case, I figured well, put it on the bottom. Keep rotating it down so that those with the larger numbers could be referred to trial and recommend this is ready for trial, this one is ready trial, this one is not because the evidence is not sufficient and so forth. Obviously the ones with even one death that is provable is ready for trial. So, some of them, because of the nature, the horror of the nature of the particular case could be referred to trial such as, well I suppose Phelps felt that one was horrible enough because of the manner of the killing of the American airman with a club over the fence post. I'm not sure whether that's a case that he referred to trial himself or somebody else had, anyhow he had it at trial. He had options just as all of us had who were chief trial counsel. He probably was doing much the same sort of thing as I was. Here's a stack of cases. On one occasion then while I'm in the midst of very serious work and I've got all my own problems I'm thinking about anyhow, one of the lawyers there was from Chicago, a major, a Bigelow Boison. And Boison was sort of a mystery character in the war crimes program. It was known that he had been there pretty much from he beginning. He was working on one case. He seemed to be single minded about it. He didn't seem to want to work with anyone. He didn't want to work on any other cases, and he was left pretty much to himself. So, on this particular occasion, he was not a likeable individual. He stuck his head in the door of my office and he said, "Donihi, you're going to be my assistant in the Lotterbaucher case." And I said, "Two questions: Who the hell is Lotterbaucher and who said so?" After all, I knew I was a chief trial counsel. I didn't know what he was. I just knew he was a member -- I didn't even know whether he was even a lawyer. He was a member of the Judge Advocates General staff which I suppose qualified him in military law. But I don't know whether he was a counsel lawyer or not. And so he said, "Lottenbaucher is the person who was secretly selected to succeed Hitler. That's who he is and Leo Goodman if you must know said." Well Goodman was my boss and Leo was his boss, so I went down to see Leo and I said, "Why have you done this to me?" And he said, "I didn't. He asked whether he could have you to assist him, and I said if it's all right with Donihi, it's all right with me." I said, "In that case, would you please permit me to defend the case. I don't like him" and I didn't know Lottenbaucher from Johan Schmidt at that point. As I got into the Lotterbaucher case I could see where Boison was sort of hanging himself rather than Lotterbaucher and I was really permitting him to do that. And it offered an opportunity I could also see to properly dispute the evidence that he wanted to present about the selection of Lotterbaucher, I had to have some testimony from Nazis, high ranking Nazis. So as Lotterbaucher had worked as the Deputy Chief of the Hitler Youth under Alder Von Shurock who had been tried at Nuremberg in the original case, Von Schirach was the head of the Hitler Youth, Von Schirach had then gone from that job to Vienna as the Gauleiter of Austria, the Gauleiter of Vienna. Hitler chose individuals to head large political areas. He had gerrymandered Germany into various Gaus, states if you like, and Austria was considered to be a Gau, as was France and Holland and so

forth, and each one of them had a gawwlighter placed in charge of them as they were put under German command. So, in the case of Austria, this particular chap that was head of the Hitler Youth and gotten the job and as his deputy Lottenbaucher moved up into the number 2 position as the head of the Hitler Youth. Now, Lotterbaucher then was chosen later and it had to be by a personal choice of Hitler, because he personally chose all the gaulighters, he was chosen to head the Gau of \_\_\_\_\_ which was a large industrial, very important industrial area, and he became also the president of Hannover. A very important job actually, and really I think any lawyer worth his salt would try Lottenbaucher with ease if he had properly tried the case would have gotten a death penalty. Not that there's anything to be bragged about in getting a death penalty, but I think probably all these fellows deserved it. Anyhow, now I'm going to be defending him and the weakness in the evidentiary link was whether or not we were going to be able to counter the evidence which is coming from Nuremberg as a matter of fact. And Telford Taylor had written a letter, sort of a safe passage for one -- see if I can even think of his name. He's written several books since then. He was a very hard person to like in a courtroom. As a witness he would turn the court against himself more than towards himself. Under my cross examination he admitted, I wish I could think of his name right now, he admitted that he considered himself to be the father of the German concentration camp and the Gestapo. Now, imagine the defense bringing in that kind of a character in this kind of a case to finger out Lotterbaucher who had a much lesser position. This chap had married Goering's niece, according to his own testimony in order to save his own neck, he says. Well, he's in charge of the Herman Goering factories, a tremendous job using slave labor. He was a bad one. He should have been on trial. But for some reason he had been granted immunity by Taylor probably because he was offering enough evidence against others. And so now here he is offering evidence in Dachau and that was his primary testimony. Well, of course, Rudolf Hess and who's the other one, I can't think of his name. My memory fades a little bit at times. They were the top ranking a higher rank in the seniority of things within in the German hierarchy than was this particular witness. So, I felt that their testimony would be important. I had no idea that I'd be able to get in, but I sent a message to Berlin asking permission to interrogate them and both of them had been convicted at Nuremberg and were incarcerated at Spandau. It's a four power prison. In order to get there you'd have to get the permission of the Russians, the British, the French as well as the United States. My avenues of approach had to be through the American mayor. I'll call him mayor. We had four military districts and the city of Berlin was quartered with the British and the French and the United States and Russians, each in charge of one of those, we called them sectors. But the four they were commanders of the American well not quite a concern, the American sector, and each one had his own command and they came together in what's known as the commanditoria. Together they represented one mayor. They were the mayor of Berlin jointly. Of course they had a water system, a telephone system, all of these things, light system, all of these things that involved running a city, had to be coordinated amongst the four of them. In order to get to see Rudolf Hess I had to ask, "Will you let me in?" My request came through the American representative, Frank Howley, who is generally known as a man who wanted to go to war against the Russians. He used to be called



