

Appeal in the Case of  
UNITED STATES OF NORTH AMERICA

- versus -

ALFRIED KRUPP VON BOHLEN UND  
HALBACH and others.

To the

Military Governor  
of the American Zone of Occupation  
in Germany

B e r l i n

The undersigned defense counsels submit this joint appeal, each for his own client, notwithstanding their privilege of presenting a special plea for mitigation, reduction or amendment of sentence for each defendant.

- 1.) On 31 July 1948 the Military Tribunal III of the United States of North America, Nurnberg, gave its judgment in Case 10 (Krupp). The following were sentenced for war-crimes and crimes against humanity, committed by participation in the "spoliation of occupied territories" and for the "slave-labor program" of the German Government:

|                                        |                                                       |
|----------------------------------------|-------------------------------------------------------|
| ALFRIED KRUPP VON BOHLEN UND HALBACH - | twelve years' imprisonment and total loss of property |
| EWALD LÖSER -                          | seven years' imprisonment                             |
| EDUARD HOUDREMCNT -                    | ten years' imprisonment                               |
| ERICH MÜLLER -                         | twelve years' imprisonment                            |
| FRIEDRICH JANSSEN -                    | ten years' imprisonment                               |
| WAX IHN -                              | nine years' imprisonment                              |
| KARL EBERHARDT -                       | nine years' imprisonment                              |
| HEINRICH KORSCHAN -                    | six years' imprisonment                               |
| FRIEDRICH VON BÜLOW -                  | twelve years' imprisonment                            |
| HEINRICH LEHMANN -                     | six years' imprisonment                               |
| HANS KUPKE -                           | two years', 10 months' and 19 days' imprisonment.     |

- 2.) Immediately after the pronouncement of the judgment the counsels for the sentenced defendants deposed a motion stating their fundamental legal and factual objections against the judgment and against the procedure on which it was based, and requesting every expedient means of redress.

The undersigned defense counsels refer to this motion and all objections raised in the course of the proceedings which were directed against the basis of this jurisdiction. This includes in particular the establishment of Special Tribunals (compare the Supplementary Opinion of Presiding Judge Anderson dated 7 July 1948, designating this Tribunal as an "ad hoc military tribunal", German Page 2771, English page 2771) and the application of an exceptional law established by the victorious powers of the second world war valid only against the vanquished.

The Defense Counsels, in this petition, will therefore make no further reference to the general foundations of this procedure, but will refer only to misgivings caused by the judgment in this case.

- 3.) The judgment, with regard to the indictment in Case 10 (Krupp) presented on 17 August 1947, consists of no less than eleven announcements by the Court:

1. Pronouncement of acquittal on the counts of aggressive war and conspiracy (Count I and IV of the indictment) dated 5 April 1948;
2. Written communication of this decision in modified form, dated 8 April 1948;
3. Written opinion on the acquittal, dated 11 June 1948, conditioned by an additional personal opinion by the Presiding Judge and one Assistant Judge;
4. Supplementary Opinion by Presiding Judge Anderson of 7 July 1948;
5. Special Concurring Opinion by Judge Wilkins of 31 July 1948;
6. Pronouncement of the sentence in connection with Spoliation and Slave-labor (Counts II and III of the indictment) of 31 July 1948 with reservation of dissenting opinion of one of the Judges;
7. Dissenting Opinion of Judge Wilkins of 31 July 1948;
8. Pronouncement of the sentences by the Assistant Judges of 31 July 1948;
9. Dissenting Opinion by Presiding Judge Anderson 31 July 1948;

