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Motion Nr. 7

UNITED STATES MILITARY TRIBUNAL III  
Nuernberg , Germany .

(stamp) 13<sup>00</sup>

Filed 29 March 1948 with  
Secretary General  
for Military Tribunal  
Defense Center.

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THE UNITED STATES OF AMERICA :

- against - :

ALFRIED KRUPP VON BOHLEN UND  
Halbach, et al. :

Case No. 10

----- Defendants ----- :

MOTION FOR A MISTRIAL AND TO DISMISS THE CHARGES  
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COMES NOW the defendant Friedrich von Daelow and moves this Tribunal for a mistrial and to dismiss the charges and specifications thereunder against him, upon the ground that even if this Tribunal did have jurisdiction over the person of the defendant, such jurisdiction has been lost for reasons hereinafter set forth and the defendant was denied due process of law.

- (1) The defendant was denied the right to a trial based upon competent evidence presented in a legal manner, that this Tribunal admitted hearsay statements once, twice and thrice removed, newspaper articles, compilations of newspaper articles, motion pictures, notes, diaries, unsigned and unidentified writings, speeches of third parties; articles and extracts from publications, some of which were 25 years old, many years before any of the acts alleged to have been committed by the defendant occurred; that this evidence was admitted by this Tribunal over the objections of defendant's counsel; that during the introduction of this meaningless mass of documents the prosecution staff continuously made an unsworn running commentary which in many instances was largely untrue and highly inflammatory and prejudicial to the defendant, thus allowing the prosecution, through its running commentary, to be the principal witness against the defendant without the sanctity of oath;

(2) That all the testimony, affidavits and allegedly sworn statements introduced in evidence against the defendant were in effect unsworn by reason of the fact that the persons who administered the oaths were unauthorized in law to do the same;

✓ (3) That the defendant has been denied the right to a speedy and public trial; that he has been held in confinement for a period of 30 months; that during the greater part of said confinement this defendant was denied the right to communicate with persons outside of confinement and as a result has been unable to procure and preserve testimony and evidence for his defense as to the matters lodged;

R (4) That this defendant is an enemy national and has been imprisoned by order of the Military Command of the United States of America during a period of belligerent occupancy of his own State and consequently is entitled to the rights guaranteed prisoners of war pursuant to the Hague and Geneva Conventions and as more particularly provided for in the Rules of Land Warfare set forth in Field Manual 27-10, paragraph 134, page 33; paragraph 117, page 29; paragraph 81, page 19; paragraph 85, 86, 165, 78, 84, 115, 140, 82, 113, 111, 109, 108, 110, 111, 81, 79, 84, 73, 82, 163, 165;

(5) That the defendant herein has been subject to private and public insults and made an object of public curiosity in violation of paragraph 73, the Rules of Land Warfare, as well as Article 2 of the Geneva Convention; that defendant has been unable to make proper preparation for his defense, in violation of paragraph 24, Rules of Land Warfare, and Article 3 of the Geneva Convention;

✓ (6) That defendant has been denied and deprived of his funds and private property and prohibited from incurring any valid obligation of any kind of character whatsoever for the proper preparation and presentation of his defense; that said taking of his money and personal property was without any determination of the amount thereof and without any receipt having been given therefore, nor were the sums thus taken credited to the account of defendant, all in violation of paragraph 79 of the Rules of Land Warfare and Article 6 of the Geneva Convention;

2 (7) That defendant has been subjected to judicial prosecution without notice to the protecting power as required by paragraph 133 of the Rules of Land Warfare and Article 60 of the Geneva Convention;

✓ (8) That the defendant has been compelled to make statements against himself in violation of paragraph 135 of the Rules of Land Warfare and Article 61 of the Geneva Convention;

✓ (9) That the defendant has been denied the right to an interpreter, the right to a representative of the protecting power as provided for in paragraph 135 of the Rules of Land Warfare and Article 62 of the Geneva Convention;

