

325-A

Supreme Court of the United States  
Washington, D. C.

file  
6-15-45

CHAMBERS OF  
ROBERT H. JACKSON

April 29, 1945.

MEMORANDUM FOR THE PRESIDENT.

I have considered your inquiry made through Judge Rosenman as to whether I would be willing to undertake to prepare and present the case against war criminals to a United Nations military tribunal. I have decided that I can undertake the work, which I consider a grave responsibility, but I will do so if my general ideas of handling the matter meet your approval. My views in outline are:

x325

1. The Memorandum for the President on War Crimes by H.L.S., E.S., and F.B., dated January 22, 1945, seems to afford a practicable and sound general basis for a summary but fair procedure. As the tribunal contemplated is of military character, nothing about the plan is inconsistent with, but on the other hand conforms to, any position I have publicly taken. The plan, of course, needs a good deal of maturing in details.

2. Time is of the essence. Some one must make an effective and unambiguous move to deal with war criminals, promptly after surrender. It must be on a basis acceptable to people whom we would discourage from taking the law into their own hands with resultant anarchy and civil bloodshed. It must be plain to the world that any delay is not the fault of the United States, and is not the fault of the President. Hence, to some extent, I would sacrifice perfection to expedition.

3. Subject to your own better informed judgment, I doubt the wisdom of delaying United States action pending agreement that I should prosecute on behalf of all the United Nations. It may be questionable after what has happened at San Francisco whether the Russians will agree to this. And I think we should not insist on it. Russia may well have evidence touching her own people that home prestige requires be presented by a Russian. Then, too, she may have evidence, such as confessions, for example, which was so obtained that I, as an American judge, could hardly vouch for it. Yet to keep it out would expose us to their charge of throwing the case. I should be satisfied to represent the United States alone at the outset and such others as, on further acquaintance, desire to entrust their cases to us. The best way to gain confidence and leadership in the matter, in my opinion, is not to ask for it but to be the best prepared.

x325-10



4. Likewise, I doubt the wisdom of waiting on negotiation of executive agreements settling the composition of the tribunal. We know some kind of military tribunal must be set up - and the preparation of our case does not depend on what the details are. We should prepare to start convincing any fair tribunal, and to be ready to begin presentation of evidence as soon as the tribunal can be ready to hear it.

The procedure I would suggest on these assumptions is substantially as follows:

- (a) Making the appointment by executive order which will define my duties and authority so that openly and at once I can move to assemble a competent staff and get all materials available in this country. As to skeleton of staff and personnel and terms of order, I can submit tentative suggestions at once.
- (b) I understand that a proposal of an organic document as to composition of the trial commission, jurisdiction of persons and offenses, etc., has been prepared and will be taken by Judge Rosenman to San Francisco to obtain agreement by the United Nations. But I think my work cannot wisely be delayed pending final agreement on details.
- (c) We should also start at once preparation of a short code of procedure, for submission to and adoption by the Commission. This is very important for it is in this that we must try to outline a flexible but efficient procedure that will be both summary and in keeping with our traditional fairness towards those accused of crime. I have studied this subject enough to be convinced we can do this acceptably but it will take time and challenge our ingenuity, and may take a good deal of time to reconcile ideas of different groups accustomed to different systems of law.
- (d) We shall have to examine the materials already amassed by the United Nations Crimes Commission in London and a good deal that will probably be obtainable abroad from the French, Polish, Dutch, Danish and Belgian underground. We want as perfect a case as can be made. Time, as well as other considerations will not permit setting up new organizations to dig up evidence but we will need liberal and prompt cooperation from Army and Naval Intelligence, F.B.I., O.S.S., and all other agencies in getting it together. Our primary task,

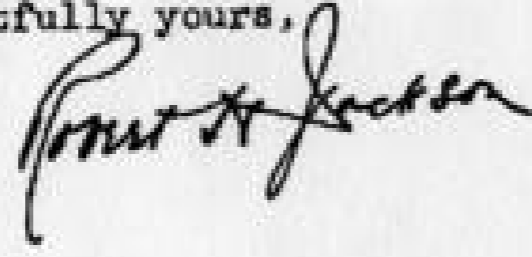
4/29/45.

as I understand it, is to sift all material and procure further verification or evidence where needed, as trial counsel would do.

If this idea of a program meets with your approval in general, my work at the Court will permit me to get at this assignment as soon as an Executive Order can issue with some interruptions, of course, between now and adjournment. We hear the last argument for the Term this week.

I shall await your further instructions and cannot forego the expression of deep appreciation of the confidence your inquiry implies.

Respectfully yours,



x41-A