10. Written explanation and supplement to the Dissenting Opinion of the Presiding Judge, dated 31 July 1948, filed with the Secretary General on 5 August 1948;
  11. Rectification and amendment of the judgment by the Presiding Judge, dated 2. August 1948.
- 4.) The ruling pronounced by the Tribunal on 31 July 1948 finding the defendants guilty and sentencing them on Count II and III is not backed by the majority of the judges but only by a single judge. In the verdict (compare above paragraph 3, number 6) only Judge Anderson and Judge Daly concurred in their opinion, in the sentence (see above paragraph 3, number 8) only the Judges Daly and Wilkins. Thus only Judge Daly based the imposed penalty on the verdict.
- 5.) This singular judgment concludes a singular trial (compare the following paragraphs 6 to 18).
- 6.) As head of the firm of Krupp, the "symbol and the beneficiary of the most sinister forces engaged menacing the peace in Europe" (USA Prosecutor Jackson before the International Military Tribunal, quoted from the opening Statement of General Taylor on 8 December 1947, page 2) Gustav Krupp von Bohlen und Halbach was indicted before the International Military Tribunal together with the so-called major war criminals. As his physical and mental conditions rendered his trial impossible, the American, French and Russian prosecution proposed that Alfried Krupp von Bohlen und Halbach be indicted instead of his sick father.
- The Tribunal concurred with the opinion of the British prosecutor: "This is not a game where a substitute may be provided for a sick player" (Trial of the Major War Criminals, official German text, Nürnberg 1947, page 17) and rejected the substitution of the son for the father (Trial of the Major War Criminals, official German text, Nürnberg 1947, page 38).
- 7.) Almost two years later, on 17 August 1947, the United States of North America - this time without participation of the other three powers - brought charges against Alfried Krupp von Bohlen und Halbach and eleven members of his father's staff notwithstanding the fact that none of the defendants were residents of the American Zone or had committed offenses against the life or property of American citizens.

8.) At the time when the indictment was served most of the defendants had already been under arrest for two years. During the preliminary examination they were questioned up to 70 times (statement Alfried Krupp von Bohlen, German transcript page 11443, English page 11034) by the prosecution. On these occasions they were never informed for what reasons they were imprisoned, <sup>on</sup> whose orders they were being detained, nor that they were being interrogated not as witnesses but as defendants and that their statements could be used against them. Moreover, they were not told that they had a right to refuse information and that they were entitled to consultation with an attorney. On the contrary, up to the time when the indictment was served they were specifically denied legal assistance while simultaneously a staff of prosecutors, interrogation and investigation personnel were engaged in the compilation of incriminating material.

9.) The proceedings before the Tribunal began with the rejection of the American attorney Earl J. Carroll as defense counsel for the defendant Alfried Krupp von Bohlen.

In several decisions - all stating different reasons - the Tribunal denied him the right specifically established in Ordinance No. 7 to be represented by a counsel of his own choice.

10.) When the defendant Alfried Krupp von Bohlen thereupon declared that, under these circumstances, he was renouncing the right to be represented by any counsel, and when the attorney Kranzbühler hitherto charged with the defense relinquished his power of attorney for his client, the Tribunal ordered him to continue to represent the defendant.

11.) Right from the beginning the transcript and the soundtrack show a biased restriction of the defense in the proceedings of the Tribunal.

This is particularly evident from the treatment of objections and motions made by the defense, the majority of which was denied without justification.

12.) On January 16, 1948, the Tribunal announced the decision that a judge would be commissioned with the examination of

witnesses. The defense considered this ruling a violation of the principle of direct nature of the proceedings and of the defendants' right to be confronted with the prosecution witnesses.

The defense counsels who wished to request a short recess on the basis of this new development were interrupted. In view of the attitude taken by the Tribunal the Defense counsels who were present saw no possibility of safeguarding the rights of the defendants and absented themselves from the court-room.

- 13.) The Tribunal proceeded with the trial in the absence of the Defense counsels, later arranged for them to be brought to the court-room under military escort, had them arrested there and taken to prison, at the same time specifically denying them an opportunity of justifying their conduct (transcript German page 1915, 2039; English page 1870/71, 1993). After three days in detention they were led to the court-room. After only two of the counsels had been heard, the Tribunal suddenly announced that it had sentenced them to imprisonment for three days and now only wanted to deliberate further measures to be taken against them (German transcript page 2020, 2030, 2033; Engl. page 1976, 1984, 1986).

The assistant Defense counsel of Alfried Krupp von Bohlen, who stated despite this announcement that his conduct had been necessary and therefore justified in the interest of his client's rights, was excluded from further participation in the proceedings (German transcript page 2096, Engl. page 2052).

By these measures on the part of the Tribunal the Defense was considerably restricted in its freedom of action. Two applications dated 19 January 1948 and 5 April 1948 requesting the Tribunal to relinquish its competence due to prejudice were rejected (German transcript page 1929, 5133; Engl. page 1883, 5015).

- 14.) The Tribunal had appointed a certain final date for the conclusion of the trial and the defense had already been informed to this effect in camera as early as January 1948. The judges deposed in open court on 8 January 1948 that they had come here on a leave of absence from the duties of their courts "for a limited period of time" and they considered it "embarrassing to have to find it necessary to extend this leave of absence too long" (German trans-

cript page 1208,1211; Engl. page 1202,1205).

