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Hostage Case: Ivar Follestad Testimony

University of North Dakota

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4. Witness, did you ever hear that Norwegians came before a military court?

A. Yes.

4. Do you now mean a court of the Reich Commissioner or a Army court?

A. This was a so-called court martial.

4. And who was on this court tribunal?

A. I was never in those courts.

DR. FRITSCH: Thank you very much. I have no further questions.

PRESIDING JUDGE CARTER: Are there further questions by the defense? The Tribunal has none.

Is there any reason why this witness should not be excused permanently?

The witness will be excused.

(Witness excused)

MR. RAPP: If your Honors please, we would like now to return to Document Book 23. Your Honors, the first document we would like to submit is the document which at present is marked for identification as 515-A, the one I handed Your Honors this morning. --515-A.

This particular jurat which has been furnished in its translation to the defense counsel, reads as follows:

I, IVAR FOLLESTAD, certify, that I am a Counselor at Law and I am duly licensed to practice before the Supreme Court of Norway and all inferior courts of Norway, that I am a Lieutenant Colonel in the Norwegian Army; that I am a duly authorized representative of the office of the Attorney General of Norway and as such I am duly accredited to the office of Chief of Counsel for War Crimes (US) at Nurnburg, Germany; that I brought to Nurnberg, Germany, documents Norway 2, Norway 11 and Norway 12; that the procedure detailed here-with was followed in connection with these documents.
(A) Norway 2 is a deposition made by Egil Sorenson to the Norwegian Police at Vadsøe, Norway. After the deposition was made, the deponent (Egil Sorenson) appeared before the Judge of the Criminal County Court of Varanger, Norway, on 12 August 1947 and stated under oath, in accordance with Norwegian Law, that the contents of the deposition were true. Norwegian law provides that statements which are to be used in any judicial proceedings may only be sworn to before a Judge in court. Further Norwegian law requires that sworn statements to be used as evidence in criminal cases must be made not only before a Judge in Court but in the presence of counsel appointed by the Court to protect the interests of the party against whom the sworn statement may be used. This procedure was followed and such counsel was appointed by the Court.

(B) Norway 11 is a letter of 18 June 1947 written and signed by Dr. John Caspersen, Deputy Director of the Norwegian Ministry of Social Welfare. The letter is also signed by Dr. Karl Evert, Director of the Norwegian Ministry of Social Welfare. After the letter had been read and signed, Dr. Caspersen appeared before a Judge of the Criminal Inquiry Court of Oslo, Norway, on 3 July 1947 and stated under oath, in accordance with Norwegian law, that the contents of the letter were true. Norwegian law provides that statements which are to be used in any judicial proceeding may only be sworn to before a Judge in Court. Further Norwegian law requires that sworn statements to be used as evidence in criminal cases must be made not only before a Judge in Court but in the presence of counsel appointed by the Court to protect the interests of the party against whom the sworn statement may be used. This procedure was followed and such counsel was appointed by the Court.

(C) Norway 12 contains three letters as follows; the first dated 25 February 1947, the second 26 June 1947 and the last 3 July 1947.
All three letters were dictated by Antoni Skoen, Deputy Director of the Central Statistical Office of Norway. The letters of 25 February and 3 July were signed by Mr. Skoen. The letter of 26 June was initialed by Mr. Skoen and signed by Arne Skaug, Director of the Central Statistical Office of Norway. The three letters were addressed to Ivar Follestad.

Antoni Skoen appeared before a Judge of the Criminal Inquiry Court of Oslo, Norway, on 3 July 1947, and stated under oath, in accordance with Norwegian law, that the contents of the letters of 25 February, 26 June and 3 July, all 1947, were true. Norwegian law provides that statements which are to be used in any judicial proceeding may only be sworn to before a Judge in Court. Further, Norwegian law requires that sworn statements to be used as evidence in criminal cases must be made not only before a Judge in Court but in the presence of counsel appointed by the Court to protect the interests of the party against whom the sworn statements may be used. This procedure was followed and such counsel was appointed by the Court.

signed: IVAR FOLLESTAD

IVAR FOLLESTAD

Lt. Colonel

Norwegian Army

Nuremberg, Germany, 25 August 1947
DR. FRITSCH: Your Honor, I object to the introduction of this document as an exhibit. With Exhibit 515-A the prosecution tries to introduce Norway Document No. 2, 11 and 12 which are not admissible according to the rules of procedure of this court. This kind of procedure in my opinion would only mean getting around the regulations. According to my duty I must also object to the certificate of a witness who gives a declaration in this form and of this contents for his government.

