GENERAL REPORT TO THE COMMITTED STAFFS OF THE OFFICE
BY DR. JACOB JANSON
ON THE NUREMBERG WAR CRIMINALS TRIAL.

Thursday, December 6, 1945

Dr. Wise opened the meeting and, after stating that this was to be considered a strictly executive meeting and that therefore nothing said were to be published or publicised, he gave the floor to Dr. Robinson.

Dr. Robinson: I think it would be better not to start from scratch. It would lead me too far afield to begin with the abc of our struggle in securing the recognition for the Jewish people as the victims of the Nazi fury. For the purposes of my report, let us recall the various acts of the drama now unfolding at Nuremberg:

Act 1 - The Statement of Justice Robert H. Jackson, American Prosecutor, June 10, 1945, which put an end to all gallivants by legal authorities as to whether Nazi criminals can be punished.

Act 2 - The Four Power Agreement of August 8, 1945, and the attached Charter of the International Military Tribunal.

Act 3 - The signing of the Indictment made public on or about October 18, 1945.

Act 4 - The trial itself, which is the basis of our discussion today.

Act 5 - Before this act, the judgment of the Court and the execution of its decision, will be presented, we will have to wait a long time.

Contrary to my original plan, I cannot be impartial in this report. I made this trip as a mission, and I must give an account of my activities. All this may be unimportant as history, but I feel that you are entitled to know my personal reactions.

The Four Power Agreement has indicated our theory of the extension in time and space of the criminal definition of war crimes, which actually amounts to the recognition of the identity of the Jewish people, as the chosen victim of Nazi persecution. Many of us took it for granted that crimes against humanity
and within the jurisdiction of the I.M. If this is true, however, only for such acts as are tied up either with the crime of war of aggression or with "war crimes" in the technical sense, unless proof is submitted to the Court that anti-Jewish measures of the Nazi regime are tied up with the Nazi conspiracy and the war of aggression, we may lose our case. This must be borne in mind in order to understand certain developments.

As to the dramatic signing of the Indictment, I sent a detailed analysis from our viewpoint to the Office Committee and the Institute group. I was present in London during the various vicissitudes of the writing of this indictment.

Frankly, the Indictment is a poor document. I deliberately underestimated this when submitting my first report to the Office Committee. When I was asked by competent persons in London for my opinion, however, I gave it and found that it was shared by many others. The weakness of the Indictment is not because it presents a weak case, but because of the system of division of labor among the four governments, resulting in four different styles which are not strongly unified. That a tremendous difference between the Indictment on the one hand and Jackson's opening speech!

But, after all, this is not too important from our point of view. Because of the lack of cohesion in this document, the Jewish case, while for the first time receiving full attention, was not presented as well as it could have been.

The best part was the first; Sections 3 and 4 seem to be without central ideas, composed of bits and pieces. The selection of facts and documents is poor.

When a document is subjected to two weeks of vacillations, revisions, conflicts, corrections, and constant changes, nothing impressive can ever be expected to result.

Although it is a four-power document, the Indictment cannot be considered
the result of the deliberations of the Four Powers. It was of course di-
vided as follows: United States — Conspiracy; Crimes against Humanity
(Count 1 & 2)
Great Britain — Crimes against the Peace (Count 3)
France — Technical War Crimes, West of Berlin
(Count 3)
Soviet Russia — Technical War Crimes, East of Berlin
(Count 3)

There is no doubt, however, that the entire trial is predominantly an
American show. After 3½ years, Britain could not come to a decision. It
was Justin Jackson who took things in hand and dramatically forced a decision
after his desperate flight to Tibet. It was the Americans who captured
26 of the 28 top Nazi criminals: It was the Americans who captured the discrimi-
nating Nazi documents now being used as evidence against them. (Great
Britain's army, too, might have captured Nazi documents, but is hardly
revealing them in the same measure as the United States. The Russians may
also have done, but they are not revealing them.) It should also be borne
in mind that Nuremberg is in the American zone of Occupation.