No consideration was given in this connection to the defense material - which at that time could as yet not be ascertained - necessitated by the prosecution exhibits.

- 15.) So as to be able to conclude the trial at the date appointed for personal reasons, the Tribunal transferred more and more of the hearing of evidence to specially appointed judges (commissioners). At times three commissioners were in session simultaneously in different court-rooms in addition to the appointed Tribunal (German transcript page 1915,2039; Engl. page 1870/71,1993). In this the defense was at a considerable disadvantage compared to the prosecution. Of 86 witnesses for the prosecution, 66 were heard by the Tribunal and 20 by a Commissioner; of 141 witnesses for the defense, only 41 were heard by the Tribunal and 100 by the Commissioner. In other words, the Tribunal was able to obtain a personal impression of most of the witnesses for the prosecution but of very few defense witnesses.

- 16.) The time granted to the Defense counsels for the preparation of the defense and for preparation of the Final Pleas and the Briefs was inadequate.

The Final Pleas and the Final Briefs had to be submitted to the Tribunal before the whole transcript became available. The transcript on the important rebuttal session was submitted to the defense only on 25 June 1948, while the first Final Pleas had to be handed in on 19 June 1948.

The fixing of a final date thus prevented the defense from giving proper consideration to the material to be submitted by them in the decisive final stage of the trial.

- 17.) The defense is unable to find in the whole transcript one question put by a Judge to a witness which might have served for the defense of one of the defendants, however, there are numerous questions resulting in incriminating answers.

For instance: The interrogation of the French witness Béché on the re-opening of the tungsten pit Montbelleux left open the question of the proper or improper mining

of the ore. Through a question, put by Judge Wilkins, apparently recapitulative but leading in reality, the witness was forced to confirm the improper mining of the ore, reversing his previous statements (German transcript page 3105; Engl. page 3063).

- 18.) In no case did the Tribunal question any witnesses of the prosecution in order to check their credibility. This was repeatedly the case with regard to witnesses of the defense.

First example: The Russian witness of the defense, Arbatow, made statements on the treatment of Eastern workers at Essen which were very favourable to the defense (transcript German page 6940 sequ., Engl. page 6711 sequ.). In connection with the examination Judge Daly, asking detailed questions, tried to reveal a relationship between the present activity of the witness and the firm of Krupp (transcript German page 7007 sequ., Engl. page 6774 sequ.).

Second example: The witness of the Defense Sieber made exonerating statements on the terrorism inflicted by the Secret State Police on the German industry (transcript German page 7182 sequ., Engl. page 6920). Judge Daly again questioned the witness with regard to his present activity, obviously with the intention of establishing a connection with the firm of Krupp. It could, however, only be ascertained that the witness is at present employed by the British Forces as an expert in high explosive ammunition for anti-aircraft weapons. This part of the statement does not appear in the transcripts. The counsels for the defense do not know the reasons for this omission.

- 19.) The judgment of this Tribunal is based on serious procedural irregularities (see the following paragraphs 20 to 23).

- 20.) The Tribunal used against the defendants documents which had not been admitted in evidence.

First case: It is stated in the judgment that the defendant von Bülow was present, when prisoners of war were beaten by members of the Works Security Police in the guard room of the Works Security Police (Judgment German page 110, Engl. page 109).

This statement of the judgment can only be based on the affidavits of the Krupp worker Theodor L'Hoest (Pros. Exh. No. 1002 and 1070). When the defense requested the cross-examination of this witness, the prosecution withdrew his affidavits (transcript German page 4706, Engl. page 4616.).

Second case: The judgment states that an Italian prisoner of war was taken to von Bülow's office after he had been beaten (Judgment German page 110, Engl. page 109).

This statement of the judgment can only be based on the affidavits of the Krupp worker Jakob Wenk (Pros. Exh. No. 1003 and 1071). These affidavits too were withdrawn by the

prosecution when the defense requested the cross-examination of Went (transcript German page 4706, Engl. page 4616).

Third case: In discussing alleged ill-treatment of Eastern workers the judgment states with regard to the witness Wirtz: "He testified before the Denazification Board that he was asked by the plant management to beat people, and named several others who participated in the mistreatment, including an employee of the Krupp firm named Balz." (Judgment German page 108, Engl. page 108).

