

RULING OF MILITARY TRIBUNAL III

Upon Motion of ALFRIED KRUPP VON BOHLEN und HALBACH

For Representation By American Counsel or Substitution of Attorneys

In Open Session of Dec. 19th 1947

THE PRESIDENT: There is a preliminary matter to be disposed of before we proceed further with the trial of this case.

The question to be disposed of is the application of the defendant Alfred Krupp to have the Tribunal especially authorize one Earl J. Carroll, an alleged attorney, as additional counsel for him as substitute for his present counsel in the further trial of this case. The application is made under Article 4, Section 3 of Ordinance 7, enacted by the United States Military Government for Germany, and Rule 7, Section A, of the Uniform Rules of Procedure governing the military tribunals sitting in Nurnberg. The Tribunal desires to emphasize at the outset that it has no disposition whatever to deny to any defendant the right to be represented by counsel of his choice, whatever be the nationality of the one proposed. On the contrary, subject always to the pertinent regulations of the United States Military Government for Germany and the Uniform Rules of Procedure, we will, upon proper application, approve the ethical employment or choice by any defendant of any reputable counsel wherever domiciled upon any reasonable showing that the individual chosen is qualified to conduct the defense of said defendant and is and will be available for that purpose, provided the Tribunal is of the opinion that such defendant cannot receive a fair trial otherwise. The right of a defendant to choose his own counsel and the approval of his choice are regulated by Article 4, Section C, of Ordinance 7, enacted by the Military Government for Germany. The provision is that the defendant shall have a right to be represented by counsel of his own selection, provided such counsel shall be a person qualified under existing regulations to conduct cases before the courts of the defendant's country or any other person who may be especially authorized by the Tribunal. The Uniform Rules of Procedure contain substantially the same provision and in addition the provision that application for particular counsel shall be filed with the Secretary General promptly

after the service of the indictment on the defendant and a provision for the appointment of substitute counsel, on the addition that no delay will be allowed for making such substitution or association. They are necessary not only from a standpoint of fairness and expeditious trial but for reasons of security arising out of the nature and circumstances under which this and similar trials are being held. The circumstances surrounding the pending application require a full statement of the facts.

The indictment was filed on August 16, 1947. It was served on the defendant Krupp on August 18, 1947. Two days later the defendant Krupp made application to have Dr. Kranzbuehler represent him in the trial. On August 25, 1947, an application was made by Dr. Kranzbuehler to be allowed to represent the defendant. On the same day both applications were granted and the defendant Krupp has been continuously represented by Dr. Kranzbuehler since that time.

Dr. Kranzbuehler is a lawyer of established ability and reputation, having participated as counsel for one of the defendants in the trial before the International Military Tribunal and as counsel in at least one of the other trials held in Nurnberg. In addition, it has been observed during the trial that Dr. Kranzbuehler understands and speaks the English language fluently and during the progress of the trial thus far we have observed that rarely has he resorted to the use of the earphones in order to obtain a translation of the spoken English language.

On September 25, 1947, the defendant applied for the appointment of a specifically named additional counsel to assist Dr. Kranzbuehler in the conduct of his defense. This application was promptly granted and since that time said assistant has been associated with Dr. Kranzbuehler in the representation of the defendant in the conduct of this case.

The defendant was arraigned and pled not guilty on November 17, 1947. On December 8, 1947, after the trial had opened, the defendant made application to have approved as his attorneys the alleged law firm of Foley and Carroll, represented as being domiciled in Haywood,

California, or Hayward. The application was supported only by a letter dated December 6, 1947, purporting to be signed by Earl J. Carroll, for the firm of Foley and Carroll, followed by the designation "attorneys at law." The letter expressed the willingness of said firm to undertake the representation of the defendant Krupp and, in addition, recited the following: "Arrangements for the necessary passports and military entry permits will be commenced immediately upon receipt of notice of approval of the Tribunal of our representation". The letter continued: "A competent associate to undertake the trial representation can be expected in Nurnberg within thirty days of the receipt of the aforementioned notice of approval." The application was accompanied by a motion to delay the trial for thirty days pending the arrival of the proposed representative of Foley and Carroll. The name of the alleged associate who was to appear for Foley and Carroll in the representation of the defendant was withheld from this Tribunal.

On December 9, 1947, the application was denied for the reasons stated by the Tribunal in the order disposing of the matter. On December 15, 1947 the pending written application was received. It is a renewal of the original application. The circumstances were such that the Tribunal thought it advisable to have the prosecution reply to the application and it was so ordered. The reply was seasonably filed under applicable rules and upon its receipt the Tribunal recessed until today to consider the matter, in order that it be finally and definitely settled so that the trial of this case not be again delayed.

The application, among other things, recited that on or about December 7, 1947, preliminary arrangements were concluded with said firm of American attorneys, Foley and Carroll, for the representation of this defendant. Unlike the original application, the renewal thereof concluded with the recitation that a member of the firm of Foley and Carroll is now present in the United States Occupied Zone of Germany and is able, ready and willing to undertake the immediate representation of this defendant before this Tribunal. But, as was true of the first application, the name and identity of the individual expected to represent the defendant before this Tribunal was not

disclosed. When this evasion appeared for the second time, the Tribunal in open session inquired of the defendant's present counsel, who had presented both applications, the name of the individual whom it was proposed to have appear and participate in or conduct the defendant's defense. From the response to this inquiry, the Tribunal for the first time learned that the proposed representative was Earl J. Carroll himself. It thereupon directed that the written application be so amended as to disclose that fact and this was done.

