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

Dear Mr. President:

My cable to you of 6 October stated that Alex Florcowaki, 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 each trial, 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:

1. 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 having occurred at Dachau during Florcowaki'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 (T-1) uniformly required to be accepted in all
A most serious 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 camouflage for its serious administra-
tive error in failing to authorize and direct the
tribunal appointed to hear the so-called "parent
Nuremberg trial to include findings of fact in support
of its judgment (as was done by the International
Military Tribunal which heard the case against
Himmler, Goering and others). The official Manual
prescribing procedures for the conduct of the
trials held at Nuremberg 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 Nuremberg subsequent proceed-
ings (including the Pirskrecht trial) in view of
the failure of the "parent" trial judgment to in-
nclude an findings of fact any realization of the
criminal activities and conditions at Nuremberg later
found necessary to support the judgments rendered
in the subsequent proceedings. Accordingly, the
arbitrary omission of some official in the War
Crimes Group was substituted for a judicial
determination of what had and what had not been
proved in the "parent" case, and this personal
opinion was inserted as "manufactured" evidence
in each Nuremberg 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 pro-
cedure in resorting to this expedient?

b. As distinguished from the International Military
Tribunal hearing at Nuremberg, the defense in
this case was denied the right to look at evidence
accumulated over a period of months by various war
rimes 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 issue. 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 of 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 dis-
"cussed 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 Plarkowski, 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 earlier 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 proceeding.

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 hardship 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 Plankwani to be conducted in strict accordance with legal principles which we all can endorse without fear or shame.

Most respectfully,

[Signature]

DIONE FOTSAK
Chief Legal Advisor