

RG 153
ENTRY 1009
BOX 17
FILE CM 334178

2

ol
Attig

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS
Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
OFFENSES AGAINST THE LAW OF WAR AND THE
ARTICLES OF WAR.

Washington, D. C.

Wednesday, July 8, 1942.

The Military Commission appointed by the President by order dated July 2, 1942, met, in room 5235 Department of Justice, at 10 o'clock a. m., to try for offenses against the Law of War and Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel.

PRESENT: Members of the Military Commission, as follows:

Major General Frank R. McCoy, President,
Major General Walter S. Grant,
Major General Blanton Winship,
Major General Lorenzo D. Gasser,
Brigadier General Guy V. Henry,
Brigadier General John T. Lewis,
Brigadier General John T. Kennedy.

As Trial Judge Advocates:

Honorable Francis Biddle, Attorney General of
the United States.
Major General Myron Cramer, The Judge Advocate
General, U. S. Army.

Colonel F. Granville Munson,
Colonel John M. Weir,
Colonel Erwin M. Treusch.
Officers of the Judge Advocate General's
Department.

Oscar Cox, Assistant Solicitor General of the
United States.
James H. Rowe, Jr.,
Assistant to the Attorney General.

As Provost Marshal:
Brigadier General Albert L. Cox.

RG 153

ENTRY 1009

BOX 17

FILE CM 334178

3

e2

As Counsel for the Accused except George John Dasch:

Colonel Cassius M. Dowell,
Colonel Kenneth Royall,
Major Lanson H. Stone,
Captain William G. Hummell.

As Counsel for the Accused George John Dasch:

Colonel Carl L. Ristine.

P R O C E E D I N G S

The President. The Commission will come to order.

The Commission is now open for the trial of such persons
as may be brought before it.

Brigadier General Cox. Bring in the prisoners.

(The prisoners were brought into the room.)

Colonel Munson. May it please the Commission: the
prosecution is ready to proceed with the trial in the case of
the United States against Ernest Peter Burger, George John
Dasch, Herbert Hans Haupt, Henry Hark Helnck, Edward John
Kerling, Hermann Otto Neubauer, Richard Quirin, and Werner
Thiel.

The reporter will be sworn.

(The oath was administered to the reporter,

Mr. Francis J. Attig, as follows:)

Colonel Munson. Do you swear that you will faithfully
perform the duties of a reporter to this Commission, so help
you God?

Mr. Attig. I do.

RG 153ENTRY 1009BOX 17FILE CM 334178

4

c3

Colonel Munson. I am directed by the Trial Judge Advocates to name the following men to this honorable Commission. The Trial Judge Advocates nominate and request your honorable body to accept as assistant trial judge advocates the following named officers of the Department of Justice; Oscar Cox, Assistant Solicitor General of the United States, and James H. Rowe, Jr., Assistant to the Attorney General.

Will those gentlemen rise, please, so that they may be identified?

(Mr. Cox and Mr. Rowe rose.)

Colonel Munson. And also the following named officers of the United States Army: Colonel F. Granville Munson, now addressing the Commission; Colonel John M. Weir, and Colonel Erwin M. Treusch; all being officers of the Judge Advocate General's Department of the Army.

Will they be accepted as assistant trial judge advocates?

The President. They will be accepted.

Colonel Royall. May it please the Commission: Before the defense counsel take any part or are recognized in this matter, we desire to make a statement to the Commission.

The President. Is that in order, as far as the prosecution is concerned?

Colonel Munson. Yes.

The President. It will be received.

Colonel Royall. In deference to the Commission and in order that we may not waive for our clients any rights which may belong to them, we desire to state that, in our opinion, the order of the President of the United States creating this Court is invalid and unconstitutional. I do not think it

RG 153
ENTRY 1009
BOX 17
FILE CM 334178

5

04 necessary or appropriate to argue that question unless I am so requested.

It is perhaps sufficient to state that our view is based, first, on the fact that the civil courts are open in the territory in which we are now located and that, in our opinion, there are civil statutes governing the matters to be investigated.

In the second place, we question the jurisdiction of any court except a civil court over the persons of these defendants.

In the third place, we think that the order itself violates in several specific particulars congressional enactments as reflected in the Articles of War.

