

The German Justice System: A Case Study

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For a short time during the war, Gottfried Weise was a German guard in the Auschwitz concentration camp. Was he therefore automatically a subhuman not deserving to be heard? Gottfried Weise asserted that he did not do anything evil in these months, and ten former internees who could remember Weise confirmed this. However, two other ‘witnesses’ accused Weise of murder. Shouldn’t both sides be heard and their arguments weighed? That is the way it is meant to be in a state under the rule of law. But, as we shall see, reality is very different. In fact, the case of Gottfried Weise is an example of the hypocrisy of the entire German establishment, not just the legal system.

Totally convinced that they are in the sole possession of the absolute truth regarding the Holocaust, they simply refuse to even consider the possibility that they could be wrong, and that their actions could cause tremendous sufferings for innocent people. As soon as the ‘Holocaust’ is involved in any court case, prosecutors and judges, media and politicians, *en masse*, simply ignore all exonerating evidence!

In a very important book, Rüdiger Gerhard has documented how, during the first trial in 1991, the judges refused to hear or accept any evidence from the ten friendly witnesses presented by defense lawyers for Gottfried Weise.¹ These inmates did not witness the alleged crimes claimed by others, and thus could not contribute anything to clarification, so went the court’s reasoning. Since, in the eyes of German law courts, a crime is almost indisputably proved of having occurred as soon as a “*Holocaust survivor*” claims that it happened, German courts more or less do accept only incriminating evidence. Consequently, the ensuing criminal proceedings merely serve the purpose of establishing the dimension of the crime, naming the culprits and meting out the punishment they deserve.

The following article describes the Sisyphus-like struggle of the defense team in their attempt to exonerate Gottfried Weise and make those blinded by their arrogance and self-righteousness see the light of truth. They failed in the first; Gottfried Weise died without justice being done. His constant friend and defender Claus Jordan also passed away. May this article help to make the second goal come true.

Germar Rudolf

1. Preface

Germany’s justice system is based on the principle of a separation of powers. The administration of justice is supposed to be independent of politics. It does, however, have to conform to the law, and laws are passed by political bodies. So far, so good – at least as long as legislative practices in turn are committed to upholding the legal traditions that have evolved over time and have been tried and proven in practice.

But if legislative practice begins to be guided by political opportunism, and if special laws are passed to which jurisprudence must bow, then the administration of justice becomes a tool of politics.

The 1979 rescission of the statute of limitations for murder in Germany is an example of special legislation that has had grave consequences. The decision to revoke this statute was the result of political pressure. Concerns regarding potential miscarriages of justice were rationalized away. The

¹ R. Gerhard (ed.), *Der Fall Gottfried Weise*, 2nd ed., Tübingen, Berg 1991, pp. 31ff., 40, 43-47, 51ff., 60, 73. See M. Köhler’s article for a more general view.

case of Gottfried Weise, set out in this chapter, shows how very justified these concerns were and how thoughtlessly all cautions were swept under the table.

It is my hope that the discussion of this case will prompt the correction of the legislative error of 1979 and that the German justice system will return to its naturally evolved tradition, as it was predicted that same year:

“[...] *Perhaps there will in fact be a few new cases that are brought to trial as a sort of justification (eagerly seized upon) for the rescission of the statute of limitations. According to the experts, however, it is not likely. In light of the strict rules of evidence, which cannot be tampered with, it is doubtful that any verdicts can still be handed down. One day, around the year 2000, the stipulation that murder is not subject to a statute of limitations will be discovered amongst the nooks and crannies of our justice system, and people will wonder how this came about. The umpteenth revision to the Criminal Code will then casually correct the problem – unless by that time we will have a state which claims for itself that omnipotence that we [Germans] are yet free to call ‘hubris’.*”²

2. Rescission of the Statute of Limitations: Breach of Legal Tradition

On March 20, 1979, and July 3, 1979, the members of the *Bundestag*, the lower house of the then West German Parliament, debated on the rescission of the statute of limitations for murder. The corresponding bill was passed into law on July 3, 1979, with a very close margin of 255 to 222 votes.³

2.1. Influence From Abroad

Naturally, there was interest in this question abroad, but this interest was fostered by German circles as well. For example, in an article titled “*American Delegation on the Issue of Rescission: Today at Schmidt’s*” the newspaper *Frankfurter Allgemeine Zeitung* reported about a tour by the Los Angeles *Simon Wiesenthal Center for Holocaust Studies* that had been financially supported by the German Foreign Office in Bonn.⁴ Members of the Israeli Parliament also sought to influence the decision-making process at the urging of German authorities. For example, Gideon Hausner, member of the Knesset and the Israeli Holocaust Center Yad Vashem, reports that German Federal Chancellor Helmut Schmidt urged him to impress upon the German legislators that National Socialist crimes must not be allowed to lapse under a statute of limitations – which he proceeded to do most insistently.⁵

2.2. Judicial Concerns

Reminders that Article 103 of the German Basic Law prohibits retroactive laws were brushed aside with reference to a 1969 decision of the Federal Constitutional Court. The opponents of the rescission of the statute of limitations raised further judicial concerns. Dr. Alois Mertes (CDU/CSU) pointed out the conflict between justice, and peace as required by the law. In European legal tradition, limitation means exclusively the “*protection of the state* [and certainly of the individual as well] *from miscarriages of justice.*” And:

“*In the countries belonging to the Anglo-American legal community, the state safeguards against the risk of injustice in other ways, namely through the principle of opportuneness and through especially strict rules of evidence. In German and European law, limitation is the necessary corrective to the principle of legality. [...] Incidentally, it is one of the great hypocrisies of our time that the punitive*

² F. K. Fromme, *Frankfurter Allgemeine Zeitung (FAZ)*, July 5, 1979: “*Was man sagt, und was man meint.*”

³ Debate on the 18th revision of the Criminal Code; see Plenary Transcripts 8/145 and 8/166.

⁴ *FAZ*, March 15, 1979: “*Den Vorhang nicht fallen lassen.*”

⁵ *FAZ*, June 18, 1979, p. 11: “*Völkermord darf nicht als ‘normales’ Verbrechen gelten.*”

*purpose of expiatory justice is everywhere relegated to second place in favor of **resocialization**, while in the case of National Socialist crimes expiation is made the foremost and sole purpose of punishment even after 35 to 47 years of resocialization.*⁶

In his statement of position, Hans-Jochen Vogel, then Federal Minister of Justice, did not express any concern about miscarriages of justice, but responded merely to the suggestion that alleged National Socialist criminals could no longer be convicted anyway due to lack of evidence. He commented that modern techniques of criminal investigation were able to

*“secure evidence of crimes and perpetrators in a way that allows the conviction of the criminal even decades after the fact.”*⁷

But he made no mention of applying the techniques of modern criminology to ensure the prevention of miscarriages of justice.

Opponents of rescission who feared that convictions might result despite insufficient evidence cautioned against one-sided investigation.⁸ Proponents, on the other hand, cited the principle of *in dubio pro reo* – i.e., ‘when in doubt, acquit’ – which practice they clearly considered a matter of course.⁹

This certainly was shown even more clearly by Friedrich Fromme, co-editor of the *Frankfurter Allgemeine Zeitung*, in his aforementioned newspaper article where he wrote of “*the strict rules of evidence, which cannot be tampered with*”, as of something self-evident and to be taken for granted. Apart from (pseudo-)morally suspecting each other, all discussions that flare up time and again about the rescission or prolongation of the statute of limitations in the *Bundestag* altogether concentrated on the question, how to punish the allegedly committed NS-injustice best, but never on the question, if a perpetuation of evidence after such a long period of time can possibly clear up the actual events of the past. Since everybody was convinced of the reality of all sorts of alleged crimes, a criminological hearings of evidence were deemed to be necessary only in order to assign alleged guilt and therewith the supposed need for penance.¹⁰

None of these “*self-evident*” matters were acknowledged in the case of Gottfried Weise: Weise was convicted with narya a thought given to the acquittal demanded by reasonable doubt. To the defendant’s detriment, the strict rules of evidence were tampered with most grossly. There was no sign of modern forensic or criminal investigation in his trial, least of all where such endeavors would have resulted in an exoneration of the accused. However: H.-J. Vogel had suggested such techniques for strictly one-sided purposes, namely to procure *incriminating* evidence.

2.3. The Fig-Leaf: An Expert Report

Originally the statute of limitations was to be rescinded only for cases of so-called NS-murders.¹¹ Members of Parliament Maihofer and Helmrich openly supported this plan. However, constitutional concerns were raised about such very obvious special legislation, so that in the end the rescission was applied to murder in general.

The question regarding the constitutionality of a general rescission of limitation for murder remained open. In his capacity as expert, Professor Böckenförde had stated that the rescission of limi-

⁶ Plenary Transcripts 8/166, p. 13235. Emphasis in the transcript.

⁷ Plenary Transcripts 8/145, p. 11612.

⁸ Eg. Dr. Lenz (Bergstraße, CDU) in the Bundestag debate of March 29, 1979, Plenary Transcripts 8/145, p. 11609.

⁹ Eg. Dr. Schwarz-Schilling (CDU), Plenary Transcripts 8/145, p. 11644.

¹⁰ Cf. Deutscher Bundestag, Presse- und Informationszentrum (ed.), “*Zur Verjährung nationalsozialistischer Verbrechen*” in *Zur Sache. Themen parlamentarischer Beratung*, vol. 3-5/80, Bonn 1980.

¹¹ Cf. F. K. Fromme, *FAZ*, Feb. 14, 1979: “*Die Angst vor dem, was man will.*”

tation becomes unconstitutional if it means that normative regulations of trial procedure can no longer be uniformly applied. He wrote:

“[...] *This may happen, for example, if [...] the results obtained are random at best, i.e., due to the unstoppable deterioration of evidence, insurmountable investigative difficulties, lack of opportunity for effectively securing evidence, fundamental uncertainty or insufficient objectifiability of the crime.*

It is beyond the scope of this report to ascertain whether a rescission of the statute of limitations for NS-murders or for murder in general would reverse into such impracticability. This requires a detailed practical understanding and assessment of actual conditions, particularly of the investigative and evidential problems involved [...].”¹²

In other words, this report did not state that the rescission was constitutional. Rather, it stated that at the time (1979) no unconstitutionality was yet apparent, and that to determine this matter conclusively it would be necessary to examine the “*actual conditions*” of several cases.

2.4. Empty Promises

One empty promise was the assurance, given when an expert report was obtained, that the overall constitutionality of the matter would be ascertained. In fact, however, clearly no one in politics or science, no one amongst the guardians of democracy, and no one in the media really wants to know, else the supplementation and conclusion of the report would long have been commissioned by now, either from Professor Böckenförde or from another source.

In 1979, the embarrassing vulnerability of the core issues of *constitutionality* and *miscarriage of justice* were shielded with Böckenförde’s unfinished report as with a fig-leaf, garnished with sanctimonious aphorisms.

The case of Gottfried Weise reveals that these were but hollow phrases and empty promises.

3. The Case of Gottfried Weise: an Example of Reversal Into Impracticability

In 1988, pensioner Gottfried Weise was convicted in Wuppertal on five counts of murder. An examination of the Wuppertal trial reveals all the characteristics identified in 1979 by Professor Dr. Böckenförde as being signs of a reversal into impracticability:

- a) **Unstoppable Deterioration of Evidence:** It has been impossible to obtain the transfer papers which, together the two other documents on hand, would prove that Weise was not employed at the alleged site of the crime in Auschwitz until September 1944. (The alleged time of the crime being “*June/July 1944*”.)
- b) **Insurmountable Investigative Difficulties:** The Court was not even able to develop a realistic conception of the alleged site of the Freimark cases. (cf. Section 3.2.2.)
- c) **Lack of Opportunity for Effectively Securing Evidence:** Both the Public Prosecutor’s Office and the Court neglected to obtain a statement from former inmate Dr. Eisenschimmel in due time. His testimony would have gone a long way towards exonerating the accused. When the defense attempted to secure this testimony, Dr. Eisenschimmel was already so ill that he could no longer testify.
- d) **Lack of Objectifiability of the Crime:** Wherever concrete facts were concerned, the Court was always very vague in its ‘findings’. In the Freimark cases, for example, the alleged time of the crime was given as “*June/July 1944*”, and the names and sometimes even the sex of the alleged victims are not stated. This makes it much more difficult to locate concrete counter-evidence

¹² FAZ, June 30, 1979, no. 149, p. 6.

such as might have been possible, for example, by cross-reference to the Auschwitz Death Lists now available.

The Wuppertal Court ‘overcame’ the evidential problems only by deviating considerably from the “*strict rules of evidence*”.

Another point which must be mentioned is one that Böckenförde could not possibly have conceived of because he spoke from the perspective of naturally evolved legal tradition: What happened in the Wuppertal trial was practically a

e) **Reversal of the Burden of Proof:** The accused was in the desperate position of being unable to prove his innocence, *e.g.*, to prove that he could not have been at the alleged site of the crime at the stated time. The Court was satisfied with contradictory and vague eyewitness statements, of whose doubtful quality it glossed over with the claim that it was exactly these contradictions that showed that the witnesses had not coordinated their testimony beforehand. It was up to the accused to prove his innocence.

It was not until long after the trial that exonerating evidence was found which the prosecutors had unlawfully avoided and prevented from being obtained in time.

