



Introduction, Auschwitz in Court

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AUSCHWITZ IN COURT: THE FRANKFURT AUSCHWITZ TRIALS - TRANSLATION AND COMMENTARY

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The Frankfurt Auschwitz trials, which began in Johann Wolfgang von Goethe's birthplace on December 20, 1963, are significantly less well known than the more famous hearings that took place in Nuremberg in November 1945. The main difference between these two trials is that the hearings in Frankfurt were conducted under ordinary statutory law instead of international law. When the trials began, West Germany had to carry out the hard task of grappling "with genocide by means of ordinary criminal law" which, at the time, was mainly designed to deal with lesser crimes committed by individuals or small groups. Despite these limitations, the atrocities that these trials brought to light are second to none. From the gassing of thousands of women, men, and children to the employment of torture devices including the "swing"¹ utilized by Schutzstaffel (SS) officer Wilhelm Boger, or phenol injected directly into the heart of the camp's detainees, these trials provided the first detailed account of the brutal killings carried out behind the gates of the Auschwitz concentration camp.

A total of 359 witnesses testified during the trials; 211 of them were camp survivors.² Only 90 of them were Jewish, since most of the Jewish prisoners did not survive, given that many of

¹ The "swing" was a torture device consisting of a wooden frame and horizontal pole from which prisoners were suspended during interrogations.

² Devin Pendas, *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History, and the Limits of the Law*. (Cambridge: Cambridge University Press, 2006), 102.

them were sent directly to the gas chambers as soon as they arrived at the camp.³ As reported by Rebecca Wittmann, the trials “ended with more than nine-hundred pages of judgment, in which all but three defendants were convicted either of murder (*Mord*) or of aiding and abetting murder (*Behilfe zu Mord*).⁴

The trials were originally audiotaped, and those tapes were supposed to have been destroyed after the court’s sentences were delivered. The recordings were instead given to the central archive of the German state Hesse in Wiesbaden in 1989. In 1993, the state broadcast company of Hesse used these materials for the first time to produce an extensive documentary about the trials, a record still available today in DVD format. More than ten years later, the Fritz Bauer Institute—named after the attorney general in charge of the Auschwitz trials—made 420 hours of the recordings available at the central archive. However, only in 2013, exactly fifty years after the beginning of the Auschwitz trials, were the recordings made available online in audio and PDF format (see www.auschwitz-prozess.de).

Despite a ban on the use of cameras in the courtroom, the Frankfurter trials received extended coverage not only in the West German press but also internationally. As is also observed by Wittmann, however, the Auschwitz trials are often still mistaken as being part of the Nuremberg trials, and as a result are largely ignored by those unfamiliar with the works of Holocaust historians. Moreover, the lack of research in this area is often seen as the result of the aforementioned law system in place in West Germany at the time, which was designed to deal with lesser crimes far removed from the genocide committed behind the Auschwitz gate. As is explained by Wittmann:

³ Pendas, 102.

⁴ Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge: Harvard University Press, 2005), 6.

Prosecutors had to adhere to rigid interpretations of the murder statute and subjective definitions of perpetrators and accomplices that in the end condemned only those who had gone beyond the acts of murder ordered by Himmler and Hitler. In effect, those who carried out the state-ordered genocide were convicted—if they were convicted at all—only as accomplices to murder⁵.

This missed opportunity to hold the murderers of Auschwitz accountable for the crimes they committed is one of the main reasons why Fritz Bauer defined these trials as a failure, given that they prompted the “wishful fantasy that there were only a few people with responsibility ... and the rest were merely terrorized, violated hangers-on, compelled to do things completely contrary to their true nature.”⁶ However, he continues, “this had nothing to do with historical reality. There were virulent nationalists, imperialists, anti-Semites, and Jew-haters. Without them, Hitler was unthinkable.”⁷ The Jewish German philosopher Hannah Arendt also expressed her disappointment, due to the aggressive behaviors of the defendants “who almost succeeded in turning the trials into a farce.”⁸ A distorted view regarding who should be made to bear responsibility for the genocide that took place in Auschwitz from 1940 until the camp’s liberation by the Red Army in January 1945 unfortunately persists. This distortion has been made worse by the lack of substantial research on the trials to date; two outstanding exceptions are accounts by Wittmann and Devin O. Pendas. Reasons behind this gap in the literature are that trial recordings became accessible online only recently and that the material has only been made available in German. Hence, this project aims to offer access to the recordings of the Frankfurt Auschwitz trials by providing an English-language guided translation of select trial tapes. This English translation will make the recordings accessible to a broader scholarly audience, and, in a more general sense,

⁵ Wittman, 7.

⁶“Did the Frankfurt Trials Fail Auschwitz Victims?,” Aug. 20, 2015, *The Local.de*, <https://www.thelocal.de/20150820/atoning-for-auschwitz-the-frankfurt-trials>.

⁷ “Did the Frankfurt Trials Fail Auschwitz Victims?”

⁸ Hannah Arendt, *Auschwitz: A Report on the Proceedings against Robert Karl Ludwig Mulka and Others before the Court at Frankfurt*. Translated by Jean Steinberg (New York: Praeger, 1966), xi.

to those who hope to gain a better understanding of atrocities committed at Auschwitz through the words of the witnesses, survivors, and judges involved in the trials.