In the meantime, the Tribunal had been advised by the Secretary that as long ago as May 1947 there had been received in his office, through routine military channels, an official order by Gen. Lucius D. Clay, Commander in Chief and Military Governor, and by his command circulated throughout the occupied area, relative to the activities of the said Earl J. Carroll, forbidding the granting to said Carroll permission to appear as counsel before courts-martial for any accused person except in those cases where he had theretofore appeared at the arraignment of such persons. This order was accompanied by a copy of a letter from Gen. Clay, dated April 30, 1947, addressed to said Carroll. It appears from Gen. Clay's letter that Carroll had been granted an entry permit expiring April 16, 1947, authorizing his entry into the occupied area in connection with five specifically-named court-martial cases; that in addition to representing the accused in said cases Carroll had engaged in certain specified activities going beyond the provisions of his entry permit and that while, as a result, he normally would have been called upon to show cause why his expulsion from Germany should not be directed, because such a course might be prejudicial to the accused whom he had been permitted to defend, that action would not be taken and that accordingly Carroll's entry permit was extended on the express condition that he act as counsel only in the five specified court-martial cases and in those in which he has theretofore appeared at the arraignment of the accused. Gen. Clay's letter concludes as follows: "In all respects other than those cited above, you are directed to refrain from acting as attorney

or counsel for any person in the United States Zone of Occupied Germany. Upon the completion of the cases in which you are permitted to appear, your authority to be present in Germany will terminate. Any violation of the conditions of the extension of your entry permit, as stated in this letter, will be cause for its immediate termination."

When General Clay's letter was brought to the attention of the Tribunal by the Secretary General, we directed that he inquire of Military Government Headquarters whether there had been any modification of the restriction placed upon Carroll's activities in the prohibited area. The response was a telegram from Gen. Clay's deputy, Major General George Hayes, which is in the following language: "For your information, letter of Military Governor dated 30 April 1947 to Earl J. Carroll has not been modified in any respect and the prohibition and limitations contained therein are still valid". That telegram was dated yesterday.

On December 17, while the present application was pending, the said Carroll filed, or attempted to file, with the Secretary General an instrument purporting to be a notice of his appearance as counsel for the defendant Krupp in the trial of this case before this Tribunal. This notice was given without any prior authorization to said Carroll to act as counsel for said defendant and was in and of itself a violation of the rules of this Tribunal. From what has been said, it is clear that even if the Tribunal were otherwise disposed to approve Carroll's representation of the defendant Krupp, he is not and will not be available for that purpose, a fact well known to him when he sought the Tribunal's authorization.

But far more important, it is a manifest fact that Carroll's negotiations with the defendant Krupp and with the latter's present counsel, and his attempt to obtain the approval of his appearance as counsel in this case are in flagrant defiance of the order of the Commander in Chief and Military Governor of the area in Germany occupied by the forces of the United States. It is needless to say that this Tribunal will not directly or indirectly countenance such conduct.

Even if it appeared that Carroll was available to represent the defendant and was otherwise acceptable, it is our considered opinion that by reason of his aforesaid conduct he has disqualified himself to appear before the bar of this Tribunal for any purpose, as counsel or in any other capacity, and he will not be allowed to do so.

In their response to the Defendant Krupp's application, counsel for the prosecution very properly has drawn attention to certain other directives of the Military Government regulating the entry of persons into the occupied area and their activities. It is unnecessary to consider or discuss these. It is sufficient to say that in the prevailing circumstances their necessity and wisdom were so obvious as to require no elaboration and that this Tribunal under no circumstances will knowingly lend itself to an attempt to thwart or handicap the Commander in Chief and Military Governor in view of the very grave responsibilities which rest upon his shoulders. These additional observations of mine -- the application, which is not signed by the defendant's present counsel but by the defendant alone, conveys the idea that unless additional or substitute counsel is allowed to represent the defendant or assist in his defense, the defendant will not receive the kind of trial to which he is entitled at the hands of this Tribunal. This is an utterly false and unwarranted assumption. As already pointed out, the defendant is and since last August has been represented by able and experienced counsel of his own choosing, who is thoroughly familiar with the rules and ordinances under which this trial is being conducted and fully competent to protect any and all rights the defendant has. This is not a court-martial proceeding provided for by the Congress of the United States but a trial by a military tribunal. The Procedure is provided for by the ordinances of the United States Military Government for Germany with which the defendant's present counsel has already had no little experience in other trials.

Moreover, apart from and in addition to the efforts of experienced counsel, this Tribunal conceives itself capable of seeing to it that the Defendant Krupp and all other defendants at the bar, receive

the kind of trial they are entitled to under applicable rules and regulations, and we intend to do so. The appointment of additional or substitute counsel is not necessary to the accomplishment of that end under the circumstances of this case. The circumstances connected with the present application furnish very good evidence of the reason for the rules hereinabove stated and we may add, with emphasis, that they give rise to a strong suspicion that the application before us was not made in good faith but for the purpose of attempting to put this Tribunal in the utterly false position of denying to the Defendant Krupp the right to be represented by counsel of his choice. The result is that the application to have Earl J. Carroll appear before this Tribunal as counsel for the Defendant Krupp is denied.