

**PRIORITY**

HEADQUARTERS  
MUNICH MILITARY POST  
Office of the Staff Judge Advocate  
APO 407-A, 4P.M. US ARMY

19 October 1948

President Harry Truman  
The White House  
Washington, D. C.

Dear Mr. President:

My cable to you of 6 October stated that Alex Piorowski, presently awaiting execution at Landsberg War Crimes Prison, was denied due process of law and asked from you a stay of execution until such time as it could be determined by the proper representatives of the United States Government whether the American concept of due process of law was to be accorded to the defendant in such trials, where the personnel of the court and the prosecution was exclusively American.

To date I have received no reply to that cable, although I assume that you have authorized the necessary steps to defer execution of the death sentence in this case until a considered judgment, representative of American opinion, has been rendered on this issue.

To assist you in judging the merit of my request, may I point out just two of the violations of due process of law which occurred in this particular trial, wherein I was designated as the Army defense counsel:

- a. The court of Army officers was not left free to determine from the evidence presented, one of the essential issues in this case, viz., whether the most important war crime sought to be proved by the prosecution as having occurred at Dachau and during Piorowski's six months' tour of duty as camp commander had, in fact, been committed--but on the contrary, the court was required, by its superior officers, to accept as undisputed an unequivocal representation by those superiors that such a crime had in fact taken place. This highly illegal (and, in this case, irreparably prejudicial) representation was made to the court in an officially prepared mimeograph memorandum inserted as paragraph 5 of a prosecution exhibit (P-1) uniformly required to be accepted in all

Dachau subsequent proceedings.

The shameful aspect of this procedure, which was legally unsound and wholly without precedent in any proceedings whether civil, criminal or military, lies in the reason which induced the military authorities responsible for the war crimes program to resort to such tactics. There is no other explanation than that it was an effort by the War Crimes Group Headquarters to conceal and compensate for its serious administrative error in failing to authorize and direct the tribunal appointed to hear the so-called "Parent" Dachau trial to include findings of fact in support of its judgment (as was done by the International Military Tribunal which heard the case against Hermann Goering and others). The official Manual prescribing procedures for the conduct of the trials held at Dachau authorized and required the tribunals hearing cases subsequent to the "Parent" trial to take judicial notice of the findings and sentences of the "Parent" case. But this provision was of little use in the Dachau subsequent proceedings (including the Piorowski trial) in view of the failure of the "Parent" case judgment to include as findings of fact any recitation of the criminal activities and conditions at Dachau later found necessary to support the judgments rendered in the subsequent proceedings. Accordingly, the arbitrary opinion of some official in the War Crimes Group was substituted for a judicial determination of what had and what had not been proven in the "Parent" case, and this personal opinion was inserted as "manufactured" evidence in each Dachau subsequent proceeding, by means of the paragraph cited in Prosecution Exhibit 1. If this reasoning is not correct, how else can we account for the flagrant abuse of every legal precedent in resorting to this expedient?

- b. As distinguished from the International Military Tribunal hearing at Nuremburg, the defense in this case was denied the right to look at evidence accumulated over a period of months by various war crimes agencies whose duty it was to assemble material having bearing on the guilt or innocence of war crimes suspects. When it was represented to the court that the files so accumulated contained material which would be of advantage to the accused, and that the defense had been denied access to this evidence, the court should have exercised its plenary

power of subpoena in the interest of making available to the defense all facts favorable to the issues. Instead, it denied the defense's motion for this assistance and indicated beyond question that its mind was already closed on the issue of guilt or innocence. This policy of "blindfolding" the defense was carried still further by an official policy at Dachau denying to the defense the right to question prosecution witnesses in advance of the trial,--but subjecting defense witnesses to just such interviews without the consent or the presence of the defense counsel. For proof of my statements I invite your attention to those portions of the case record and its exhibits which are discussed in the Petition for Writ of Habeas Corpus filed with the United States Supreme Court in this case, a copy of which petition is on file with the Department of the Army.

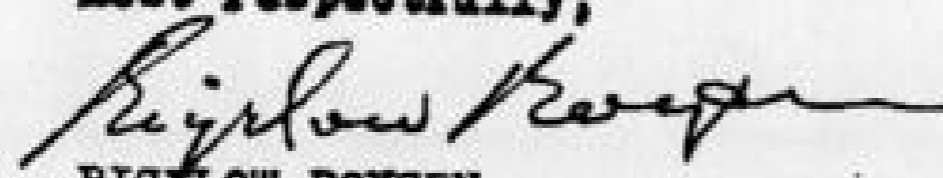
There are other reasons in this particular case why there should be a retrial of Piorowski, but it is not my desire to burden you with a series of technical details. I am urging only these few considerations upon you because there is no other forum (independent of the agency responsible for the errors which require correction) whose assigned task it is to consider them. As you already know from my cable advice to you, the Supreme Court in a 4 to 4 decision declared itself incompetent to rule on the issue of the applicability of due process of law in this type of proceedings.

If it is true that those agencies of our Government which were entrusted with the accomplishment of the war crimes program have overreached proper boundaries in accomplishing their mission, that is understandable in view of the great pressure and handicaps under which they labored. But, the great moral strength of our country lies in its ability to bring itself back from its own excesses into conformity with its highest concepts of justice formulated in periods of national serenity when human passions played no influential part.

Given an opportunity to know the facts, I am confident that our country through its responsible representatives will again respond to the demands of justice and will insist upon a

new trial for Alex Piorowski to be conducted in strict accordance with legal principles which we all can endorse without fear or shame.

Most respectfully,



BIGLOW BOYSEN  
Chief Legal Advisor