

CASE NO. 70

TRIAL OF WILLI MACKENSEN

BRITISH MILITARY COURT, HANNOVER,
JANUARY 28TH, 1946

A. OUTLINE OF THE PROCEEDINGS

Willi Mackensen, formerly Hauptmann, was accused of having committed a war crime in that he "on dates between 20th January, 1945, and 12th April, 1945, in violation of the laws and usages of war, was concerned with others, not in custody, in the ill-treatment of Allied prisoners of war on a forced march from Thorn in Poland to the Hannover area in Germany, as a result of which ill-treatment at least 30 prisoners of war died".

It was alleged that the accused was in charge of the column in question, that the prisoners had little food, no cooking facilities, no heating in billets and no medical supplies, and that one prisoner was wounded and another shot dead.

The accused pleaded not guilty, but during the evidence for the Prosecution he changed his plea to one of guilty. He was found guilty and sentenced to death by hanging. The sentence was confirmed.

B. NOTES ON THE PLEA OF GUILTY

Regulation 3 attached to the Royal Warrant specifically exclude from application to war crime trials certain Rules of Procedure made pursuant to the Army Act. Among these appears Rule 35 (D) which reads as follows :

"(D) A Plea of 'Guilty' shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered a plea of 'Not guilty' shall be recorded and the trial shall proceed accordingly".

Rule 38, which is not excluded by Regulation 3, runs as follows :

"38. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of 'Not guilty', and plead 'Guilty', and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of 'Guilty', and shall, so far as is necessary, proceed in manner directed by Rule 37".

Rule 38 is not (though 35 (B) and 37 are) among those Rules, applicable to District Courts-Martial, which are made applicable by Rule 121, "so far as practicable" to Field General Courts-Martial and so to war crime trials ; the Court decided nevertheless to allow the accused to change his plea.

Rule 35 (B) contains the following safeguards :

"(B) If an accused person pleads 'Guilty', that plea shall be recorded as the finding of the court ; but, before it is recorded, the president, on behalf of the court, shall ascertain that the accused understands the

nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead 'Not guilty'."

In the present instance, the Legal Member made certain that the accused agreed to the truth of the various particulars contained in the charge, that the accused realised that the Court would have no alternative but to find him guilty, and that the accused had discussed the matter with his Counsel.

Rule 37, to which reference is made by Rule 38, sets out the procedure to be followed on the recording of a plea of guilty. Paragraphs (B) and (C) thereof contain the following provisions :

"(B) After the record of the plea of 'Guilty' on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these rules in the case of a plea of 'Not guilty'."

"(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character."

Explaining the position to the accused the Legal Member stated :
"Mackensen, I must tell you this, that on a plea of guilty there is a difference in the procedure, and that instead of hearing evidence from witnesses in the ordinary way the Prosecutor will lay before the Court sufficient facts to help the Court to come to a decision on the merits of the case. The Prosecutor will either read from documents which give evidence previously taken on oath or he will summarise the facts of the case. There will be no opportunity, of course, for any of the evidence to be questioned, and the Court will therefore act essentially on those facts which the Prosecutor will lay before it."

After the Prosecutor had quoted from a number of affidavits, the accused expressed his desire neither to call witnesses, nor to give evidence himself, as to his character ; his Counsel delivered a closing speech in mitigation of punishment. The Court then delivered sentence.