The trials, their defendants, and the charges leveled against them.

The trials began in October 1963, more than a decade after West Germany had begun investigating approximately 30,000 former Nazis, convicting only 155 of murder. Such a staggeringly low number of sentences was due, according to Wittmann, to the fact that the investigations were not systematic and were in large part improvised. Furthermore, the Nuremberg trials gave a false sense of justice for the crimes committed by Nazis, curbing the push to continue investigating countless perpetrators responsible for the murder of millions behind the bars of concentration camps. Finally, older prosecutors were reluctant to investigate Nazi officers, since many of the prosecutors had been also members of the Nazi party. During the trials' opening session on October 7, 1963, the presiding Judge Josef Perseke began by listing charges against the following twenty-three former SS officers:

1. Robert Karl Ludwig Mulka
2. Karl Höcker
3. Friedrich Wilhelm Boger
4. Hans Stark
5. Klaus Hubert Hermann Dylewiski
6. Pery Broad
7. Johann Schobert
8. Bruno Schlange
9. Franz Johann Hoffmann
10. Oswald Kaduk
11. Stefan Baretzki
12. Heinrich Bischoff
13. Johann Arthur Breitwieser
14. Franz Bernhard Lucas
15. Willy Frank
16. Willi Ludwig Schatz
17. Victor Capesius

18. Josef Klehr
19. Herbert Scherpe
20. Hans Nierzwicicki
21. Emil Hantl
22. Gerhard Neubert
23. Emil Bednarek

The defendants Boger, Dylewski, Broad, Hofmann, Kaduk, Baretzki, Bischoff, Capesius, Klehr, Nierzwicki, and Bednarek were accused of murder:

“committed intentionally, crimes perpetrated alone or in cooperation with others, acts driven by murderousness and other insidious, cruel motives which at times made use of dangerous means.”

Opening order of the regional court (p. 4)

The defendants Höcker, Dylewski, Broad, Schoberth, Schlage, Stark, Breitwieser, Lucas, Frank, Schatz, Scherpe, Hantl, and Neubert, conversely, were accused of:

“having knowingly aided, through direct action, in the perpetration of crimes suggested by third parties.”

Opening order of the regional court (p. 4)

The presiding judge then read the charges against each of the defendants. The charges against Robert Mulka and Karl Höcker, for instance, explicitly referred to the gassing of prisoners using the pesticide Zyklon B:

“The defendant played an important role in the implementation of the National Socialist extermination program (setting up, operating, and securing the gassing facilities procuring the Zyklon B required for gassing; organizing, handling, and securing the selection of incoming transports of civilians by the *Wachsturbann*, participation in the selection on the ramp; transporting the persons selected for gassing to the gas chambers with the trucks of the camp motor pool”

Opening order of the regional court (p. 5)

The detailed list of actions perpetrated by the defendants makes clear the extensive research undertaken by prosecutors, who dealt with the difficult task of checking the reliability of

sources used to reconstruct the crimes committed by the defendants. Thanks to their meticulous research, the prosecutors could present charges to the court with highly detailed descriptions of the crimes committed by the defendants and by other SS officers who helped. The prosecutors' detailed descriptions also included additional information regarding the time(s) when and place(s) where the atrocities were perpetrated. The charges against Hans Stark, for instance, indicated the exact number of the prisoners killed by him at the so-called *Schwarze Wand* (black wall):

In the period from the end of 1940 to December 1941 and from March 1942 to November 1942, as *SS-Unterscharführer*, later as *SS-Oberscharführer* and as head of the admissions department of the Political Department, the defendant Stark participated:

1. in an unspecified number of cases, in the shooting of prisoners in a room specially provided for this purpose in the so-called Small Crematorium. In May/June 1942, together with the then *Rapportführer* Palitzsch, he participated in the shooting of two groups of 20 prisoners each; among them were several women, and children between the ages of 5 and 12;
2. in an unspecified number of cases in the unlawful shooting of prisoners, in particular Soviet prisoners of war, at the so-called black wall between Blocks 10 and 11. More specifically:
 - a) in the fall of 1941, together with other SS members, shot approximately 20 to 30 Soviet commissars at the "black wall" between Blocks 10 and 11, in turn, personally killing five or six;
 - b) in the spring of 1942, shot a prisoner at the "black wall," after he had initially shot another prisoner together with *Rapportführer* Palitzsch due to confusion resulting from identical names.
3. in the fall of 1941, in the Small Crematorium, the defendant Stark, together with an SS paramedic, sprayed the poison gas through an opening provided for this purpose in the gassing room, as a result, approximately 200 to 250 Jewish men, women and children were killed;
4. from the summer of 1942 on, in an unspecified number of cases, carried out selections on the Birkenau ramp, and then transported the prisoners from the selection site to the gas chamber. In some cases, he forced many of them into the gas chamber.

