

26 November, 1945.

Maj. Gen. Wm. J. Donovan,
Nurnberg.

My dear Bill:

I think your letter calls for a little review of our situation. You and I appear to have developed certain fundamental differences in viewpoint about this case. Time alone will tell which of us is right, but there can be no doubt that the case cannot follow both of our lines.

During your long absence from the case, my own confidence grew with study of the document analyses that our case could safely rest wholly on documents and that witnesses need be used, if at all, only incidentally. With this you disagreed and proposed more reliance on oral testimony. I was and am willing to consider use of any witness but only after he has made a complete written statement of what his testimony is. This I have from some proposed witnesses, but none from any you have been working with. The Planning Board advise they have had nothing except oral statements from you.

Meanwhile, other differences of viewpoint have developed. I understand you have expressed complete disagreement with the indictment of the General Staff and the High Command. Obviously if the work you are doing with witnesses or with such a defendant as Goring reflects this attitude, it is at odds with the policy of the case as settled by the indictment and may result in serious embarrassment.

Then too, we do not see alike about the defendants such as Schacht. I do not think he will help us convict anyone we do not already have convicted on the documents. And if he did, I do not think we should give him any advantage for doing so.

In short, I do not think we can afford to negotiate with any of these defendants or their counsel for testimony. We have interrogated them extensively and I might put some parts of some interrogations in evidence, but I would not put one of the defendants on the stand as our witness. To use one of them ourselves will create the impression that there was some kind of bargain about his testimony, opening the door to that defendant to plead for leniency on the ground he was "helpful" and may give a background for claims that promises were made to that effect. My view is, therefore, that we should prove our case against these defendants with no use of them as witnesses. I have instructed our own Dr. Kempner that we will have no negotiations on such matters, either with defendants

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or their counsel, despite the fact one of them approached him with an offer to testify. I know the "turning of state's evidence" would be dramatic and sensational - but I think it better for the reputation of our case that each defendant do any confessing on his own behalf - not on ours.

Partly because of this feeling, perhaps, but also for other reasons, I disapprove the use being made of the German lawyer Leverkuhn. You told me you were consulting with him and to that I saw no objection. But Saturday I learned he is living in the house with some of our prisoners of war witnesses with whom Amen had been working under my instruction. Apparently on your behalf, Leverkuhn was extending to one of them social entertainment at a time when Amen had an appointment to complete his written statement and Leverkuhn assumed to set aside Amen's instructions to Lehousen. Leverkuhn I have never met. I have never delegated any authority to him and he is not on my staff. From what little I can learn, he was badly mixed up with the Nazis and is not a man who should be trusted with knowledge of our case. His relation with some of the defendants may not be disinterested. I do not think he should consort with our witnesses and be possessed of information which comes of such association as to what we are doing, trying to prove, etc. Leverkuhn must get out of these billets and out of Nurnberg. His presence here will cause trouble as sure as night follows day.

Now the question as between you and John Amen as to which shall examine and cross-examine defendants and witnesses is not simply a personal one, or one of military rank. He has been for months at work with these defendants and witnesses. So far as I know, John has worked fully in accord with my view of the policy of the case. You and I both know that the slant of counsel who examines or cross-examines a witness often determines the whole slant and effect of his testimony. Once an adverse attitude is developed at the bar by an associate, it would be almost impossible for me to alter it. Frankly, Bill, your views and mine appear to be so far apart that I do not consider it possible to assign to you examination or cross-examination of witnesses.

Therefore, I did not respond to your request for access to Goering. I repeat that time may prove you right and me wrong. I do not claim any great wisdom in so novel and complex a matter. I only have responsibility.

Sincerely yours,

RAG