3.1. Overview of the Background, Course and Consequences of the Wuppertal Trial of Gottfried Weise

3.1.1. Background of the Case of Gottfried Weise

Gottfried Weise was badly injured when a soldier, and lost an eye. He was certified unfit for front-line or guard duty, and after training as bookkeeper he was detailed to the concentration camp Auschwitz, where he was first employed in the *Häftlingsgeldverwaltung* [Bookkeeping for Prisoners’ Funds] outside the Camp and later in the *Personal Effects Warehouse II* in Birkenau, where the possessions of camp inmates were stored. There Weise had to supervise a group of Jewish women. After Auschwitz was dissolved he conducted this group safely to the Allies, via Ravensbrück. All of ‘his’ inmates had testified for him: how he had worked to make their lot easier in Auschwitz, that they had been glad to be reassigned to his command during the transport, that once he had even carried a disabled girl out from under Russian artillery fire. After minute scrutiny in the course of three years of imprisonment, Gottfried Weise was released. His conscience was clear, and so he proceeded to do something quite extraordinary: through the Red Cross and the World Jewish Congress he searched for his former protégés. In the verdict handed down by the Wuppertal District Court,¹³ however, these efforts on the part of the accused are only mentioned disparagingly as signs of his great cunning.

3.1.2. How Did the Indictment Come About?

In 1962, during the trial of Richard Baer in Vienna, one witness, Herbert Tischler, had told of an SS *Unterscharführer* or *Rottenführer* “*Weiser*” who, he claimed, had killed an inmate when he tried to shoot a tin can off his head. Thus “[William] *Tell of Auschwitz*” was born.

Yet, an official document identified Tischler as an unreliable witness, and it was a known fact that he was wanted by Interpol for all sorts of criminal acts. But as witness for the prosecution in an NS trial, Tischler was considered credible. His reference to the alleged “*Tell of Auschwitz*” entered the mills of criminal prosecution. The alleged “*Tell shooting*” was ascribed to former *Unterscharführer* Gottfried Weise. Inquiries were begun in 1980; questionnaires with details of the alleged crime and with photos of Gottfried Weise were sent to Poland, Israel, Hungary, and the United States.

¹³ Verdict of the Wuppertal District Court, Jan. 28, 1988, pp. 104-107.

In other words, witnesses were sought – and found. With the example of the witness Freimark I will show how this search for witnesses and the ‘refreshing’ of their memories was done.

3.1.3. What Were the Charges?

On June 7, 1985, the Public Prosecutor’s Office of Cologne charged the pensioner Gottfried Weise, resident in Solingen, born in Waldenburg on March 11, 1921, with having committed murder in the concentration camp Auschwitz.

On January 28, 1988, Weise was found guilty of five counts of murder and sentenced to life imprisonment by the Wuppertal Jury Court headed by Wilfried Klein, now vice-president of the Wuppertal District Court.

According to the witness Józsefne Lazar, the accused committed **two murders** (the ‘Lazar cases’) in Personal Effects Warehouse II by means of the so-called “*tin can shooting*”, where the accused placed tin cans on the head and shoulders of his victims and then shot at the tins and then at the victims.

According to the witness Jacob Freimark, the accused also committed **three murders** (the ‘Freimark cases’) in “*June/July 1944*” in Personal Effects Warehouse I, namely:

- a) one murder in a hut (the ‘hut murder’), and
- b) approximately four weeks later, two murders in an area between the camp fence and a ramp some 30 ft. away (the ‘ramp murders’).

3.1.4. How Did the Trial Proceed?

The entire trial took place against the backdrop of a foregoing conviction of the accused in a scenario of hatred. The press and the Court complemented each other. For example, the press report quoted in the following repeated eyewitness testimony which, though proven to be false,¹⁴ was gullibly accepted at face value not only by the credulous public but also by the Court, which actually included even this so easily refutable atrocity tale in its written Reasons for Sentence:¹⁵

“Children Were Thrown Alive Into The Burning-Pit

[...] When a new transport of inmates arrived at the camp, the children were immediately separated from the rest of the group, and thrown alive into a blazing fire-pit, [...].

Suddenly, the intoxicated ‘Blind One’ arrived (that’s what the inmates called the accused, Weise), turned the light on and ordered Olga [...] to dance [...] It was horrible! Outside, the screams of the children. [...] The Blind One ordered the pregnant girl to stand still, and kicked her in the stomach with his boot. The young woman screamed and collapsed. [...].”¹⁶

This sort of atrocity tale served to brand the accused as the “*Beast of Auschwitz*” – not only in the eyes of the public, but also in those of the Court. While the accused was not convicted for the alleged live burnings, the assumption that they did take place and that the accused had displayed a great deal of callous hard-heartedness most certainly did influence the Court in reaching its verdict. This is proven clearly by the detailed way in which the Court repeats this atrocity tale in its Reasons for Sentence and then accuses the defendant of “*utterly callous hard-heartedness*”.

The biased attitude of the judges was also clearly apparent in the courtroom. For example, the VVN – the Organization of Persons Persecuted by the Nazi Regime, a group known at that time to be financed from East Germany and directed by the *Stasi*, the East German State Secret Service –

¹⁴ There was no burning pit at the location mentioned, near Personal Effects Depot II; cf. the chapter by J. C. Ball, this volume.

¹⁵ Reasons for the Wuppertal Auschwitz verdict of Jan. 28, 1988, p. 96.

¹⁶ Wuppertal newspaper *General-Anzeiger*, June 10, 1987.

this VVN had handed out fliers in and outside the courtroom. The Presiding Judge offered a gentle reprimand for the distribution of the fliers in the courtroom – something like that, he said, should not be disseminated about the accused until after he had been convicted. But no stop was put to the continued distribution of the leaflets.

The constant taking of shorthand notes by representatives of the VVN and by ‘escorts’ of the witnesses for the prosecution was also not forbidden by the Court, which kindly overlooked it. (Incidentally, Ruth Kulling of the VVN always had a seat in the area reserved for members of the press.) In contrast, the defense counsel had urged the son of the accused to refrain from taking notes, as doing so was not permitted during the trial. – Several times it was also observed that the VVN members, after making their shorthand transcripts with impunity, proceeded to read their notes to the witnesses for the prosecution before these took the witness stand.

In any normal trial the defense could and should have intervened here, but in light of the scenario of hate that had been tolerated and even partly contributed to by the Court, the defense in the Wuppertal trial saw no purpose in doing so. In order to avoid providing even further material for all the advance preparation and choreographing of the witnesses for the prosecution (in flagrant violation of all rules of procedure, by the way), the defense counsel had advised the defendant to refrain from making any statements of his own. After the verdict had been handed down, the press twisted this accordingly:

*“The defendant’s silence, said Klein, showed that Weise had no facts with which to counter the accusations – ‘the past has caught up with him now and will not be hushed up’.”*¹⁷

No one seems to have noticed the monstrous implications of this statement: the defendant had no facts with which to counter the accusations! What this suggests is that the accusations advanced in the indictment and by the witnesses were facts in and of themselves, which the accused was unable to refute. But accusations, of course, are by no means facts.

But the reversal of the burden of proof, accepted so matter-of-factly by the press, is no mere slip of the judicial tongue. The closer one examines the trial documents, the more clear it becomes how much the Court allowed its own bias to guide it. In any ‘normal’ trial the accused is presumed innocent until proven guilty, and any uncertainty dictates the maxim ‘when in doubt, acquit’. In Wuppertal this was not so.

In the given situation of reversed burden of proof, it was of course an easy matter to turn all the many investigative problems, which are well to be expected in such a very late trial, against the accused – especially those set out in Sections 2a-c.

Nevertheless, the accused would have had a fighting chance to prove his innocence – if that’s the way it had to be – if the Court had not inexorably restricted or downright denied him every opportunity for doing so. One of the hobbles placed on his defense was that the Court relentlessly perpetuated the prosecution’s one-sided selection of witnesses: the prosecution had a wealth of information regarding potential witnesses at its disposal. It was the duty of the Public Prosecutor’s Office to sift through these for witnesses for the prosecution *as well as for the defense*, but this was not done. Even in the course of preliminary investigations the former inmates were only urged to testify if they claimed to have incriminating information, such as for example the witness Lazar in her testimony in Budapest on June 2, 1987, and June 16, 1987. The transcripts¹⁸ show, among other things, how compassionately and urgently the Presiding Judge Klein – who had traveled all the way from Wuppertal for this purpose – strove to persuade the witness to consent to testify in Wuppertal. Po-

¹⁷ Article by Ulla Dahmen-Oberbossel in the Wuppertal *General-Anzeiger* of Jan. 20, 1988.

¹⁸ Copies of both transcripts were appended to the Motion for Appeal of Aug. 12, 1988.

tential witnesses for the defense were dealt with rather differently. When the defense suggested the questioning of an ill witness, Ms. Moische Korn, in Israel, this was rejected:

*“The motion to hear evidence does not indicate any reasons that the witness can be examined in the foreseeable future.”*¹⁹

The defense attempted to counteract this one-sided selection of witnesses by submitting numerous Motions to summon former inmates (more than twenty) and by further motions to hear evidence, but all were summarily rejected. These refusals were justified time and again by the comment that the best these witnesses could do would be to testify that they knew nothing of the alleged crimes committed by the accused. This sort of testimony was said to be irrelevant because, first of all, the inmates could not have known everything and, second, after 43 years they could not possibly remember exactly.

The Wuppertal Court consistently downgraded Motions to hear evidence, submitted by the defense, to the level of Motions to obtain evidence, only to reject them.²⁰ In the first Order for Exemption From Imprisonment, however, the Provincial High Court and Court of Appeal in Düsseldorf had stated that in its view all potential witnesses should be heard, since the difficulty involved in establishing the truth after such a long time warranted this.²¹ This is most remarkable, as it is not the usual procedure for another court to attend to matters of ascertaining facts; on principle, this is the sole task of the Court responsible for the trial. The Provincial High Court and Court of Appeal in Düsseldorf reinforced its opinion by granting Weise renewed exemption from imprisonment after the Wuppertal verdict.

Another example of suppression of evidence is the testimony of Isaac Liver, given on October 18, 1985, at the headquarters of the National Police in Villejuif, France. The numbers in the following quoted excerpts refer to written questions to the witness:

“No. 2: I worked in ‘Camp Canada’, first in Auschwitz in Canada No. 1, then in Canada No. 2, which was in Birkenau, approximately 4.3 miles from Auschwitz. In 1944 I was in Birkenau [...].

No. 4: The name Gottfried Weise and the nicknames ‘the Blind Man’ or ‘Sleepy’ are absolutely unfamiliar to me.

No. 5: I did not witness the crimes mentioned in this brief and never heard anyone talk about them. I believe that this story is untrue, as there is no doubt that all the prisoners in the camp and probably those in the other camps as well would have known of it.

*Personally, I feel that this story is untenable; everything described in this brief [!] is completely new to me and if these things had really taken place in the camp the way they are described, I could not but have known about them.”*²²

An unprejudiced court would naturally have examined precisely this witness in detail so as to avoid getting a one-sided account of the events, to avoid giving the public a one-sided story, and to ascertain the powers of recollection and the credibility of the various witnesses by comparing their testimony. But the Wuppertal Court ‘*knew*’ from the outset which witnesses were credible and which were not. And so the witness Isaac Liver was not heard. The transcript of his earlier examination, while available to the Court, was not read, thus remaining unknown to the public as well as to the jury. Other testimony that could have exonerated the accused and corrected the purely negative way he had been presented to the public was swept under the carpet the same way.

¹⁹ Rejection of Motions to Take Evidence nos. 1-13, quoted here from p. 17 of the Motion for Appeal.

²⁰ Motion for Appeal, p. 6.

²¹ *Ibid.*, p. 80.

²² P. 1909f. of the Court files.

Not only did the Court refuse to call witnesses for the defense, it also thwarted the timely presentation of material evidence. This will be discussed in greater detail in Section 3.1.7.2.

3.1.5. Reasons for Sentence

On January 28, 1988, the First Division of the Wuppertal District Court's Jury Court decided that the accused was guilty of five counts of murder, the overall sentence being life imprisonment. The first eighteen pages of the Reasons for Sentence are devoted to a representation of the "*historical background*" based on "*generally known and historically established facts*" with

"reference to, for example: Buchheim/Broszat/Jacobsen/Krausnick, Anatomie des SS-Staates, Walter-Verlag, volumes I and II; Hofer, 'Der Nationalsozialismus – Dokumente 1933-1945', Fischer-Verlag; Kogon, Der SS-Staat, Wilhelm-Heyne Verlag".

Auschwitz literature giving sound, verifiable and useful factual information is completely lacking in this list of works.

It is not surprising, therefore, that the descriptions of the camp, its organization and circumstances, which take up another 40 pages of the Reasons for Sentence, contain numerous patently and verifiably false claims and statements. For example, on pages 57-58 of the Reasons for Sentence it actually states, verbatim:

"For many of the inmates their most valuable possession was a bowl that served equally for their calls of nature and for eating."

And:

*"The purpose served by the concentration camp Auschwitz as mass extermination camp shall not be discussed in detail here, as the crimes which the defendant committed, i.e., is said to have committed are not connected with the orders given in the context of the 'Final Solution'."*²³

But details mentioned further on in the Reasons for Sentence repeatedly refer to the well-known scenario. One example of this is to be found in the context of the Wuppertal Court's attempts to explain away particularly incredible claims contained in the witness Lazar's thoroughly imaginative testimony. In Budapest, Lazar had stated under oath that she had personally seen many murders taking place, for example:

"3. I could move around freely in 'Camp Canada' and so I could observe how SS-men shot prisoners.

