

OFFICE OF UNITED STATES CHIEF OF COUNSEL
FOR PROSECUTION OF AXIS CRIMINALITY

ROBERT H. JACKSON
CHIEF OF COUNSEL

12 October 1945.

PLEASE ADDRESS REPLY TO:

APO 403, C/o Postmaster,
New York City.

President Harry S. Truman,
The White House,
Washington.

My dear Mr. President:

In view of your request to be kept informed about our progress,
I am making this private and informal report.

The indictment of twenty-four individuals and six organizations is ready and probably will be filed before this letter reaches you. Included in it are Raeder and Hans Fritzsche. Both of these are in Russian hands and have not been delivered at Nurnberg. Furthermore, the evidence was to be furnished by the Russians, for the evidence we have against them is probably insufficient. No Russian evidence has arrived. The organizations indicted include the Reich Cabinet, the Leadership Corps of the Nazi Party, the S.D., the S.A., the Gestapo, and the General Staff and High Command of the German armed forces.

Some controversies arose over the indictment. The British were opposed to indicting the General Staff and the High Command. We thought it would be difficult to explain why we were indicting anybody for aggressive warfare if we left them out. Russia and France agreed with us and the vote was three to one in favor of including them. Some individuals probably should have been added to the indictment in order to fairly represent the organizations, but we were defeated on that by a vote of three to one.

Another matter of difference was that Russia insisted on describing certain atrocities committed in the Baltic States in such a manner as to include the Baltic States as territory of the U.S.S.R. We objected that the United States had not recognized Russian sovereignty over this territory. The question could easily have been avoided by use of language which had no implications either way. Rudenko, however, insisted on the language and said that if any change were made he would have to refuse to sign the indictment until he had gone back to Moscow for instructions from Stalin. I finally signed the indictment, accompanying it with a letter to the other prosecutors to the effect that the use of this language was to avoid the threatened delay and is not at any time to be construed as an act of recognition by the United States as I have no authority in respect to any such question. The full text has been cabled to the State Department.

The first meeting of the Tribunal in Berlin is a chapter that will make you laugh or cry, depending on how you look at it. I do not know how the American press has treated it, but it could have been written

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up pretty badly. We had set up the Tribunal's meeting for Tuesday morning, October 9th, and had asked the European Air Transport Service to furnish a plane to bring Biddle, Judge Parker and their party immediately from Southampton to Berlin on Sunday. This would have allowed Sunday evening and Monday for the informal conferences which are so necessary to a well organized public meeting. The British and the French arrived for the conferences.

Our judges not only did not get there but we could not find out for a long time where they were. The explanation made is this: Either the European Air Transport Service failed to furnish a plane for the Biddle party as we requested, or it was diverted by General R. B. Lord. General Lord was also on the Queen Mary. He ordered the plane to take him to Paris instead of taking the judicial party to Berlin. We are told that he said he had an important Sunday evening engagement in Paris. Against the protests of Biddle and Parker, they and all of their party were taken to Paris. There they were further delayed by weather. They did not reach Berlin until Monday afternoon around five o'clock.

Meanwhile, the British and the French judges were waiting. We were embarrassed to urge the Russians to get their judges there for we could not explain what had become of our own. The result was that the time announced for the conference arrived with very little of opportunity for informal discussion of its agenda. I, being a prosecutor, could not assume to act for the judges. The whole situation was thrown into very bad confusion which could not be wholly concealed. I do not know where the responsibility for taking our judges to Paris instead of to Berlin lies. But I do know that it caused grave embarrassment to Biddle and to Judge Parker and to me, that it is the cause of a very bad first impression of United States efficiency in these trials. It is the more regrettable because the cooperation from the military authorities in this theatre has been so hearty and this fiasco appears so inexcusable.

Some of our embarrassment was relieved, however, by the fact that the Russians appeared to be as inefficient as the Americans. They, too, were late in arrival. Also, when the Russian judges finally arrived, the Russian prosecutor could not be found. He had returned to London without leaving anyone to represent him. An amusing sidelight is that the Russians, who had insisted on the Berlin meeting against our wishes and had more or less assumed to act as hosts, had not even made provision for billeting their own prosecutor at the Saturday meeting of prosecutors and if the British had not taken him in I do not know what he would have done for food and shelter.

I have at all times insisted that the Tribunal should hold no secret sessions except its conferences between its own members. But the Russians would not consent to an open session in the absence of their own prosecutor. Finally, the Tribunal called in the Press and announced it was ready to receive the indictment. But, on Russian objection, it



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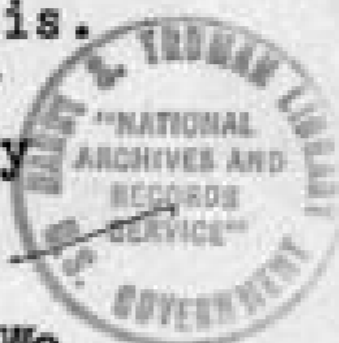
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Next day, the Tribunal sent for the three of us prosecutors who were in Berlin to attend a closed session. I protested that a closed session between the Tribunal and the prosecutors would create a very bad impression, and there was nothing that the public was not entitled to know. But this was overruled, again on Russian insistence. So I stayed at the request of the Tribunal and answered their questions, as did the French and British representatives. I then left Berlin and returned to Nurnberg making provision for representation in case the Tribunal wants a public meeting. I am informed now that no public session is to be held there and they will receive the indictment by letter of transmittal. I think, however, the Russians have over-influenced the Tribunal into the mistake of holding closed sessions.

