The President,  
The White House,  
Washington.

My dear Mr. President:  

Your request that I elaborate concerning Mr. Middle'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 admirable and equity judge accustomed to handing purely private litigation, but he has seemed unaware of the political implications of this case. I had hoped that Mr. Middle, in view of his experience in Government, would sense this situation and direct his influences 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 the cross-examination, when I tried to get from Goering a "yes" or "no" answer, the Lord Justice, at Middle'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 sanctimony which the Allied Control Council found so absurd that it went over our heads 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 assess 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 materiality of every single document which incriminates them. The defendants themselves have come to a pretty firm conviction that they are liars 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...
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
the duration. In the first place, it is not yet a year from the surren-
der 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 com-
enced. 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 impute 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 satis-
fied in evidence and only much 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 origi-
nal reason for the ruling was to make sure that all documentary evidence
got into the four languages. However, we have long since been told 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 judge)
who do not want the Nurnberg trial to end in a hurry for they are better
bribed and better provided for now 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 interna-
tional 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
the Lord Justice knew 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 this purpose has, of course, tended to stimulate people to make attacks upon it that would not otherwise do so.

I suppose I am unkind 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 undoubtedly 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, enlivened 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,

[Signature]

ROBERT H. JACOBSON.