"Howling Mad Howley". Now, he never said he wanted to go to war against the Russians, but what he did say that got a lot of publicity is "Let's run the tanks down the Autobahn and put a stop to this nonsense" the blockades and so on. Clay was on his way - Clay of course had seniority in the sense of the overall international picture, but Clay was on his way to report to the United States when my request arrived in Berlin and Clay was apparently going to be there for several days and Howley saw this as an opportunity to try to get the gates open at Spandau for historians and scholars. He had no idea who I was and didn't certainly know that I was going to be coming for the defense. He just knew that I had a title that came out of the American government. So, he jumped on that and decided that this would be a good opportunity to get the gates of pride open into the prison for some of our people. In order to accomplish that he would have to put a request on the table and ask the Russians, the British and the French to consider it favorably, within 48 hours. It had to lay there for 48 hours. Now, the last day of business would be Friday. He decided to wait until Friday, 10:00 in the morning, thereabouts, put it on the table. It would have to lay there for 48 hours which would be Sunday morning. Then, tell me as he did to arrive at the prison at 10:00 on Sunday. They hadn't even considered it. They merely have got it on the table in the commandatoria with a 48 hour rule. Now, obviously anyone would know right away that this would be a device and I knew it was going to be a device, but I was following instructions, I wanted to get in that prison. And of course there was no trouble getting in under the circumstances but talking to the accused was another thing. I should say the convicted, the convicts. Hess was in a very large cage, much like an animal cage if you can imagine a lion's cage at the circus, as was Von Schirach, the Hitler Youth leader was in another one. The tables were lined up on the outside for all of the four powers representatives, for myself, my interpreter, and court reporter. It was a great temptation. I wanted to get over and start talking to them immediately but I was told by each of three who were there the American, French, and British that their instructions were no, you can't do it unless the Russians show because we don't want a break on this thing. And the Russians have said no, so I said well, could you get the Russian on the telephone for me and I told him that I was unable to come back. I told him the truth about that that I had to do it now or never. And he said well, he was very apologetic, he understood my place but it would have to be taken up tomorrow, Monday, that I think he said but we don't particularly honor Sunday as you do, but that's out of consideration for the other powers rather than ourselves. We don't feel that the 48 hour rule has ever meant to circumvent the good orderly approach to consideration of business. I had to agree that that sounded pretty reasonable to me. I said, "I'm here and I have to do it. They're over there. I'm looking at them right now and as soon as I hang up this telephone." Here I lied to him. I said I'm going to start these interrogations but I feel that I have to apologize to you and to your country because I don't want anyone to feel embarrassed by this but I have to do it now or never, but I do feel that I owe it to you to tell you that one of the subjects I'm going to get into is communism on Hitler's staff. He was there almost that fast. Well, he was in a bind. I sort of calculated that he'd come. Obviously I knew that that would peak his interest. He had to answer to something if that happened and I went out of there and said that these two inmates have now identified communist on Hitler's staff, it would have made news. There's no question about that. So,

he was there to see what happened. It wasn't the subject at all. I had no intention of getting into that because I'm not qualified to get into it at that time. But we did go through the whole thing and we had a little drink and they have a tiny club there at Spendell or did have and we all had a little drink and toasted one another. I understood then the next day then the Russians really created quite a ruckus and hell broke lose in the commandatora. They never were able to get anyone in again. Whether they could have except for that I don't know, probably not. Now, I mentioned Dick Higgin. Dick Higgin among his other jobs later, on the State Department's staff. He became the prison's officer after we reopened our embassy there, and as such he had to visit Spandau and make constant reports about it. He told me that he never could talk to Hess except Hess would say "What do you think of my garden?" It was a lot of rocks. Hess was just pulling his leg. Hess wouldn't talk to anybody.

Q: What was it like to talk to him? What did you ask him?

