



PUBLIC SOCIOLOGIST

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THE VINDICTIVE SPOUSE: THE CASE OF THE NAZI WIFE

The Facts

In 1944 a German soldier paid a short visit to his wife while under travel orders on a reassignment. During the single day he was home, he conveyed privately to his wife something of his opinion of the Hitler government. He expressed disapproval of Hitler and other leading personalities of the Nazi party. He also said it was unfortunate that Hitler had not met his end in the assassination attempt that had occurred on July 20th of that year. Shortly after his departure, the soldier's wife reported his remarks to the local leader of the Nazi party, observing that "a man who would say a thing like that does not deserve to live." He was arrested shortly after, tried by a military tribunal and given a sentence of death. After a short period of imprisonment, instead of being executed, he was sent back to the front in Russia to fight till death. In 1950, after the collapse of the Nazi regime, the surviving husband complained to the prosecutor of the New German Republic about his wife. The wife was brought to trial for having procured the false imprisonment of her husband under the German Criminal Code. Her defense rested on the ground that her husband's statements to her about Hitler and the Nazis constituted a crime under the laws then in force. Accordingly, when she informed on her husband, she was simply bringing a criminal to justice.

The Law

1938 Statute:

“The following persons are guilty of destroying the national power of resistance and shall be punished by death: Whoever publicly solicits or incites a refusal to fulfill the obligations of service in the armed forces of Germany, or in armed forces allied with Germany, or who otherwise publicly seeks to injure or destroy the will of the German people or an allied people to assert themselves stalwartly against their enemies”



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1934 Statute:

“(i) Whoever publicly makes spiteful or provocative statements directed against, or statements which disclose a base disposition toward, the leading personalities of the nation or of the National Socialist German Workers' Party, or toward measures taken or institutions established by them, and of such a nature as to undermine the people's confidence in their political leadership, shall be punished by imprisonment. (2) Malicious utterances not made in public shall be treated in the same manner as public utterances when the person making them realized or should have realized they would reach the public. (3) Prosecution for such utterances shall be only on the order of the National Minister of Justice; in case the utterance was directed against a leading personality of the National Socialist German Workers' Party, the Minister of Justice shall order prosecution only with the advice and consent of the Representative of the Leader. (4) The National Minister of Justice shall, with the advice and consent of the Representative of the Leader, determine who shall belong to the class of leading personalities for purposes of Section i above.”

The Question

You are the Justices of the Federal Republic of Germany in 1950. How will you decide the wife's case? Write a decision as a judge and explain the rationale?