This statement can be based neither on the decision of the Denazification Board that had been submitted to the Tribunal (Pros. Exh. No. 1357, Pros. Doc. 534, German page 58, Engl. page 40), nor on the statement of the witness Wirtz before the Tribunal. On the contrary, the latter states expressly that he had not made such depositions before the Denazification Board (transcript German page 4409-4411, Engl. page 4326-4327). This finding of the Court must therefore be based on evidence that had not been introduced and that contains such a deposition.

- 21.) Contrary to its decision to the effect that the contents of affidavits made by individual defendants would only be considered as evidence against the respective affiants (Judgment German page 2, Engl. page 2) the Tribunal made use of such statements also against co-defendants.

First example: The Tribunal states that Eberhardt and Janssen had deliberated the employment of KZ inmates at Geisenheim (Judgment German page 123, Engl. page 125). This statement can only be based on the affidavit of the defendant Eberhardt (Pros. Exh. No. 1246, Pros. Doc. Bk. 44, page 18) which was consequently also used against the defendant Janssen.

Second example: The judgment states: "Eastern workers were mistreated in many other ways. According to the defendant Ihn, from the time of the arrival of Russians, towards the end of 1941, until about 1943, they were deprived of writing letters or receiving letters." (Judgment German page 196, Engl. page 106). This deposition is included in an affidavit of the defendant Ihn (Pros. Exh. No. 971, Doc. Bk. 35, German page 35, Engl. page 28). The Tribunal made use of it against all defendants who were found guilty on Count III.

- 22.) The Tribunal considers particularly serious incidents as facts although the only witness who was heard in this respect stated explicitly that he did not know anything

about them, but had heard about these incidents only by hearsay and rumours.

Example: The judgment states: "In repair workshop 2, a Russian prisoner of war was killed in such a manner as to cause acute agony. The same person upon another occasion attempted to hang a Russian whose life was saved only through the intervention of the plant manager. No action was taken against the culprit." (Judgment German page 109, Engl. page 108).

The transcripts show that these occurrences which the Tribunal states as facts, were taken from a statement with which the prosecutor reproached the witness Dvorak during his examination. This witness stated repeatedly that he heard of such incidents but that he could not state anything in this respect from his own knowledge (transcript German page 10606 sequ., in particular page 10608, 10612; Engl. page 10446 sequ., in particular page 10448, 10452).

- 23.) The Tribunal used documents which do not exist as evidence against the defendants.

First example: The judgment states that "its conclusions are based, in the main, upon written documents". It states further that by order of one of the defendants documents - the contents of which are entirely unknown - were burned, and continues: "The significance of the burning of these documents is not to be overlooked." (Judgment German page 6, Engl. page 6).

Second example: The fact that rations issued to prisoners of war and military internees were inadequate, is, according to the Tribunal "conclusively shown by documentary evidence taken from the Krupp archives which had been secreted as hereinabove stated." (Judgment German page 72, Engl. page 68a)

In reality no evidence had been concealed, nor does the Tribunal make a statement to that effect in any other part of the judgment. The Presiding Judge himself realized this fact, after the judgment had been pronounced and issued a subsequent "Statement of Amendment" according to which the words "which had been secreted as hereinabove stated" were to be deleted (Corrective Statement dated 2 August 1948).

By making this "Statement of Amendment" the Presiding Judge deprives a factual finding of the Tribunal of its former basis, but maintains the finding as such without establishing what other facts it is based on.

- 24.) As far as the factual contents of the judgment are concerned, it contains such a distortion of facts that without extensive quotations from the entire transcripts it is impossible to clarify all inadequacies and errors.

In most cases the Tribunal makes no reference to the evidence forming the basis of its findings. Where however, individual

documents are named, no reference - with a few exceptions - is made to the place where they are quoted in the transcripts. It is therefore extremely difficult to state an opinion with regard to the judgment.

This appeal is therefore as heretofore limited to a few examples of characteristic erroneous findings (see the following paragraphs 25 to 34).

- 25.) The Tribunal does not quote one sentence exonerating the defendants from the 2829 documents submitted by the defense and the statements of 141 defense witnesses.

As far as any reference at all is made to evidence of the defense, the Tribunal does so only in order to draw conclusions incriminating the defendants.

First example: The Tribunal states that in the summer of 1941 plans were made for the final solution of the Jewish question in all Europe and that final solution meant extermination. (Judgment German page 137; Engl. page 140). According to further statements of the judgment "the officials of the firm without doubt knew of that abominable policy as early as 1936 (Judgment German page 139; English page 141).

