

C O P Y

PROCLAMATION NO. 3

Fundamental Principles of Judicial Reform

By the elimination of the Hitler tyranny by the Allied Powers the terrorist system of Nazi Courts has been liquidated. It is necessary to establish a new democratic judicial system based on the achievements of democracy, civilization and justice. The Control Council therefore proclaims the following fundamental principles of judicial reform which shall be applied throughout Germany.

I.

EQUALITY BEFORE THE LAW

All persons are equal before the law. No person, whatever his race, nationality or religion, shall be deprived of his legal rights.

II.

GUARANTEES OF THE RIGHTS OF THE ACCUSED

1. No person shall be deprived of life, liberty or property without due process of law.

2. Criminal responsibility shall be determined only for offences provided by law.

3. Determination by any court of any crime "by analogy" or by so-called "sound popular instinct", as heretofore provided in the German Criminal Code, is prohibited.

4. In any criminal prosecution the accused shall have the rights recognized by democratic law, namely the right to a speedy and public trial and to be informed of the nature and cause of the accusation, the right to be confronted with witnesses against him and to have process for obtaining the witnesses in his favour and the right to have the assistance of counsel for his defense. Excessive or inhuman punishments or any not provided by law will not be inflicted.

5. Sentences on persons convicted under the Hitler Regime on political, racial or religious grounds must be quashed.

III

LIQUIDATION OF EXTRAORDINARY HITLER COURTS

The People's Court, Courts of the NSDAP and Special Courts are abolished and their re-establishment prohibited.

IV

INDEPENDENCE OF THE JUDICIARY

1. Judges will be independent from executive control when exercising their functions and owe obedience only to the law.

2. Access to judicial functions will be open to all who accept democratic principles without account of their race, social origin or religion. The promotion of judges will be based solely on merit and legal qualifications.

V

CONCLUDING CLAUSE

Justice will be administered in Germany in accordance with the principles of this proclamation by a system of Ordinary German Courts.

Done at Berlin 20 October 1945

P. KOENIG

G. ZHUKOV

DWIGHT D. EISENHOWER

B.H. ROBERTSON  
Lt. General  
for E.M. MONTGOMERY

Ex. 2

OFFICE OF MILITARY GOVERNMENT FOR GERMANY(US)  
Office of Military Governor  
Berlin, Germany  
APO 742

10 January 1948

AG 015 Mil Govt. Courts (LD)

Military Government  
Court Letter No. 1

SUBJECT: Military Government Court Letters; Fundamental Principles Required to be Applied at the Trial of Cases in Military Government Courts.

TO : Directors, Office of Military Government for Bavaria  
Office of Military Government for Hesse  
Office of Military Government for Wuerttemberg.-Baden  
Office of Military Government for Bremen  
Office of Military Government for Berlin  
sector.

I.

MILITARY GOVERNMENT COURT LETTERS

1. This is the first of the series of Military Government Court Letters to be published by this office from time to time in order to acquaint all who have to do with the administration of justice by Military Government with the following matters:

a. directives from higher authority concerning the administration of justice;

b. fundamental principles and standards of justice;

c. important points of law;

d. important points developed in court decisions or review thereof, or in opinions of the Legal Divisions of this office or Laender offices;

e. other matters of general interest to legal personnel concerned with the administration of justice in Military Government Courts.

2. a. Military Government Court letters have a special distribution which includes, in each Land and Sector, distribution to all professional personnel in the office of the Chief Legal Officer, to all prosecutors and other professional members of the field legal teams, to all judges of Military Government courts, including judges of Summary Military Government courts, and to all Public Safety and Special Branch officers and officials.

b. The information contained in Military Government Court Letters may be made available to any person. This office will furnish German translation Military Government Court letters; fundamental Principles required to be applied at the trial of Cases in Military Government Courts.  
AG 015 Mil Govt. Courts (LD) Mil Govt. Ltr. No.1 DMGUS, 10 January 1948

of certain of them which are particularly applicable to the defense and which should be made available for use of German Defense counsel.

c. All personnel receiving distribution of Military Government Court Letters referred to in par. 2 a, above, will maintain a file of such letters for reference purposes, and will be held strictly accountable for knowledge of the contents of each letter.