(10) That each and every member of this Tribunal and the accusers are enemy aliens of the accused and as such are not the proper persons to prosecute or to judge the guilt or innocence of the accused. In addition to that this Tribunal

has prevented the defendant from making a proper showing by improperly foreclosing the examination of witnesses under the rules of cross-examination and this Tribunal has appointed a commissioner to take testimony against this defendant during the pendency of this trial, thus making it impossible for this defendant to be confronted with witnesses against him; this Tribunal has allowed members of the prosecution staff to generally use inflammatory statements against the defendants during the course of the trial and in the presence of the Tribunal itself and extra-judicially; the members of the Tribunal have allowed the prosecution staff to make false and untrue statements on matters in hearing before this Tribunal during the normal course of the trial and the prosecutors have made many such false, improper and inflammatory statements and remarks and the defendant has been further prejudiced and denied due process because of the following:

- (11) The denial to the defendant of the right to challenge each or any members of this Tribunal for cause;
- (12) The denial to the defendant of the right to challenge the jurisdiction of this Tribunal;
- (13) The denial to the defendant of the right to peremptory challenge;
- (14) The denial to the defendant of the right to a separate trial;
- (15) The denial to the defendant of the right to be represented by counsel of his own selection and provision;
- (16) The denial to the defendant of the right to compulsory process for the production of material witnesses essential to the defense;
- (17) The denial to the defendant of the right to prepare for his defense;
- (18) The denial to the defendant of the right to be confronted by the witnesses against him;
- (19) The denial to the defendant of the right of cross-examination;
- (20) The denial to the defendant of documentary evidence essential to his defense in the possession of the prosecution, which documentary evidence was forcibly seized from defendant's possession. By the prosecution and its agents and thereafter wilfully and wrongfully suppressed by the said prosecution's staff and its agents;
- (21) The denial to the defendant of access to witnesses essential to his defense, witnesses having been placed in confinement by the prosecution, its agents and emissaries in accordance with a deliberate scheme and design whereby the prosecution has caused the arrest of persons who might possibly be witnesses for the defendant and such persons have been placed in protracted confinement and their identities and location hidden from the defendant in many instances; in other instances, many of said persons have been labelled "prosecution" witnesses and the

defendant denied access to them; there being upwards of 130,000 such persons so arrested and held in protracted confinement as a result of this general scheme and design on the part of the prosecution staffs of the American Military Tribunals at Nuernberg;

(22) That defendant's witnesses have been the victims of duress, intimidation and coercion by the prosecution staff and its agents by reason of the fact that persons requested as witnesses by the defendant had been arrested by the prosecution and placed in confinement; that the widespread knowledge of such treatment on the part of the prosecution of defendant's witnesses has so discouraged so many witnesses in possession of knowledge essential to a proper defense of the defendant that these persons are no longer willing to testify on behalf of the defendant;

(23) That the defendant has been denied the rights of an enemy alien under a belligerent occupant in violation of the Rules of Land Warfare, paragraphs 73, 75, 78, 79, 81, 83, 90, 109, 110, 111, 114, 129, 133, 135, 136, 137, 139, 169, 313, 323, 320, and of the following provisions of the Geneva Convention: Article III, Article IV, Article V, Article VI, Article VIII, Article XI, Article XVII, Article XXXVI, Article XXXVII, Article XXXVIII, Article XLI, Article XLII, Article 78 Article 56, Article 60, Article 61, Article 62, Article 63, Article 64, Article 66, Article 86 and Article 46, paragraph 1 and paragraph 2 of the Hague Regulations.

This motion is based upon the record of trial and oral testimony to be adduced at the hearing hereon.

/s/ Joseph S. Robinson

/s/ Dr. Wolfgang Pohle by We

(Joseph S. ROBINSON,)

(Dr. Wolfgang POHLE)

Attorney for Friedrich von Daelow.