The President. Are there any remarks on the part of the prosecution?

The Attorney General. I do not want to argue the case, but if at the appropriate time you wish to hear argument on it, I should like to be heard. May I simply make a very brief statement in answer to Colonel Royall's remarks?

In the first place, I cannot conceive that a military commission composed of high officers of the Army, under a commission signed by the Commander-in-Chief, would listen to argument on the question of its power under that authority to try these defendants.

In the second place, let me say that the question of law involved is a question, of course, to be determined by the civil courts should it be presented to the civil courts.

Thirdly, this is not a trial of offenses of law of the civil courts but is a trial of the offense of the law of war, which is not cognizable to the civil courts. It is the trial,

RG 153
ENTRY 1009
BOX 17
FILE CM334178

6

05

as alleged in the charges, of certain enemies who crossed our borders, crossed our boundaries, which had then been described by the military and naval authorities, and who crossed in disguise in enemy vessels and landed here.

They are exactly and precisely in the same position as armed forces invading this country. I cannot think it conceivable that any commission would listen to an argument that armed forces entering this country should not be met by the resistance of the Army itself under the Commander-in-Chief or that they have any civil rights that you can listen to in this proceeding.

Colonel Royall. May I say in reply, sir, that the military rank of the Commission or the President of the United States does not, in our opinion, affect the matter in any way, and it is needless to say to this Court that we are basing our position in no sense upon the personnel of the Court or any lack of confidence that we have in it.

Colonel Ristine. If the Commission please, on behalf of the one prisoner--

The President. I take it you are Colonel Ristine?

Colonel Ristine. Yes, sir.

The President. Representing the one prisoner by name?

Colonel Ristine. Representing the one. May I request that the objections urged by defense counsel be equally applicable to that prisoner, George John Dasch?

The President. Colonel Ristine, Mr. Reporter, has been directed by competent authority to represent that particular prisoner, and the Commission has been so informed by such authority.

RG 153
ENTRY 1009
BOX 17
FILE CM 334178

7

o6

Colonel Dowell. Another comment by defense counsel, if the Commission please: The purpose of these remarks at this time is merely to ward off any assumption that the defense accepts by participating in this proceeding the legality of the tribunal or of its method of constitution.

The President. Does the prosecution care to remark on these statements of the defense counsel?

The Judge Advocate General. No, sir.

The President. It is the opinion of the Court that before any decision in the order of instance be passed on by the Commission, the Commission shall be sworn and organized. I might state in this connection that the Commission will hold its proceedings in secret; that those present will be limited to the proper officials of the prosecution and of the defense; and that they will all be sworn, as well as such officials as may be present on the request of the prosecution and the defense, subject to the decision of the Court as to the propriety of their entrance; and that there will be no spectators of any character or kind admitted to the sessions of this Court or Commission.

Since the procedure as to order of instance will be that followed in military courts in general, we shall now proceed to the swearing of the Court and those present before taking action on your request.

Colonel Munson. May it please the Commission: The defense counsel requests me to ask your honorable body to accept as assistant defense counsel the following named officers of the Army of the United States: Major Lauson H. Stone.

(Major Stone rose.)

RG 153
ENTRY 1009
BOX 17
FILE CM 334178

o7

Colonel Munson. Captain William G. Hummell.
(Captain Hummell rose.)

Colonel Munson. With respect to those present, do I understand the order of the Commission to cover the officers of the Federal Bureau of Investigation, who are necessary in the conduct of the case, and such assistants as the Attorney General may desire to aid him in the prosecution of the case, without naming those officers specifically?

The President. That is correct.

Colonel Munson. That is correct, sir.

The President. I shall ask you to name them to the officer at the door. I shall ask you to present to Lieutenant Page, representing the Provost Marshal, at the door, a list of those authorized, so that they may be passed in and out properly and expeditiously.

Colonel Munson. Two copies of the record will be furnished the defense under the terms of the order.

I shall now read the order appointing this military commission.

ORDER APPOINTING MILITARY COMMISSION

"Commander-in-Chief of the Army and Navy

"Washington, D. C. July 2, 1942.