A: Well, Hess was my total subject matter had to with why I was there. Whether or not Lottenbaucher was a high enough member of the Hitler team to have been even considered remotely as a successor to Hitler. Von Schirach, the same thing. The testimony of Von Schirach was somewhat helpful. I did put that in evidence as having some sense in it. Also, by reputation Von Schirach had an American Mother and I think maybe the court thought he was more believable than if he didn't have any American blood. I'm not sure. It wouldn't make sense, but I believe that could have had something to do with it. Hess, however, his document was pretty much -- he was trying to be cooperate when he found out I was there for the defense. But he was pretty much giving me a self-serving declaration. He was trying to make his own distorted views known. He wanted to make a complaint against Nuremberg and so forth. So, I didn't want to put it in evidence because I didn't think it served my ace very well. I did offer it to Boisen and Boisen looked at it distinctly and he didn't want it. So, I still have the original interrogation, otherwise it would have been in evidence just as Von Schirach's was.

Q: What had Von Schirach done?

A: On the essentials they both said, they didn't know about any secret meeting that would have considered Lotterbaucher. They didn't think that was possible. That was the essential thing, as far as I was concerned. That's all I went to Berlin for at that particular time. And whether the court was influenced by that as much as it was against the witness who was brought in by Boisen, I think my cross examination of that witness was very telling because he admitted to being the father of the German concentration camp and the Gestapo. And you could see the court immediately, he ought to be hung right here in the courtroom. And he had one of these large fencing scarves on his face. Apparently he was one of that club of I'm trying to think, the military clique where they used to bandage their faces up and then they'd hit with a sabre. You've seen those scarves, I'm sure. I'm trying to think of his name. It may come back to me. Right now it doesn't. Anyhow, have I departed from the general subject around here.

Q: What was the disposition of that case? You won that case?

A: There were a great many people. I guess you would have to say it was a total victory in some ways because there should have been a lot, put it this way, and I don't mean to be boastful about this. I think any lawyer in Dachau could have prosecuted that case, any of the chief trial counsel could have prosecuted that case and had a number of hangings including Lottenbaucher's. Lottenbaucher went scott free. The Kreisleiter of the particular town where some of the deaths occurred some of the deaths and that were ascribed to leadership because of what was known as a Borman (ph) order to dispose of American airman. The Americans were supposed to be recruited in Chicago to be airman and that Borman (ph) order was making a point of the bestiality of the kind of people we were dealing with. Anyhow there was a lot of the proof that was adduced by Boisen was to try to carry out the influence of the so-called Borman (ph) order, the treatment of flyers. Normally the Kreisleiter through whom this order would have emanated from the Gestapo and the SS, the Kreisleiter would have been hanged for sure, by a fellow by the name of Peiffer and he only got -- he got life imprisonment but he didn't get death, and of course that means he's out now someplace if he lived through his imprisonment, and all the others with lesser sentences. The only one that went free as far as I know is Lottenbaucher. He was keynote in the trial. He should have -- I was relying more on Boisen's failure than I was on any talent of my own. Every day at the end of the trial, I've forgotten how long that case went on. It may have been a couple of weeks, but anyhow I'd go up to the bench and pick up the notes that were left by the Judges. This is an old trick in these things anyhow, and then I'd knew pretty much how the judges were feeling. I lived in a hotel. At that point I had moved out of the camp as I was so depressed living in Dachau that I finally asked permission to live in a hotel that was reserved for the courts and they had a little room that they let me have there and I knew these judges very well. They were mostly pretty good solid military men and they made good judges as a general thing, but they were very prejudiced I'm sure against Boisen in this particular case, and they may have been prejudiced towards me out of friendship, although I think that probably would have been a minor part. But I picked up these notes and a lot of them would say "Why doesn't Donihi pin back Boisen's ears." Well of course the court member didn't realize that I was waiting for them to do the pinning back. It's an old defense ploy, but it gave me a quick readout as to how their minds were running at the end of every day. And Boisen had a habit of sticking his finger up in the faces of the court. He get up right close to the bench and he would just sort of waive his finger and you could see the expression on their faces you know. They wanted to clip him, and he was a major, now if he had been a civilian perhaps they might have accepted it better. He was a major and they were colonels all the way down the line.

Q: Give me an idea of the kinds of cases that would come across your desk and other lawyer's desks that you would review and decide to do the case or not to do the case and which cases did you want to do?

