

30 Dec-M-FL-1-1-Sampson (Int. Schaeffer)

Court No. V-A, Case XII

Official Transcript of the American Tribunal V-A in the matter of the United States of America; against Wilhelm von Leeb et al, defendants, sitting at Nurenberg, Germany, on 30 December 1947, the Honorable Judge Young, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal V-A. Military Tribunal V-A is now in session. God save the United States of American and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: Military Tribunal V-A will come to order. The Tribunal will now proceed with the arraignment of the Defendants in Case No. 12 pending before this Tribunal.

The Secretary General will call the roll of the defendants.

DR. LATERNSEER (Attorney for the Defendant von Leeb)

If Your Honors please, my name is Dr. Laternser, and I am Defense Counsel for the defendant von Leeb. I have also been chosen spokesman for the Defense. Before this Tribunal proceeds with the arraignment of the defendants, I would like to put a motion for the whole of the Defense.

I most that this Tribunal pronounce itself incompetent to try these defendants, and I would like to give my reasons for this motion. All generals who are defendants here were during the last war officers of the German Armed Forces. They were belligerents in the meaning of Article I of the Appendix to the Hague Convention for Land Warfare, and as such, they were captured by the enemy. According to the Geneva Convention they are entitled to be recognized as prisoners of war. Already during peace time it was recognized that a soldier is under a special law; soldiers have to be his judges. It is handled in this way everywhere because ever in peace time the life of a soldier is governed by different conditions compared with the life of an ordinary citizen. Much more so does this applies in war time. It is, therefore, all the more important that actions committed in war time and committed by a soldier are

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judged by a court consisting of soldiers. The United States acted in accordance with this rule concerning their own soldiers. The rights of a prisoner of war and a soldier are governed by the Rules of the Geneva Convention; in accordance with Article 63 sentence on a prisoner of war can only be pronounced by these same courts and according to those same proceedings as applied to a member of the power holding prisoner. In this case it is not undisputed whether or not the power holding the prisoner is at all competent to try such acts that were committed by the prisoner before he was captured. If one answers this question in the affirmative, irrespective for what reasons, then Article 63 of the Geneva Convention applies to this extent. The circle of act committed during captivity is not a very extensive one. These are mainly questions of disobedience, insubordination towards sentries and superiors, mutiny, etc., but that the Geneva Convention for these offenses provides the sentencing by a military court will not be disputed even by the Prosecution.

ALL the more the lawful reason for this provision applies to act committed in war time which were committed within the highest level of the military leadership and within the OKW. All these are acts, the judgment and evaluation of which requires special expert and personal knowledge by the judges.

If the Tribunal please, this is not only recognized by British courts, which, for instance held the proceedings against FieldMarshal Kesselring before proper a [sic] military court; the practice of the United States runs along similar lines, and thus recently in the proceedings against Skorzeny before a military tribunal in Dachau, the Tribunal consisted of American officers. This conclusively proves that the defendants have a claim for a trial before the military court, which according to Article 12 of the Rules of Land Warfare of the U.S., should be a General Court-martial. This general court-martial, according to Article 16 of

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the same Rules, has to consist of officers of at least the same rank.

For these reasons, if Your Honor please, I have put the motion that this Tribunal should pronounce itself not competent to judge these defendants.

THE PRESIDENT: May I inquire if Counsel has filed this motion with the Secretary General?

DR. LATERNSE: If Your Honor please, I have not put this motion in writing because on the basis of the rules of procedure, that is on the basis of Article 11, I am of the opinion that the question of competence will become clear from the proceedings; and, concerning such questions which will become apparent from proceedings, in my opinion of the Rules of Procedure, we have the oral proceedings.

If the Tribunal desires so, I shall certainly immediately put this motion in writing. I put this motion at this moment, Your Honor, because in the opinion of Defense Counsel, the defendants are only obliged to plead before a competent tribunal. If this Tribunal should reach the opinion that it is not competent, then this would leave out this arraignment of the defendants here.

THE PRESIDENT: General Taylor, have you any comment to make on this motion?