Opening order of the regional court (p. 8)

Some of the charges include the names of other notorious SS collaborators that, at the time of the trials, were still at-large in different parts of the world. Such is the case for charges against Dr. Victor Capesius, who worked as an assistant of Dr. Josef Mengele. Mengele worked as chief

physician in the gypsy camp and is known to have used Auschwitz prisoners, including twins and children, for human experimentation. The charges against Capesius state explicitly that he aided Mengele in the selection of prisoners to be used during experimentation and in the experiments themselves:

In the period from the end of 1943 until Christmas 1944 as *SS-Hauptsturmführer* and from November 9, 1944, as *SS-Sturmbannführer* and head of the SS pharmacy of the concentration camp Auschwitz-Birkenau, the defendant Dr. Capesius

1. in the spring and summer of 1944, participated in the selection of an undetermined number of Jewish prisoners after their arrival at the ramp in Auschwitz-Birkenau. Consequently, these prisoners were sent to the gas chambers for gassing in an unspecified number of cases. He carried out or supervised the use of Zyklon B by the *Sanitätsdienstgrad*. In particular, in April 1944, the accused, together with the camp physicians Dr. Mengele and Dr. Klein, participated in the selection. On May 5, 1944, he independently selected prisoners from a train from Romania. On May 25, 1944, together with the camp physician Dr. Mengele, selected prisoners from a train from Romania. On June 11, 1944, independently selected prisoners from a train from Hungary. In August 1944, participated in the selection of prisoners from Romania, a group comprised of approximately 1,000 people;
2. In at least 5 cases participated in the selections in the Birkenau camp, whereby in each case numerous prisoners were gassed and killed. During a selection in the Birkenau women's camp, the accused searched for women who were hiding and found one who was then also gassed. On two different days in the summer of 1944, he assisted Dr. Mengele in the selection, translating Dr. Mengele's request that sick women had to report to him in Hungarian. The women who responded were then gassed. In August 1944, together with the camp physician Dr. Mengele and two other SS leaders, forcibly returned two Hungarian Jewish boys to the camp. The boys, who were housed in the children's barrack, had attempted escape. Four days later, all the children from this barrack, about 1200, were transported to the gas chambers and killed. On October 13, 1944, together with Dr. Mengele, he supervised female prisoners marching to the gas chambers. On July 31, 1944, together with Dr. Mengele and other SS officers, ordered and supervised the liquidation of the gypsy camp;
3. conducted experiments with narcotic drugs on prisoners, mixing Evipan and morphine with coffee and increasing the dose in each case, so that at least two prisoners died after drinking the solution;
4. requested the killing of prisoners by phenol injection, supervising the medical personnel who carried out the lethal injections.

Opening order of the regional court (p. 15)

Carpesius was not the only doctor who was accused of having supervised the use of Zyklon B to kill prisoners in the gas chambers. Three other doctors—Dr. Franz Bernhard Lucas, Dr. Willy Frank, and Dr. Willi Ludwig Schatz—had similar charges. While the first was a general physician, the last two were dentists who worked in the *Zahnstation* (dental station) in Birkenau. These three doctors were said to have:

in an undetermined number of cases, after the arrival of Jewish prisoner transports at the ramp in Auschwitz-Birkenau, participated in or supervised the selections, whereby an unspecified number of prisoners were subsequently transported to the gas chambers. There, [they] supervised the use of Zyklon B by the medical staff.

Opening order of the regional court (p. 15)

Additionally, Capesius was not the only doctor who was accused of having ordered the execution of prisoners through the injections of phenol into their hearts. Three other SS officers were accused of using lethal injections at Auschwitz: Josef Klehr, Hans Nierzwicicki, and Emil Hantl. The charges against Klehr, in particular, showed how often this SS officer used phenol during his time at Auschwitz:

From 1941 to 1944, [the defendant] as SS-Oberscharführer, Sanitätsdienstgrad, and head of the so-called gassing squad:

1. in an unspecified number of cases, helped the selections at the Birkenau ramp and in the inmate infirmary, or he independently carried out selections in the inmate infirmary, whereby numerous prisoners were selected for gassing and killed. In particular, the accused:
 - a) on April 20, 1942, sent approximately 300 inmates who were staying in the so-called *Schonungsstube* in Block 20 to the gas chambers;
 - b) on August 29, 1942, together with the SS camp physician Dr. Entress and the accused Scherpe, selected and sent approximately 700 sick prisoners from block 20 to the gas chambers, supervising their loading onto trucks;
 - c) in January 1943, he selected about 40 to 50 prisoners for gassing on the ramp from an incoming transport of prisoners,
 - d) in the spring of 1943, sorted out the index cards of sick prisoners from the infection block of the prisoner infirmary in the main camp, thereby designating the