*4. Executions happened almost everyday, almost hourly. I saw it with my own eyes."*²⁴

Now this was in contradiction to the statements of most former inmates who had testified earlier. But the Court managed to come up with an explanation for this 'discrepancy'. It explained this gross exaggeration away by stating that the experiences associated with the mass dyings taking place at the nearby crematoria had *fused* with the personal memories of the witness.²⁵

At numerous other points in the Reasons for Sentence as well, the judges made reference to the "*commonly known, historically established facts*" in which they believe so firmly. For example, the absolutely unbelievable claim that the accused could take wild potshots in the camp with impunity is simply rationalized with the comment that after all it is "*commonly known*" that the life of an inmate was of no value.

Even if one were to accept the "*commonly known*" nature of this idea, one ought at least to have asked how such mad pistol-popping could have been possible without also endangering the other guards. In a somewhat closer investigation one could have examined old guard books, which would

²³ Verdict, pp. 65, 66.

²⁴ Verdict, p. 151.

²⁵ Verdict, p. 116.

have revealed that every weapon, each and every bullet had to be accounted for. For example, I had no trouble obtaining a number of sample pages from concentration camp guard books from archives in Prague – pages which document precisely that the procedure of issuing weapons and ammunition, which every soldier is familiar with, was also observed no less strictly by the concentration camp guards. With a little less “*common knowledge*” and a little more objective investigation, the Court would not have fallen for that bit of nonsense about the mad beast taking potshots in the camp whenever he pleased, and getting away with it without so much as a reprimand.

Under German law, there is no appeal in matters of fact, which would permit the re-examination of the ‘findings’ which the Court arrived at in this way of “*common knowledge*”. In trials of severe crimes (as murder or denial²⁶) there is no option for appeal, only for ‘revision’, which investigates technical errors of procedure but does not examine facts deemed to have been established as such.

3.1.6. Revision

The defense had concentrated on the ‘Lazar cases’, and on the branding of the accused as “*the Beast of Auschwitz*” which they involved. The defense considered the witness Freimark, who did not enter the picture until quite late, to be so utterly incredible that it felt that a conviction based on his accusations was impossible. This was a mistake on the part of the defense, which was not versed in the vagaries of Special Trials. Nothing was impossible in Wuppertal.

The attorney in charge of the revision also focused on the ‘Lazar cases’. He believed that evidence for even partial incorrectness would force a new trial. This was another mistake with tragic consequences for the accused. On March 31, 1989, the Federal Supreme Court quashed the verdict, but only with reference to these two alleged murders – while, surprisingly, upholding it for the remainder of the charges, *i.e.*, for the other three alleged murders, the ‘Freimark cases’.

3.1.7. The Final Verdict: The Freimark Cases

What was the nature of the “*very ‘personalized’ evidence*” (as the attorney for revision put it) in these Freimark cases that had not been affected by the revision process? On the basis of Freimark’s testimony, the Wuppertal Court had considered three murders in Personal Effects Warehouse I, the so-called *Old Camp Canada*, as being proved:

- a) Shooting of an unidentified male inmate on an unspecified day in June or July 1944. This crime was said to have been committed in a hut described by the Court as “*Bedding hut*”.
- b) Approximately four weeks later (but still in “*June or July 1944*”): shooting of two inmates from Grodno (sex unspecified). Another inmate is said to have been murdered by SS-man Graf on this occasion. (This branded Graf as murderer and discredited him as witness for the defense. A Viennese court had acquitted him, but the Wuppertal Court fought tooth and nail against having the Viennese records brought in for reference.) These crimes allegedly took place in an area between a fence and a ramp located on a rail line some 30 ft. from the fence. At the time of the crime, hundreds of inmates had been boarding “*thirty to forty*” wagons via the ramp, while floodlights turned night into day.

3.1.7.1. Unconditional Faith in Freimark’s Statements

For the Wuppertal Court, the testimony of the only alleged eyewitness, Freimark, sufficed to warrant a conviction. The Court commented on Freimark:

“*The credibility of this witness is beyond question.*”²⁷

²⁶ In this context, German law indeed ranks Holocaust denial as severe as theft, rape, robbery, and murder.

²⁷ Verdict, p. 180.

*His credible testimony is already enough to convince the Court of the factuality of the crimes of the accused as these are set out in 1a) and b).*²⁸

It was very rash to condemn a person to life imprisonment on the sole basis of trust in the veracity and probity of one single witness. Despite all the difficulties ensuing from the advanced deterioration of evidence, it was possible to find new proof which reveals that the witness Freimark had not told the truth.

The Court's unconditional faith in its witness Freimark is incomprehensible. Many such contradictions had already become apparent during the trial; the Court chose to ignore them. For example, no one had bothered to take note that Freimark had claimed that, having been a Jewish political inmate in Auschwitz, he had had to wear a green identifying patch. Closer scrutiny would have shown that time and again Freimark has given different accounts of this aspect of his internment which, after all, must have been of paramount importance to him during his time in the concentration camp. When asked "*what sort of patch?*", he is now known to have answered in the past: red-yellow (1962), green (1966), green (1968), green and red-yellow (1988), green-yellow (1989).²⁹ These and many other inconsistencies were never investigated by the Wuppertal Court. When the defense drew attention to contradictions, these references were ignored.

The most important discrepancy is to be found in Freimark's statements regarding the time when he was ill with typhus. It is undisputed, for example, that Gottfried Weise was not detached to Auschwitz until late May 1944, and spent the first eight weeks with Bookkeeping for Prisoners' Funds, which office was located outside the camp. The defense was able to prove this on the basis of two documents. Further, the witness Freimark had stated earlier that he had contracted a severe case of stomach typhus in late May 1944.

According to the documents at hand, therefore, neither Freimark nor Weise could have been at the alleged site of the crime at the time claimed for the crime ("*June/July 1944*"). But the Court managed to iron out this minor 'wrinkle': Weise might very well have been assigned to guard duty every now and then (Weise had been certified unfit for guard duty), and Freimark (who was utterly infallible any other time) may have been mistaken in his earlier statements. Of course, Freimark confirmed most happily that, oh well, in that case he had simply not fallen ill until a little later. And the Court commented that the discrepancies in Freimark's claims regarding the time of his bout of typhus did not reflect on his credibility as witness because his testimony was supported by circumstantial evidence.³⁰ Freimark declared that his earlier 'mistake' was due to the fact that during his questioning in 1968, he had "*not paid any particular attention*" in giving the time of his illness.³¹

3.1.7.2. Mis-Timed Circumstantial Evidence

The defense had requested that documentary evidence be obtained to verify Freimark's illness. The Court received such papers the day before the verdict was handed down, and believed it had reason to rejoice. The documents that had been located – medical papers from concentration camp Auschwitz – proved, it said, that the witness, Freimark, had been examined in the Inmate's Infirmary in August and September 1944 for suspected typhus. It was felt that, aside from eyewitness testimony that needed to be artificially lauded to the skies, one had now finally found some material (even though presumptive) evidence that might serve as spur to the intent to convict: circumstantial

²⁸ Verdict, p. 190.

²⁹ Matthies/Jordan, Aug. 1993: *Der Fall Weise – Neue Beweise zur Klärung unrichtiger Angaben des Zeugen Freimark und unrichtiger Feststellungen im Urteil des Landgerichtes Wuppertal vom 28. Januar 1988*. Copies of this study are available in return for photoduplication costs.

³⁰ Verdict, p. 185.

³¹ Verdict, pp. 75, 76.

evidence to indicate that Freimark's new claim as to the time of his illness was correct. What was smoothly overlooked was the fact that in his most recent testimony Freimark had claimed "October 1944" as the new date of the onset of his illness, not "August or September 1944". The Court was only able to maintain these erroneous claims by consistently refusing all of the Defense's Motions to bolster this circumstantial evidence with supplementary documentation.³²

But even this prop, patched together as it was out of fragments of the existing presumptive evidence, had been mis-timed by the Court. It wrote:

*"In the documents of August 14, 1944, for example, it was noted under no. 9 of the list, regarding the examination of former inmate and witness Jakob Freimark: '87215... Freimark, Jakob... Clinical diagnosis: suspected typhus [Typhusverd.], while for other inmates the result given was 'typhus still suspected [noch Typhusverd.], merely 'Typhus', etc.'"*³³

What this suggests is that Freimark's illness was nowhere near a complete recovery ("noch Typhusverd." [typhus still suspected] nor even full-blown "Typhus"), but that there was merely a preliminary suspicion of typhus, in other words, that at most he had only just contracted the disease. It should be noted, however, that neither among the numerous infirmary documents that were turned up later, nor among the Court documents, is there any infirmary paper that states 'noch Typhusverd.' [i.e., typhus still suspected]. It is also strange that only two of a whole series of relevant documents, available at the Auschwitz Museum, were read by the Court, and at the last minute. And what is no less strange is the steadfast claim that there were no further infirmary papers regarding Freimark. The defense had no opportunity to take a closer look at the laboratory papers, which were not read to the Court until the day of the verdict. In this way the Court was able to sustain the fiction that Freimark's illness must have broken out some time after August 14, 1944, and that he had been fully recovered again by September 18, 1944. Further evidence has been found now which disproves this tale, which was thoroughly unbelievable from the start.

3.2. New Evidence, Motion for Retrial, Dismissal, Objection

A motion for retrial was filed in the case of Gottfried Weise in late 1992. On April 22, 1994, the District Court in Mönchengladbach dismissed this motion, which decision was communicated to the prisoner in late May. Weise's attorney objected to this dismissal. The new evidence on which the motion for retrial is based was, in part, ignored completely in the dismissal and, in part, rejected for technical or insufficient reasons.

3.2.1. 'The Wrong Time' – New Evidence for the Incorrect Time Alleged for the Onset of Freimark's Case of Typhus

3.2.1.1. Infirmary Papers Discovered After the Fact

What baffles one is why a judicial scandal had not already erupted years ago, when it was shown how casually the Wuppertal Court had interfered with the obtaining of further evidence, because allegedly:

*"[...] there is nothing to indicate that the state-operated Auschwitz Museum in Poland has access to any documents beyond the aforementioned infirmary papers, which have been put at the disposal of the Red Cross International Tracing Service in photocopy form."*³²

In fact, tens of thousand of infirmary papers are stocked in the polish Auschwitz Museum, which alone is circumstantial evidence for the enormous efforts that were made in Auschwitz to help the

³² Verdict, pp. 76, 77.

³³ Verdict, p. 58.

M. 2. K. - H. K. B. - B. V. F. - H. 11. 8. IX. 1944.

Blut = 3. 1944
N. 12

Nr.	Nr. d. Papp.-Nr.	Name u. Vorname	Klinische Diagnose
1.	124813	Kwiatkowski Josef	Typhus
2.	181184	Smirnow Hariton	Typhus
3.	84215	Freimark Jakob	Typhus

(1212/118)

Illustration 1: First “sterile” entry for Freimark, on lab report dated Sept. 8, 1944.
“Sterile” entries were also made for the other two patients.

sick inmates recovering, even though the established interpretation of history alleges that sick internees were selected for being unfit for labor and consequently gassed. As a matter of fact, seven infirmary papers pertaining to Freimark’s illness were found in the archives of the Auschwitz Museum:

1. Aug. 13/14, 1944 (Blood, Gruber-Widal und Weil-Felix³⁴, results: not yet “sterile”),
2. Aug. 28, 1944 (Stool, results: still some pathogenic intestinal bacteria),
3. Aug. 28, 1944 (Blood, results: not yet “sterile”),
4. Sept. 5, 1944 (Stool, results: still some pathogenic intestinal bacteria),
5. Sept. 8, 1944 (Blood, results: “sterile” for the first time),
6. Sept. 11, 1944 (Stool, results: only normal coli bacteria, for the first time),
7. Sept. 18, 1944 (Blood, Gruber-Widal, results: still “sterile”).

The Court based its opinion – that “*in that case*” Freimark had simply not fallen ill until August – on the two aforementioned papers that were allegedly the only ones that could be found: on two of seven now known lab papers, specifically the first and last links (Nos. 1 and 7) of the chain of evidence.³² If the defense had been granted an opportunity to examine the papers presented by the Court, then it could have determined even on the basis of only these two lab papers, nos. 1 and 7, that something was wrong with the Court’s interpretation: the results of no. 1 did not yet indicate ‘sterile’, while the results of no. 7 did. If nothing else, then this “sterile” result on no. 7 – had it been known to the defense – would have sufficed to make the defense suspicious. This was the first instance where the accused was denied a means to defend himself in this particular matter; his second means of defense, the obtaining of documents no. 2 through 6, was also denied him – and of course the Motion to obtain an expert medical opinion was refused as well.

The documents found after the fact now prove that Freimark’s case of typhus did not break out “*in August 1944*”, as the verdict claims. The sequence of documents shows clearly that Freimark could not have contracted his acute case of typhus between August 13 and September 18, 1944. However, his lengthy and severe bout of typhus is undisputed, and also established in the verdict. But the documents prove that it did not break out and become cured within the time span of August-September 1944. But when else should the illness have occurred: before or after August-September 1944? The specialists’ statements now available to the defense state unequivocally that the second entry of “sterile” (according to the Gruber-Widal test) at the end of the series of lab tests is typical for the conclusion of a final check-up in accordance with the regulations pertaining to epidemic

³⁴ Medical testing methods.

control at the time in question. This could already be proven by means of the bacteriological findings that have been available since 1990, but evidence regarding the severity and hence the duration of Freimark's preceding illness was as yet still lacking.

In January 1995 the defense, at long last, also obtained copies of the serological reports. (For an account of how this evidence was obtained in the face of strenuous official opposition, see Section 5.2. False Claims Made by the Wuppertal Court) These serological reports contain the following information pertaining to Freimark's blood tests:

August 14, 1944: "Titer 1:800"

August 29, 1944: "Titer 1:800"

September 8, 1944: "Titer 1:200"

"Titer" is the term used for the results of serological tests (degrees of dilution in agglutination tests). titers are first measurable a minimum of two weeks after the onset of illness, and often "*not until much later, approximately 30 days*" following onset. Values begin at 1:100. As the illness progresses, titers slowly increase to 1:400 or more.