GENERAL TAYLOR: Your Honor, I would like to make three very brief comments. Firstly, as to procedure: This is the type of motion which has invariably been filed in writing under Rule No. 10 of the Uniform Rules. We, of course, have not seen it. I would respectfully suggest that Dr. Laternser should be asked to file a motion in writing; the Prosecution will answer it in writing; and the Court can, if it so desires, set it for argument.

Secondly, the question raised in the motion is not novel, as the same point has been made in other proceedings here and has been rejected. I also believe it to be dealt with in the Wehrmacht decision of the Supreme

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Court, all of which matters we can cover in our answer to the motion.

Thirdly, different charges of officers of the Wehrmacht, in this theater have been a matter of general policy. It is not a matter peculiar to this case in any way. Under general theater policy all Wehrmacht officers have been charged, and there is nothing peculiar about the situation of the defendants in that regard.

That is all I have to say.

THE PRESIDENT: Under the circumstances, and there being ample time before the actual trial of this case begins, Counsel representing the defendants will file this motion with the Secretary General, and prior to--or at the beginning of the trial the same will be ruled upon by this Tribunal.

The Secretary General will call the roll of the defendants.

THE SECRETARY GENERAL: Each defendant will stand and answer "present" when his name is called and he is seated.

Defendant Wilhelm von Leeb.

DEFENDANT VON LEEB: Here.

SECRETARY GENERAL: Defendant Hugo Sperrle

DEFENDANT SPERRLE: Here.

SECRETARY GENERAL: Defendant Georg Karl Friedrich-Wilhelm von Kuechler.

DEFENDANT von KUECHLER: Here.

SECRETARY GENERAL: Defendant Johannes Blaskowitz

DEFENDANT BLASKOWITZ: Here.

SECRETARY GENERAL: Defendant Hermann Hoth.

DEFENDANT HOTH: Here.

SECRETARY GENERAL: Defendant Hans Reinhardt.

DEFENDANT REINHARDT: Here.

SECRETARY GENERAL: Defendant Hans von Salmuth.

DEFENDANT von SALMUTH: Here.

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SECRETARY GENERAL: Defendant Karl Hollidt.

DEFENDANT HOLLIDT: Here.

SECRETARY GENERAL: Defendant Otto Schniewind.

DEFENDANT SCHNIEWIND: Here.

SECRETARY GENERAL: Defendant Karl von Roques.

DEFENDANT von ROQUES: Here.

SECRETARY GENERAL: Defendant Walter Warlimont.

DEFENDANT WARLIMONT: Here.

SECRETARY GENERAL: Defendant Otto Woehler.

DEFENDANT WOehler: Here.

SECRETARY GENERAL: Defendant Rudolf Lehmann.

DEFENDANT LEHMANN: Here.

SECRETARY GENERAL: May it please the Honorable Tribunal, all the defendants are present in court.

THE PRESIDENT: Mr. Secretary General, the record will so indicate. Unless there be objections, the reading of the indictment will be dispensed with. Hearing no objection, it is so ordered. Mr. Secretary General, the record will so indicate.

The defendants will now be called upon to plead guilty or not guilty to the charges against them. Each defendant as his name is called will stand and speak clearly into the microphone. At this time there will be no arguments, speeches or discussions of any kind. Each defendant will simply answer the question put to him, and then plead guilty or not guilty of the offenses with which he is charged in the indictment.

Mr. Secretary General, call each defendant.

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THE SECRETARY GENERAL: The defendant Wilhelm von Leeb.

THE PRESIDENT: Wilhelm von Leeb, are you represented by counsel before this Tribunal?

WILHELM VON LEEB: Yes.

THE PRESIDENT: Was the Indictment in the German language served upon you at least thirty days ago?

WILHELM VON LEEB [sic]: Yes.

THE PRESIDENT: Have you read the Indictment?

WILHELM VON LEEB: Yes.

THE PRESIDENT: How do you plead to this Indictment, guilt or not guilty?

WILHELM VON LEEB: Not guilty.

THE PRESIDENT: Be seated.

DR. LATERNSEER: If Your Honor please, I would like to apologize for interrupting for a moment, but I just would like to make this statement, namely, that through this arraignment the competency of this Tribunal is not established. Your Honors, I am not quite sure whether or not I have been understood correctly. I don't know what translation was given for my statement. What I would like to state now as counsel for the defendant von Leeb is that I maintain the point of view that through this arraignment the competency of this Court has not been established and agreed upon.

