

October 1, 1945

Mr. Max Kopstein
33 North LaSalle
Chicago, Ill.

Dear Mr. Kopstein:

Dr. Robinson left for London some ten days ago in connection with preparations for the Nuremberg trials. We shall try to answer your letter for him.

That Kramer and his gang are being tried by a British military court and not by the international military tribunal is a puzzle not only for you.

According to the Moscow Declaration of November, 1943, only such war criminals whose offenses have no particular geographical localization are to be punished by joint decision of the Allies; all others are to be returned to the countries where they committed their crimes, to be tried before domestic courts.

It seems certain that at the time of this Declaration the problem of punishment for crimes committed on German territory was not touched upon at all. In the case of Kramer and some of his SS assistants, there was ample room for trial before the Polish court, since Kramer and his gang had operated in Oswiecim, Birkenau before they took over the command of Belsen Bergen.

On the other hand, the Agreement on Punishment of War Criminals, signed by the Four Powers at London on August 8, 1945, in its Article 6, C, paragraph 2, provides, as you well know, that "leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes..." may be arraigned before the new international criminal jurisdiction. This provision, in the light of the preamble to the Agreement and the negotiations which preceded its establishment and signature, refers only to major war criminals. It would seem that Joseph Kramer and his gang were not considered "leaders, organizers or instigators." Hence in this case two geographical areas had to be taken into consideration -- Poland and Germany. Since there never was any question of turning over to German courts any criminals for crimes committed within Germany, and since German sovereignty is divided among the military administrators of the various zones of occupation, it was but natural that, Belsen being in the British Zone of Occupation, the British military court should take cognizance of this case.

The fact in itself is not to be considered unfavorable. First, assuming that Kramer were to be tried by the international court, he would have appeared only after the court would have declared the SS a criminal organization. This, of course, would have caused considerable delay. Secondly, in spite of all shadows which exist in the Lunenburg trial from the Jewish point of view, you understand that this trial will be of tremendous importance as a precedent for certain pleas and defenses which unavoidably will be interposed before the international military court by the 26

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Nazi higher-ups. It is of course needless to emphasize that this value of precedent would be even stronger were the United States, for reasons of friction on secondary points between the signatories of the London Agreement, finally to decide to try the 26 chief Nazi leaders before an American military court alone.

We hope that this explanation will clear up for you the point of confusion and will be of help to you in preparing your address on the subject.

Sincerely yours,

Gerhard Jacoby

Henri Singer

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