

U/A
Ruling of Tribunal III, on matters relating to Content of

Court committed on January 16, 1948

On Friday, January 16, 1948, a series of incidents occurred in connection with the sessions held on that day, which in the considered opinion of the

Tribunal constituted contumacious conduct on the part of several of the Counsel

for the Defense in this case, and it was accordingly so adjudged. Those the^{whom}

Tribunal found necessary to discipline were: Dr. Wecker, Dr. Reitzenstein, (- - -)

Dr. Schilf, Dr. Gollinck, Dr. Geissler, and Dr. Pohle. ~~It was~~ Upon this finding

being made, the Marshal was directed to take said parties into custody, and

hold them until further orders of the Tribunal. On Monday, January 19, 1948,

at 9:30 A.M., they were, at the orders of the Tribunal, produced in ^(open session) ~~the~~.

A hearing was held consuming two full days, where⁽ⁱⁿ⁾ every person concerned was accorded a full opportunity to be heard in person, or by counsel, or both.

The purpose of this hearing was to determine what further action, if any, was required in order to insure in so far as possible, an orderly and lawful trial of this case.

Before announcing our findings, we deem it appropriate to recapitulate briefly the events of January 16th, insofar as they are pertinent here, and refer to the authority by virtue of which we acted.

In the morning session of that day, after a full discussion participated in by counsel for the defense, a ruling was made by the Tribunal to the effect ~~that a Commissioner was to hear two witnesses on that afternoon.~~ *Cross examination of two affiants whose affidavits had been introduced by Plaintiff* Counsel for

the Defense had objected to the sitting of a Commissioner, concurrently with

the session of the Tribunal. ^(It was said) As said, after a discussion, this objection was

objection

overruled. Thus, this ^(procedure) procedural matter had been definitely decided by the Tribunal, and another matter was to be taken up, namely, the presentation of documents by counsel for the Prosecution. At or about this time, Defense Counsel, Dr. Schilf, began to address the Tribunal. Upon inquiry by the Tribunal, Dr. Schilf informed the Tribunal that he rose for the purpose of further discussing the question of the ^(Commission) Commissioner which had been fully discussed and finally ruled upon. ~~But~~ When this occurred, the Presiding Judge announced that there would be no further discussion on that, and directed the attorney for the Prosecution to proceed with the Document Book. In fact, at that time, Counsel for the Prosecution was standing at the podium, preparing to begin his presentation. But Dr. Schilf persisted in his ^(an) attempt to address the Tribunal.

The Presiding Judge again directed the Prosecution ^{to} to proceed with the Document Book. Dr. Schilf did not even consider it necessary to wait until the Presiding Judge had finished his sentence, but in ^{a defiant} an ~~offensive~~ manner, and cutting off the Presiding Judge, and completely disregarding the ruling of the Presiding Judge to the effect that, not Dr. Schilf, but the Prosecutor had the floor, protested against the fact that he was not permitted to go on.

The Presiding Judge again admonished Dr. Schilf that there would be no further discussion on the question of the commissioner's hearing.

Again disregarding the ruling of the Presiding Judge, Dr. Schilf continued to talk and again protested against the ruling. The behavior of Dr. Schilf made it impossible for the Counsel for the Prosecution who was still standing at the podium, to proceed as he had been ordered by the Tribunal.

The Presiding Judge warned Dr. Schilf to take his seat; otherwise, he would order him removed from the courtroom.

Dr. Schilf answered defiantly: "I request that be done." (In the German original: ^(tho appears) "Ich bitte darum.") The Presiding Judge replied: "All right, you may remove yourself, then." And speaking to the Counsel for the Prosecution, he added: "Proceed."

Counsel for the Prosecution had hardly been able to say a few words when Dr. Schilf again interrupted him, trying to speak again, and had again to be reminded by the Presiding Judge that he would have nothing more to say, "now."