- prisoners for gassing; at the same time, he also selected prisoners who appeared ill in the corridor for gassing;
- e) in May 1943, selected approximately 70 prisoners from the prisoners' infirmary of the main camp. In the fall of 1944, he sent several prisoners wounded in a bombing raid to the gas chambers.
- f) at a point in time which can no longer be determined, he selected several sick prisoners for gassing in Block 21 of the prisoners' infirmary of the main camp. Among them was the prisoner Szende, who suffered from frostbite.
2. in an unspecified number of cases—often several times a week—assisted in selections carried out by SS doctors, whereby numerous prisoners were selected to be killed by phenol injections into the heart muscle. In an undetermined number of cases, he assisted in the killing of selected prisoners by means of phenol injections into the heart carried by other prisoners who were forced to do so. He also performed the lethal injections himself.
- In particular, the accused:
- a) in the summer of 1942, after a dispute in the women's camp, administered a heart injection to a woman, who died immediately;
- b) in the years 1942 and 1943, he killed numerous prisoners who had undergone experiments by phenol injections;
- c) in the summer of 1942, killed a Soviet political commissar by phenol injection;
- d) In September 1942, he killed the prisoners Teofil Cyron, Dr. Phil. Weiner, and Siegmund Stobiecki (student), who were to be shot but were not fit for transport, by phenol injections;
- e) on Christmas Eve 1942, he killed about 200 prisoners in the prisoners' infirmary by phenol injections;
- f) in late 1942 or early 1943, he killed 20 prisoners by phenol injection;
- g) in Block 20, he killed several young prisoners using phenol injections;
- h) in the summer of 1942, he killed a group of 15 Jewish prisoners—persons employed in the Jawischowitz subcamp who had arrived at the main camp for outpatient treatment—by phenol injections;
- (i) in the summer of 1942 or 1943, he killed two female prisoners, including Terlikowska, a Polish woman from Warsaw, by phenol injections;
- (k) in 1942 or 1943, he killed Dr. Samson, a prisoner, in the morgue of Block 28, with a phenol injection, after having previously tortured him by calisthenics (so-called *Sportmachen*); in an unspecified number of cases, as head of the gassing squad, carried out the mass gassing of prisoners.
3. In an unspecified number of cases, as head of the gassing squad, carried out the mass gassing of prisoners. In particular, in the fall of 1942, the accused carried out the gassing of an unspecified number of prisoners in the Small Crematorium, and in the spring of 1943 the gassing of approximately 200 prisoners also in the Small Crematorium (gassing of a special commando);
4. in the second half of 1942, several prisoner nurses working in the attic of a block of the inmate infirmary in the main camp were tortured by so-called exercise for such an extended period of time that inmate Rudek died of heart failure;

5. In May or June 1944, he pushed an elderly Jewish woman and her daughter into an incinerator because they did not want to separate after a selection for one of the incineration sites dug into the ground near the Birkenau crematorium.

Opening order of the regional court (pp. 15-16)

At the end of the trials, the only defendants that were sentenced to life in prison were Wilhelm Boger, Franz Hoffmann, Oswald Kaduk, Josef Klehr, and Emil Bednarek. The other defendants were given prison sentences of five years, on average. Johann Schobert, Arthur Breitweiser, and Willi Schatz were acquitted. These sentences provoked a wide range of public reactions, from blatant disappointment to great enthusiasm. Some saw these trials as a way for Germany to confront and overcome its past. The press focused on the atrocities committed by defendants such as Kaduk, Baretzki, and Bednarek. Others complained that the duty of the court was not to deal with the past and that the defendants needed to be tried separately.

In the sections below, we will first offer a brief description of the three translations presented in this volume: the testimony of the Jewish-Austrian doctor Otto Wolken, the testimony of Boger's formal Jewish secretary, Maryla Rosenthal, and the closing remarks of the defendants before the verdict. These descriptions are meant to facilitate access to essential historical accounts of the trials. Since both Otto Wolken and Maryla Rosenthal were asked about crimes committed by specific defendants (i.e., regarding Stefan Baretzki in the case of Otto Wolken, and Wilhelm Boger in the case of Maryla Rosenthal), the descriptions are accompanied by translations of the charges against these defendants similar to those presented above. These translations will aid in a more complete understanding of the hearings in which Otto Wolken and Maryla Rosenthal participated, given that both witnesses were asked to describe to the best of their ability what they saw while imprisoned at Auschwitz.

The Translations

The first translation we present is by Otto Wolken. Wolken was sent to Auschwitz in 1943 because of his participation in an underground, anti-Nazi-regime resistance movement in Vienna. His prisoner number was 128,828, and after being initially held in Auschwitz I, was transferred to Auschwitz Birkenau. He stayed at Auschwitz until the Soviet Army liberated the camp on January 27, 1945. Selected for death in the gas chamber, Wolken was saved by another Austrian prisoner who recognized his Austrian accent and decided to help him. Wolken's skills as a doctor increased his chances for survival in the camp. He worked in the Birkenau infirmary and, because of his position there, his testimony contains extensive details about the sanitary conditions of the camp, how sick prisoners were treated, and how the SS-doctors sent prisoners to the gas chamber. His lengthy testimony covers many other aspects of life in the concentration camp: morning roll calls, the unjust distribution of food, the mistreatment and torture of prisoners by SS-guards, the "sport activities" that were forced onto the prisoners, the "rabbit hunts," and the frequency of the prisoner suicide carried out on the electrified fences surrounding the camps. Wolken's recollection of the events he witnessed will provide readers with a unique perspective on everyday life behind Auschwitz's gates. His testimony is invaluable given that Wolken recorded events within the camp as they occurred. As a result, Wolken was, during the trials, prepared to testify for two hours regarding the events he witnessed at Auschwitz before being interrogated by prosecutors.