All this offers something very positive from our viewpoint. If there is
any group which took the Jewish case seriously, it is only the Americans.
'Crimes against Humanity' involved a terrible fight within the Four Powers
group. It should be recalled that it was the American group which had a
Jewish Section, that began its work in Washington under the Office of
Strategic Services and then later within the Office of Chief of Counsel.
Nothing of that kind existed in the British set-up, nor in the French or
Russian, either. (This does not mean that they will ignore the Jewish case
in their respective sections.) It is the self-assurance of American leadership
in world affairs on the moral plane which has proved of tremendous
importance. The others missed the point.

The general structure of the Office of Chief Counsel is important to know. Its personnel certainly numbers in the hundreds. In addition to all technical services, including films, recordings, translations, documentation, library, etc., there was a very well thought out plan of dividing the work.

Law four sections:

Section I — Genocidal Plan of Conspiracy

II — Crimes against the Peace

III — War Crimes

IV — Crimes Against Humanity

All four sections are headed by an over-all planning committee. Despite the existence of some of these divisions within the jurisdiction of other nations, the Americans consider it their duty to be prepared to handle the entire case, if necessary, to "send-leas" their documents to the others. In fact, all the others came to the Americans for documents, reports and other forms of assistance.

Within this structure, Section IV contains many sub-sections:

1. Anti-Jewish crimes
2. Lootings of art treasures
3. Concentration camps
4. Prisoners of War
5. Treatment of civilians, etc.

The characteristics of this Section IV, as of all other American sections, are as follows: It consists of a group of men of good will but who lack competence in Jewish affairs. They recognize their own limitations, but hesitate to draw the necessary conclusions. This Jewish "team" is made up of Jews who lack competence and of non-Jews, all of them of good will. The
The one "real" Jew is a "super Jew."

The deeper reasons for this state of affairs are (1) American impermeableness; (2) the assumption that a military man (and a lawyer, to boot) must know everything, especially how to execute any order be any receiver; (3) oversimplification of the whole Jewish matter. Why shouldn't a practising attorney be able to prepare a case about anything at all?

Despite these objective difficulties, it is only fair to say that the effort made was extraordinary, in the attempt to overcome their own shortcomings and the limitations imposed by time.

The most profound reason is certainly that we, those who are competent, are on the outside, and those who are on the inside are incompetent. The solution was either to bring the outsiders in, or to educate the insiders. The former was deemed more expedient, and that's what was done.

* * *

I would like to convey to you something of the extent of the extraordinary sense of unreality of Nuremberg. The rubble and ruins wherever you go, on every street, even within the buildings. Amidst these ruins, exists a tremendous court building, the jail beneath, a grand hotel in which live many people connected with the trial, complete with night club. All this said the local population who wander about, looking on — and we know nothing of these people and their thoughts of us who have come there to pronounce judgment. You realize that you are living on a no-man's-land, an island of little America, isolated from reality. Coming down to the court, many people are more interested in the American PF than in the proceedings of the court. There is a great congestion.
emotion of people, a mixture of angry language, pleasure-seeking and laughter, side by side with the grim business of the Tribunal — all of which contribute to the dream-like quality of life in Nuremberg.

Our special lines of policy in connection with my particular mission:

It is not of any interest now to go into the details of the preparation of the indictment and to indicate that parts of it would have looked different if not for our work and watchfulness. Suddenly the idea of "Genocide" (Laskin's term) came into being, and the term was inserted into the document but was not developed. An example of the application of the concept of "Genocide,"

"Jews and Gypsies" were cited, when I saw that, I got mad, because it so ranked of the real method of humiliation of Jews by putting them in a class with the gypsies. It is a doubtful source of satisfaction that the word, "Poles" was inserted to make the phrase read: "Jews, Poles and Gypsies."

The problem of the Jewish witness has not yet reached the stage where it can be discussed.

