

Nuernberg, 27 November 1945.

Dear Bob:

If we are to have a review as you say in your letter of 26 November 1945, let us have a straight and not an inaccurate one.

1. You have not forgotten that from the very first, research as well as camera specialists were made available to you. I visited the document centers, arranged for our access to them and obtained key documents very early in the case. This was as it should be. I speak of it only to remind you that I recognized, as you do, the value of both mediums of proof. I thought it a mistake to rely exclusively on documents or on moving pictures or on oral testimony. I urged our job be done in a lawyer-like, organized and balanced presentation.

2. To the Board of Review and the Planning Board I stressed that no witness be finally approved until we examined his signed statement in question and answer form. In consulting the Planning Board as to whether we should proceed to obtain such a statement from Goering, on two occasions I read to them from the statement obtained, and they expressed the opinion that the statement be completed. I attended every meeting of the Planning Board at none of which were you present.

3. When in Berlin you first showed me the indictment I said it was unbecoming our country to use such a device as there employed against the General Staff. I still think so. The young British officer who prepared it told me he was not very proud of the job. I urged a revision so that such members as were participants be charged individually and not by position and by function. I thought it was on this theory that you approved granting the request of the Brauchitsch Group in presenting their paper - which is itself an indictment of their conduct.

I have never agreed with those of our Regular Army who think that there should be no criminal charge against the General Staff. That I made clear to General Bedell Smith, Chief of Staff, when you and I were at Frankfurt. Perhaps it would have been better to have shot the guilty ones. Since we elected to proceed by indictment I think we should do it properly. It is repugnant to me that there should be any pretext as we find in the trial today for the defendants to assert that the prosecution is unfair.

The "if" clause in your concluding sentence takes an assumption and then deals with it as if it were a fact.

4. We agree about Schacht in so far as using him as a witness is concerned. His lawyer saw me and I told him I would not see Schacht. Of this I have already informed you.

5. (a) In your fifth paragraph you discuss "negotiate" and "bargain." I never knew these ideas were even suggested, except as might be inferred from your memorandum that no proposal of a defendant to testify would be considered unless in writing he incriminated other defendants.

(b) The Goering proposal as made by his counsel and confirmed by him was on no such basis. It was to be testimony in open court as to his

participation and that of other defendants in the case. It was to be in writing, in question and answer form, signed by the defendant. Then it was to be submitted for your action and if approved, the defendant was to take the stand as a witness - not as "our witness" - and be subjected to such questioning as desired.

I agree that the case is fool proof and of itself needs no such statement. But a confession from the last sane leader of the gang might well be of value in a larger sense. This was not intended as a "stunt", or as a dramatic episode, but as a very practical means of bringing home to the German people the guilt of these men.

To accept or exclude this kind of testimony after reading it is an exercise of judgment. To exclude it before doing so - is something less.

6. About Leverkuehn. I told you and Amen all I knew about him. You both thought he would be useful and he has been. If he has done anything contrary to Amen's wishes then he is wrong. But I think the rest of your comments might in fairness be deferred until you know the facts.

7. There is not - and never has been so far as I am concerned - any question between Amen and me on examination of defendants or witnesses. That is just absurd. If one exists in your mind, you have been tilting at windmills. Amen can do the job. The insinuation in your last three sentences in this paragraph might be spared. Your mind may work that way - mine does not.

8. It is true that I have frequently told you squarely and honestly that

- (1) the case needed centralized administrative control.
- (2) that there was a lack of intellectual direction.
- (3) that it was not handled as an entity.
- (4) that because it was a lawsuit plus something else it needed an affirmative human aspect with German as well as foreign witnesses.

I never knew that there was ever disagreement on these points.

As I told you several weeks ago I am leaving within a few days. Time will not be concerned with our opinions - right or wrong.

Sincerely,

/s/ BILL

WILLIAM J. DONOVAN

TO: Mr. Justice Robert Jackson

WJD/jes