THE PRESIDENT: If I understand counsel, his contention is that by these defendants pleading under this arraignment he does not desire it be held that the point of jurisdiction, or the competency [sic] of the Tribunal has been waived by the plea, is that correct?

DR. LATERNSEER: Yes, Your Honor, it is.

THE PRESIDENT: The motion having been interposed this Tribunal will not so construe it but will pass upon the

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motion as though no plea had been entered, or as though the motion had been ruled upon before the arraignment was had.

Mr. Secretary-General, you will call the next defendant.

THE SECRETARY-GENERAL: The defendant Hugo Sperrle.

THE PRESIDENT: Hugo Sperrle, are you represented by counsel before this Tribunal?

HUGO SPERRLE: Yes.

THE PRESIDENT: Was the Indictment in the German language served upon you at least thirty days ago?

HUGO SPERRLE: Yes.

THE PRESIDENT: Have you read the Indictment?

HUGO SPERRLE: Yes.

THE PRESIDENT: How do you plead to this Indictment, guilt or not guilty?

HUGO SPERRLE: Not Guilty.

THE PRESIDENT: Be seated. Mr. Secretary-General, call the next defendant.

THE SECRETARY-GENERAL: Georg Karl Friedrich Wilhelm von KUECHLER.

THE PRESIDENT: Georg Karl Friedrich Wilhelm von Kuechler, are you represented by counsel before this Tribunal?

GEORG KARL FRIEDRICH WILHELM von KUECHLER: Yes.

THE PRESIDENT: Was the Indictment in the German language served upon you at least thirty days ago?

GEORG KARL FRIEDRICH WILHELM von KUECHLER: Yes.

THE PRESIDENT: Have you read the Indictment?

GEORG KARL FRIEDRICH WILHELM von KUECHLER: Yes.

THE PRESIDENT: How do you plead to this Indictment, guilt or not guilty?

GEORG KARL FRIEDRICH WILHELM von KUECHLER: Not guilty.

THE PRESIDENT: Be seated. Mr. Secretary-General will call the next defendant.

THE SECRETARY-GENERAL: The defendant Johannes

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Blaskowitz?

THE PRESIDENT: Johannes Blaskowitz, are you represented by counsel before this Tribunal?

JOHANNES BLASKOWITZ; Yes.

THE PRESIDENT: Was the Indictment in the German language served upon you at least thirty days ago?

JOHANNES BLASKOWITZ: Yes.

THE PRESIDENT: Have you read the Indictment?

JOHANNES BLASKOWITZ: Yes.

THE PRESIDENT: How do you plead to this Indictment, guilty or not guilty?

JOHANNES BLASKOWITZ: Not guilty.

THE PRESIDENT: Be seated. Mr. Secretary-General proceed with the call.

THE SECRETARY-GENERAL: The defendant Hermann Hoth,

JUDG-S HALLS; Hermann Hoth, are you represented 'oy counsel before this Tribunal?

HERMANN HOTH: Yes.

JUDG-S HALLE: Was the Indictment in the G-erman language served upon you at least thirty days ago?

HERMANN HOTH: Yes.

JUDGE HALLE: Have you read the Indictment?

HERMANN HOTH; Yes.

JUDG-E HALLS: How do you plead to this Indictment, guilty or not guilty?

HERMANN HOTH: Not guilty.

JUDG-S HALLS: Be seated. Proceed with the call.

THE SECRETARY GENERAL: The defendant Hans Reinhardt.

JUDGE HALLE: Hans Reinhardt, are you represented by counsel before this Tribunal?

HANS REINHARDT; Yes.

JUDGE HALLS: Was the Indictment in the German Ianguage served upon you at least thirty days ago?

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HANS REINHARDT: Yes.

JUDGE HALLS: Have you read the Indictment?

HANS REINHARDT: Yes.

JUDGE HALLE: How do you plead to this Indictment, guilty or not guilty?

HANS REINHARDT: Not guilty.

JUDGE HALLS: Be seated. Proceed.

THE SECRETARY-GENERAL: The defendant Hans von Salmuth.