During his testimony, the attorney general asked specific questions about the defendants Stefan Baretzki, Klaus Hubert, Hermann Dylewski, Pery Broad, Johann Schobert, Josef Klehr, and Victor Capesious. Although Wolken did testify on numerous crimes perpetrated by SS

officers—including the mass murder of prisoners from a Lember transport on April 10, 1943—
Wolken was most familiar with the defendant Bareski, who was accused of having committed the
following crimes:

- In the years 1942 to 1945, the defendant Stefan Bareski, in his role as *SS-Sturmmann* or *SS-Rottenführer* and *Blockführer* in the Birkenau camp,
1. participated in an unspecified number of selections on the Birkenau ramp and in the Birkenau camp, events during which numerous prisoners were sorted out for gassing and subsequently gassed to death. He assisted with the loading of prisoners to be sent to the gas chambers onto trucks and accompanied the transports to the crematoria.
 2. in an undetermined number of cases, killed prisoners with his bare hands, which he described to other SS members as a “special hit”;
 3. removed or pushed away the chair or box on which prisoners were standing with a noose around their neck during the execution of prisoners carried out by hanging in numerous cases.
 4. pushed prisoners against the electrified wire of the camp fence in order to prevent their attempted escape with inmates from the Birkenau women’s camp, Section C at the beginning of 1943. Two prisoners died as a result.
 5. on October 4, 1943, participated in cooperation other SS members in a so-called hare hunt—i.e., event during which they pushed prisoners against the charged electric wire of the camp fence. 11 prisoners from a Polish transport from Lemberg were shot;
 6. on April 19, 1944, beat prisoner Michael Liczka (prisoner number 85140) to death with a stick;
 7. in the summer of 1944, killed a prisoner in the corridor of a camp barrack;
 8. in 1944, at the arrival of a prisoner transport from Lodz, shot a woman who was already a prisoner in the Auschwitz camp after recognizing her.
 9. in March 1944, participated in the liquidation of the family camp (Terezín Camp) in Birkenau, event during which approximately 4,000 camp inmates were gassed;
 10. in the fall of 1944, after a prisoner uprising in a crematorium with other guards, shot at prisoners from a bicycle, killing several of them;
 11. in 1944, shot a Jewish prisoner in the Birkenau camp with a pistol arbitrarily, and without cause.

Opening order of the regional court (p. 12)

Wolken, who personally knew the defendant, witnessed many of Baretzki’s crimes, including the indiscriminate beating and shooting of prisoners, and the pushing of prisoners against the camp’s electrified fences. The detailed depictions of crimes committed by the defendant in Wolken’s testimony irritated the defense attorneys, who accused him of being influenced by the testimony

of another Auschwitz survivor, the well-known Austrian historian Hermann Langbein. Otto Wolken's lengthy testimony is presented in this volume for the first time in English. Accompanying footnotes will help readers navigate the complexity of the Auschwitz genocide.

The second translation we present is the testimony of Maryla Rosenthal, the secretary to the defendant Friedrich Wilhelm Boger, known as "the devil of Auschwitz" for his brutal treatment of prisoners and for his employment of torture devices during interrogations he carried out in the camp. Wilhem Boger was arrested after a letter was sent to the Stuttgart prosecution office in which Boger, who at the time was living in his neighborhood, was accused of crimes including murder at Auschwitz. Afterward, another letter with similar accusations against Boger was sent by Hermann Langbein, who, like Otto Wolken, had also participated in the communist resistance movement against the Nazi regime until his arrest in 1942. Thanks to these letters, Boger was apprehended in early October 1958. The list of charges against Boger—perhaps the longest of any of the twenty-three officers at the Frankfurt trials—includes the following:

The defendant Boger, from 1942 to 1945, as *SS-Oberscharführer* and investigating officer of the Political Section

1. participated in numerous selections in which an undetermined number of prisoners were selected for gassing. The defendant was also involved in numerous selections on the Birkenau ramp and in one selection in the Gypsy camp;
2. In an unspecified number of cases, he regularly cooperated with other SS members of the political unit, carrying out selections of prisoners from the detention block who were to be shot;
3. In an unspecified number of cases, he assisted in mass shootings of prisoners at the "black wall" between Blocks 10 and 11. More specifically:
 - a) in February or early March 1943, with a small caliber rifle he shot about 50 to 60 Polish prisoners at the "black wall."
 - b) About 14 days after the incident described in (a) he shot 40 Polish prisoners in the same way.
 - c) At the beginning of April, he shot about 100 prisoners, mainly of Polish nationality, in the same way.
 - d) in April 1943, he actively participated in the shooting of about 40 Soviet commissars, among whom there were also three women, at Block 11.