A preliminary question concerning the Presidency of the Tribunal ought to have been threshed out but owing to the delayed arrival of our members it could not be adequately considered. Biddle, I think, had a natural and laudable ambition to be President. Ordinarily, I should have welcomed his election. However, the United States Army is host at Nurnberg, all of the arrangements are American, all of the defendants except three are prisoners taken by Americans. Also, we have a staff three times the size of that of all of the other nations combined and most of the evidence comes from our sources. In the division of the case, the major part of the trial work has been assigned to us because we are the people best prepared to carry it through. If we were also to furnish the Presiding Officer, there would be danger that these trials would look like a purely American enterprise. If anything should go wrong, all of the animosities and blame would be centered upon the United States although its representatives do not have a free hand but are controlled by three other votes. Ambassador Murphy, General Clay, Charles Fahy and all of my own staff felt that it would be a disservice to the United States if an American were made head of the Tribunal and the British slid out from responsibility. This was emphasized when I learned that the British Delegation were ready to suggest Biddle for President of the Court. In the few moments that I was able to see Biddle after he arrived and before the meeting, I presented this viewpoint to him. Greatly to his credit, he agreed. He suggested to the British that their Lord Justice Lawrence should preside. Lawrence is an experienced trial judge and I am confident that it is better to have this trial go on under the Presidency of a British Judge of high standing than to have taken the place for an American. I think Lawrence will be chosen unless some plan of rotation prevails.

Several dangers confront us in these trials. One is the possible attempt of Nazis, defendants and lawyers, to so behave as to break up or discredit the trial. Whether such an attempt could succeed would depend



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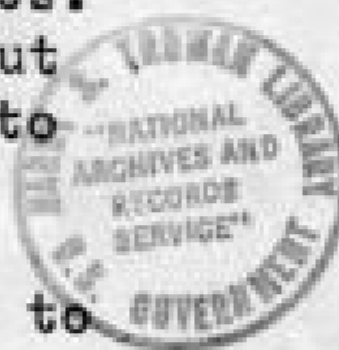
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The second danger comes from our Allies. First of all, they have done or are doing some of the very things we are prosecuting Germans for. You, no doubt, are informed that the French are so violating the Geneva Convention in the treatment of prisoners of war that our command is taking back prisoners sent to them. We are prosecuting plunder and our Allies are practicing it. We say aggressive war is a crime and one of our Allies asserts sovereignty over the Baltic States based on no title except conquest, etc., etc.

Then, too, the prosecutors do not have our idea as to how a trial should be conducted in fairness and dignity. The Laval trial is a scandal throughout Europe. As nearly as I can get at it, the trials by "people's courts" in the Balkans and Hungary, and elsewhere under Russian control, are nothing that we would recognize as trials at all. The prospective trials, as far as I can judge, are received by the Germans with skepticism and little expectation of fairness.

I know of nothing the United States can do except to stand by our principles and let others explain their own apparent inconsistencies. I have talked with General Clay and Ambassador Murphy and Mr. Fahy about the effect on the German people and will endeavor to conduct the case to assist rather than to complicate their difficult problems.



Meanwhile, you will perhaps be both amused and instructed as to German psychology by one of Ribbentrop's answers to me under interrogation. In the course of a long and evasive explanation he referred to "this terrible war." I said, "By the way, Ribbentrop, when did this first begin to impress you as a 'terrible war'?" Without a trace of humor and after some deliberation, he said, "I will tell you the exact moment. It was when I heard that the Americans and their Allies had landed in Africa." He inadvertently disclosed the underlying attitude of the Nazi crowd toward the war - it was a terrible war when it began to be a losing war.

I am asking my son, William, who has been through these negotiations with me to carry this letter to you. He and Sidney Alderman, of my staff, will be in the States a few days and can give you any further information on any subject in which you are particularly interested. In view of the interest of their Departments in these matters, I am enclosing copies of this letter for Secretaries Byrnes and Patterson if you wish to pass it on to them. Needless to say, I will welcome any suggestions you or they care to make as to what we can do to keep these trials on the high level that you have desired. In spite of the difficulties, I think we shall succeed.

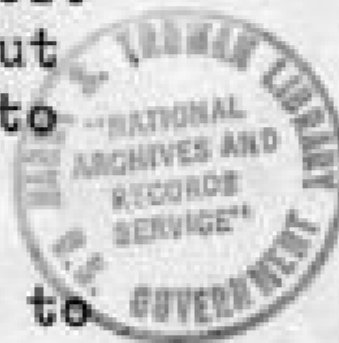
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Respectfully yours,



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