JUDGE HALLE: Hans von Salmuth, are you represented by counsel before this Tribunal?

Hans von SALMUTH: Yes.

JUDGE HALLS: Was the Indictment in the German language served upon you at least thirty days ago?

HANS VON SALMUTH: Yes.

JUDGE HALLS: Have you read the Indictment?

HANS VON SALMUTH: Yes,

JUDGE HALLE: How do you plead to this Indictment, guilty or not guilty?

HANS VON SALMUTH: Not guilty.

JUDGE HALLS: Be seated. Proceed.

THE SECRETARY-GENERAL: The defendant Karl Hollidt.

JUDGE HALLS: Karl Hollidt, are you represented by counsel before this Tribunal?

KARL HOLLIDT: Yes,

JUDGE HALLS: Was the Indictment in the German language served upon you at least thirty days ago?

KARL HOLLIDT: Yes.

JUDGE HALLE: Have you read the Indictment?

KARL HOLLIDT: Yes.

JUDGE HALLS: How de you plead to this Indictment, guilty or not guilty?

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KARL HOLLIDT: Not guilty.

JUDGE HALLE: Be seated. Proceed.

THE SECRETARY-GENERAL: The defendant, Otto Schneiwind.

JUDGE HARDING: Otto Schneiwind, are you represented by counsel before this Tribunal?

OTTO SCHNEIWIND: Yes.

JUDGE HARDING: Was the Indictment in the German language served upon you at least thirty days ago?

OTTO SCHNEIWIND: Yes.

JUDGE HARDING: Have you read the Indictment?

OTTO SCHNEIWIND: Yes.

JUDGE HARDING: How do you plead to this Indictment, guilty or not guilty?

OTTO SCHNEIWIND: Not guilty.

JUDGE HARDING: You may be seated.

THE SECRETARY-GENERAL: The defendant Karl von Roques.

JUDGE HARDING: Karl von Roques, are you represented by counsel before this Tribunal?

KARL VON ROQUES: Yes.

JUDGE HARDING: Was the Indictment in the German language served upon you at least thirty days ago?

KARL VON ROQUES: Yes.

JUDGE HARDING: Have you read the Indictment?

KARL VON ROQUES; Yes.

JUDGE HARDING: How do you plead to this Indictment, guilty or not guilty?

KARL VON ROQUES: Not guilty.

JUDGE HARDING: You may be seated. Proceed.

THE SECRETARY-GENERAL: The defendant Hermann Reinecke.

JUDGE HARDING: Hermann Reinecke, are you represented by counsel before this Tribunal?

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HERMANN REINECKE: Yes,

JUDGE HARDING: Was the Indictment in the language served upon you at least thirty days ago?

HERMANN REINECKE: Yes.

JUDGE HARDING: Have you read the Indictment?

HERMANN REINECKE: Yes.

JUDGE HARDING: How do you plead to this Indictment, guilty or not guilty?

HERMANN REINECKE: Not guilty.

JUDGE HARDING: You may be seated. Proceed.

THE SECRETARY-GENERAL: The defendant Walter Warlimont.

JUDGE HARDING; Walter Warlimont, are you represented by counsel before this Tribunal?

WALTER WARLIMONT: Yes.

JUDGE HARDING; Was the Indictment in the German language served upon you at least thirty days ago?

WALTER WARLIMONT: Yes.

JUDGE HARDING: Have you read the Indictment?

WALTER WARLIMONT: Yes.

JUDGE HARDING: How do you plead to this Indictment, guilty or not guilty?

WALTER WARLIMONT: Not guilty

JUDGE HARDING; You may be seated.

THE PRESIDENT: Mr. Secretary-General, you may call the next defendant.

THE SECRETARY-GENERAL; The defendant Otto Woehler.

THE PRESIDENT: Otto Woehler, are you represented by counsel before this Tribunal?

OTTO WOEHLE: Yes.

THE PRESIDENT: Was the Indictment in the German language served upon you at least thirty days ago?

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OTTO WOehler: Yes.

THE PRESIDENT: Have you read the Indictment?

OTTO WOehler: Yes.

THE PRESIDENT: How do you plead to this Indictment, guilty or not guilty?