The Tribunal bases this assertion on an affidavit of a defense witness according to which in 1936 the defendant Ihn had intervened in favour of a Jewish employee of the firm of Krupp who was to be dismissed under pressure of the Vertrauensrat (Confidential Council) (affidavit Mickenschreiber, Def. Exh. No. 2767, Doc. Bk. Ihn XV, page 26).

Second example: The defense has shown, on the basis of numerous documents, to what extent the Krupp works at Essen suffered the effects of the Allied air war and the defense deduced therefrom that the attitude of the defendants would necessarily have to be judged in the light of the general living conditions created thereby.

The only conclusion drawn by the Tribunal from this argumentation of the defense is the statement - prejudicial to the defendants - that the firm of Krupp ought to have made better provisions for the air protection of foreign labor and that under the circumstances prisoners of war ought not to have been employed at all.

- 26.) In its judgment the Tribunal announced the principle that the innocence of the defendants must be presumed until there is proof of the crimes charged beyond reasonable doubt (Judgment German page 6, Engl. page 6). In reality the Tribunal has not only failed to take into account this principle "in

dubio pro reo" which is recognized in the criminal law of all civilized nations, but has actually changed it to the opposite "in dubio contra reum" (see the following paragraphs 27 to 30).

- 27.) The judgment replaces evidence which is lacking by suppositions against the defendants.

First example: The judgment states with regard to the inmates of the disciplinary labor camp Dechenschule: "Some of them worked in the Main Administration Building where were the offices of the defendants Krupp, Janssen, Houdremont, Ihn, Lehmann, Kupke and von Bülow. The defendants Janssen, Eberhardt, Houdremont, von Bülow, Ihn, Müller, Kupke and Lehmann necessarily saw the inmates either at their work or on their way to and from the camp." (Judgment German page 99, Engl. page 98).

The transcripts show neither that the aforementioned defendants actually had their offices in those parts of the Main Administration Building where the prisoners worked, nor that at that time they had any offices at all in the Main Administration Building, nor that the defendants actually saw the prisoners on their way from and to the camp or at their work. The statements of the Tribunal are only based on its presumption which is prejudicial to the defendants.

Second example: The judgment establishes that ill-treatment in the cellar was known to the secretaries who worked in the same building. The following question is linked with this statement in the judgment: "Could this have been unknown to these defendants whose offices were in the same building?" (Judgment German page 110; Engl. page 108).

The transcripts do not prove that these beatings were known to the defendants. The prosecution did not even make any allegation to that effect.

In the unusual form of a question the Tribunal gives expression to a presumption which, in the absence of proof, is evaluated against the defendants.

- 28.) Whenever a document can be interpreted either in favour or against the defendants the Tribunal chooses the unfavourable interpretation:

First example: The prosecution had submitted to the Tribunal a circular letter of the Directorate dated May 1941, according to which "Krupp's interests ... must be pursued in each case in the event of an enlargement of the Krupp Konzern, owing to purchase of or participation in foreign works in the home country or abroad." (Pres. Exh. No. 653, Doc. Bk. 19, German page 111, Engl. page 85). In this connection the defense had submitted an affidavit of the former Chief of the Audit Department of the Konzern which reads e.g.: "At that time this note was written down at my own suggestion ... I wanted to be kept informed prior to possible negotiations in order to be able to interpose my veto in good time." (Def.

Exh. No. 3071, Doc. Bk. Lösser supplementary volume page 1; cf. also plea for Alfried Krupp von Bohlen, page 101/2, and Ewald Lösser, p. 57/8).

In spite of this statement and without any evaluation of the evidence the Tribunal, taking a partial view, interprets the circular letter (Judgment German page 32, Engl. page 33) in the sense of the prosecution as proof of the defendants' intention to plunder the occupied territories systematically.

Second example: The judgment deals with the purchase of machinery - a purchase which it considers to be illegal - from a Reich company which sold machines seized in France or acquired on the Black Market. In connection with this the judgment says: "An interesting item appears in the minutes of the meeting of the Vorstand ... , showing approval of an appropriation of RM 13.550.-- for the purchase of machine tools through "Krupp Reparatur Werk" in Paris, Krawa (Motor Vehicle Construction Department). (Judgment German page 46, Engl. page 47).

The Tribunal submits therefore without any proof that this amount was granted by the defendants for the illegal acquisition of machines.

- 29.) If incriminating and exonerating statements are made with regard to some question, the Tribunal accepts the incriminating statement. The exonerating one is either not mentioned or else the Court declares that it cannot be credited.