A: Well, I made reference earlier to the Schindler matter, and I had a similar case to that. In Dachau there was the prisoners called it the Wuelfert detail. W-U-E-L-F-E-R-T detail. There were two, I think they were brothers-in-law. Wuelfert was the name of the factory, but the two man who ran it had a canning, meat canning factory, a very large, let's say like Armand Hammer or Hormel or something of that sort. They had made literally millions and millions of dollars out of the slave labor they had working there from camp Dachau. Everyone in the camp wanted to get into the Wuelfert detail because they were treated so well. They had a good place to rest and sleep. They stayed there. They didn't return to the camp, except for some grave infraction they were never taken off that detail. They were there until the end of the war. They were well fed, well treated. So in a matter there was a similarity to Schindler here. But as I looked at the case, nobody seemed to want to try that case that lawyers are sort of picking and choosing what they wanted to try which I guess was a fair way to do it because they do their better work that way. And no one seemed to want that one and I decided I would try it myself, because to my way of thinking, I didn't care how good they were to the prisoners, it's the fact that they were getting rich on these prisoners. Of course, I think if all of the Germans who were using slave labor treated them as Wuelfert did, perhaps it would have been for a better end of the war and maybe we wouldn't have had a war crimes program of the same dimensions. Schindler and Wuelfert were similar in this regard. Anyhow, I tried them and I remember Claudio Delatallo and Claudio had an office in St. Louis and in Belsano. Claudio is he in college days had roomed in University of Belsano I believe it was had roomed with Tagliati who was the head of the Italian Communist Party, who subsequently became the head of the Italian Communist party. I don't know whether that says that Claudio is involved in communism or not, but he refused, Claudio refused to, some others lawyers did too, to prosecute any of the cases. The lawyers were expected generally to be on call to either prosecute or defend. The cases that I defended sometimes I didn't want to defend, but they had to be defended. I thought you go ahead and do your job on it. Sometimes I'd turn it down if I absolutely refused to I would be permitted. But it was considered bad taste not to defend a case if you were asked to. And somebody had to be there in the defense. It was part of the regulation. But Claudio refused to take any for the prosecution, and that was permissive. And he prosecuted no cases and he defended a lot of them and he was defensive of the whole system in many ways. Anyhow, Claudio complained to our mutual boss Leo Goodman. He used to say that this Donihi he is vicious, he is vicious. I never thought I was vicious. It's just that I tried to try my cases in a workmanlike manner. And sometimes I'd try to put the lawyer on the other side on trial, that's sort of an old ploy in trial court. Anyhow, this particular case of the Wuelfert's, Claudio was feeling that very strongly because he was sympathetic with them. The Wuelferts I forgotten the term of years, maybe four, five, six or seven, it doesn't have much meaning at this point as to the time, it was relatively short sentence, and I guess I was asking for the death penalty as a matter of fact. I had very strong feelings that if you're part of the system using slave labor why, you know you can't fall back on the business that I was nice to the prisoners any more than you could say it was superior orders. In fact, it's worse that superior orders. They guy's that saying superior orders is saying I was forced to do it. This guy is doing it because he's making money. And if you

were there and listening to the various stories about these things that prisoners were required to do and a lot of them died if they were working in the rock quarries, they might die. If they tried to make an escape, the dogs would be sent after them. They might be torn to death. Some of them were beaten to death for trying to raid the garbages from the SS men's kitchen, that sort of thing. It was just unbelievable sort of things. There were so many people there that I suppose the SS figured a few more less isn't going to make that difference. They were nearly dead, you hit a guy and he drops over, he can't recover.

Q: In the course of the trial, did you rely more on witnesses or on documents?

A: Well, documents were of course the mainstay of the membership in an organization which was considered to be, had been held to be in Nuremberg. The original Nuremberg trial had held to be infamous and unlawful organizations, criminal organizations, and all you had to have was that document showing the membership and the organizational the indictment against the organization itself. You could rest on that, but usually you wanted to have a little bit more. You wanted to know something about their particular participation, maybe he was the president of the organization or I should say the Führer, the local Führer of the organization. By the way, I meant to say about Hess. It was interesting to me that the tenure of Hess's comments and you have more than just reading of the testimony itself, you have to almost hear the inflection in his voice, and he spoke with such fondness of the Führer. It sounded like he still was hoping for a comeback. I don't think he expected the Führer to come back, but I think he did think that maybe Nazism would.

Q: When you couldn't rely on documents, and you needed to rely on witness was that --?

A: Well, you really didn't have to rely totally on -- you always had a common design to fall back on. If a person occupied a position in a concentration camp, or in the Gestapo or the SS or the SA, obviously that was adequate. You had enough to start with there. In the case such as the one with the young farmer that was beating someone with a fence post, you had to have specific evidence because that was related to a specific event. Somebody had to know what had happened. Phelps thought he had enough evidence in the sworn testimony with the kid that said that the Ghost made him cave in the head of the airman. Well, it wasn't enough as it turned out, but normally it should have been.

Q: Did the cases that came across your desk not of parties members but of people who were hired by the system but who were not necessarily party members you wouldn't have that level of documentation? They were---

A: No, if I understand that question correctly, whether they were party members or not, you know we're dealing mostly with concentration camp and obviously a lot of people in a concentration camp who are prisoners were not party members, a lot of them might have been prisoners who should have been tried themselves as habitual criminals, murderers

possibly who are in there doing the bidding of the SS. We call them Kapos. The Kapos, people who wanted at the cost of the lives of others, maybe I'm being too harsh on them but anyhow, people who were willing to do the bidding of the SS. Frequently you'd hear of the SS people were interrogating the SS people. You would hear them say something like if there were any deaths or if there were any killings the prisoners themselves must have done it. Well, the truth is, is that the SS wanted to let the fault for that fall as much on the prisoner command as they could, the Kapo command, you could call it that. But there's no escaping the fact that it was the SS really. There was no way that the Kapo command was not running the camp, but they were doing an awful lot of the chores. Just like a trustee in a prison. Now, if that's the kind of person that you are referring to when you asked if a person who is not a party member, generally speaking, everybody in Germany was some kind of a party member. If you applied for -- first of all, if you joined the Hitler youth, no matter what your age, you're kind of a party member right there. If you applied for a driver's license, you've joined the automobile club, you were kind of a party member. You couldn't get the sustenance that it took to keep life going unless you were in some kind of a party structure.