*"The agglutinative potential persists for many months following recovery from the illness."*³⁵

A titer of 1:800 on August 14, 1944, (sample of August 13, 1944) means that Freimark must have contracted typhus long before that date. All the medical experts consulted agree on this point. Further, the titer of only 1:200 (September 8) indicates that Freimark's convalescence was already well advanced at this time. Therefore, Freimark must have been severely ill with typhus prior to August 1944, in other words, in June/July 1944 as he had stated originally. To establish this as evidence relevant to the Court, Weise's attorney has requested the consultation of a Court-approved expert – but his requests, submitted repeatedly for several years now, have been in vain.

But even without an expert medical report, it can be proven that Freimark's illness cannot have begun after September 1944, since as Freimark himself testified, he had participated for at least a few weeks in the preparations leading up to the crematorium Uprising of October 7, 1944. The only remaining possibility, namely that he fell ill before August 1944, is confirmed by many other statements of Freimark's. His initial claim that he fell ill "*in late May 1944*" is supported in many ways by his further statements.

In its decision of revision, the District Court of Mönchengladbach again ignores the significance of the "*sterile*" entries, it again ignores the regulations for epidemic control that were in effect in those days, and it again rejects the consultation of an expert. Weise's attorney had requested "*an expert report, to be drawn up by an epidemiologist specializing in hygiene and bacteriology*". As the Wuppertal judges before them, their colleagues in Mönchengladbach now claim with universal expert knowledge that the lab reports give no indication of any "*final check-up*". But while the Wuppertal judges still maintain that Freimark's hotly contested bout of typhus took place sometime between August 14 and September 18, 1944, the District Court of Mönchengladbach does at least realize that Freimark was not acutely ill with typhus during this time. From the perspective of the Motion for Retrial the defense fully agrees with this. But what the District Court of Mönchengladbach would also like to sweep under the carpet is the question of when exactly Freimark should have undergone the acute stage of his severe case of typhus, if not in June/July 1944? Understandably enough, this question is a very uncomfortable one for the supporters of the verdict. In Freimark's statements, his resistance activities account so fully for the time from September 18, 1944, to the Crematorium Uprising (October 7, 1944) that no sufficient time remains. The time of his long and severe illness, which no one disputes, can thus have been only before August 1944, *i.e.*, in

³⁵ According to Helmut Denning, *Lehrbuch der Inneren Medizin*, 6th ed., Thieme, Stuttgart 1964, pp. 86ff.

June/July 1944. **And if one will concede this, one must also concede that the only supposed eyewitness could not possibly have been at the alleged site of the crime at the alleged time.**

3.2.1.2. Freimark's Testimony Regarding the 'Klehr Case'

Aside from the complete sequence of laboratory reports, other new evidence also supports Freimark's original statement that his illness began in late May 1944. This evidence comes in the form of statements made by Freimark before he knew where the emphasis would need to be placed in the Weise case. In 1968, for example, he stated that he had been admitted to the infirmary in May 1944, with typhus. He then recounts how he was able to observe Dr. Mengele and the medical orderly (*Sanitätsdienstgrad*) Josef Klehr at their experiments on inmates when he "was already feeling better".³⁶ By this time his severe illness (102, 104, 106.3°F fever³⁷) had abated and he was up and walking around as convalescent. His severe illness must therefore have abated in July 1944 at the latest, for it was found in the Auschwitz Trial in Frankfurt that the orderly Klehr had been transferred to the satellite camp Gleiwitz in July 1944. According to the *Auschwitz Chronicle*,³⁸

"[...] from July 1944 [Klehr was] director of the prisoners' infirmary in the auxiliary camp Gleiwitz I [...]."

In his 1968 testimony, Freimark reported in detail about many of Dr. Mengele's atrocious deeds, all of which he – Freimark – had seen with his own eyes. And:

"Klehr, the orderly, always accompanied Dr. Mengele."³⁹

So Freimark did not see Klehr only once, he saw him a great many times. And, of course, he could not have seen everything he described in just a single day; he needed weeks of observation. This permits only one conclusion: to allow for his observation of Klehr and Mengele, Freimark's severe case of typhus must have been clearing up in early July 1944 at the latest.

In its decision of revision, the District Court of Mönchengladbach suggests that it might well have been the case that Freimark was in the infirmary on several occasions. After all, the witness had also stated that he had once been beaten by Dr. Senteler. In suggesting this, the District Court of Mönchengladbach ignores the precisely documented organization of the health care facilities in the Auschwitz concentration camp. The Court completely ignores the fact that inmates were admitted to the infirmary only after being examined by Chief Physician Dr. Zenkteller (not "Senieler"; cf. also Section 3.2.5); that they could not simply drop in to visit friends whenever they felt like it; that Freimark himself recounted his experiences with Dr. Zenkteller several times, relating to his bout of typhus; etc.

³⁶ Freimark's testimony in Tel Aviv, Nov. 20, 1968; doc/172. Regarding quoting method "doc/nm" (here doc/172): a voluminous dossier has been compiled about the numerous claims and data by and about Freimark. Interested persons may obtain a copy in return for photoduplication costs. Aside from the transcripts of earlier witness testimony by Freimark, this collection also contains two longer reports or accounts by Freimark:

- 1) "Einsam in der Schlacht" [Lonely in Battle], Freimark's autobiographical account in the Suwalki book of 1989 (*Jewish Community Book Suwalki and Vicinity: Baklerove, Filipove, Krasnopole, Psheroshle, Punsks, Ratzk, Vizhan, Yelineve*; The Yair – Abraham Stern – Publishing House, Tel Aviv 1989); texts are partly in English, partly in Hebrew; Freimark's story has been translated from the Hebrew.
- 2) Freimark's Yad Vashem report; recollections from 1959, records from 1962 and 1964. (Originally translated into German from the Yiddish [in Hebrew script].)

³⁷ Yad Vashem report, pp. 72, 82; doc/156, 162.

³⁸ D. Czech, *Auschwitz Chronicle, 1939-1945*, Henry Holt, New York 1989, p. 816.

³⁹ Freimark's eyewitness testimony in Tel Aviv, Nov. 20, 1968; doc/173.

3.2.1.3. Freimark's Statements on the Course of his Illness

Freimark's case of typhus must have been very severe indeed. In his Yad Vashem report, Freimark recounts – as mentioned before – that he had frequently run temperatures of 102 to 106.3°F.³⁹ Also, probably because he was confined to his sick-bed for so long, he had developed a painful abscess on his posterior.⁴⁰ While he was in bed suffering badly from this abscess, the following had allegedly been recorded on his card [hospital chart?]: “*Grober Vital 1/800.*”⁴¹

The question remains open whether this Gruber-Widal test is one of those known to us from the lab reports or whether a test of this kind was already performed during the acute stage of the illness. The latter cannot be ruled out in light of the evident severity and duration of the illness. In his testimony of 1966, Freimark also remarked that he was “*laid up*” with a case of stomach typhus.⁴² In his testimony of 1968, already cited repeatedly, he reiterated that he had contracted typhus (in May 1944), then added that he made his observations of Mengele and Klehr “*when I was feeling better again.*” So he must have been rather poorly before. And he must have been very considerably improved over the time when he still suffered so severely from the dressed abscess on his posterior, since he could not have taken the excursions he described while being padded and bandaged as he was. The abscess, in turn, was the result of protracted confinement to bed combined with the uncontrolled voiding of urine and stool typical for stomach typhus. This too shows that the illness must have begun long before the time “*when I was feeling better again.*”

The acute manifestation of his illness, accompanied with collapse and fever up to 106.3°F, which he still stressed vigorously in 1962, rules out that the illness did not break out until August/September 1944. A lengthy series of lab tests intended to identify and confirm the disease would have been utter nonsense, given the intensity of the outbreak and the unmistakable symptoms.

All Freimark's pre-1988 statements regarding his bout of typhus indicate that he was severely ill, and for a correspondingly long period of time. A case of typhus that severe takes weeks from the time of outbreak to the time it abates. But as demonstrated in the foregoing, the illness must have begun to abate by early July 1944 at the latest, else Freimark could not have observed Klehr's misdeeds “*frequently*”. Freimark's severe bout of typhus, which lasted several weeks, must thus have begun in early June 1944 at the latest. This coincides with the time he specified in 1968, namely “*late May 1944*”. Hence his earlier statements support his testimony of 1968.

Aware though it is of this, the District Court of Mönchengladbach, in its decision of revision, has turned a blind eye to the fact that Freimark allegedly made his observations of Mengele and Klehr when he was recovering again – in other words, *after* his severe illness. The Court suggests instead that Freimark had no doubt been in the infirmary repeatedly. The Court thus ignores not only the fact that Freimark himself had recounted his observations of Klehr in express connection with his recovery from typhus. It also ignores the organization of the health care facilities, which are set out in particular detail in the documentation pertaining to Auschwitz. Without being admitted by the Chief of the Out-Patient Department, Freimark could not have gained access to the sickward, much less to the isolation ward for epidemic patients, which is where he claims to have made his observations. As lab documents prove, Freimark was assigned to Infirmary Compound BIIf. The admitting physician in the accompanying Out-Patient Department BIId was the Polish Dr. Zenkteller, whom Freimark recollects in a very emotionally charged manner, and again in close connection with his case of typhus (cf. also 3.2.5.).

⁴⁰ Yad Vashem report, pp. 79, 80; doc/160.

⁴¹ Yad Vashem report, p. 80; doc/161.

⁴² Freimark's statement in Tel Aviv, April 29, 1966; doc/168.

3.2.1.4. Freimark's Testimony Regarding his Collaboration in the Preparations for the Crematorium Uprising

Freimark was not ill in August/September 1944. The complete series of lab reports from August 13 to September 18, 1944, proves this. Could Freimark have been so severely ill with typhus *after* September 18, 1944, (when he was healthy, as proven) and *before* October 24, 1944 (when he was also clearly healthy, and on his way to Sachsenhausen)?

An affirmative answer to this question is already practically ruled out, since the five weeks remaining between September 18 and October 24, 1944, would hardly have been enough to allow for the severe illness *per se*, much less for the mandatory subsequent quarantine that was necessary to establish freedom from infection prior to the transfer to another camp.

But Freimark himself provides us with another piece of evidence for the recovered state of his health after September 18, 1944. According to him, he participated in the preparations for the Crematorium Uprising in close co-operation with Salman Gradovski.⁴³ The Uprising took place on October 7, 1944. Freimark's involvement must have come after his illness. In Wuppertal, too, it was expressly noted that in his new testimony Freimark "*placed the subsequent Crematorium Uprising in close temporal proximity to this [i.e., the time of his illness].*"⁴⁴ This is correct, except that the entire illness cannot be slotted into August/September. That was only the time of convalescence and final check-up. The series of lab reports proves this beyond doubt. But the actual time of illness *per se* was in June and July, 1944.

In its decision of revision, the District Court of Mönchengladbach completely disregards the issue of how Freimark's severe illness (which is proven beyond doubt) is to be fitted into the time-table of the events in question.

3.2.1.5. Freimark's Testimony Regarding His Recall to the 'Canada' Commando at the Beginning of the Hungarian Transports

*"When the Hungarian transports began, I was recalled to work in 'Canada'. That was where we realized why they wanted us to purge the camp of Jews. They arrived day and night, these transports from Hungary. We worked on the ramp, and it was very hard. One transport after the other arrived."*⁴⁵

This statement of Freimark's in his report of 1959/1962 once more solidly corroborates his very definite testimony of 1968, that he rejoined the 'Canada' Commando in May 1944. According to the *Auschwitz Chronicle*, the Hungarian transports, whose start was the occasion of his recall, began in mid-May 1944.⁴⁶ Freimark's initial statement, that he fell ill shortly after this recall, fits in perfectly with the date he first gave for the start of his illness: late May 1944.

In its decision of revision, the District Court of Mönchengladbach ignores this completely.

3.2.1.6. Freimark's Testimony Regarding His Further Convalescence During the Time of the Transports from Lodz

In his Yad Vashem report,⁴⁷ Freimark gives a detailed account of his stay in the infirmary while continuing to recover from his illness. According to Freimark, this rather lengthy stage of convalescence coincided with the time of the transports from Lodz – in other words, August/September 1944. This, in turn, coincides perfectly with his statement that he had fallen ill in late May 1944.

⁴³ Suwalki book and Yad Vashem report; doc/108, 109, 111, 139, 141, 142, 145, 152ff.

⁴⁴ Verdict, p. 75; doc/177.

⁴⁵ Yad Vashem report, p. 53; doc/146.

⁴⁶ D. Czech, *op. cit.* (note 38), p. 627.

⁴⁷ Yad Vashem report, p. 83-84; doc/162, 163.

In its decision of revision, the District Court of Mönchengladbach ignores this completely.

3.2.1.7. Summary of Section 2.2.1

Gottfried Weise's attorney has been pointing out for years that the lab reports do not disprove Freimark's illness in May 1944, but that rather they are powerful evidence for the correctness of this initial statement. Strangely enough, none of the authorities whose duty it is to ensure that justice is done has shown the slightest interest. Now, however, this evidence – which is already of great consequence by itself – is solidly supported by further new evidence. These further evidential pillars resulted from statements of Freimark's which were no less unknown to the Wuppertal Court than the complete sequence of lab reports, which therefore also constitute new evidence.

