



10-7-1947

## Einsatzgruppen Case: Opening Statement for Defense - Dr. Stuebinger for Braune

International Military Tribunal

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7 Oct-A-FL-24-2-Gallagher (Int/ Lea)

Court No. II-A, Case IX

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 re-transferred 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.



DR. BELZER: Thank you.

THE PRESIDENT: And I want to congratulate the Defense Center for the speed with which it operated, as it would seem they have go ahead of all of us. I see no reason why this witness should be compelled to wait the period of time which you have estimated, so you have the consent of the Tribunal to release her, and to see to it that she is back here in Nurnberg in time to be called as a witness when you are ready for her.

DR. BELZER: Yes, Your Honor, Thank you.

THE PRESIDENT: All the opening statements appear now to have been delivered, and I want to thank the Defense Counsel for their cooperation with the Tribunal in every respect, and we will now recess until tomorrow morning at 9:30 o'clock. Dr. Aschenauer will proceed with the presentation of the Ohlendorf defense. Do you have something to present?

DR. STUEBINGER: Dr. Stuebinger for the defendant Werner Braune.

Your Honor, I would merely like to suggest that the opening statement for the defendant Braune may be read. I have not as yet read this.

THE PRESIDENT: Oh, I am very sorry, yes.

DR. STUEBINGER: May it please the Tribunal:

The defendant Braune has been indicted by the Prosecution, as have all the other defendants, on the following three counts:

1. Crimes against Humanity.
2. Commission of War Crimes.
3. Membership in a criminal organization.

In the main the Prosecution in 9 document books has presented material and emphasized it in its opening statement, demonstrating how the defendants, - including defendant Braune - are supposed to have committed acts making them guilty in the meaning of the Indictment. It has characterized the acts of the defendants as "the tragic fulfillment of



7 Oct-A-FL-24-4-Gallagher (Int, Lea)

Court No, II-A, Case IX

a program of intolerance and arrogance". Over and above that, it has stated that each of the defendants, in his position of responsibility or as commander in a so-called liquidation unit, usurped the right to determine the fate of human beings, and was imbued with the idea of death as the intended result of his power and contempt. The acts for which the defendants have to answer were supposedly not dictated by military necessity, but by an extreme perversion of human ideas, the National Socialist doctrine of the master race. In refutation of this, I as Defense Counsel, should like to make the following statement:

In the opening session of 15 September 1947, in answer to the question put by the Presiding Judge as to whether or not he considered himself guilty of the grave charges brought against him, the defendant answered "Not guilty" and with this statement he thus expressed his own inner conviction.

Nothing could be further from the truth than to interpret this answer as an expected incomprehensible denial and therefore to attach no significance to it; nothing could be further from the truth than to interpret the statement of the Defendant as an attempt at cowardly evasion of responsibility.

By stating that he was not guilty, the defendant consciously expressed the fact that he feels absolutely innocent of the grave charges which have been brought against him and that those who were ultimately responsible were quite other persons who are not sitting in the prisoners' dock today.

Within the scope of my argumentation, I shall show what considerations and trains of thought are the basis for this feeling. It is inherent in defendant Braune's attitude that he in no way attempted to disown his acts or to white-wash them and that his statements are entirely trustworthy.

7 ~~Oct-A-FL-24-5~~-Gallagher (Int. Lea)

Court No. II-A, Case IX

This human and decent attitude of my client has made it much easier for me to carry out my task as defense counsel. I do not regard it as my task to attain a dubious result by legal tricks and distortions, but merely to serve the cause of law and justice before this high Tribunal.

Concerning Counts I-III of the Indictment

In Count I, the Prosecution charges the defendant with crimes against humanity, in which he is alleged to have participated, as defined by the provisions of Control Council Law No. 10.



Count II of the Indictment charges the Defendant, to have committed war crimes by the same actions, crimes which were committed through violation of the laws and customs of war, including murder, maltreatment of prisoners of war and of the civilian population of countries and territories under the belligerent occupation of or otherwise controlled by Germany and wanton destruction and devastation not justified by military necessity.