Q: Maybe I should put the question another way. In the Dachau trials that you were involved in, they were not trying people for being members of an institution that committed atrocities but you were mainly trying people who did things were not simply in some formal way a member of a system that committed atrocities, right? Because the trials were a particular act, or am I wrong?

A: Well, anyone who is an SS person or an administrative personnel within the concentration camp, was automatically going to be tried because he was a member of a common design there. Anyone who had a position such as a Kreisleiter, we'll say a mayor, we'll say a Gauleiter, a governor, head of the Hitler Youth, anyone who came across say any of our desks with that kind of category, was categorically in a criminal organization and therefore, was subject to trial for the criminal acts of that organization. If you wanted to be more specific about what his particular role was then you dug deeper, but he could have been tried on the common design theory alone, if you wanted to. Lawyers were reluctant to do that. I did that with regard to the Wuefert case simply because I felt like don't let them get off simply because they were being nice to prisoners and letting them eat. What you're saying in a situation like that is Oh we let them live. We let them sleep on the floor where it was nice and warm. You could hardly call that kindness.

Q: So, the witnesses if you were going to go deeper, not through documentation but through eyewitness testimony, you would find witnesses of that particular camp. You wouldn't use generic witnesses about what happened in camps in general?

A: Well everybody who came to a lineup of course was -- I see what you're saying. In general well you could use an expert witness of course, if you wanted to. I never did rely on them. I used specific witnesses with specific fences or specific conditions. To that

extent you might be using someone generically who could testify as to the conditions of a camp or several camps, but you really didn't need expert witnesses on that. There was much, it was so easily provable with what you had at hand. I'm not sure maybe if we had used experts as you suggest, maybe you could have shortened the length of some of the trials down to maybe a day or two instead of several days and trying to prove specific things, but that was not my practice anyhow.

Q: At a certain point, this is right after the Lottenbaucher trial, I gather, they were saying to close down the cases?

A: Yes, shortly after that towards the end of 1947.

Q: Did you find that, did you have files on your desk?

A: I had a lot of stuff. A lot of that had to be turned over to -- we couldn't possibly try all the cases that were there. That's why we were trying hysterically to get the most important things out. Important in terms of the maximum number of deaths. The gravest offenses. Those things which we felt should be given a priority in trial. It wasn't at all possible. So, I guess whatever was left over went to the Germans for trial. I sort of washed my hands of the whole event, because I didn't go with Augsburg with the rest of the team who took on the job of reviews, but then I went up to Clay's staff as I've just indicated, and that removed me totally from war crimes for the time being.

**End of Tape #2**

**Tape #3**

Q: Can you just tell us briefly how you were recruited for the European Theater of War Crimes?

A: I think the first time was when I came back after being in Tokyo and came home on emergency, I was asked at the Pentagon -- I had to make some reports for Mr. Keenan, the Chief Counsel, and I was asked if I would consider taking a job in Germany. I think the feeling was that maybe I would be able to go to Germany and get back and forth home. Everyone knew that I had had this emergency. But I sort of tucked in my back pocket for future consideration, and then I was asked again after I had resigned. That was several months later, and I went home and thought about it and then I called them and said yes, I would take it. It was that simple. I got orders to report that they've given time to the court of department, I guess they called it, the fourth of December 1946. I was there and went to Bremen. It was terribly cold when I arrived and went from there to Frankfurt, and from Frankfurt to Heidelberg and Heidelberg to Augsburg and Augsburg to Nuremberg and Nuremberg to Dachau. It was just a hop skip and jump and then I went to work immediately after the first of the year trying cases. I tried cases all of 1946 and 1947. I guess there was two years of trial work, quite a few cases.

Q: About how many?

A: Ok, I guess if I were to count the ones that passed across the desk for someone else to try that I was just looking for trial, I would have to say probably close to a thousand cases that went through my hands. And I was in court almost every day of the five days of the week trying some part of some case, so you could figure that five days a week, not necessarily a different case each day, but if you were to count it that way that would be 20 cases a month that I myself would be trying which would add up pretty close to 200, maybe in the neighborhood of 200 cases a year, or 500 cases that I personally probably tried, or was part of a trial. I wasn't necessarily the lawyer because a lot of these cases had several lawyers in them. On the prosecution side you would have several lawyers for one reason or another, break down the work. On the defense side frequently you would have conflicting testimony, conflicting interest so that they had to have different defense counsel. Each accused was entitled to his own counsel. If it in any way conflicted with the trial of the others on trial. There's -- you know I'm just one of several lawyers that was trying cases. I think Phil Denson who was there before I was probably tried more significant cases than I. Certainly the Buchenwald case was more significant public relations wise and it was the original -- I tried several Buchenwald cases, but they were sort of subsequent, the wrap up of the administration. He got the top people in the camp in whatever cases he tried. Bill would know more about the original conception of those trials over there than I would. I think he was there from 1945 on, whereas I came from Japan, Johnny come lately.