Far away from Nuremberg, the idea of our "representatives" or "observers" being officially admitted to the trials sounded like a good idea. But the fact is that there are no "representatives" in Nuremberg at all. The court consists of the floor and the gallery. The "representatives" of the countries not represented on the bench are in the gallery, and so is everybody else, and there is no place for "observers." And there is nothing to observe. If you are not a judge or defense counsel or journalist or one of the 29 "bystanders," there is no place for you on the floor. Everybody else is upstairs, and you cannot see very much from the gallery.
You know of the tremendous efforts made to get a "representation" of Jews to Nuremberg. You know of the answer Col. Patterson sent me. And I must say his reply was reasonable. Fifteen governments adhered to the Four Power Agreement and even their representatives were accommodated with difficulty on the gallery. And actually, there is not much point in being there, as I have indicated. Sitting there for 3 or 4 months to hear documents read out in court is useless, useless when we can read them same documents here.

When we had despaired and were convinced that we had lost this part of our case, something happened which I am not sure I can explain fully. After receiving instructions from New York and deciding to return home as soon as possible, I was approached by the Office of Chief of Counsel in Paris to proceed immediately to Nuremberg. I refused because I wanted to know the purpose of this summons. Later, I had a long telephone conversation with Nuremberg; they wanted me to come and help them out. Only later did I find this document which throws light on how this came about.

"Decision of Board of Review on Problem of approval of Jewish Expert.

"Approval is requested for the interview of Dr. Jacob Robinson for the purpose of determining whether he will be available and valuable as a trial witness with respect to the persecution of the Jews.

"Evidence is particularly needed to support the allegation in the indictment that 5,700,000 Jews under Nazi domination have disappeared. It is believed that Dr. Robinson can support this figure and that he will also be useful in connection with other phases of the Jewish case... It is believed that Dr. Robinson qualifies as an expert witness on the Jewish problem and that his opinions and estimates carry considerable weight.

"Dr. Robinson is known to the Chief of Counsel."

From various quarters came the opinion that the case cannot be presented without expert advice. I was rushed to Nuremberg and there discovered that the Jewish Brief had been completed. 57 pages long, it is in itself a great
achievement.
A meeting was called upon my arrival, and Col. Holler who headed me the
Brief asked me to read it and tell him what I think of it. A few hours later,
I submitted my provisional opinion. From the viewpoint of general impression,
the document is good; it contains, however, many mistakes which are likely
to undermine the case presented; the selection of quotations is not a happy
one in all cases. It was suggested that the entire Brief be rewritten.

Despite certain hesitations, and after two days of discussion, the revision
was finally agreed to. As a result of my suggestions, some 35 of the 57 pages
were rewritten. It is now a better document, but still far from being good.
The conclusion given was that, if there is something I would like to add,
it can be inserted later in the "presentation" to be made by Major Walsh. The
presentation is not bound to follow the written Brief.

I certainly would have remained in Nuremberg as long as I wanted to, but
I saw no point in staying on indefinitely until such time as my help would
again become necessary.

How were we to prove our conclusion? Jackson stuck to the figures we gave
him. Our statistics had been revised in August and were well distributed in
Nuremberg. There were two other sources of figures. It was important to invent
our statistics with the power of evidence. I had to sign an affidavit stating
our competence to give an opinion on casualties, giving our sources, indicating
our methods of computation, etc. This affidavit may be submitted to the court
to substantiate the data contained in the Jackson statement and in his opening
speech.
There is a great 'hush-hush' surrounding the fact that there are many cases in the archives of the court who are being questioned. Among them is Wisliceney, a Nazi responsible for anti-Jewish persecutions in Slovenia, Hungary, Croatia and Greece. Col. Broekhart, a good American criminal lawyer, is conducting Wisliceney's interrogation. It was impossible for me, a civilian without status, to get the permit necessary to interrogate him. So the following procedure was adopted: I would prepare the questions, Col. Broekhart would go to Wisliceney and put these questions to him, get his replies, and bring them to me. I would write these answers up and Broekhart would take them back to Wisliceney for his approval, etc.

