

S E C R E T

20 October 1945

MEMORANDUM for Mr. Justice Jackson

FROM General Donovan

Following our talk concerning Schlabrendorff I had him prepare comments on the indictment. Here they are:

"The main part of the Indictment falls into four counts. In Count I a division, convincing, and consistent with the Law of Nations is made between crimes against Peace, War Crimes and Crimes against Humanity. The weight of Count I is put on the evidence that National Socialism was a conspiracy. (III) Count IV adds the history of National Socialism starting with the organization of the totalitarian domination over Germany, going through the internal politics, economics and external politics to the page leading to the aggression up to the preparation of the war against the U. S. A. This evidence is convincing. It would have been, in my opinion, advantageous that the building up of a National Socialistic conspiracy aimed first at the subjugation of the German people, then of Europe, and finally the world should have been developed in a stronger way. . . ."

"Count II, Crimes Against Peace, is good and handled in a plausible way.

"In order to be able to appraise Count III, War Crimes, I would have to be in a position to check the various allegations contained in it. As a whole, they make a good impression. But, my feeling of justice obliges me to draw the attention on one point. On Page 18, it is alleged that in September 1941, in Katyn Forest, 925 Polish officers were executed by the Nazis. This is not true. I was myself, at that time, in Katyn and was an eye witness to the discovery of the Polish officers' graves. According to this, there is no doubt that the Polish officers have been captured and shot by the Russians. This undeniable fact is known, not only by thousands of ex-German soldiers and officers, but also by many Polish priests, English Officers and non-German

physicians of European nations. The democracies would very much jeopardize their good cause in advancing a provable untrue affirmation. I recommend therefore to strike this point. As against this, the Indictment mixes the three following orders of Hitler:

- "a) Shooting of all captured Russian Commissars.
- "b) Shooting of all captured Russian soldiers so far as they were members of the Communist Party.

"Both are clear offenses against the laws of nations.

"Count IV contains Crimes Against Humanity. The piecing together is good but one-sided. It is right that Crimes against Germans are here made the object of the Indictment. But it could provoke the involuntary impression of being one-sided when, on page 26, the Social Democrat Brietscheid, and the Communist Thalmann, are named as victims of this crime, but such first-class men like General Schleicher, General von Brodow and Director of Ministry Klausing, the Leader of the Catholic Action are omitted. In this connection, all the murders related to the 20th of June 1934, should also be mentioned. It further also occurs to me that the murder by 44 men of 7,000 Russian nationals of Hebrew Faith committed in 1941 in Kovvissow has not been mentioned despite that, especially in this case, protests were lodged by German Military Quarters leading to important inter-German discussions. An Appendix A is added to the Indictment containing the 24 names of the first lot of defendants. The formulation of the charges against these 24 persons are too schematic and not concrete enough to convey a convincing effect. Already, starting with Goering the question is begging the answer, why the Reichstag's fire staged by himself is not made the object of a charge. For one who knows National Socialism, the selection of the 24 defendants is not evident. Men like Schacht, Papen, Krupp, and Neurath, cannot be named together (the same day) with the other defendants. Who knows them knows also that they were not Nazis, knows also that their politics was false and rotten, knows that never more will they be allowed to play a political role, but knows also that they are no criminals, knows that they didn't

want the war, knows that Papen had the intimate wish to double-cross Hitler and put him against the wall, knows that contrary to the affirmation contained in the indictment Schacht was not Minister up to 1945, but that he retired before and so actively demonstrated his repentance. The charge against these personalities seems to me to stand on weak legs. Concerning both military groups (Keitel, Jodl, Raeder and Doenitz), the objection can be discounted that they as soldiers had to obey orders. But this is right only up to a certain point. Because the former Prussian and later German military law did never admit blind obedience. The soldier was not exempt of responsibility if he had or should have recognised the criminal character of the order. Besides, according to German military law, the Chief Commanders of the Wehrmacht armies and the Chiefs of the General Staff assumed by their signature the co-responsibility for the content of their orders, so that they were not only executive organs without their proper will.

"Annex B to the Indictment contains charges against 6 organizations. This inspires some reserve insofar as summary charges might often contain some injustice against some individuals.

"Concerning the Reichs Cabinet, I would limit the charges to the ministers who did not retire and who participated in the decision which justified the murders of June 30, 1934. As to the charges against the General Staff as such, I consider them to the extent unjustified as they do not refer only to the leading heads since 1938. Because apart from these the General Staff was the nucleus of the resistance against Hitler and his criminal intentions.

"The enumeration in Appendix C of the breaches of international treaties by Hitler and his confederates seems to be good and complete.

W. J. D.