Q: How did it come about that people were able to say, "I will not defend anybody?"



A: I guess there were three people, if I'm not mistaken, Joe Frisky who is close to the upper peninsula in Michigan, not quite that far north, but he was a judge up there. He was a very nice man. I think he's one of those who preferred just to defend. I think partly it's out of a habit pattern of being a defense lawyer much of their lives. I mentioned Claudio Dellatalla. I don't know why Claudio did. Claudio would sit in a room full of people, and I think a part of it was just mischievous because if he wanted to start almost a riotous conversation, he'd say well one of these days they're going to erect a statue out here of Hitler and part of it's going to be because he had the right idea. Oh my Lord, the room would divide right down the middle. People were ready to throw rocks not only at him but at each other. He could start a lot of arguments that way. So, you have to draw some conclusion from that. Maybe he was anti-semitic. It seemed so. Maybe it was just mischief. I can't imagine, but he was one of those that only defended. Frisky only defended. I'm sure the motivations were not the same. Don Ross, a Navy captain, I don't remember him prosecuting any cases. He seemed to prefer defending, but I think in the case of Frisky and Ross, I think they probably had experience in defending cases more than in prosecution, and I must say, the prosecution of the cases to a trial lawyer in a setting like Dachau is not any challenge. The challenge to a lawyer sometimes means a great deal, and I think probably those who are prosecuting cases must have had the experience that this is sort of spearing fish in a barrel. I defended some cases out of a sort of a feeling that you have a duty as a lawyer not to just prosecute all of them, and I defended some cases that I would have rather have prosecuted. I mean personally would have rather prosecuted because of my distaste for the deeds that were really provable in the case.

Q: Were there lawyers who refused to defend anybody?

A: Yes, I think many of the Jewish lawyers did, and quite understandably. They had such a feeling of antipathy in that setting, gosh, how can you possibly be fair and impartial. Fair is one thing, impartial how can you be impartial if you have relatives and friends neighbors who have been affected by these concentration camps in an adverse way. So, I can understand why they didn't. I knew several of the lawyers there who absolutely would not take on a defensive case.

Q: Can we talk a little bit about witnesses and was it difficult using survivors as witnesses given the trauma that they had just gone through?

A: Yes, it was difficult. I recommend that is a good tea. I remember seeing, this hardly enlightens, but, an image comes to my mind of Churchill on one occasion when he was addressing a joint session of the Parliament and he had a surprised look on his face as he picked up what he thought was a glass of water. "This is really tea." But-- There were so many people. They came into your office. You got their names, you asked to speak with them because you know that they're witnesses. They've been through a line up procedure. And you kind of feel that in my situation, here it is a couple of years after they have been

released from that terrible encampment, you kind of expect they're going to come in looking fairly healthy. And they come in and they're still emaciated. They're trembling. They've lost teeth. Their memory seems to lapse. Their eyes show various kinds of distress. You talk to people like this day after day, it's not long before you begin to feel a little bit like them. It's a terrible sensation, really to realize -- I guess I could illustrate this because none of us could possibly know exactly what it's like to be in one of those concentration camps any more than we could unless we've been in battle we couldn't know what it's like to be shot in a battle. I guess it was Easter of 1947. Three of us went down to Paris together, and we found that our money was rapidly running out. The Black Market prices were just out of this world. If you went into a French nightclub some waiter had put a 10,000 frank bottle of champagne on your table and uncorked it before you even had a chance to say I don't want it. It seemed like everyone was grabbing. There were a few things that were frozen. Hotel rooms were frozen in the war time price freeze. Transportation other things -- so we decided that we just couldn't afford the life that was supposed to be a Parisian gay life. We better get back to work, and I checked with Horley Airport to find out how we could go back to Munich by air without spending too much money. I found out that they had a war time price freeze on air travel. It was very inexpensive. We were going to be able to fly to Marseilles, Algiers, Tunis, Rome and Munich for less I guess than it had cost us to come down by rail to Paris, so we decided we would do that and we could exchange our French francs such as they were or on a one to one basis for Algerian francs. And then at Algiers for Tunisian francs and then we'd be on our own getting Roman or getting Italian lira. Well, we had some difficulty. We got as far as Marseilles on the first leg of the journey and we're going through immigration and the chap who was checking us told me over and over again you can't go because you don't have a visa. And I kept handing him my passport saying but I have a diplomatic passport. You have no visa, which he was talking French, and I don't know much French, anyhow. I had pushed by b-4 bag back at him. These other two people with me were looking kind of uncomfortable as though they were willing to turn around and go home. I kept pushing my bag towards him because he picked the bags up and moved them over where they go up a ramp. Finally in some disgust, I guess he figured let them learn for themselves. He took my bag and he pushed it over and he just waived us on. So, we got on the aircraft, got to Algiers and to our amusement and misfortune we found that the immigration Frenchman there was excellent in English and he said, I am awfully sorry, you cannot come into Algiers without a visa, an admission. I said, "Well, we won't be any trouble. Just let us-- we'll make our reservation back to Marseilles on the next plane." He said, "I'm awfully sorry, but you cannot leave Algiers without a visa, an exit visa. So, I said, what are we going to do. And he said, well where are you headed what are you going to do and one thing and another and I said we were with the war crimes program. It seemed to impress him, and it was true that I was going to try a case when I went back involving the death of some 10,000 Frenchmen. So, I was able to tell him truthfully that from the French point of view it was important for me to get back to Munich. So, he called a hotel and we got what they claimed was Eisenhower's suite in the hotel there in Algiers. It was very nice. We learned it was very little cost, very lost cost. And the same bottle of champagne, for example, that would have been 10,000 francs was something