- e) in September 1943, he shot prisoner Kalinowski at the “black wall” between Blocks 10 and 11.
 - f) he killed two Soviet officers in Block 11 by shooting them in the neck.
 - g) in the summer of 1943, together with *SS-Oberscharführer* Palitzsch, Boger, next to the crematorium, shot 94 men and 8 women who had been sentenced to death by a mock trial by the *Standgericht*, on the “black wall.”
4. In an unspecified number of cases, he mistreated prisoners so severely during interrogations that they died as a consequence immediately afterwards. The accused used a special device in order to extract confessions from the prisoners, who had their hands tied above their knees while being hung over a bar that was suspended in a rack. The prisoners referred to this device as the “Boger swing.” Specifically:
 - a) in February 1943, he tortured a prisoner named Slecarrow so severely that he died the following day as a result.
 - b) in February 1943, during an interrogation, he tortured the prisoner Janicki, who was tied up and hung over a pole. He beat him so severely that Janicki died the next day.
 - c) following the interrogation described in (b), tortured the prisoner Wroblewski on the “swing” and shot him in the bunker, after Boger found an old, rusty revolver in Wroblewski’s possession.
 - d) in 1943, tortured a Polish prisoner to death.
 - e) in the summer of 1943, after the fire in the German weapons station, tortured a young Polish prisoner in a room and beat him so severely that the prisoner died immediately afterwards.
 - (f) in 1943, he tortured a Polish prisoner—a person suspected of having stolen meat—to such an extent that the prisoner died the same evening at the police station.
 - g) in 1943, he killed the Polish prisoner Jan Lupa through torture during interrogation.
 - h) on September 15, 1943, he tortured the Jewish prisoner Walter Windmüller during interrogation and caused him such severe injuries to his testicles and kidneys that he died on September 21, 1943.
 - i) he imprisoned the prisoner Wienhold and two others in the bunker of Block 11 for attempting to escape. He tortured them during their subsequent interrogation. Two of the prisoners died because of the injuries they had suffered.
 5. he ordered executions by gunshot for members of a Polish resistance group; among those shot there were: Colonel-Pilot Gilewicz; Colonel-Pilot Dziama; Colonel Stamirowski; Count Maurycy Potocki; Major Boncza; Major Kurczewski; Lieutenant Lisowski; Lieutenant Szumielewicz; Sergeant Karp; and Lawyer Wozniakowski;
 6. In defiance of the refusal of the camp doctor, shot a prisoner from Block 21 following the prisoner’s recovery from an operation;
 7. he killed 22-year-old Slovak prisoner secretary Lily Toffler in the washroom on the first floor of detention block 11, Toffler was shot twice by Boger using a pistol;
 8. during transport from Camp B (Terezín camp), journalist Novotny was shot dead when she resisted being loaded onto a truck taking prisoners to the gas chambers;
 9. shot a prisoner from Warsaw at Block 10;

10. hanged a Soviet prisoner on gallows set up next to the camp kitchen;
11. in October 1942, in the prisoners' kitchen, forced the head of a Polish clergyman, approximately 60 years of age, under water until he drowned;
12. in the spring of 1943, a Polish couple with their three children between 3 and 10 years of age, were led into Block 11, where he shot first the children and then the parents from a distance of about 3 meters with a pistol;
13. on May 9, 1943, while drunk, shot a Polish prisoner in the head with a revolver during interrogation. The prisoner died from the gunshot wound.
14. in June 1943, in infirmary Block 28, killed Polish General Dlugiszewski, an emaciated prisoner suffering from psoriasis;
15. in the summer of 1943, carried out the hanging of 4 Soviet prisoners of war who were sentenced to death for alleged illegal political activity; one of these prisoners was a Soviet cultural adviser;
16. in late 1943 or early 1944, show a young Polish prisoner who had been ordered by another member of the SS member to fetch water in a boiling vessel at the watering place;
17. in the spring of 1944, executed a transport of Jewish prisoners from Hungary by beating them with a bullwhip, forcing them toward the crematorium where he participated in their gassing;
18. in 1944, participated in execution by hanging of two Polish girls;
19. in the spring or summer of 1944, hanged the block elder of Block 28 in the d camp of Birkenau;
20. Around the middle of 1944, 46 prisoners from the "Union" command, who were no longer able to work due to physical exhaustion, were shot with a pistol in Block 11;
21. in August 1944, in front of the camp kitchen, hanged four Soviet prisoners of war, who had escaped from the camp and been recaptured;
22. in the fall of 1943 or 1944, after the suppression of an uprising of prisoners from a special prisoner detachment in the crematorium —approximately 100 persons who had resisted transport to the gas chamber— he ordered the prisoners to lie on the ground. In cooperation with the SS-Oberscharführer Hous and SS-Oberscharführer Houstek Erber, Boger shot the prisoners to death;
23. on December 30, 1944, participated in the hanging of prisoners Bernard Swierczyna, Ludwig Vesely, Ernst Burger, Rudi Friemel, and Piotr Piaty;
24. in the summer of 1944, participated in the extermination of the Gypsy camp, the inmates of the camp were forcibly driven into the gas chambers.

Opening order of the regional court (pp. 5-7)

The witness Maryla Rosenthal was asked about many of the charges against Wilhelm Boger. Her testimony provides a unique picture of Boger's crimes. She was also asked about the case of the prisoner Lilly Tofler, who was shot by Boger after being found in possession of a love letter Tofler had written to another prisoner. In this volume, Rosenthal's testimony will be

published in English for the first time. Footnotes accompanying the testimony will help readers navigate data related to the Auschwitz genocide.

Finally, our English translation includes the closing remarks of all defendants, statements delivered at the end of the hearings before the verdict of the court was received. While some of the defendants' statements asked the court for a fair judgment, others openly challenged the trustworthiness of some of the witnesses' testimonies, while complaining about the fairness of the trials.

