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Einsatzgruppen Case: Opening Statement for Defense - Dr. Belzer for Graf

International Military Tribunal

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Impossible for a man of Defendant Radetzky's military rank. For him contradiction or opposition would have meant a certain danger to life and limb. Such considerations are, however, totally unnecessary in connection with Defendant v. Radetzky and there is no need to plead, perhaps, that the defendant incurred no criminal guilt because he could not be expected to oppose criminal orders given him. For Defendant v. Radetzky never received or carried out an order for execution nor did he ever assist in any way in the carrying out of such an order. This leaves a mere knowledge. I believe I am in a position to state that it is already an established principle of the American Military Tribunal that criminal responsibility cannot be based on a mere knowledge of crimes.

Accordingly, trusting the Tribunal's justice, I hope to invalidate the charge brought against the Defendant v. Radetzky.

THE PRESIDENT: Counsel for the defendant Graf. You may proceed.

DR. BELZER: (Attorney for the Defendant Graf)

May it please the Tribunal, the outside appearance of this case is marked by lack of space. The dock is terribly crowded and the seats of the counsels for the defense have grown, so to speak, into the tables of the judges. To whatever extent I feel personally honored to be seated at the table of the judges, so to speak, I must all the same say that at least this one place could have been saved if the prosecution had chosen the men whom it wanted to bring before the Tribunal in connection with the Einsatzgruppen from the same point of view which it maintained in the indictment and the opening statement. The inclusion of the Defendant Matthias Graf into the indictment of Case 9 is a serious mistake of the prosecution.

Mentioned in the indictment at last defendant is:

"Matthias Graf - (2nd Lt) in the SS, member of the SD, Officer of Einsatzkommando 6 of Einsatzgruppe C."

In number 5 of the indictment it is stated that all defendants, as officers or staff members of one or more Einsatzgruppen or subordinate units, had committed the crimes specified in the indictment.

The opening statement of the prosecution completes this statement on page 1 by saying that the defendants had been commanders and officers of special groups known as Einsatzgruppen, that each of the defendants in the dock had held a position of responsibility or command in an extermination unit and each of them had assumed the right to decide the fate of men. Examining the individual responsibility of the defendants the prosecution states in the opening statement (p. 35 and 36 of the German translation) in addition: "Each of the defendants held a position of responsibility or command in an extermination unit. By virtue of his post he had the power to order executions." And further I quote: "As military commanders these men were bound by laws well known to all who wear the soldier's uniform, laws which impose on him who takes command the duty to prevent within his power, crimes by those in his control." Finally, the prosecution in its opening statement (p. 36 of the German translation) promised: "We shall show in this case that the rank and position of these defendants carried with it the power and duty to control their subordinates. This power, coupled with the knowledge of intended crime and the subsequent commission of crime during their time of command imposes clear criminal responsibility."

Well, the prosecution has terminated its statement about evidence; concerning the Defendant Matthias Graf, it

has not proved anything at all as to participation, in any form whatsoever, in the crimes specified in the indictment. It could not do so and can never do so.

It is correct that the defendant Matthias Graf was assigned to the Einsatzkommando C-6 from the end of May 1941 to about the middle of October 1942. During all the time of his membership in this Kommando the defendant had not the rank of an officer. At the beginning of the war with the war with the Soviet Union the defendant Graf had the lowest rank among all members of the Kommando. It can therefore not be said that Graf had held any authority of command or even only a position of responsibility in the Einsatzkommando C-6. Nor had the defendant Graf to do any police work with the Einsatzkommando C-6, nor had he in the least to do with the executions carried out by the Kommando. Graf was specialist III of the Department SD; His task consisted in reporting from all fields in the life of the population. These reports concerned:

General atmosphere and situation,
ethnic questions and people's health, all diseases,
scarcities, physicians and lack of medicine resp.
scarcity,
education, art, science and research,
agriculture, forestry, commerce, handicraft and
trade, industry.