closer to 100 francs in Algiers. It was crazy this difference in prices. So, we felt rich. We were having a great time in Algiers. We were told that we'd have to see their foreign office and our own embassy on Monday, which we did. We there on the weekend. So, after enjoying a few days in Algiers, I-- foolishly -- I did it without checking things that needed to be checked. I made reservations by rail after I had gotten our visas. I had gotten visas for us to leave by way of, I don't know whether it was Mason Blanc Air (ph), but anyhow, an airport in Algiers, and that's stamped in the passport that we're going to need the visas. Well, we got onto a train. We couldn't get transportation out by air so we got on a train and dumped out on the dessert -- we had state rooms, -- dumped out on the dessert when the train turned south and we were stranded waiting for the next one to come along. It was horrible. The train was packed with Arabs and kids that were noisy. We waited several hours out there on a little platform in the middle of the dessert with little bonfires going around, it looked like tribal bonfires. It was not exactly an exciting scene, and then when we got to the border of Tunis, I was taken off the train, and told that we were not permitted to go through on the visa because it said we were going to leave Algiers by air. What do you do? I was trying to tell them in French that I was involved with the criminals--the war criminals. They got the wrong impression from that. They thought maybe I was an escaped war criminal and giving us a very hard time. We finally got an English interpreter who explained to them that I was a prosecutor that there were 10,000 Frenchman involved. So, the chap called the chief of police in Tunis, got authority for us to come through, back on the train, and the chief of police met us in his own car. Enough of that. I'm going back to Algiers. That first night in the hotel we were having dinner and the desk clerk came in and said, there's a gentleman here who wants to speak with you, and I thought right away maybe the police are here because of the way we came in without visas. It turned out to be a gentleman who was in the high -- boots of a field engineer. He was a civil engineer in the engineering trousers suit. He had the dress of his profession. Invited him to have coffee and dessert with us and he was very belligerent. He said you owe me some money and I said you know what money do I owe you. He explained that he and his wife were Buchenwald survivors. That when they were released at Buchenwald they agreed between themselves they would never again speak of the terrible things that they've been through. They were going back to France. They did apparently went back, I think it was Paris. They went back there and still the surroundings were constant reminders of the Nazi occupation and the things that had happened to them. So, he apparently obtained work and they came to Algiers. In Algiers, he said they succeeded in not ever talking about it again, but two letters came, one to him and one to his wife. The kind of letters that we sent out to the survivors asking them to come back and go through this lineup procedure, give testimony, stay and identify and be part of the whole trial procedure. So, he said they took these letters and they sat down and they cried. He and his wife both sat there and cried. It was pathetic. If you looked at this man you knew how serious he was, and that they decided that they did have a duty, one of them would go. He was the one who was going to go, so he immediately went. He paid his own way back to Dachau, to Munich, Dachau hotel, automobile rental, all his food, he paid for and he said and nobody has ever reimbursed me. It seems to me to be very obvious because obviously the U.S. Army is really running that operation and you'd

have to have travel orders to travel on and with these orders you would get your meals. You would get everything in the routines that are provided by the military. I'll tell you what. I'll take the facts down as you give them to me and present them back to our finance officer and then he may be in touch with you and you can work it out between yourselves. He was very grateful. He said let me come back and take you all to my night club. Well, we wanted to see some of the nightclubs. He took us out on the Gold Coast and we went to three clubs, and these things were posh. You know, the sort of thing you'd expect to find in Las Vegas and he threw away an awful lot more money on the roulette tables than we ostensibly owed him. I asked him afterwards how come. He said, well it's the principle of the thing. You caused us a lot of pain, an awful lot of pain, and you're going to pay for it. It meant an awful lot to him. It was evident. Well, I did present this thing back to our finance people and I suppose if he's lucky why he got this money, but if he's not, it's still in the court of claims. Anyhow, the only point is that was a terrible thing. These were people who didn't want to come back, who wouldn't have come back except that we appealed to their loyalty to those who had not survived and the need for someone to come and identify the malefactors. So, he did, but you see he was in a very unhappy state to have to do that. It was hurting him personally. And that's the kind of thing that everybody came with. Those terrible memories that they had. They didn't want to come back. They didn't want to repeat it. You may be able to tell in talking to me or listening to me that I am troubled when I even reflect back on my secondhand experience in living in Camp Dachau. It was really terrible.