Finally in Count III of the Indictment the Defendant is charged,

1.) with having been a member of the Schutzstaffeln (SS)

subsequent to September 1939

2.) a member of Amt III of the RSHA (SD)

3.) a member of Amt IV of the RSHA (Gestapo)

i.e. of organizations, declared to be criminal by the International Military Tribunal and paragraph 1 d of Article III of Control Council Law No. 10.

It will be the task of these proceedings to clarify to which extent the actions constituting the subject of the indictment comply objectively with the above-mentioned facts with regard to Germany's fight against Bolshevism unless measures taken in individual cases seem justified as permissible retaliation according to existing customs of international and war law or were permissible as punishment for offenses against orders expressly and publicly issued by the occupying power.

In addition to that, it has to be stated that the Defendant was under orders in a frontline assignment and acted only within the scope of orders which he considered to be binding. The question of acting on orders is of special importance in this case, since the defendant was not holding an important key position, but was a subordinate receiving orders and received his assignment at a time when all orders had already been issued and had been in the process of execution for months.

Under these circumstances he had no possibility to disobey the order, apart from the fact that he trusted the legality of the order given to him.



1.) These points of view made the Defendant speak his "not guilty".

2.) This trial receives its special characteristics through lacking consciousness of guilt and emergency resulting from orders.

The prosecution, to be sure, considers the prerequisites for all three counts of the indictment existent by claiming in figure 9, letters A-P of the indictment, -- without, however, completely specifying the actions with which the Defendant BRAUEN is charged (with exception of letter F) -- that the Defendant as leader of Einsatzkommando 11b of Einsatzgruppe D murdered a considerable number of human beings in his territory of assignment (Crimea) during the time of November 1941 until March 1942.

I want to state that the prosecution, too, means by murder the concept common and unchanged at all times to all civilized peoples, of killing a human being from joy of killing, avarice or other low motives, maliciously or cruelly or by means constituting a common danger.

In view of the first two counts of the indictment I will explain that the defendant without any efforts of his own was ordered to an Einsatzgruppe in the East and that in his position he only acted within the scope of binding orders issued long before his arrival and that he could not act differently although the contents of those orders in no way corresponded with his own ideas concerning the treatment of members of other races or were even in accord with his own inner disposition and wishes. On the contrary the carrying out of the orders given to him was rather a heavy psychological burden for the Defendant and only the idea of duty and obedience, but also the knowledge that it would be impossible for him to evade this order, made it possible for him to stand this strain. It was not in his power to annul or to alter orders.

I shall prove that the defendant BRAUNE only when in the Einsatz was told what his tasks were, when all orders had already been given a long time ago and when they had been executed since months.



It was not up to him to question the Fuehrer order, either objectively or subjectively. His Kommando did not exterminate but it carried out orders which, as they had been given, were given from a point of view of safeguarding the territory. He was not entitled to examine or even to decide upon what was a military necessity and what not. That was solely the task of the highest military authority.

The fact that the execution of the ordered measures on a front of more than 2000 kilometers resulted from the situation reports and that these reports were sent to 60 different agencies, as is proven by the distributor, and situation reports were sent out in 100 copies to Reich Ministries, as for instance to the Reich Minister for Foreign Affairs, v. RIBBENTROP, proves, that it was out of the question for the defendant to doubt that this was anything but a Fuehrer order.

Of decisive importance for his conviction is also the fact that the Wehrmacht, as the executor of executive power and of the responsibility in the execution of the measures, participated to a very essential extent or that the Einsatzgruppen received any possible assistance in the execution of their tasks. Thus he soon received orders directly from the Army to take and execute measures in the sense of the Fuehrer orders, be it the assignment for the combing of Simferopol, in which it was expressly stated that they were to be on the lookout for Jews, or the order given by the 11th Army, which in December 1941 ordered the execution of the measures against the Jews in Simferopol to be finished before Christmas.

Finally, and as concerns all these reflections, the manner in which the fight was going on in the East may not be forgotten, and that one had to deal here with an opponent, who originally disregarded any International Law and fought a total war, in which he thought every means admissible.