## II

### DIRECTIVE ON US OBJECTIVES AND BASIC POLICIES IN GERMANY

3. The directive dated 15 July 1947 received from the U.S. State War and Navy Departments by the Commanding General, of the United States forces of Occupation in his capacity as such and as Military Governor (reprinted in 23 MGR 2050) contains the following instructions which are of direct concern to Military Government courts;

" As a basic objective of the occupation in the reestablishment of the rule of law in Germany, you will require all, agencies under your control to refrain from arbitrary and oppressive measures ... You will protect the civil rights of persons detained under charges assuring them a fair trial and ample opportunity to prepare their defense."

4. It is stressed that this directive, without qualification or exceptions, requires (a) all agencies of Military Government to refrain from arbitrary or oppressive measures and (b) the protection of those civil rights of persons detained on charges that assure them of a fair trial and an adequate opportunity to prepare their defense.

5. The directive states the basic policies under which Military Government in the U.S. Area of Control is to operate. The construction of all Military Government legislation, and of the legal effect of all action thereunder, and all judicial process in Military Government Courts, are subject to, and required to be consistent with this directive.

## III

### FUNDAMENTAL PRINCIPLES CONCERNING TRIAL OF CASES IN MILITARY GOVERNMENT COURTS.

6. The following material is quoted from letter, this headquarters, "Reduction of Case Load of, Preparation of Cases for Trial

before, and Legal Principles to be Followed by Military Government Courts, "AG 013.3 (LD) dated 16 July 1947:

Military Government Court letters; Fundamental Principles Required to be applied at the trial of cases in Military Government Courts, AG 015 Mil. Govt. Courts (LD) Mil Govt. Court Ltr. No. OMGUS 10 January 1948.

5. a. Law enforcement by Military Government at the present time concerns chiefly the problems incident to maintenance of general law and order. Moreover civilian police agencies have been established and are functioning. There is thus no longer a need for the necessary disregard (which existed in the earlier stages of the Occupation) of some of the customary procedural safeguards of American Law in law enforcement. It is therefore desired that Military Government Court proceedings in all essential points conform to the traditional procedures of American Law which apply whenever the life, liberty, or property of an individual are subjected to penal procedure. Likewise every effort must be made, within the objectives of the Occupation, to respect the guarantees of personal rights provided by the German Constitutions.
- b. The existing provisions permitting some departure from usual procedures in certain cases to prevent prejudice to the security of the United States Forces or for other exceptional reason, however, remain in effect for such special situations.
- c. The following principles concerning Military Government Court trials are to be uniformly observed:

(1) Independence in the courts.

It is fundamental to Americans that a Judge must arrive at his determination solely upon the evidence presented to him in court, and that any outside influenced duress or interference is improper. A judgement influenced by such action, fails to meet the duress process of law essential to any American judicial proceedings and is wholly repugnant to American ideas of justice. This principle is to be observed with respect to all Military Government Courts. Instances of outside duress or interference, or attempted duress or interference, are to be promptly reported by the member of the court concerning to the Director of Military Government in the particular Land or Sector. An information copy of each such report shall be sent to OMGUS, attention Director of the Legal Division. Where the alleged offender is a member of non-indigenous employee, of the Occupation Forces of the United States or of any Allied Nation, a full report of the circumstances shall be forwarded by the Director to OMGUS, attention Chief of Staff, together with an information copy to the Director of the Legal Division, for appropriate action. In all other cases, where it appears after investigation that the complaint is well founded, the Director will initiate such action against the alleged offender as he may deem appropriate.

(2) Function of Courts.

The sole function of every Military Government Court is give justice in each case before it according to the law and the evidence. Such courts must not be used as instrument for facilitating general administration.

(3) Due Process of law.

It is fundamental American belief that every person as a human being has rights which entitle him to exist in a condition of freedom and dignity which may not be disturbed or interfered with judicially except in conformity with certain procedure. The essential principles of procedural due process of law are that the court which tries the case must be properly constituted court, to which the case is properly assigned, and over which it has jurisdiction, and that the accused is given due notice of the offenses for which he is charged and a reasonable opportunity to present his defense. This includes the right of counsel; and the opportunity to testify himself, if he so desires; to have witnesses testify on his behalf, and to introduce other evidence in his defense. It is a matter of fundamental policy that this "day in court" with all the rights it traditionally implies, will be assured to every accused before every Military Government Court.