The new evidence supporting Freimark's 1968 statement ("*onset of illness in late May 1944*") include:

1. Lab reports Nos. 1 and 7, which had been misapplied by the Wuppertal Court, as well as the lab reports Nos. 2 through 6, discovered later – *i.e.*, the entire sequence of lab reports, Nos. 1 through 7. This documentary support of Freimark's 1968 testimony – very solid support indeed – is reinforced five-fold by the following new evidence contained in other statements of Freimark's:
2. Freimark was in the infirmary by June 1944 at the latest. Only in this way could he have observed Klehr at his misdeeds when his illness began to abate, *i.e.*, in July 1944 at the latest.
3. Freimark's illness was very severe, and lasted a proportionally long time. It cannot have begun after the "*sterile*" test results of September 9 and 18, 1944, because on October 24, 1944, he was already healthy and being transferred.
4. In late September/early October 1944 Freimark, then healthy, collaborated in the preparations for the Crematorium Uprising. Thus, he cannot have been ill at this time.
5. Freimark himself dates his transfer to 'Canada' as mid-May 1944. He recalls the time of the transfer: "*When the Hungarian transports began [...]*". The Hungarian transports began in mid-May 1944.
6. Freimark was still convalescing at the time the transports from Lodz arrived, *i.e.*, in August/September 1944.

With reference to the Court's statement that "*the credibility of this witness is beyond question*", only one conclusion is possible: Freimark himself proves that he cannot have been at the site of Weise's alleged crimes in June/July 1944. The statements he made which indicate that he fell ill in late May 1944 are considerably more plausible than his suspiciously sudden change of mind in Wuppertal, that "*in that case*" he had simply not fallen ill until August/September 1944.

In its decision of revision, the District Court of Mönchengladbach holds to the Wuppertal version.

3.2.2. 'The Wrong Place' – New Evidence For the Incorrect Account of the Place and Details of the Crime⁴⁸

The murders which are imputed to Gottfried Weise by that part of the verdict that has become final were allegedly committed in, *i.e.*, near the old disinfestation facilities (Gas Disinfestation I) which the Court imprecisely and incorrectly termed Personal Effects Warehouse I (*Effektenlager I*).⁴⁹ This is where witness Jakob Freimark claims to have observed them:

⁴⁸ A more detailed study has been drawn up on this topic: Matthies/Jordan, *Der Fall Weise – Neue Beweise zur Klärung unrichtiger Ortsangaben und unrichtiger Tatvorwürfe im Urteil des Landgerichtes Wuppertal vom 28. Januar 1988*, March 1993, with supplement from May 1993. Copies of this study are available in return for photoduplication costs.

⁴⁹ Cf. Matthies/Jordan, *ibid.*, p. 4.

a) The convicted is said to have committed one murder in the “Bedding hut” on the grounds of Personal Effects Warehouse I. The witness claims to have seen this while standing amongst many other inmates in a square in the camp, from which point one could see the entrances to two identical-looking huts at the same time.

b) The convicted is said to have committed two further murders “in the square between the loading ramp and the eastern entrance to Personal Effects Warehouse P”. The track on

which the loading ramp was located ran along the fence, at a distance of “approximately 30 ft.”. Therefore, in the eyes of the Court, there was a “square” of about 1,080 sq. yards [33 ft. (distance between fence and track) × 295 ft. (length of the fence)] between the fence and the loading ramp.

In contrast to the alleged victims and the alleged time of the crime, the supposed sites of the crimes are described relatively precisely by the Court. This makes it possible to double-check the description of the site which the Court accepted in reaching its verdict. This layout of the site was incorrect.

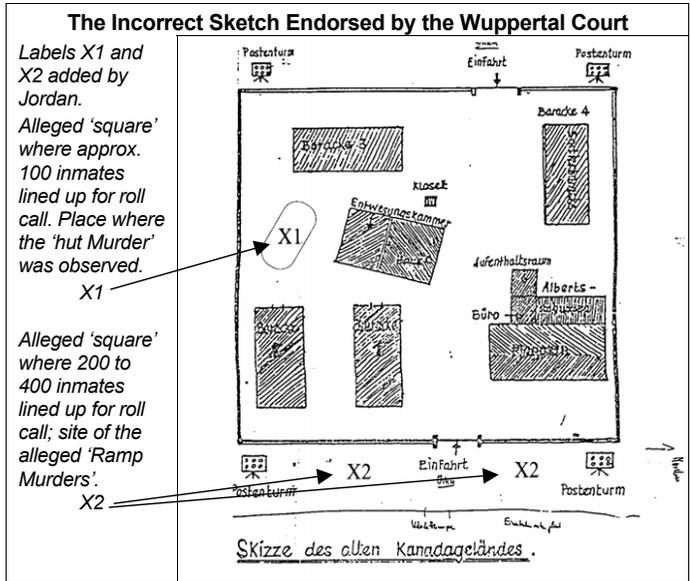
In its decision of revision, the District Court of Mönchengladbach cannot dispute the incorrectness of the Wuppertal Court’s account of the site, but it deems the incorrect findings contained in the verdict to be irrelevant.

3.2.2.1. The Wuppertal Court’s Incorrect Layout of the Site of the Crime

Both the witness and the Court orientated their accounts of the alleged events on an incorrect layout of the site of the crime – a layout that agrees with an equally incorrect sketch that was incorporated in the verdict.

3.2.2.2. The Correct Layout as Shown by Documents

The following sketch, drawn to scale, shows the correct layout. This sketch is the result of careful analysis of several American air photos,⁵⁰ the description of Delousing Chamber I (the alleged site of the crime) as given by documents from the Auschwitz Archives,⁵¹ and the book by Pressac⁵² which is considered to be the definitive scientific work of Auschwitz literature.



⁵⁰ Cf. J. C. Ball, *Air Photo Evidence*, Ball Resource Services, Delta, BC, 1993, p. 34 (online material is available at: www.air-photo.com/).

⁵¹ Cf. *Archivum des Museums in Auschwitz. Ensemble der Erklärungen zum Raub des Opfergutes*, ch. 51, pp. 119-134,

In its decision of revision, the District Court of Mönchengladbach does not dispute that the sketch which the Wuppertal Court used to determine the location and nature of the alleged crimes is incorrect. It also has nothing with which to contest the correctness of the sketch drawn from the aerial photographs. Nevertheless, the Court states “*that the US air photo of August 25, 1944, by itself cannot reflect the conditions in the camp at the time of the crime, in June/July 1944 [...]*”. This claim is utterly incomprehensible, since the District Court of Mönchengladbach, according to its own account, has also seen the US air photos of April 4, 1944, May 31, 1944, and December 21, 1944, which – together with other evidence – served to verify the sketch.

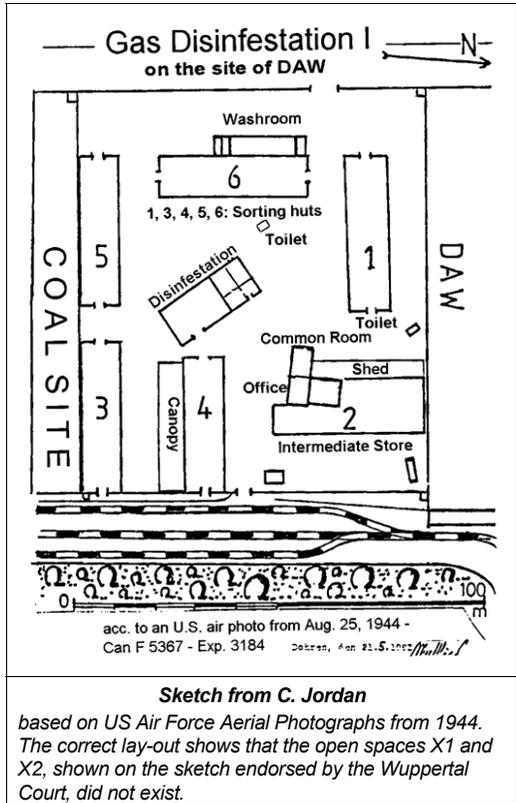
3.2.3. ‘The Wrong Scenario’ – Correction of the Alleged Layout Shows: the Scenario Attested to Would Have Been Physically Impossible

The Wuppertal Court based its conception of the layout of the site in question not only on the incorrect sketch but also on witness testimony, particularly on the testimony of the witness Freimark. The Court had affirmed that this witness recollected the site in particularly precise detail. And indeed, he described almost a dozen incorrect details precisely as they appear, incorrectly, on the Court’s sketch. Witness Freimark obviously was not familiar with the alleged site of the crime from personal memory; he merely went by the faulty sketch.

First of all, two very essential details were wrong:

1. The alleged empty space (“square”) where Freimark claims to have stood among “many” inmates while witnessing a crime was in fact taken up by a hut (No. 5 in the previous sketch) of which Freimark obviously had no knowledge. Freimark and his fellow inmates could not have stood here. Also, there was no other place large enough to accommodate a greater number of inmates which would have met the requirements of the scenario described by Freimark (two huts doorways directly visible).

In its decision of revision, the District Court of Mönchengladbach suggests that perhaps it was not 100 inmates who were lined up. Freimark and the Wuppertal Court had only mentioned “many”. But the work commandos named by the Wuppertal Court, and the information provided by the *Auschwitz Chronicle* regarding their numerical strength, does indicate a num-



⁵² report of former inmate Josef Odi.
J.-C. Pressac, *Auschwitz: Technique and Operation of the Gas Chambers*, Beate Klarsfeld Foundation, New York 1989.

ber of approximately 100 inmates, calculated as set out in the Motion. Happily, these calculations are facilitated by the many Auschwitz work detail lists still available which show the precise numerical strengths of the work details which, according to the Wuppertal Court, were present at the site of the crime. Once again, any factual resolution of this matter has been rejected. The District Court of Mönchengladbach has also completely ignored the second important matter: according to the Wuppertal/Freimark scenario, Freimark would have had to be able to see directly into the entranceways of two huts resembling each other in every detail. The correct sketch, however, shows that the huts were by no means that similar, and that there is no conceivable place from which both hut's entrances could be directly looked into at the same time. The District Court of Mönchengladbach ignores the fact that this proves Freimark's account of the crime to be false.

Especially where the two allegedly identical huts are concerned, Freimark's account of the crime is typical of the way in which 'truth was ascertained' in this case: originally – *i.e.*, at the time of his first questioning in Israel – Freimark knew of only one hut, where all the characters who played a part in the 'hut murder' got together. In the Wuppertal trial, Freimark then saw the (incorrect) sketch of the camp, where two identical huts are (falsely) drawn in. The sketch inspired Freimark, and he *revised* his initial testimony (the single-hut version) into a two-huts scenario. He now redistributed the participants in this drama between two huts, for a particularly theatrical account of the alleged events. As proof of his veracity, he concedes that he is no longer sure whether the "*Bedding hut*", the actual scene of the crime, was the right-hand or the left-hand one of the twin huts. The Court was so filled with enthusiasm by his nit-picking love of truth and his detailed knowledge of the scene that it completely overlooked the trap: the two-huts version works only on the fictional scene of the crime, on the incorrect camp sketch – not on the real scene. It does not fit the real layout; Freimark's account of the crime, and the 'findings' based thereon in the verdict, are false.

2. The scenario of the alleged crimes b), the 'ramp murders', is based on the following: hundreds of inmates, working day- and night-shifts, loading up a long freight train of "*thirty to forty*" freight cars, unloading it again, and re-loading it again. Hundreds of tons of freight must be passed in bundles along long queues of inmates. With utter disregard for blackout regulations, the large open space between the fence and the ramp is lit "*bright as day*" by the floodlights on the fence. Three inmates manage to set up a hiding place in one of the many freight cars, bring in a supply of food and water, and hide themselves there. Their absence is not noticed until shift change. After hours of counting and roll-call, the inmates must begin unloading all the freight cars again. In the presence of hundreds of other inmates, the fugitives are found, beaten, and murdered. The time is approximately midnight.

The facts, however, are as follows: the loading rail-line ran right along the fence. Thus, the ramp did not give access to a "*square*" 295 ft. long and 33 ft. wide, but rather only to a strip at most 3 ft. wide and at most 98 ft. long (approximately 33 sq. yards). There were also no floodlights on the fence and no night-time illumination "*bright as day*". As well, there were no "*thirty to forty*" freight cars. The entire loading track could have accommodated a maximum of six freight cars, and no more than three would have fit alongside the little ramp directly by the fence. (The former inmate Josef Odi, who – unlike Freimark – was familiar with the old Gas Delousing Chamber, and had described it correctly, had already considered it remarkable indeed that on some days as many as "*several*" freight cars could be loaded!)

In its decision of revision, the District Court of Mönchengladbach avoids commenting on the physical impossibility of the "*thirty to forty*" freight cars in a most unusual way: while quoting the verdict verbatim at all other times, in this instance the Court simply omits the claim of thirty to forty freight cars in its quotation from the verdict. Was this deliberately omitted, or

done so through sloppiness? The District Court of Mönchengladbach does not comment on the other errors in Freimark's account which prove his unfamiliarity with the site. Further, the District Court of Mönchengladbach attempts to gloss over the physical impossibility of setting up the work commandos (as specified by the Wuppertal Court) between the rail line and the fence by arguing rather weakly:

First, according to the Motion, there was a distance of 8.9 ft. between the rail line and the fence, and second, the work details surely did not number as many inmates as the Motion calculated on the basis of statements of the Wuppertal Court and of data from the Auschwitz Chronicle.