Fritz Bauer

Before allowing readers to begin their journey into the trials' testimonies, it is, however, important to draw attention to one of the hearings' protagonists, Attorney General Fritz Bauer, a figure without whom the trials may not have taken place.

Bauer was born in 1903 in Stuttgart to a German Jewish family. After receiving a doctorate in law, he worked as a magistrate. In 1933, he was captured by National Socialists and imprisoned in a Heuberg, concentration camp in southwest Germany. After spending more than ten years in Copenhagen and Stockholm, he returned to Germany in 1949 to participate actively in the prosecution and punishment of Nazi war criminals.⁹ Bauer is also remembered for his vital role in capture of Adolf Eichmann in Argentina. Bauer's plan to see Eichmann tried in a German court never materialized.

Accompanying Bauer's desire to capture and try the SS men who participated in the murder of millions at Auschwitz was his wish to uncover crimes behind the creation of the Auschwitz

⁹ Ronen Steinke, *Fritz Bauer: The Jewish Prosecutor Who Brought Eichmann and Auschwitz to Trial*. (Bloomington: Indiana University Press), 2020, 14-15.

death machine. To do so, he repeatedly invited writers and poets to the trials and tasked them with writing about the atrocities in a variety of forms. Bauer believed that the trials alone could not succeed in unraveling the workings of Nazi genocide. According to Bauer, it was necessary to allow authors to write in their own way about the trials because only a more complete understanding of the genocide itself would serve to inform and teach the public about the events,¹⁰ and, as such, prevent the crimes of Auschwitz from being repeated.¹¹ According to Bauer:

There would have to be a division of labor . . . between the Auschwitz judge and the Auschwitz poet. The Auschwitz judge chastises, the Auschwitz poet should educate. This division of labor is necessary, and I tell you as a jurist, we jurists in Frankfurt have cried out in horror, cried out with all our soul, for the poet who expresses what the trial is not capable of expressing.¹²

The attorney general's words reflect his belief regarding the role of poets and writers in narrating the events of the trials. Only authors will succeed, Bauer contends, in opening the eyes of the German people to allow them to confront the past.

One of the scholars who answered Bauer's call was Peter Weiss, a German Swedish writer, painter, and experimental director of international fame thanks to the success of his play *Marat/Sade* in 1964.¹³ Weiss also strongly criticized the Auschwitz trials since he believed it was impossible to use ordinary laws to punish crimes like the ones committed by the defendants.

The result of Weiss's participation in the trials as a spectator is his theater play *Die Ermittlung: Oratorium in 11 Gesängen* (The investigation: oratorio in 11 cantos). In this work,

¹⁰ Fritz Bauer, *Die Kriegsverbrecher vor Gericht* (Zürich: Europa Verlag 1945), 155.

¹¹ Christoph Weiß, "Auschwitz auf dem Theater? Ein Podiumsgespräch im Württembergischen Staatstheater Stuttgart am 24. Oktober 1965 aus Anlaß der Erstaufführung der Ermittlung," in *Deutsche Nachkriegsliteratur und der Holocaust*, ed. Stephan Braese et al. (Frankfurt am Main: Campus, 1998), 74.

¹² Kerstin Steitz, "Juristische und Epische Verfremdung. Fritz Bauers Kritik am Frankfurter Auschwitz-Prozess (1963-1965) und Peter Weiss' Dramatische Prozessbearbeitung Die Ermittlung. Oratorium in 11 Gesängen (1965)," *German Studies Review* 40.1 (2017): 79.

¹³ Steitz, "Juristische und Epische Verfremdung," 89.

Weiss reconstructs the journey of several prisoners arriving at Auschwitz, from the moment of their selection at the ramp until their death through phenol injection, gassing in the gas chambers, or by gunshot at the “black wall.” In some cases, Weiss reported the dialogues almost verbatim from witness and defendant testimony, combining official documentation and literary narrative in the production of a unique stage play.

While employing trial recordings as source material, Weiss’s play makes use of structures reminiscent of Dante’s “The Divine Comedy.” For example, the Florentine author also divides his comedy into cantos. Notes at the beginning of Weiss’s play illuminate the author’s principal goal: in his play, only facts are presented; as such, only specific characters (that is, the defendants Borger, Kaduk, Stark, and Klehr) are mentioned by name while the remaining characters (witnesses, judges, prosecutors, and defendants) remain anonymous. Weiss’s method reflects camp practices, given that the prisoners were stripped of their identities and made mere numbers. The anonymity of Weiss’s characters can also be linked to effects of alienation, as it renders identification with any character difficult while steering readers’ or viewers’ attention to the facts and defendants.