(4) Defense Counsel.

The duty of Defense Counsel in Military Government Court trials is, by every honorable means, to protect every individual right of the accused and vigorously, intelligently and adequately to prepare and present to the court the accused's defense. The proper performance of such duties is an essential part of the American concept of a fair trial. Courts, in all Cases where the accused or his counsel are not familiar with common law procedures, should be alert to take action as required by MGR 5-354.2 so that the rights of the accused will be substantively protected.

(5) Speedy trial.

Every accused in a Military Government Court has the right to a speedy trial for the offense with which he is charged. This requires a trial as soon as the orderly conduct of business permits, allowing the prosecution reasonable time to prepare its charges being prepared and served upon them, at the earliest practicable date. Serious delays in filing charges and bringing a case to trial (e.g. over one month in bringing case to trial) call for investigation.

(6) Public trial.

Except in situations involving security ( see MGR 5-327 6) all military Government Court trials are to be public.

(7) Double jeopardy.

No person shall for the same offense be put twice in jeopardy.

(8) Sentence.

If a finding of guilty is made against the accused, a just and proper sentence under law violated should be imposed upon him in the manner prescribed by MGR 5-331 bearing in mind the provisions of MGR 5-363. Suspension of any part of a sentence is to be only in circumstances within MGR 5-555. The determination of a just and proper sentence in a specific case within the range of penalties provided by the laws violated, obviously involves many facts the importance of which the court is best able to decide. The wide range of sentences permitted in the various specific laws formerly made it advisable to provide guides for sentences outside of the laws themselves, pending the acculation of experience by the courts as to proper sentences for particular offenses. The result of such experience are now generally available. Therefore, guides for sentences are no longer desirable, and all such guides are hereby rescinded.

(9) Review.

Proper action by the Reviewing Authority necessitates a full examination of the case with independent determinations as to the propriety of the findings and sentence and consideration of any mitigating circumstances of factors requiring clemency, subject only to the limitations that a finding of guilty may not be substituted for a finding of not guilty and that a sentence may be increased except in certain instances of frivolous petitions for review. In the exercise of the Reviewing Authority's responsibility, no sentence should be approved, unless after a proper review of the case it is found that;

- (a) The case is one over which the trial court had proper jurisdiction.
- (b) The accused received a fair trial.
- (c) The rights of the accused were duly protected.
- (d) The findings and sentence as approved are proper.

(10) Conclusion.

American Military Government must, to the maximum degree, exercise its governing power to according to democratic principles and procedures. Military Government Court are in constant and close contact with the German people. Their actions are considered by the German people as the standard of American Justice. Therefore, the proceedings and judgment of Military Government must conform to the principles of due process, protect and enforce, the rights as well as the responsibilities of the individual, and prove to the German people the essential fairness and soundness of the democratic judicial process."

BY DIRECTION OF THE MILITARY GOVERNOR:

F. H. GARDE  
Lieutenant Colonel, AGD  
Adjutant General.

Tekephone BERLIN 42179

DISTRIBUTION: "C", "E" and "X"

Distribution X as used in this letter and in any subsequent Military Government Court letter except when a different distribution is specifically ordered shall be as follows:

|     |        |    |     |                   |
|-----|--------|----|-----|-------------------|
| 450 | copies | to | OMG | Bavaria           |
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| 200 | "      | "  | "   | Wuertenberg-Baden |
| 75  | "      | "  | "   | Bremen            |
| 75  | "      | "  | "   | Berlin-Sector.    |

Each Director, Land office of Military Government, will be responsibility for effecting distribution to all officers and civilian attorneys on the office of the Chief Legal Officer, to all Judges of Military Government Courts (including all Summary Military Government Courts) to all Military Government prosecutors, assistant prosecutors, and attorneys who are members of the Field Teams and to each Military Government Public Safety and Special Branch Officer or officials within the particular Land or Sector.

