

JUSTICE JACKSON'S FINAL REPORT TO THE PRESIDENT CONCERNING THE NURNBERG WAR CRIMES TRIAL

The President,
The White House,
Washington, D. C.

My dear Mr. President:

I have the honor to report as to the duties which you delegated to me on May 2, 1945 in connection with the prosecution of major Nazi war criminals.

The International Military Tribunal sitting at Nurnberg, Germany on 30 September and 1 October, 1946 rendered judgment in the first international criminal assizes in history. It found 19 of the 22 defendants guilty on one or more of the counts of the Indictment, and acquitted 3. It sentenced 12 to death by hanging, 3 to imprisonment for life, and the four others to terms of 10 to 20 years imprisonment.

The Tribunal also declared 4 Nazi organizations to have been criminal in character. These are: The Leadership Corps of the Nazi Party; Die Schutzstaffeln, known as the SS; Die Sicherheitsdienst, known as the SD; and Die Geheimstaatspolizie, known as the Gestapo, or Secret State Police. It declined to make that finding as to Die Sturmabteilungen, known as the SA; the Reichscabinet, and the General Staff and High Command. The latter was solely because the structure of the particular group was considered by the Tribunal to be too loose to constitute a coherent "group" or "organization," and was not because of any doubt of its criminality in war plotting. In its judgment the Tribunal condemned the officers who performed General Staff and High Command functions as "a ruthless military caste" and said they were "responsible in large measure for the miseries and suffering that have fallen on millions of men, women and children. They have been a disgrace to the honorable profession of arms." This finding should dispose of any fear that we were prosecuting soldiers just because they fought for their country and lost, but otherwise is regrettable.

The magnitude of the task which, with this judgment, has been brought to conclusion may be suggested statistically: The trial began on November 20, 1945 and occupied 216 days of trial time. 33 witnesses were called and examined for the prosecution. 61 witnesses and 19 defendants testified for the defense; 143 additional witnesses gave testimony by interrogatories for the defense. The proceedings were conducted and recorded in four languages—English, German, French, and Russian—and daily transcripts in the language of his choice was provided for each prosecuting staff and all counsel for defendants. The English transcript of the proceedings covers over 17,000 pages. All proceedings were sound-reported in the original language used.

In preparation for the trial over 100,000 captured German documents were screened or examined and about 10,000 were selected for intensive examination as having probable evidentiary value. Of these, about 4,000 were translated into four languages and used, in whole or in part, in the trial

as exhibits. Millions of feet of captured moving picture film were examined and over 100,000 feet brought to Nurnberg. Relevant sections were prepared and introduced as exhibits. Over 25,000 captured still photographs were brought to Nurnberg, together with Hitler's personal photographer who took most of them. More than 1,000 were selected and prepared for use as exhibits. The Tribunal, in its judgment, states, "The case, therefore, against the defendants rests in large measure on documents of their own making, the authenticity of which has not been challenged except in one or two cases." The English translations of most of the documents are now being published by the Departments of State and War in eight volumes and will be a valuable and permanent source for the war history. As soon as funds are available, additional volumes will be published so that the entire documentary aspect of the trial—prosecution and defense—will be readily available.

As authorized by your Executive Order, it was my policy to borrow professional help from Government Departments and agencies so far as possible. The War Department was the heaviest contributor, but many loans were also made by the State, Justice, and Navy Departments and, early, by the Office of Strategic Services. All have responded generously to my requests for assistance. The United States staff directly engaged on the case at Nurnberg, including lawyers, secretaries, interpreters, translators, and clerical help numbered at its peak 654—365 being civilians and 289 military personnel. British, Soviet and French delegations aggregated approximately the same number. Nineteen adhering nations also sent representatives, which added thirty to fifty persons to those actively interested in the case. The press and radio had a maximum of 249 accredited representatives who reported the proceedings to all parts of the world. During the trial over 60,000 visitors' permits were issued, but there is a considerable and unknown amount of duplication as a visitor was required to have a separate permit for each session attended. Guests included leading statesmen, jurists, and lawyers, military and naval officers, writers, and invited representative Germans.