Even after having left the podium and having started to walk toward his seat, he neither took his seat nor did he move to the door, but started back to the podium and reached for the earphones. He had to be stopped by a gesture of the Marshal.

Dr. Schilf then left the courtroom. Immediately, all other defense lawyers who at that moment were present in the courtroom, and without any of them even asking the Tribunal for permission to leave, and without any of them making any statement to the Tribunal, demonstratively and in one group marched out of the courtroom. This was at about 11:45 A.M.

Being taken entirely by surprise, and not appreciating at the moment the significance of this move, or what it was intended to be, the Tribunal allowed the proceedings to continue, momentarily expecting the return of the counsel to the courtroom. Considerably more than a reasonable time elapsed before it was decided that some action must be taken to preserve the integrity

of the proceedings. Accordingly, at the recess we ordered the Marshal to institute a search for ^{the} defense counsel and notify them to forthwith appear in the courtroom. ^{notice} This was duly served; ^{and} after a delay of some 20 to thirty minutes, they put in their appearance, ^{it} whereupon the members of the Tribunal resumed the Bench and took the action already referred to.

The walk-out of all the Defense Counsel made it impossible for the trial to proceed orderly and validly, according to the normal course of procedure. What was done during their absence must be done over again, unless some way, ~~can be found~~, can be found to remedy the ^{defect} ~~defect~~ in the proceedings. Moreover, because of the disciplinary steps made necessary by this contumacious conduct, the Tribunal was unable to proceed further with the trial on that day and has not been able to proceed since.

As can be readily seen, all three members of this Tribunal ^(necessarily) had immediate, direct and personal ^{determinative} cognizance of all of the ~~predetermined~~ acts, namely; the defiant behaviour of Dr. Schilf, the walk-out demonstration, and the subsequent abstention from the trial by all of the Counsel for the Defense, which was ended through the action of the Tribunal in notifying its Marshal to direct the Counsel to put in their appearance forthwith. Just here, distinction must be noticed between contumacy under the very eyes of a court or Tribunal, and contumacious acts committed out of the presence of a court or Tribunal.

Only the latter required that a formal hearing be conducted in order to take disciplinary action. As to the former, that is, contumacious conduct in the

presence and under the very eyes of the court, this can be summarily dealt with on the strength of the immediate, direct and personal knowledge of the Court.

From what has been said, it is clear that the whole series of incidents revolved around the procedural question as to whether two witnesses were to be heard Friday afternoon before a Commissioner. It was evident, indeed, it was not denied that the conduct of Dr. Schilf in this connection created a state of confusion in the courtroom that was wholly ^(Incompatible) inconsistent with the orderly conduct of the trial. His attitude, as reflected not only by what he said and did, but by his tone of voice and manner and demeanor, had every appearance of being defiant and his anger, or excitement, ~~xxx~~ if such it was, as he afterwards claimed it to have been, was apparent, not only to the Tribunal, but to everyone present in the courtroom.

The defense lawyers, who without asking permission, or making any statement of their intentions, ^(or attempting to do so) ~~provoked~~ provocatively marched out of the courtroom, also directly challenged the very authority and ability of the Tribunal to function. By such conduct, they ^(served) served notice upon the Tribunal that they considered it within their power to sabotage and paralyze the conduct of the trial, if and when they felt misgivings about a particular ruling, and moreover, that they ^(reserved) reserve to themselves the right to determine when a particular ruling justified a walkout. By such conduct, the counsel, not only violated their duty to the Tribunal, but they violated their duty to the defendants in leaving them without the benefit of counsel while the prosecution was proceeding with the presentation of evidence against them. It should be pointed out just here, that the counsel for the defense in this case occupy a unique status. They

appear only by the express approval of the ~~Court~~, and their compensation and

Tribunal (under the regulations enacted by the M. G. of the U. S. for Germany) and measure

expenses are paid, not by their clients, but out of public funds of the Community.