Wisliceney's knowledge of Jewish affairs is absolutely amazing. His hatred for Jews is greater than his hatred for the Jews. What we wanted from him was facts and figures. In the entire Jewish case we were confronted with a problem of the meaning of three words which were obviously code words in Nazi terminology. We needed the proper definition of the words:

- Ausstieg — evacuation
- Sonderbehandlung — special treatment
- Endlösung — final solution

and not with much difficulty before we obtained them. While Ausstieg in German may mean only "evacuation," in the Nazi language in reference to Jews it meant their deportation for further acts leading to slavery and annihilation. Sonderbehandlung, as it appears in many of the Nazi documents which were among those submitted to the court, means special discriminatory treatment including physical and mental tortures of every kind. Endlösung, in the language of the Nazis, means complete physical destruction. When these incriminating documents are read in the light of these definitions, only then will they convey to the judges the real meaning of the Nazi plan of conspiracy.
Dr. Wilhelm Boett, another one of the Nazis kept in the cellar at
Nuremberg, was assistant to Ribben who had given him the following figures:
4 million Jews were murdered outside the Soviet, and an additional 2 million
inside the Soviet. Boett made a very long statement containing exact figures,
details, circumstances. It is interesting to note that our figures, Ribben’s
and Boett’s all coincide. If anything, ours are a little underestimated.

As a by-product of my presence there, I was asked to express an opinion
and give my advice on the use of the ghetto films. A special showing of both
captured films was arranged for our group. These pictures were certainly meant
for propaganda purposes. They show only Jews; even the policemen are only
Jews. It tries to prove the callousness of the Jews by showing many well-dressed
passers-by completely ignoring the corpses strewn about the streets. The
theme of the pictures is: Jews are inherently bad people; there is no such thing
as Jewish solidarity; they mistreat their own brethren. Ergo, how can non-
Jews be expected to do any better? It was obvious that these pictures were
not made at one time, but rather pieced together from scenes taken at many
different times. The Nazis apparently decided later that these films would
prove boomerang against their own propaganda line. They were found buried
in salt mines, labelled “Top Secret, not to be used without authority of top
chiefs.”

There remain a few unsolved legal problems with respect to Crimes against
Humanity, on which we are going to work in the Institute.

The opening speech of Justice Jackson was indeed a tour de force, which
took six hours to deliver. The impression on the public was tremendous, the
Impression on the insiders, mostly negative — which fact does not reflect on the strength of the address. Their attitude was that Jackson had skinned the areas off the entire case and left plain milk for the rest of the prosecutors — there was nothing more for the others to say, which of course concerned James. I cannot understand such an attitude on the part of people who are trying to do a specific job. But to console the group until when I was working, I made a detailed comparison between the speech of Jackson and the contents of our brief with the surprising result that only some 3 or 4 of our points were contained in his speech, and, on the other hand, 22 out of 28 paragraphs of his speech contained nothing comparable to the contents of the brief.

Only 31 carried the full text of Jackson’s speech. The other papers carried only excerpts, and those excerpts were not a very happy choice. By the way, in the first paragraph of the section on “Crimes against the Jews,” Jackson said:

“In the aggregate, they [the Jews] had made for themselves positions which aroused envy, and had accumulated properties which excited the enmity of the Nazis.”

It was felt in Wiesbaden that this should not have been said, and it was bitterly criticized in Paris. And some felt that he was inconsistent by “Jews,” “Jewish people,” etc. But how could it have been said better than:

“What we charge against these defendants is not those arrogance and presumptions which frequently accompany the intermingling of different peoples and which are likely, despite the honest efforts of government, to produce regrettable crimes and convulsions. It is my purpose to show a plan and design to which all Nazis were fanatically committed, to annihilate all Jewish people... The persecution of the Jews was a continuous and deliberate policy.”
At this point the defendants were at their lowest ebb, completely crushed. This situation gave rise to a certain competition among the Four Prosecutors in their desire to speak on the Jewish case, which turns out to be the strongest self-defense case.

The Nazis were convinced that they were going to win the war. They were also convinced of the importance of their war against the Jews, and so were not too careful about maintaining their secrets in these fields. In fact, some of the Nazi documents captured by the Americans will also be presented as tying in with the Jewish case and with the cases of some of the other sections, such as treatment of civilian population, looting, prisoners of war, etc.