First example: In May 1940 Alfried Krupp von Bohlen was at a friend's house, listening to the German Wehrmacht report together with his friend and other guests, and was following the advance of the German troops in the West with the help of a map. From the conversation about industrial plants situated in these areas the witness for the prosecution Rümman claims to have gained the impression of "vultures gathering around their booty" (transcript German page 2107, Engl. page 2063).

The Tribunal is "satisfied that this incident occurred as portrayed by the witness Rümman and that it clearly indicates the attitude of the defendant Alfried Krupp during the period of Germany's aggressions." (Judgment German page 25/26, Engl. page 27.)

In contradiction to the statement by the witness Rümman, the witness for the defense Eilebrecht-Kemena declares that the conversation dealt exclusively with three branch establishments belonging to the host which were situated in Holland and Belgium. He describes Rümman's statement as "grotesque" (transcript German page 6706, Engl. page 6491).

The Tribunal accepts without hesitation the statement made by the witness for the prosecution, and does not even mention the witness for the defense.

Second example: The judgment quotes an affidavit by the witness Schrödter and declares: "This testimony leaves no doubt that the officials in Essen were quite well aware of the fact that the employment of prisoner of war in the production of armament was a violation of the law." (Judgment German page 71, Engl. page 70).

The passage from the affidavit as quoted in the judgment was withdrawn by Schrödter in his examination before the Tribunal, with the explanation that the wording was not his own but was pressed upon him by an interrogating official (statement Schrödter, transcript German page 2736-2820, Engl. page 2678-2765, Closing Brief Kranzbühler for Alfred Krupp von Bohlen "Family, Firm and Person", page 37/38). The judgment does not mention the withdrawal.

- 30.) The Tribunal makes use of testimonies which are unfavourable for the defendants, deposed by witnesses who are obviously unworthy of belief, without considering the facts which speak against their credibility.

Example: The witness for the prosecution Wirtz declared in his examination on 18 February 1946 in answer to a direct question that apart from him, none of the persons present in the court-room of the Tribunal were present at his denazification proceedings in Kulmbach. As a matter of fact a representative of the prosecution, Mr. Mandellaut, who is known to the defendant, was present at that session. He himself has stated this in the record (transcript German page 4427, 4432; Engl. page 4341, 4347). In spite of this obvious perjury the Tribunal accepts only what is testified by this witness as a basis for the statement that cases of ill-treatment had occurred at the instigation of superiors (Judgment German page 108, Engl. page 108).

- 31.) Documents submitted by the defense are quoted in a distorted way, in that individual sentences are taken out of their proper context and thus incriminating the defendants.

Example: The judgment states: "The defendant von Bülow continued to oppose the removal of the barbed wire fence. Even Hitler expressed his surprise that 'the Russian civilian detainees were kept behind barbed wire fences like prisoners of war.'" (Judgment German page 103, Engl. page 103).

The judgment gives the impression that Hitler was referring to von Bülow's measures. As a matter of fact the quotation of Hitler's statement is taken from the minutes made by the Reich Minister Speer on a conference with Hitler which had nothing at all to do with the conditions at the firm of Krupp (Def. Exh. No. 1580, Bülow Doc. Sk. 13, page 44). The judgment quotes only this one sentence without mentioning the sentence which follows: "I (Speer) told him

(Hitler) that this was the result of one of his (Hitler's) orders."

- 32.) In its judgment the Tribunal makes statements for which no foundation can be found in the evidence.

Example: In connection with the cases of ill-treatment cited by the witness Wirtz, the judgment states: "The defendants von Bulow, Ihn and Lehmann had direct knowledge of the indescribably savage treatment of the poor unfortunate workers." (Judgment German page 108, Engl. page 108).

There is no direct or indirect foundation for this particularly grove statement to be found in the transcript.

- 33.) Although the Tribunal acquitted the defendants on the charge of aggressive war, it nevertheless charges them again and again in its reasons for the verdict with participation in waging an aggressive war.

Example: The judgment speaks of the "aggressive attitude of the firm" (Judgment German page 56, Engl. page 56); and the "attitude of the defendant Alfred Krupp during the period of Germany's aggressions" (Judgment German page 26, Engl. page 27). Without any proof it imputes to the defendants the intention to profit by aggressive wars, stating that they "relied upon the concept that an aggressor may first overrun enemy territory, and then afterwards industrial firms from within the aggressor's country may sweep over the occupied territory and utilize property there" (Judgment German page 22, Engl. page 24).