On the United States fell the obligations of host nation at Nurnberg. The staffs of all nations, the press, and visitors were provided for by the United States Army. It was done in a ruined city and among an enemy population. Utilities, communications, transport, and housing had been destroyed. The Courthouse was untenable until extensively repaired. The Army provided air and rail transportation, operated a motor pool for local transportation, set up local and long distance communications service for all delegations and the press, and billeted all engaged in the work. It operated messes and furnished food for all, the Courthouse cafeteria often serving as many as 1,500 lunches on Court days. The United States also provided security for prisoners, judges, and prosecution, furnished administrative services, and provided such facilities as photostat, mimeograph, and sound recording. Over 30,000 photostats, about fifty million pages of typed matter, and more than 4,000 record discs were produced. The Army also met indirect requirements such as dispensary and hospital, shipping, postal, post exchange, and other servicing. It was necessary to set up for this personnel every facility not only for working, but for living as well, for the

community itself afforded nothing. The Theatre Commander and his staff, Military Government officials, area commanders and their staffs, and troops were cordially and tirelessly cooperative in meeting our heavy requirements under unusual difficulties and had the commendation, not only of the American staff, but of all others.

It is safe to say that no litigation approaching this in magnitude has ever been attempted. I trust my pride will be pardonable in pointing out that this gigantic trial was organized and ready to start the evidence on November 20, 1945—less than seven months after I was appointed and after the surrender of Germany. It was concluded in less time than many litigations in the regularly established Courts of this country which proceed in one language instead of four. If it were not that the comparison might be deemed invidious, I would cite many anti-trust actions, rate cases, original cases, in the United States Supreme Court, and other large litigations that have taken much longer to try.

In this connection it should be noted that we decided to install facilities for simultaneous interpretation of the proceedings into four languages. This was done against the advice of professional interpreters of the old school that it "would not work." It does work, and without it the trial could not have been accomplished in this time, if at all. To have had three successive translations of each question, and then three of each answer, and to have had each speech redelivered three times in different languages after the first delivery finished, would have been an intolerable waste of time. The system we used makes one almost unaware of the language barrier so rapidly is every word made available in each language.

II.

Although my personal undertaking is at an end, any report would be incomplete and misleading which failed to take account of the general war crimes work that remains undone and the heavy burden that falls to successors in this work. A very large number of Germans who have participated in the crimes remains unpunished. There are many industrialists, militarists, politicians, diplomats, and police officials whose guilt does not differ from those who have been convicted except that their parts were at lower levels and have been less conspicuous.

Under your Executive Order of January 16, 1946, the war crimes functions devolve upon Military Government upon my retirement. At the time this order was signed it was agreed between Military Government and myself that I would at once name Brigadier General Telford Taylor as deputy in charge of preparing subsequent proceedings, and that upon my retirement he would be named to take over the war crimes prosecution on behalf of Military Government. He has assembled a staff and prepared a program of prosecutions against representatives of all the important segments of the Third Reich including a considerable number of industrialists and financiers, leading cabinet ministers, top SS and police officials, and militarists. Careful analysis is being made of the Tribunal's decision to determine any effects of the acquittal of Schacht and von Papen upon this plan of prosecution of industrialists and financiers who are clearly subject to prosecution on such specific charges as the use of slave labor.

The unsettled question is by what method these should be tried. The most expeditious method of trial and the one that will cost the United States the least in money and in manpower is that each of the occupying powers assume responsibility for the trial within its own zone of the prisoners in its own custody. Most of these defendants can be charged with single and specific crimes which will not involve a repetition of the whole history of the Nazi conspiracy. The trials can be conducted in two languages instead of four, and since all of the judges in any one trial would be of a single legal system no time would be lost adjusting different systems of procedure.

A four-power, four-language international trial is inevitably the slowest and most costly method of procedure. The chief purposes of this extraordinary and difficult method of trial have been largely accomplished, as I shall later point out.

There is neither moral nor legal obligation on the United States to undertake another trial of this character. While the International Agreement makes provision for a second trial, minutes of the negotiations will show that I was at all times candid to the point of being blunt in telling the conference that the United States would expect one trial of the top criminals to suffice to document the war and to establish the principles for which we contended, and that we would make no commitment to engage in another.