"By virtue of the authority vested in me as President and as Commander-in-Chief of the Army and Navy, under the Constitution and Statutes of the United States, and more particularly the Thirty-Eighth Article of War (U.S.C. Title 10, Sec. 1509)"--

The latter, I may interpolate, standing for United States Code, Title 10, Section 1509--

RG 153ENTRY 1009BOX 17FILE CM 334178

9

o8

"I, Franklin Delano Roosevelt, do hereby appoint
as a Military Commission the following persons:

"Major General Frank R. McCoy, President

Major General Walter S. Grant

Major General Blanton Winship

Major General Lorenzo D. Gasser,

Brigadier General Guy V. Henry

Brigadier General John T. Lewis

Brigadier General John T. Kennedy

"The prosecution shall be conducted by the
Attorney General and the Judge Advocate General.

The defense counsel shall be Colonel Cassius M.
Dowell and Colonel Kenneth Royall.

"The Military Commission shall meet in Washington,
D. C., on July 3th, 1942, or as soon thereafter as it
practicable, to try for offenses against the Law of
War and the Articles of War, the following persons:

"Ernest Peter Burger

George John Dasch

Herbert Hans Haupt

Henry Harm Heinck

Edward John Kerling

Hermann Otto Neubauer

Richard Quirin

Werner Thiel

"The Commission shall have power to and shall,
as occasion requires, make such rules for the conduct
of the proceedings, consistent with the powers of
Military Commissions under the Articles of War, as it
shall deem necessary for a full and fair trial of the

RG 153
 ENTRY 1009
 BOX 17
 FILE CM 334178

10

09

matters before it. Such evidence shall be admitted as would, in the opinion of the President of the Commission, have probative value to a reasonable man. The concurrence of at least two-thirds of the Members of the Commission present shall be necessary for a conviction or sentence. The record of the trial including any judgment or sentence shall be transmitted directly to me for my action thereon.

"FRANKLIN D. ROOSEVELT

"The White House,
 "July 2, 1942.

All the members of the Commission named therein are present, to wit: Major General McCoy, Major General Grant, Major General Winship, Major General Gasser, Brigadier General Henry, Brigadier General Lewis, and Brigadier General Kennedy.

The accuser in this case is Colonel F. Granville Munson, United States Army. The charges were forwarded to the Trial Judge Advocates of this Commission by letter of The Adjutant General, dated July 6, 1942, pursuant to the order of the Secretary of War, which will be read later.

No member of this Commission is to be called as a witness for the prosecution, and no cause for or ground of challenge of any member of this Commission is known to the prosecution.

Is any member of this Commission aware of any facts which he believes to be a ground for challenge by either side? If so, please state those facts.

Cin.
 fls.
 10:20

RG 153
 ENTRY 1009
 BOX 17
 FILE CM 334178

1b

11

Cinci
 ris
 Attig
 10:20
 a.m.

The President. There seem to be none.

Colonel Munson. The prosecution has no challenges.

The President. Lieutenant Page, please permit nobody to leave the court or to enter until further instructions. I will make an exception for any who have heretofore been sworn.

For the moment I will ask you to carry out my previous instructions--that nobody will be allowed to leave or enter until further instructions.

(The oath was administered to the reporter, Mr. H. J. Cinciotta, as follows:)

Colonel Munson. Do you swear that you will faithfully perform the duties of a reporter to this Commission, so help you God?

Mr. Cinciotta. I do.

Colonel Munson. Do the accused or their counsel desire to challenge any member of this Commission for cause?

Colonel Royall. May it please the Commission, on account of the unusual nature of the proceeding, and because of the short time that we have had to investigate this matter, if the Commission will permit us, with all deference, of course, to the individual members of the Commission, we would like to ask the Commission as a body a few questions to determine whether or not we will challenge anyone, if that is permissible.

The President. I would like to ask the Judge Advocate General of the Army whether he thinks the proceedings would more properly, on this plea, follow the organization of the Commission with regard to swearing the Commission and counsel and those present.

The Judge Advocate General. I do not believe, sir, that

Due to the enormous size of the transcript, we have included only the first 10 pages here on this web site. If you would like the complete transcript, please contact Dolores Valdez at (213) 532-2000, ext 228 to arrange for the complete transcript.