Those of the Defense Counsel who were not present in the courtroom when the walkout occurred, but who later joined them, and by common agreement, remained away from the courtroom, knowing that no defense counsel were present in the courtroom, likewise violated their duty to the Tribunal and to the defendants. Considered from any angle, the action of all Counsel who participated, can be regarded as nothing less than a strike against the authority of the Tribunal to function in this trial. ^(upon its own motion) It should be noted that it was afterwards claimed that Counsel's delay in returning to the courtroom was due to the fact that they were preparing a statement explaining the walkout. They themselves, introduced this statement in evidence upon the hearing held on Monday and Tuesday. It consists of ^{slightly more} ~~somewhat less~~ than two typewritten pages.

It is apparent from what has been said, that the circumstances narrated, singly and together, pose the very grave question as to who is to conduct this trial; whether the members of the Tribunal, or Counsel for the Defense. To this question, there can be but one answer. We come now to a discussion of the authority by virtue of which the Tribunal ^{acted} ~~acted~~ in imposing disciplinary measures against those named.

It points out the reasons for which the walkout occurred, which, reading from the English translation, are as follows: "The defense counsel saw themselves forced to take this step for the following reasons: The Presiding Judge had denied a defense counsel the right to make a regular motion to justify, a motion which the Tribunal had not yet ruled upon. The motion which Mr. Schiff intended to make had nothing to do with the ruling previously made by the Court regarding the employment of the Commission. In addition to this, the defense counsel as a whole feel offended that Mr. Schiff was not permitted to go on and was denied the possibility to make this motion." "There is no attempt to apologize for the disrespect shown to the Tribunal, no explanation other than that read as to the reasons."

Art. 18 of the Charter of the International Military Tribunal, annexed to the Four Power Agreement made in London on 8 August 1945, provides:

"The Tribunal shall

.....
c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges." (and)

The London Agreement and the annexed London Charter ^{have} ~~has~~ been adhered to, ^{they were} after ~~it was~~ signed by the four major powers, ^(and) by 19 other nations. It has been formally upheld by the United Nations which represent 50-odd different countries. The principles laid down in the London Charter, including the one just quoted, represents therefore, the most authoritative expression of international law, as pertaining to the trials of this character.

X. Control Council Law No. 10, which was duly enacted by representatives of the four occupying powers including the United States of America, makes the London Agreement and Charter an integral part of this Law.

Ordinance No. 7 of the Office of Military Government for Germany of the United States of America, which has laid down binding rules for the procedure in these trials, literally repeats, in its Art. VI(c) the provision contained in Art. 18(c) of the London Charter. All these provisions are well known to defense lawyers active here.

Certainly, when confronted with a situation tantamount to surrendering its authority to Counsel, the Tribunal therefore has full power to take appropriate action.

(here in)

The authority of the Military Tribunals sitting at Nurnberg to punish for contempt has been exercised in at least two other instances. These precedents were the punishment of a witness in the so-called "Medical Case". There the act had been committed in open court, and the witness was punished by imprisonment in a ~~summary~~ ^{summary} proceeding. The other precedent in the so-called "Justice Case" involved the commission of grave irregularities by a defense counsel and an assistant of his, outside the presence of the Tribunal. The lawyer was sentenced to 30 days imprisonment, and disqualified to act as defense counsel in (any of) the trials being held here.

As already said, the aforementioned defense lawyers were produced Monday, (Jan. 19), ~~before the Tribunal, pending further orders of the Tribunal.~~ ^{before} ~~Dr. The~~ ^(then decession) Tribunal ~~is~~ considered it essential to ascertain whether they persisted in their contempt, that is, ^{continued} their contumacious conduct and attitude. After two full days of hearings in open court, the Tribunal finds as follows:

Dr. Wecker, Dr. Reitzenstein, Dr. Schilf, Dr. Gollinck and Dr. Pohle have made declarations to the Tribunal in which they express that they realize that their behavior on January 16, (1948), was wrong and disrespectful to the Tribunal.