It has been suggested by some of our Allies that another international trial of industrialists be held. The United States proposed to try in the first trial not only Alfred Krupp, but several other industrialists and cartel officials. Our proposal was defeated by the unanimous vote of our three Allies. After indictment, when it appeared that the elder Krupp was too ill to be tried, the United States immediately moved that Alfred Krupp be added as a defendant and tried for the crimes which he had committed as chief owner and president of the Krupp armament works. This was likewise defeated by the Combined vote of all our Allies. Later, the Soviet and French joined in a motion to include Krupp, but it was denied by the Tribunal. This is not recited in criticism of my associates; it was their view that the number of defendants was already sufficiently large and that to add others would delay or prolong the trial. However, if they were unwilling to take the additional time necessary to try industrialists in this case, it does not create an obligation on the United States to assume the burdens of a second international trial.

The quickest and most satisfactory results will be obtained, in my opinion, from immediate commencement of our own cases according to plans which General Taylor has worked out in the event that such is your decision. Of course, appropriate notifications should be given to the nations associated with us in the first trial.

Another item of unfinished business concerns the permanent custody of captured documents. In the hands of the prosecution and of various agencies there are large numbers of documents in addition to those that have been used which have not been examined or translated but which probably contain much valuable information. These are the property of the United States. They should be collected, classified, and indexed. Some of them may hold special interest for particular agencies; all of them should be available ultimately to the public. Unless some one qualified agency, such as the

Library of Congress, is made responsible for this work and authorized to take custody on behalf of the United States, there is considerable danger that these documents will become scattered, destroyed, or buried in specialized archives. The matter is of such importance as to warrant calling it to your attention.

III.

The vital question in which you and the country are interested is whether the results of this trial justify this heavy expenditure of effort. While the sentences imposed upon individuals hold dramatic interest, and while the acquittals, especially of Schacht and von Papen, are regrettable, the importance of this case is not measurable in terms of the personal fate of any of the defendants who were already broken and discredited men. We are too close to the trial to appraise its long-range efforts. The only criterion of success presently applicable is the short-range test as to whether we have done what we set out to do. This was outlined in my report to you on June 7, 1945: By this standard we have succeeded.

The importance of the trial lies in the principles to which the Four Powers became committed by the Agreement, by their participation in the prosecution, and by the judgment rendered by the Tribunal. What has been accomplished may be summarized as follows:

1. We negotiated and concluded an Agreement with the four dominant powers of the earth, signed at London on August 8, 1945, which for the first time made explicit and unambiguous what was theretofore, as the Tribunal has declared, implicit in International Law, namely, that to prepare, incite, or wage a war of aggression, or to conspire with others to do so, is a crime against international society, and that to persecute, oppress, or do violence to individuals or minorities on political, racial, or religious grounds in connection with such a war, or to exterminate, enslave, or deport civilian populations, is an international crime, and that for the commission of such crimes individuals are responsible. This Agreement also won the adherence of nineteen additional nations and represents the combined judgments of the overwhelming majority of civilized people. It is a basic charter in the International Law of the future.

2. We have also incorporated its principles into a judicial precedent. "The power of the precedent," Mr. Justice Cardozo said, "is the power of the beaten path." One of the chief obstacles to this trial was the lack of a beaten path. A judgment such as has been rendered shifts the power of the precedent to the support of these rules of law. No one can hereafter deny or fail to know that the principles on which the Nazi leaders are adjudged to forfeit their lives constitute law—and law with a sanction.

3. The Agreement devised a workable procedure for the trial of crimes which reconciled the basic conflicts in Anglo-American, French, and Soviet procedures. In matters of procedure, legal systems differ more than in substantive law. But the Charter set up a few simple rules which assured all of the elements of fair and full hearing, including counsel for the defense. Representatives of the Four Powers, both on the Bench and at the Prosecutors' tables, have had to carry out that Agreement in day-to-day

cooperation for more than a year. The law is a contentious profession and a litigation offers countless occasions for differences even among lawyers who represent the same clients and are trained in a single system of law. When we add the diversities of interests that exist among our four nations, and the differences in tradition, viewpoint and language, it will be seen that our cooperation was beset with real difficulties. My colleagues, representing the United Kingdom, France, and the Soviet Union, exemplified the best professional tradition of their countries and have earned our gratitude for the patience; generosity, good will and professional ability which they brought to the task. It would be idle to pretend that we have not had moments of difference and vexation, but the steadfast purpose of all delegations that this first international trial should prove the possibility of successful international cooperation in use of the litigation process, always overcame transient irritations.