Q: In some ways you don't want to talk about it?

A: Well it isn't a matter of not wanting to. It's had an affect on you and I dare say that every one of the people who were there, and went through it, after all they were all human beings, day after day after day, you put in two years of this sort of thing and one day after another and you get some feeling of being on sort of a carousel that's never going to stop in the atrocity.

Q: Did you and the other lawyers talk about this? What affect it was having on you all?

A: No, I don't guess we did in that sense. I have no memory of -- we talked about specific cases, of course, I mean I might mention to someone what I thought about a case that I was trying.

Q: Did you notice things that happened to you? Did you have bad dreams?

A: I probably did have a lot of -- I did have some nightmarish dreams. I still do as a matter of fact. I woke up screaming one time a few days ago. My wife was wondering what had happened to me. That has been a long time since that had happened before, but that was in the last few days. Curious isn't it, these second hand affects. I guess that's a fair analysis, but, anyhow, all these people coming in day after day after day. Men, women, what should have been children, now grown up, young people in a terrible condition that

they are in. It's a terrible thing. I recall meeting some of the survivors even at this late date, so long afterwards. I taught a foreign affairs seminar out at the Jewish community center at Rockwell and I met quite a few of the survivors. Some of them attended my class, as a matter of fact. I had the same impression. They never recover. They never recover. Some of them seemed to have recovered, but they just don't, you know. And to illustrate some of what I'm talking about, under the law of return, of course as you know, a lot of people who go to Israel, did go to Israel, had claims. And I used to use as a speaker a lady who was assigned to the Embassy from here, I think she was from Tel Aviv or Jerusalem; I think she was from Tel Aviv, but she was a lawyer and assigned to do some legal work here for a year or two, and she used to come out and talk to my class at Rockwell at the Montgomery college foreign affairs seminar that I had. Her job when she was home in, I don't know whether it was the foreign office, but she was in the application of some of the laws under the law of return, was to decide who was going to get a portion of the money which had been paid in reparations. So, she would say this one is entitled to this much, that one is -- and I suppose no one ever got enough. She said it was very painful and she herself, you could tell in talking with her that she was suffering as a consequence of the affect of it. It was very interesting.

Q: Is there anything more you'd like to say about the war crimes trials? Were they sufficient, were they insufficient?

A: The language I can think of -- we were talking about the attorney general Tom Clark. I was in his office on one of my trips home reporting to him, and a congressman was in his office at that time and several of his deputies were up there and I was just standing in the group of them, and because I was present the subject got around to war crimes program. There were some demurer being raised about what is it doing? How do we justify it and so forth. Everybody had a different view. I recall what he said, "Well, it all does seem to be *ex po facto*, but what the hell are you going to do with those guys?" That I think says it all. What are you going to do with them? You can't let a thing like that go. I've been asked several times about what to do about -- and I wrote an article about the Gulf War crimes, some part of it is about the Gulf War crimes. What are you going to do with a fellow like Saddam Hussein. Is he supposed to go free? Apparently he is, but you have no proper record. You've got a newspaper record. You've got perhaps some military records, but this is not the same. You really need a judicial record of this sort of thing in order to justify the existence of war crimes. If he goes free it sort of justifies winking and letting him go free across the board in the future, despite the fact that the U.N. has now authorized a war crimes program, but it's not going to be any better than the nations who apply it. Apparently Saudi Arabia and Kuwait they don't want to apply it. I had taken the position when I was asked in those days of the Gulf War, after the Gulf War, what to do about it. My feeling was we don't have to be involved personally but we should encourage the Saudis who would have a case, the Kuwaities who would have a case, the Egyptians who would have a case, and certainly the Israelies who would have a bigger case, that all of these would have a voice, but somebody should try these scoundrels meaning Saddam Hussein. Otherwise you don't have a judicial history of the thing. To

answer specifically the question about what I think about the war crimes case, it does give you a judicial history that condemns certain kinds of behavior. That's important.

Q: Was it enough?

A: Well, its as much as we could do. You know, there were a lot of people that got off light. Really the war criminals who did not get hanged in the ming and in the European and Asian Theater, but particularly in the European Theater, they can thank God that they were tried under a Western System of justice.

Q: Thank you so much.

A: You're welcome.

**Conclusion of Interview**