Certified Copy

UNITED STATES MILITARY TRIBUNAL III  
SITTING IN THE PALACE OF JUSTICE  
NURNBERG, GERMANY  
16. January 1948

THE UNITED STATES OF AMERICA :

- vs. - :

ALFRIED KRUPP VON BOHLEN UND :  
HALBACH, et al., :

Defendants. :

Case No. 10

GENERAL ORDER

In order to discharge the obligation resting upon it to achieve an expeditious hearing of the issues and to avoid unreasonable delay (Military Government Order No. 7, Art. VI), the Tribunal finds it necessary to issue the following:

ORDER:

1. Mr. Carl J. DIETZ is hereby appointed a Commissioner of this Tribunal to preside at and supervise the taking of the testimony of such witnesses as may hereafter, from time to time, be designated by the Tribunal on the official record of its proceedings.
2. Before assuming his official duties hereunder the said Mr. Carl J. DIETZ shall take, subscribe to and file with the Secretary General an oath or affirmation to the effect that he will honestly, faithfully and impartially perform and discharge his duties as such Commissioner.
3. Said Commissioner shall have power to administer oaths, take evidence, enforce the attendance of witnesses, parties and counsel, preserve good order, fix and determine the time of his hearings, and do all other things reasonably necessary to the proper administration of his office; all subject to the directions of the Tribunal and review by the Tribunal for good cause shown.
4. The said Commissioner shall cause a verbatim report of his proceedings, including the testimony and evidence taken before him, to be properly recorded, reported, certified to, and filed in the office of the Secretary General. All evidence so reported by the commissioner shall be considered by the Tribunal as of the same force and effect as evidence heard by the Tribunal in open court. The Commissioner shall also cause an appropriate number of copies of all such testimony and evidence, in the German and English languages, to be made available for the use of the Tribunal and counsel in this case.
5. It shall be the duty of the Secretary General and the Marshal of the Tribunal to make available to said Commissioner such facilities, services and accommodations as may be reasonably necessary for the proper discharge of his official duties.
6. This Order is without prejudice to the power and authority of the Tribunal to modify or rescind the same at its pleasure.

S. H. C. Anderson

MILITARY TRIBUNAL III  
pl. t. o.

s. H.C. Anderson  
Presiding Judge

Edward J. Daly  
Judge

William J. Wilkins  
Judge

In Chambers

Dated, 16 January 1948

True Copy certified

/s/ Lowell O. Rice Capt. Inf.

Nurnberg, 29-1-1948

MOTION No. 10

UNITED STATES MILITARY TRIBUNAL III

NURNBERG, GERMANY.

THE UNITED STATES OF AMERICA )

- against - )

ALFRIED KRUPP VON BOHLEN UND )  
HALBACH, et al., )  
Defendants. )

CASE NO. 10

(stamp:)

Filed 29 Mar. 48 with  
Secretary General  
for Military Tribunal  
Defense Center

MOTION TO VACATE ORDER DATED 16 January, 1948

AND TO STRIKE ALL TESTIMONY TAKEN PURSUANT THERETO.

COMES NOW the defendant Friedrich von BUELOW and moves this Tribunal to vacate an order of this Tribunal dated 16 January, 1948 and to strike all testimony taken before the "Commissioner" named therein on the ground

1) that said order denies to the accused the right to be confronted by witnesses against him;  
denies to the accused "due process of law";  
as guaranteed by the Laws and the Constitution of the United States of America; as guaranteed by Control Council Proclamation No.3, a copy of which is hereto attached, marked as "Ex.1 as guaranteed in Military Government Letter No.1 dated 10 January, 1948, a copy of which is hereto attached, marked as Ex.2; and as guaranteed by the rules and practice applicable to the trial of criminal cases in all civilized jurisdictions

and the accused moves to strike from the record any and all testimony taken before the said "Commissioner" on the ground

1) that the said Commissioner is not vested by law with the right or power to function as a judicial officer, or to administer oaths, or to otherwise take testimony as a substitute judge for this Tribunal.

This motion is based upon the record of trial, the Exhibits hereto attached and upon argument and the testimony to be adduced at the hearing thereon.

(s) Joseph S. Robinson

(s) Dr. Wolfgang Pohle by We.

Joseph S. ROBINSON and  
DR. Wolfgang POHLE,  
ATTORNEYS for Friedrich von  
BUELOW