A vast documentation will be presented to the Court to expose the so-called "sensational" acts of the German people, like the boycott of August 1st and the Fégère of November 9th. Goring’s Instructions, recently found, bring in some new elements such as arrests of Jews are to be made in accordance with the capacity of the local prisons.

Jackson calls the report of the General who liquidated the Warsaw Ghetto "sensational." This document contains a day-by-day diary of the process of the liquidation of the Warsaw Ghetto, with exact details as to the numbers of troops participating, the numbers of Jews killed, etc.

Some of the defendants are trying to prove that they had nothing against the Jews. Ribbentrop and von Fritsch, a third or fourth generation German, Baldur von Schirach made a statement to the effect that he considers the anti-Jewish policy of the Nazi regime a mistake. Others claim not to have known anything about the mass-murders, etc.
One of the most important documents of the trial is the diary of Hess, 55 volumes, containing the complete story, day by day, beginning with September 17, 1939, and ending in March, 1945. The series contains the minutes of the meetings he held with his cabinet. A second series is of his personal notes. Both the Polish and Soviet delegations are eager to copy as much as they can from the Diary. By the way, this Diary sheds new light on the collaboration of certain Polish circles with the Nazis, especially in the anti-Semitic field. The Polish underground, too, appears in an entirely new light, as being guided and led partly by the Gestapo agents.

We have an official letter from Major Walsh acknowledging my assistance, etc. Objectively, I believe that it was a good cooperation. Unless something drastic happens, we are slated to receive a nice hearing.

The idea was, originally, for the United States Prosecution to state its case first, to be followed in order by Great Britain, France, and Soviet Russia. The day I left, apparently a change in this schedule occurred, it being decided to follow the order of the countries in the Indictments:

I War of Aggression
II War Crimes
III Crimes against Humanity

However, new changes may still occur.

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Legal points Jackson's opening speech contains the following references to the legal aspect of "crimes against humanity:

'...chief among these crimes against humanity... are mass killings of countless human beings in cold blood..."
Does it take these men by surprise that murder is treated as a crime?.....

"We charge that all atrocities against Jews were the manifestation and culmination of the Nazi plan to which every defendant here was a party."

This is the culmination of these crimes, but not the crimes themselves.

The thesis that, as the murder of one individual is a crime, the murder of even six million people is also a crime — this is too elementary. According to our theory, these killings must be tied up with previous stages of the crime, constituting the last link in a chain of criminal acts of the conspiracy to destroy the Jewish people. The possibility of simplifying the "Crimes against Humanity" represents a grave danger that must be met by people trained in the intricacies of international law and competent to handle it.

In the office of the American Judge, in addition to Francis Biddle himself and John J. Parker, there are a number of legal advisers, among them Prof. Geoffrey Wright also has a great deal about international law, protection of human rights, etc. Three advisers are in a position to do a great deal. Unfortunately, Geoffrey Wright considers himself part of the bench, exclusively, and I was on the "side" of the prosecution. And there must be no communication between the two.

This trial is not yet ended. I do not now want to state whether or not the Nuremberg trial constitutes an asset in favor of our cause or not. We must wait for the judgment, the motives of the judgment, the declaration as to what is criminal, etc., before we make up our minds on the advantage or disadvantage for us of this war crimes trial. Concerning other subsequent trials,
I am not at all convinced that we have any particular interest in the great flow of trials. We must make a thorough analysis of these two types -- the national trial (Lemiburg), and the international trial (Nuremberg) -- before we can reach any decision.

The matter of war crimes is one of very few in which our group is the only Jewish group that made a contribution and remained active in to the end.

We hope, in due course, to bring out a complete White Paper on the trial of war criminals -- one of many white papers vindiying our war-time activities. It will contain, inter alia, the story of our fight for a proper definition of war crimes so as to enable the Jewish cases to be brought in, as such, in the Indictment; how this definition found its expression in the judgment; and how instrumental we were in the revolution created in legal thinking on the subject.