In addition, I would like to point out that according to the principle of the better proof, in my opinion as the witness is here in the courtroom, he himself must be heard on these questions. Furthermore, I cannot see how the witness gets the basis for his statement that the declaration of the persons mentioned in the documents 2, 5 and 11 were actually given to the Norwegian court in the correct form. In no case do the documents in themselves correspond to the rules of procedure as they are valid for this court.

PRESIDING JUDGE CARTER: Is there any question in the mind of counsel as to the authority of this man to make this certificate?

You didn't hear?

DR. FRITSCH: I didn't get the last question, Your Honor.

PRESIDING JUDGE CARTER: I say if there is any question on the part of the defense as to the authority of this man to make this certificate, we think he is entitled to call him for cross examination on that subject if the defense cares to do it.

DR. FRITSCH: Yes, that is also one of the reasons submitted by me.

PRESIDING JUDGE CARTER: I say if you care to examine this man about his authority to make the certificate, you may cross-examine him on that subject.

DR. FRITSCH: Yes, Your Honor. But I would have to decide about this. In my opinion, the other reasons submitted by me should be sufficient in order to rule out this document.

PRESIDING JUDGE CARTER: I don't think it is so important on this document as it is on the documents they are trying to get in evidence.
when that objection comes up, but if you want to question his authority, you may do that now.

DR. FRITSCH: Yes, that is what I am doing, Your Honor, and I would also ask that the documents should only be admitted if the validity of this Document 515-A is recognized. If those persons who in Documents Norway 2, 5, and 11 have also given statements are placed in the witness stand for me by the prosecution so that I can cross-examine them.

PRESIDING JUDGE CARTER: If you care to cross-examine him, you can do so now. He is here in the courtroom, I understand.

MR. RAPP: That is perfectly agreeable to us, Your Honor. I believe defense counsel was inquiring whether or not the affiants could be brought to Nuernberg for the purpose of being cross-examined by defense counsel.

PRESIDING JUDGE CARTER: Oh, I misunderstood him on that. Well, I suppose if you request it that, under the rule, they have to obtain them if they can for cross examination.

DR. FRITSCH: Yes. I would like to make this application, Your Honor. I therefore ask that in case the documents are admitted in evidence I be allowed to cross-examine those witnesses who made the declarations in the documents Norway 2, 11, and 12.

PRESIDING JUDGE CARTER: We will cross that bridge when we get to it. Let's get the preliminaries out of the way first.

MR. RAPP: May I inquire from defense counsel now what defense counsel intends to do in relation with this document?

DR. FRITSCH: I would ask that this witness be called into the witness stand so that I can cross-examine him.

PRESIDING JUDGE CARTER: You are now dealing with Exhibit 515-A and not the documents themselves. Do you care to examine Follestad as to his authority to make this deposition?

DR. FRITSCH: Yes.

PRESIDING JUDGE CARTER: All right, proceed to do so.
(IVAR FOLLESTAD, a witness, took the stand and testified as follows.)

BY THE PRESIDENT:

Q. Does the witness speak English?
A. Yes, Your Honor, I do.

Q. I solemnly swear that the testimony I will give in the case on trial will be the truth, the whole truth, and nothing but the truth, so help me God.

(The witness repeated the oath.)

DIRECT EXAMINATION

BY DR. FRITSCH:

Q. Witness, please give your full name.
A. My name is Follestad.

Q. Witness, where were you born?
A. I was born in Bergen in Norway.

Q. Where are you living at present?
A. I live in Bergen in Norway, but for the time being at the Grand Hotel in Nuernberg.