- 34.) The style and presentation of the judgment are often inconsistent and polemic in character.

First example: The Krupp firm is described as a "huge octopus which swiftly unfolded one of its tentacles behind each new aggressive push of the Wehrmacht" (Dissenting Opinion by Judge Wilkins, German page 36/37, Engl. page 39/40).

Second example: The firm is charged with having "considered occupied France as a hunting ground" (Judgment German page 44, Engl. page 45).

Third example: The Tribunal sees in a business correspondence concerning the leasing of a plant and the purchase of an estate in France "the avidity of the firm to acquire the two objects" (Judgment German page 30, Engl. page 31).

Fourth example: The assertion by the prosecution - refuted by the evidence - that wages due to the

workers were left unpaid by the firm when the Elmag plant in Mülhausen was evacuated, is repeated by the judgment in this form: "The Krupp officials ..... left in such a hurry that they failed to pay 800.000.-- RM then owing to the workers." (Judgment German page 36, Engl. page 38).

Fifth example: "The ostensible purpose of Werkschutz II was to suppress riots, but the weapons furnished to it, leather truncheons, were much more suitable for flogging" (Judgment German page 107, Engl. page 107). The judgment refers here to the leather truncheons forming part of the equipment of the Works Security Police, which the present Works Security Police of the firm are also wearing by order of the British Military Government (Statement by Friedrich Müller, transcript German page 8335, Engl. page 8182).

- 35.) The judgment differs from earlier judgments by American Military Tribunals in important legal questions.

Contrary to the decision of the Military Tribunal IV, Case 5 (Flick), the judgment denies that the fact that the war developed into total war had any influence on the application and interpretation of the law of war.

Contrary to the decision of the Military Tribunal VI, Case 6 (I.G. Farben), the judgment considers economic activity in an occupied territory as a punishable act, even in cases where the economy as a whole is prejudiced and the rights of the owner are not violated.

Contrary to the decision of the Military Tribunal IV, Case 5 (Flick), the judgment refuses to recognize as a state of emergency the fact that industry was forced to employ foreign labor, prisoners of war and concentration camp detainees.

- 36.) In its judgment the Tribunal states as a principle "that there can be no conviction without proof of personal guilt" (Judgment German page 6, Engl. page 6).

Adhering to this principle, all previous Nürnberg judgments, including the judgments by the International Military Tribunal, made individual statements concerning the acts or omissions which could be imputed as crimes to each defendant.

In contrast to this, the Krupp judgment offers a general statement of the facts only, in which individual defendants are mentioned now and then in connection with individual business affairs. However, the judgment does not state by which act of a defendant which penal law is supposed to have been violated.

This can be recognized still less since in many cases the name of the acquitted defendant Pfirsch is mentioned in the same connection as that of his co-defendants who were sentenced (Judgment German pages 8, 13, 32, 34, 38, 46, 57, 112, 113, 119; Engl. pages 9, 14, 15, 33, 34, 40, 48, 57, 111, 113, 119; Dissenting Opinion by Judge Wilkins, German page 24/25, Engl. page 27,29),

- 37.) The judgment makes no mention at all of the comprehensive evidence concerning the personality of the individual defendants and in no way evaluates their efforts to overcome the difficulties due to the war, and to improve the living conditions of the labor forces allocated to the firm.

The Tribunal omits to consider conditions which speak in favour of the defendants. This attitude is the most severely condemned by the Presiding Judge of the Tribunal itself, when he says in his Dissenting Opinion on the judgment: "I think there are many circumstances in mitigation, not mentioned in the judgment, which should be given more weight." (Dissenting Opinion by the Presiding Judge Anderson, German page 1, Engl. page 1).

- 38.) Many of the above-mentioned deficiencies affect the confiscation of property which the two assistant Judges inflicted upon the defendant Alfried Krupp.

In connection with the confiscation it is obvious that only Judge Daly bases the sentence on the judgment as pronounced by the Tribunal.

Judge Wilkins must have been influenced in this decision by his Dissenting Opinion in the judgment concerning the question of spoliation, in which he goes far beyond the incriminating statements of the judgment, and by his special Concurring Opinion on the acquittal of the charge of aggressive war, in which he states that "the firm under the leadership of Gustav Krupp" is guilty of participation in "preparing Germany for its wars of aggression, as well as in the waging of these wars" (Special Concurring Opinion by Judge Wilkins, German page 47, Engl. page 50). This condemnation by Judge Wilkins of the firm, which as such

was neither indicted nor defanded, can only signify a justification of the confiscation of the property.