This was the task of the defendant, and during the whole of the time of his membership in the Kommando the work of the defendant Graf was within this framework. The fact, that the defendant Graf had no officer's rank in the Einsatzkommando C-6, results from the document submitted by the prosecution, NO-4801, Exhibit No. 147, in Doc. Book IIIC. This is the personnel file of the defendant. On

page 1 of this document it is entered that Matthias Graf was appointed 2nd Lt on 20 April 44. Consequently the defendant became an officer only after being away, again, from Einsatzkommando C-6 for nearly 2 years.

By witnesses and documents the defense will prove that the defendant Graf was actually not a member of Einsatzkommando C-6 as officer, and was never a staff member of the Kommando or of Einsatzgruppe C, that, at no time, he had or exercised authority of command, at no time, did any police work and had nothing to do with any execution. The defendant Matthias Graf can never be connected with the crimes described in the indictment.

In number 13 of the indictment, it is stated that all the defendants had been members of the SS and, in addition, the defendant Graf is enumerated among the members of the SD. Hereby Graf is charged with membership in organizations declared criminal by the judgment of the IMT. On the part of the defense it is objected in this respect that the defendant Matthias Graf withdrew from the SS in 1936. This fact results from the personnel file of the defendant, prosecution exhibit 147 in Doc. Book IIIIC. On page 6 of the Document (page 3 of the original) the following time is given as period of membership in the SS; 1 April 33 - 15 March '37, and as rank: SS Sturmann. Graf did not rejoin the SS.

The judgment of the IMT concerning membership in the SD takes as starting point that the SD was a voluntary organization and states as a fact that all members of the SD joined this organization in a voluntary way. In the conclusion the IMT declared "as criminal in the sense of the statute, the group of those members of the SD..., who became or remained members of the organization, although they knew, that this organization was made use of for carrying out acts declared criminal according to article 6 of the statute, and who, as members of the organization, took a personal part in the commitment of such crimes." The conviction of a defendant on account of membership in the group - declared criminal - of members of the SD is consequently dependent on two preliminary conditions:

- (1) Voluntary joining of the SD and hereby membership in the SS or voluntary maintaining of membership and
- (2) Taking a personal part in the commitment of crimes mentioned in the statute and in the Control Council Law No. 10.

It will be proved that the defendant actually withdrew from the SS prior to 1 September 1939. It will be proved that Graf never joined the SD voluntarily, but in January 1940, became liable for emergency

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service for the war period as auxiliary war worker. That he was, first, employed in the SD intelligence service at home, was detailed, temporarily, to Einsatzkommando C-6, against his will, and, finally, was retransferred to service at home. Evidence will be submitted that Graf refused repeated suggestions to be taken over by the SD, and repeatedly tried in vain to get away entirely from the SD. The fact that the Defendant Graf obtained an SS rank for the period of his employment with the SD, did not mean new membership in the SS. The request of the prosecution concerning conviction of the Defendant Graf on account of membership in a criminal organization cannot be complied with -- apart from other points - because of the lack of membership in the SD or SS. It was already previously mentioned that there is no proof at all for any criminal activity of the Defendant Graf.

The evidence for the defendant Matthias Graf will show that the indictment is completely unfounded in all three counts.

Your Honor, I would like to put a question to the Tribunal. In the opening session on the 15 September it was stated that motions for the calling of witnesses to be interrogated are to be put in. I have complied with this request. I have made my motions. If I only count one day for each of the defendants, my turn will come at the earliest four weeks from now. Yesterday the Defense Center already brought the witness Franziska Reimers from Bonn to Nurnberg, but I can not see why this lady who has a job today at home has to sit idling in Nurnberg for four weeks. I, therefore, ask the Tribunal to permit me to tell this Miss Reimers to return to Bonn, and to stand ready to come back to Nurnberg at my call.

THE PRESIDENT: I want to thank you, Dr. Belzer, for your immediately and enthusiastic compliance with the request of the Tribunal --

DR. BELZER: I have not the connection, Your Honor.

THE PRESIDENT: May be you don't have your earphones on correctly.