Regarding the first objection, the District Court of Mönchengladbach failed to take note of the information it had with respect to rail and loading facilities. Otherwise it would at least have noticed that freight cars protrude over the rail line, *i.e.*, that there were by no means all of 8.9 ft. of open space between the cars and the fence, but rather 5.6 ft. at most. The Court would have had to realize that it was not possible to walk or stand immediately next to the fence, that a usable strip approximately 3 ft. wide was all that remained, and that this strip as well was no longer than just barely 98 ft. (including space for guards at the sides). A closer look would have revealed to the District Court of Mönchengladbach that it was impossible for more than twenty persons to line up, much less to work here under guard. And there would have been absolutely no space left for the alleged beatings and murders to take place and – to quote Freimark – to be observed in detail by all the inmates present.

Regarding the second objection, it is rather amazing that the District Court of Mönchengladbach suddenly casts grave doubts on the data given in the *Auschwitz Chronicle*, that source which it otherwise deems so extremely reliable (namely, when the data it provides serves to incriminate), and it is all the more surprising that the Court does so without even having examined the documents cited therein (work detail lists). Well, never mind! Loading, unloading and reloading the thirty or forty freight cars, as was described and “*ascertained*” by the Court, would have required a great many workers, and the Wuppertal Court also stressed this repeatedly. But where should these have found enough room under the actual conditions? The District Court of Mönchengladbach leaves this vital question completely open.

Investigations pertaining to the alleged site of the crime reveal many other discrepancies, which confirm two things:⁵³

- Freimark testified to many local details that exist only on the incorrect Court sketch, not in actual fact. He clearly had no personal memories of the site.
- Many of the incorrect details “*ascertained*” by the Court are integral parts of the scenario which is the basis for the account of the crime and the corresponding ‘findings’ of the Court.

These two points alone prove that the testimony of the witness Freimark, and the account of the alleged events subsequently set out in the verdict, are false.

3.2.4. ‘The Wrong Gottfried’

In the Wuppertal trial, witness Freimark repeatedly declared that the accused was “*indelibly impressed*” on his memory as “*Gottfried*”. This was rather surprising even then, for in his earlier testimony – those samples of it which were known at that time – Freimark had never mentioned Gottfried Weise, the man who was allegedly so indelibly impressed on his recollections.

⁵³ For details cf. Matthies/Jordan, *op. cit.* (note 48).

3.2.4.1. New Evidence: the Real Gottfried of Freimark's Recollections

In the meantime, lengthy reports and witness statements of Freimark's have come to light which were not yet known at the time of the Wuppertal trial. In 1959/1962, for example, Freimark wrote a very long report for the Yad Vashem, detailing everything he remembered about Auschwitz. Freimark clearly spent years intensively reviewing his Auschwitz memories for this purpose, and these accounts contain something quite astonishing: at that time, Freimark recollected a completely different Gottfried (and *only* this different one):

*"When Oskar [an inmate chief overseer] was sent home, he was replaced by another German, named Gottfried. He was from the Sudetenland. He was a terrible son-of-a-bitch. An assistant overseer served under him, a Belgian named Leon. The two of them were dreadful murderers."*⁵⁴

So in 1962, Freimark clearly associated the name Gottfried with an inmate. Freimark had to endure his tyranny when he was "*skilled laborer in the weaving mill*". And if he *had* remembered more than one murderous son-of-a-bitch named Gottfried, is it really credible that he would at that time (1962) have mentioned exclusively the one of whom he only knew in very general terms that he was a "*terrible son-of-a-bitch*" and a murderer, and would have completely forgotten about the very memorable one-eyed Gottfried Weise even though – according to Freimark's testimony of 1985 – he had observed *this* Gottfried commit several very definite murders, at great peril to his own life?

3.2.4.2. The Wuppertal Theory of "Successive Reproduction"

The Wuppertal Court believes it has found a way to explain the workings of Freimark's memory. The Court explained that despite the great passage of time "*his 'simple' recollection... of the central event [showed] the high degree of accuracy of his recollections.*" Further, the Court exhibited psychologically motivated empathy for the way in which Freimark first did not, then did remember things.⁵⁵ The witness, the Court explained, successively reproduced his memories around emotionally charged focal points and had thus not been affected by external influences.⁵⁶

To Freimark, the name "*Gottfried*" was no doubt a "*focal point*" for the reproduction of "*emotionally charged fragments of memories*". Does it not seem reasonable to suspect that Freimark "*successively reproduced*" the wrong Gottfried?

3.2.4.3. How was the Accused Identified?

In the trial of Gottfried Weise, the identification of the accused was carried out in a gross deviation from any serious recognition process.⁵⁷ As already mentioned in the context of Isaac Liver's statements, potential witnesses for the prosecution were given a questionnaire providing information regarding the suspect and the charges brought against him.⁵⁸ An accompanying series of photographs included several of the accused, which, however, is probably of lesser importance in this case, as the one-eyed Gottfried Weise is easily identified anyhow. It is thus no surprise that Freimark, who had several opportunities to study the photos, knew very well which of them showed the accused. And as though that had not been a bad enough travesty of the identification process, the Wuppertal Court even permitted the staging of this farce in the courtroom:

⁵⁴ Yad Vashem report, p. 63; doc/151.

⁵⁵ Verdict, p. 187; doc/180.

⁵⁶ Verdict, p. 188; doc/181.

⁵⁷ Cf. the works of Prof. Dr. Michael Stadler, Institute of Cognition Psychology, University of Bremen; cf. esp. Stadler/Fabian/Wetzels, "*Wiedererkennen des Täters oder Identifizieren des Beschuldigten?*", in *Bremer Beiträge zur Psychologie* 100(1) (1992).

⁵⁸ Regarding similar practices in medieval witch trials, see the chapter by M. Köhler, this volume.

“Much as though a great weight had suddenly lifted from his shoulders, he [Freimark] said that he had immediately recognized ‘Slepak’, ‘Gottfried’, when he had entered the courtroom, and then, looking at the accused, he continued: ‘Yes, that’s him. Let him take off his glasses. He wasn’t wearing glasses back then. I’m inmate 87215. Do you recognize me?’ Flipping back and forth in the photo folder that he had been given, and getting more excited and upset by the second, he identified the accused after only a few moments: ‘I’m looking, and I think I’m in Auschwitz again. That’s him (photo 8). No doubt about it, that’s him (photo 14). I saw him like that (photo 2). That’s him too. There’s no doubt, these pictures show Slepak. That’s the man sitting here today.’”⁵⁹

3.2.4.4. The Wrong Gottfried: Result of “Successive Reproduction of Emotionally Charged Remnants of Memories”

Freimark’s considerable prowess as an actor in the Wuppertal courtroom shows how thoroughly he was able to embrace a role that accrued to him from successive reproductions of his memory. How could the wrong “Gottfried” have evolved in his mind?

When he was first questioned about Gottfried Weise in 1985, the name “Gottfried” was still “*indelibly impressed*” on his memory, but any recollections of the actual person had already faded. He is then questioned quite pointedly about a presumed murderer named “Gottfried”. To Freimark this name is a focal point for emotionally charged remnants of memories. One of his emotionally charged remnants is the certain belief that all SS-men employed in Auschwitz “*participated in the machinery of murder*.”⁶⁰ Two emotionally charged remnants now combine in his mind to produce a new “*focal point for successive reproduction*” in a fictional construct that is growing ever more real to him. A photo album is placed before him, showing men wearing the hated uniforms of concentration camp guards. Unlike the others, one of them is portrayed several times. He has only one eye – that makes him stand out: “*Sleepy*”, or “*Slepak*”, whom they had specifically asked about! And his name is Gottfried! Goodness gracious! Freimark now feels certain that he has found his man. All that’s still lacking is the appropriate story. And Freimark proceeds to successively produce memories of other emotionally charged remnants, drawing on things experienced, read and heard: the story that inmates who had hidden in a freight car were shot. Of course...:

Hadn’t he, Freimark, actually seen that happen himself? – Let’s see, what was that all about again? – Right: an inmate from Grodno⁶¹ – or was it two?, and Graf had shot him?⁶² – Were there perhaps even more of them? – But of course: there were three, and two of them were shot by “Gottfried”. – Yeah, sure, he’d already been a “dreadful murderer” back in the weaving mill. – And where did he shoot the two of them? – Well, surely there were freight cars to be loaded, standing outside the “Old Canada” area, and the fellow in charge there used to shoot, too.

So was that “Gottfried”? – Of course, who else should it have been, if not that “terrible son-of-a-bitch”? Sure, he was the one! – Incidentally, his surname was Weise. – Oh really? Well, I still think of him by his first name.

What’s that? 1944, not 1943? Well, all right then!!! 1944!

⁵⁹ Verdict, p. 183; doc/179.

⁶⁰ Verdict, p. 182; doc/179. Again, there are parallels to the witch trials: every defendant is guilty!

⁶¹ For Freimark, the name of the town Grodno seems to be another focal point for emotionally charged remnants of memories. In his imaginative account of how he participated in the murder of a fellow prisoner, his accomplices are again three inmates from Grodno, who were then executed; doc/67.

⁶² Verdict, pp. 196-197; doc/182.

Freimark of 1985 grows ever more certain. And it is not long before he can recount his subjective truth with such “*astounding accuracy and realism*” that the witness-hunting public prosecutor is ecstatic and the Wuppertal judges are all the more so.⁶³

In its decision of revision, the District Court of Mönchengladbach comments on all this:

“The supposition advanced by the appellant, that the witness Freimark could have confused the appellant with a functionary inmate named ‘Gottfried’ is not a statement of fact commensurate with the requirements for admissibility. The appellant has not submitted any concrete evidence pointing to such a confusion. The witnesses he has proposed to call in order to establish the state of witness Freimark’s knowledge with respect to the appellant and the inmate Gottfried are not suitable as a source of evidence because they cannot contribute anything towards establishing what the witness Freimark knew at the time.”

[Note: the testimony of 58 witnesses, all of whom were in the same area as Freimark, had been proposed as evidence to establish that the inmates did not know their guards by their first names.]

3.2.5. Other ‘Wrong Gottfrieds’ in Freimark’s Accounts

It is incredible to see how thoughtlessly a German Court applies the previously described theory of “*successive reproduction*”. To emphasize how great the danger of ‘wrong Gottfrieds’ is with story-tellers like Freimark, the following gives just one example of the many other instances where Freimark has mis-identified persons:

In his Yad Vashem report (1959/1962), Freimark describes how the infamous Dr. Mengele, assisted by Dr. Knott and Dr. Schor, took a quart of his blood.⁶⁴

In his 1966 testimony regarding Sachsenhausen, Freimark then claimed that a Dr. Senteler (correctly: Zenkeller) had taken this quart of blood.⁶⁵

In his Suwalki report of 1989 (“*Einsam in der Schlacht*” [Lonely in Battle]) he again names Dr. Mengele and Dr. Knott as having taken the blood, but this time without mentioning Dr. Schor.⁶⁶

Freimark’s memories focus on a central event, namely the taking of the blood. His tendency to exaggerate turns the quantity into an entire quart. But nevertheless: the taking of the blood – the central event – very likely did indeed take place. The acting persons, on the other hand, are freely exchangeable in Freimark’s imagination. It is easy to see why Freimark named Dr. Zenkeller (1966) as being the one who had taken the blood: Freimark hated this physician and in 1966 accused him of, among other things, having carried out “*selections*”. The central experience was that this inmates’ physician had had to decide which patients were to be admitted to the infirmary for treatment. Freimark’s penchant for exaggeration turned this into “*Selections For The Gas Chambers*” – a charge which, as is well known, bodes ill for anyone accused thereof. Unlike Gottfried Weise, however, Dr. Zenkeller was lucky: he was Polish, was given a fair trial in Poland, and was acquitted.⁶⁷ Had he been German, the matter would no doubt have ended tragically for him too.

⁶³ According to the Court (Verdict p. 196; doc/182) two inmates were indeed shot by one *Unterscharführer* Wigleb in 1943 after attempting to hide in a wagon under some things that were to be shipped out. Because of the 1943 incident, former *Unterscharführer* Graf was charged in Vienna as accomplice, but was acquitted. According to Freimark, in 1944 he was again an accomplice in a precisely identical event, this time committed together with Weise. Clearly Freimark had heard about the event of 1943 and proceeded to impute it to Gottfried Weise. Incidentally, Freimark had originally stated 1943 as the date for this event as well, and it took the joint efforts of the Prosecuting Attorney and the judge to persuade him to revise the date to 1944.

⁶⁴ Yad Vashem report, p. 72; doc/160ff.

⁶⁵ doc/167, 168. In the transcript it was first typed, then crossed out with the same typewriter: “*also took a liter of my blood.*”

⁶⁶ doc/139.

⁶⁷ *Hefte von Auschwitz*, no. 15, p. 45, footnote 90.

In its decision of revision, the District Court of Mönchengladbach does not waste time on such considerations. It did not even take note that the name of the physician accused by Freimark was actually Dr. Zenkteller. Similarly, by failing to consider this Polish physician's duties, which are known in detail, it also neglected to ensure the proper evaluation of Freimark's statements.

4. The 'Freimark Case'

In Freimark's various accounts, there are many other examples of persons, places and incidents being mixed up. These have been discussed in greater detail in a separate analysis of claims and data by and about Freimark.⁶⁸ On the basis of the statements he made in the course of the 'Freimark Case' – statements which, due to the talkativeness of the witness, are amply available – the goal-oriented nature of his testimony can be well analyzed. The overriding goals which become apparent time and again are:

- a) the desire for revenge for his incarceration, and
- b) the desire for self-aggrandizement.