Proof for this conception and manner of fighting of the enemy was the systematic way of the partisan warfare, which had already been well prepared by the Russians before the outbreak of hostilities and which was considered an especially effective means to decrease the strength of



the enemy. The manner of fighting in the Eastern campaign, for which the assignment of partisans behind the lines of the German Army had been considered as a well calculated means of fighting and which had been cultivated accordingly in an ever increasing measure, has shown how far in modern total warfare the methods of fighting have come away from the ideologies of the Hague Regulations for Land Warfare, and how fluctuating had become the whole complex of the problems of "military necessity". That is also borne out by the manner in which the modern air warfare was conducted and the development of the atom bomb as the latest means of combat until its first employment in Japan.

These reflections show the situation in which the defendant found himself in the assignment in the East and make clear the situation concerning orders given him. The Prosecution has also acknowledged this situation concerning orders without any reservations, when they talk on pages 11/12 of the Opening Statement of an information given the commanders of the Wehrmacht by HITLER on the tasks of the Einsatzgruppen, and when they refer to HITLER's decree as shown in the verdict of the IMT, and mentions that detailed instructions were put into effect.

The defendant's conduct: The defendant BRAUNE saw to it that orders, issued long before this assumption of office, were carried out correctly and he took special care that no excesses or cruelties occurred.

The picture, which I shall draw on the basis of testimonials and the defendant's examination in his own case, in no way conforms to the picture of my client which the Prosecution has given in its opening speech. The Defendant BRAUNE was not the man to take upon himself the right to decide the fate of men and to deal out death in a cold-blooded manner. To the contrary, he considered this, his task, his duty as a tremendous burden, carrying it out merely in realization of his war-time duty as a subject and soldier to abide by the orders and laws of the head of the State and his Supreme Military Commander true to his oath as Civil Servant and soldier.



I shall prove to the Tribunal that the defendant always acted in the consciousness of carrying out a Fuehrer order, thereby engaging in a legal activity. In harmony with his personality and position he could under no circumstances oppose this order. Much less did it occur to him that he might possibly refuse to carry out the order, as he was aware of the consequences which such a refusal in the operational theater would mean to him. It would have meant his certain death.

Thus I have come to the question whether open resistance could have been expected. The judgment of the I.M.T. defines it as a question whether there actually existed a choice in accordance with ethical laws.

Court No. II answered this question in its judgment of Erhard MILCH (page 96 of the opinion) to the effect that it did not intend to suggest to MILCH and had never done so that he (MILCH) should have chosen any way out which might have cost him his life. Life is a legal right the maintenance of which must above all be granted to man, but open resistance to HITLER's order would have brought it to a sudden end. The defendant BRAUNE was no more than a small cog in a large machine and he would have been removed by the force of authority and power and HITLER's order would still have been carried out.

There was no way open to the defendant to evade the command to which he was appointed and he could not sabotage the orders for he was always under the control of his superiors and his subordinates who independently of him had for some time already acted on orders given them.

I shall describe BRAUNE's conduct when not under orders from his supreme commander.

BRAUNE never belonged to the General SS and can thus not be sentenced on that point.

He left the SD in April 1939 when transferred to Coblenz. After the outbreak of war he did not belong to Amt III, Amt VI or Amt VII of the RSHA.

BRAUNE belonged to the Gestapo, but I shall prove that also this fact does not provide the basis for a sentence, for BRAUNE was made to join



the Gestapo by deception and coercion, he did not join by his own free will and it is this free will which is a condition for a sentence.

All these circumstances will present BRAUNE and his conduct in a totally different light from that in which the Prosecution has tried to present him. The only possible answer to the Prosecution can be a verdict of "Not Guilty".

THE PRESIDENT: I hope you understand, Dr. Stuebinger, that there is no intention to slight you by not calling you this afternoon. The confusion arose through the fact that you had appeared at the podium this morning, and apparently you were checked off, so now we certainly do have your opening statement, and now we will recess until tomorrow morning at nine-thirty.

(The Tribunal adjourned until 8 October 1947, at 0930 hours.)