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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.
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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:

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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.