Freimark adapts these overriding objectives to his individual case-oriented goals. In 1966, for example, his desire for revenge was directed against Dr. Zenkteller. When he realized that, being Polish, Zenkteller – an able Polish army medical officer, by the way – was immune to false allegations, Freimark redirected his accusations at Dr. Mengele. Freimark also manages to adapt his overriding desire for self-portrayal to the conditions presented in each individual case. In his Yad Vashem report of 1959/1962, for example, he still wrote a great deal about his heroic work for the Resistance movement of the Camp Underground, and about his no less heroic participation in the preparations for the so-called Crematorium Uprising (October 7, 1944). At that time he still gave the time of the beginning of these preparations as "*August 1944*". That fit in well with the actual beginning of his illness, May 1944. In the Wuppertal Trial, however, it was necessary for him to postpone his illness, since otherwise he could not have incriminated the accused. To prevent any conflict with his alleged heroic feats in the Resistance movement, he now gives the time he fell ill as late October 1944. This in turn clashes with his transfer to Sachsenhausen, which can be precisely dated as October 23, 1944. In writing his heroic epic "*Einsam in der Schlacht*" [Lonely in Battle] for the Suwalki book in 1989, after the Wuppertal Trial, he therefore restricts himself to only very vague comments about his participation in the Uprising of October 7, 1944, and shifts the starting date of his illness to yet another time – December 1944.

Incidentally, some American friends of a young Israeli were sent translations of the Suwalki book. At first the Israeli was so moved by Freimark's account that he did not think he could go on reading. But then he did read on. He provided the translation free of charge, annotated with the comment: "*This man is a fucking liar!*"

In its decision of revision, the District Court of Mönchengladbach:

"The credibility of the witness Freimark is in no way compromised by this comment."

5. The 'Wuppertal Case'

5.1. The Bias of the Wuppertal Court

In Wuppertal they were happy about Freimark's so precisely tailor-made memory. Freimark was the Court's dream witness.

⁶⁸ Matthies/Jordan, Aug. 1993: *Der Fall Weise – Neue Beweise zur Klärung unrichtiger Angaben des Zeugen Freimark und unrichtiger Feststellungen im Urteil des Landgerichtes Wuppertal vom 28. Januar 1988*. Copies of this study are available in return for photoduplication costs.

Up until then, nobody had wanted Freimark as witness. Neither in the Sachsenhausen Trial nor in the Frankfurt Auschwitz Trial had he gotten the role he longed for, and even the clerk who took down Freimark's Yad Vashem report seems to have harbored a few doubts, as his skeptical questions would indicate. But in Wuppertal, Freimark was finally given stage center. The Presiding Judge's "common knowledge" and his desire to create a memorial for the victims of Fascism provided for the proper staging of his presentation. The judge himself expounded on the nature of his "common knowledge" in the verdict; his desire for a 'memorial' was initially known to the author of this article only through hearsay, and so I made inquiries. The result: in late 1985 the Wuppertal newspaper had reported about the many deaths that had occurred in the concentration camp *Kemna* that had existed near Wuppertal from mid- to late-1933. A curious Wuppertal inhabitant asked why the names of the murdered persons were not given on the new Kemna Memorial. It turned out that, happily, there had been no casualties in Kemna at all, and the allegation of "many dead" was thus wrong. The newspaper named the City Archives as its source. The City Archives named judge Klein as theirs. And judge Klein did not consider the polite inquiry, now addressed to him, to be deserving of a reply.⁶⁹

The appropriate stage-set for the trial was provided courtesy of the Wuppertal 'Antifa', the anti-Fascist scene: the VVN's metastasis whose fellow-travelers and hired applauders happened to be particularly numerous in Wuppertal and included the local press. The trial which was then enacted in Wuppertal has already been reviewed in detail in the book *Der Fall Weise*:⁷⁰ the bias exhibited by the Wuppertal Court, the disparate treatment and valuation of the witnesses for the prosecution and the defense, the refusal of numerous motions to hear evidence, and the suppression of exonerating evidence. I have already mentioned a further example of the suppression of evidence practiced in Wuppertal (Section 3.2.1.1, lab reports). A separate report⁷¹ discusses further aspects of the one-sided valuation of evidence in Wuppertal, and I will dispense here with a repetition of the details set out in the book and the report. Copies of the book were sent to all the members of the *Bundestag* [German parliament], and the report went to all those persons directly responsible: the Federal President, the Federal Chancellor, the Federal Minister of Justice, the Chief Minister in charge, and the regional Minister of Justice. The response: with a few exceptions, there was a general denial of responsibility, references to the separation of powers, and referrals to the Public Prosecutor's Office, which in turn states succinctly that it perceives "no need for action" without responding to so much as a single one of the arguments submitted.

This situation is not only unfortunate for the individual tragic case in question, but should be a cause of sleepless nights for anyone concerned about how far Germany is actually under the rule of law.

5.2. False Claims Made by the Wuppertal Court

The Wuppertal Court made several false claims. A number of them have been known for some time. For example, it has been proven ever since 1990 that the Court's claim that no further documentation was available regarding Freimark's illness was false (see Section 2.2, 'New Evidence').

⁶⁹ Copy of the unanswered letter, C. Jordan's files.

⁷⁰ Rüdiger Gerhard, *Der Fall Weise – Dokumentation zu einem Auschwitz-Birkenau-Prozess: Ein "Lebenslänglicher" fordert Gerechtigkeit*, 2nd ed., Türmer, Berg am See 1991. For example, see pp. 31-33, statements of Dr. Hans Eisenschimmel (not read into evidence) and Henry Isaac Liver (ignored); p. 51, refusal to consider the 'Vienna File'; p. 60, witness Kierski (disparaged as "having insufficient perspective"); p. 73, witness Burger (exonerating evidence given by a witness for the prosecution is simply glossed over and explained away).

⁷¹ Jordan, March 15, 1992: *Der Fall Weise – Fakten zum Wiederaufnahmebegehren*. Copies of this work are available in return for photoduplication costs.

Another false claim was that the medical records of convalescing patients were always marked “*typhus still suspected*” (see Section 3.1.7.2, ‘Mis-Timed Circumstantial Evidence’).

In early 1995, particularly weighty evidence came to light regarding further false claims made by the Wuppertal Court. On January 12, 1995, Charles Biedermann, Director of the International Tracing Service in Arolsen, sent the Federal Secretary of the Interior (Bonn) the lab papers, including the serological results, that had been held back for such a long time. In his accompanying letter, he wrote apologetically that it was not the ITS’s fault that these documents had been held back for so long. In 1988 the Presiding Judge Klein had merely said:

“The issue of decisive importance in this trial [of Weise] is the question whether the witness Jakob FREIMARK was still interned in the concentration camp Auschwitz on September 18, 1944, as the ITS had confirmed earlier in a memo to the Bavarian Landesentschädigungsamt [State Compensation Office].”⁷²

And further:

“Not until now [letter, Federal Department of the Interior, December 19, 1994] have you informed us that in fact every single lab test as well as its nature and results were of vital importance in the trial.”

Contrary to this, judge Klein gave the impression both during the trial and in the verdict that he had in fact searched for such medical records and one might be sure that none existed.

The letter of the ITS reveals, as an aside, that judge Klein must have had access to Freimark’s Compensation File. *The defense is still denied even the slightest glimpse of this file.*

6. General Problems Entailed in Very Late Trials

In its every stage, the Weise Trial entailed problems which most likely did not arise only in this case, but in other, similar trials as well. What happened and continues to happen in the case of Gottfried Weise, therefore, is a general model of the legal problems created by the rescission of the statute of limitations.

Now these admittedly are problems lying within the province of jurists, a province where I really have no business interfering. But I would not presume to intervene in someone else’s province if I could see someone in responsibility doing his duty there.

6.1. The Generation Gap

The Baden-Württemberg Minister of Justice, Eyrich, noted as early as 1979 that a generation gap was to be expected in trials taking place so very long after the alleged crimes. The process of reaching a verdict, Eyrich said, could be compromised by the fact that the younger generation, to which the judges belong, “*cannot properly conceive of the conditions and framework of the crime which they themselves, after all, never experienced.*”⁷³

No doubt Eyrich perceived the generation problem first and foremost with respect to the evaluation of events of the war – the absolute necessity to obey orders, etc. But even in the case of Gottfried Weise, who is charged with completely private murders committed on a whim, as it were, and by no means in compliance with any orders, – even in this case the younger judges were quite unable to “*properly conceive of*” many things.

A contemporaneous witness who remembers the difficulties encountered in the cremation of the Dresden bombing victims, for example, would surely not have fallen for the atrocity tale of children being burnt alive in open-air burning pits. Or another example: anyone who had ever been on guard duty himself would certainly have wondered where Weise might have gotten the ammunition he

⁷² This date of Freimark’s presence in Auschwitz had never been questioned and was not an issue at all.

⁷³ *FAZ*, Feb. 9, 1979, p. 5.

wasted in shooting wildly about in the camp, why the Guard Register contained not a single entry about the shootings, etc. etc.

One example shall suffice to show how completely incapable the younger generation of judges in Mönchengladbach was of understanding and “*properly conceiving of*” the conditions and situations of those days:

One of Freimark’s many ‘mistakes’ was his claim, made in the Suwalki book of 1989, that he had been interned in a prisoner-of-war camp at Allenstein. “*The camp was called Stalag 10a.*”⁷⁴ According to Freimark, this was where the Polish Captain Kachacinski told him:

*“I invite you to join the underground organization that we will set up. You will be the contact to all the camps. You will be the contact between the camps. You will be given work that will enable you to move freely between the camps. As electrician you will test the electrical fences.”*⁷⁵

In the Suwalki book, Freimark proceeds to fill several pages describing his underground activities as electrician.

In his Yad Vashem report, he tells of similar work done in Auschwitz and refers to the experience he had gained in “*Stalag 10a*”:

*“We went to work in the Polish underground. We went around the camp and made sure that the signs were hanging properly and that the small fence in front of the electrical fence was in order. I was the foreman in this work detail because I said I was already experienced as electrician. I had already done this kind of work in Stalag 10a.”*⁷⁶

In its decision of revision, the District Court of Mönchengladbach:

*“This statement also does not suffice to compromise the credibility of the witness Freimark, because on page 70 the witness only states that he had **pretended** to be an electrician in order to be assigned to a special unit, which he indeed was; and that he had been made foreman there. Thus, the witness Freimark does not claim that his presence in the Prison Camp was a matter of fact.”*

The District Court of Mönchengladbach did not even pay attention to the abbreviation “*Stalag*”. As we know, this did not stand for “*Strafgefangenenlager*” [Prison Camp], as the District Court incorrectly claims, but for “*Stammlager*” [Main Camp], which was the term for regular prisoner-of-war camps – as opposed to “*Oflag*” = “*Offizierslager*” [Officers’ Camp]. In light of this, how should the judges at Mönchengladbach have thought to ask the questions that would have immediately occurred to any member of the war generation? For example: how did Freimark, who allegedly was 16 years old at that time, ever get into a prisoner-of-war camp at all? And why were there so many Polish officers there, who after all are known to have been quartered in separate Officers’ Camps? But this did not ‘ring a bell’ for these younger judges who, luckily for them, were born too late to be subject to doubts raised by experience. Instead, they come to the easily refutable false conclusion that it was possible for Freimark to simply “*pretend*” that in Auschwitz. Even the excerpt which the District Court of Mönchengladbach quotes from Freimark’s Yad Vashem report shows that he had not said anything about ‘pretending’ there. In the Suwalki book he even proceeds to build up a whole series of his heroic deeds around his work as electrician. If the District Court of Mönchengladbach considers this work to be ‘pretense’, then it must also relegate Freimark’s entire Suwalki report to the realm of fable. In other words, it must acknowledge Freimark to be utterly unreliable, as petitioned by the defense.

⁷⁴ Suwalki book, p. 314; doc/120.

⁷⁵ Suwalki book, p. 316; doc/124.

⁷⁶ Freimark’s Yad Vashem report, p. 70; doc/155.

6.2. Wilful Application of Standard Theorems of Forensic Psychology

While the Wuppertal Court did dutifully read the textbooks on the forensic application of psychology, it stretched the theorems it found therein to the breaking point. Something which holds true for normal trials cannot simply be extended ‘as is’ to the new kind of Special Trial we have here. For example:

The forgetting process over time, which the Court did take note of in some detail,⁷⁷ is illustrated by a bell curve in the book by Bender, Röder and Nack⁷⁸. It is downright frivolous for the Wuppertal Court to attempt in pseudo-scientific manner to apply such ‘forgetting’ bell curves in unmodified form in cases where the events to be recalled are 41 years removed, such as in the case of Freimark’s first questioning. It ought to have been noted that the ‘forgetting’ bell-curves of textbook fame are based on forgetting times on the scale of months, of a few years at the very most – not of several decades.

6.3. Disregarded in Wuppertal: the Tendency of Very Late Testimony to be Goal-Orientated

Bender, Röder and Nack point out that testimony given in the course of a trial is frequently geared towards a desired goal (in other words, incrimination or exoneration of the accused). For this reason, remnants of memories are often deformed to make them ‘expedient’; untruths are ‘attached’ to true details. Further they state:

“132. Whereas the comprehensiveness and reliability of recollections deteriorate with time as a matter of course, the subjective certainty of the informants – the conviction that their recollections are complete and reliable – frequently exhibits the opposite trend: they (allegedly) become all the more certain, the farther back the actual event lies in time.

133. This phenomenon is related to the increased probability that remote events are more frequently ‘retrieved’ from the depths of memory because the informants have thought about, have mentally occupied themselves with the events in question. But such a resurrection of earlier memories not only reinforces thought patterns, it also falsifies and expands them. Given this prerequisite, the farther back an event is, the more our informants have ultimately forgotten how little they had remembered of the event shortly after it happened.”⁷⁹

This classic textbook speaks of even 30 days as “*long-term*”. Freimark was first questioned about the case of Gottfried Weise after 41 years, *i.e.*, 15,000 days – an intervening period 500 times as long. During this period, additional things he repeatedly heard and read influenced his memories in an emotionally highly charged manner. The ever-changing content of his testimony at different points in time speaks for itself: fading memories are overlaid with things heard, read and imagined.