Dr. Ballos occupies a special position. He participated in the walkout, but left the Courthouse before the Marshal notified counsel to put in their appearance. He was therefore, not present on Friday afternoon when the disciplinary measures against the others were taken. On Monday, with commendable frankness, he voluntarily informed the Tribunal of the facts. He also has conceded his error, and made suitable declarations to the Tribunal with respect

deviate from the generally accepted rules in an emergency; but also to rely entirely on his own discretion as to when an emergency (or necessity) exists.

(now) The Tribunal feels that the continued participation of a lawyer who is animated by such views would be potentially harmful ^{to} the fair ^(continuation) ~~(continuance)~~ of this

trial. The Tribunal therefore disqualifies Dr. Geisseler as a co-defense lawyer or defense lawyer for any of the defendants in this case, and excludes him

from all ~~other~~ ^{in this case} further proceedings. ^{But} without ~~prejudice~~ prejudice to the

determination of any of the charges against any of the defendants, as provided

^(and authorized) by Article 6 of Ordinance 7 of the Military Government of the U. S. ^(it is) ^(too Germany) The Tribunal ~~also~~ also

directs Dr. Geisseler to hand over forthwith to defense counsel, Dr. Kransbuehler,

or to ~~any~~ ^{in this case} other lawyer representing the defendant Krupp, all and any files,

papers, documents, pieces of evidence, etc. relating to the defendant, Krupp.

It may be noted that one of Dr. Geisseler's principle grievances is that

he was not heard before he was ordered into custody on January 16th. Since

his contumacious conduct occurred ^{under} the eyes of the court ^(by Tribunal) and was wholly

without justification, there was no need for ^(and) a hearing. However, while it is not

a ^{determinative} ~~determined~~ factor, it is interesting to note that upon the very full and

extended hearing accorded him on the 20th of January by this Tribunal, ~~which~~

~~hearing was held for the purpose aforesaid,~~ he himself demonstrated how useless

any hearing would have been on the ~~preceding~~ preceding Friday. Upon that

occasion, the only reasons he put ^(forward) forward demonstrated that he reserved to

himself the right to determine whether a strike by defense counsel against the

authority of the Tribunal was proper in a given instance, and that he considered

the walk-out in which he participated, as having been fully justified.

There remains to be dealt with those members of defense counsel who were not, for legitimate reasons, present in court when the walk-out occurred, but who willfully, knowingly, and pursuant to a common plan, absented themselves from the proceedings, knowing that no defense counsel were present ^{at the trial} in the courtroom, and continued to so absent themselves until ordered to appear.

The Tribunal finds that they were fully advised as to all of the facts and circumstances connected with the walk-out, and by common agreement ^{with} those ^{who} ~~that~~ participated therein, and without excuse or justification refused ^(to the presence of some defense counsel) to return to the courtroom when the situation demanded their presence. We hold that this was a violation by these lawyers of their duty to the Tribunal and to their respective clients.

But we think this contumacy was of a lesser degree than that of those who also participated in the walkout, and that of Dr. Schilf who created the Turmoil in the first place. This for the reason that, had the exodus not taken place, these defense counsel would not have absented themselves in the manner they did.

The Tribunal therefore, is satisfied to ~~reprimand~~ reprimand these members of Counsel for the Defense for their conduct, and admonish them against a repetition of a violation of their professional duties.

It is well enough to say, in reaching its conclusions, the Tribunal has not been unmindful of the fact that, for obvious reasons, the Defendants have had a high stake in the outcome *of this proceeding.*

(fnw) The Tribunal herewith considers these unfortunate events as closed.

It reiterates that it considers them as being fundamental and of the utmost gravity. The Tribunal hopes and expects that the trial will proceed in an orderly fashion, and that all orders and rules made by ~~it~~ *it* will be respected by counsel on both sides of this case.

Finally we *contempt proceeding*
~~we~~ think it proper to note for the record that this has not been a criminal proceeding, but that the measures taken ~~are~~ *were* solely of a disciplinary nature.