



OFFICE OF U.S. CHIEF OF COUNSEL

APO 124A U. S. Army

Nurnberg, Germany
April 24, 1946The President,
The White House,
Washington.

My dear Mr. President:

Your request that I elaborate concerning Mr. Biddle's attitude toward our case can be answered briefly.

Our case has two aspects. One is purely legal - conviction of these particular defendants. The other may be called political. It is the effect of the trial on the future attitude of the German people and other people towards Nazism.

The difficulty is that there seems to be insufficient appreciation on the bench of the international and German aspects of the case. The British presiding judge is an admiralty and equity judge accustomed to handling purely private litigation, but he has seemed unaware of the political implications of this case. I had hoped that Mr. Biddle, in view of his experience in Government, would sense this situation and assert his influence in the direction of a strong control by the Tribunal of such witnesses as Goering and Rosenberg. In this I have been disappointed. Early in my cross-examination, when I tried to get from Goering a "yes" or "no" answer, the Lord Justice, at Biddle's prompting and without any objection by Goering's counsel, informed him that he could make any explanation he desired in connection with his answer. The result was a series of irrelevant speeches full of professions of patriotism and martyrdom which the Allied Control Council fear aroused sympathy for him, and he generally ran over us in a way that gave a bad impression of our own capacity to deal with him. As the New York Times said, our appeals for support from the Tribunal were little heeded. I am sure that the ruling proceeded from a zeal to be fair to Goering, coupled with the failure to sense his belligerent determination to revive Nazism and menace to the future peace thereby.

But so far as the strictly legal case is concerned, it has not been harmed. In fact, by their long harangues Goering, Ribbentrop and Rosenberg have been compelled to admit the authenticity of every single document which incriminates them. The defendants themselves have come to a pretty firm conviction that they are licked and have got to the stage of accusing each other and making professions of penitence.

One of the objections to the course the Tribunal has adopted is that it prolongs the case. Five years from now, no doubt, no one

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will ask whether the case ran a few months more or less. But for today there is a good deal of feeling that it is taking too long. I myself feel that it is, but there are several things to be borne in mind about its duration. In the first place, it is not yet a year from the surrender of Germany and we all know how rare it is that any case in the United States even gets to trial at all within a year after it is commenced. In the second place, we have found much more evidence than we ever expected to get. We now have over 4,000 documents of importance to the case embracing the minutes of secret conferences, speeches, orders, and reports. There never has been a war whose origins have been so carefully documented, and the defense does not impeach them in the least. Compared with most historic cases, this one is not long - the trial of Warren Hastings took seven years. But we must admit that considerable delay is occasioned by the failure to hold the defense to the rules that would ordinarily be applied in a jury trial.

Another ruling which has occasioned us great waste of time concerns the admission of our documents. In ordinary practice, after proving the identity and authenticity of a document, it would be marked in evidence and only such part of it would be read and at such time as counsel desired. This Tribunal, however, early ruled that no part of any document would be considered in evidence that was not read in open court so as to go through the microphones in four languages. The original reason for the ruling was to make sure that all documentary evidence got into the four languages. However, we have long since been able to catch up with the job of translation and to present every document in four languages to the Tribunal. Despite this, we have been unable to get the ruling modified. This ruling not only slowed up the trial greatly but yesterday, for example, over two hours were taken reading in open court a document that every judge and prosecutor had before him in his own language, every defendant had it in German and the entire press had it.

I have protested about this matter but in vain. The plain fact is there are a good many people (I do not say this includes the judges) who do not want the Nurnberg trial to end in a hurry for they are better billeted and better provided for here than they would be any place else in the world, and at the expense of the United States. This must be borne in mind in deciding whether there should be any future international trials.

I was also disturbed to learn that the British Lord Justice the other night in discussing the delay of the trial remarked that of course I was in a hurry to get the trial over as he understood I desired to get back to the States to run for Governor of New York. Unfortunately, that sort of story has been going around. I have been reluctant to get into the business of answering their rumors, but I shall take pains to let

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the Lord Justice know and I think you should know that under no circumstances would I consider leaving the bench to run for Governor of New York or any other political office. I am sure that you understand that I am not using this task for political purposes, and the rumor that it has that purpose has, of course, tended to stimulate people to make attacks upon it that would not otherwise do so.


I suppose I am unduly sensitive about these delays because I have been away from home nearly a year and my absence from the Court causes criticism of you as well as of me. Now you have additional complications due to the death of the Chief Justice which leaves only a seven-man Court and may disable it from deciding some further cases. As you know, I should have been back for the sitting of the Court if the Chief Justice had not written me as he did. And if the situation becomes embarrassing to you in any way that could be relieved by my returning for an argument session, I will be ready to do it. My impression is, however, that it will be better as Chief Justice Stone thought to let any undecided cases go over to fall when there will doubtless be a full bench to decide them. But I want to make clear that I am ready to do whatever you think best, having in mind both the domestic and the foreign situation.

By the way, I would like to mention a young man borrowed from Tom Clark who has done extremely creditable work here. He is Tom Dodd, Assistant United States Attorney in Connecticut, who, I am told, is being looked upon favorably by the Democratic leaders of his State. He has done such excellent work that I should have put him in charge in my absence had I been returning to the States, and I think you are apt to hear of him in the future. In any place for which you are ever in need of a first-class legal mind, enriched by industry and backed by sound character, his name is worth bearing in mind.

I greatly appreciated your compliment to the work here. I am sure that we have nothing to fear from the cases of the remaining defendants with the possible exception of Schacht, who broke with the Nazis in 1938. While the case against him is in some respects weak, he will strengthen our case against all the others by the line of testimony he intends to take. The case we started out to make, as outlined in my report to you, has been already made and there is nothing in sight that can disturb it in the least. Your expression is, however, a source of comfort and encouragement.

With high regards and good wishes, I am

Sincerely yours,


ROBERT H. JACKSON.