4. In a world torn with hatreds and suspicions where passions are stirred by the "frantic boast and foolish word," the Four Powers have given the example of submitting their grievances against these men to a dispassionate inquiry on legal evidence. The atmosphere of the Tribunal never failed to make a strong and favorable impression on visitors from all parts of the world because of its calmness and the patience and attentiveness of every Member and Alternate on the Tribunal. The nations have given the example of leaving punishment of individuals to the determination of independent judges, guided by principles of law, after hearing all of the evidence for the defense as well as the prosecution. It is not too much to hope that this example of full and fair hearing, and tranquil and discriminating judgment will do something toward strengthening the processes of justice in many countries.

5. We have documented from German sources the Nazi aggressions, persecutions, and atrocities with such authenticity and in such detail that there can be no responsible denial of these crimes in the future and no tradition of martyrdom of the Nazi leaders can arise among informed people. No history of this era can be entitled to authority which fails to take into account the record of Nurnberg. While an effort was made by Goering and others to portray themselves as "glowing patriots," their admitted crimes of violence and meanness, of greed and graft, leave no ground for future admiration of their characters and their fate leaves no incentive to emulation of their examples.

6. It has been well said that this trial is the world's first post mortem examination of a totalitarian regime. In this trial, the Nazis themselves with Machiavellian shamelessness exposed their methods of subverting people's liberties and establishing their dictatorships. The record is a merciless expose of the cruel and sordid methods by which a militant minority seized power, suppressed opposition, set up secret political police and concentration camps. They resorted to legal devices such as "protective custody," which Goering frankly said meant the arrest of people not because they had committed any crime but because of acts it was suspected they might commit if left at liberty. They destroyed all judicial remedies for

the citizen and all protections against terrorism. The record discloses the early symptoms of dictatorship and shows that it is only in its incipient stages that it can be brought under control. And the testimony records the German example that the destruction of opposition produces eventual deterioration in the government that does it. By progressive intolerance a dictatorship by its very nature becomes so arbitrary that it cannot tolerate opposition, even when it consists merely of the correction of misinformation or the communication to its highest officers of unwelcome intelligence. It was really the recoil of the Nazi blows at liberty that destroyed the Nazi regime. They struck down freedom of speech and press and other freedoms which pass as ordinary civil rights with us, so thoroughly that not even its highest officers dared to warn the people or the Fuehrer that they were taking the road to destruction. The Nurnberg trial has put that handwriting on the wall for the oppressor as well as the oppressed to read.

Of course, it would be extravagant to claim that agreements or trials of this character can make aggressive war or persecution of minorities impossible, just as it would be extravagant to claim that our federal laws make federal crime impossible. But we cannot doubt that they strengthen the bulwarks of peace and tolerance. The four nations through their prosecutors and through their representatives on the Tribunal, have enunciated standards of conduct which bring new hope to men of good will and from which future statesmen will not lightly depart. These standards by which the Germans have been condemned will become the condemnation of any nation that is faithless to them.

By the Agreement and this trial we have put International Law squarely on the side of peace as against aggressive warfare, and on the side of humanity as against persecution. In the present depressing world outlook it is possible that the Nurnberg trial may constitute the most important moral advance to grow out of this war. The trial and decision by which the four nations have forfeited the lives of some of the most powerful political and military leaders of Germany because they have violated fundamental International Law, do more than anything in our time to give to International Law what Woodrow Wilson described as "the kind of vitality it can only have if it is a real expression of our moral judgment."

I hereby resign my commission as your representative and Chief of Counsel for the United States. In its execution I have had the help of many able men and women, too many to mention individually, who have made personal sacrifice to carry on a work in which they earnestly believed. I also want to express deep personal appreciation for this opportunity to do what I believe to be a constructive work for the peace of the world and for the better protection of persecuted peoples. It was, perhaps, the greatest opportunity ever presented to an American lawyer. In pursuit of it many mistakes have been made and many inadequacies must be confessed. I am consoled by the fact that in proceedings of this novelty, errors and missteps may also be instructive to the future.

Respectfully submitted,

ROBERT H. JACKSON.