The decision of the two Assistant Judges of the Tribunal, is in contradiction of all previous Nürnberg judgments. No confiscation of property was pronounced even against the main war criminals who were arraigned before the International Military Tribunal. In this trial, too, it was pronounced only against Alfried Krupp and not against any of his co-defendants.

Confiscation of property is not in agreement with the generally acknowledged principles of the penal law of all civilized nations, principles which also govern the application of Control Council Law No. 10. According to the latter, confiscation of property is only admissible if the judgment establishes a causal connection between the criminal act and the acquisition of the property. The Krupp judgment does not contain any such statement. Moreover, if it did, it would obviously be incorrect.

The confiscation of the property, therefore, is not justified in this case by Control Council Law No. 10. It is in contradiction to the principle promulgated by the Tribunal itself: "that the personal and private rights of persons in the occupied countries shall not be interfered with except as justified by emergency conditions" (Judgment German page 19/20, Engl. page 21).

The Presiding Judge Anderson disagreed with the confiscation of the property and declined to pronounce this sentence, as well as the prison terms decided upon by the Assistant Judges (transcript German page 13866, Engl. page 13441). His Dissenting Opinion shows that in his opinion the confiscation of the property is illegal.

39.) The deficiencies in the proceedings and the judgment of Military Tribunal III, Case 10 (Krupp) can be seen from the transcript and are so serious that the administrative revision of the amount of the sentence as provided for in Ordinance No. 7, and the authority of the Military Governor to mitigate, reduce or otherwise alter the sentences, cannot suffice.

Justice requires that this judgment be revised in its entirety. This seems to us to be possible only by a judicial revision.

40.) The undersigned counsels for the defense move therefore,

1. that the judgment as pronounced on 31 July 1948 by the Military Tribunal III, Case 10 (Krupp) should not be confirmed;
2. that - as an International Criminal Jurisdiction is not in existence - the judgment be reviewed by the American Federal Jurisdiction;
3. that the defendants, who have been kept in detention up to three and a half years already, be released, if necessary against bail, pending the decision by the American Federal Court;
4. that the confiscation of property pronounced against Alfried Krupp von Bohlen und Halbach be cancelled by way of an alteration of the sentence, in accordance with Article XVIII, paragraph a) of Ordinance No. 7.

Nürnberg, 21 August 1948

(signature) Otto Kranzbühler  
Otto Kranzbühler, Nürnberg,  
Maximilianstr. 28  
for the defendant Alfried Krupp  
von Bohlen und Halbach,  
at present Nürnberg, I.S.D.  
and the defendant Max Ihn,  
at present Nürnberg, I.S.D.

(signature) Erich Wandschneider  
Erich Wandschneider, Hamburg-  
Othmarschen, Chronachstr. 39  
for the defendant  
Heinrich Korschau,  
at present Nürnberg, I.S.D.

(signature) Heinz Wolf  
Heinz Wolf for Dr. Kurt Peschke,  
Berlin-Steglitz, Wuthenowstr. 4  
for the defendant Eduard Houdremont,  
at present Nürnberg, I.S.D.

(signature) Wolfgang Pohle  
Dr. Wolfgang Pohle, Angermund,  
Duisburgerstr. 18  
for the defendant  
Friedrich von Bülow,  
at present Nürnberg, I.S.D.

(signature) Heinrich Link  
Heinrich Link, Nürnberg,  
Mathildenstr. 31  
for the defendant Erich Müller,  
at present Nürnberg, I.S.D.

(signature) Heinz Wolf  
Heinz Wolf, Bayrisch-Gmain,  
Haus Kandlinger  
for the defendant  
Heinrich Lehmann,  
at present Nürnberg, I.S.D.

(signature) Dr. Alfred Schilf  
Dr. Alfred Schilf, Ansbach,  
Pfaffengreut  
for the defendant Friedrich Janssen,  
at present Nürnberg, I.S.D.

(signature) Dr. Alfred Behringer  
Dr. Alfred Behringer, Nürnberg,  
Ewaldstr. 16  
for the defendant Haus Kupke, Essen,  
Gummertstr., Kruppische Krankenanstalten.

(signature) Dr. Walter Siemers  
Dr. Walter Siemers, Hamburg,  
Kleine Johannisstr. 4  
for the defendant Karl Eberhardt,  
at present Nürnberg, I.S.D.