Q. What are you by profession, witness?
A. I am counsel at the Supreme Court of Norway.

Q. And what is your education?

JUDGE BURKE: Just a moment, Dr. Frisch. Do you seriously question the authority of this witness to make the type of certificate which he has assumed to make here?

DR. FRITSCH: First of all I must do that, Your Honor. Unfortunately, I must do this, Your Honor, but I will be very brief.

PRESIDING JUDGE CARTER: Proceed.

BY DR. FRITSCH:

Q. Witness, I would like to ask you only to tell me whether you received the usual education for the profession of a lawyer.
A. Yes.

Q. How far did you know about the events which were connected with the evacuation in Norway?
A. I only learned of them after the war, on investigation.

Q. Witness, did you conduct these interrogations by order of the Norwegian Government?

A. Yes, I did. On the authority of the Attorney General and the Norwegian Department of Justice.

Q. Witness, on whose order are you here?

A. I am here on account of the authorities just mentioned, the Attorney General of Norway and the Justice Department of Norway.

Q. In which office here did you submit your legitimations?

A. The Attorney General had taken up contact with General Taylor and General Taylor has got the appointment from the Norwegian Attorney General.

Q. Witness, the document marked for identification, 515-A, is known to you?

A. Yes, I know the documents because, as stated, I brought them here myself.

Q. Were you yourself present, witness, when the witnesses mentioned in these documents Norway 2 and so forth were sworn in?

A. No, I was not present. I was not present when the witness mentioned in Norway No. 2 was examined under oath, but I personally was present when the three latter witnesses mentioned in 11 and 12 were sworn under oath. Anyhow, I can certify that it was done also with the witness named in Norway 2 because their protocol from the court testifying just reached me yesterday. I have it here.

Q. Then this declaration of the 24th of August 1945 was not given by you from your own knowledge but by reason of documents which you have just received?

A. No, that is a mistake on part of counsel. I just stated that I was personally present when the witnesses mentioned in Norway 11 and Norway 12 were sworn under oath in the Norwegian court. I was not present myself when the witness in Norway was sworn, but as I just told you, I have the protocol here with the following letter from the Attorney General himself.
Q. And what can be seen from that?

A. What I stated, that this witness was examined in court, counsel being appointed by the judge for the defendant Rendulic, and that he made the same statement word for word as appears in the Document Norway 2. Afterwards, defendant's counsel or judge made a few questions and they were answered, supplementary.
Q Witness, in Document 515-A, it states that the witness in Document Norway 2 on the 12th of August 1947, before the Judge of the Criminal Appeal Court of Varanger, appeared and that on this day he swore under oath that the contents of the declaration was true.

A Yes, that is right.

Q This affidavit was only made on the 12th of August 1947, then?

A The witness first made a statement to the police and afterwards this statement was sworn to in court in the presence of a Norwegian Criminal Judge and in the presence also of counsel appointed for the defendant Rendulic.

Q And Norway No. 11 and 12 were also only prepared in 1947, on the 18th of July and 27th of February? And the 3rd of July and sworn to?

A The dates just mentioned are the dates when the letters were written. On the 27th of September, the first one; on the 18th of June the second one; and on the 3rd of July the last one. They were sworn to, all of them, in the same meeting in the Criminal Inquiry Court of Oslo on the 3rd of July, 1947.

DR. FRITSCH: I have no further questions to the witness.

MR. RAPP: Your Honor, we have no questions.

PRESIDING JUDGE CARTER: The witness will be excused.

Exhibit 515-A will be admitted in evidence subject to the usual limitations that we place on evidence of this kind.

MR. RAPP: If your Honors will now please turn to page 4 of Document Book 23 and page 5 in the German Document book, your Honors, this is a deposition by Egil Sorensen to the Norwegian Police of Vadsøe describing the destruction and killing of Sorensen's wife by members of the German Wehrmacht.

DR. FRITSCH: Your Honor, I would ask the prosecution to tell me against whom this document is directed. I have pointed out already that the navy which is charged here and who is supposed to have committed some