OTTO WOehler: Not guilty.

THE PRESIDENT: You may be seated. Mr. Secretary-general, call the next defendant.

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If Your Honors please, I am Dr. Frohwein, and I am the defense counsel for the last defendant, who is Oberstatsrichter Dr. Lehmann.

I put the motion that the Tribunal rule that this defendant, Dr. Lehmann, will not be tried, and that the charge against this defendant be rejected because inadmissibility [sic].

I will briefly give my reasons for this motion. Dr. Lehmann was an American prisoner of war. He was not taken prisoner as a soldier, but he was formally arrested. He was brought into an American internment camp with a report on this arrest. He remained under arrest in the prison in Nuernberg [sic]. During the time of his imprisonment in Nuernberg, from 16 October 1946 until 12 May 1947, the Prosecution carried out an investigation of his person. For three months he was kept in solitary confinement. Concerning these investigations a report was made to the Prosecution. Thereupon, however, no charge was made, but instead Dr. Lehmann was brought, first of all, to a prisoner of war camp, and on the 30th of June 1947 he was released and set at liberty. For this reason, under Article III-1-d of Control Council Law No. 10, he cannot now be tried. This provision reads as follows: "The occupying authorities are entitled to put those persons arrested and requested before a court competent for a such a proceeding, inasmuch as they are extraditing to another authority if a proper charge has been made. But if accordance with this provision anyone has been arrested either extradited [sic] or freed, the authorities can no longer try him." The meaning of this sentence is whoever has been arrested can be put before a court by the occupying authorities if a proper charge has been raised against such a person. However, if a person is under arrest and is then either released or extradited to another power, then the occupying authorities can no longer put this person before a court. Therefore, if an investigation has taken place and the prisoner has been released, then the proceedings can no longer be carried out.

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The Prosecution in this case has had time and opportunity to reflect and decide on their final resolution. Since this defendant was released the Prosecution is bound to this decision which was their own, I, therefore, consider that the trial of and charge directed against Dr. Lehmann is not admissible.

I have not been able to submit this motion in writing to the Secretary General because it was only this morning that I was admitted as defense counsel, although I had authority, and on the 12th of December reported as defense counsel, although I am contained in the list of those defense counsel admitted, which list the defendants received simultaneously with their Indictment.

THE PRESIDENT: The counsel states that he has not filed this motion. The motion should be filed with the Secretary General, and inasmuch as there is ample time without delaying the trial the Prosecution can answer under the rules, and if the Court deems it necessary the matter will be set for argument. Otherwise the motion will be ruled upon by the Court at or previous to the trial.

Mr. Secretary General, you may proceed with the next defendant.

THE SECRETARY GENERAL: Defendant Rudolf Lehmann.

THE PRESIDENT: Rudolf Lehmann are you represented by counsel before this Tribunal?

DEFENDANT RUDOLF LEHMANN: Yes.

THE PRESIDENT: Was the Indictment in the German language served upon you at least thirty days ago?

DEFENDANT RUDOLF LEHMANN: Yes.

THE PRESIDENT: Have you read the Indictment?

DEFENDANT RUDOLF LEHMANN: Yes.

THE PRESIDENT: How do you plead to this Indictment — "guilty" or "not guilty?"

DEFENDANT RUDOLF LEHMAN: Not guilty.

THE PRESIDENT: You may be seated.

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THE SECRETARY GENERAL: May it please the Honorable Tribunal, all the defendants are present in Court.

THE PRESIDENT: Mr. Secretary General have all the defendants pled to this Indictment?

THE SECRETARY GENERAL: Yes, your Honor.

THE PRESIDENT: The pleas of the defendants will be entered by the Secretary General in the records of the Tribunal?

THE SECRETARY GENERAL: Yes, your Honor.

THE PRESIDENT: Mr. Secretary General, is there any further matter, so far as you know, to be brought before this Tribunal at this time?

THE SECRETARY GENERAL: No, your Honor.

THE PRESIDENT: There being no further business, the Tribunal, will recess to a date to be later determined.

(THE TRIBUNAL ADJOURNED AT 1040 TO RECONVENE UPON CALL OF THE TRIBUNAL)