

5-24-1948

Order on Defense Motion to Strike

Military Tribunal VI

Repository Citation

Military Tribunal VI, "Order on Defense Motion to Strike" (1948). *Trial 6 - I.G. Farben Case*. Paper 11.
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UNITED STATES MILITARY TRIBUNAL VI
SITTING IN THE PALACE OF JUSTICE, NURNBERG, GERMANY
24 May 1948

THE UNITED STATES OF AMERICA :
 :
 - vs. - :
 :
 CARL KRAUCH, et al., : Case No. 6
 :
 Defendants. :
 :

ORDER

On 12 May 1948, Dr. Rudolf Dix, on behalf of the Defendant Hermann Schmitz, filed a motion to strike from the Prosecution's Exhibit 334 (an affidavit of the Defendant Ter Meer) the affidavit of the said Schmitz contained therein. A brief review of the pertinent parts of the record is necessary.

On 5 May 1948, Dr. Rudolf Dix, counsel for the Defendant Schmitz, filed a motion in which it was stated that in May, 1943, Major Tilley, acting for the United States Government, conducted an interrogation of said Schmitz during the course of which he "called the defendant's attention to the fact that he would incur twenty years imprisonment if he should not say the truth, or not testify at all." (Our emphasis).

Said motion further recited that on 11 September 1945, one Lawrence Linville conducted a further interrogation of the Defendant Schmitz in the course of which the following occurred:

"Q: I call your attention to Ordinance No. 1, Article No. 2, Section No. 33, as issued by the Military Government (Handing a copy of the Ordinance to the witness, who reads the indicted section).

"A: Yes. I have read it."

On 10 May 1948, the Prosecution stipulated on the record (transcript page 14053) as follows:

"For the purpose of this proceeding, we will stipulate on the basis of Dr. Dix' statement, that such an interrogation did take place as indicated in his motion."

The following also appears on page 14054 of the transcript:

"The President: Do we understand, Mr. Prosecutor, that you are willing to stipulate for the purposes of the matter under controversy that the interrogation, the questions and answers that were contained in the showing made by Dr. Dix, are correctly reported to the court in Dr. Dix' statement?"

"Mr. Sprecher: That is correct, Mr. President."

Military Government Ordinance No. 1, referred to above, was promulgated 16 August 1945, and provided as follows:

"The following offenses are punishable by such penalty other than death as a Military Government Court may impose:

* * * * *

33.) Knowingly making any false statement, orally or in writing, to any member of, or person acting under the

authority of, the Allied Forces in a matter of official concern, or in any manner defrauding, or refusing to give information required by, Military Government." (Our emphasis).

At the ~~xx~~ time the above described incidents occurred the Defendant Schmitz was under detention by the American Military authorities, having been arrested on 7 April 1945.

The question to be decided is, therefore, ~~xxx~~ whether the purported statement of the Defendant Schmitz contained in the ~~xxxx~~ Prosecution's Exhibit 334 can be regarded as his voluntary statement against interest.

The ruling announced for the Tribunal by Judge Morris on 11 May 1945 (transcript pages 14249 and 14250) had reference to the admissibility of affidavits made by defendants who did not take the witness stand, generally, and was not directed to the subject of any alleged duress or coercion under which such affidavits were obtained.

There is no more fundamental concept of enlightened jurisprudence than that one charged with crime may not be compelled by force, fear, threats or intimidations to give evidence against himself. Indeed, most modern judicial systems recognize that a defendant in a criminal case may refuse to testify in his own behalf without the risk creating any inference or presumption of his guilt. This Tribunal is not disposed to ignore these basic human rights.

It would be difficult, if not impossible, to conceive of a more effective means of coercing one into giving evidence against himself than to advise him that he would be subject to life imprisonment for failure to do so, especially when the implied threat is accompanied by the showing of an official directive providing for such liability.

We conclude, therefore, that the statement of the Defendant Schmitz, bearing date of 17 September 1945, appearing in the affidavit of the Defendant Ter Meer, Prosecution's Exhibit 334, is inadmissible as the voluntary statement of the Defendant Schmitz. The said statement of the Defendant Schmitz will not be considered as evidence of the facts purported to be set forth therein and remains in the record only insofar as it may be necessary for a proper understanding of the statements of the Defendant Ter Meer as set forth in his affidavit, Prosecution's Exhibit 334.

/s/ Curtis G. Shake
Presiding Judge

/s/ James Morris
Judge