The problems in ascertaining truth, as already noted for regular trials by renowned authors specialized in this field, occur all the more with exponentially increased severity in political ‘special trials’ conducted decades after the alleged fact. In the Federal Republic of Germany, the problems that arise are made taboo for reasons of foreign affairs or ‘public education’. Academic research is not subject to such fetters in the U.S.A.

⁷⁷ Verdict, pp. 187, 188; doc/180, 181.

⁷⁸ R. Bender, S. Röder, A. Nack, *Tatsachenfeststellungen vor Gericht*, 2 vols., C. H. Beck, Munich 1981, v. 1 p. 46.

⁷⁹ R. Bender, S. Röder, A. Nack, *ibid.*, v. 1 p. 48.

6.4. Ignored in Wuppertal: The “*Survivor Syndrome*”

The problem of the “*Holocaust Survivor Syndrome*” received international attention at the time of the Wuppertal trial. Medical sources told me that the Ukrainian-American psychiatrist Dr. O. Wolansky was one of the leading experts on this subject today, and I was referred to a seminar he had given on this subject on January 25, 1993, at a Congress held in the Polish Consulate in New York and attended by 150 Polish, White Russian and Ukrainian physicians. To quote an excerpt:

“Well-known Ukrainian-American psychiatrist Dr. O. Wolansky explained the persistent psychological and psychiatric damage caused to the mentation of the majority of the concentration camp survivors. He indicated that in regard to Holocaust survivors alone, over 1600 medical articles and books [have been] written on this subject in the past 50 years, which resulted in the term *Holocaust Survivor Syndrome*. He explained that the true horrors and the stress of the concentration camps were forgotten by survivors with the passing of the years, and were supplanted by group fantasies of martyrdom borrowed from heard or read materials or by delusions confabulated anew. He illustrates this phenomenon with the effusive and emotional testimony in Jerusalem of the Jewish Treblinka survivors at the Demjanjuk trial which subsequently turned out to be what in legal terms and before a more neutral tribunal could be called prejudice and/or fabrications.”⁸⁰

It was revealed in the Wuppertal trial that Freimark had been under psychiatric care. The symptoms of “*Survivor Syndrome*” which Dr. O. Wolansky listed in his seminar –

- fantasies of martyrdom borrowed from heard or read materials,
- delusions confabulated anew, and
- effusive and emotional testimony –

may be found in Freimark’s accounts in great number, in the form of ‘attached untruths’ as set out by Bender, Röder and Nack.

7. *Cautio Criminalis*

In advocating the rescission of the statute of limitations, Herr Schwarz-Schilling soothingly pointed to the allegedly matter-of-course maxim of *in dubio pro reo* [when in doubt, acquit]. As though to reaffirm his confidence in this practice, he released a postage stamp in 1991 (in his erstwhile capacity as Postmaster General) which commemorated the four-hundredth anniversary of the birth of a man who had made outstanding contributions to the development of the western world’s legal traditions.

At a time when all the world (he himself included) still believed in witches, Jesuit priest Friedrich Spee von Langenfeld advanced his “*Judicial Considerations Regarding the Witch Trials*”. Of course the heinous crime of witchcraft must be combated, he said, but precisely *because* witchcraft was such an especially grave crime, the accused must be granted every possible avenue of defense.

One might wish that those in charge of our justice system today would read Spee’s book and take his advice to heart.⁸¹ Of course no one still believes in witches who go flying off on their brooms at night to meet with the devil. But the belief in particularly heinous crimes as a matter of “*common knowledge*” is firmly entrenched. And of course physical torture is no longer used today, unlike in the witch trials of medieval times. Even in the post-war Special Trials it has not been the method of choice since the early 1950s. But defendants accused of crimes commonly known to have been particularly heinous are still denied the full range of avenues for defense demanded by Spee more than

⁸⁰ News release, Jan. 25, 1993, Polish Historical Society, PO Box 8024, Stamford, CT 06905, USA; cf. Paul Chodoff, “*Post-traumatic disorder and the Holocaust*”, *American Journal of Psychology – Academy Forum*, Spring 1990, p. 3.

⁸¹ Friedrich Spee von Langenfeld, *Cautio Criminalis oder Rechtliches Bedenken wegen der Hexenprozesse*, dtv, Munich 1982.

360 years ago. How, for example, was Gottfried Weise to defend himself against being branded “the Beast of Auschwitz” if the flaming burning-pits, the burning of live children, the mass gasings going on all around him, the meters-high flames shooting out of the crematoria chimneys were so “commonly known”? It was only logical for the Wuppertal judges to allow the beast thus branded no ‘excuses’.

As a high-ranking jurist informed me, one of the elements ensuring the citizen’s firm understanding of their legal position is that verdicts which have become final are not open to nitpicking. I beg to differ. Even the judicial Demigods in Black may err. It is very important to keep them from becoming ideologically blinded and subject to preprogrammed ‘errors’. The uncertainty about one’s legal position which the rescission of the statute of limitations has caused must be remedied. Even those defendants who are charged with ‘special crimes’ must be able to defend themselves without restraint, and persons who speak up in their favor must not be defamed out of hand as “Nazi” and potential arsonist, as it happened in Solingen to Herrn Kissel for daring to put in a good word for his neighbor Weise.⁸²

In 1979, journalist Fromme predicted that our naturally evolved German legal traditions would be silently restored “in about the year 2000”. Isn’t it high time that Böckenförde’s expert judicial report is finally concluded with the analysis of a concrete legal case?⁸³ No one seems to have the courage to grasp the nettle, neither in the matter of principle nor in the individual case of Gottfried Weise. In this case, a retrial had already been requested in late 1992. A few months later, Weise’s attorney attempted to find out from the District Court of Mönchengladbach how the processing of the application was proceeding. The application could not be processed, he was told initially, because the documents requested had not yet been provided by North Rhine-Westphalia.

Then a game ensued, not unlike what we as children used to call “*Schraps lost his hat*”. The Pardons Office had the documents. No,

not that office, a different one. No, not that one either. Finally, in late November 1993, the District Court sent a memo with a voluminous enclosure. The Public Prosecutor’s Office of Cologne – the same one that had achieved Weise’s conviction – had had the files since July 1993, and had drawn up a lengthy ‘decree’ in which it attempted, with a great many words and very little content, to substantiate that the application for retrial should be refused. In a further ‘decree’ of December 1993, the Public Prosecutor’s Office brought forth additional arguments for refusal. In January 1994 Weise’s attorney submitted the refutation of all these arguments to the District Court. In late May 1994 the application for retrial was refused, which the defense appealed. The Provincial Court of Appeal at Düsseldorf refused the appeal, without hearing and without comment. The Federal Constitutional Court did not admit the appeal, on the grounds that first the Provincial Court of Appeal at Düsseldorf would have to hear the appeal it had refused earlier. And since early 1995 the Düssel-



⁸² Cf. the flier which Herr Kissel saw himself forced to distribute because the media denied him the right to publicly correct the vicious incendiary slander that had been directed at him; cf. reprint of this flier in U. Walendy, *Historische Tatsachen* no. 59, Verlag für Volkstum und Zeitgeschichtsforschung, Vlotho 1993, p. 38.

⁸³ In the meanwhile, Prof. Böckenförde has become a judge of the German Federal Constitutional Court himself.

dorf Court of Appeal is waiting for the documents and files to resurface from somewhere within Chief Minister Rau's jurisdiction.⁸⁴

How long is this playing-for-time going to continue? After two previous strokes, Gottfried Weise has just undergone a massive operation for cancer, followed by pneumonia, and has suffered a third stroke. To some, a 'natural solution' might seem the easier way out.

For as long as those responsible continue to shirk their duties, all we have left to us is the prayer which I found inscribed on an Upper Bavarian house,⁸⁵ invoking Saint Michael, the "*champion of justice, to stand by us in evil times*".

8. Addendum by Michael Gärtner

Since the first German Edition of this book has appeared, the situation of the presented case has almost sensationally changed. Due to his meticulous, unremitting efforts, the severely disabled veteran Dr. Claus Jordan has discovered facts, which place the verdict of 1988 against Gottfried in an absurd light.

8.1. The Documents

8.1.1. Scene of the Crime

Documents about the railway connection of the *Personal Effects Warehouse I* were found in a Moscow archive. This includes documents about a delousing facility that was operated therein. These documents are being complemented by air photos of the western Allies and of the German Luftwaffe. First researches on these documents are leading to the assumption that the Auschwitz main camp only had a simple rail line passing by rather than a ramp.

8.1.2. Operation of the Delousing Facility of Kanada I

Furthermore, the documents of the Moscow archive show that the delousing facility of the *Personal Effects Warehouse I* directly attached to the Main Camp was out of operation at the alleged time of the crime as it was ascertained by the court. It has been removed into the Auschwitz Main Camp before. A highly modern microwave delousing facility with a huge capacity was installed at this place. For this we succeeded in finding an up to now unknown archive, which shows the capacity of this facility. More detailed results were published recently.⁸⁶

8.1.3. Time of the Crime

The International Tracing Service in Arolsen, Germany, has delivered documents via the German Federal Ministry of the Interior, which prove more facts:

8.1.3.1. Documents Known at the Time of the Verdict

On January 28, 1988, one day before the verdict was announced, the Wuppertal Court received documents about the typhus illness of Freimark, the only witness for the prosecution, via the International Tracing Service. Instead of involving an medical expert in the assessment, the court judged itself in its absolute power because of the "*urgency of the case*".

⁸⁴ Date of this writing: May 1995.

⁸⁵ "*O'hl.Michael 'Kämpfer des Rechts' / steh uns bei / wenn uns droht was schlechts.*" AD 1993.

Unfortunately the beautiful color photograph of this house inscription cannot be reproduced here; it was confiscated by a certain lady Prosecuting Attorney.

⁸⁶ H.J. Nowak, "*Kurzwellen-Entlausungsanlagen in Auschwitz*", *VffG* 2(2) (1998), pp. 87-105 (online: who.org/VffG/1998/2/Nowak2.html), see his contribution in this handbook.

Dr. Jordan must be thanked for his self-sacrificing efforts, that years after the verdict more documents were found in those delivered to the court, which give additional information about Freimark. According to a renowned judge, this alone should suffice for a retrial of the case.

8.1.3.2. New Documents about Freimark

In a letter of January 12, 1995,⁸⁷ the International Tracing Service of Arolsen reported about a complete series of laboratory reports concerning Freimark via the German Federal Ministry of the Interior (The International Tracing Service is not allowed to give direct information.) The Tracing Service received these results of the “*Hyg.-bakt. Untersuchungs-Stelle der Waffen-SS Südost*” [Hygienic-bacteriological Research Department of the Waffen-SS South East] regarding Freimark, starting at August 14, 1944, ending at September 18, 1944, and including the highest research number 79698, directly from the Auschwitz State Museum. According to the book *Inventararchivale Quellen des NS-Staates*,⁸⁸ these files of the *Hygieneinstitut* include 151 volumes for the years 1943-1945.

According to a first statement of a medical expert, as Dr. Jordan could establish, these laboratory reports prove that the witness Freimark was not ill at the time period in which the court placed his typhus illness. On the contrary, he was probably ill as he has described in his first statement (May/June 1944).

8.2. Omitted Hearing of Evidence by the Court

The above quoted letter of the International Tracing Service additionally proves that the Wuppertal judge Klein did not even try to search for more detailed documents about Freimark’s illness. Judge Klein has told the Tracing Service that the only question decisive for this trial would be *if* the witness Freimark was still interned in Auschwitz in September 18, 1944.⁸⁹

But the supportive Motion to Take Evidence of the defense, dating January 18, 1987, said clearly:

“Visual assessment of the original laboratory reports at the Auschwitz State Museum, Auschwitz/Poland”.

8.3. Summary

The International Tracing Service wrote in January 12, 1995:

“Only now [December 12, 1994] we were told by you [Ministry of the Interior], that instead of this all laboratory reports as well as their method and result were important for this trial.”

SEVEN years after the verdict, the International Tracing Service Arolsen sends TWENTY enclosures to the Ministry of the Interior! The Tracing Service had received these very documents from the Auschwitz State Museum as micro film copies already in 1978.

Gottfried Weise is sitting in prison with a life sentence, because the German judge Klein didn’t consult the evidence.

Dr. Claus Jordan died in June 21, 1995, four days before his 70. birthday. He didn’t have the privilege to finish his efforts and to see Gottfried Weise, whom he always considered to be a innocent man, back in freedom. But at the very least, he joined the ranks of those being prosecuted for their contributions and work for justice: In March 1995, the Tübingen judge Stein started judicial

⁸⁷ Ref. T/D -288240.

⁸⁸ Heinz Boberach p.p. Institut für Zeitgeschichte. Subtitle: “*Die Überlieferung von Behörden und Einrichtungen des Reiches, der Länder und der NSdAP*”, K.G. Saur, Munich 1991.

⁸⁹ Thus the Int. Tracing Service quotes the judge in its letter, note 87.

inquiries against him, because this article allegedly incites the German people to hatred against the Jews.⁹⁰

With this contribution, his work on behalf of Gottfried Weise's freedom and honor, Dr. Claus Jordan courageously fought for the truth, as he always did.

His friends continue his work.

Gottfried Weise was released from detention on a mercy plea in April 1997 because he was severely ill (cancer). He died in the spring of 2000.

⁹⁰ Amtsgericht Tübingen, Ref. 4 Ls 15 Js 1535/95.