One of the testimonies used by Weiss in *Die Ermittlung: Oratorium in 11 Gesängen* is included here among the English translations presented in this issue of the *North Meridian Review*: the testimony of Maryla Rosenthal. Rosenthal appeared as a witness at the Frankfurt trials on March 13, 1964. Weiss used the 52-minute audio recording of Rosenthal’s testimony as source material for Witness 5 in his third canto, a section including Boger’s swing, and in his fifth canto, which details the murder of Lili Tofler. In many of Weiss’s passages, we find direct references to the same trial transcripts here published in English for the first time. Examples include statements regarding Boger’s ostensibly humane behaviors during his interactions with Rosenthal—that is,

Boger's efforts to save Rosenthal from punishment and execution, events detailed separately in the trial recording of Rosenthal's testimony. Weiss, however, includes Rosenthal's statements at the same point:

Maryla Rosenthal: Mr. Boger was very humane and very decent to me. For example, he would bring back his cookware from the canteen, take away just one spoon, and then he would say to me, "Maryla, please go and clean the cookware." That meant, of course, that I could eat what remained. Officially I wasn't allowed to eat it. I then called my two friends in, and we went to the toilet. We locked the door and ate. Mr. Boger also brought me a warm jacket and shoes from Birkenau. So, he was very kind to me as a coworker. He said a few times: 'I have nothing against Jews. I hate the Polacks, the damn Polacks.' That was his way of saying it. Of course, when Mr. Boger went to the men's camp, everybody knew that a massacre would take place there. I didn't see it because I was always in the office. But word got around.

Maryla Rosenthal: As soon as Mr. Boger came back. He visited Mr. Westphal, and he probably heard about my situation. Both Mr. Boger and Mr. Westphal then did everything in their power to convince the Lagerälteste Drechsler not to let me go to the penal unit. I can say that they saved my life, and they put me in the political unit in the Gypsy camp.

In Weiss's play, the words from Witness 5 are a summary of Maryla's statement:

Witness 5: Boger always treated me humanely. He often gave me his cooking utensils with the rest of his food. Once he saved my life when I was to be transferred to the punishment company.

The witness's testimony also refers to Boger's torture device, the swing or speaking machine.

Regarding Boger's swing:

Maryla Rosenthal: One day, Mr. Boger appeared in the office and took me out of there. He was looking for a writer and an interpreter. So, I started working for him and wrote down and translated all the interrogations – these were always political prisoners, including people who had tried to escape and similar important things. The prisoners were, of course, very shy, and some didn't want to speak at all. Herr Boger didn't hold back from slapping their faces, he also kicked them with his boots. Then he came up very close to them, right in their face, almost piercing them with his eyes. And if a prisoner absolutely didn't want to speak, he would say: "You're going to the 'talking machine' now."

Witness 5: In the end he came even closer to him and said: I have a machine that will make you speak.

In some passages, the statements or the witness are reported almost unchanged:

Maryla Rosenthal: Yes, and [the crying] happened more than once. But Mr. Boger told me “You have to shut down your feelings here.”

Witness 5: Once Boger saw that I was crying. He said: here you have to shut out your personal feelings.

The section of Rosenthal’s testimony in which she talks about what happened to the murder of inmate Lili Toffler is used by Weiss in a separate canto. However, some of the canto’s details do not align exactly with Rosenthal’s testimony, suggesting that Weiss used another source in crafting his description of the torture and subsequent murder of Tofler.

The fact that Weiss had access to different documents can be also seen in the canto, which details Nazi employment of phenol. For the canto, it is likely that Weiss made use of testimony from Polish prisoner Ján Weis, recorded on November 6 and 12, 1964. The recording of Ján Weis’s testimony is more than three hours long and contains specific information regarding the use of lethal phenol injections into the hearts of prisoners. This testimony also contains details about the role of Klehr, defendant who carried out most of the phenol murders. References to the phenol procedure, to Klehr, and to the murder of more than one-hundred children through phenol injection are taken from the Weis testimony and used in the third part of Weiss’s canto. Separate sections of the same canto are, however, lifted from other testimonies. Weiss combined various documents to compose his cantos, showing how historical records—witnesses’ testimony—and fiction itself can be used in conjunction during confrontation with historical atrocity.

Because of the importance of Weiss’s play in an understanding of the trials and the role played by Fritz Bauer, this issue of the *North Meridian Review* concludes with “Creative Facticity in Peter Weiss’s *The Investigation*,” a scholarly work by Jennifer William. In her essay, After

providing historical background on the author's writing process, William argues that in Weiss's play "fictionality and facticity are complementary rather than contradictory forces." We discover, for instance, that Weiss did not have complete access to all recordings while he was working on the play. William describes the framework she uses for her analysis as "creative facticity," arguing that Weiss's play demonstrates how the playwright makes use of the objectivity of the testimonies given during the trials. William's framework emphasizes the creative process behind Weiss's *The Investigation*, a literary procedure through which historical documentation is mixed with literary elements to guide readers through Auschwitz using eleven cantos modeled on Dante's Hell. The emphasis that William places on Weiss's "interdisciplinary synthesis between archaeology and creative practice" is useful in an analysis of Weiss's work, a play in which fiction and reality collide. Moreover, William's discussion of the role of working memory in witness testimony will give readers additional tools for approaching Weiss's work, documentary theater as a genre, and legal testimonies in general. Of great importance is also William's discussion of historical narrative and its ability to evoke strong feelings in the audience. However, as Williams contends toward the end of her piece, emotions evoked by historical narrative can also create a dangerous, false sense of accessibility to historical events. Weiss's play should not, William argues be seen as a way to access and understand atrocities committed in Auschwitz.

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